



Constitutional
Rights
Foundation

Educate. Participate. Empower.

People v. Klein

False Report of an Emergency and a Criminal Threat

Featuring a pretrial argument on the First Amendment



OFFICIAL MATERIALS FOR
THE CALIFORNIA MOCK TRIAL COMPETITION

A Program of Constitutional Rights Foundation

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In Memoriam



The 2018-2019 California Mock Trial case is dedicated to the memory of longtime Constitutional Rights Foundation (CRF) supporter, Judge Ross Klein. Ross believed in the importance of law and civic education and volunteered for CRF's Mock Trial Program for over 20 years. Ross received CRF's Judge of the Year Award in 2000. Ross will be greatly missed by CRF and members of the Mock Trial community.

Cover Drawing: Elizabeth Taliaferro, Alameda County,
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PROGRAM OBJECTIVES

For the students, the Mock Trial program will:

1. Increase proficiency in basic skills (reading and speaking), critical-thinking skills (analyzing and reasoning), and interpersonal skills (listening and cooperating).
2. Develop an understanding of the link between our Constitution, our courts, and our legal system.
3. Provide the opportunity for interaction with positive adult role models in the legal community.

For the school, the program will:

1. Provide an opportunity for students to study key legal concepts and issues.
2. Promote cooperation and healthy academic competition among students of varying abilities and interests.
3. Demonstrate the achievements of young people to the community.
4. Provide a hands on experience outside the classroom from which students can learn about law, society, and themselves.
5. Provide a challenging and rewarding experience for teachers.

CODE OF ETHICAL CONDUCT

All participants (including observers) are bound by all sections of this Code and agree to abide by the provisions.

1. All competitors, coaches and other participants, including observers will show courtesy and respect for all team members and participants, including their opponents and all courthouse staff, judges, attorney coaches, teacher coaches and mock trial staff and volunteer personnel.
2. All competitors, coaches and participants, including observers, will show dignity and restraint, irrespective of the outcome of any trial. Trials, contests and activities will be conducted honestly, fairly, and with civility.
3. **Team members and all student participants** will conform to the highest standards of deportment. Team members and participants will not employ tactics they believe to be wrong or in violation of the Rules. Members and participants will not willfully violate the Rules of the competition in spirit or in practice. All teams and participants are responsible for insuring that all observers are aware of the Code.
4. **Teacher Coaches** agree to focus on the educational value of the Mock Trial Competition. They shall discourage willful violations of the Rules and/or this Code. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the letter and the spirit of the competition's Rules and this Code of Ethical Conduct.
5. **Attorney Coaches** agree to uphold the highest standards of the legal profession and will zealously encourage fair play. Attorney Coaches are reminded that they must serve as positive role models for the students. They will promote conduct and decorum among their team members and fellow coaches in accordance with the letter and the spirit of the competition's Rules and this Code of Ethical Conduct and will demonstrate the same through their own behavior. They will emphasize the educational value of the experience by requiring that all courtroom presentations (e.g., pretrial, questions, objections, etc.) be substantially the work product of the student team members.

By participating in the program, students, teacher coaches and attorney coaches are presumed to have read and agreed to the provisions of the Code. Violations of this Code of Ethical Conduct may be grounds for disqualification from a contest and/or suspension or expulsion from the program.

2018-2019 CALIFORNIA MOCK TRIAL PROGRAM

Each year, Constitutional Rights Foundation creates the Mock Trial case for students across the state of California. The case provides students an opportunity to wrestle with large societal problems within a structured forum and strives to provide a powerful and timely educational experience. It is our goal that students will conduct a cooperative, vigorous, and comprehensive analysis of these materials with the careful guidance of teachers and coaches.

The lesson and resources included in this packet offer schools and teachers additional methods to expand and deepen the educational value of the Mock Trial experience. We encourage all participants to share these resources with their colleagues for implementation in the classroom. We hope that by participating in the lesson and the Mock Trial program, students will develop a greater capacity to deal with the many important issues identified in *People v. Klein*.

CLASSROOM DISCUSSION MATERIALS

Cyberbullying: Law and Policy

Schoolyard behavior like teasing is often considered to be a normal part of growing up. Everyone seems to have experienced it or witnessed it in their childhoods. When it threatens the safety and well-being of students, however, it crosses the line into bullying. When done on the Internet, bullying poses new challenges for students, parents, schools, and society.

Generally, bullying is purposefully aggressive, antagonistic behavior by one person or group of people against another. It is defined by an imbalance of power, so that the victim is somehow weaker or more vulnerable than the bully. Bullying is usually systematic and ongoing. If severe enough, however, it could occur in a single incident.

Bullying can be physical, verbal, or emotional. It can involve racism and other forms of discrimination. Direct bullying occurs in the presence of the victim. Indirect bullying, like spreading rumors, also can lead to emotional pain and can provoke physical harm.

When Bullies Go Online

In a widely viewed 2015 TED Talk, Monica Lewinsky described herself as the first victim of cyberbullying. Lewinsky became infamous after the news of her 1998 affair with then-President Bill Clinton became public. She stated, "I went from being a private figure to being a publicly humiliated one worldwide. There were mobs of virtual stone-throwers." Since then, Lewinsky has used her experience to become an advocate for victims of cyberbullying across America. Although Lewinsky may have been one of the first to experience this dark side of social media and technology, she was by no means the last.

The Cyberbullying Research Center has defined cyberbullying as incidents "when someone repeatedly harasses, mistreats, or makes fun of another person online or while using cell phones or other electronic devices." The key is that a bully will use technology to humiliate or hurt another person.

It is a growing problem among children and teens. According to the Pew Research Center, 95 percent of teens now report they have a smartphone or access to one. Of this group, 45 percent of teens now say they are “online on a near-constant basis.” As of 2018, Tulane University reported that 70 percent of K-12 kids have witnessed cyberbullying take place. There is also overlap between the bullies and the bullied: the i-SAFE Foundation reports that about 50 percent of adolescents have both been cyberbullied and engaged in cyberbullying themselves.

Cyberbullying can be more than harassment or teasing; it may involve threats and hate-speech and can encourage or lead to physical attacks. Many bullies post video clips of themselves harassing or abusing others or publish personal information about their victims. They also might attempt to assume the identity of their victim, publishing embarrassing information that can lead to ridicule or abuse by others.

Another type of cyberbullying is known as “catfishing,” which refers to someone using a fictitious online profile to lure the victim into an online relationship. Catfishing can also be used to trick victims into sending nude photos or videos, which are often used for blackmail or humiliation later. While there are few statistics on how many students have been affected by catfishing, the tragic case of 13-year-old Megan Meier (mentioned below) highlights its very real implications.

Effects Of Bullying

In January of 2018, 12-year-old Gabbie Green committed suicide after being bullied by other students. Fellow students had participated in spreading rumors that Gabbie had sexually transmitted diseases, calling her vulgar names, and threatening to expose personal information about her life, both through cell phones and over social media. After the suicide, two middle school students involved in the cyberbullying faced criminal charges as a result of their behavior.

The Gabbie Green story shows how victims are at great risk of depression. Victims may also experience anxiety, loss of self-esteem, and relationship problems with parents and friends. They may suffer physical pain and gastrointestinal problems due to stress. Bullying can have negative effects on victims’ academic performance and other activities. Tulane University researchers found that cyberbullying victims are 2 to 9 times more likely to contemplate suicide.

Bullying also affects the bully. Students who bully are more likely to get into fights, vandalize property, and drop out of school. Bullies are more likely to be convicted of crimes. It is common for bullies to actually be “bully-victims,” or victims who turn around and bully others.

Schools face increasing pressure to control bullying and cyberbullying. Students who are bullied are more likely to miss school leading to high levels of truancy. Bullying may cause a loss of morale in students and lead to feelings of disrespect towards teachers. Additionally, severe bullying problems can cause dropout rates to rise.

Criminal Laws

Many existing laws already allow criminal prosecution for threats, stalking, identity theft, and many forms of harassment. Some argue that these existing

laws are good enough to fight against cyberbullying. Others argue that specific laws making cyberbullying a crime are necessary.

In 2006, Lori Drew believed that her Missouri neighbor, 13-year-old Megan Meier, had spread rumors about her daughter. With the help of one of her employees and her own daughter, Drew created a social-media account for a fictional boy named Josh Evans who befriended Megan online. Megan sent “Josh” personal information, but “Josh” turned on Megan and posted the message: “The world would be a better place without you.” Later that day, Megan hanged herself.

Despite public outrage, authorities had trouble finding a criminal law under which Drew could be prosecuted. Because Drew violated the social media site’s terms of service, the U.S. attorney general prosecuted her for violating the Computer Fraud and Abuse Act, a law designed to prevent fraud and confront problems of computer hacking. A jury found Drew not guilty of violating that law.

In 2008, in response to backlash over the Megan Meier case, the Missouri state legislature expanded its harassment laws to criminalize harassment from a computer, text messages, and other electronic means. The law also required school boards to create new anti-harassment policies. Many states have followed suit and expanded their laws to include electronic communication.

The Megan Meier Cyberbullying Prevention Act was introduced in Congress in 2009. It would criminalize interstate communications that amount to cyberbullying. The law never passed and died in a congressional committee. As of 2018, there is still no federal law that directly addresses bullying.

In some cases, bullying overlaps with discriminatory harassment which is covered under federal civil rights laws enforced by the U.S. Department of Education and the U.S. Department of Justice. No matter what label is used (e.g., bullying, hazing, teasing), schools are obligated by these laws to address conduct that is bullying based on a student’s race, color, national origin, sex, disability, or religion.

Civil Laws

Even if no crime has taken place, a victim of cyberbullying might file a civil lawsuit against a bully, the bully’s family, a school, or school district, depending on the facts. The difference between civil law and criminal law is that civil law describes private rights, but criminal law describes those actions that are offenses against society as a whole.

In a civil case, there are penalties other than incarceration for someone who violates the rights of others. Monetary penalties are called damages. In a criminal case, however, there is usually a punishment of incarceration, namely jail or prison, and often monetary fines.

Intentional infliction of emotional distress and defamation are examples of causes of action within the civil justice system. Intentional infliction of emotional distress occurs when someone intentionally or recklessly causes severe emotional distress in another. The conduct must be “extreme and outrageous.” Mere insults, annoyances, or low-level threats will not suffice.

Nonetheless, perpetrators potentially could be liable for a lot of money in damages.

Defamation occurs when someone communicates false statements that injure another's reputation. If a statement is true, however, it is generally not defamation. Let's say Brenda sends e-mails to all her friends at school falsely accusing Victor of stealing money out of someone's backpack. Again, not only would it be cyberbullying, but Victor has a good claim that his reputation has been smeared. He might be able to sue Brenda for damages.

Schools and Cyberbullying

Schools face a dilemma when it comes to cyberbullying. Schools can regulate student conduct on campus. Much cyberbullying, however, originates off-campus and is done on home computers or from cell phones, even if it relates to events and people at a school.

Some feel that the school should be the primary agent in handling the cyberbullying problem because school authorities are in the best position to observe student conduct. Schools traditionally discipline bullies for their behavior, and they might provide resources for counseling of both bullies and victims. Cyberbullying done on or off campus, however, may not amount to a crime, such as stalking.

Legislatures can help by defining the schools' responsibilities. In 2008, legislation in Florida allowed school administrators to punish cyberbullying that occurs off-campus if it "has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or has the effect of substantially disrupting the orderly operation of a school." A number of states have crafted similar statutes. However, not all states explicitly address what happens when the bullying occurs off campus, leaving it up to school districts to develop their own policies.

The California education code specifically addresses cyberbullying. In that code, a superintendent or school principal may recommend that a student be suspended or expelled for engaging in "bullying committed by means of an electronic act...directed specifically toward a pupil or school personnel." The cyberbullying, however, must be "related to school activity" to be punishable.

The Supreme Court has provided some guidance. In *Tinker v. Des Moines*, the court held that students wearing armbands in protest of the Vietnam War were engaged in protected speech under the First Amendment. Nevertheless, schools could constitutionally regulate student speech or expression that causes a "substantial interference" at the school.

Writing & Discussion

1. What is bullying? Do you agree that the Internet has increased the problem of bullying? Why or why not?
2. Why do schools face a dilemma about punishing a bully when the cyberbullying occurs or originates off campus?
3. In your opinion, what approach to addressing the problem of cyberbullying is the most effective? Should the laws be more or less strict?

Activity: A School Takes on Cyberbullying

Each of the five scenarios listed below involves an allegation of cyberbullying at the hypothetical Kinseytown High School. The school has a policy on bullying:

The administration of Kinseytown High School believes that all students have a right to a safe and healthy school environment. The school will not tolerate behavior that infringes on the safety of any student. A student shall not intimidate or harass another student through words or actions. Such behavior includes: direct physical contact, such as hitting or shoving; verbal assaults, such as teasing or name-calling; and social isolation or manipulation. Any student who engages in bullying may be subject to disciplinary action up to and including expulsion.

This policy applies to students on school grounds, while traveling to and from school or a school-sponsored activity, during the lunch period, whether on or off campus, and during a school-sponsored activity.

In small groups, look at the scenarios and answer these questions:

- (1) Is this an example of cyberbullying? Why or why not?
 - (2) If so, what discipline should the school impose? Why?
 - (3) What are the legal consequences, if any, in this example?
1. Penelope and Rosetta work together on the Kinseytown High yearbook. They are usually friends, but have a heated disagreement over the artwork for the yearbook's cover. During lunch period, Penelope sends a text message to Rosetta stating "I'm so mad I can't even sit near you. Leave me alone today."
 2. Marla is a new student at school. In the school computer lab, William sets up a page on NowPic called "Marla Go Home!" Several students post derogatory messages about Marla's appearance, calling her a "wannabe" and a "slime of a person." Marla sees the page and leaves early. She stays at home for several days.
 3. One Saturday, Herman and Stevie create an Instagram account impersonating Alex, a student they dislike. At Herman's home, the two use Alex's name and a photo of Alex to set up the account. In Alex's name, they post photos and captions insulting other students. When Alex arrives at school on Monday, three students who believe they were insulted by Alex punch and kick him.
 4. Robert is a popular "class clown" and often "roasts" other students by making fun of them in front of small audiences during passing periods and after school. On the day after the school election, Robert posts a message about Milton, the new class president, on his Snapchat story. Robert is friends on Snapchat with many other students at Kinseytown High. The message states "I can't keep it a secret anymore. Milton stuffed those ballots when no one was looking! I SAW him!" There is no evidence that Milton tampered with the election.
 5. Arnie and Edwin do not get along. One Sunday afternoon, Arnie sends threatening e-mails to Edwin. One e-mail reads, "I hate your guts! How about I put a bullet in you when I see you at school tomorrow? How do you like that?" Edwin reads the e-mails and informs his parents.

INTRODUCTION TO 2018-2019 MOCK TRIAL COMPETITION

This packet contains the official materials required by student teams to prepare for the 38th Annual California Mock Trial Competition. In preparation for their trials, participants will use information included in the *People v. Klein* case packet (except for the classroom discussion materials). The competition is sponsored and administered by Constitutional Rights Foundation. The program is co-sponsored by the Daily Journal Corporation and American Board of Trial Advocates.

Each participating county will sponsor a local competition and declare a winning team from the competing high schools. The winning team from each county will be invited to compete in the state finals in Sacramento, March 22-24, 2019. The winning team from the state competition will be eligible to represent California at the National High School Mock Trial Championship in Athens, Georgia, May 16-19, 2019.

The Mock Trial is designed to clarify the workings of our legal institutions for young people. As student teams study a hypothetical case, conduct legal research, and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, they learn about our judicial system. During Mock Trials, students portray each of the principals in the cast of courtroom characters, including counsel, witnesses, court clerks, and bailiffs. Students also argue a pretrial motion. The motion has a direct bearing on the evidence that can be used at trial.

During all Mock Trials, students present their cases in courtrooms before actual judges and attorneys. As teams represent the prosecution and defense arguments over the course of the competition, the students must prepare a case for both sides, thereby gaining a comprehensive understanding of the pertinent legal and factual issues.

Because of the differences that exist in human perception, a subjective quality is present in the scoring of the Mock Trial, as with all legal proceedings. Even with rules and evaluation criteria for guidance, no judge or attorney scorer will evaluate the same performance in the same way. While we do everything possible to maintain consistency in scoring, every trial will be conducted differently, and we encourage all participants to be prepared to adjust their presentations accordingly. Remember that the judging and scoring results in each trial are final.

IMPORTANT

Visit our Facebook page CRF California Mock Trial and Twitter @camocktrial for all program and case updates.

1 CALIFORNIA MOCK TRIAL FACT SITUATION

2 Reagan, Marlow, Cameron, and Sawyer work at a restaurant in East
3 Flamingo called Hennessy’s, owned by Sam Kolostian. On New
4 Year’s Eve last year, Reagan accidentally broke Sam’s “Baker’s Pride”
5 oven, which cost over \$34,000. Reagan had put aluminum foil on the
6 bottom of the oven so Reagan wouldn’t have to clean it after making
7 a quick snack after closing, but the foil melted, causing serious
8 damage to the oven and creating a fire hazard. Sawyer was there
9 when it happened, but being Reagan’s best friend, Sawyer helped
10 Reagan cover it up and promised never to say anything.

11 On June 1, Sawyer posted a selfie on NowPic, a popular photo-
12 sharing social media app, and the photo went viral. By the end of
13 the week, Sawyer had gained over 150,000 new followers, and
14 Sawyer received an offer for a brand deal with a local company.
15 A few days later, on June 11, Sawyer dropped Reagan as a friend.
16 Sawyer said, “I’m sorry, I just need to focus on developing my
17 brand, and I just don’t see you as part of it.” By the end of that
18 week, Sawyer had over 300,000 followers and four brand deals,
19 and Sawyer talked about the deals incessantly at Hennessy’s
20 while working. During this time, Reagan befriended Marlow
21 and Cameron.

22 One month after Sawyer’s swift rise to becoming a social media
23 influencer, on July 2, Sawyer talked to the other workers about
24 how much effort it takes to be an influencer. “On the bright side,”
25 Sawyer said, “you should see the way people talk to me now and
26 the amazing messages I get from hot people all the time!” After
27 hearing this, Reagan suggested to Marlow and Cameron that they
28 create a fake social media account and “catfish” Sawyer, or use the
29 fake account to flirt with Sawyer and make Sawyer think that
30 Sawyer and the fake account were in a relationship. Marlow and
31 Cameron readily agreed.

32 That same day, Reagan, Marlow, and Cameron created a BLAB
33 social media account and a NowPic account under the name
34 Hayden Carlton, using stock photos they found on the Internet.
35 They purchased followers and added Sawyer as a friend on both
36 accounts, and sent Sawyer a message saying that Hayden is 24,
37 lives in the next town over, and thinks Sawyer is the most
38 attractive person Hayden has ever seen. Sawyer responded
39 positively, and Sawyer and “Hayden” proceed to enter into an
40 online “relationship.” Sawyer bragged about Sawyer’s new
41 significant other, Hayden, to all the co-workers. Reagan, Marlow,
42 and Cameron were pleased with the success of their catfishing, in
43 which all three actively participated.

44 On July 21, a few weeks after the catfishing began, Reagan,
45 Marlow, and Cameron decided to use the fake account to invite
46 Sawyer on a date at a fancy restaurant. After letting Sawyer sit at
47 the table for thirty minutes without responding, they secretly took
48 a picture of Sawyer alone at the table, looking sad. They posted
49 the photo on the “Hayden” account, tagging Sawyer, with the
50 caption, “As if anyone would be interested in @Sawyer! You are

1 not as hot as you think you are, and no real person would want to
2 waste their time on a wannabe influencer like you. Too bad you
3 have no friends to wipe your tears... #karma.”

4 Sawyer saw the post and realized that Sawyer had been catfished,
5 and from that point on, Sawyer stopped talking about Hayden.

6 After Sawyer did not respond to the restaurant photo, Reagan,
7 Marlow, and Cameron continued taunting Sawyer using the
8 Hayden account. Over the next two weeks, the “Hayden” account
9 posted relentlessly about Sawyer, including photos where Sawyer
10 looks terrible and spreading rumors about what Sawyer is doing
11 and who Sawyer is with. Sawyer still did not know who was
12 running the “Hayden” account.

13 Finally, on August 13, the Hayden account posted another bad
14 photo of Sawyer, with the caption, “Did you know birds hate
15 Sawyer too? One literally pooped right on Sawyer one time. I
16 wonder if we could find that bird and have it do a repeat
17 performance...” Sawyer saw the caption and realized that Reagan
18 was behind the Hayden account: Reagan had been the only person
19 with Sawyer when the bird incident happened years before, and
20 Sawyer had never told anyone else about the incident.

21 The next day, Sawyer went to work and told Sam that Reagan was
22 the one who broke the Baker’s Pride oven, and that Sawyer just
23 found out and couldn’t believe that Reagan had been hiding it.
24 When Reagan showed up for work, Sam fired Reagan. When
25 Reagan asked why, Sam said, “You’ll be hearing from my lawyer
26 about the \$34,000 you owe me for that oven.” Sam told Reagan to
27 get out. Reagan left the restaurant.

28 That afternoon, Sawyer posted a picture of Sawyer smirking, with the
29 caption “Tfw you WIN. <emojis> . #toobadsosad.” Using the Hayden
30 account, Reagan commented on Sawyer’s post, “You deserve to die.
31 I’m going to get you for this, you just wait. I hate you. When you’re
32 dead no one will even miss you, you monstrous slime of a person. You
33 think you can stick me with a \$34,000 lawsuit and just get away with
34 it? Watch your back Sawyer, I’m coming for you.” Sawyer responded,
35 “LOL, as IF. You’re done now, bye.”

36 That night, someone sent a “text-a-tip” to the police department,
37 telling the police that there was a “hostage situation” at Sawyer’s
38 house. The police immediately dispatched a Special Weapons and
39 Tactics (“SWAT”) team to the house where Sawyer lived. As the
40 SWAT team entered the house with firearms drawn, Sawyer became
41 frightened and slipped down the staircase, breaking Sawyer’s femur.
42 In reality, there was no need for a SWAT team. Sawyer had been
43 “swatted,” meaning someone had falsely reported the hostage
44 situation in order to send police to Sawyer’s home.

45 East Flamingo’s local police officer, Keegan Lopez, was one of the
46 officers on scene during the “swatting,” and spoke to Sawyer in
47 the ambulance on the way to the hospital. Sawyer told Officer
48 Lopez that Reagan Klein was the culprit behind the “swatting.”
49 Officer Lopez asked why Sawyer thought so. Sawyer replied by

1 describing the catfishing and Sawyer’s own conclusion that
2 Reagan was behind it. Sawyer also described how Sawyer revealed
3 that Reagan had broken the oven at Hennessy’s, which resulted in
4 Reagan’s firing. Sawyer then showed Officer Lopez the Hayden
5 account and the comment left on Sawyer’s photo from earlier that
6 afternoon. Sawyer told Officer Lopez that Sawyer was frightened
7 of Reagan. After hearing what Sawyer said, Officer Lopez got
8 Reagan’s address and drove over to Reagan’s apartment.

9 When Officer Lopez got to the apartment, Reagan voluntarily let
10 the officer inside. Officer Lopez asked Reagan if Reagan was
11 behind the Hayden account, and if Reagan was the person who
12 posted the comment on Sawyer’s picture that afternoon. Reagan
13 admitted to participating in the Hayden account, and to posting the
14 comment. Officer Lopez asked Reagan if Reagan knew anything
15 about the “swatting” incident. Reagan denied knowing anything
16 about it.

17 Officer Lopez noticed a flip-phone plugged into the wall, and asked
18 if it belonged to Reagan. Reagan told Officer Lopez that it belonged
19 to Cameron, and Officer Lopez asked Cameron if Officer Lopez
20 could look at it. Cameron unplugged the phone, opened it, and
21 handed it to Officer Lopez. Officer Lopez looked down at the
22 screen to see a 911 “text-a-tip” message, sent at 9:08 p.m., that
23 was identical to the message the department had received earlier
24 that night about the “hostage situation.” Officer Lopez asked
25 Cameron if Officer Lopez could retain the phone for evidence.
26 Cameron said yes.

27 Officer Lopez then took statements from Cameron, Reagan, and
28 Marlow about what they were doing earlier that night around 9:08
29 p.m. and what their relationship was with Sawyer. After the
30 interviews, Officer Lopez had probable cause to arrest Reagan for
31 making a criminal threat against Sawyer.

32 Officer Lopez brought the phone to the police department to
33 examine it. Forensic analysis showed that the false “text-a-tip”
34 about Sawyer had come from that phone. Additionally, Officer
35 Lopez had a linguistics expert conduct a linguistic analysis of the
36 “text-a-tip” message compared to writing samples from Cameron
37 and Reagan that the department had gathered from their individual
38 social media accounts. The expert opined that between the two,
39 the tip was probably written by Reagan; therefore, Officer Lopez
40 added another count, making a false emergency report, to
41 Reagan’s charges.

42 **SOURCES FOR THE TRIAL**

43 The sources for the mock trial are a “closed library,” which means
44 that Mock Trial participants may only use the materials provided
45 in this case packet. The materials for the trial itself include
46 Statement of Charges, Physical Evidence, Stipulations, excerpts
47 from the California Penal Code, CALCRIM Jury Instructions, Fact
48 Situation, Witness Statements, and the Mock Trial Simplified Rules
49 of Evidence.

1 **STATEMENT OF CHARGES**

2 The prosecution charges Reagan with two counts:

3 Count 1 – False Report of an Emergency (California Penal Code
4 Section 148.3(b))

5 Count 2 – Criminal Threat (California Penal Code Section 422)

6
7 **PHYSICAL EVIDENCE**

8 Only the following physical evidence may be introduced at trial.

9 The prosecution is responsible for bringing:

10 1. Exhibit A, Text-a-Tip

11 2. Exhibit B, Screenshot of Marlow’s YumYumDelivery Order
12 History

13 3. Exhibit C, Features of the Writings

14 4. Exhibit D, Distinctive Vocabulary Choices

15 5. Exhibit E, Diagram of Reagan’s Apartment

16 *ALL reproductions can be as small as the original document
17 found in the case materials but no larger than 22 x 28 inches.

18
19 **STIPULATIONS**

20 Stipulations shall be considered part of the record. Prosecution and
21 defense stipulate to the following:

22 1. There are no Fourth Amendment issues with the seizure of
23 evidence or the arrest of the defendant.

24 2. At the time of the arrest, there was sufficient probable
25 cause to arrest Reagan Klein.

26 3. There are no Miranda issues related to the arrest of Reagan
27 Klein.

28 4. All witness statements were taken in a timely manner.

29 5. Dr. Dakota Cheung and Dr. Blake Williams are qualified
30 expert witnesses and can testify to each other’s statements
31 and reports. The absence of a report may not be
32 questioned.

33 6. All physical evidence and witnesses not provided for in the
34 case packet are unavailable and their availability may not
35 be questioned.

36 7. Exhibit E is a correct and accurate depiction of the floor
37 plan of Reagan Klein’s apartment that was created by the
38 East Flamingo Police Department.

39 8. YumYum Delivery is unable to identify who delivered the
40 pizza to Reagan’s apartment.

41 **LEGAL AUTHORITIES AND PRETRIAL MATERIALS**

42 (Middle school students do not argue the pretrial motion and may
43 use the statement in question in the case-in-chief, subject to
44 relevance and other evidentiary objections.)

45
46 This section of the mock trial contains materials and procedures
47 for the preparation of the trial and a pretrial motion on an
48 important legal issue. The judge’s ruling on the pretrial motion
49 will have a direct bearing on the charges and the possible outcome
50 of the trial. The pretrial motion is designed to help students learn
51 about the legal process and legal reasoning. Students will learn
52 how to draw analogies, distinguish a variety of factual situations,

1 and analyze and debate constitutional issues. These materials can
2 be used as a classroom activity or incorporated into a local mock
3 trial competition. The pretrial motion is the only allowable motion
4 for the purposes of this competition.

5 The First Amendment protects individuals from federal
6 government intrusions on their right to speak, exercise religion,
7 assemble, publish news, and petition the government. These rights
8 are extended to the states by the due process clause of the 14th
9 Amendment. Freedom of speech is an area that has come under
10 fire throughout United States history. The tension between the
11 right to speak freely and the need to protect people from dangers
12 that may result from certain speech has been hotly debated
13 throughout the Nation’s history, resulting in a great number court
14 decisions over the years.

15 The pretrial motion in this case is a motion under California Penal
16 Code § 995 to set aside Count 2 – Criminal Threat as a matter of
17 law. A § 995 motion is brought by the defendant asking the trial
18 court to set aside the count if the defendant has previously been
19 held to answer to the charges at a preliminary hearing without
20 reasonable or probable cause. Here, the defense will argue that
21 Reagan Klein’s NowPic comment (see Pretrial Arguments below) is
22 constitutionally protected free speech. If the presider rules in favor
23 of the defense, finding the comment not to be a “clear, immediate,
24 unconditional, and specific” communication to Sawyer Smith of a
25 serious intention and the immediate prospect of being carried out
26 as required by law, the criminal threat charge will be dismissed.
27 The prosecution, however, will argue that the presider consider all
28 of the circumstances surrounding the threat in determining if the
29 legal standard was met. Regardless of the presider’s ruling, the
30 comment may still be used as evidence relating to the Count 1 –
31 False Report of an Emergency, subject to relevance and other
32 evidentiary objections.

33 **PRETRIAL ARGUMENTS**

34 The pretrial issue in this case focuses on whether it is free speech
35 under the First Amendment for a person to comment on social
36 media, “You deserve to die. I’m going to get you for this, you just
37 wait. I hate you. When you’re dead no one will even miss you,
38 you monstrous slime of a person. You think you can stick me with
39 a \$34,000 lawsuit and just get away with it? Watch your back
40 Sawyer, I’m coming for you.”

41 The prosecution will argue that such speech constitutes a true
42 threat that is not protected speech under the First Amendment.
43 The First Amendment does not protect “true threats,” although it
44 does protect “loose, figurative, or hyperbolic language.” A
45 statement becomes a “true threat” when the speaker intends to
46 communicate a “serious expression of an intent to commit an
47 unlawful act of violence.” A “true threat” is one that is sufficient
48 to cause a reasonable person to be in sustained fear. Because a
49 reasonable person could foresee how statements such as “you
50 deserve to die,” “I’m going to get you for this,” “when you’re dead
51 no one will even miss you,” “watch your back,” and “I’m coming

1 for you,” would be taken as a serious expression to inflict bodily
2 harm on someone, and Sawyer admitted to being in fear of what
3 Reagan would do to Sawyer, the comment should constitute a true
4 threat. Furthermore, Reagan and Sawyer’s rocky relationship after
5 Sawyer dropped Reagan as a friend, as can be seen through
6 Reagan’s decision to “catfish” and otherwise taunt Sawyer through
7 the Hayden account, shows a history of animosity between the
8 parties. Courts have looked at a history of animosity as relevant in
9 determining whether a statement constitutes a true threat.

10 The defense will argue that the comment was not a “true threat,”
11 and it is therefore protected free speech under the First
12 Amendment. The comment lacked the “unequivocal,
13 unconditional, immediate, and specific” language normally
14 required to constitute a threat under section 422, and if such
15 language is lacking, the court examines the surrounding
16 circumstances to determine if the statement is elevated to a threat.
17 Courts have found that statements such as “I’m going to get you”
18 are insufficient alone to constitute a true threat. Here, Reagan
19 made no specific threat, and there was no other outside conduct to
20 suggest that the comment was a serious expression of an intent to
21 inflict bodily harm on Sawyer. Furthermore, section 422 requires
22 that the statement “causes that person reasonably to be in
23 sustained fear for his or her own safety” in order to constitute a
24 criminal threat. Sawyer’s response, “LOL, as IF. You’re done now,
25 bye,” clearly demonstrates that Reagan’s comment did not cause
26 Sawyer to be in sustained fear for Sawyer’s safety. Sawyer’s
27 actions following the comment further support the mentality of
28 Sawyer’s response: Sawyer was at home, streaming a movie, like it
29 was any other night of the week. If Sawyer were in sustained fear,
30 Sawyer would have called the police.

31

32 **SOURCES FOR PRETRIAL HEARING**

33 The sources for the pretrial motion arguments are a “closed
34 library,” which means that Mock Trial participants may only use
35 the materials provided in this case packet. These materials include:
36 any relevant testimony to be found in the fact situation and
37 witness statements of Reagan Klein, Sawyer Smith, and Officer
38 Lopez, excerpts from the U.S. Constitution, the California Penal
39 Code, and edited court opinions.

40

41 The U.S. Constitution, U.S. Supreme Court holdings, and California
42 Supreme Court and California Appellate Court holdings are all
43 binding and must be followed by California trial courts. All other
44 cases are not binding but are persuasive authority. In developing
45 arguments for this Mock Trial, both sides should compare or
46 distinguish the facts in the cited cases from one another and from
47 the facts in *People v. Klein*.

48

49

1 **LEGAL AUTHORITIES**

2 **U.S. Constitution**

3 *Amendment I*

4 Congress shall make no law respecting an establishment of
5 religion, or prohibiting the free exercise thereof; or abridging the
6 freedom of speech, or of the press; or the right of the people
7 peaceably to assemble, and to petition the Government for a
8 redress of grievances.

9
10 *Amendment XIV*

11 Section 1. All persons born or naturalized in the United States and
12 subject to the jurisdiction thereof, are citizens of the United States
13 and of the State wherein they reside. No State shall make or
14 enforce any law which shall abridge the privileges or immunities
15 of citizens of the United States; nor shall any State deprive any
16 person of life, liberty, or property, without due process of law; nor
17 deny to any person within its jurisdiction the equal protection of
18 the laws.

19
20 **California Constitution**

21 *Article I, Section 2*

22 (a) Every person may freely speak, write and publish his or her
23 sentiments on all subjects, being responsible for the abuse of this
24 right. A law may not restrain or abridge liberty of speech or press.

25
26 **STATUTORY**

27 **California Penal Code §148.3 (2013)**

28 (b) Any individual who reports, or causes any report to be made,
29 to any city, county, city and county, or state department, district,
30 agency, division, commission, or board, that an “emergency”
31 exists, who knows that the report is false, and who knows or
32 should know that the response to the report is likely to cause
33 death or great bodily injury, and great bodily injury or death is
34 sustained by any person as a result of the false report, is guilty of a
35 felony and upon conviction thereof shall be punishable by
36 imprisonment pursuant to subdivision (h) of Section 1170, or by a
37 fine of not more than ten thousand dollars (\$10,000), or by both
38 that imprisonment and fine.

39
40 (c) “Emergency” as used in this section means any condition that
41 results in, or could result in, the response of a public official in an
42 authorized emergency vehicle, aircraft, or vessel, any condition
43 that jeopardizes or could jeopardize public safety and results in, or
44 could result in, the evacuation of any area, building, structure,
45 vehicle, or of any other place that any individual may enter, or any
46 situation that results in or could result in activation of the
47 Emergency Alert System . . .

48
49 **California Penal Code §422 (2011)**

50 (a) Any person who willfully threatens to commit a crime which
51 will result in death or great bodily injury to another person, with
52 the specific intent that the statement, made verbally, in writing, or
53 by means of an electronic communication device, is to be taken as
54 a threat, even if there is no intent of actually carrying it out,

1 which, on its face and under the circumstances in which it is
2 made, is so unequivocal, unconditional, immediate, and specific as
3 to convey to the person threatened, a gravity of purpose and an
4 immediate prospect of execution of the threat, and thereby causes
5 that person reasonably to be in sustained fear for his or her own
6 safety or for his or her immediate family's safety, shall be
7 punished by imprisonment in the county jail not to exceed one
8 year, or by imprisonment in the state prison.

9
10 **JURY INSTRUCTIONS**

11 **California Criminal Jury Instructions**

12 **CALCRIM 223 (Direct and Circumstantial Evidence)**

13 Facts may be proved by direct or circumstantial evidence or by a
14 combination of both. Direct evidence can prove a fact by itself. For
15 example, if a witness testifies he saw it raining outside before he
16 came into the courthouse, that testimony is direct evidence that it
17 was raining. Circumstantial evidence also may be called indirect
18 evidence. Circumstantial evidence does not directly prove the fact
19 to be decided, but is evidence of another fact or group of facts
20 from which you may logically and reasonably conclude the truth
21 of the fact in question. For example, if a witness testifies that he
22 saw someone come inside wearing a raincoat covered with drops
23 of water, that testimony is circumstantial evidence because it may
24 support a conclusion that it was raining outside.

25
26 Both direct and circumstantial evidence are acceptable types of
27 evidence to prove or disprove the elements of a charge, including
28 intent and mental state and acts necessary to a conviction, and
29 neither is necessarily more reliable than the other. Neither is
30 entitled to any greater weight than the other. You must decide
31 whether a fact in issue has been proved based on all the evidence.

32
33 **CALCRIM 224 (Circumstantial Evidence: Sufficiency of
34 Evidence)**

35 Before you may rely on circumstantial evidence to conclude that a
36 fact necessary to find the defendant guilty has been proved, you
37 must be convinced that the People have proved each fact essential
38 to that conclusion beyond a reasonable doubt.

39
40 Also, before you may rely on circumstantial evidence to find the
41 defendant guilty, you must be convinced that the only reasonable
42 conclusion supported by the circumstantial evidence is that the
43 defendant is guilty. If you can draw two or more reasonable
44 conclusions from the circumstantial evidence, and one of those
45 reasonable conclusions points to innocence and another to guilt,
46 you must accept the one that points to innocence. However, when
47 considering circumstantial evidence, you must accept only
48 reasonable conclusions and reject any that are unreasonable.

49
50 **CALCRIM 1300 Criminal Threat (Pen. Code, § 422)**

51 The defendant is charged in Count 2 with having made a criminal
52 threat [in violation of Penal Code section 422]. To prove that the
53 defendant is guilty of this crime, the People must prove that:

- 1 1. The defendant willfully threatened to unlawfully kill or
- 2 unlawfully cause great bodily injury to Sawyer Smith.
- 3 2. The defendant made the threat (orally/in writing/by electronic
- 4 communication device);
- 5 3. The defendant intended that (his/her) statement be understood
- 6 as a threat [and intended that it be communicated to Sawyer
- 7 Smith];
- 8 4. The threat was so clear, immediate, unconditional, and specific
- 9 that it communicated to Sawyer Smith a serious intention and the
- 10 immediate prospect that the threat would be carried out;
- 11 5. The threat actually caused Sawyer Smith to be in sustained fear
- 12 for (his/her) own
- 13 safety;
- 14 AND
- 15 6. Sawyer’s fear was reasonable under the circumstances.
- 16 Someone commits an act *willfully* when he or she does it willingly
- 17 or on purpose.

18
19 In deciding whether a threat was sufficiently clear, immediate,
20 unconditional, and specific, consider the words themselves, as
21 well as the surrounding circumstances.
22 Someone who intends that a statement be understood as a threat
23 does not have to actually intend to carry out the threatened act [or
24 intend to have someone else do so].
25 *Great bodily injury* means significant or substantial physical injury.
26 It is an injury that is greater than minor or moderate harm.
27 *Sustained fear* means fear for a period of time that is more than
28 momentary, fleeting, or transitory.

29
30 **CASES**

31 ***D.C. v. R.R.*** (2010) 182 Cal. App. 4th 1190

32 **Facts:** Defendant posted comment on fellow student’s website, “I
33 want to rip out your *** heart and feed it to you. I heard your
34 song while driving my kid to school and from that moment on I’ve
35 wanted to kill you. If I ever see you I’m going to pound your head
36 in with an ice pick...I hope you burn in hell.”

37
38 **Issue:** Was the defendant’s comment a “true threat,” or was it
39 constitutionally protected speech?

40
41 **Holding:** The comment was a true threat. The First Amendment
42 does not protect “true threats,” although it does protect “loose,
43 figurative, or hyperbolic language.” In this case, however, the
44 message was “unequivocal.” A true threat conveys a serious
45 expression of an intent to inflict bodily harm, and the defendant’s
46 comment conveyed such an intent three times when the defendant
47 wrote that he wanted to rip out the victim’s heart, he wanted to
48 kill the victim, and he wanted to pound the victim’s head in with
49 an ice pick. The “grotesque and exaggerated images” produced by
50 such language did not convey a jocular tone, and an intent to
51 harm can also be seen through expressions like “burn in hell.”
52 Furthermore, the threat here was not a few words shouted during
53 a brawl: “it was a series of grammatically correct sentences

1 composed at a computer keyboard over a period of at least several
2 minutes.” Additionally, the defendant had to decide to send it after
3 typing it. Thus, the message and its transmission show
4 deliberation. A reasonable person would interpret this as a serious
5 threat to his or her life. Therefore, it is a “true threat” and it is not
6 constitutionally protected speech.

7
8 ***Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal
9 Cruelty USA, Inc.*** (2005) 129 Cal. App. 4th 1228

10 **Facts:** Defendant is an activist group protesting the plaintiff’s
11 business that involved animal testing. Defendant’s website
12 encouraged violent acts of protest and provided a list of “current
13 targets” of the campaign, including identities of the business’s
14 employees and “presumably home addresses and other identifying
15 information.” The website also had a list of acts that activists had
16 completed on their behalf, including physical assaults, firebombing
17 cars, sledgehammer attacks “on your car—while you are still
18 inside it,” threats to kill or injure people, their partners and
19 children, etc. At the end of the list, the page said, “Editors’ Note:
20 Now don’t get any funny ideas, folks.” Activists targeted several of
21 the plaintiff’s employees, following them home, harassing them,
22 causing physical destruction to their property, and more.

23
24 **Issue:** Did the content on the activist website constitute a “true
25 threat,” or was it constitutionally protected speech?
26

27 **Holding:** A statement becomes a “true threat” when “the speaker
28 means to communicate a serious expression of an intent to commit
29 an act of unlawful violence.” Violence and threats thereof “fall
30 outside the protection of the First Amendment because they coerce by
31 unlawful conduct.” Furthermore, true threats are punishable rather
32 than protected “because of the state’s interest in protecting
33 individuals from the fear of violence.” Given the context of prior
34 violent attacks that have occurred by activists of this organization and
35 the trespass and vandalism that occurred on the business’s
36 employees’ homes after they were specifically targeted by the activist
37 website’s list of “current targets,” the court determined that the
38 content “would put a reasonable person in fear for her safety, or the
39 safety of her family.” Therefore, such content constitutes a true
40 threat, and it is not constitutionally protected free speech.
41

42 ***In re George T.*** (2004) 33 Cal. 4th 620

43 **Facts:** Defendant, a student, gave what he called “dark poetry” to
44 two of his classmates. The “poems” included language such as
45 “For I am Dark, Destructive, & Dangerous. I slap on my face of
46 happiness but inside I am evil!! For I can be the next kid to bring
47 guns to kill students at school. So parents watch your children cuz
48 I’m BACK!!” and “I am a slave to very evil masters ... Probably I
49 would be the next high school killer....” The students who
50 received these “poems” felt frightened and reported the poems as
51 threats against themselves personally and against the school.
52

1 **Issue:** Were the defendant’s poems a “true threat,” or were they
2 constitutionally protected speech?
3

4 **Holding:** The poems were constitutionally protected speech. In
5 order for words to constitute a criminal threat, they must be “so
6 unequivocal, unconditional, immediate, and specific as to convey
7 to the person threatened, a gravity of purpose and an immediate
8 prospect of execution of the threat.” The qualities of being
9 unequivocal, unconditional, immediate, and specific are the
10 primary factors courts consider when looking at a threat and its
11 surrounding circumstances to determine whether it is a true threat.
12 If the words of the threat are vague, the circumstances of the
13 threat are weighted more heavily. There are three primary
14 circumstances that can make a vague threat a true threat: a history
15 of animosity between the parties, threatening gestures or
16 mannerisms accompanying the words, and conduct suggesting an
17 immediate prospect of execution of a threat to kill. Here, none of
18 the three primary circumstances were present, and the poems’
19 words were not unequivocal, nor were they unconditional,
20 immediate, or specific. Therefore, the poem was not a true threat.
21 It was constitutionally protected free speech.
22

23 ***In re Ricky T.*** (2001) 87 Cal. App. 4th 1132

24 **Facts:** A teacher accidentally hit the defendant in the face with the
25 door when opening it. In response, the defendant “got in the
26 teacher’s face,” “cursed at the teacher,” and said he would “kick
27 the teacher’s ***.” The defendant also said “I’m going to get you.”
28 The teacher sent the defendant to the principal’s office, and a
29 police officer interviewed the defendant about the incident in the
30 dean’s office the next day.
31

32 **Issue:** Did the defendant’s statements constitute a “true threat,” or
33 was it constitutionally protected speech?
34

35 **Holding:** No. The threat lacked immediacy, and there were no
36 surrounding circumstances that indicated the statements were a
37 true threat, such as a history of animosity between the parties,
38 threatening gestures accompanying the statements, or conduct to
39 suggest there was an immediate prospect of execution. Despite the
40 comments being rude, they did not suggest any gravity of purpose,
41 especially considering they were not accompanied by any show of
42 physical force, such as pushing, shoving, or other close-up
43 physical confrontation. Finally, in order for a threat to be criminal,
44 the defendant needs to be in sustained fear. Here, nothing
45 indicated that the teacher’s fear was more than fleeting, since he
46 did not report the incident to the police.
47

48 ***People v. Martinez*** (1997) 53 Cal. App. 4th 1212

49 **Facts:** Defendant was visiting his on-and-off girlfriend at her
50 workplace, when her supervisor asked him to leave. After being
51 asked twice, the supervisor waited with the girlfriend until the
52 defendant left. After about three or four minutes, the defendant
53 attempted to return to talk to the girlfriend. The supervisor
54 approached the defendant on his bike. Both men dismounted their

1 bikes, and the defendant proceeded to get in the supervisor’s face,
2 “yelling and cussing at him.” The defendant told the supervisor, “I’m
3 going to get you... I’ll get back to you, I’ll get you.” The supervisor
4 worried about what the defendant said for the rest of the night, and
5 reported the incident to security the next morning. Five minutes after
6 the supervisor reported the incident, security found a “fire between
7 the chlorine shack and the auxiliary house” of the building. A forklift
8 in the building had also been burned, and a can of oil was found
9 nearby. Bicycle marks led away from the fires, and when the police
10 went to the defendant’s home, there was a bike with the same oil
11 from the can at the scene on its pedal.
12

13 **Issue:** Did the defendant’s statements constitute a “true threat,” or
14 was it constitutionally protected speech?
15

16 **Holding:** Yes. Although words like “I’m going to get you,” “I’ll get
17 back at you,” and “I’ll get you” would be insufficient alone to
18 convey a threat, they are sufficient to convey a threat when taken
19 in conjunction with the fact that the defendant later set fire to the
20 building. Here, the defendant’s conduct suggested there was an
21 immediate prospect of execution of a threat to kill, despite the
22 words themselves being vague. Therefore, the defendant’s
23 comments were sufficient to constitute a true threat, and they were
24 not constitutionally protected free speech.
25

26 **People v. Allen** (1995) 33 Cal. App. 4th 1149

27 **Facts:** This case involves an eight-month period of violence against
28 a woman by her ex-boyfriend, the defendant. After several of the
29 incidents, the woman fled with her son to her mother’s house. The
30 mother called the police after each of these incidents, and the
31 woman called the police after all of the other incidents. Finally, the
32 mother was outside her home when the defendant rode his bike
33 past her house several times. When she went to move inside the
34 house, the defendant “used profanity first and then said, ‘I’m
35 gonna kill you. I’m gonna kill you and your daughter.’ As he said
36 this, Allen took an eight or nine-inch black handgun from his
37 trousers and pointed it at [the mother], his arm extended and the
38 weapon pointed at her.”
39

40 **Issue:** Did the defendant’s statements constitute a “true threat,” or
41 was it constitutionally protected speech?
42

43 **Holding:** Yes. The threat made was unequivocal, and it was made
44 under circumstances that indicated the statements were a true
45 threat: there was a history of animosity between the parties, and
46 the defendant used the threatening gesture of pointing a gun at the
47 mother while making the threat. Therefore, this constitutes a true
48 threat. Additionally, in order for a threat to be criminal, the
49 defendant needs to be in sustained fear. Here, the mother’s
50 repeated calls to the police show that she was in sustained fear of
51 what the defendant might do.
52

53 **People v. Chandler** (2014) 60 Cal. 4th 508

1 **Facts:** After repeatedly yelling profanities at the victim whenever
2 the defendant saw her, one day the defendant approached the
3 victim holding “an object, saying “*** you, ****. I’m going to kill
4 you.”” The defendant said to another victim on the same day, “I’m
5 going to kill you, you *** **,” while swinging a golf club back
6 and forth. The second victim responded, “Bring it on,” because
7 she did not want to show any fear to the defendant.
8

9 **Issue:** Did the defendant’s statements constitute a “true threat,” or
10 was it constitutionally protected speech?
11

12 **Holding:** Yes. The defendant’s comments were unequivocal, and
13 they were made under circumstances that indicated the statements
14 were a true threat. There was a history of animosity between the first
15 victim and the defendant in the form of the repeated profanities the
16 defendant would yell at the victim. For the second victim, swinging
17 the golf club while making the comments constitutes a threatening
18 gesture. Additionally, both victims were in sustained fear. A victim
19 can be in sustained fear even if he or she makes a comment
20 suggesting that he or she is not in fear, since it is common for people
21 who are afraid to desire not to show it.
22

23 **City of San Jose v. Garbett** (2010) 190 Cal. App. 4th 526

24 **Facts:** Defendant was a man who was convinced that the city
25 government was conspiring against him. He told the police such
26 things as the government “ransacked” his home, landed a
27 helicopter on his roof, and rummaged through his garbage. One
28 day, he complained at the city clerk’s office, saying that everyone
29 on the city council was against him and complaining that he was
30 only allowed one minute to speak, when he should be allowed two
31 minutes. The clerk informed him that he was always allowed two
32 minutes to speak. At one point in the conversation, the defendant
33 said, “What does somebody have to do to change policy around
34 here? Do you have to be—take matters into your own hands like
35 the Black man in Missouri?” He was not yelling, and his voice was
36 “monotone and cold, his jaw clenched.” The clerk asked if the
37 defendant was threatening them, and the defendant responded,
38 “No.” The clerk understood that the defendant had referred to a
39 shooting that an angry man in Missouri had perpetrated in a city
40 hall three months earlier.
41

42 **Issue:** Did the defendant’s statements constitute a “true threat,” or
43 was it constitutionally protected speech?
44

45 **Holding:** Yes. The defendant’s statements constituted a true threat,
46 rather than constitutionally protected free speech. If a reasonable
47 person would foresee that the recipient would interpret the
48 statement as a serious expression of intent to harm or assault, it
49 constitutes a “true threat.” Furthermore, a defendant does not
50 need to subjectively intend for the statement to be taken as a
51 threat for the statement to be deemed a true threat. It is not
52 necessary that the defendant “intend to, or be able to carry out his
53 threat; the only intent requirement for a true threat is that the
54 defendant intentionally or knowingly communicate the threat.”

1 Here, since the defendant intentionally communicated his
2 statements, and a reasonable speaker would have foreseen that the
3 statement would be taken as a serious threat, the statement
4 constitutes a “true threat.” Therefore, it is not constitutionally
5 protected free speech.

6

7 **People v. Jackson** (2009) 178 Cal. App. 4th 590

8 **Facts:** Defendant was asked to leave an apartment because the
9 current tenant, his friend, was being evicted. The husband-and-
10 wife landlords said that his response to the request was to become
11 severely irritated, anxious, and make comments about blowing the
12 landlords’ heads off. He did not appear to have a gun or other
13 explosive device. The landlords called the police, and both
14 landlords reported that they “feared for their lives.” The defendant
15 removed his belongings, but then approached the house and told
16 the landlords, “No, I’m not leaving...I’m going to get an AK-47 and
17 blow all your heads off.” The defendant then sat down on the
18 porch, where the husband landlord kept an eye on him, unsure of
19 what he would do next. The current tenant and her father both
20 testified that they did not hear the defendant make any threats, but
21 that he was being belligerent and rude. According to them, he was
22 not “raving and going on” like the landlords testified he was.

23

24 **Issue:** Did the defendant’s statements constitute a “true threat,” or
25 was it constitutionally protected speech?

26

27 **Holding:** No. The jury found that the defendant’s comments did
28 not constitute a “true threat” because even though the defendant
29 made the “blow your head off” statements and intended for them
30 to be received as threats, the landlords either did not suffer
31 sustained fear or their fear was unreasonable under the
32 circumstances. A threat falls outside of First Amendment
33 protection “when a reasonable person would foresee that
34 the...words will cause the listener to believe he or she will be
35 subjected to physical violence.” In this case, although a reasonable
36 person would foresee how the defendant’s statements could cause
37 the landlords to believe they would be subjected to physical
38 violence, the circumstances were such that it was unreasonable for
39 the landlords to have been in fear. The circumstances were such
40 because the defendant did not, in fact, have a weapon, nor did he
41 make moves to go get a weapon. Therefore, the statements did not
42 constitute “true threats.”

1 **WITNESS STATEMENTS**

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Prosecution Witness: Sawyer Smith (Victim)

My name is Sawyer Smith. I am 22 years old, and I live at 511 E. Flamingo Parkway in East Flamingo, California. I currently attend East Flamingo Community College and plan to transfer to a four year university once I’ve saved enough money. I’ve worked at Hennessy’s restaurant for the past six years.

I’ve been running my NowPic account as a lifestyle blog for the past year and a half. Everyone’s always told me that I have great taste and lead a cool life (I like hiking and doing weekend adventures to exciting places), so I thought it might be fun to use my NowPic page to let other people see how I live.

On June 1, the coolest thing happened. My most recent post went viral, and all of a sudden I had thousands more people following me by the minute. By the end of the first week, I’d gone from around 3,000 followers to over 150,000 followers, and I had an offer for a brand deal from a local fitness company. I knew that this new status meant that I had to get serious about my brand if I wanted to be able to become a full-time social media influencer.

I took a hard look at my life. I’d been best friends with Reagan since we were in middle school, but ever since Reagan went to college and only comes home for summers, Reagan’s gotten a lot weirder and all high-and-mighty about living out of East Flamingo. Reagan doesn’t even post on Reagan’s NowPic account. How lame is that? I figured that since Reagan clearly wasn’t going anywhere socially, it would be better for my brand not to spend all my time with Reagan and try to get some more *influential* friends. It’s not like Reagan even lived here for most of the year anyway, so I figured Reagan wouldn’t care that much. So I told Reagan after work that I needed to focus on my brand and that I didn’t really see our friendship as being part of that. I thought Reagan took it well, but given everything, I guess that wasn’t the case.

About a month after my social media rise began, I was getting a bunch of really cool messages from some really hot people. I guess I talked about it at work, but I mean my life was so interesting, I figured my co-workers would want to live vicariously through it. Anyway, I got this message from an account under the name Hayden Carlton, who said that Hayden is 24, lives in the next town over, and thinks I’m the most attractive person Hayden has ever seen. I thought Hayden was totally hot, so we started messaging all the time. Like all day, every day. I told Hayden so much about myself, and I really felt like we had a connection.

Then came the humiliation. “Hayden” invited me on a date. I showed up, and I got stood up. Then, about 30 minutes after our date was supposed to have started, Hayden posted a pic of me alone in the restaurant with a really mean caption. Did you see it? It was awful. It said “As if anyone would be interested in @Sawyer! You are not as hot as you think you are, and no real person would want to waste their time on a wannabe influencer

1 like you. Too bad you have no friends to wipe your tears...
2 #karma.” As soon as I read “no real person...,” I knew I had been
3 catfished. I was so embarrassed. I’ve heard of people getting
4 catfished before, I just never thought it would happen to me. I was
5 crushed, but I decided that the best way to save face would be to
6 pretend it never happened, and act like “Hayden” never existed. I
7 thought that would work, but it just made things worse!
8
9 For the next two weeks, the Hayden account posted about me all
10 the time. Bad pictures, mean captions, straight up lies, you name
11 it. It got me a lot more followers, but it still sucked! And I still had
12 no clue who would do this to me. Then, they made their mistake.
13
14 My freshman year of high school, a bird pooped on my shirt as I
15 was walking to school with Reagan. Reagan lent me a sweatshirt
16 to cover it up, and I threw the shirt away. It was gross, and we
17 never really talked about it again. Anyway, I never told anyone
18 about it, ever, so the only person who knew was Reagan. I think
19 Reagan must have thought I told other people, because on August
20 13, there was the bird poop story, posted by the Hayden account.
21 Can you believe that? Reagan, my best friend in the world. I know
22 that I dropped Reagan as a friend, but I thought Reagan took it
23 well. I literally could not have been more wrong.
24
25 I felt so betrayed. I decided to get even. I knew that Reagan had
26 broken Sam’s expensive oven on New Year’s Eve, and that Sam
27 was still angry about it. I marched into work the next day and told
28 Sam that I’d just found out it was Reagan who did it, and I
29 couldn’t believe Reagan wouldn’t come forward immediately to
30 apologize. When Reagan came into work a few minutes later, Sam
31 fired Reagan on the spot. I didn’t hear exactly what they said, but
32 Reagan looked freaked and left right away. I thought it was over.
33 Even is even, right?
34
35 I posted a little victory pic on my NowPic later that day: a great
36 shot of me giving my best smirk. I know, it was a little petty, but I
37 was feeling on top of the world that I had finally beaten this stupid
38 online attack by the fake Hayden account. Reagan deserved to get
39 fired because of it. I guess Reagan didn’t think so though, because
40 Reagan decided to take out Reagan’s anger on my post. Did you
41 see the psycho comment Reagan left? I was totally freaked out, but
42 I tried to play it chill so my followers would think I was tough.
43 How was I supposed to know that Sam was going to sue Reagan
44 for \$34,000? I thought Reagan would just get fired!
45
46 It turns out Reagan’s reign of terror wasn’t over even after that
47 though, because that night my house got “swatted.” One minute
48 I’m watching a movie in bed, and the next my door is literally
49 being beaten down by the police. It was terrifying! I heard the
50 commotion and ran to the top of the stairs. I thought someone
51 might be trying to break in and steal from me or something. When
52 the police started screaming at me not to move, I freaked out and I
53 guess I slipped, because suddenly I was falling down the stairs. It
54 hurt so badly, I felt my leg snap and I blacked out from the pain.

1 I woke up on a stretcher, and the paramedics were taking me to
2 the hospital. I know this had to have been Reagan. Reagan was the
3 one who was in charge of the Hayden account, and I got Reagan
4 fired. Reagan went ballistic on my NowPic post, so I thought it
5 was pretty clear who did it. I told Officer Lopez that while we were
6 in the ambulance, and showed the officer the Hayden account and
7 the comment Reagan made on my post that afternoon. This was a
8 really awful way to try to get back at someone. I can't believe we
9 were ever friends.

1 **Prosecution Witness: Cameron Holmes (Employee at**
2 **Hennessy's)**

3 My name is Cameron Holmes. I'm 23 years old, and I'm from East
4 Flamingo, California. I work at Hennessy's restaurant, and I'm
5 ashamed to admit that I took part in catfishing Sawyer with the
6 Hayden account. Sawyer had gotten really obnoxious talking about
7 Sawyer's newfound "status" as an "influencer" after that one
8 picture went viral — it was all Sawyer could talk about! Hearing
9 Sawyer drone on and on about followers and brand deals was
10 annoying. I have my own Blab and Now Pic accounts but I don't
11 spend countless hours on social media like Sawyer does.

12
13 What was really annoying was that after Sawyer got famous, if
14 you can even call it that, Sawyer dropped Reagan as a friend. I've
15 always liked Reagan, so it seemed chill when Reagan started
16 hanging out with me and my best friend Marlow. We all worked at
17 Hennessy's together, and Marlow has been my best friend for
18 years. Marlow goes to the same college as Reagan, but I didn't
19 realize that would be the source of so many inside jokes and plans
20 that excluded me until a few weeks in. Reagan was trying to steal
21 my best friend! I started to plan a bunch of things for the three of
22 us to do together, because I wanted to give them the benefit of the
23 doubt but also make sure I wasn't left out in the cold.

24
25 After enduring a month of Sawyer's incessant bragging, Reagan
26 came up with this idea to catfish Sawyer. Marlow agreed
27 immediately. I agreed because I thought Sawyer could stand to be
28 knocked off that high horse. I also saw it as a way for the three of
29 us to do something together. We made a fake account called
30 Hayden Carlton, used some photos of a model from the Internet,
31 and started flirting with Sawyer.

32
33 We all had access to the account, but Reagan used it the most. We
34 led Sawyer on for about two weeks and then decided to end it in
35 the most humiliating way possible. We set up a date, left Sawyer
36 sitting alone at the table for 30 minutes, and then snapped a
37 picture of Sawyer looking pathetic and added the nasty caption.
38 "#Karma" was my addition. I wanted to really drive it home that
39 Sawyer deserved this and that Sawyer could only blame Sawyer
40 for this.

41
42 We showed up to work the next day, expecting to find a slightly
43 more humble version of Sawyer to work with, and man, were we
44 disappointed! Sawyer was carrying on like nothing had happened,
45 like no one really embarrassed Sawyer in public, and like Sawyer
46 was still like royalty or something. Marlow, Reagan and I were
47 furious. We spent all that effort trying to take Sawyer down a peg,
48 and it did nothing! So we decided that we'd continue messing with
49 Sawyer using the Hayden account because maybe if Sawyer
50 realized that *someone* didn't like Sawyer enough to put in all this
51 effort, maybe there was an issue with the way Sawyer was acting.

1 I couldn't have imagined what happened next. I remember that
2 someone had broken Sam's fancy oven over New Year's but didn't
3 know that it was Reagan, or that Sawyer knew about it. Trust me,
4 if I'd known that, I'd have told Reagan that it was really stupid to
5 mess with Sawyer. Somehow, Sawyer found out that Reagan took
6 part in the Hayden account, and Sawyer told Sam that Reagan
7 broke the oven. Reagan got fired, and later that night when
8 Reagan, Marlow, and I were hanging out, Reagan told us that Sam
9 said Reagan would be hearing from Sam's lawyer about that
10 \$34,000. Can you believe an oven could be so expensive?
11

12 On August 9, I lost my cell phone. I had bought one of those pre-
13 paid phones from the store that you have to flip open to see the
14 time or do anything with and was using that until my new phone
15 came in on August 15. On August 14, I was hanging out at
16 Reagan's apartment with Marlow, watching TV and eating pizza.
17 Marlow ordered the pizza on YumYumDelivery, but was standing
18 in the corner of the living room and talking on the phone when it
19 was "arriving," so I went downstairs to get it. I left the flip-phone
20 on a side table plugged in to an outlet when I went downstairs,
21 and it was there the whole night. Anyone could have used it to
22 "swat" Sawyer, but I think it was probably Reagan. No one else
23 had that big of an issue with Sawyer, and I saw Reagan holding
24 the flip-phone after I came back upstairs from picking up the
25 pizza. Reagan was closing the phone, and it was clear to me that
26 Reagan thought no one was looking. I'm not even that surprised.
27

28 If I've learned anything over the past few months, it's that Reagan
29 is a jerk. Earlier in the night, I overheard Reagan and Marlow
30 talking. Reagan was saying how excited Reagan was to go back to
31 university so that Reagan and Marlow wouldn't have to put up
32 with me crashing their hangouts all the time. And Marlow *agreed!*
33 What kind of a person steals someone else's best friend? I guess
34 the person who fakes a SWAT report on their former best friend.
35

36 Officer Lopez showed up that night. Reagan let the officer into the
37 apartment, and they talked for a few minutes. Then, Officer Lopez
38 told us about the swatting incident and pointed toward my flip-
39 phone plugged into the wall. Reagan told Officer Lopez that it
40 belonged to me. Officer Lopez asked if the phone was mine, and if
41 Officer Lopez could look at it. I said yes, and opened the phone as
42 I was handing it to Officer Lopez. Officer Lopez looked at the
43 phone, and asked if Officer Lopez could retain it for evidence. I
44 agreed. My new phone was arriving soon anyway.
45

46 Then, Officer Lopez interviewed me. Officer Lopez asked me
47 things like what we'd been doing that night, what I was doing at
48 9:08 p.m., and what my relationship was like with Sawyer. I told
49 Officer Lopez that I went downstairs to pick up the pizza when
50 Marlow said it was arriving at 9:00, and that the delivery person
51 clearly lied when he marked "Arriving" on the app because I was
52 waiting downstairs for almost 10 minutes. I don't know why
53 Marlow's app says it was delivered at 9:02, but sometimes in the

1 past delivery people have marked food as “Delivered” before they
2 actually drop it off so their average delivery time stays low.

3

4 I told Officer Lopez that I had no beef with Sawyer. I explained the
5 whole Sawyer-Reagan ex-best-friends situation, and how Sawyer
6 got Reagan fired and probably sued. Because it seemed relevant, I
7 also told Officer Lopez that I’d seen Reagan closing my phone after
8 I came back up with the pizza, and I hadn’t seen anyone else
9 touch it. Officer Lopez thanked me, and then talked to Marlow and
10 Reagan. Officer Lopez arrested Reagan that night for the threat
11 Reagan posted on Sawyer’s NowPic picture.

1 **Prosecution Witness: Officer Keegan Lopez (Arresting Officer)**

2 My name is Keegan Lopez. I have been a police officer for East
3 Flamingo for almost twenty years, and I am in the Special
4 Weapons and Tactics (SWAT) team. East Flamingo is a pretty safe
5 town, but the department figured that some of the officers should
6 be trained just in case there was an emergency.

7
8 On the night of August 14, we got a text-a-tip about a hostage
9 situation at 511 E. Flamingo Parkway—Sawyer’s address. The text
10 came in at 9:08 p.m. We SWAT officers responded immediately. It
11 took us six minutes to reach the address, and two minutes to
12 surround the residence. We knocked on the door loudly,
13 announcing it was the police, but no one answered. We tried using
14 the megaphone, but still no response. Finally, at approximately
15 9:20 p.m., we rammed the door down. Upon entering the
16 residence, we saw no one on the bottom floor. We approached the
17 stairs as Sawyer Smith was coming out of the bedroom. We told
18 Sawyer to “Freeze!” because we weren’t sure what the situation
19 was and we needed to ensure that no one got hurt. Last thing you
20 want is a civilian getting themselves shot because they won’t listen
21 to the police, and the police think the civilian is the one holding
22 people hostage.

23
24 When we shouted “Freeze!,” Sawyer jumped a little and seemed to
25 slip on the carpet at the top of the stairs. Next thing we know,
26 Sawyer was tumbling down the stairs. I heard a big crack on the
27 way down, and when Sawyer reached the bottom, Sawyer was
28 apparently unconscious. Two officers ran up the stairs and quickly
29 checked the rest of the house. When they said it was clear, we
30 allowed the paramedics who had been waiting outside to run in to
31 assist Sawyer.

32
33 Since the house was empty, I called in that the text was a fake,
34 and I rode along with Sawyer to the hospital. The kid was in a lot
35 of pain, but kept repeating “I know who did this. It was Reagan
36 Klein. Reagan did this.” I asked Sawyer who Reagan was and what
37 Sawyer thought Reagan did. Sawyer told me about a former friend
38 named Reagan Klein, a NowPic account that’s been posting hurtful
39 things about Sawyer for over a month, how Sawyer found out that
40 Reagan ran the account, and how Sawyer got Reagan fired from
41 the restaurant, Hennessy’s, in revenge.

42
43 Sawyer then showed me the comment the “Hayden” account made
44 on Sawyer’s post from earlier that afternoon. I thought it sounded
45 very threatening, and Sawyer seemed really afraid. Since Sawyer
46 seemed so sure that it was Reagan who posted the comment and
47 Reagan who sent in the false tip, I figured it was worth talking to
48 Reagan about it. I got the address from the department and headed
49 over to Reagan’s apartment.

50
51 When I got there, Reagan voluntarily let me inside. I asked Reagan
52 about the Hayden account, and if Reagan was the one who posted
53 the comment on Sawyer’s picture that afternoon. Looking

1 completely embarrassed, Reagan admitted to being an operator of
2 the account and for losing Reagan’s temper and posting the
3 “aggressive comment.” Reagan told me Reagan regretted posting
4 the comment, and that Reagan would never do anything to hurt
5 Sawyer. I informed Reagan, Cameron, and Marlow about the
6 swatting incident that happened earlier that night. I asked Reagan
7 if Reagan knew anything about the incident, and Reagan denied
8 knowing anything about it.

9
10 Then, I noticed a flip-phone plugged into the wall. I asked if it
11 belonged to Reagan, and Reagan told me it was Cameron’s. I asked
12 Cameron if I could look at the phone, and Cameron said yes. I put
13 on gloves in case it turned out to be evidence. Cameron picked up
14 the flip-phone, opened it, and handed it to me without looking at
15 the screen. And there it was: the false tip, sent at 9:08 p.m.
16 Thinking this was pretty substantial evidence but knowing I
17 should get it confirmed by the department, I asked Cameron if I
18 could retain the phone for evidence. Cameron said yes. I put the
19 phone in an evidence bag I had with me to bring to the
20 department later.

21
22 I then interviewed Cameron, Marlow, and Reagan separately about
23 the swatting incident. I asked them their basic information, what
24 they were doing around 9:08 p.m., and what their relationship was
25 with Sawyer. I spoke to Cameron first, since it was most likely
26 Cameron’s flip-phone that sent the tip. Cameron told me Cameron
27 had gone downstairs to pick up the pizza at 9:00 p.m., and waited
28 down there for about 10 minutes for the pizza to arrive. Cameron
29 also told me that Cameron has no “beef” with Sawyer, and that
30 Reagan is the one who has had it out for Sawyer since Sawyer
31 dropped Reagan as a friend and then got Reagan fired and possibly
32 sued. Finally, Cameron told me that Cameron remembered seeing
33 Reagan closing the flip-phone when Cameron came back upstairs
34 with the pizza.

35
36 Marlow told me that Marlow and Cameron also participated in the
37 Hayden account, and that they were just messing with Sawyer to
38 teach Sawyer a lesson in humility, not to seriously hurt Sawyer in
39 any way. Marlow told me that Marlow had been on the phone
40 with Marlow’s older sister, who was planning a visit to East
41 Flamingo the next week, from 8:57 p.m. to 9:14 p.m. Marlow
42 showed me Marlow’s phone-call log as proof, and both Cameron
43 and Reagan corroborated that Marlow had been on the phone in
44 the corner opposite the flip-phone the entire time. Marlow had
45 been the one to order the pizza on YumYumDelivery, an app for
46 ordering food delivery. The app gives you updates as your delivery
47 gets closer, and Marlow got a notification at 9:00 p.m. that the
48 food was “Arriving.” Marlow sent Cameron downstairs to get the
49 pizza, and showed me in Marlow’s “Order History” that the food
50 was marked “Delivered” at 9:02 p.m.

51
52 Marlow said that Cameron had been checking Cameron’s phone
53 pretty regularly during the night, and said that Marlow didn’t see

1 Reagan with Cameron’s phone at all. Considering the fact that
2 Marlow seemed to have been distracted by Marlow’s own phone
3 call, I didn’t think that was worth much.
4

5 Reagan again denied having sent the false tip but admitted to
6 having looked quickly at Cameron’s phone to check the time at
7 around 9:11 p.m. Reagan also said that Cameron came upstairs
8 with the pizza no more than five minutes after Marlow sent
9 Cameron downstairs to pick it up. Not thinking I had enough
10 evidence to arrest anyone for the false tip at the time, I arrested
11 Reagan for the criminal threat Reagan admitted to having posted
12 on Sawyer’s picture.
13

14 Then, I brought the phone to the police department to examine it.
15 Sure enough, it was the phone that made the false “text-a-tip”
16 about Sawyer. I called up Dr. Dakota Cheung, a linguistics
17 professor who I know has helped with author identification and
18 testified for the department before, to take a look at the false tip.
19 Dr. Cheung did a linguistics analysis of the tip and compared it to
20 a collection of other social media posts made by Reagan and
21 Cameron that the department gathered and provided to Dr.
22 Cheung. Dr. Cheung told me that Reagan probably wrote the tip,
23 so we added making a false emergency report to Reagan’s charges,
24 commonly known as “swatting.” What a terrible crime. People
25 need to realize how dangerous it is, not only to the intended
26 victim, but also to the police officers involved.

1 **Prosecution Witness: Dr. Dakota Cheung (Forensic Linguist)**

2 My name is Dr. Dakota Cheung. I have a Ph.D. in Linguistics from
3 Western California University, and I am currently a professor of
4 Linguistics at the University of California. I have been a professor
5 here for 18 years, and I have served as an expert witness for forty
6 prior cases. My expert testimony has covered author identification
7 based on writing samples, voice pattern analysis, and the impact
8 of different question types in police interviews. I have conducted
9 over one hundred independent studies on author identification in
10 various formats.

11
12 After examining the false “text-a-tip” report, the posts made by the
13 “Hayden” account, and a collection of social media posts on BLAB
14 and NowPic made by Reagan and Cameron, I concluded that the
15 writing of the text was more likely than not made by Reagan. In
16 conducting my analysis, I used a stylistic approach as described by
17 Dr. Tim Grant, a British forensic linguist who is highly respected in
18 the field. A stylistic analysis is often well suited for shorter
19 messages, such as texts, tweets, and other social media posts, and
20 it can be used most effectively when focusing on what Dr. Grant
21 calls “pairwise distinctiveness,” which involves taking two
22 possible authors, and focusing the analysis on variations between
23 them. I followed Dr. Grant’s statistical method of analysis,
24 identifying key features used by both Cameron and Reagan in their
25 respective writings, and comparing those features to the ones
26 present in the tip. I prefer to use this type of analysis instead of an
27 analysis of each author’s distinctive vocabulary choice, like Dr.
28 Williams used in Exhibit D. In my opinion it is more precise and
29 can allow for a more comprehensive comparison between authors.

30
31 First, I analyzed over 76 of Reagan’s social media posts that the
32 police gathered. I identified the following features and compiled
33 them in Exhibit C, a document I created: multiple typographic
34 exclamations, use of quotation marks, use of ellipses, use of
35 commas, use of single space between word and “emoji,” and use
36 of eight-letter or longer adjectives. Exhibit C Table 1 shows a
37 comparison between the number of times those features were
38 present in Reagan’s known writings, and the number of times they
39 were in Cameron’s known writings.

40
41 Next, I analyzed over 92 posts made by Cameron on Cameron’s
42 social media accounts and those Cameron admitted to penning on
43 the “Hayden” account. I identified the following features, which
44 can be seen in Exhibit C Table 2: misspellings, prosodic
45 emphasizees (convey pronunciation through intentional
46 misspelling, e.g., “hellooooo”), whole word number homophone
47 substitution (replacing words with a number, e.g., “for” becomes
48 “4”), whole word letter homophone substitution (replacing entire
49 words with one letter, e.g., “are” becomes “R”), mixed
50 typographic exclamations (e.g., !!?!), shortenings —specifically,
51 “really” to “rilly” and “please” to “plz” — and use of all caps for
52 emphasis. Exhibit C Table 2 shows a comparison between the
53 number of times those features were present in Cameron’s known

1 writings, and the number of times they were in Reagan’s known
2 writings.

3

4 Between the two tables, the analysis shows that Reagan and
5 Cameron have distinct writing styles.

6

7 The key to seeing whose style is consistent with the text is
8 comparing the list of features to those found in the “text-a-tip,” as
9 seen in Exhibit C Table 3. The examination reveals that those
10 features that are distinctive of Reagan’s writing appear to be more
11 prevalent in the tip than those distinctive of Cameron’s writing,
12 suggesting to me that, between the two, Reagan was the author of
13 the tip.

14

15 It’s possible that the author (for the sake of consistency, let’s say
16 it’s Cameron) tried to disguise their writing to look or sound like
17 Reagan’s. However, not only are features generally the result of
18 habit and not conscious choice, it is my opinion that some of
19 Cameron’s specific features would be especially difficult to
20 overcome, such as misspellings. None of the words in the tip were
21 misspelled, whereas Cameron has a few words misspelled in most
22 posts. Taking that in conjunction with the fact that this was on a
23 flip-phone without autocorrect, it is my opinion that Cameron can
24 probably be ruled out as the author. Therefore, it is my expert
25 opinion that Reagan is the author of the fake police tip.

1 **Defense Witness: Reagan Klein (Defendant)**

2 My name is Reagan Klein. I am 22 years old, and I just finished my
3 junior year at the University of California. Every summer, I go
4 home to East Flamingo to work at Hennessy’s restaurant, where
5 I’ve worked since I was a junior in high school. I worked there
6 with Marlow, Cameron, and my former best friend, Sawyer. This
7 year, I subleased an apartment for the summer so that I didn’t
8 have to bother my parents, who are in the process of moving.

9
10 Sawyer and I have been drifting apart for a while, I think because
11 Sawyer was always jealous that I got into the University of
12 California and Sawyer didn’t. But we’d been such close friends for
13 such a long time, I figured we would always have summers at
14 Hennessy’s to reconnect. Everything changed though when that
15 ridiculous NowPic picture of Sawyer’s went viral. I have both a
16 NowPic and BLAB account but I don’t post very often. I think
17 constant posting on those accounts makes people shallow and
18 measures their personal worth on the number of likes they get on
19 a picture. That’s certainly the way Sawyer valued Sawyer’s
20 personal worth. As soon as Sawyer felt like Sawyer was becoming
21 “better” than me, Sawyer dropped me as a friend. It was
22 devastating and mortifying — to have someone who you always
23 thought was your friend suddenly treat you like you’re worth
24 nothing.

25
26 With Sawyer refusing to be associated with me, I turned to Marlow
27 and Cameron for friendship. The three of us got along great,
28 especially Marlow and me because Marlow also goes to University
29 of California. We all liked to commiserate about how insufferable
30 Sawyer had become ever since Sawyer became a social media
31 “influencer,” because it’s not like we could avoid the topic at
32 work. About a month after Sawyer got “famous” and dropped me,
33 Sawyer was humblebragging about how much work it was to
34 maintain status on NowPic but how hot people kept messaging
35 Sawyer. That gave me the idea to catfish Sawyer. I talked to
36 Marlow and Cameron about it, and they wholeheartedly agreed.
37 We created an account called Hayden Carlton, and spent the next
38 few weeks flirting with Sawyer. I was probably the one on the
39 account the most, but Marlow and Cameron definitely actively
40 participated. I almost never posted anything without running it by
41 Marlow first, and for the vast majority of posts, Cameron and
42 Marlow would dictate to me what to write and we’d post when we
43 were all together.

44
45 After leading Sawyer on, we decided to end the illusion in the
46 most humiliating way possible. We invited Sawyer to an upscale
47 restaurant, let Sawyer sit there for 30 minutes alone, took a picture
48 of Sawyer looking dejected, and used the Hayden account to post
49 it. I admit the caption was pretty mean, but we wanted to send
50 Sawyer a message. Everyone was finished listening to Sawyer sing
51 Sawyer’s own praise all the time, and I wanted to remind Sawyer
52 that after dropping me, Sawyer really didn’t have anyone to turn

1 to. I wanted to show Sawyer that there are social consequences to
2 being a jerk to people.

3
4 Turns out, Sawyer didn't care at all about getting catfished. When
5 we all got back to work, Sawyer acted like nothing had even
6 happened, and, not that I would've thought it was possible, the
7 bragging about NowPic got *worse*. It was ridiculous! Marlow,
8 Cameron, and I decided that we'd continue using the Hayden
9 account to mess with Sawyer. We thought that maybe if one
10 embarrassment wasn't enough, a continual onslaught of mean
11 things might show Sawyer the light.

12
13 It didn't. Sawyer continued to go on like nothing was happening,
14 until somehow, after about two weeks, Sawyer figured out that I
15 was involved with the Hayden account. I'm not sure how Sawyer
16 figured it out, but Sawyer did, and Sawyer's revenge was
17 completely disproportionate to what I'd done to Sawyer. Telling
18 Sam my darkest secret, that I broke Sam's oven over New Years? I
19 was devastated, and the guilt has been eating me alive ever since
20 it happened. I told Sawyer about it immediately to get Sawyer's
21 advice. Sawyer told me to wait to see if the Hennessy's insurance
22 covered it. Sam got the oven replaced less than two weeks later, so
23 I let Sawyer convince me that it was better if I just kept quiet.
24 Sawyer knew how much I'd been torturing myself over it. I
25 couldn't believe that Sawyer would do something that might
26 actually ruin my life when all I did was play a little prank and say
27 a few mean things about Sawyer.

28
29 When I went into work the next day, August 14, Sam fired me. At
30 the time, it didn't cross my mind that Sawyer might have told Sam
31 what I did, or even that Sawyer knew I was involved with the
32 Hayden thing, so I asked Sam why I was getting fired. Sam said
33 something like, "You'll be hearing from my lawyer about that
34 \$34,000 oven." I was in utter shock. I left the restaurant and went
35 home to my apartment.

36
37 When I got there, I checked the Hayden account, just out of habit
38 at this point. You know what I saw? Sawyer, smirking, with a
39 caption "Tfw," meaning "that feeling when," "you WIN.
40 <emojis> . #toobadsosad." What a complete jerk. Naturally, I was
41 furious. Enraged, even. I can honestly say I think I started seeing
42 red. What kind of a person does that? Actually *gloats* about setting
43 me up for a \$34,000 lawsuit? Sawyer *knows* that I'm paying for
44 college with student loans. Sawyer *knows* that I work two jobs on
45 campus because I'm barely getting by. The fact that Sawyer would
46 intentionally get me fired, set me up to get sued for more money
47 than I can imagine, and then *gloat* about it was unbelievable.
48 Especially because Sawyer *knew* about me having broken the oven
49 for months and lied to Sam about knowing so that I would get
50 fired but Sawyer would still look innocent. I lost my mind a little
51 bit. In my haze, I commented something stupid on Sawyer's post.
52 Looking back, it was a lot. But I didn't really mean it, and Sawyer

1 knows that. Someone who was my best friend for like eight years
2 would know that I would never hurt anyone.

3
4 That night, Marlow and Cameron came over, and I told them
5 everything. We hung out and were watching TV. Marlow had
6 ordered pizza on YumYumDelivery, but Marlow was standing in
7 the corner of the room on the phone with Marlow's sister when
8 Marlow got the notification that it was arriving, so Marlow sent
9 Cameron downstairs to pick it up. I was sitting at the dining room
10 table, in the chair closest to the TV. Cameron came back less than
11 five minutes later, checked Cameron's phone, and put the pizza on
12 the dining room table. We both grabbed a slice of pizza while we
13 waited for Marlow to get off the phone. I burnt my mouth the
14 pizza was so hot! I decided to wait until Marlow got off the phone
15 before I tried another bite. I checked Cameron's temporary flip-
16 phone for the time at like 9:11 because we were hungry, and mine
17 was charging in my room. I never bought a clock for the living
18 room where we were hanging out. Marlow got off the phone a few
19 minutes later and we started eating.

20
21 Then, Officer Lopez showed up. I let Officer Lopez into the
22 apartment, and I admitted to having written the nasty comment on
23 Sawyer's NowPic picture. I felt horrible about having written that
24 because I knew it was mean to say, but I was so upset when I saw
25 the picture that I ended up venting my anger in the comment. I
26 knew Sawyer wouldn't take it seriously, so I didn't think twice
27 about telling Officer Lopez it was me. Officer Lopez then told us
28 about the "swatting" incident. I told Officer Lopez the truth: it
29 wasn't me and I didn't know anything about it.

30
31 Then, Officer Lopez asked about Cameron's flip-phone that was
32 still plugged into the wall. I told the officer it was Cameron's, and
33 Officer Lopez went to talk to Cameron. I saw Cameron grab the
34 phone, open it, and hand it to Officer Lopez, who put it into a
35 clear bag. Officer Lopez continued talking to Cameron for a few
36 minutes, then talked to Marlow for a few minutes, and then came
37 back to me.

38
39 I told Officer Lopez again that I wasn't the person who sent the
40 false tip. Officer Lopez asked if I'd used the flip-phone at all that
41 night. I told Officer Lopez I had checked the time quickly at like
42 9:11 p.m. because we didn't have a clock in the living room.
43 Before I knew it, Officer Lopez was arresting me for criminal
44 threat. I know that the comment I posted was a little aggressive,
45 but I didn't mean for Sawyer to think I was physically threatening
46 Sawyer in any way — I wouldn't do that. And Sawyer would
47 know that! I was just upset and meant that I'd keep posting
48 Sawyer's secrets on the Hayden account.

49 Later, they also charged me with sending in the false tip. I don't
50 know who sent the text to the police. It was probably Cameron.
51 Cameron was getting really jealous of me and Marlow's friendship,
52 and maybe Cameron thought that if Sawyer lost everything, we'd
53 go back to being friends and Cameron could have Marlow back. I

1 don't know. Maybe Cameron just wanted to get back at me
2 because Cameron thinks I'm somehow stealing Marlow away. All I
3 know is that it wasn't me.

1 **Defense Witness: Marlow Patterson (Co-Worker at Hennessy’s)**

2 My name is Marlow Patterson. I am 23 years old, and I just
3 finished my junior year at University of California. Like Reagan, I
4 go home every summer to work at Hennessy’s. Reagan and I
5 started becoming much better friends this summer after Sawyer
6 dropped Reagan as a friend. I can’t believe someone would
7 actually do that to “benefit their brand,” or whatever. It’s a lame
8 thing to do to someone.

9
10 After Sawyer dropped Reagan because Sawyer’s NowPic went
11 viral, Sawyer wouldn’t shut up about being a social media
12 influencer. It was incessant: NowPic this, brand deal that. I have
13 my own NowPic and Blab accounts but the way Sawyer was
14 obsessed with social media was ridiculous. Everyone was sick of
15 it. After about a month of putting up with it, Reagan came up with
16 the brilliant idea of catfishing Sawyer. What a great way to knock
17 Sawyer down a few pegs and get back at Sawyer for being so
18 annoying! So we set up this fake account, named it “Hayden
19 Carlton,” and started the flirtation. It was hilarious to us at the
20 time. We’d all take turns operating the account, although I think
21 Reagan used it the most.

22
23 After a couple of weeks, we decided we’d had our fun, and it was
24 time to end it. It had to be a way that would actually teach Sawyer
25 a lesson, so we decided to have “Hayden” invite Sawyer on a date,
26 stand Sawyer up, and post a picture of Sawyer looking miserable
27 alone at the table. I was the one who took the picture and wrote
28 the caption, with help from Reagan and Cameron. Sawyer looked
29 mortified when Sawyer checked NowPic and saw the post, and ran
30 out of the restaurant. We honestly thought that would be the end
31 of it.

32
33 Instead, our plan backfired. Sawyer pretended like the Hayden
34 thing never happened, and talked about NowPic stuff even *more*.
35 Cameron, Reagan, and I decided we’d continue using the Hayden
36 account to troll Sawyer. Maybe Sawyer would learn a lesson about
37 humility if someone was constantly pointing out Sawyer’s
38 shortcomings. For about two weeks, we posted about Sawyer all
39 the time. Nothing seemed to be working. Then, somehow, Sawyer
40 figured out that Reagan was in on the Hayden account.

41
42 Instead of trying to talk to Reagan about it, Sawyer became a
43 psycho-jerk and decided to tell Sam that Reagan broke Sam’s fancy
44 baker’s oven over New Year’s. I didn’t know that Reagan had
45 done that, otherwise I probably wouldn’t have encouraged us to
46 continue to use the Hayden account. Even though what we did to
47 Sawyer was petty and mean, what Sawyer did back to Reagan was
48 unjustifiable. Anyone who gives two seconds of thought would
49 know that Reagan could not only lose the job at Hennessy’s, but
50 also be responsible to pay for that \$34,000 oven! The fact that
51 Sawyer would put Reagan at risk for having to drop out of college
52 to pay for that makes it seem like Sawyer never really considered
53 Reagan a friend at all.

1
2 So Reagan got fired, and Cameron and I went over to Reagan's
3 apartment later that night. Reagan told us all about it, including
4 the aggressive post that Reagan made on Sawyer's picture. I don't
5 blame Reagan. What Sawyer did was excessive, and sometimes it
6 helps to let off a little steam with a social-media rant. I know
7 Reagan didn't mean harm by it, and based on how Sawyer replied,
8 Sawyer thought it was a joke, too. At any rate, my older sister
9 called me at 8:57 p.m., and we talked for almost 20 minutes. I had
10 ordered the pizza on YumYumDelivery, and got a notification at
11 9:00 p.m. that it was "arriving." I sent Cameron downstairs to grab
12 the pizza. I was standing in the corner of the living room the
13 whole time, and Reagan was sitting at the dining room table in the
14 chair closest to the TV. I never saw Reagan with Cameron's phone
15 at all during the night, but Reagan often checks the time quickly
16 on whoever's phone is the closest since there isn't a clock in the
17 living room.

18
19 We were all eating when Officer Lopez showed up. Reagan let the
20 officer inside, and they talked for a few minutes. Officer Lopez
21 then told us about the "swatting" incident. Officer Lopez talked to
22 Cameron next, who gave the officer Cameron's burner phone, and
23 then Officer Lopez talked to me. Officer Lopez asked me a bunch
24 of questions about my relationship with Sawyer, what the Hayden
25 account was about, and what I was doing around 9:08 p.m. I told
26 the officer I was on the phone with my sister, and showed the
27 officer my call log as proof. I also showed Officer Lopez my
28 YumYumDelivery "Order History," which said that the pizza was
29 delivered at 9:02 p.m. I didn't notice when exactly Cameron came
30 back into the apartment, though. I guess I was a little off in outer
31 space during the phone call. I told the officer that Cameron and I
32 also participated with the Hayden account, and how we were
33 messing with Sawyer to teach Sawyer a little humility. We'd never
34 actually hurt Sawyer.

35
36 Officer Lopez also asked if I'd seen anyone using the flip-phone
37 that night. I told Officer Lopez that Cameron had been checking it
38 regularly, which made sense because it's Cameron's phone. Officer
39 Lopez asked if I'd seen Reagan using it, and I said no, because I
40 hadn't. And since I was in the room the whole time, I feel like I
41 would've noticed if Reagan had been using Cameron's phone for
42 more than a minute or so.

43
44 Officer Lopez then went and talked to Reagan again. At the end of
45 their conversation, Officer Lopez arrested Reagan. I think it was
46 for "criminal threat." That's bogus. It was not a threat, and Sawyer
47 knew it. Then, they also stuck Reagan with a false emergency
48 report charge. I don't know who texted the police, but it was not
49 Reagan. We were in the same room all night, and I would've
50 noticed if Reagan was lurking around Cameron's phone. Also,
51 Reagan doesn't really do anything without talking to me about it
52 first. Even posting on the Hayden account: Reagan ran all caption

1 ideas by me before posting. If I had to guess who sent the text, it
2 was probably Cameron.
3
4 Cameron's been acting super weird lately, and I think it might be
5 because Reagan and I have gotten a lot closer. Cameron is
6 territorial, and it could be that Cameron thought Reagan was
7 trying to steal me somehow. The other day, Cameron was talking
8 to me and said something like, "I miss when it was just the two of
9 us hanging out. Sometimes I wish we could just go back to the old
10 days, when Sawyer wasn't obnoxious and Reagan didn't bug us. If
11 we could just go back and get Reagan out of the picture, this
12 summer would be a lot more fun." I thought it was creepy and
13 weird, and I told Cameron that I liked hanging out with Reagan.
14 That didn't seem to go over well. I'm just worried that Cameron
15 might have framed Reagan for this to get Reagan out of the way.

1 **Defense Witness: Sam Kolostian (Owner of Hennessy’s)**

2 My name is Sam Kolostian. I am 55 years old, and I own the
3 restaurant Hennessy’s. Sawyer, Marlow, and Cameron all work for
4 me. Reagan is a former employee. Reagan and Marlow usually
5 only worked holidays and summers the last couple of years
6 because they’re students, but Sawyer and Cameron work more
7 year-round. I’m not sure about this whole social media business,
8 but from what the kids have been saying, Sawyer became
9 somewhat famous using it. All I really know is that on August 14,
10 Sawyer came to me visibly upset. Sawyer told me that Sawyer had
11 just found out that Reagan was the person who broke my Baker’s
12 Pride oven last New Year’s, and that Sawyer couldn’t believe that
13 Reagan had been covering it up. I was furious. I trusted those kids
14 with everything, and for one of them to have been lying to my face
15 for over six months is unacceptable.

16
17 Reagan came in a few minutes later, and I fired Reagan on the
18 spot. Reagan looked confused. In my anger, I said my lawyer
19 would be contacting Reagan about the \$34,000 oven. Reagan shot
20 a glance directly at Sawyer across the room, which dispelled any
21 doubts I might have had that it was Reagan who did it. I left the
22 room before Reagan could say another word. Reagan left the
23 restaurant, and didn’t come back in. I feel terrible. I was never
24 really going to sue the kid—after all, my insurance covered
25 everything and I replaced the oven at no cost to me two weeks
26 later. I just was so upset and felt so betrayed by what Reagan had
27 done, lying to me all these months. I get it though: Reagan’s a
28 good kid, and in college. Young people do some stupid things, and
29 Reagan was probably scared of getting fired or having to pay for
30 the damage. Now I know, too, that Sawyer knew the truth about
31 the oven for months but didn’t tell me.

32
33 I don’t believe that Reagan would have made that text to the
34 police. That’s too dangerous. A few days before the whole firing
35 thing went down, Reagan, Sawyer, Marlow, Cameron, and I were
36 all watching the news together in the morning before the
37 restaurant opened. We were watching a news story about how
38 some kid thought it would be a funny prank to call SWAT on his
39 enemy, so that SWAT would break the enemy’s door down. Turns
40 out the enemy’s dad was the only one home, and when he came
41 outside demanding to know why the police were surrounding his
42 house, SWAT-team officers shot him. I remember we all watched
43 it, and we talked about how reckless it was to do that to someone,
44 and how easy it was for someone to get hurt like that.

45
46 I just don’t think Reagan would have done this. For six years,
47 Reagan always showed up on time for work, was pleasant with the
48 customers, and was nice for everyone to be around. And Reagan
49 wouldn’t hurt a fly. One time there was this nightmare toddler
50 who was screaming and yelling and throwing food at other
51 customers. I was prepared to throw the whole family out, but
52 Reagan got there first. Reagan squatted down next to the kid and
53 started talking to him, telling him jokes and making him laugh.

1 Reagan pointed at the food, and pointed at me. I guess Reagan
2 joked about me being a monster who will come eat the kid if he
3 didn't stop throwing the food, because the kid smiled and looked
4 away from me. Then Reagan said something else, and the kid
5 smiled and nodded. The parents thanked Reagan profusely, and
6 Reagan came back over to me. Reagan said, "If that kid gets
7 through the rest of the dinner quietly and without throwing any
8 food, you owe him a lollipop." I burst out laughing. Bribing a
9 toddler with a lollipop? I never would have thought of it. It's easier
10 to just ask customers like that to leave. But Reagan goes above and
11 beyond to make other people happy, and always has. I had to fire
12 Reagan after the oven incident, but I know that I lost an asset to
13 my restaurant team and the company of a great person.

14
15 Another time, another waiter was walking through some crowded
16 tables and started to drop an entire family's meals from the tray.
17 Reagan was standing right there, and one of the hot plates started
18 falling and was going to hit a baby sitting in a high chair. Reagan
19 ran forward and grabbed the hot plate with Reagan's bare hands,
20 getting second-degree burns but saving the baby. I'm telling you,
21 Reagan's one of those kids with a heart of gold, who understands
22 the value of life and that you shouldn't mess with it. Especially
23 after watching that SWAT news story — Reagan looked so upset
24 by what that kid did and how someone got shot, even commenting
25 on how "horrible" it was. Reagan would never do that to someone
26 else. It doesn't matter what they did to Reagan. Reagan's better
27 than that.

1 **Defense Witness: Dr. Blake Williams (Forensic Linguist)**

2 My name is Dr. Blake Williams. I have a Ph.D. in Linguistics from
3 Eastern California University, and I am currently a professor of
4 Linguistics at the University of California, like Dr. Cheung. I have
5 been a professor here for 24 years, and I have served as an expert
6 witness for seventy prior cases. My expert testimony has primarily
7 focused on author identification based on writing samples and
8 voice pattern analysis. I have conducted over one hundred twenty
9 independent studies on author identification in various formats.

10
11 After examining the false “text-a-tip” report, the posts made by the
12 “Hayden” account, and a collection of social media posts made by
13 Reagan and Cameron, and the statements Cameron and Reagan
14 made to the police, I found that the “text-a-tip” writing was more
15 consistent with Cameron’s writing style than Reagan’s. In
16 conducting my analysis, I used the traditional stylistic analysis for
17 shorter messages and followed the commonly used method of
18 identifying consistent and distinct vocabulary choices in addition
19 to opposing features present in Reagan’s and Cameron’s writings.

20
21 I analyzed the same posts that Dr. Cheung used, and in addition to
22 the features Dr. Cheung identified in Exhibit C, I focused on
23 identification of potentially distinctive vocabulary choices which I
24 compiled in Exhibit D, a document I created. I have identified
25 specific vocabulary choices made by Cameron and Reagan in
26 Exhibit D. As the exhibit shows, Reagan seems to have an affinity
27 for longer, more complicated words, and frequently uses
28 descriptions including the root “heart.” Additionally, Reagan tends
29 to focus on “consequences” and the various forms of “value.”
30 Finally, Reagan uses the expression “I figure” quite commonly.
31 Alternatively, Cameron tends to use words like “really” and
32 “please” — with varied spelling, of course — and seems to focus
33 primarily on what someone “deserves.” Cameron also has a
34 tendency to include metaphors in Cameron’s writing.

35
36 Taking the various features shown in Exhibits C and D and the
37 distinct and consistent word choices used by Reagan and
38 Cameron, I agree with Dr. Cheung that they have distinct styles
39 and that an author of the “text-a-tip” can be established.

40
41 However, I disagree that the appropriate conclusion is that Reagan
42 probably wrote the tip. The examination of the “Features” exhibits
43 reveals that those features that are generally distinctive of
44 Reagan’s writing are more prevalent in the tip than those generally
45 distinctive of Cameron’s writing. However, when the distinctive
46 vocabulary choices are also considered, it is my expert opinion
47 that the author is more likely Cameron, if Cameron and Reagan are
48 the only two options. If I haven’t said earlier, something
49 significant to keep in mind is that when conducting a stylistic
50 analysis focusing on pairwise distinctiveness, or comparing two
51 possible authors, the results are limited to saying which potential
52 author is more likely to have written it, *between those two authors*
53 *alone*. Nothing in my or Dr. Cheung’s analysis eliminates any
54 other person in the world from having written the tip.

1
2 At any rate, continuing under the large assumption that the only
3 two possible authors are Reagan and Cameron, it is my
4 professional opinion that Cameron is more likely to have been the
5 one who wrote the tip. Comparing the tip, seen in Exhibit A, with
6 Cameron’s distinctive vocabulary, one finds the elements of what
7 someone “deserves,” “really” and “please” with Cameron’s unique
8 spelling preferences. By contrast, the inclusion of the oddly
9 phrased “pointed gun at Sawyer’s heart” and the addition of the
10 obvious “don’t think he was trying to steal valuables” to the tip
11 both stand out to me as blatant attempts to use Reagan’s
12 vocabulary. Nothing about the words distinctive to Reagan’s style
13 appear in what I would identify as the natural manner Reagan
14 employs them in other posts. Instead, to me, the words seem
15 dropped in, like someone was very particularly trying to make the
16 tip sound like Reagan’s writing style. The same unnatural style
17 applies to the other features that have been identified. In my
18 expert opinion, the writing appears to be consistent with a writer
19 intentionally placing all of those features in a way that does not
20 match the more natural flow of Reagan’s other writings.

EXHIBIT A

Text-a-Tip

The following is a transcript of the Text-a-Tip that the East Flamingo Police Department received on August 14 at 9:08 p.m.

“Hostage situation @ 511 E. Flamingo Pkwy!! Man w gun approached Sawyer, pointed gun at Sawyer’s heart, and forced Sawyer inside the house. Sounded like he said “this is what you deserve.” Had a suspicious backpack...rly possible there r more weapons inside. Don’t think he was trying to steal valuables...plz hurry!! Didn’t want 2 get 2 close, figured he’d see me and take me too. Hurry hurry!”

EXHIBIT B

Screenshot of Marlow's YumYumDelivery Order History

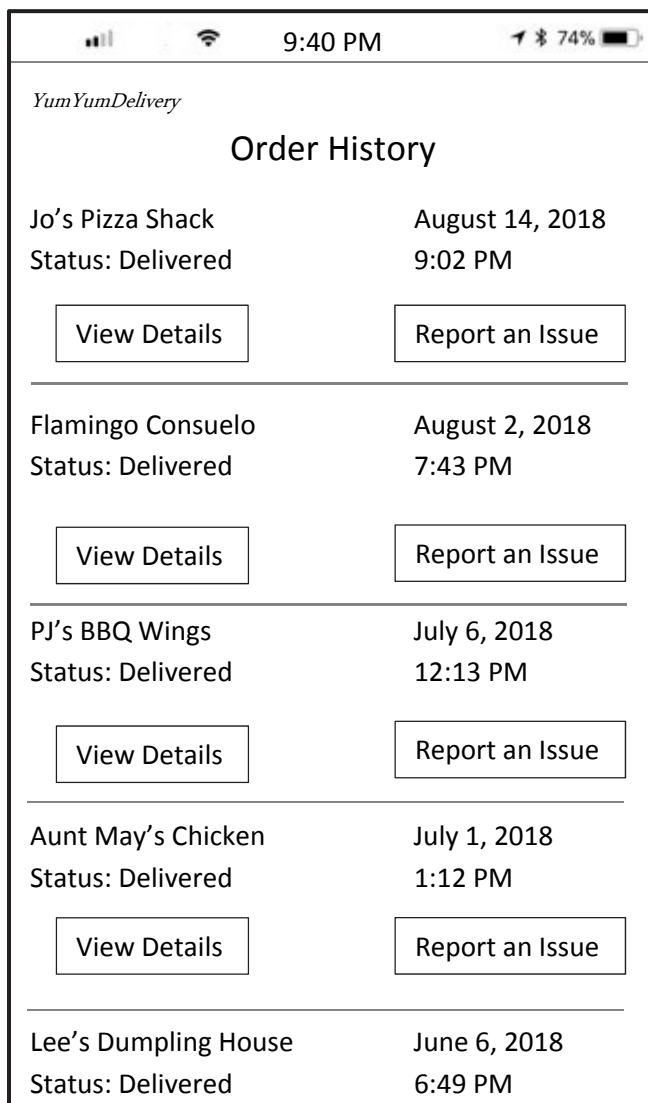


EXHIBIT C

Table 1: Features of Reagan's Writing

Feature	# Present in Reagan's Writing	# Present in Cameron's Writing
Multiple Typographic Exclamations (e.g. !!)	12	2
Use of Quotation Marks	7	1
Use of Ellipses (...)	9	3
Use of Commas	55	13
Use of Single Space between Word and "Emoji"	19	2
Use of eight-letter or longer adjectives	18	3

Table 2: Features of Cameron's Writing

Feature	# Present in Reagan's Writing	# Present in Cameron's Writing
Misspellings	3	14
Prosodic Emphasizers (convey pronunciation through spelling, i.e. helloooooo)	0	7
Whole word number homophone substitution (e.g. 2 for to)	0	9
Whole word letter homophone substitution (e.g. u for you)	0	13
Mixed typographic exclamations (?!)	2	9
Shortenings: specifically, "really" to "rllly" and "please" to "plz"	0	21

Table 3: Comparison of the Features to the Text-a-Tip

Feature	# Present in False Tip	# Present in Reagan's Writing	# Present in Cameron's Writing
Multiple Typographic Exclamations (e.g. !!)	1	12	2
Use of Quotation Marks	1	7	1
Use of Ellipses (...)	2	9	3
Use of Commas	3	55	13
Use of Single Space between Word and "Emoji"	0	19	2
Use of eight-letter or longer adjectives	2	18	3
Misspellings	0	3	14
Prosodic Emphasizers (convey pronunciation through spelling, e.g. helloooooo)	0	0	7
Whole word number homophone substitution (e.g. 2 for to)	2	0	9
Whole word letter homophone substitution (e.g. u for you)	1	0	13
Mixed typographic exclamations (?!)	0	2	9
Shortenings: specifically, "really" to "rllly" and "please" to "plz"	2	0	21

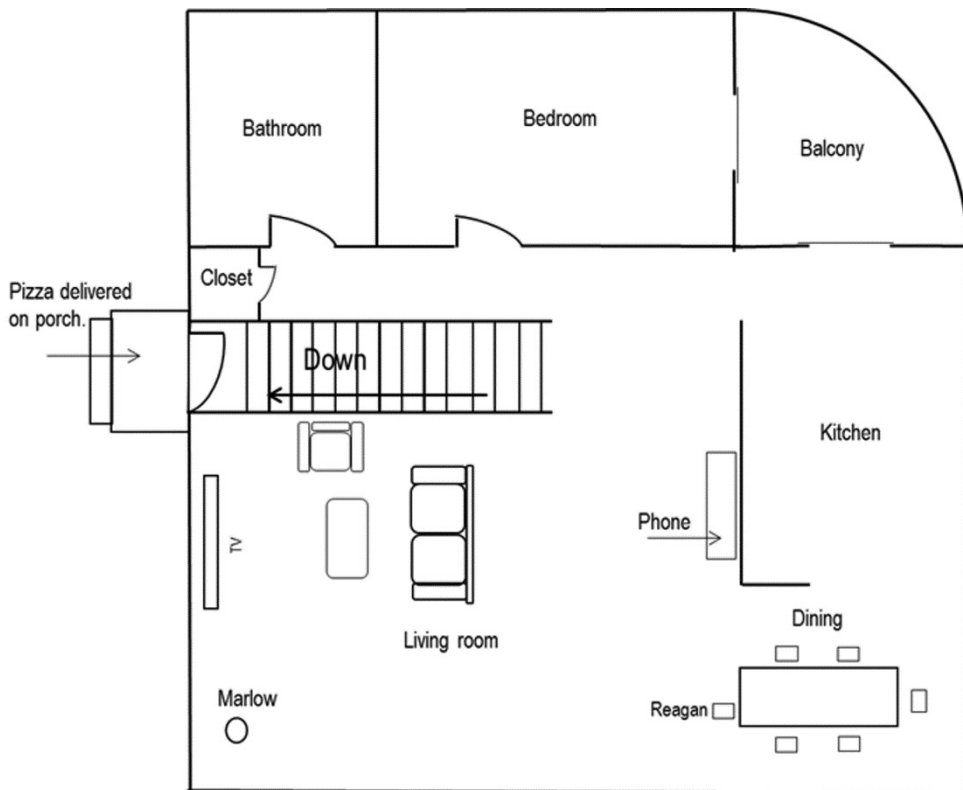
EXHIBIT D

Distinctive Vocabulary Choices

Vocabulary Choice	Present in False Tip?	# Present in Reagan's Writing	# Present in Cameron's Writing
Heart, disheartened, heartless	Y	19	2
Consequences, results	N	26	5
Value: valued, valuable, worth, worthy	Y	13	0
"I figure" expression	Y	21	0
Really (& associated spelling)	Y	0	13
Please (& associated spelling)	Y	0	10
Deserve: deserve(s/d), owe(s/d), "what's coming," lesson	Y	4	11
Use of metaphors (e.g. out in the cold)	N	3	12

EXHIBIT E

Diagram of Reagan's Apartment



FORM AND SUBSTANCE OF A TRIAL

The Elements of a Criminal Offense

The penal (or criminal) code generally defines two aspects of every crime: the physical aspect and the mental aspect. Most crimes specify some physical act, such as firing a gun in a crowded room, and a guilty, or **culpable**, mental state. The intent to commit a crime and a reckless disregard for the consequences of one's actions are examples of a culpable mental state. Bad thoughts alone, though, are not enough. A crime requires the union of thought and action.

The mental state requirement prevents the conviction of an insane person. Such a person cannot form **criminal intent** and should receive psychological treatment rather than punishment. Also, a defendant may justify his or her actions by showing a lack of criminal intent. For instance, the crime of burglary has two elements: (1) entering a dwelling or structure (2) with the intent to steal or commit a felony. A person breaking into a burning house to rescue a baby has not committed a burglary.

The Presumption of Innocence

Our criminal justice system is based on the premise that allowing a guilty person to go free is better than putting an innocent person behind bars. For this reason, defendants are presumed innocent. This means that the prosecution bears a heavy burden of proof; the prosecution must convince the judge or jury of guilt beyond a **reasonable doubt**.

The Concept of Reasonable Doubt

Despite its use in every criminal trial, the term "reasonable doubt" is hard to define. The concept of reasonable doubt lies somewhere between probability of guilt and a lingering possible doubt of guilt. A defendant may be found guilty "beyond a reasonable doubt" even though a possible doubt remains in the mind of the judge or juror. Conversely, triers of fact might return a verdict of not guilty while still believing that the defendant probably committed the crime. Reasonable doubt exists unless the triers of fact can say that they have a firm conviction of the truth of the charge.

Jurors must often reach verdicts despite contradictory evidence. Two witnesses might give different accounts of the same event. Sometimes a single witness will give a different account of the same event at different times. Such inconsistencies often result from human fallibility rather than intentional lying. The trier of fact (in the Mock Trial competition, the judge) must apply his or her own best judgment when evaluating inconsistent testimony.

A guilty verdict may be based upon circumstantial (indirect) evidence. However, if there are two reasonable interpretations of a piece of circumstantial evidence, one pointing toward guilt of the defendant and another pointing toward innocence of the defendant, the trier of fact is required to accept the interpretation

that points toward the defendant's innocence. On the other hand, if a piece of circumstantial evidence is subject to two interpretations, one reasonable and one unreasonable, the trier of fact must accept the reasonable interpretation, even if it points toward the defendant's guilt. It is up to the trier of fact to decide whether an interpretation is reasonable or unreasonable.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.

TEAM ROLE DESCRIPTIONS

ATTORNEYS

The **pretrial-motion attorney** presents the oral argument for (or against) the motion brought by the defense. You will present your position, answer questions by the judge, and try to refute the opposing attorney's arguments in your rebuttal.

Trial attorneys control the presentation of evidence at trial and argue the merits of their side of the case. They do not themselves supply information about the alleged criminal activity. Instead, they introduce evidence and question witnesses to bring out the full story.

The **prosecutor** presents the case for the state against the defendant(s). By questioning witnesses, you will try to convince the judge or jury (juries are **not** used at state finals) that the defendant(s) is guilty beyond a reasonable doubt. You will want to suggest a motive for the crime and try to refute any defense alibis.

The **defense attorney** presents the case for the defendant(s). You will offer your own witnesses to present your client's version of the facts. You may undermine the prosecution's case by showing that the prosecution's witnesses are not dependable or that their testimony makes no sense or is seriously inconsistent.

Trial attorneys will:

- Conduct direct examination.
- Conduct cross-examination.
- Conduct redirect examination, if necessary.
- Make appropriate objections: Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony.
- Conduct the necessary reargument and be prepared to act as a substitute for any other attorneys.
- Make opening statements and closing arguments.

Each student attorney should take an active role in some part of the trial.

WITNESSES

You will supply the facts of the case. As a witness, the official source of your testimony, or record, is composed of your witness statement, and any portion of the fact situation, stipulations, and exhibits, of which you would reasonably have knowledge. **The fact situation is a set of indisputable facts that witnesses and attorneys may refer to and draw reasonable inferences from.** The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses.

You may testify to facts stated in or reasonably inferred from your record. If an attorney asks you a question, and there is no answer to it in your official testimony, you can choose how to answer it. You can either reply, “I don’t know” or “I can’t remember,” or you can infer an answer from the facts you do officially know. Inferences are only allowed if they are *reasonable*. Your inference cannot contradict your official testimony, or else **you can be impeached** using the procedures outlined in this packet. Practicing your testimony with your attorney coach and your team will help you to fill in any gaps in the official materials (see Unfair Extrapolation on p. 64).

It is the responsibility of the attorneys to make the appropriate objections when witnesses are asked to testify about something that is not generally known or that cannot be reasonably inferred from the Fact Situation or a Witness Statement.

COURT CLERK, COURT BAILIFF, UNOFFICIAL TIMER

We recommend that you provide two separate people for the roles of clerk and bailiff, but if you assign only one, then that person **must** be prepared to perform as clerk or bailiff in any given trial.

The unofficial timer may be any member of the team presenting the defense. However, it is advised that the unofficial timer not have a substantial role, if any, during the trial so they may concentrate on timing. The ideal unofficial timer would be the defense team’s clerk.

The clerk and bailiff have individual scores to reflect their contributions to the trial proceedings. **This does NOT mean that clerks and bailiffs should try to attract attention to themselves; rather, scoring will be based on how professionally and**

responsibly they perform their respective duties as officers of the court.

In a real trial, the court clerk and the bailiff aid the judge in conducting the trial. The court clerk calls the court to order and swears in the witnesses to tell the truth. The bailiff watches over the defendant to protect the security of the courtroom.

In the Mock Trial, the clerk and bailiff have different duties. For the purpose of the competition, the duties described below are assigned to the roles of clerk and bailiff. **(Prosecution teams will be expected to provide the clerk for the trial; defense teams are to provide the bailiff.)**

Duties of the Court Clerk

When the judge and scoring attorneys arrive in the courtroom, introduce yourself, explain that you will assist as the court clerk and distribute team roster forms to the opposing team, each scoring attorney, and the judge.

In the Mock Trial competition, the court clerk's major duty is to time the trial. You are responsible for bringing a stopwatch to the trial. Please be sure to practice with it and know how to use it when you come to the trials.

An experienced timer (clerk) is critical to the success of a trial.

Interruptions in the presentations do not count as time. For direct, cross, and redirect examination, record only time spent by attorneys asking questions and witnesses answering them.

Do not include time when:

- **Witnesses are called to the stand.**
- **Attorneys are making objections.**
- **Judges are questioning attorneys or witnesses or offering their observations.**

When a team has two minutes remaining in a category, hold up the two-minute sign; when one minute remains, hold up the one-minute sign; when 30 seconds remain, hold up the 30-second sign; when time for a category has run out, hold up the stop sign and announce, "Stop!" The only verbal warning during the trial should be "Stop!" Remember to speak loud enough for everyone to hear you.

Time allocations: Two Minutes, One Minute, 30 Seconds, Stop

There is to be no allowance for overtime under any circumstance. This will be the procedure adhered to at the state finals. After each witness has completed his or her testimony, mark down the exact time on the time sheet. Do not round off the time.

Duties of the Bailiff

When the judge arrives in the courtroom, introduce yourself, explain that you will assist as the court bailiff and distribute team roster forms to the opposing team, each scoring attorney, and the judge.

In the Mock Trial competition, the bailiff's major duties are to call the court to order and to swear in witnesses. Please use the language below. When the judge has announced that the trial is beginning, say:

“All rise, Superior Court of the State of California, County of ____, Department ____, is now in session. Judge ____ presiding, please be seated and come to order. Please turn off all cell phones and refrain from talking.”

When a witness is called to testify, you must swear in the witness as follows:

“Do you solemnly affirm that the testimony you are about to give will faithfully and truthfully conform to the facts and rules of the Mock Trial competition?”

In addition, the bailiff is responsible for bringing to trial a copy of the “Rules of Competition.” In the event that a question arises and the judge needs further clarification, the bailiff is to provide this copy to the judge.

Duties of the Unofficial Timer

Any official member of the team presenting defense may serve as an official timer. This unofficial timer must be identified before the trial begins and sit next to the official timer (clerk).

If timing variations of 15 seconds or more occur at the completion of any task during the trial, the timers will notify the judge immediately that a time discrepancy has occurred. Any time discrepancies less than 15 seconds are not considered a violation. NO time discrepancies will be entertained after the trial concludes.

Any objections to the clerk's official time must be made by this unofficial timer during the trial, before the verdict is rendered. The

judge shall determine whether to accept the clerk's time or make a time adjustment.

If the times differ significantly, notify the judge and ask for a ruling as to the time remaining. You may use the following sample questions and statements:

“Your honor, before bringing the next witness, may I bring to the court's attention that there is a time discrepancy.”

“Your honor, there is a discrepancy between my records and those of the official timekeeper.”

Be prepared to show your records and defend your requests.

TEAM MANAGER

Your team may also select a member to serve as **team manager**. Any team member, regardless of his or her official Mock Trial role, may serve as team manager. The manager is responsible for keeping a list of phone numbers of all team members and ensuring that everyone is informed of the schedule of meetings. In case of illness or absence, the manager should also keep a record of all witness testimony and a copy of all attorney notes so that another team member may fill in if necessary.

PROCEDURES FOR PRESENTING A MOCK TRIAL CASE

Introduction of Physical Evidence

Attorneys may introduce physical exhibits, if any are listed under the heading “Evidence,” provided that the objects correspond to the description given in the case materials. Below are the steps to follow when introducing physical evidence (maps, diagrams, etc.) All items are presented prior to trial.

1. Present the item to an attorney for the opposing team prior to trial. If that attorney objects to the use of the item, the judge will rule whether the evidence is appropriate or not.
2. Before beginning the trial, mark all exhibits for identification. Address the judge as follows: “Your honor, I ask that this item be marked for identification as Exhibit # ____.”
3. When a witness is on the stand testifying about the exhibit, show the item to the witness and ask the witness if he/she recognizes the item. If the witness does, ask him or her to explain it or answer questions about it. This shows how the exhibit is relevant to the trial.

Moving the Item Into Evidence

Exhibits must be introduced into evidence if attorneys wish the court to consider the items themselves as evidence, not just the testimony about the exhibits. Attorneys must ask to move the item into evidence during the witness examination or before they finish presenting their case.

1. “Your honor, I ask that this item (describe) be moved into evidence as People’s (or Defendant’s) Exhibit #__ and request that the court so admit it.”
2. At this point, opposing counsel may make any proper objections.
3. The judge will then rule on whether the item may be admitted into evidence.

The Opening Statement

The opening statement outline the case as you intend to present it. The prosecution delivers the first opening statement. A defense attorney may follow immediately or delay the opening statement until the prosecution has finished presenting its witnesses. A good opening statement should:

- Explain what you plan to prove and how you will prove it.

- Present the events of the case in an orderly sequence that is easy to understand.
- Suggest a motive or emphasize a lack of motive for the crime.

Begin your statement with a formal address to the judge:

- “Your honor, my name is (full name), the prosecutor representing the people of the state of California in this action,” or
- “Your honor, my name is (full name), counsel for Reagan Klein, the defendant in this action.”
- Proper phrasing includes:
 - “The evidence will indicate that...”
 - “The facts will show that...”
 - “Witness (full name) will be called to tell...”
 - “The defendant will testify that...”

Direct Examination

Attorneys conduct direct examination of their own witnesses to bring out the facts of the case. Direct examination should:

- Call for answers based on information provided in the case materials.
- Reveal all of the facts favorable to your position.
- Ask the witnesses to tell the story rather than using leading questions, which call for “yes” or “no” answers. (An opposing attorney may object to the use of leading questions on direct examination.)
- Make the witnesses seem believable.
- Keep the witness from rambling about unimportant issues.

Call for the witness with a formal request:

“Your honor, I would like to call (name of witness) to the stand.”

The witness will then be sworn in before testifying.

After the witness swears to tell the truth, you may wish to ask some introductory questions to make the witness feel more comfortable. Appropriate inquiries include:

- The witness’s name.
- Length of residence or present employment, if this information helps to establish the witness’s credibility.

- Further questions about professional qualifications, if you wish to qualify the witness as an expert.
- Examples of proper questions on direct examination:
 - “Could you please tell the court what occurred on ____ (date)?”
 - “What happened after the defendant slapped you?”
 - “How long did you see...?”
 - “Did anyone do anything while you waited?”
 - “How long did you remain in that spot?”

Conclude your direct examination with:

“Thank you, Mr./Ms. (name of witness). That will be all, your honor.” (The witness remains on the stand for cross-examination.)

Cross-Examination

Cross-examination follows the opposing attorney’s direct examination of the witness. Attorneys conduct cross-examination to explore weaknesses in the opponent’s case, test the witness’s credibility, and establish some of the facts of the cross-examiner’s case whenever possible. Cross-examination should:

- Call for answers based on information given in Witness Statements or the Fact Situation.
- Use leading questions, which are designed to get “yes” and “no” answers.
- Never give the witness a chance to unpleasantly surprise the attorney.

In an actual trial, cross-examination is restricted to the scope of issues raised on direct examination. Because Mock Trial attorneys are not permitted to call opposing witnesses as their own, the scope of cross-examination in a Mock Trial is not limited in this way.

Examples of proper questions on cross-examinations:

- “Isn’t it a fact that...?”
- “Wouldn’t you agree that...?”
- “Don’t you think that...?”
- “When you spoke with your neighbor on the night of the murder, weren’t you wearing a red shirt?”

Cross examination should conclude with:

“Thank you, Mr./Ms. (name of witness). That will be all, your honor.”

Impeachment During Cross-Examination

During cross-examination, the attorney may want to show the court that the witness on the stand should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that makes the witness's credibility (believability) doubtful. Other times, it may be done by asking about evidence of criminal convictions.

A witness also may be impeached by introducing the witness's statement and asking the witness whether he or she has contradicted something in the statement (i.e., identifying the specific contradiction between the witness's statement and oral testimony).

The attorney does not need to tell the court that he or she is impeaching the witness, unless in response to an objection from the opposing side. The attorney needs only to point out during closing argument that the witness was impeached, and therefore should not be believed.

Example: (Using signed witness statement to impeach) In the witness statement, Mr. Jones stated that the suspect was wearing a pink shirt. In answering a question on direct examination, however, Mr. Jones stated that the suspect wore a red shirt.

On cross-examination, ask, "Mr. Jones, you testified that the suspect was wearing a red shirt, correct?"

Mr. Jones responds, "Yes."

Show Mr. Jones the case packet opened up to Mr. Jones' statement. Ask Mr. Jones, "Is this your witness statement, Mr. Jones?" (Mr. Jones has no choice but to answer, "Yes.")

Then ask Mr. Jones, "Do you recognize the statement on page ____, line ____ of the case packet?"

Read the statement aloud to the court and ask the witness: "Does this not directly contradict what you said on direct examination?"

After you receive your answer (no matter what that answer is) move on with the remainder of your argument and remember to bring up the inconsistency in closing arguments.

Redirect Examination

Following cross-examination, the counsel who called the witness may conduct redirect examination. Attorneys conduct redirect examination to clarify new (unexpected) issues or facts brought out in the immediately preceding cross-examination **only**. They may not bring up any issue brought out during direct examination. Attorneys may or may not want to conduct redirect examination. If an attorney asks questions beyond the scope of issues raised on cross, they may be objected to as “outside the scope of cross-examination.” It is sometimes more beneficial not to conduct re-direct for a particular witness. To properly decide whether it is necessary to conduct re-direct examination, the attorneys must pay close attention to what is said during the cross-examination of their witnesses.

If the credibility or reputation for truthfulness of a witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ‘save’ the witness through re-direct. These questions should be limited to the damage the attorney thinks has been done and enhance the witness’s truth-telling image in the eyes of the court. Work closely with your attorney coach on redirect strategies.

Closing Arguments

A good closing argument summarizes the case in the light most favorable to your position. The prosecution delivers the first closing argument. The closing argument of the defense attorney concludes the presentations. A good closing argument should:

- Be spontaneous, synthesizing what actually happened in court rather than being “prepackaged.” **NOTE: Points will be deducted from the closing argument score if concluding remarks do not actually reflect statements and evidence presented during the trial.**
- Be emotionally charged and strongly appealing (unlike the calm opening statement).
- Emphasize the facts that support the claims of your side, but not raise any new facts.
- Summarize the favorable testimony.
- Attempt to reconcile inconsistencies that might hurt your side.
- Be well-organized. (Starting and ending with your strongest point helps to structure the presentation and gives you a good introduction and conclusion.)

- The prosecution should emphasize that the state has proven guilt beyond a reasonable doubt.
- The defense should raise questions that suggest the continued existence of a reasonable doubt.

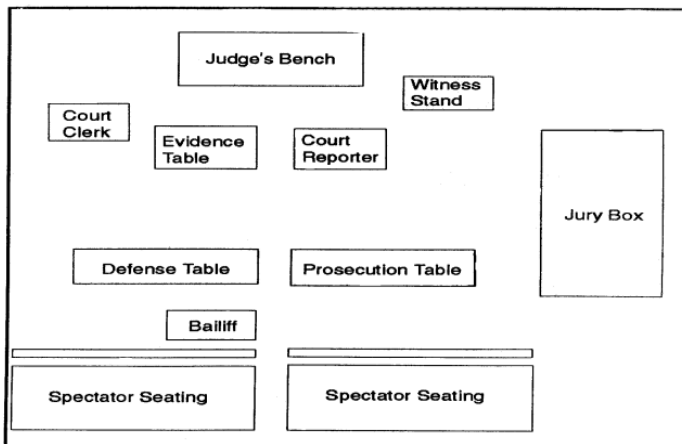
Proper phrasing includes:

- “The evidence has clearly shown that...”
- “Based on this testimony, there can be no doubt that...”
- “The prosecution has failed to prove that...”
- “The defense would have you believe that...”

Conclude the closing argument with an appeal to convict or acquit the defendant.

An attorney has one minute for rebuttal. Only issues that were addressed in an opponent’s closing argument may be raised during rebuttal.

DIAGRAM OF A TYPICAL COURTROOM



MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

Criminal trials are conducted using strict rules of evidence to promote fairness. To participate in a Mock Trial, you need to know its rules of evidence. The California Mock Trial program bases its Mock Trial Simplified Rules of Evidence on the California Evidence Code. Studying the rules will prepare you to make timely objections, avoid pitfalls in your own presentations, and understand some of the difficulties that arise in actual court trials. The purpose of using rules of evidence in the competition is to structure the presentation of testimony to resemble a real trial.

Almost every fact stated in the materials will be admissible under the rules of evidence. All evidence will be admitted unless an attorney objects. To promote the educational objectives of this program, students are restricted to the use of a select number of evidentiary rules in conducting the trial.

Objections

It is the responsibility of the party opposing the evidence to prevent its admission by a timely and specific objection.

Objections not raised in a timely manner are waiver, or given up. An effective objection is designed to keep inadmissible testimony, or testimony harmful to your case, from being admitted. A *single* objection may be more effective than several objections. Attorneys can, and should, pay attention to objections that need to be made to questions and those that need to be made to answers.

Remember, the quality of an attorney's objections is always more important than the quantity of the objections.

For the purposes of this competition, teams will be permitted to use only certain types of objections. The allowable objections are found in the case packet. **Other objections may not be raised at trial.** As with all objections, the judge will decide whether to allow the testimony, strike it, or simply not the objection for later consideration. **The rulings of the trial judge are final.** You must continue the presentation even if you disagree. A proper objection includes the following elements. The attorney:

1. Addresses the judge,
2. Indicates that he or she is raising an objection,
3. Specifies what he or she is objecting to, i.e., the particular word, phrase, or question, and
4. Specifies the legal grounds for the objection.

Example: "(1) Your honor, (2) I object (3) to that question (4) because it is a compound question."

Throughout this packet, you will find sections titled “Usage comments.” These comments further explain the rule and often provide examples of how to use the rule at trial.

ALLOWABLE EVIDENTIARY OBJECTIONS

1. Unfair Extrapolation (UE)

This objection is specific to California Mock Trial and is not an ordinary rule of evidence.

Each witness is bound by the facts contained in his or her own official record, which, unless otherwise noted, includes his or her own witness statement, the Fact Situation (those facts of which the witness would reasonably have knowledge), and/or any exhibit relevant to his or her testimony. The **unfair extrapolation (UE)** objection applies if a witness creates a material fact not included in his or her official record. A **material fact** is one that would likely impact the outcome of the case.

Witnesses may, however, make **fair extrapolations** from the materials. A fair extrapolation is one in which a witness makes a reasonable inference based on his or her official record. A fair extrapolation does not alter the material facts of the case.

If a witness is asked information not contained in the witness’s statement, the answer must be consistent with the statement and may not materially affect the witness’s testimony or any substantive issue of the case.

Unfair extrapolations are best attacked through impeachment and closing argument. They should be dealt with by attorneys during the course of the trial. (See page 52 on how to impeach a witness)

When making a UE objection, students should be able to explain to the court what facts are being unfairly extrapolated and why the extrapolation is material to the case. Possible rulings by a presiding judge include:

1. No extrapolation has occurred;
2. An unfair extrapolation has occurred;
3. The extrapolation was fair.

The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

Usage comments—The most common example of an unfair extrapolation would be if an expert witness or police officer is

questioned about research and procedures that require them to have specialized knowledge outside what is contained in their official records. This type of unfair extrapolation is illustrated in Example #1 below. Example #2 provides a set of facts and an example of fair and unfair extrapolation based on a sample fact scenario.

Example #1: A defense expert witness testifies about using fluorescent light when collecting fingerprints, which is described in her witness statement. On cross-examination, the prosecutor asks, “Did you also use a superglue processing technique to collect fingerprints?” While a superglue processing technique is an actual way to collect fingerprints, the procedure was not mentioned anywhere in the case materials. The defense could object that the question calls for an unfair extrapolation.

Example #2: Sample Fact Scenario

John Doe, who is being charged with buying stolen goods on a particular night, states the following in his witness statement: “On the night in question, I pulled into the parking lot of the Acme Grocery Store and parked my car. I walked into the store with the other customers, picked up some items, went to the checkout stand, and left the store with my shopping bag.”

Fair Extrapolation: At trial, John Doe testifies to the following: “On the night in question, around 9:00p.m., I went to the Acme Grocery Store, parked my car, went into the store and purchased milk and a box of cereal. The fact that John Doe said he “purchased milk and a box of cereal” is a fair extrapolation. Even though there is no mention of what John purchased in his witness statement, it can be reasonably inferred from the context of his witness statement that he entered the store and purchased groceries. Furthermore, the items he purchased (milk and cereal) do not impact any substantive issue in the case.

Unfair Extrapolation: At trial, John Doe testifies to the following: “I pulled into the parking lot of the Acme Grocery Store and parked my car. I walked into the store, purchased some groceries, and withdrew \$200 from the ATM.” The fact that John Doe withdrew cash is an unfair extrapolation because the fact John withdrew \$200 on the night of the crime is material to the charge of buying stolen goods because it impacts the substantive issues of his motive and means to later buy stolen goods.

Form of Objection: **“Objection, your honor. This is an unfair extrapolation,” or, “That question calls for information beyond the scope of Mr. Doe’s witness statement.”**

NOTE: The Unfair Extrapolation objection replaces the Creation of a Material Fact objection used in previous years in California Mock Trial.

2. Relevance

Unless prohibited by a pretrial motion ruling or by some other rule of evidence listed in these Simplified Rules of Evidence, all relevant evidence is admissible. Evidence is relevant if it has any tendency to make a fact that is important to the case more or less probable than the fact would be without the evidence. Both direct and circumstantial evidence may be relevant and admissible in court.

Example: Eyewitness testimony that the defendant shot the victim is **direct** evidence of the defendant’s assault. The testimony of a witness establishing that the witness saw the defendant leaving the victim’s apartment with a smoking gun is **circumstantial** evidence of the defendant’s assault.

Usage Comments— When an opposing attorney objects on the ground of relevance, the judge may ask you to explain how the proposed evidence relates to the case.

You can then make an “offer of proof” (explain what the witness will testify to and how it is relevant). The judge will then decide whether or not to let you question the witness on the subject.

Form of Objection: **“Objection, your honor. This testimony is not relevant,” or, “Objection, your honor. Counsel’s question calls for irrelevant testimony.”**

3. More Prejudicial than Probative

The court in its discretion may exclude relevant evidence if its probative value (its value as proof of some fact) is substantially outweighed by the probability that its admission creates substantial danger of undue prejudice, confuses the issues, wastes time, or misleads the trier of fact (judge).

Usage Comments—This objection should be used sparingly in trial. It applies *only* in rare circumstances. Undue prejudice does not mean “damaging.” Indeed, the best trial evidence is always to some degree damaging to the opposing side’s case. *Undue*

prejudice instead is prejudice that would affect the impartiality of the judge, usually through provoking emotional reactions. To warrant exclusion on that ground, the weighing process requires a finding of clear lopsidedness such that relevance is minimal and prejudice to the opposing side is maximal.

Example: A criminal defendant is charged with embezzling money from his employer. At trial, the prosecutor elicits testimony that, several years earlier, the defendant suffered an animal cruelty conviction for harming a family pet.

The prosecution could potentially argue that the animal cruelty conviction has some probative value as to defendant’s credibility as a witness. However, the defense would counter that the circumstances of the conviction have very little probative value. By contrast, this fact creates a significant danger of affecting the judge’s impartiality by provoking a strong emotional dislike for the defendant (undue prejudice).

Form of Objection: **“Objection, your honor. The probative value of this evidence is substantially outweighed by the danger of undue prejudice (or confusing the issues, or misleading the trier of fact).”**

4. Laying a Proper Foundation

To establish the relevance of direct or circumstantial evidence, you may need to lay a proper foundation. Laying a proper foundation means that before a witness can testify about his or her personal knowledge or opinion of certain facts, it must be shown that the witness was in a position to know those facts in order to have personal knowledge of those facts or to form an admissible opinion. (See “Opinion Testimony” below.)

Usage Comments—Example: A prosecution attorney calls a witness to the stand and begins questioning with “Did you see the defendant leave the scene of the crime?” The defense attorney may object based upon a lack of foundation. If the judge sustains the objection, then the prosecution attorney should lay a foundation by first asking the witness if he was in the area at the approximate time the crime occurred. This lays the foundation that the witness was at the scene of the crime at the time that the defendant was allegedly there in order to answer the prosecution attorney’s question.

Form of Objection: **“Objection, your honor. There is a lack of foundation.”**

5. Personal Knowledge/Speculation

A witness may not testify about any matter of which the witness has no personal knowledge. Only if the witness has directly observed an event may the witness testify about it. Personal knowledge must be shown before a witness may testify concerning a matter.

Usage Comments—Witnesses will sometimes make inferences from what they actually did observe. An attorney may properly object to this type of testimony because the witness has no personal knowledge of the inferred fact.

Example: From around a corner, the witness heard a commotion. The witness immediately walked toward the sound of the commotion, found the victim at the foot of the stairs, and saw the defendant at the top of the landing, smirking. The witness then testifies that the defendant pushed the victim down the stairs. Even though this inference may seem obvious to the witness, the witness did not personally observe the defendant push the victim. Therefore, the defense attorney can object based upon the witness’s lack of personal knowledge that the defendant pushed the victim.

Form of Objection: **“Objection, your honor. The witness has no personal knowledge to answer that question.” Or, “Objection, your honor, speculation.”**

6. Opinion Testimony (Testimony from Non-Experts)

Opinion testimony includes inferences and other subjective statements of a witness. In general, opinion testimony is inadmissible because the witness is not testifying to facts. Opinion testimony is admissible only when it is (a) rationally based upon the perception of the witness (five senses) and (b) helpful to a clear understanding of his or her testimony. Opinions based on a common experience are admissible. Some examples of admissible witness opinions are speed of a moving object, source of an odor, appearance of a person, state of emotion, or identity of a voice or handwriting.

Usage Comments—As long as there is personal knowledge and a proper foundation, a witness could testify, “I saw the defendant, who was crying, looked tired, and smelled of alcohol.” All of this is proper lay witness (non-expert) opinion.

Form of Objection: **“Objection, your honor. Improper lay witness opinion.” Or, “Objection, your honor. The question calls for speculation on the part of the witness.”**

7. Expert Witness

A person may be qualified as an expert witness if he or she has special knowledge, skill, experience, training, or education in a subject sufficiently beyond common experience. An expert witness may give an opinion based on professional experience if the expert’s opinion would assist the trier of fact (judge) in resolving an issue relevant to the case. Experts must be qualified before testifying to a professional opinion. Qualified experts may give an opinion based upon their personal observations as well as facts made known to them at, or before, the trial. The facts need not be admissible evidence if they are the type reasonably relied upon by experts in the field. Experts may give opinions on ultimate issues in controversy at trial. In a criminal case, an expert may not state an opinion as to whether the defendant did or did not have the mental state at issue.

Usage Comments—Examples:

1. A handwriting comparison expert testifies that police investigators presented her with a sample of the defendant’s handwriting and a threatening letter prepared by an anonymous author. She personally conducted an examination of both documents. Based on her training, her professional experience, and her careful examination of the documents, she concluded that, in her opinion, the handwriting in the anonymous letter matches the handwriting in the sample of the defendant’s handwriting. This would be an admissible expert opinion.
2. A doctor testifies that she based her opinion upon (1) an examination of the patient and (2) medically relevant statements of the patient’s relatives. Personal examination is admissible because it is relevant and based on personal knowledge. The statements of the relatives are inadmissible hearsay (hearsay is defined in Section 9 below) but are proper basis for opinion testimony because they are reasonably relevant to a doctor’s diagnosis. A judge could, in her discretion, allow the expert witness to describe what the relatives told her and explain how that information supports her opinion. Although those statements would not be admissible to prove the statements are true, they can be used to explain how the statements support the doctor’s opinion.

Form of Objection: **“Objection, your honor. There is a lack of foundation for this opinion testimony,” or, “Objection, your honor. Improper opinion.”**

8. Character Evidence

“Character evidence” is evidence of a person’s personal traits or personality tendencies (e.g. honest, violent, greedy, dependable, etc.). As a general rule, character evidence is **inadmissible** when offered to prove that a person acted in accordance with his or her character trait(s) on a specific occasion. The Simplified Rules of Evidence recognize three exceptions to this rule:

1. Defendant’s own character

The defense may offer evidence of the defendant’s own character (in the form of opinion or evidence of reputation) to prove that the defendant acted in accordance with his or her character on a specific occasion (where the defendant’s character is inconsistent with the acts of which he or she is accused). The prosecution can rebut the evidence (See Usage Comments below).

2. Victim’s character

The defense may offer evidence of the victim’s character (in the form of opinion, evidence of reputation, or specific instances of conduct) to prove the victim acted in accordance with his or her own character on a specific occasion (where the victim’s character would tend to prove the innocence of the defendant). The prosecution can rebut the evidence (See Usage Comments below).

3. Witness’s character

Evidence of a witness’s character for dishonesty (in the form of opinion, evidence of reputation, or specific instances of conduct) is admissible to attack the witness’s credibility. If a witness’s character for honesty has been attacked by the admission of bad character evidence, then the opposing party may rebut by presenting good character evidence (in the form of opinion, evidence of reputation, or specific instances of conduct) of the witness’s truthfulness.

Admission of Prior Acts for Limited Non-Character Evidence Purposes

Habit or Custom to Prove Specific Behavior

Evidence of the habit or routine practice of a person or an organization is admissible to prove conduct on a specific occasion in conformity with the habit or routine practice. Habit or custom evidence is not character evidence.

Prior Act to Prove Motive, Intent, Knowledge, Identity, or Absence of Mistake

Nothing in this section prohibits the admission of evidence that the defendant committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, intent, knowledge, identity, or absence of mistake or accident) other than his or her disposition to commit such an act.

Usage Comments—If any prosecution witness testifies to the defendant or victim’s character, the defense may object. But the prosecution may then request to make an offer of proof, or an explanation to the judge, that the prosecution (a) anticipates the defense will introduce evidence of defendant’s or victim’s character, and (b) Mock Trial rules do not allow for rebuttal witnesses or recalling witnesses. If the judge allows, the prosecution may present evidence in the form of opinion, evidence of reputation, or specific instances of conduct to rebut the defense’s anticipated use of character evidence. If this evidence does not come in during the defense, the defense attorney can move to strike the previous character evidence.

Examples:

Admissible character evidence

1. The defendant is charged with embezzlement (a theft offense). The defendant’s pastor testifies that the defendant attends church every week and has a reputation in the community as an honest and trustworthy person. This would be admissible character evidence.

Inadmissible character evidence

2. The defendant is charged with assault. The prosecutor calls the owner of the defendant’s apartment to testify in the prosecution’s case-in-chief. She testifies that the defendant often paid his rent late and was very unreliable. This would likely not be admissible character evidence for two reasons: (1) This character evidence violates the general rule that character evidence is inadmissible (and it does not qualify under one of the three recognized exceptions above), and (2) the character trait of “reliability” is not relevant to an assault charge (by contrast, propensity for violence or non-violence would be relevant character traits in an assault case).

Form of Objection: **“Objection, your honor. Inadmissible character evidence,”** or, **“Objection, your honor. The question calls for inadmissible character evidence.”**

9. Hearsay

Hearsay evidence is evidence of a statement that was made other than by a witness while testifying at trial and that is offered to prove the truth of the matter stated. (This means the person who is testifying to another person’s statement is offering the statement to prove it is true.) Hearsay is considered untrustworthy because the declarant (aka the speaker) of the out-of-court statement did not make the statement under oath and is not present in court to be cross-examined. Because these statements are unreliable, they ordinarily are not admissible.

Usage Comments—Testimony not offered to prove the truth of the matter stated is, by definition, *not* hearsay. For example, testimony to show that a statement was said and heard, or to show that a declarant could speak a certain language, or to show the subsequent actions of a listener, is admissible.

Examples:

1. Joe is being tried for murdering Henry. The witness testifies, “Ellen told me that Joe killed Henry.” If offered to prove that Joe killed Henry, this statement is hearsay and would likely not be admitted over an objection.
2. A witness testifies, “I went looking for Eric because Sally told me that Eric did not come home last night.” Sally’s comment is an out-of-court statement. However, the statement could be admissible if it is not offered for the truth of its contents (that Eric did not come home), but instead is offered to show why the witness went looking for Eric.

Form of Objection: **“Objection, your honor. Counsel’s question calls for hearsay.”** Or, **“Objection, your honor. This testimony is hearsay. I move that it be stricken from the record.”**

Hearsay Exceptions

Out of practical necessity, the law recognizes certain types of hearsay that may be admissible. Exceptions have been allowed for out-of-court statements made under circumstances that promote greater reliability, provided that a proper foundation has been laid for the statements. The Simplified Rules of Evidence recognize **only** the following exceptions to the hearsay rule:

- a. **Declaration against interest:** a statement which, when made, was contrary to the declarant's own economic interest, or subjected the declarant to the risk of civil or criminal liability, or created a risk of making the declarant an object of hatred, ridicule, or social disgrace in the community. A reasonable person in the declarant's position would not have made the statement unless the person believed it to be true.
- b. **Excited Utterance:** a statement that describes or explains an event perceived by the declarant, made during or shortly after a startling event, while the declarant is still under the stress of excitement caused by the event.
- c. **State of mind:** a statement that shows the declarant's then-existing state of mind, emotion, or physical condition (including a statement of intent, plan, motive, mental state, pain, or bodily health).
- d. **Records made in the regular course of business (including medical records):** writings made as a record of an act or event by a business or governmental agency (Mock Trial does not require the custodian of the records to testify). To qualify as a business record, the following conditions must be established:
 - 1) The writing was made in the regular course of business;
 - 2) The writing was made at or near the time of the act or event; and
 - 3) The sources of information and method of preparation are trustworthy.
- e. **Official records by public employees:** writing made by a public employee as a record of an act or event. The writing must be made within the scope of duty of a public employee.
- f. **Prior inconsistent statement:** a prior statement made by the witness that is inconsistent with the witness's trial testimony.
- g. **Prior consistent statement:** a prior statement made by a witness that is consistent with the witness's trial testimony. Evidence of a prior consistent statement can only be offered after evidence of a prior inconsistent statement has been admitted for the purpose of attacking the witness's credibility. To be admissible, the consistent statement must have been made before the alleged inconsistent statement.
- h. **Statements for the purpose of medical diagnosis or treatment:** *statements* made for purposes of medical diagnosis or treatment, describing medical history, past or present symptoms, pain, or sensations.
- i. **Reputation of a person's character in the community:** evidence of a person's general reputation with reference to his or her character or a trait of his or her character at a relevant time in the community in which the person then resided or in a group with which the person habitually associated.

- j. **Dying Declaration:** a statement made by a dying person about the cause and circumstances of his or her death, if the statement was made on that person’s personal knowledge and under a sense of immediately impending death.
- k. **Co-Conspirator’s statements:** statements made by the declarant while participating in a conspiracy to commit a crime or civil wrong. To be admissible, the following must be established:
 - 1) The statement was made in furtherance of the objective of that conspiracy;
 - 2) The statement was made prior to or during the time that the declarant was participating in that conspiracy; and
 - 3) The evidence is offered either after admission of evidence sufficient to sustain a finding of the facts specified in (1) or (2) or, in the court’s discretion as to the order of proof, subject to the admission of this evidence.
- l. **Adoptive admission:** a statement offered against a party, that the party, with knowledge of the content of that statement, has by words or other conduct adopted as true.
- m. **Admission by a party opponent:** any statement by a party in an action when it is offered against that party by an opposing party. The statement does not have to be against the declarant’s interest at the time the statement was made.

Objections for inappropriately phrased questions

10. Leading Questions

Attorneys may not ask witnesses leading questions during direct examination or re-direct examination. A leading question is one that suggests the answer desired. Leading questions are permitted on cross-examination.

Usage Comments—Example: during direct examination, the prosecutor asks the witness, “During the conversation on March 8, didn’t the defendant make a threatening gesture?” Counsel could rephrase the question, “What, if anything, did the defendant do during your conversation on March 8?”

Form of Objection: **“Objection, your honor. Counsel is leading the witness.”**

11. Compound Question

A compound question joins two alternatives with “and” or “or,” preventing the interrogation of a witness from being as rapid, distinct, or effective for finding the truth as is reasonably possible.

Example: “Did you determine the point of impact from conversations with witnesses and from physical remarks, such as debris in the road?” If an objection to the compound question is sustained, the attorney may state “Your honor, I will rephrase the question,” and then break down the question into two separate questions:

Q1: “Did you determine the point of impact from conversations with witnesses?”

Q2: “Did you also determine the point of impact from physical marks in the road?”

Remember that there may be another way to make your point.

Form of Objection: **“Objection, your honor, on the ground that this is a compound question.”**

12. Narrative

A narrative question is too general and calls for the witness in essence to “tell a story” or give a broad and unspecific response. The objection is based on the belief that the question seriously inhibits the successful operation of a trial and the ultimate search for the truth.

Usage Comments—Example: The attorney asks A, “Please describe all the conversations you had with X before X started the job.” This question calls for the witness to give a long narrative answer. It is, therefore, objectionable.

Form of Objection: **“Objection, your honor. Counsel’s question calls for a narrative.” Or, “Objection, your honor. The witness is providing a narrative answer.”**

13. Argumentative Question

An argumentative question challenges the witness about an inference from the facts in the case. The cross-examiner may not harass a witness, become accusatory toward a witness, unnecessarily interrupt the witness’s answer, or make unnecessary comments on the witness’s responses. These behaviors are also known as “badgering the witness.” (If a witness is non-responsive to a question, see the non-responsive objection, #16 below).

Usage Comments—Example: Questions such as “How can you expect the judge to believe that?” are argumentative and objectionable. The attorney may argue the inferences during summation or closing argument, but the attorney must ordinarily

restrict his or her questions to those calculated to elicit relevant facts.

Form of Objection: **“Objection, your honor. Counsel is being argumentative.” Or, “Objection, your honor. Counsel is badgering the witness.”**

14. Asked and Answered

Witnesses should not be asked a question that has previously been asked and answered. This can seriously inhibit the effectiveness of a trial.

Usage Comments—Examples: On direct examination, the prosecution attorney asks, “Did the defendant stop at the stop sign?” Witness answers, “No, he did not.” Then, because it is a helpful fact, the direct examining attorney asks again, “So the defendant didn’t stop at the stop sign?” Defense counsel could object on asked-and-answered grounds.

On cross-examination, the defense attorney asks, “Didn’t you tell a police officer after the accident that you weren’t sure whether X failed to stop for the stop sign?” Witness answers, “I don’t remember.” Defense attorney then asks, “Do you deny telling the officer that?” If the prosecution attorney makes an asked-and-answered objection, it should be overruled. Why? In this example, defense counsel rephrased the question based upon the witness’s answer.

Form of Objection: **“Objection, your honor. This question has been asked and answered.”**

15. Vague and Ambiguous Questions

Questions should be clear, understandable, and concise as possible. The objection is based on the notion that witnesses cannot answer questions properly if they do not understand the questions.

Usage Comments—Example: “Does it happen at once?”

Form of Objection: **“Objection, your honor. This question is vague and ambiguous as to ____.”**

16. Non-responsive Witness

A witness has a responsibility to answer the attorney’s questions. Sometimes a witness’s reply is vague or the witness purposely

does not answer the attorney’s question. Counsel may object to the witness’s non-responsive answer.

Usage Comments—Example: The attorney asks, “Did you see the defendant’s car in the driveway last night?” The witness answers, “Well, when I got home from work I hurried inside to make dinner. Then I decided to watch TV, and then I went to bed.” This answer is non-responsive, as the question is specifically asking if the witness saw the defendant’s car on the night in question.

Form of Objection: **“Objection, your honor. The witness is being non-responsive.”**

17. Outside the Scope of Cross-Examination

Redirect examination is limited to issues raised by the opposing attorney on cross-examination. If an attorney asks questions beyond the issues raised on cross-examination, opposing counsel may object to them.

Form of Objection: **“Objection, your honor. Counsel is asking the witness about matters beyond the scope of cross-examination.”**

Summary of Allowable Evidentiary Objections for the California Mock Trial

1. **Unfair Extrapolation:** “Objection, your honor. This question is an unfair extrapolation,” or, “That information calls for information beyond the scope of the statement of facts.”
2. **Relevance:** “Objection, your honor. This testimony is not relevant,” or, “Objection, your honor. Counsel’s question calls for irrelevant testimony.”
3. **More Prejudicial than Probative:** “Objection, your honor. The probative value of this evidence is substantially outweighed by the danger of undue prejudice (or confusing the issues, or misleading the trier of fact).”
4. **Foundation:** “Objection, your honor. There is a lack of foundation.”
5. **Personal Knowledge/Speculation:** “Objection, your honor. The witness has no personal knowledge to answer that question.” Or, “Objection, your honor, speculation.”
6. **Opinion Testimony (Testimony from Non-Experts):** “Objection, your honor. Improper lay witness opinion.” Or, “Objection, your honor. The question calls for speculation on the part of the witness.”
7. **Expert Opinion:** “Objection, your honor. There is a lack of foundation for this opinion testimony,” or, “Objection, your honor. Improper opinion.”
8. **Character Evidence:** “Objection, your honor. Inadmissible character evidence,” or, “Objection, your honor. The question calls for inadmissible character evidence.”
9. **Hearsay:** “Objection, your honor. Counsel’s question calls for hearsay.” Or, “Objection, your honor. This testimony is hearsay. I move that it be stricken from the record.”
10. **Leading Question:** “Objection, your honor. Counsel is leading the witness.”
11. **Compound Question:** “Objection, your honor, on the ground that this is a compound question.”
12. **Narrative:** “Objection, your honor. Counsel’s question calls for a narrative.” Or, “Objection, your honor. The witness is providing a narrative answer.”
13. **Argumentative Question:** “Objection, your honor. Counsel is being argumentative.” Or, “Objection, your honor. Counsel is badgering the witness.”
14. **Asked and Answered:** “Objection, your honor. This question has been asked and answered.”
15. **Vague and Ambiguous:** “Objection, your honor. This question is vague and ambiguous as to ____.”
16. **Non-Responsive:** “Objection, your honor. The witness is being non-responsive.”
17. **Outside the Scope of Cross-Examination:** “Objection, your honor. Counsel is asking the witness about matters beyond the scope of cross-examination.”

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