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ABSTRACT

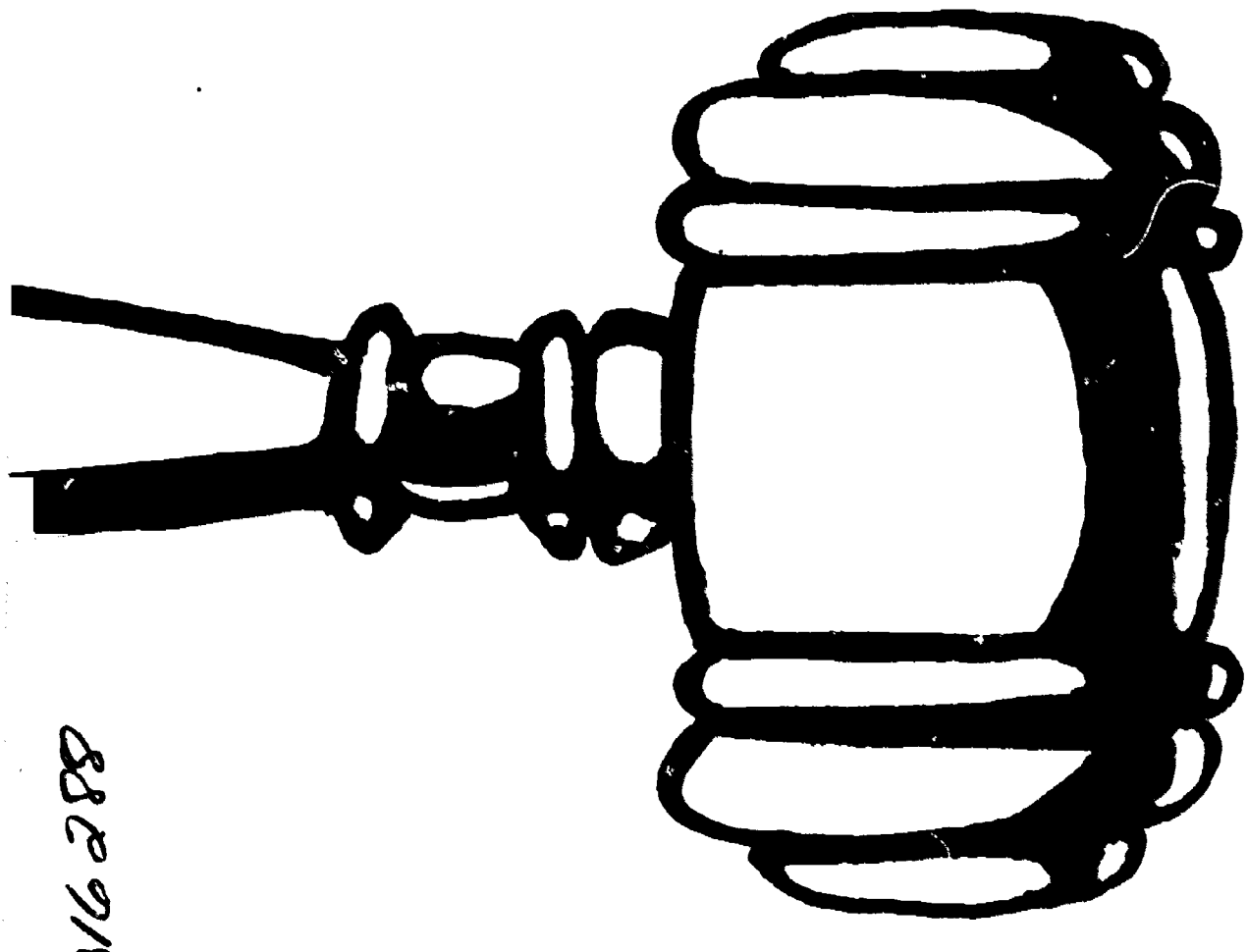
These instructional materials involve secondary students in simulating a criminal trial concerning teenage drinking. Included are all materials necessary for participation in the 1984 California Mock Trial Competition. Part I of the document describes a hypothetical situation involving a high school senior who faces state felony charges for leaving the scene of an accident where another person has been injured. The driver had been drinking on the night of the accident. Discussion questions are provided. Part II, which makes up the bulk of the publication, develops the hypothetical situation and provides all materials necessary for presentation of the mock trial. Included are discussions of the form and substance of a criminal trial, role descriptions, a time sheet, procedures for presenting the case, rules of evidence summary, a judge's rating sheet, case materials, and classroom exercises. Part III contains materials and procedures for the preparation of a pre-trial motion on an important constitutional issue--the conflict between freedom of the press and the right to a fair public trial by an impartial jury. Tips on how to use a law library are also included. (RM)

# CONSTITUTIONAL RIGHTS FOUNDATION



# PEOPLE v. BALLARD

## HIT AND RUN: Teenage Drinking Driving and Responsibility







**Official Materials for the California State Mock Trial Competition**

**Co-Sponsored by the State Bar of California, the California Young Lawyers Association and *The Los Angeles Daily Journal***

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## INTRODUCTION

Drinking and driving are a deadly combination. The National Safety Council estimates that some 26,000 people are killed each year by drunk drivers in the U.S. This situation has brought about an angry response from many Americans, who have put pressure on their state legislatures to enact tougher laws to punish drunk drivers and to discourage all people from driving when they are drunk. Within the past 15 years, several states have lowered the legal drinking age to as low as 18; because roughly 5,000 teenagers die in alcohol-related accidents each year, Congress has pressured these states to raise the age back to 21.

Drinking can seem like a very grown-up thing to do, and young people are under considerable pressure from their friends to drink. But drinking is a privilege which requires that the individual act in a responsible and mature way. When people are irresponsible with liquor, the result can be deadly, as when an intoxicated person drives a car.

The 1984 Mock Trial competition focuses on teenage drinking in a felony prosecution for hit and run driving. Part I of this packet describes a hypothetical situation involving a high school senior who faces state felony charges for leaving the scene of an accident where another person has been injured. In the hypothetical, this young woman had been drinking on the night of the accident, although the amount she drank is disputed and we do not know if she was in fact driving the vehicle when it struck the victim pedestrian. The "Issues for Preliminary Discussion" section raises questions for class discussion to help the participants identify their own feelings about many of the personal, social, and legal issues involved.



Part II develops the hypothetical and provides the official materials which the student teams will need to prepare for the Fourth Annual California State Mock Trial Competition, sponsored and administered by the Constitutional Rights Foundation. Co-sponsors are the State Bar of California, the California Young Lawyers' Association, and the Los Angeles Daily Journal.

Each participating county will sponsor a local competition and declare a winning team from among the competing high schools; the winning team from each county will be invited to compete in the State Finals in Sacramento on March 12-14, 1985.

The Mock Trial is a simulation of a criminal case, with students portraying each of the principals in the cast of courtroom characters. The Mock Trial is designed to demystify the workings of our legal institutions. As the student teams study a hypothetical case, do legal research, and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, they acquire a working knowledge of our judicial system. Students participate as counsel, witnesses, court clerks or bailiffs; they present their cases in court before actual Municipal and Superior Court judges.

Although competition may be the primary concern of students during the Mock Trial activities, the lasting value of this experience comes from the understanding of our judicial system and the process we use as we strive to create a just society. The

activities encourage young people to develop their analytical abilities and communication skills while gaining increased self-confidence.

The Constitutional Rights Foundation gratefully acknowledges the National Institute for Citizen Education in the Law (NICEL) for assistance in preparation of these materials.

## PROGRAM OBJECTIVES

For the students, the Mock Trial competition will:

1. Increase proficency in basic skills such as listening, speaking, reading, and reasoning.

2. Further student understanding of the theories and the substance of the law as applied by our courts and the legal system.

For the school, the competition will:

1. Promote cooperation and healthy competition among students of various abilities and interests.

2. Demonstrate high school students' achievements to the community.

3. Provide a hands-on experience from which students can learn about law and society, and about themselves, outside the classroom.

4. Provide a challenging and rewarding experience to the teachers who participate as advisers.

## PART I

### HIT AND RUN: TEENAGE DRINKING, DRIVING AND RESPONSIBILITY

The first rain of spring fell on Bellweather and glistened on the city's well-lit streets. Up in the hills, near the southern end of the city golf course, loud music came from a ranch-style house. Cars filled the wide gravel driveway and parking area next to the house. Shortly before midnight, an old Plymouth Valiant roared to life and its headlight beams pierced the night. The car rolled into the street and began swiftly making its way down the narrow, slippery curves which led to Foothill Boulevard.

Genevieve LaFrance, warm and dry in her lime-green nylon workout suit, jogged in place at the northwest corner of 22nd Street and Foothill Boulevard. She looked north and south on Foothill, then hopped into the crosswalk and ran in time to the music which played on her stereo headset.

Genevieve did not reach the other side on foot. A fast-moving automobile swept down upon her from her right and hit her with its right front fender. She flew several feet and landed on the lawn of a dark house.

Dorothy Franklin lives on the west side of Foothill Boulevard where 22nd Street ends. She stood under her carport while her Great Dane, Beauregard, made his evening rounds of the front yard. She saw Genevieve enter the crosswalk and watched in horror as the car knocked her onto the next-door neighbor's front lawn. She ran to Genevieve, determined she was alive, and hurried into the house to call an ambulance. She dialed 911 and, while waiting for an answer, wrote down what she remembered of the license number of the car: VAN64.

Genevieve regained consciousness in the Community hospital emergency room at 12:25 a.m., fifty-five minutes after she had been struck. She was in severe pain. Once pain medication had been administered, she was able to talk with a police investigator for a few moments before being wheeled into surgery. She was somewhat disoriented, and before asking any questions Officer Martinez let her know that it was early Saturday morning, April 28, 1984. Her ruptured spleen would be removed in emergency surgery and her shattered right elbow would be set soon after.

In a period of five minutes, by connecting with a statewide computer system, the police dispatcher had traced the ten possible California license numbers -- VAN640, VAN641, VAN642, etc. Of the ten license numbers, only one was for a car registered in Bellweather, at an address on Meadow Valley Road. Martinez recognized the owner's name: Steve Ballard, the mayor's husband. An outspoken politician, Kathleen Ballard was among the state's best-known supporters of PADD, People Against Drunk Driving.

Proceeding in his investigation, Martinez drove to the Ballard home and found the pale blue Valiant parked at an angle in the driveway, with one tire over on the lawn. Martinez verified the license number and noted that the engine was still warm. He pulled a scrap of lime-green cloth from a chrome strip attached to the right fender and put it in a little plastic bag.

Officer Martinez noticed lights inside the house and rang the doorbell. After about 30 seconds Cindy Ballard turned on the porch light and peered out at him, then opened the door quickly. She wore a white Bellweather High sweatshirt. She said

she was glad to see him; she had been about to call the police to report that the family car had been involved in an accident, although she hadn't been driving. Martinez said he wanted to ask her some questions about the accident and suggested she awaken her parents. Cindy invited him in and said her parents were out of town.

The officer would later testify that he smelled alcohol on Cindy's breath when she opened the door.

B. Issues for preliminary discussion

1. What should you do if your brother or sister, or a close friend, becomes drunk and disruptive at a party? What if that person insists he or she can drive but you don't think it would be safe? Would it make a difference if the person were just an acquaintance and not someone you cared for a great deal? How would you handle the situation if the person were your mother or father?

2. A group known as Students Against Drunk Driving suggests that teenagers and their parents sign the following contract, which they call the "Contract for Life." Would you sign such a contract with your parents? Would they be willing to enter into the agreement with you?

> **For teenagers** -- "I agree to call you for advice and/or transportation at any hour, from any place, if I am ever in a situation where I have had too much to drink or a friend or date who is driving me has had too much to drink." (Signed and dated.)
>
> **For parents** -- "I agree to come and get you at any hour, any place, no questions asked, and no argument at that time, or I will pay for a taxi to bring you home safely. I would expect that we will discuss this issue at a later time. I also agree to seek safe, sober transportation home if I am ever in a situation where I have had too much to drink or a friend who is driving me has had too much to drink." (Signed and dated.)

3. What various reasons do people have for drinking?

4. What might schools do to help students learn to live safely and sanely with alcohol?

5. Is alcohol a drug? In what ways is liquor like illegal drugs? In what ways is it different?

6. Citizens' action groups have persuaded Congress that it would be a good thing to raise the drinking age back to 21 in the states which have lowered it. It is up to the state legislatures to change their laws, but Congress can put certain kinds of pressure on the states to do what the federal government believes is best. In this case, Congress has decided to cut back to the highway funding it gives to those states which do not voluntarily raise the drinking age limit. President Reagan originally said he did not agree with Congress, because he believed the states should be able to make their own decisions on such matters. But during the summer of 1984 he changed his mind and signed the highway funding bill into law.

Roughly half the states currently allow people under 21 to drink. In these states, the drinking age was lowered in response to a seemingly logical argument: if young people can be drafted to fight in wars, are allowed to vote, and are required to pay taxes, they should have the same rights as adults, including the right to drink. What arguments support the federal government's position? What other factors should the lawmakers in each state consider?

7. A person who gets drunk and drives a car risks criminal prosecution for drunk driving. If the driver injures or kills someone, he or she can be found guilty of manslaughter, assault and battery, and other crimes. Separate from the criminal prosecution, that person can also be sued by the injured person or that person's family, and be held responsible for paying medical bills or "wrongful death" compensation. This can come to hundreds of thousands, and sometimes millions, of dollars. (One of the main functions of car insurance is to keep you from having to come up with the money yourself if you lose a lawsuit over an accident in which you've been at fault.)

   In a few recent cases, courts have allowed injured people and their families to sue not only the driver who was drunk but the owner of the bar where that person got drunk. The courts explain that the bar owner and the bar's employees are responsible to the public at large, and that they should prevent people who are extremely drunk from driving their cars.

   Some judges have even suggested that a person who hosts a party at home should be held financially responsible for injuries caused by party guests who drive away drunk. Alternatively, these judges say that the host should be held criminally responsible for contributing to the crime committed by the drunk driver.

   What do you think of the new trend in the law?

8. The Mock Trial problem in this packet hinges on two people's very different stories about how an accident occured. Cindy Ballard is a star athlete in her high school and the daughter of the mayor. She is accused of hit-and-run driving. Though she readily admits that her car was involved in the accident, she claims that she was not driving at the time of the accident, and she says that the responsible person is Rolfe Gabardi, a foreign exchange student. Rolfe claims he did not drive Cindy's car, and the police believe that Cindy is trying to frame him.

   The court will do everything in its power to give Cindy a fair trial, and the materials in this packet deal with the administration of justice in her trial. Before studying those materials, do you have a reaction to what you know of the facts so far? Do you find yourself wanting to be on Cindy's side or Rolfe's, or are you content to go through the exercises and wait to see what happens at trial? If you do favor one of them over the other, why do you think you sympathize more with that person?

# PART B: MOCK TRIAL MATERIALS

## The Criminal Case Process

Every year, state and federal criminal justice systems handle thousands of criminal cases. Most cases are routine: a crime occurs and a suspect is identified and arrested on a charge for which there is sufficient evidence of guilt. A trial does not take place if the defendant pleads guilty to the crime charged or to a lesser offense. Except for a vague notion that police departments are overworked, courts are overburdened and prisons are overcrowded, the general public is barely aware of the daily routine of criminal justice activity in progress.

What does capture public attention is the "big case." A sensational murder, an assassination attempt, or a multi-million dollar fraud case can make headlines in our daily newspapers for months. Reporters clamor for interviews with the prosecution and defense teams, "artists' renditions" of the day's courtroom events are featured on T.V. news shows, and the defendant's name becomes a household word.

Although these big cases are not typical, they do give us a dramatic glimpse of the criminal justice process. These cases introduce us to a mindboggling array of courthouse characters, legal terminology, procedural steps and crucial issues upon which the ultimate decision rests. At any point along the way, we might throw up our hands and say, "What's the point of all this...did she do it or didn't she do it?" Since no one can read the mind of a person accused of crime, and no one can peer back into the past to find out exactly what happened at the scene, we must use other methods to find the truth.

## The Adversary System

Central to truth-finding in the American trial system is the "adversarial process." In it, opposing attorneys help neutral fact-finders (the judge or jury) learn about, sift through and decide whose version of the facts of a particular case is true. Ultimately, the fact finder must also weigh the facts and come to a verdict.

To do this, the attorneys must be advocates. They are also adversaries. That is, they try to present facts in a light most favorable to their side and point out weaknesses in their opponents' case. Through well-planned strategies and legal arguments, they try to convince the court to see the "truth" as they do. In a criminal case, the opposing sides are the prosecution and the defense.

The prosecution's basic goal is to protect society from crime by making sure the guilty are tried, convicted and punished. By filing charges against a particular defendant, the prosecutor is making a claim that the individual has committed a crime. At trial, the prosecutor must prove the claim beyond a reasonable doubt. The basic goal of the defense is to challenge the prosecutor's case by raising all reasonable doubts as to the defendant's guilt. Defense attorneys are also responsible for making sure that the defendant gets every right and benefit guaranteed under law and the Constitution.

By pitting these two sides against each other, it is believed that the truth will come out. For example, if the prosecution's case rests merely on an eyewitness identifying the defendant as the one who robbed a store, the defense might go to great lengths to question the memory or eyesight of the witness. This might be

done to challenge the witness' credibility or to present the judge and jury with the defense's viewpoint about what really happened. The defense can be assured of a similarly strict examination of any evidence it produces. Under the adversary system, the judge or jury must decide which version is true.

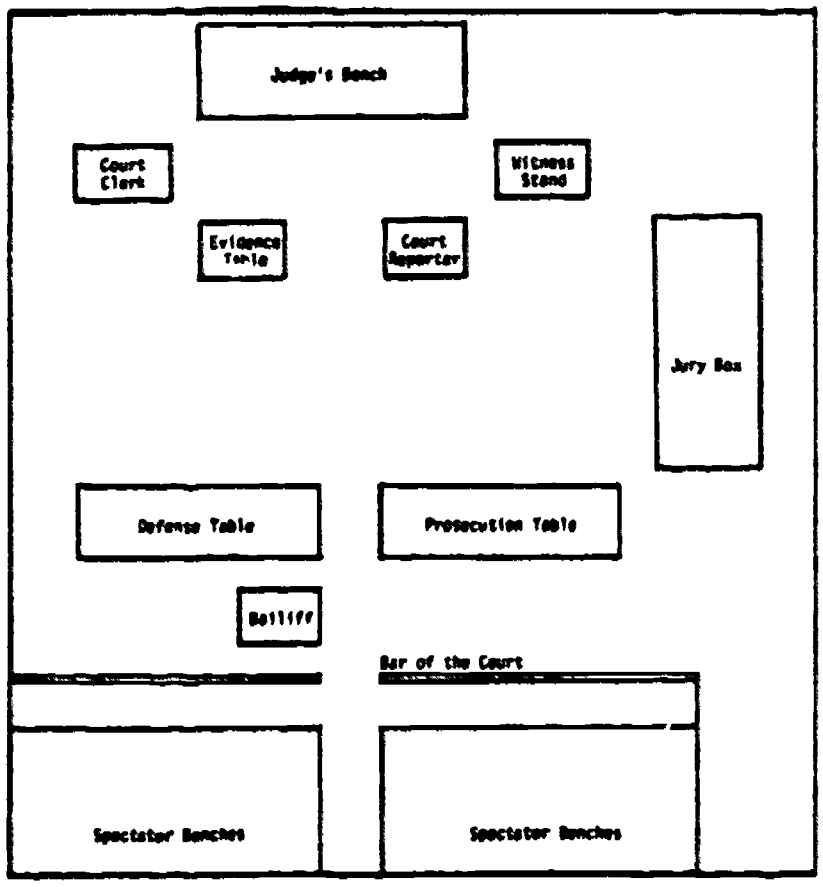
The fact finder must go through this process with all the evidence produced at trial. Before the ultimate decision of whether a defendant is guilty or not can be determined, a lot of facts must be established and weighed. Are the witnesses believable? Are the lab tests accurate? Are the connections between the various pieces of evidence logical and supportable? What other explanations for the alleged events are possible? Indeed, the quest for truth is never more intense or systematized than in a criminal trial.

Because the adversarial process involves humans, it is not foolproof. Memories fail, witnesses see the same event in different ways, and reasonable people differ about what is true. Biases and prejudices may affect perception or recollection of certain events, and witnesses sometimes simply lie. In extreme cases, an advocate can go so far in trying to win that objective truth gets lost. An emotional argument could sway the jury in spite of the facts; important evidence could be concealed.

To protect against these problems, our criminal case process has evolved sophisticated checks and balances. Some protect the process itself, others protect the defendant. Judges and jurors can be removed for bias or prejudice. Witnesses are sworn to tell the truth and can be punished for lying if they don't. Criminal defendants in a serious case can count on representation by an attorney, a trial by jury, the right to confront accusers, a speedy and public trial, and the right to appeal. They are also protected against having to post an excessive amount for bail or having to testify against themselves. These protections are spelled out or implied in the Constitution of the United States and in the constitutions and laws of the various states.



## A TYPICAL COURTROOM



# MOCK TRIAL COMPETITION RULES

## Participants

Participants in the Mock Trial Competition must be senior high school students. A Mock Trial team can consist of from 7 to 15 students.

In order to involve the maximum number of students, select 3 attorneys for prosecution, 3 for defense and two sets of witnesses--4 prosecution and 4 defense. This structure is not mandatory, however, and schools that wish to involve fewer students may have team members assume dual roles.

The role of clerk/bailiff can be played by a defense or prosecution witness whose side of the case is not being presented during that round of the competition or by another student. This person will assist the judge or act as timekeeper for the trial in which his or her school participates. (Please note: If all your team members assume two roles, you will need an extra person to assume the clerk/bailiff responsibilities.)

Although juries will not be used in the state finals, county competitions may involve students as jurors.

## Conduct of Trial

All team members participating in a trial must be in the courtroom at the appointed time, ready for the beginning of the round. This will be the first opportunity for prosecution witnesses to observe the defendant.

After the judge has delivered his or her introductory remarks, witnesses participating in the trial (other than the defendant) are to leave the courtroom until called to testify. After testifying, witnesses may remain in the courtroom to watch the proceedings.

The Mock Trial FACT SITUATION and WITNESS SHEETS provided in this packet will be used throughout the Competition. Those case materials comprise the sole source of information for testimony. Witnesses may not testify to any matter not directly stated in or reasonably implied from the official case materials.

Attorneys may produce physical evidence provided that the materials correspond to the descriptions of items given in the case materials. Neither team may introduce surprise witnesses. Attorneys may not conduct re-direct examination nor recall a witness. All witnesses must be called.

## Time Limits

Each team will have a total of 35 minutes to present its case. Violating time limits will reduce the team's total score. Time limits for each type of presentation are listed below:

| | |
|---|---|
| Opening & Closing Statements | -- 10 minutes for each team |
| Direct Examination | -- 15 minutes for each team |
| Cross-Examination | -- 10 minutes for each team |

Teams may divide the 10 minutes for opening and closing statements as desired (e.g., 3 minutes opening, 7 minutes closing). Time in each category may be allotted among team attorneys as they choose, but overall time limits for each category must be observed.

Judging

A judge or attorney serving as a judge for the competition will preside at each trial. Judges will advise participants of the rules and courtroom procedure prior to each trial. Validity of objections and outcome of the Competition will be left to the judge's discretion.

The judge will score both teams according to the judging criteria sheet in this packet. At the end of the presentations, the judge will render a verdict on the merits of the case and another on the performance of the participants. The performance decision will determine the winner of the round.

The Competition

In the Fall, schools will compete in county competitions. The winning teams from each county may choose to advance to the State Finals in Sacramento. The local competitions will vary in size from few to dozens of schools.

One week prior to the first round of the Competition, schools will be notified whether they will present the prosecution or defense side in Round I. Some schools may be asked to sit out for a round if an uneven number of schools participate. The schools drawing byes would automatically advance to and participate in the next round.

Additional assignments will be made after each round. Whenever possible, as schools advance, they will be assigned to present the opposite side of the case from that which they took in the previous round.

## THE FORM AND SUBSTANCE OF A CRIMINAL TRIAL

All criminal offenses are precisely defined by law in the Penal Code. A trial tests whether the defendant has violated that Code. After hearing the evidence for both sides, a neutral party decides whether to convict or acquit the defendant.

Charges against the defendant are brought by a prosecutor. In California, the prosecutor is usually a member of the district attorney's staff. In the name of the people of the state, a prosecutor seeks to uphold public order by seeking convictions against defendants whom the prosecutor thinks are guilty.

Opposite the prosecutor is the defense attorney. To be sure that the defendant has a fair trial, the defense attorney presents the defendant's version of the alleged criminal activity. Thus, the defense attorney performs the crucial function of guarding against infringements of constitutional rights or other errors of law or procedure.

Either the defendant or prosecutor may request a jury trial. Juries consist of 6 to 12 members of the defendant's community, all of whom must agree in order to reach a verdict. A jury drawn from the community gives ordinary people a voice in deciding guilt. A jury acts as the trier of fact. The jurors must decide what the defendant really did and why he or she did it. If the defendant waives his or her right to a jury trial, the judge has the job of making these decisions.

Some trials also raise issues of law. Judges alone rule on the proper interpretation of the law. Issues of law include such questions as the admissibility of evidence and the meaning of a statute. Legal, rather than factual, issues usually form the basis for an appeal of the trial court's decisions.

When a verdict in a case becomes final, it settles findings of fact and points of law. A conviction stays on a person's record even though the person continues to claim innocence. An acquittal clears the defendant of the charges forever. The Double Jeopardy Clause of the Constitution prohibits trying a person twice on the same charges.

The Elements of a Criminal Offense

The penal code generally defines two parts of every crime. These are the physical part and the mental part. 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 culpable mental states. Bad thoughts alone, though, are not enough. A crime requires the union of thought and action.

The mental state requirements prevent convictions 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 actions by showing a lack of criminal motivation. For instance, the crime of burglary has two elements: (1) breaking and entering (2) with the intent to steal. 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, the prosecution bears a heavy burden of proof. Defendants are presumed innocent. The prosecution must convince the judge or jury of guilt beyond a reasonable doubt.

Despite its use in every criminal trial, the term "reasonable doubt" is very hard to define. The concept of reasonable doubt lies somewhere between probability of guilt and a lingering possible doubt of guilt. Reasonable doubt exists unless the trier of fact can say that he or she has an abiding conviction, to a moral certainty, of the truth of the charge.

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.

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. Jurors are instructed to apply their own best judgment in evaluating inconsistent testimony.

An eyewitness' memory can be influenced by common police procedures employed to obtain reports: questioning, suspect lineups, and use of mugbooks. Research shows that the more specific an investigating officer's questions are, the more likely a witness is to report information that has been suggested by the questions rather than his or her own recollections of what happened. The power of suggestion is also felt by the witness who views a lineup after looking through a mugbook; such a witness is more likely to identify a person in the lineup on the basis of having seen his or her photograph. Witnesses may be unaware that a face seems familiar to them not because they remember it from the scene of a crime, but because they

have recently inspected its photograph. Identification is even more likely if police tell the witness beforehand that the lineup includes the suspect.

Evidence

The trier of act must base a verdict solely on evidence produced at trial. Testimony of witnesses, physical objects, drawings and demonstrations can all be used as evidence. The rules of evidence determine which types of proof may be used in court. Rumors, hearsay and irrelevant statements are generally not admissible. They are too unreliable. Court cases have held that evidence obtained illegally must not be used in court.

## RECOMMENDATIONS FOR USING THE MOCK TRIAL MATERIALS

While not identical to an actual trial, the Mock Trial procedure closely resembles the real thing. You will go through every major step of a criminal trial.

The information provided in these materials on conducting a Mock Trial supplies all of the instructions you will need to present your case. An attorney will work with your team to answer further questions about trial procedure or criminal law.

In preparing for a trial, you will probably learn more than you will need to know to present this year's case. The materials in this packet introduce you to a broad range of events that do not occur in all criminal trials. You may not need some of the procedures to present your case.

Presentation suggestions are not intended as requirements. Treat the "Forms of Objection" etc. as guidelines which you may adjust to fit your style.

The Fact Situation and Witness Sheets provide the sole basis for all of the evidence that you may introduce at trial. Details stated in the Fact Situation are not open to dispute. If the Fact Situation describes a building as a run-down shack, you may not suggest that it has been recently painted and repaired.

The Witness Sheets contain testimony that a witness will give in court. Statements which appear only in the witness sheets are not necessarily true. Witnesses may be honest, lying, confused, forgetful or mistaken. In giving their testimony, witnesses and their own attorneys should assert the accuracy of their version of the facts.

Casting doubt on the story given in the Witness Sheets is the job of an attorney on cross-examination. One witness testifying that a shack had recently been painted and another denying that fact may both believe that they are being truthful. Perhaps one of them had simply gotten mixed up and looked at the wrong shack or made the observation at night. All witnesses must be called.

Each student should read all of the materials in this packet. Thorough familiarity with the instructions and facts of the case will increase your ability to make a convincing presentation at trial. Witnesses are not permitted to use notes at all. Attorneys may refer to their notes prepared before trial or written during trial. Relying excessively on notes, though, detracts from a presentation. Speaking off-the-cuff gives you extra flexibility to respond to surprises as the case unfolds. Be spontaneous!

## ROLE DESCRIPTIONS

Attorneys

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 defendants. By questioning witnesses, you will try to convince the judge or jury that the defendants are guilty beyond a reasonable doubt. You will want to suggest a motive for the crime and will try to refute any defense alibis.

The Defense Attorney presents the case for the defendants. 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 witnesses cannot be depended upon, or that their testimony makes no sense or is seriously inconsistent.

Student attorneys will:

- o conduct direct examination
- o conduct cross-examination
- o do the necessary research and be prepared to act as a substitute for any other attorneys
- o make opening and closing statements.

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

Witnesses

You will supply the facts in the case. Witnesses may testify only to facts stated in or reasonably implied from the Witness Sheets or Fact Situation. Suppose that your Witness Sheet states that you left the Ajax Store and walked to your car. On cross-examination, you are asked whether you left the store through the Washington or California Avenue exit. Without any additional facts upon which to base your answer, you could reasonably name either exit in your reply — probably the one closer to your car. Practicing your testimony with your team's volunteer attorney will help you to fill in any gaps in the official materials. Imagine, on the other hand, that your Witness Sheet included the statement that someone fired a shot through your closed curtains into your living room. If asked whether you saw who shot the gun, you would answer, "No." You could not reasonably claim to have a periscope on the roof or have glimpsed the person through a tear in the curtains. Neither fact could be found in or reasonably implied from the case materials.

If you are asked a question calling for an answer which cannot reasonably be implied from the materials provided, you must reply, "I don't know" or "I can't remember." (Note: Prosecution witnesses wishing to testify about the physical characteristics of the defendant must base their statements on the actual people playing the defendant on the day of the trial. Witnesses will have a chance to see each other before the trial begins.)

Court Clerk/Bailiff

The court clerk/bailiff aids the judge in conducting the trial. In an actual trial, the court clerk calls the court to order and swears in the witness to tell the truth. The bailiff watches over the defendant to protect the security of the courtroom.

Court clerk/bailiffs will meet with a staff person at the courthouse shortly before the trial begins. At that time, you will be assigned as a clerk, bailiff, or both, and you will proceed to your school's trial. Bailiffs will be given timing sheets.

When the judge arrives in the courtroom, introduce yourself and explain that you will assist as the court clerk or bailiff. If you are the only clerk/bailiff available for a courtroom, you will need to perform all of the duties listed below. If necessary, ask someone else sitting in the courtroom to get the witnesses from the hallway for you when they are called to the stand.

COURT CLERK:

When the Judge has announced that the trial shall begin, say:

> "All rise. Superior Court of the State of California, County of _____, Department _____, the Honorable Judge_____ presiding, is now in session. Please be seated and come to order."

When the bailiff has brought a witness to testify, you must swear in the witness as follows:

> "You do solemnly affirm that the testimony you may give in the cause now pending before this court shall be the truth, the whole truth, and nothing but the truth."

BAILIFF:

Bring a stopwatch if you can get one. Mark down on the time sheet the time to the nearest one-half minute. Interruptions in the presentations do not count as time. For direct and cross-examination, record only time spent by attorneys asking questions and witnesses answering them. Don't include time when witnesses are coming into the courtroom, attorneys are making objections, judges are offering their observations, etc.

When a team has 2 minutes remaining in a category, raise two fingers so the judge and attorney can see you. When 1 minute remains, raise one finger. If an attorney is questioning only the second or third witness on direct or cross-examination, announce: "One minute, Your Honor." If time for a presentation runs out, announce "Time!"

At the end of the trial, tell the judge whether either team went more than one-half minute over time in any of the categories. As the judge prepares to leave after the trial, you should ask him or her to give you the judge rating sheet. Be sure to give the timing and rating sheets to the appropriate staff person.

# TIME SHEET

_____ v. _____
(Prosecution--School Name) (Defense--School Name)

DATE: _____
COUNTY: _____
JUDGE: _____
BAILIFF: _____

| PROSECUTION: | | DEFENSE: | |
|---|---|---|---|
| Opening Statement | _____ | Opening Statement | _____ |
| Direct Exam (15 minutes) | | Cross-Exam (10 minutes) | |
| Genevieve LaFrance | _____ | Genevieve LaFrance | _____ |
| Dorothy Franklin | _____ | Dorothy Franklin | _____ |
| George Martinez | _____ | George Martinez | _____ |
| Rolfe Gabardi | _____ | Rolfe Gabardi | _____ |
| TOTAL TIME | _____ | TOTAL TIME | _____ |
| Cross-Exam (10 minutes) | | Direct Exam (15 minutes) | |
| Cindy Ballard | _____ | Cindy Ballard | _____ |
| Jim Porter | _____ | Jim Porter | _____ |
| Ronald Narasaki | _____ | Ronald Narasaki | _____ |
| Jill Cochran | _____ | Jill Cochran | _____ |
| TOTAL TIME | _____ | TOTAL TIME | _____ |
| Statements (10 minutes) | | Statements (10 minutes) | |
| Opening Statement (from above) | _____ | Opening Statement (from above) | _____ |
| Closing Statement | _____ | Closing Statement | _____ |
| TOTAL TIME | _____ | TOTAL TIME | _____ |

NOTE: ROUND OFF TIMES TO THE NEAREST ONE-HALF MINUTE.
Examples: 3 minutes, 10 seconds = 3 minutes; 4 minutes,
15 seconds = 4 1/2 minutes; 2 minutes, 45 seconds = 3 minutes.

## ORDER OF EVENTS IN THE MOCK TRIAL

1. Court is called to order.
2. Attorneys present physical evidence for inspection.
3. Judge states charges against Defendant.
4. Prosecution delivers its opening statement.
5. Defense may choose to deliver its opening statement at this point or may wait to open after the Prosecution has delivered its case.
6. Prosecution calls its witnesses and conducts a direct examination.
7. After each Prosecution witness is called up and has been examined by the Prosecution, the Defense may cross-examine the witness.
8. Defense may deliver its opening statement.
9. Defense calls its witnesses and conducts a direct examination.
10. After each Defense witness is called up and has been examined by the Defense, the Prosecution may cross-examine the witness.
11. Prosecutor gives its closing statement.
12. Defense gives its closing statement.
13. Judge deliberates and reaches verdict.
14. Verdict is announced in court.
15. Defendant is sentenced or released.

## PROCEDURES FOR PRESENTING YOUR CASE

Introduction of Physical Evidence

Attorneys may introduce physical exhibits, provided that the objects correspond to the description given in the case materials. Below are the steps to follow when introducing physical evidence (clothing, maps, diagrams, etc.).

Step 1 -- Present the item to an attorney for the opposing side prior to trial. If that attorney objects to use of the item, the judge will rule whether it fits the official description.

Step 2 -- When you first wish to introduce the item during trial, request permission from the judge: "Your Honor, I ask that this item be marked for identification as Exhibit #_____."

Step 3 -- Show the item to the witness on the stand. Ask the witness to explain it or answer questions about it.

Step 4 -- When finished using the item, give it to the judge to examine and hold until needed again by you or another attorney.

## The Opening Statement

The opening statement outlines 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 witnesses. A good opening statement should:

- o explain what you plan to prove and how you will do it
- o present the events of the case in an orderly sequence that is easy to understand
- o 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 __(defendant)__ in this action."

Proper phrasing includes:

"The evidence will indicate that..."
"The facts will show..."
"Witness __(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:

- o call for answers based on information provided in the case materials
- o reveal all of the facts favorable to your position
- o ask the witness 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)
- o make the witness seem believable
- o keep the witness from rambling about unimportant matters.

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 comfortable. Appropriate inquiries include:

- o the witness' name
- o length of residence or present employment, if this information helps to establish the witners' credibility
- o further questions about the 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 witnesses' credibility, and establish some of the facts of the cross-examiner's case whenever possible. Cross examination should:

- o call for answers based on information given to Witness Sheets or Fact Situation
- o use leading questions which are designed to get "yes" and "no" answers
- o 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.

Examples of proper questions on cross-examination:

"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, didn't you have on a red shirt?"

Cross-examination should conclude with:
"Thank you, Mr./Ms. __(name of witness)__. That will be all, Your Honor."

Closing Statements

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

- o be emotionally charged and strongly appealing (unlike the calm opening statement)
- o emphasize the facts which support the claims of your side
- o summarize the favorable testimony
- o attempt to reconcile inconsistencies that might hurt your side
- o be prepared so that notes are barely necessary
- o be well organized (starting and ending with your strongest point helps to structure the presentation and give you a good introduction and conclusion)
- o prosecution: emphasize that the state has proved guilt beyond a reasonable doubt

- o <u>defense:</u> raise questions which suggest the continued existence of a reasonable doubt
- o synthesize what actually happened in court rather than being "pre-packaged."

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 your closing statement with an appeal to convict or acquit the defendant.

## SUMMARY OF THE RULES OF EVIDENCE

Criminal trials are conducted using strict rules of evidence to promote fairness. To carry on a Mock Trial, you will need to know a little about the system of evidence. All evidence will be admitted unless an attorney objects. Because the subject is so complex, you will not be expected to know its fine points. The purpose of using rules of evidence in the Competition is to structure the presentations to resemble those of an actual trial.

Almost every fact stated in the materials will be admissible under the rules of evidence. You may not have an opportunity to make any objections at all. 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 cases.

One objection available in the Competition which is not an ordinary rule of evidence allows you to stop an opposing witness from creating new facts. If you believe that a witness has gone beyond the information provided in the Fact Situation or Witness Sheets, use the following objection:

"Objection, Your Honor. The witness is creating a material fact which is not in the record."

As with all objections, the judge will decide whether to allow the testimony, strike it or simply note the objection for later consideration. Judges' rulings are final. You must keep your cool and continue the case even if you disagree.

<u>Relevance</u>

To be admissible, any offer of evidence must be relevant to an issue in the trial. This rule prevents confusion of the essential facts of the case with details which do not make guilt more or less probable.

Either direct or circumstantial evidence may be admitted in court. Direct evidence proves the fact asserted without requiring an inference. A piece of circumstantial evidence is a fact which, if shown to exist, suggests the existence of an additional fact. The same evidence may be both direct and circumstantial depending on its use. A witness may say that she saw a man jump from a train. This is direct evidence that the man had been on the train. It is indirect evidence that the man had just held up the passengers.

To establish the relevance of circumstantial evidence, you may need to lay a foundation. If the opposing attorney objects to your offer of proof on the ground of relevance, the judge may ask you to explain how the offered proof makes guilt more or less probable. Your reply would lay a foundation.

Examples:

1. The defendant is charged with stealing a diamond ring. Evidence that the defendant owns a dog is probably not relevant, and if the prosecution objected to this evidence, it would not be admitted.
2. In an assault and battery case, evidence that the victim had a limp is probably not relevant to the guilt of the defendant. Laying a foundation by suggesting that the victim fell rather than having been pushed might make the evidence admissible.

Form of Objection:

"Objection, Your Honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record."

"Objection, Your Honor. Counsel's question calls for irrelevant testimony."

Personal Knowledge

In addition to relevance, the only other hard and fast requirement for admitting testimony is that the witness must have a personal knowledge of the matter. Only if the witness has directly observed an event may the witness testify about it.

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

Examples:

1. The witness knew the victim and saw her on March 1. The witness heard on the radio that the victim had been shot on the night of March 3, 1981. The witness lacks personal knowledge of the shooting and cannot testify about it.
2. From around a corner, the witness heard a commotion. Upon investigating, the witness found the victim at the foot of the stairs, and saw the defendant on the landing, smirking. The witness cannot testify over the defense attorney's objection that the defendant had pushed the victim down the stairs even though this inference seems obvious.

Form of Objection:

"Objection, Your Honor. The witness has no personal knowledge to answer that question."

"Your Honor, I move that the witness' testimony about _____ be stricken from the case because the witness has been shown not to have personal knowledge of the matter." (This motion would follow cross-examination of the witness which revealed the lack of a basis for a previous statement.)

Character Evidence

Witnesses generally cannot testify about a person's character unless character is in issue. Such evidence tends to add nothing to the crucial issues of the case. (The honesty of a witness is one aspect of character always in issue.)

In criminal trials, the defense may introduce evidence of the defendant's good character and, if relevant, show the bad character of a person important to the prosecution's case. Once the defense introduces evidence of character, the prosecution can try to prove the opposite. These exceptions are allowed in criminal trials as an extra protection against erroneous guilty verdicts.

Examples:

1. The defendant's minister testifies that the defendant attends church every week and has a reputation in the community as a law-abiding person. This would be admissible.
2. The prosecutor calls the defendant's former landlady. She testifies that the defendant often stumbled in drunk at all hours of the night and threw wild parties. This would probably not be admissible unless the defendant had already introduced evidence of good character. Even then, the testimony might not be relevant.

Form of Objection:

"Objection, Your Honor. Character is not an issue here."

Opinion

Witnesses may not normally give their opinions on the stand. Judges and juries must draw their own conclusions from the evidence. A witness may give an opinion if describing the facts would not be helpful. Estimates of the speed of a moving object or the source of a particular odor are allowable opinions.

Expert witnesses can give their opinions about matters within their special expertise. Before a person can give an opinion as an expert, the person must be shown to have special knowledge or training. If an expert appears in a Mock Trial, however, you should assume that both sides have stipulated (agreed) to the expert's qualifications. You will not need to qualify the witness as an expert.

Examples:

1. A coroner testifies that the victim had died by suffocation and was a compulsive gambler. Only the cause of death would be admissible, because a coroner is not an expert on anything having to do with gambling.
2. A taxi driver testifies that the defendant looked like the kind of guy who would shoot old ladies. Counsel could object to this testimony and the judge would require the witness to state the basis for his opinion.

Form of Objection:

"Objection, Your Honor. Counsel is asking the witness to give an opinion."

"Objection, Your Honor. The witness has given an opinion. I move that the testimony be stricken from the record."

Privileges

To promote certain important objectives unrelated to the trial, some witnesses cannot be compelled to testify about what they know. The Fifth Amendment of the

Constitution permits all witnesses to remain silent rather than answer incriminating questions and allows criminal defendants to refuse to take the stand at all. (All witnesses in the Mock Trial must be called to testify.)

Other privileges apply to specific types of conversations. Uninhibited communication between lawyers and clients, for example, is considered more important than requiring lawyers to testify as to what their clients have told them in private. Likewise, doctors, priests, spouses and psychiatrists have limited privileges to remain silent regarding statements made in confidence to them.

Examples:
1. A witness is asked whether she helped the defendant to break into a house. The witness could remain silent rather than risk incriminating herself.
2. The prosecutor calls the defense attorney as a witness. The prosecutor then asks the attorney if he had seen his client break into a doctor's office on June 17, 1981. This question is proper because the privilege protects communication only.

Form of Objection:

"Objection, Your Honor. The answer to counsel's question would violate the lawyer-client (etc.) privilege."

Hearsay

If a witness offers another person's out-of-court statement to prove a matter asserted in the witness' own testimony, the statement is hearsay. Because they are very unreliable, these statements ordinarily may not be used to prove the truth of the witness' testimony. For reasons of necessity, a set of exceptions allows certain types of hearsay to be introduced. Work with your attorney coach on the exceptions which may arise in this case.

Examples:
1. Joe is being tried for murdering Henry. The witness testifies, "Ellen told me that Joe killed Henry." This statement is hearsay and probably would not be admitted over an objection.
2. The defendant takes the stand. He testifies, "Henry yelled to me to get out of the way." Admissible. This is an out-of-court statement, but is not offered to prove the truth of its contents. Instead, it is being introduced to show that Henry had warned Joe by shouting. Hearsay is a very tricky subject.

Form of Objection:

"Objection, Your Honor. Counsel's question calls for hearsay."

"Objection, Your Honor. This testimony is hearsay. I move that it be stricken from the record."

# JUDGE'S PERFORMANCE RATING SHEET

Instructions: This rating sheet is to be used to rate Mock Trial teams. For each of the standards listed below, indicate a score from the following scale:

1 — poor
2 — below average
3 — average
4 — good
5 — superior

Scoring of the presentation should be INDEPENDENT OF YOUR DECISION ON THE MERITS OF THE CASE. Please indicate the verdict in the space provided.

PROSECUTION: _____ (school name) DEFENSE: _____ (school name)

| ATTORNEYS: | PROSECUTION | DEFENSE |
|---|---|---|
| OPENING STATEMENT provided a clear and concise description of the anticipated presentation. | | |
| ON DIRECT EXAMINATION attorneys elicited relevant facts from witnesses to prove elements of the case. | | |
| ON CROSS EXAMINATION attorneys exposed contradictions in testimony and weakened the other side's case without becoming unnecessarily antagonistic. | | |
| IN CLOSING STATEMENT the attorney made an organized and well-reasoned presentation emphasizing the strengths of his or her side of the case and addressing the flaws exposed by the opposing attorneys. | | |
| IN QUESTIONING OF WITNESSES attorneys properly phrased questions and demonstrated a clear understanding of trial procedure and rules of evidence. | | |
| ATTORNEYS DEMONSTRATED SPONTANEITY in response to witnesses and in the overall presentation of the case, capitalizing on opportunities which arose during trial. | | |
| ATTORNEYS DEMONSTRATED command of the facts and issues in the case and their understanding of the relevant points of law. | | |
| **WITNESSES:** | | |
| CHARACTERIZATIONS were believable and witness testimony was convincing. | | |
| PREPARATION was evident in the manner witnesses handled questions posed to them by the attorneys. | | |
| WITNESSES GAVE TESTIMONY for their sides based upon the record or what could be reasonably implied from the Fact Situation and Witness Sheets (deduct points for unreasonable deviation). | | |
| WITNESSES DEMONSTRATED PONTANEITY in their responses to questions. | | |
| **TEAM:** | | |
| COURTROOM DECORUM and courtesy were observed by the team. | | |
| ALL TEAM MEMBERS took active roles in the presentation of the case. | | |
| SUB TOTAL: | _____ | _____ |
| PLEASE DEDUCT POINTS FOR OVERTIME: | _____ | _____ |
| TOTAL: | _____ | _____ |

## PART II

## MOCK TRIAL CASE MATERIALS: People v. Ballard

The first rain of spring fell on Bellweather and glistened on the city's well-lit streets. Up in the hills, near the southern end of the city golf course, loud music came from a ranch-style house. Cars filled the wide gravel driveway and parking area next to the house. Shortly before midnight, an old Plymouth Valiant roared to life and its headlight beams pierced the night. The car rolled into the street and began swiftly making its way down the narrow, slippery curves which led to Foothill Boulevard.

Genevieve LaFrance, warm and dry in her lime-green nylon workout suit, jogged in place at the northwest corner of 22nd Street and Foothill Boulevard. She looked north and south on Foothill, then hopped into the crosswalk and ran in time to the music which played on her stereo headset.

Genevieve did not reach the other side on foot. A fast-moving automobile swept down upon her from her right and hit her with its right front fender. She flew several feet and landed on the lawn of a dark house.

Dorothy Franklin lives on the west side of Foothill Boulevard where 22nd Street ends. (A map of the section of Bellweather is on page 29.) She stood under her carport while her Great Dane, Beauregard, made his evening rounds of the front yard. She saw Genevieve enter the crosswalk and watched in horror as the car knocked her onto the next-door neighbor's front lawn. She ran to Genevieve, determined she was alive, and hurried into the house to call an ambulance. She dialed 911 and, while waiting for an answer, wrote down what she remembered of the license number of the car: VAN64.

Genevieve regained consciousness in the Community Hospital emergency room at 12:25 a.m., fifty-five minutes after she had been struck. She was in severe pain. Once pain medication had been administered, she was able to talk with a police investigator for a few moments before being wheeled into surgery. She was somewhat disoriented, and before asking any questions Officer Martinez let her know that it was early Saturday morning, April 28, 1984. Her ruptured spleen would be removed in emergency surgery and her shattered right elbow would be set soon after.

In a period of five minutes, by connecting with a statewide computer system, the police dispatcher had traced the ten possible California license numbers -- VAN640, VAN641, VAN642, etc. Of the ten license numbers, only one was for a car registered in Bellweather, at an address on Meadow Valley Road. Martinez recognized the owner's name: Steve Ballard, the mayor's husband. An outspoken politician, Kathleen Ballard was among the state's best-known supporters of PADD, People Against Drunk Driving.

Proceeding in his investigation, Martinez drove to the Ballard home and found the pale blue Valiant parked at an angle in the driveway, with one tire over on the lawn. Martinez verified the license number and noted that the engine was still warm. He pulled a scrap of lime-green cloth from a chrome strip attached to the right fender and put it in a little plastic bag.

Officer Martinez noticed lights inside the house and rang the doorbell. After about 30 seconds Cindy Ballard turned on the porch light and peered out at him, then opened the door quickly. She wore a white Bellweather High sweatshirt. She said

she was glad to see him; she had been about to call the police to report that the family car had been involved in an accident, although she hadn't been driving. Martinez said he wanted to ask her some questions about the accident and suggested she awaken her parents. Cindy invited him in and said her parents were out of town.

The officer would later testify that he smelled alcohol on Cindy's breath when she opened the door.

After inviting Officer Martinez into her house, Cindy sat with him at the kitchen table and listened to his reading of her Miranda rights. (See page 30 for an explanation of the law which requires police to notify suspects of their rights before questioning them.) Cindy waived her right to remain silent and said she didn't mind talking to him. She said that she had spent the evening at a party at a friend's house.

When Martinez asked how recently she had driven home from the party, Cindy repeated that she had not driven. She said that a foreign exchange student named Rolfe had driven her home.

Martinez next asked Cindy if she had been drinking at the party. She nodded affirmatively, then took him up on his Miranda offer; she said she was exhausted and confused and that she preferred not to answer any more questions until she had gotten a good night's sleep.

Under the circumstances, Martinez explained, he had reason to believe that the car Cindy had been driving had struck a pedestrian about an hour earlier. He also had reason to believe that she had been driving under the influence of alcohol. Officer Martinez then arrested Cindy for:

(1) felony hit-and-run, under Cal. Veh. Code §20001 and §20003 (a) and (b) (see page 30) and for

(2) driving under the influence of alcohol, under Cal. Veh. Code §23153 (see page 31).

Martinez took Cindy to the police station and booked her at 2:20 a.m. He told her that he wanted to measure her blood-alcohol level scientifically to determine whether she had been drinking. As an expert, he was qualified to administer the test, interpret the results, and testify in court concerning those results.

Cindy declined to take the blood-alcohol test until she could see a lawyer. Martinez surprised her with the information that she did not have the right to refuse to take a sobriety test. He said she would lose her driver's license for six months for refusing, and he quoted portions of the California Vehicle Code, section 13353, which made this clear. He explained that she could choose a test of her breath, her urine, or her blood. She cooperated with a breath test, on which she registered a .04.

After conferring with his superior officer, Martinez withdrew the drunk driving charge because Cindy's blood-alcohol level had not been high enough to establish a legal presumption that she had been intoxicated at the time of the accident; a level of .10 is required to establish that presumption. Still, his supervisor pointed out, evidence that she had been drinking might have some bearing on the hit-and-run prosecution.

Cindy called her swimming coach, Mr. Narasaki, and asked him and his wife to bail her out of jail. Meanwhile, Officer Martinez awakened a few school officials and learned that Rolfe Gabardi, one of Bellweather High's few foreign exchange students, was living in a garage apartment adjacent to the home of a Bellweather physician and her family.

After Coach Narasaki posted Cindy's bail, Officer Martinez drove to Rolfe's tiny apartment. Rolfe answered the door in his bathrobe when Officer Martinez arrived to question him. He listened to the officer's explanation of the evening's events and nodded as Martinez read him his Miranda rights. He then agreed to answer the officer's questions.

The young man said that he knew nothing about any accident. He had been at a party but had walked home. He led the officer into his bathroom and showed him the wet jacket, shirt and jeans which he had hung in the shower to dry.

## THE WITNESS STATEMENTS

### PROSECUTION WITNESS: Genevieve LaFrance

The victim was once the prima ballerina in a famous European dance company. Genevieve recently published a best-selling book and at 52 is semi-retired in Bellweather, where she contributes her time and money to local art organizations. Among her favorite projects is "Dance Week" at Bellweather High.

Genevieve jogs along the same route every evening and is familiar with the intersection where she was injured. She remembers looking both ways before crossing Foothill Boulevard and believes that the car must have been traveling very fast since she had not seen even the slightest glow of its headlights when she first entered the crosswalk. Bright headlights had suddenly flown toward her from her right. She felt crushing pain and everything went black. The next thing she remembered was waking up in the hospital with a violent headache, feeling nauseated with severe abdominal pain.

### PROSECUTION WITNESS: Ms. Dorothy Franklin

Ms. Franklin is a social worker and the divorced mother of two grown children. She observed the accident from her carport and called the ambulance. Before Genevieve stepped into the crosswalk, Ms. Franklin had noticed the earphones she wore and hoped the little radio wouldn't electrocute her in the rain. She imagined that Genevieve's devotion to fitness -- running in the rain, at night -- was what kept the ballerina so trim.

Genevieve was just over halfway through the crosswalk when the car passed the Franklin house. "Look out!" Ms. Franklin screamed, but Genevieve was clearly not going to make it to the other side. Ms. Franklin watched helplessly as the car caught Genevieve with its right front fender and sent her flying into the air. She landed with a thud on the next-door neighbor's lawn. The car slowed as if to stop, briefly flashing its brake lights, but the driver suddenly gunned the engine and sped up the hill and out of sight. When she realized the car wasn't going to stop, Ms. Franklin trained her eyes on the license plate and began reciting aloud the characters she could read: VAN64.

Ms. Franklin ran down the 60-foot driveway to Genevieve and knelt beside her. She was sprawled on her back and Ms. Franklin said a quick prayer of thanks when she saw the woman's chest rising and falling. "Can you hear me?" she asked. Slowly and painfully Genevieve moaned, "What...happened?" and then she went limp. Ms.

Franklin ran into the house and scribbled what she could remember of the license number on the message pad next to the kitchen telephone. The VAN part was easy enough to recall. She hesitated, then thought "Of course! I'll be 64 next week. It was a 64."

After calling the 911 emergency number and receiving the operator's assurance that an ambulance and police car were on their way, Ms. Franklin felt upset and took an extra dose of her blood pressure medication. She then went out to cover Genevieve with a blanket and sat by her in the rain, holding an umbrella over her until the ambulance arrived with a police car right behind.

In the house, after the ambulance had left, Ms. Franklin told Officer Martinez that she had the license number of the hit-and-run vehicle; but as she read what she had written she realized sadly that a license number should have more than five characters. The officer asked her if the digit she had missed was the last one on the license plate. She brightened a bit and said she thought so. As he questioned her, she remembered more and reported that the car had been an older model pale blue compact.

Ms. Franklin cannot identify the driver of the car but she is sure the driver was a female wearing white clothing because she caught a glimpse of white through the windshield and passenger window before the car struck Genevieve, and the profile she saw was that of a young woman.

**PROSECUTION WITNESS: Officer George Martinez**

Officer Martinez received Ms. Franklin's call just after he took over as the patrol officer on call, and he went out to investigate on his own. He was pleased that Ms. Franklin had remained calm enough to help Genevieve, but was concerned that her memory of the car's license number was too far off base.

In the hospital waiting room, Officer Martinez told Genevieve's husband that he would do all he could to solve the crime. As he walked out of the hospital Martinez was overwhelmed by the importance of locating the car and the hit-and-run driver. The accident added to a series of local highway tragedies. Just last fall, Bellweather High's Homecoming King and Queen had been killed by a drunk driver, and the local press had run several front page articles on the incident. Editorials had criticized the police department's "inept investigation of highway murders."

Back in his patrol car, the investigator did not wait long for the information he needed. While still talking with the radio dispatcher, he drove directly to the Ballard home, where he recognized the car by its license number: VAN640.

Martinez was sure he recognized the scrap of green cloth from the car's fender moulding as a piece of the victim's jogging suit. He later confirmed his suspicion about the green cloth by matching it with Genevieve's jacket. On the scrap, embroidered in white, were the letters "LAD"; on the jacket, next to the torn spot, were the letters "IDAZ." When put together, they spelled "LADIDAZ," the name of a popular sportswear manufacturer.

Martinez smelled alcohol on Cindy's breath when she answered the door. When they talked, he felt her attitude was defensive, and he was suspicious of her sudden desire to remain silent after having agreed to answer his questions.

He hadn't believed Cindy's story, but it was his job to check out every detail. This

is why he obtained Rolfe's statement that same morning. Rolfe's story made sense and he seemed sincere though very frightened, in part because any legal trouble could ruin his chances of going to college in the U.S. The young man claimed to have walked home from the party, and the clothes hanging in his shower were certainly wet enough to have made that trip in the rain.

Martinez think it's just too easy for someone in Cindy's position to blame a vulnerable foreign student for her mistake.

**PROSECUTION WITNESS: Rolfe Gabardi**

Rolfe is a foreign exchange student from Switzerland who arrived in Bellweather in January of 1984. He volunteers at the Bellweather Children's Clinic, working with handicapped children, and hopes to go to medical school in the U.S. He lives in a garage apartment which is attached to the home of Dr. Petrov, a Bellweather pediatrician.

Rolfe and Cindy had seen each other at school but they had never met before. During the party, Jill Cochran introduced them and they danced for a few minutes. At Cindy's suggestion they went out to her car to sit and talk. She got behind the wheel and he did not drive or even ride in the car at any time. He and Cindy became very friendly, talking and laughing for about 15 minutes, and she suddenly became quiet. After a moment, she said that she had really looked forward to getting a chance to talk to him, and he thanked her for the compliment. Cindy asked if he had ever dated an American girl, and he replied that he had not. Cindy's next question took Rolfe by surprise. She asked if he would like to. A little embarrassed, he said he already had a girlfriend in Switzerland. Cindy was silent and stared in front of her and jerked her arm away when Rolfe touched it gently. She was obviously upset. He tried to make her feel better by telling her he really wanted to be her friend, but she wouldn't listen. He decided it would be best to leave.

He said goodnight, climbed out the passenger door, and took a direct route from Jill's house to the jogging path which runs along the golf course and proceeded the mile or so to his home. Cindy did not drive away from the party in the two or three minutes Rolfe was still near the house.

Rolfe doesn't think his arrival woke his host family--the lights were off in the main house as he approached. He walked in the door of his room just after 11:30 p.m., hung his wet clothes in the shower, and turned on the television: Johnny Carson was just beginning his monologue. The show was pretty boring, so he turned off the TV, played a Bruce Springsteen record, and was in bed by midnight.

**DEFENSE WITNESS: Cindy Ballard**

The defendant is as well known in Bellweather as her mother the outspoken mayor. At 17, Cindy is a national swimming champion who narrowly missed a spot on the U.S. Olympic swim team. She plans to try out for the 1988 team and is frightened of the effect these criminal charges may have on her future.

Cindy agrees with Rolfe up to a critical point in his story: though she admits they sat in the car and talked, she denies that they had any misunderstanding and declares he most certainly did <u>not</u> walk home from the party. She felt too sick to

drive, having had a few too many drinks. Relieved to have someone to drive her down the winding and slippery road below Jill's house, Cindy rested her head on Rolfe's shoulder as he pulled out of the driveway.

Rolfe drove fast down the slick road. When the tires squealed loudly around a tight curve, Cindy abruptly sat up and saw a figure dressed in green just a few feet ahead of the car. She remembers screaming at the loud thud! and watching helplessly as the figure flew over the sidewalk to the right. Then she insisted that Rolfe stop but he just sped up and coldly asked her for directions to her house. She begged him to go back but he shook his head and said he might be arrested or even deported, and that would ruin his college plans in the U.S.

Once in Cindy's driveway, Rolfe jammed the car into park. He asked Cindy not to say anything. She simply stared at him. He then abruptly got out of the car and headed down the dark street without saying goodnight. Cindy became frightened and wasn't sure what she should do. She was exhausted and very confused as she let herself into the house and sat down to think, wishing that her parents were home. She was just about to call the police when Officer Martinez rang the doorbell.

**DEFENSE WITNESS: Ronald Narasaki**

Mr. Narasaki is the swimming coach at Bellweather High. He trusts Cindy very much. He believes one of her strongest qualities is her concern for others and he recalls several occasions when she has stopped during workouts to care for other people who were injured or in trouble. He simply doesn't believe that she could do such a thing as abandon someone who was hurt. He has been excited for Cindy because she just won a swimming scholarship to an excellent college, and he says sadly that only this prosecution can stop that now.

**DEFENSE WITNESS: Jill Cochran**

Jill is Cindy's closest friend at Bellweather High. She hosted the party and was a little concerned about how her friend would get home because Cindy had been drinking; but she rather enjoyed Cindy's being drunk because the swimming champ is so "serious" most of the time. She is not sure how much Cindy had to drink, but it was at least a few glasses of wine and some mixed drinks. Cindy giggled and laughed a lot, and flirted with some of the boys.

Jill introduced Cindy to Rolfe when he arrived at the party. Jill remembers giving Cindy a teasing wink as she and Rolfe left the house through the kitchen door, because she knew Cindy had a crush on him. Since Cindy just smiled back and didn't say goodnight, Jill assumed the two were just going out to talk; this was confirmed when she saw them, through the kitchen window, go out to Cindy's car. She could see Cindy's white sweatshirt clearly while it was hard to see Rolfe in the rain because he wore a dark "Member's Only" jacket and jeans.

Jill was surprised about 15 minutes later when she heard a car in the driveway and looked out just in time to see Cindy's car from the rear as it pulled out. She couldn't swear that she saw Rolfe behind the wheel, but she could see Cindy's sweatshirt and her friend appeared to be sitting in the middle of the front seat and not behind the wheel.

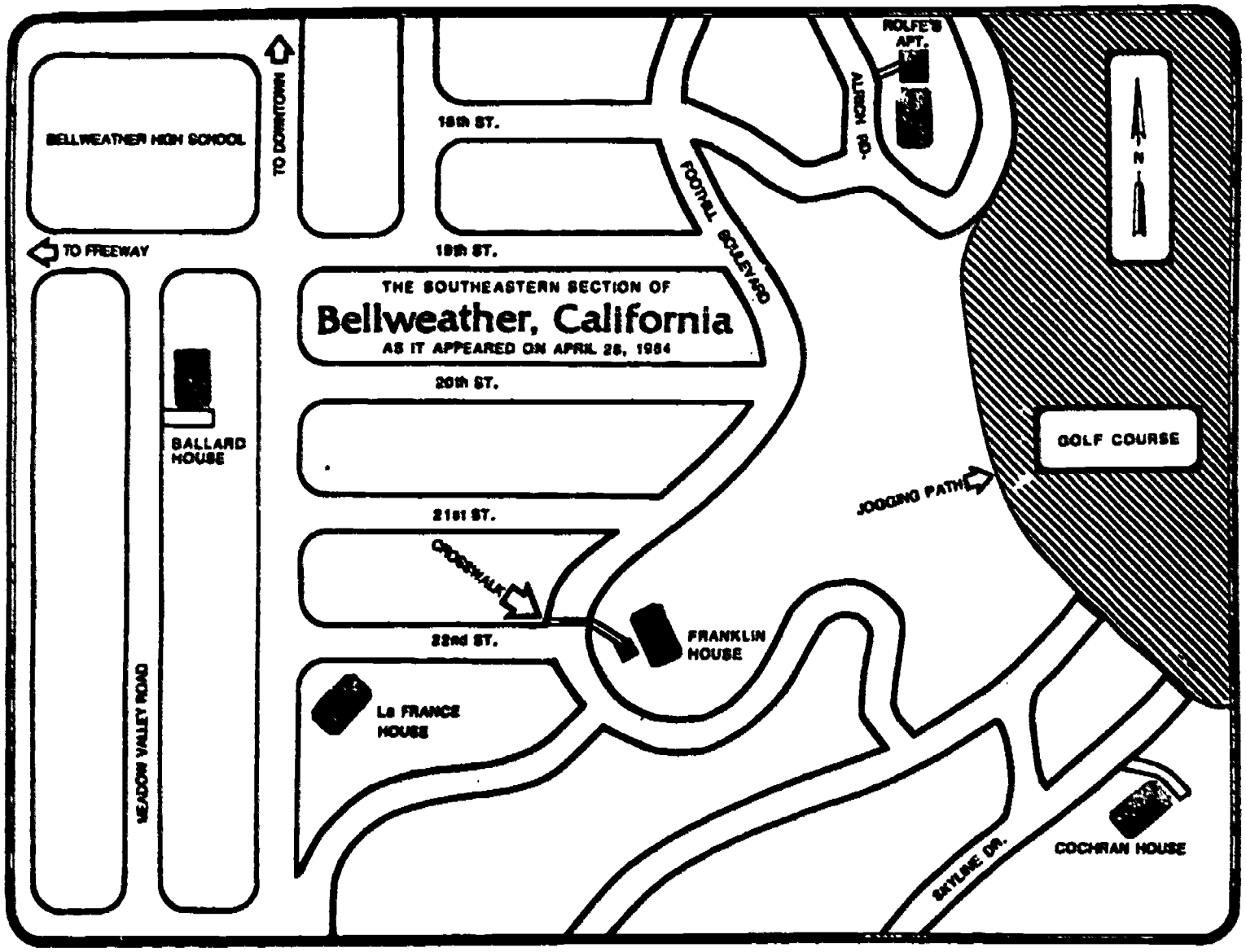
**DEFENSE WITNESS: Barry Porter**

A member of the Bellweather High swim team, Barry spent a lot of time with Cindy at the party. They talked mostly about an upcoming swim meet. Barry saw Cindy have very little to drink; he points out that Cindy is an athlete who doesn't abuse her body. Rolfe was the one who seemed a little over the edge. Barry saw him take a few drinks straight out of a vodka bottle.

As Jill had done, Barry also saw Cindy and Rolfe go out into the rain, but he wasn't as amused as Jill. He was concerned for Cindy and didn't trust Rolfe. The two walked out the kitchen door, and a few moments later Barry heard two car doors slam shut. He mentioned his concern to Jill, who said she thought Rolfe was a nice guy. He sat in on a few rounds of Trivia Life downstairs, then joined a group headed upstairs to watch music videos. On his way he stopped to use an upstairs bathroom and looked out the window into the yard. He watched Cindy's car for at least one full minute. Just then he heard Cindy's car start, and he watched its headlights point the way out of the driveway, into the street, and down the hill.

From his vantage point Barry could not see how many people were in the car. But he definitely did not hear a car door slam, and he didn't see anyone walking away from the car before it left the driveway.

**MAP OF THE SOUTHEASTERN SECTION OF BELLWEATHER**



## EVIDENCE ADMISSIBLE AT TRIAL

The following items may be introduced at trial:

(1) 1 faithful reproduction of the map of Bellweather which appears on page 29 of this packet. Map should be no larger than 22" x 28".

(2) The prosecution team is responsible for bringing a piece of green cloth in a plastic bag.

## A SUSPECT'S RIGHTS

Just before he questioned Cindy and Rolfe, Officer Martinez read each of them a list of rights which are guaranteed to all residents and citizens of the United States when they are being held and questioned by the police. Lawyers, judges, and the police usually refer to these as the suspect's Miranda rights — after an Arizona murder defendant named Miranda.

Miranda attempted to have his conviction overturned based on the fact that the police had obtained a confession from him without heeding his right, under the Fifth Amendment to the Constitution, not to be compelled to incriminate himself. Detectives had interrogated him while he stood handcuffed for four hours, during which time they refused to allow him to talk to his lawyer. At the end of the four hours he confessed to the crime.

When the U.S. Supreme Court overturned Miranda's conviction in 1966, a new precedent was set which is followed by the police throughout the U.S. Suspects in custody are told their Miranda rights before any questions are asked of them concerning the crime they are suspected of having committed. Under the Supreme Court's ruling in Miranda, a conviction can be reversed if it was based on information which the defendant supplied without having been notified of his or her rights.

The police read a suspect his or her rights from a standard form:

1) You have the right to remain silent.

2) Anything you say can and will be used against you in a court of law.

3) You have the right to talk to a lawyer and have him present with you while you are being questioned.

4) If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.

5) You can decide at any time to exercise these rights and not answer any questions or make any statements.

**NOTE: The propriety of Martinez's Miranda warnings to Cindy and Rolfe will not be an issue at trial. This information is included for educational purposes only.**

## HIT-AND-RUN LAWS

California's hit-and-run law is based on the duty of each person:

1) to stop at the scene of an accident in which he or she is involved and

2) to give aid to anyone who might have been injured in the accident.

## §20001 VEHICLE CODE
## DIVISION 10. ACCIDENTS AND ACCIDENT REPORTS

§20001. Duty to stop at scene of accident

The driver of any vehicle involved in an accident resulting in injury to any person other than himself, or death of any person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.

Any person failing to comply with all the requirements of this section under such circumstances is guilty of a public offense and upon conviction thereof shall be punished by imprisonment in the state prison, or in the county jail for a period not to exceed one year or by fine of not to exceed ten thousand dollars ($10,000) or by both.

§20003. Duty upon injury or death

(a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall also give his name, address, the registration number of the vehicle he is driving, and the name of the owner to the person struck or the driver or occupants of any vehicle collided with or shall give such information to any traffic or police officer at the scene of the accident and shall render to any person injured in the accident reasonable assistance, including the carrying or the making arrangements for the carrying of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if such carrying is requested by the injured person.

(b) Any driver subject to the provisions of subdivision (a) shall also, upon being requested, exhibit his driver's license, if available, to the person struck or to the driver or occupants of any vehicle collided with or to any traffic or police officer at the scene of the accident.

NOTE: The California Penal Code, in Section 18, provides that any felony conviction for which the defendant is imprisoned in a state prison can bring a sentence of 16 months, two years, or three years. Though the Vehicle Code section quoted above does not mention that provision, it is well understood by the lawyers and judges who work with the law.

## DRUNK DRIVING LAWS

With no other evidence of drunkenness, a blood alcohol level of .10 is enough to cause the court to presume that a person is intoxicated. A .10 level means that the person's blood contains one-tenth of one percent alcohol, or that it is one-one thousandth alcohol. With other supporting evidence, defendants have been convicted of drunk driving when their blood alcohol levels were tested at levels as low as .04.

## California Vehicle Code

§23153. Influence of alcohol and drugs causing bodily injury to persons other than driver; alcoholic content in blood; proof.

(a) It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act of neglect proximately causes bodily injury to any person other than the driver.

(b) It is unlawful for any person, while having 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

## California Vehicle Code

§13353. Chemical blood, breath or urine tests; operative date of section

(a) (1) Any person who drives a motor vehicle shall be deemed to have given his or her consent to chemical testing of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood, and to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23152 or 23153. The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23152 or 23153. The person [illegible] that his or her failure to submit to, or the noncompletion of, the required chemical testing will result in the suspension of the person's privilege to operate a motor vehicle for a period of six months, or for a period of one year if the person has previously been convicted of a violation of Section 23152, 23153, or 23103 as specified in Section 23103.5 within five years of the date of the refusal.

## INTRODUCTION TO EXERCISES

This Mock Trial packet contains sufficient information to enable you to prepare students to participate in the Competition. You may wish to supplement these materials with other sources to give students a fuller appreciation of trial procedure.

A Mock Trial Coordinator in your area will assign a local attorney to work with your students. All advisers are encouraged to avail themselves of the volunteer attorney's skills and expertise to answer questions, prepare for trial and debrief the participants after each round. The attorneys can help to enliven the sometimes dry official descriptions of courtroom procedures.

Participating students should read the entire packet of mock trial materials. It is best for each student to have a copy. All participants should be encouraged to read the entire set of materials, since the team will act as a unit rather than a collection of unrelated individuals.

The next few pages of this packet contain exercises designed to review the student materials. Involving the volunteer attorney in these exercises maximizes their instructional potential.

This packet also includes a debriefing guide for use with the team and attorney after a round. The debriefing session is essential to highlight the educational aspects of the Mock Trial Competition. Taking the class to an actual trial is an excellent way to teach them about the legal system and prepare them for the Mock Trial.

## EXERCISE: Rules of Evidence

INSTRUCTIONS: For each situation described below, explain whether you would object to admission of the evidence. If so, on what grounds would you make your objection? If you were offering the evidence can you think of a way to get it in despite objection?

1. Doug is on trial for auto theft. As an alibi, Doug testifies, "Cindy told me that Jim had stolen that car for a joy ride. She never touched it."

2. Trial for arson. A witness for the defense testifies that the defendant was with her on the night of the crime. The prosecutor asks, "Isn't it true that you used cocaine when you were in college three years ago?"

3. Mr. Wirtz, an English teacher who knew the defendant since high school, testifies for the prosecution that Joe has deep psychological problems.

4. On direct examination, the defense attorney asks, "You could hear the noise from the next apartment very clearly, couldn't you?"

5. The witness, a waitress, testifies that the bartender had mentioned to her that the defendant had ordered five shots of whiskey on the night of the crime.

6. Police officer Jones testifies that when he entered the victim's apartment, he saw the defendant trying to climb out a window.

4. The prosecutor asks the witness, "Didn't you tell the defendant's attorney that you had seen the defendant take the money?"

8. Sally has never seen Amy with her son. Can Sally testify that Amy is a horrible mother?

9. Trial for embezzlement. The defense introduces a diploma to show that the defendant graduated from high school.

10. The prosecution calls a witness to testify that the defendant had shoplifted for years before being arrested for grand theft.

## EXERCISE: The Steps in a Criminal Trial

INSTRUCTIONS: Re-order the following sentences in the order that the events would occur in a real trial.

Facts of the Case: Mark is on trial for murder. His attorney is Ms. Heath. The prosecuting attorney is Mr. Stevens. Judge Kelly is presiding.

The Trial

a. Mr. Stevens delivers his closing argument.

b. Ms. Heath cross-examines the prosecution witness.

c. Judge Kelly gives the jury their instructions.

d. Mr. Stevens examines a prosecution witness.

e. Ms. Heath gives her opening statement.*

f. The jury deliberates, makes its decision and returns to the courtroom.

g. Mr. Stevens cross-examines the defense witness.

h. Court is called to order.

i. Mr. Stevens gives the prosecution's opening statement.

j. Judge Kelly releases or sentences the defendants.

k. Ms. Heath delivers her closing argument.

l. Ms. Heath conducts her direct examination of a defense witness.

__ __ __ __ __ __ __ __ __ __ __ __

1 2 3 4 5 6 7 8 9 10 11 12

* "e" can be used in one of two places.

## EXERCISE: Courtroom Duties

INSTRUCTIONS: Place the letter for each person in the courtroom in the blank for each duty. Some people have several duties.

A. BAILIFF
B. PROSECUTOR
C. JUDGE
D. COURT CLERK
E. JURY
F. DEFENDANT
G. DEFENSE ATTORNEY
H. WITNESS

1.____ Announces that court is in session.
2.____ Rules on legal issues in the case.
3.____ Tries to show that a reasonable doubt of guilt still exists at the end of the trial.
4.____ Guards the defendant.
5.____ Gives an account of what happened.
6.____ Maintains order in the courtroom.
7.____ Has been accused of breaking the law.
8.____ Introduces evidence of guilt.
9.____ Decides the factual issues in the case.
10.____ Delivers the first closing statement.
11.____ Sentences guilty defendants.
12.____ Swears in the witnesses.
13.____ Can be cross-examined.
14.____ Delivers the last opening statement.
15.____ Can't be forced to testify.

## ANSWERS TO EXERCISES

### Rules of Evidence

1. Hearsay. Cindy's out-of-court statement that Jim took the car is being offered to prove that he, and not the defendant, took the car. Cindy should testify to this herself.

2. Relevance. The use of cocaine three years ago has nothing to do with the facts of the case or the witness' credibility. This question was probably intended to harass or embarrass the witness and is entirely improper.

3. Opinion. An English teacher is not an expert in psychological matters. The witness perhaps could testify to bizarre things that Joe had done or bther indicators of psychological problems.

4. Leading Question. On direct examination an attorney must allow the witness to tell his or her own story. The attorney could ask, "How well could you hear the noise from the apartment next door?" The original question would be proper on cross-examination.

5. Hearsay. The bartender's out-of-court statement is being offered to prove that the defendant had been drinking heavily. Introduce the bartender as a witness or ask the waitress if she had noticed how much the defendant had been drinking.

6. This is a proper bit of testimony, the more the better.

7. Privilege. The lawyer-client privilege protects from disclosure statements about the case made to a client's lawyer. Ask the witness whether she had seen the defendant take the money.

8. Personal Knowledge. Sally doesn't appear to have any basis for claiming that Amy is a terrible mother. Try to establish that Sally knows of Amy's poor parenting, perhaps by having seen scars on the child and having seen the child lightly clothed on cold winter days.

9. Relevance. Graduation from high school has nothing to do with stealing money that the defendant had been trusted with. If the defense is trying to show good character, something more convincing than a high school diploma is needed.

10. Character Evidence. Unless the defense has already produced evidence of good character, the prosecution cannot offer this testimony.

NOTE: For almost any offer of evidence taken out of context, relevance may not be clear.

## Steps in a Criminal Trial

| H | I | E* | D | B | E*/L | G | A | K | C | F | J |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |

* defense may give opening statement in either spot.

## Courtroom Duties

1. D
2. C
3. G
4. A
5. H
6. A
7. F
8. B
9. E
10. B
11. C
12. D
13. H
14. G
15. F

## PART III: PRE-TRIAL MOTION AND OPPOSITION TO BE FILED

This section of the mock trial packet contains materials and procedures for the preparation of a pre-trial motion on an important constitutional issue. The continuing conflict between freedom of the press and the right to a public trial guaranteed by the First and Sixth Amendments and the right of every individual to a fair trial by an impartial jury are important to every citizen. Incorporation of these materials into this mock trial packet is intended to stimulate understanding and debate regarding this key issue. The materials in this section can be used as a classroom activity and/or incorporated into a local mock trial competition. This pre-trial motion will be one element of the State Mock Trial Competition in Sacramento, March 12-14, 1985.

For the purposes of the pre-trial motion, participants should assume that Cindy's lawyers have asked for a jury trial. They are therefore concerned that newspaper and television publicity will prejudice potential jurors against the defendant and destroy her chance for a fair trial. Within a few days of her arrest her lawyers felt it necessary to petition the court for a limitation on publicity.

Beginning on the morning after Cindy's arrest, when her parents returned to town, the family was the object of ridicule and harrassment. They changed their phone number on Monday because of the many unpleasant calls they received. "Hate mail" began arriving, much of it aimed at Cindy's mother. Several letters came from people who had served jail terms or lost their driving privileges for drunk driving or hit-and-run, demanding that Cindy pay for her mistakes as they had paid for theirs.

The most spiteful letters were dropped anonymously into Cindy's locker at school; among other things she was called "a dirty little liar" and a "would-be murderer." Some of the mail directed at her mother was even from PADD members who until the incident had appreciated Ms. Ballard's outspoken support of their cause. They now denounced her as a hypocrite.

Because they fear continued press coverage of the case might make it impossible to assemble an impartial jury, the defense attorneys are petitioning the court to bar members of the press from Cindy's trial.

The prosecution attorneys object to these requests, primarily because they do not want to see the court shield defendants from media attention. They invoke the U.S. Constitution's First Amendment guarantee of freedom of the press and discuss the importance of keeping America's judicial system open to the public's scrutiny and understanding; they assert the public has a right to know.

Cindy's defense lawyers will submit a memorandum to the court, not to exceed five typewritten, double-spaced pages, explaining why members of the press should not be allowed to attend Cindy's trial.

The prosecution lawyers will submit a similar memorandum, also limited to five typewritten, double-spaced pages, explaining why members of the press should be allowed to attend Cindy's trial.

The lawyers on each side may quote any of the "background materials" in the following section and may also use any common sense arguments they wish to use. It is acceptable to try to persuade the court to create "new law" by interpreting

the existing body of law in new and different ways. It is when trial courts make such new interpretations, and appeals courts affirm their decisions, that the law develops over the years.

**The court's decision concerning these motions will proceed completely separately from Cindy's criminal prosecution and will have no bearing on the outcome of her trial.**

## ORDER OF EVENTS IN THE MOCK PRE-TRIAL MOTION HEARING

1. Prior to the opening of the hearing, the judge has read the memoranda filed by the defense and prosecution.
2. The hearing is called to order.
3. The Judge asks the defense to summarize the arguments made in the motion. The Judge may interrupt to ask clarifying questions.
4. The Judge asks the prosecution to summarize the arguments made in its opposing motion. Again, the Judge may interrupt at any time with questions.
5. The Judge deliberates and announces the court's ruling on the defense motion. The motion is either granted or denied.

## BACKGROUND MATERIALS FOR PRE-TRIAL MOTION

There are no hard and fast rules which tell a judge to grant a defendant's request or to deny it. Before a criminal trial, the prosecution and the defense make up their various requests in a form known as a motion. In its motion, each side tries to convince the judge to agree with its view of how the trial should be conducted.

The attorneys back up their motions with quotations and references to statutes (written laws), the Federal and State Constitutions, and cases which have been decided in the past by other courts. The decisions of the State Supreme Court and the United States Supreme Court carry a great deal of weight and are considered to be part of the law of the land. Those courts have interpreted the statutes and constitutions; their decisions in various cases are relied on by trial judges when those judges are dealing with similar cases.

It is up to the lawyers to quote the sections of various cases which will persuade the judge to rule in their favor. A particular case will contain language which either side will want to use for this purpose. In essence, each lawyer is saying, "Please interpret the law in the way I want you to, whether the 'law' in this instance is a constitution, a statute, or a decision by a higher court in a previous case."

The materials available to the attorneys in People v. Ballard are from 1) the California Constitution; 2) the United States Constitution; 3) The California Penal Code (laws written by the legislature which govern the conduct of criminal trials); 4) the U.S. Supreme Court case of Sheppard v. Maxwell; 5) the U.S. Supreme Court case of Globe Newspaper Co. v. Superior Court; 6) the California Court of Appeal cases of a) Rosato v. Superior Court, b) Cramer v. Superior Court, and c) Younger v. Smith.

## UNITED STATES CONSTITUTION

### AMENDMENT 1

"Congress shall make no law respecting an establishment of religion, or prohibiting

the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

AMENDMENT 6

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

## CALIFORNIA CONSTITUTION

CRIMINAL CASES—RIGHTS OF ACCUSED Art. 1, §15

"§15. Criminal cases; speedy public trial; compel attendance of witnesses; appearance and defense; counsel; depositions; double jeopardy; self-incrimination; due process.

Sec.15. The defendant in a criminal case has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant. The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel.

People may not twice be put in jeopardy for the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law."

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The California Penal Code, which is the collection of laws concerning the way in which criminal proceedings must be conducted, provides for the "open and public examination" of witnesses during a trial. But the defendant may file a pre-trial motion and request that no one be allowed to attend the proceedings except the attorneys and officers of the court.

The judge can grant the defendant's request only if the "exclusion of the public is necessary in order to protect the defendant's right to a fair and impartial trial." In the pre-trial motion, Cindy's attorneys will try to convince the judge that the exclusion of the press, as members of the public, is necessary to protect Cindy's right to a fair trial. The prosecution will argue that the public should be allowed to attend.

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CALIFORNIA PENAL CODE §868

"§868. Open and public examination; exclusion of public upon request of defendant and finding by magistrate; exceptions; person for moral support of prosecuting witness."

"The examination shall be open and public. However, upon the request of the defendant and a finding by the magistrate that exclusion of the public is necessary in order to protect the defendant's right to a fair and impartial trial, the

magistrate shall exclude from the examination every person except the clerk, court reporter and bailiff, the prosecutor and his or her counsel, the Attorney General, the district attorney of the county, the investigating officer, the officer having custody of a prisoner witness while the prisoner is testifying, the defendant and his or her counsel, the officer having the defendant in custody and a person chosen by the prosecuting witness who is not himself or herself a witness but who is present to provide the prosecuting witness moral support, provided that the person so chosen shall not discuss prior to or during the preliminary examination the testimony of the prosecuting witness with any person, other than the prosecuting witness, who is a witness in the examination. Nothing in this section shall affect the right to exclude witnesses as provided in Section 867 of the Penal Code."

## CASES FOR USE IN MOTION PREPARATION

Gannett Co. v. DePasquale, (1979) 443 U.S. 368

"[T]here is a strong societal interest in public trials. Openness in court proceedings may improve the quality of testimony, induce unknown witnesses to come forward with relevant testimony, cause all trial participants to perform their duties more conscientiously, and generally give the public an opportunity to observe the judicial system." 443 U.S. at 383.

"Closure of pretrial proceedings is often one of the most effective methods that a trial judge can employ to attempt to insure that the fairness of a trial will not be jeopardized by the dissemination of such information throughout the community before the trial itself has even begun." 443 U.S. at 379.

"Although the Sixth Amendment's public-trial provision establishes a strong presumption in favor of open proceedings, it does not require that all proceedings be held in open court when to do so would deprive a defendant of a fair trial." 443 U.S. at 439.

The United States Supreme Court has held that "members of the public have no constitutional right...to attend criminal trials..." Gannet Co., Inc. v. DePasquale, 443 U.S. 368 (1979).

Sheppard v. Maxwell, (1966) 384 U.S. 333

"Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures." 384 U.S. at 363.

"[T]he presence of the press at judicial proceedings must be limited when it is apparent that the accused might otherwise be prejudiced or disadvantaged." 384 U.S. at 358.

NOTE: See the following section, "How to Use a Law Library," under the heading "Locating the Cases," for an explanation of how court cases are cited. Don't be intimidated by the numbers appearing in such strange places!

## Rosato v. Superior Court, (1975) 51 CA3d 190

[In order to determine the validity of a pretrial order concerning publicity, the court] "need only be satisfied that there is a reasonable likelihood of prejudicial news which would make difficult the impaneling of an impartial jury and tend to prevent a fair trial." 51 CA3d at 208.

"Persons accused of crime enjoy the fundamental constitutional right to a fair trial..." 51 CA3d at 205.

"In Sheppard v. Maxwell, (1966) 384 U.S. 333, the [U.S.] Supreme Court breathed life and vigor into the fair trial concept as it is affected by pervasive pretrial and trial publicity. The court, in reversing a first degree murder conviction, mandated as an indispensable ingredient to a fair trial the right of a defendant to have his trial conducted free of pretrial and trial publicity affecting the fairness of the hearing...The Court, while recognizing the vital role of a free press in the effective and fair administration of justice, held that the publicity surrounding a trial may become so extensive, pervasive and prejudicial in nature that, unless neutralized by appropriate judicial procedures, a resultant conviction may not stand, and the trial court has the duty to so insulate the trial from publicity as to insure its fairness." 51 CA3d at 205.

"It has been repeatedly acknowledged that the freedom exists to insure the unimpeded flow of information indispensable to the existence of a democratic society." 51 CA3d at 212.

## Younger v. Smith, (1973) 30 CA3d 138

[The] "clear and present danger" [test] "is inappropriate as a criterion for the validity of protective orders." [The appropriate test is that the order be based on] "a reasonable likelihood of prejudicial news which would make difficult the impaneling of an impartial jury and tend to prevent a fair trial." 30 CA3d at 162-163.

"[T]he court...is under a constitutional duty to curb speech to combat the evil of an unfair trial..."30 CA3d at 163.

"Any [protective order against publicity] must of necessity cover the infinite variety of ways and means in and by which prejudicial utterances can be made and the many avenues through which a future jury can be prejudiced by speech which the court can prohibit." 30 CA3d at 166.

"[P]rotective orders must be geared to the apparent needs of the moment and their validity must be judged with that necessity in mind." 30 CA3d at 160.

"[S]ince the assessment of the need for a protective order must take so many uncertain factors into account, pedantic appellate debates over the correct criterion are good clean fun for those who enjoy that sort of thing, but of precious little help to the trial judge who must silence the sources of prejudicial pre-trial publicity as soon as possible, or risk spending weeks or months trying a case which is doomed to be reversed, should it result in a conviction." 30 CA3d at 160.

## Cromer v. Superior Court, (1980) 109 CA3d 728

"We conclude that there is a 'substantial probability [of] irreparable damage' to Ms. Cromer's fair trial right...and a 'reasonable likelihood' of 'identifiable prejudice to the accused'...were Ms. Cromer's purported confession now to be released to the public, including those who may be called upon to serve as jurors at her trial.

'[But] we are required by reason and authority to explore, and utilize where proper, other measures which will reasonably insure a fair trial without requirement of closure of judicial proceedings or evidence." 109 CA3d at 735.

"The appropriate judicial criteria for insuring an accused a fair trial in the face of adverse pretrial publicity is whether there is a 'reasonable likelihood'of substantial prejudice..." 109 CA3d at 733.

## HOW TO USE A LAW LIBRARY

Lawyers who argue a case all have one thing in common. Each has spent many long hours in a law library carefully researching every detail of his or her case. Knowing how to use a law library may be the most important tool a lawyer has. With it he or she can become knowledgeable in almost any field of law.

Most counties have law libraries which are open to the public in or near their court houses, as do many colleges and law schools. After you have located a nearby law library, be sure to call ahead to find out when it is open, if you can use its facilities and if there are any special rules you will have to follow. You or your teacher might be able to arrange for the librarian to give you a tour of the library, too.

Once you are inside a law library, there are four basic methods you can use to find and research an area of the law.

### The Topic Method

The first method involves looking through various types of legal encyclopedias and digests for the names and citations of cases involving a particular subject or topic. This is known as the topic method. It should be used when you want to research a topic, like searches and seizures, but do not know the names of the cases you want to read.

Legal encyclopedias provide an excellent source of background information on almost every area of law. In addition to having a summary of the law in these areas, the legal encyclopedias contain the names of the most important cases decided in each area. The cases are both federal and state, depending on which encyclopedia you use. The two most widely used are called American Jurisprudence, Second Edition, Am. Jur. 2d, and Corpus Juris Secundum (C.J.S.). Both contain federal and state decisions.

These entries contain summaries of the law in the various areas. Along with each summary are a number of footnotes which contain the names and citations of the leading cases in the area of law you are researching. You should copy down the ones you will be most interested in. Be sure to copy the numbers and letters which follow the case names too. They are the citations and their importance will be discussed later.

Before you put the volume back on the shelf, make sure you turn to the back cover of the hardback volume. There you will find a paperback stuffed into a pocket. This paperback contains many cases which have been decided more recently, and any changes in the law which have occurred since the publishing of the main volume. Look through this pamphlet, known as the supplement or pocket part, for the section which corresponds with the one you were reading in the main volume. See if there have been any more recent cases or changes in the law. This process is known as up-dating your search. It should be used with every resource book in the law library.

A second source for background information and names of cases in various areas of the law is a digest. A digest is a multi-volumed series of books which contain a paragraph or two about each case decided in almost every area of the law. These paragraphs are the publisher's opinion of the law decided upon by the court in the various opinions. They are not officially accurate.

If you want to find a United States Supreme Court opinion, the two best digests you can look through are the:

1. U.S. Supreme Court Digest
2. Lawyer's Edition, U.S. Supreme Court Reports Digest

Each digest is arranged by topics. There are two good ways of looking for cases in a digest. The first is to look through the Table of Contents for categories you may be interested in. A table of contents is located at the front of the set of volumes, and at the beginning of each broad topic, such as Constitutional Law. This is known as the topic approach. You would then look through each possible topic for cases that might interest you.

Descriptive Word Method

A second way to find cases you are interested in is by looking in indexes of these same volumes under words which describe your topic. This is known as the descriptive word method.

To use this method you should make a list of every word or topic which could describe your topic. Once you have made such a list, you go to the "Descriptive Word Index" of a digest and look under each word. Then turn to the correct section of the digest.

Case Method

The other general method for researching an area of the law is used when you know the name of a case in that area. This is known as the case method.

If you do not know the citation of the case you want to look up, the first place to look is in the TABLE OF CASES of a legal digest. These tables, arranged alphabetically, contain the name and citation of every case mentioned in the entire digest. Be certain to update your research if you do not find the name of your case in its proper place. Once you know the citation it should be easy for you to find the case itself by using the method outlined above. If you know the citation and the name of the case, you can turn directly to the case and begin reading.

After you have finished reading the case you are interested in, you can do further research by turning to the beginning of the opinion. There you will find the headnotes and "Key Numbers" (if you are using the West Publication). These headnotes and "Key Numbers" refer to sections in the digests which contain information on the same subject.

Each state also has its own set of reporters, digests, and sometimes encyclopedias. In addition there are digests and reporters for the federal court system, and for the United States Supreme Court. If you want to find them, or the abbreviations for them, ask your law librarian for help.

## Word and Phrases

The fourth way to research a topic of law is to use the set of volumes called Words and Phrases. It can be used to find cases which define and discuss legally important words and phrases.

The 46 volumes of this set of books are arranged alphabetically by the particular word or phrase you might be interested in. Below each phrase you will find short paragraphs from cases which have mentioned the key words. Unfortunately, the paragraphs are not always arranged in any particular order under the categories you look in. Because of this you must look through all of them to see if any interesting cases appear. Once again, you should update your search by checking the pocket parts at the rear of the volume for any new cases.

## Locating the Cases

Once you have found the names of the cases you wish to look up and read, you are ready to search for them. This is where the citation comes into use. A citation contains the numbers and letters after the names of the case. For example, in the United States v. Ross decision, the complete citation is: 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed. 2d 592 (1982). It directs you to the proper series of books, or reporters, the proper volume number and the correct page of the volume where the decision you are interested in is located.

Let us say that you were most interested in the United States v. Ross decision. The complete citation means: United States v. Ross is the name of the case; 456 U.S. 798 means that the case is located in volume 456 of the reporter United States Reports at page 798; it is also located at volume 102 of U.S. Supreme Court Reports at page 2157; and in volume 72 of Lawyers Edition, U. S. Supreme Court Reports at page 572; 1982 is the year of the decision.

Each of the references listed above is to a different set of reporters. All contain the same case. United States Reports is the only official one, however. In other words, it is the only one that is officially accurate. However, because it is also the slowest to be published, most libraries contain at least one of two other reporters which are unofficial, but which are published more quickly.