TEACH DEMOCRACY

Civic participation begins with civic education

People v. Clark

A Murder Trial

Featuring a pretrial argument on the Fourth Amendment
(involving a geofence warrant)

OFFICIAL MATERIALS FOR
THE CALIFORNIA MOCK TRIAL COMPETITION

A Program of Teach Democracy
(formerly Constitutional Rights Foundation)

Co-Sponsored by:
American Board of Trial Advocates Foundation
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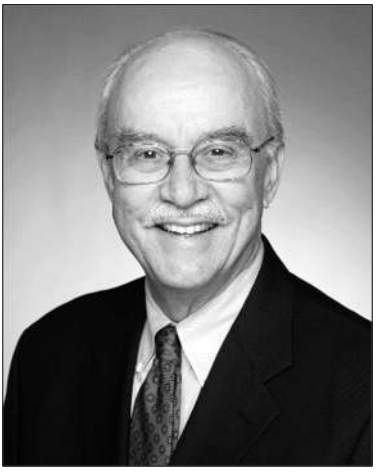
IN MEMORY



TODD CLARK

November 23, 1933 – March 22, 2023

The 2023-2024 California Mock Trial case is dedicated in memory of Todd Clark, Constitutional Rights Foundation's (CRF) former executive director. Todd's decades of leadership in civic learning, creativity as an educator, capacity to build coalitions and partnerships, and strong belief that young people truly are the future of democracy propelled the work of CRF. Among his many endeavors at CRF, he sponsored and promoted the publishing of the Bill of Rights in Action, the Mock Trial program in California, History Day in California, a city-wide internship program, and broke ground in the national field of law-related education and service-learning. Todd received the Isidore Starr Award for Special Achievement in Law-Related Education from the American Bar Association. Todd was President of the California Council for Social Studies, receiving the "Hilda Tabor Award" for outstanding contributions to social studies, and went on to be elected as President of the National Council for Social Studies. Continuing his leadership role, he was appointed by two California governors to serve as a member and chairman of the California Commission on Improving Life Through Service, receiving Commendations from the governors for his work. For all his contributions to the field of civic and law-related education, we honor his legacy.

TABLE OF CONTENTS

2023-2024
CALIFORNIA MOCK TRIAL PROGRAM

Each year, Teach Democracy (formerly CRF) creates the mock trial case for students across the state of California. The case provides students an opportunity to examine legal issues within a structured forum and is designed to provide a powerful and timely educational experience. It is our goal that students conduct a cooperative, vigorous, and comprehensive analysis of these materials with the careful guidance of teachers and coaches.

Program Objectives

For the students, the mock trial program will:

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

For the school, the program will:

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

CODE OF ETHICAL CONDUCT

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

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

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

American Board of Trial Advocates™

The American Board of Trial Advocates (ABOTA) provides its members with a Code of Professionalism. Consider this code as you participate in Mock Trial.

Excerpt from the
American Board of Trial Advocates Code of Professionalism

- *Always remember that the practice of law is first and foremost a profession.*
- *Encourage respect for the law and the courts.*
- *Always remember that my word is my bond and honor my responsibilities to serve as an officer of the court and protector of individual rights.*
- *Be respectful in my conduct towards my adversaries.*
- *Honor the spirit and intent, as well as the requirements of applicable rules or codes of professional conduct and should encourage others to do so.*

For more about ABOTA, visit: www.abota.org

INTRODUCTION TO 2023–2024 MOCK TRIAL COMPETITION

This packet contains the official materials required by student teams to prepare for the 43rd Annual California Mock Trial Competition. In preparation for their trials, participants will use information included in the People v. Clark case packet. The competition is sponsored and administered by Teach Democracy (formerly Constitutional Rights Foundation). The program is co-sponsored by the Daily Journal Corporation and American Board of Trial Advocates Foundation.

Each participating county will sponsor a local competition and declare a winning team from the competing high schools. The winning team from each county will be invited to compete in the state finals in Los Angeles. March 22-24, 2024. The winning team from the state competition will be eligible to represent California at the National High School Mock Trial Championship in Wilmington, Delaware, May 2–5, 2024.

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

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

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

CALIFORNIA MOCK TRIAL
FACT SITUATION

Sunshine Medical Components, Inc. ("SMC") is a billion-dollar medical technology corporation founded and managed by members of the Sunshine family. The corporation is privately held, with 30 board members. The board members are orthopedic surgeons and medical professors from top teaching hospitals, as well as other types of investors. SMC's board members assist with making long-term goals, creating policies, and assisting in making major decisions.

Fred Sunshine, the founder and sole owner of SMC, died in 2015. Per the terms of his will, ownership of SMC was distributed to his three adult children as follows: Kieran, the middle child, inherited a 30 percent share of the company; Emari, the oldest child, inherited a 50 percent share; and Arian, the youngest, inherited a 20 percent share.

Kieran Sunshine was the chief executive officer (CEO) of SMC from 2015 until his death in 2023. In 2015, Emari was promoted to Vice President of Research and Development, per the instructions left in Fred Sunshine's will.

As CEO, Kieran led the corporation and managed all of SMC's operations and projects. In 2022, Kieran announced that he was leading the development of SMC's new product: the ForeverFlex5000 (ForeverFlex). The ForeverFlex was a prosthetic (artificial) joint replacement. Unlike regular artificial joints, the ForeverFlex was purported to function at greater than 95% efficacy for at least 30 years, which is about twice the average longevity of prosthetic joints, making ForeverFlex unique in the prosthetic joints market.

SMC projected that its share of the prosthetic joint replacement market would more than double after the ForeverFlex release. Kieran's presentation materials to potential funders of SMC promised a nearly 30 percent increase in new revenue for SMC when the ForeverFlex went to market. In addition, publicity and market goodwill were projected to earn million-dollar bonus checks for SMC's top corporate officers, including Kieran, Emari Sunshine, Arian Sunshine, and Tobie Clark, SMC's in-house corporate counsel who represented the company.

Kieran and Tobie planned a presentation for a board meeting on July 17, 2023, at the Bells Hotel. The pair expected to present the final ForeverFlex test results, up-to-date numbers

on expected market returns, and to finally announce their plans for SMC's initial public offering (IPO). When a company goes public with an IPO, it sells its stocks in its company to the public. People who buy the stocks become shareholders with partial ownership of the company, and the company is called "publicly traded." As a publicly traded company, SMC would be able to bring the company more money and a greater opportunity to do business across the world.

However, on the morning of January 3, 2023, Kieran received results of recent clinical study tests on the ForeverFlex. The test results showed that there were numerous bacterial infections appearing in trial patients that were related to the metal material in the ForeverFlex. The problem with ForeverFlex would take at least a year to fix, if it could be fixed at all.

Later that morning several employees, including Arian Sunshine (SMC's VP of Marketing), Emari, and Gerri Moayed (SMC's holistic wellness coach) saw Kieran go into Tobie's office and close the blinds before closing the door. Tobie and Kieran remained in the closed-door meeting for an hour. On January 5, Tobie filed a patent application for the ForeverFlex and, on January 19, filed a rush handling request for the patent.

In late May, Tobie purchased a bottle of champagne and a special champagne saber. Champagne sabers are used to ceremoniously cut the tops off bottles of champagne.

On July 15, both Tobie and Kieran checked into the Bells Hotel and agreed to meet in Kieran's suite the next morning to make final preparations for the board meeting. The Bells Hotel is located in downtown San Luis, an urban center with several skyscrapers nearby. Tobie had arranged for the champagne and saber to be delivered to Kieran's suite at 9:00 AM on July 16 as a surprise for Kieran. Shortly after Tobie arrived in Kieran's suite, around 9:00 AM, an argument ensued. Tobie left Kieran's room, leaving the saber on display on the fireplace in Kieran's suite. Throughout the day, several people, including Arian, Emari, and Gerri, visited Kieran in his suite to prepare for the meeting.

The next morning, on July 17 at 8:00 AM, Gerri went to check on Kieran for a morning yoga practice. Gerri knocked on Kieran's exterior door, from the hallway of the hotel, but Kieran did not answer. Gerri used the spare key that Kieran gave Gerri to enter the room. Gerri saw Kieran lying on the ground in a pool of blood and immediately called 911. Detective Nova Perren responded to the 911 call, arriving at

the scene at 8:15 AM. The medical examiner arrived shortly thereafter and pronounced Kieran dead.

During the crime-scene investigation, Detective Perren found a champagne saber located on the carpet to the right of Kieran's body. On the saber were four fingerprints located on the grip close to the blade, with the prints facing away from the curved metal of the guard. The fingerprints were ultimately forensically matched with Tobie Clark. Three other prints were never matched with anyone. There was also a partial shoeprint on the carpet on the right side of Kieran's body.

After completing Kieran's autopsy and all other forensic testing, the medical examiner, Dr. K.C. Vasquez, confirmed that the champagne saber was consistent with the type of weapon that caused Kieran's fatal stab wound.

Detective Perren gathered more information that morning from a variety of witnesses. Based on these interviews, the physical evidence, and the autopsy report Det. Perren arrested Tobie at Tobie's residence on August 3 for the murder of Kieran Sunshine. Tobie posted bail the next day.

SOURCES FOR THE TRIAL

The sources for the Mock Trial are a "closed library," which means that Mock Trial participants may only use the materials provided in this case packet. The materials for the trial itself include Statement of Charges, Physical Evidence, Stipulations, California Penal Code, Jury Instructions, Fact Situation, Witness Statements, and the Mock Trial Simplified Rules of Evidence.

STATEMENT OF CHARGES

The prosecution charges Tobie Clark with first degree murder, which is the unlawful killing of another human being with malice aforethought. California Penal Code §187.

PHYSICAL EVIDENCE

Only the following physical evidence may be introduced at trial. The prosecution is responsible for bringing:

1. Exhibit A, Diagram of the 10th floor of the Bells Hotel with the geofence
2. Exhibit B, Diagram of the 10th floor of the Bells Hotel (no geofence)
3. Exhibit C, Diagram of the crime scene
4. Exhibit D, Partial footprint found at the crime scene
5. Exhibit E, Tobie's silk scarf
6. Exhibit F, Saber found at the crime scene
7. Exhibit G, Medical examiner's diagram of Kieran Sunshine's body

All reproductions can be reproduced in the original size located in this packet or up to 22" X 28."

STIPULATIONS

1. All witness statements were taken in a timely manner.
2. The transcript of the 911 call is not available.
3. Dr. Parker Turner and Dr. K.C. Vasquez are qualified experts and can testify to each other's statements. They may also testify to any relevant information they would have reasonable knowledge of from the fact situation, witness statements and exhibits.
4. At the time of the arrest, there was sufficient probable cause to arrest Tobie Clark.
5. All physical evidence and witnesses not provided in the case are unavailable and their availability may not be questioned.
6. The test results on January 3rd showed bacterial infections spreading amongst the ForeverFlex patients.
7. Tobie Clark had full access to all of ForeverFlex test results.
8. The patent application contained information which could merit charges against Tobie Clark and Kieran Sunshine for making false statements to the federal government.
9. Kieran Sunshine was wearing a black two-piece suit and a white collared shirt with a gray tie on the 16th of July, the same suit he was found in on the 17th of July.
10. Tobie's shoe size is 41, Emari's shoe size is 41.5, Gerri's shoe size is 42 and Kieran's shoe size is 44.

11. Tobie Clark has an old rotator cuff shoulder injury.
12. Tobie, Gerri, and Emari all previously owned Magnates shoes. Detective Perren was unable to obtain any of their shoes.
13. Gerri and Kieran's rooms are adjoined by two connecting doors facing each other. Each door locked from the inside of their respective rooms. The door belonging to Kieran's room was always locked on Kieran's side.
14. Kieran wrapped the silk scarf the morning of July 16th and gave the scarf to Tobie that same morning.
15. All witnesses are right-handed and the fingerprints found on the saber are consistent with someone gripping the saber with their right hand.
16. There is no activity on Kieran's phone after 10:30 PM on July 16.
17. Any resemblance to real persons or entities is purely coincidental.
18. Exhibit A is a diagram of the 10th floor of the Bells hotel with the geofence created by Detective Perren. Exhibit B is a diagram of the 10th floor of the Bells hotel created by Detective Perren without the geofence. Exhibit C is a diagram of the crime scene created by Detective Perren. Exhibit D is a photograph of the partial footprint found at the crime scene by Detective Perren. Exhibit E is Tobie's silk scarf given to Tobie by Kieran and found at Tobie's house. Exhibit F is the saber found at the crime scene by Detective Perren. Exhibit G, is a diagram of Kieran Sunshine's body created by Doctor Vasquez.

PRETRIAL:

19. In Exhibit A, the diagram of the 10th floor of the Bells Hotel with the geofence, each square represents 15 square feet. The circle indicates the boundary of the geofence.
20. For purposes of the pre-trial argument, the map of the geofence warrant (Exhibit A) may only be used if the defense's motion to exclude is denied. If the defense's motion is granted, the exhibit cannot be admitted into evidence, nor can it be used for impeachment purposes.
21. If the doubled-bracketed information is excluded from trial, it may not be used during the trial for any reason, including for impeachment purposes.
22. The search did not violate California Electric Communications Privacy Act (CalECPA).
23. The three other customers found during the geofence warrant did not have anything to do with Kieran's murder.

LEGAL AUTHORITIES

Statutory

California Penal Code § 187. Murder defined
Murder is the unlawful killing of a human being with malice aforethought.

California Penal Code § 188. Malice defined
Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

California Penal Code § 189. Degrees of murder
All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or amor, poison, lying in wait, torture, or by any other kind of willful, deliberate and premeditated killing … is murder of the first degree.

JURY INSTRUCTIONS

CALCRIM 223 (Direct and Circumstantial Evidence)
Facts may be proved by direct or circumstantial evidence or by a combination of both. Direct evidence can prove a fact by itself. For example, if a witness testifies, he saw it raining outside before he came into the courthouse, that testimony is direct evidence that it was raining. Circumstantial evidence also may be called indirect evidence. Circumstantial evidence does not directly prove the fact to be decided but is evidence of another fact or group of facts from which you may logically and reasonably conclude the truth of the fact in question. For example, if a witness testifies that he saw someone come inside wearing a raincoat covered with drops of water, that testimony is circumstantial evidence because it may support a conclusion that it was raining outside. Both direct and circumstantial evidence are acceptable types of evidence to prove or disprove the elements of a charge, including intent and mental state and acts necessary to a conviction, and neither is necessarily more reliable than the other. Rather, you should give each piece of evidence the weight you think it deserves. Neither is entitled to any greater weight than the other. You must decide whether a fact in issue has been proved based on all the evidence.

CALCRIM 224 (Circumstantial Evidence: Sufficiency of Evidence)

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the People have proved each fact essential to that conclusion beyond a reasonable doubt. Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

CALCRIM 520 (Murder with Malice Aforethought)

The defendant is charged with murder. To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant committed an act that caused the death of another person; and
2. When the defendant acted, (he/she) had a state of mind called malice aforethought; and
3. (He/She) killed without lawful (excuse/[or] justification).

There are two kinds of malice aforethought, express malice and implied malice. Proof of either is sufficient to establish the state of mind required for murder. The defendant acted with express malice if (he/she) unlawfully intended to kill.

The defendant acted with implied malice if:

1. (He/She) intentionally committed an act;
2. The natural and probable consequences of the act were dangerous to human life;
3. At the time (he/she) acted, (he/she) knew (his/her) act was dangerous to human life; and
4. (He/She) deliberately acted with conscious disregard for (human/ [or] fetal) life.

Malice aforethought does not require hatred or ill will toward the victim. It is a mental state that must be informed before the act that causes death is committed. It does not require deliberation or the passage of any particular period of time.

CALCRIM 521 First Degree Murder (Pen. Code, § 189)
The defendant has been charged with first degree murder under the theory that the murder was willful, deliberate, and premeditated.

The defendant is guilty of first-degree murder if the People have proved that (he/she) acted willfully, deliberately, and with premeditation. The defendant acted willfully if (he/she) intended to kill. The defendant acted deliberately if (he/she) carefully weighed the considerations for and against (his/her) choice and, knowing the consequences, decided to kill. The defendant acted with premeditation if (he/she) decided to kill before committing the act that caused death.

The length of time the person spends considering whether to kill does not alone determine whether the killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time.

The People have the burden of proving beyond a reasonable doubt that the killing was first degree murder rather than a lesser crime. If the People have not met this burden, you must find the defendant not guilty of first degree murder and, assuming that you find that the prosecution proved each of the elements of murder, the murder is second degree murder.

PRETRIAL HEARING

Middle school students do not argue the pretrial motion and therefore the bracketed information and Exhibit A may be used at trial.

This section of the mock trial contains materials and procedures for the preparation of a pretrial motion on an important legal issue. The presider's ruling on the pretrial motion will have a direct bearing on the admissibility of certain pieces of evidence and the possible outcome of the trial. The pretrial motion is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies, distinguish a variety of factual situations, and analyze and debate constitutional issues. These materials can be used as a classroom activity or incorporated into a local mock trial competition. The pretrial motion is the only allowable motion for this competition.

In arguing the pretrial motion, teams may only use the closed library of case materials in the People v. Clark mock trial case packet. The closed library includes the authorities listed below under Constitutional Provisions and Case Law. It also includes the brief references to rules from certain cases in this section, such as *Mapp v. Ohio.* Participants in this mock trial may also use the Fact Situation, Pretrial Supplemental Fact Situation, and relevant parts of the witness statements in arguing the pretrial motion before presiders.

The Fourth Amendment, as applied to the states through the 14th Amendment, protects against unreasonable searches and seizures, usually by requiring a search warrant. The Fourth Amendment further states that warrants must be supported by probable cause. Probable cause exists where police applying for a warrant demonstrate that "there is a fair probability that . . . evidence of a crime will be found in a particular place" described in the warrant. *U.S. v. Grubbs*, 547 U.S. 90, 95 (2006).

When a search takes place without a warrant, it is often considered an unreasonable search, which is illegal. When an illegal search occurs, the court can provide a remedy through the "exclusionary rule," which allows the Court to exclude illegally obtained evidence from being used at trial against a defendant. *Mapp v. Ohio*, 367 U.S. 643 (1961).

Geofence Warrants

The search warrant in this case is a geofence warrant, which is a specialized kind of search warrant. A “geofence” is a virtual fence (perimeter) around a geographic area created by the location data for every mobile-device user within the area and over a particular period of time. When a person activates their cellphone or other mobile device in a geographic area covered by cell towers in that area, the cellphone uses the Global Positioning System (GPS) to send a unique electronic signal or “ping” to a cell tower. Every “ping” is then stored by the electronic data company Google. Law enforcement often seeks location data for mobile-device users during criminal investigations and serves geofence warrants on Google to retrieve that information.

Police typically follow a three-step procedure to apply for and obtain evidence from a geofence warrant. First, police apply for the geofence warrant as they would any other search warrant, and they identify the type of evidence they are seeking that would show a magistrate (judge) that there is a fair probability that the evidence sought exists, is in a particular location, and that it will be in that place when the police execute (carry out) the warrant. The particular type of evidence to be seized would be phone numbers (without users’ names) associated with the mobile devices in the geofence area. Police specify the size, shape, and timeframe of a geofence warrant. The area of geofence warrants can be virtually any shape, whether a circle or any polygon (triangle, square, pentagon, etc.). Police serve the warrant on Google, the electronic data company that collects and houses virtually all location data for mobile devices when location data services are activated within the mobile devices.

Second, police may narrow the number of devices identified in the geofence and may also expand the geographic area, timeframe, or both in order to see where those specified mobile devices traveled. Police also request this additional information from Google.

In the third stage of the procedure, police request de-anonymized data (e.g., user account information, such as names (if available) or email addresses) from the electronic data company for the devices they identified in the second stage, or for a subset of those devices.

The Motion to Quash

The defense has filed a motion to quash the warrant. A motion to quash is a motion by the defense to have the court invalidate the search warrant for violating the Fourth Amendment's protection against unreasonable searches and seizures. If the defense motion is granted, then all evidence contained within the double-bracketed portions of text in this case packet will be excluded from trial and inadmissible for any purposes at trial (see discussion of the exclusionary rule below). If the motion is denied, then all evidence in those same double-bracketed portions will be admissible at trial.

The defense challenges the warrant on two grounds: (1) the warrant lacked probable cause for Detective Perren to seize cellphone evidence surrounding the homicide of Kieran Sunshine because it was overbroad; and (2) Det. Perren did not act in good faith in executing the warrant. An overbroad warrant does not sufficiently particularize the evidence to be searched for and seized or the location of that evidence. The term good faith means honest intent or acting without any intent to take an unfair advantage over someone. For police, that means acting without any intent to treat suspects unfairly or fraudulently. Acting in good faith without a warrant is an exception to the warrant requirement of the Fourth Amendment.

The parties agreed that Det. Perren's use of a geofence warrant was a search, and the search did not violate the statutory provisions of the California Electronic Communications Privacy Act (CalECPA), a California law that requires law enforcement to get a warrant before retrieving electronic information about anyone's location and activities.

If the court finds the warrant was not overbroad, then the search was reasonable, and all geofence evidence is admissible: the geolocation map, and testimony. The court would not then need to address the question of Det. Perren's good faith in execution of the warrant. If the warrant was overboard, however, then the search was unreasonable, and the question would remain whether Det. Perren acted in good faith in their execution of the warrant.

If Det. Perren acted in good faith, such that the exclusionary rule should not apply, all geofence evidence is admissible even if the warrant is found to be overbroad. If Det. Perren did not act in good faith, such that the exclusionary rule should apply, no geofence evidence is admissible.

In the pretrial hearing, the defense will argue first, followed by the prosecution, because the defense is bringing the motion. What follows are outlines of pretrial arguments for the prosecution and defense. Mock trial teams may find additional arguments based on the authorities and facts contained within this case packet.

Defense Arguments

At the pretrial hearing, the defense will argue that the geofence warrant was invalid and therefore the search was unreasonable. The exclusionary rule should apply, and therefore no geofence evidence should be admitted.

The defense will argue that the geofence warrant was invalid because it was not supported by probable cause and not sufficiently particular, which made the warrant overbroad. The overbroad warrant gave Det. Perren too much discretion in searching for evidence that was clearly unrelated to the crime, namely the cellphone data of persons who could not have been involved.

If the Court finds that the search was unreasonable, the defense will argue that the geofence evidence should not be admitted because Det. Perren did not act in good faith in executing the warrant, and therefore there was no exception to the warrant requirement in Det. Perren's search. The defense will argue that Det. Perren failed to obtain magistrate approval for a new warrant before narrowing the list of 80 devices originally found within the geofence to just five, and before requesting de-anonymized customer "pings" in the geofence. Furthermore, Det. Perren drew the geofence too broadly, knowing that Det. Perren did not have probable cause as to each customer in the fence. Finally, the four-hour timeframe in Det. Perren's second request for location data was unreasonably long.

Prosecution Arguments

At the pretrial hearing, the prosecution will argue that the geofence warrant search was not overbroad, and therefore all geofence evidence should be admitted. The prosecution will argue that Det. Perren described the place to be searched and items to be seized with sufficient particularity with regard to the evidence to be seized and its location in Google's data storage. Furthermore, the prosecution will argue that Detective Perren only requested de-anonymized data from Google once Perren established that there were cellphones near the scene of the crime (Kieran's suite) at a time that an eyewitness said the

defendant appeared to be moving toward the scene of the crime.

If the court finds that the warrant was overbroad and therefore invalid, the prosecution will argue that the geofence evidence should be admitted anyway because Det. Perren acted in good faith in connection with the search, a known exception to the warrant requirement. The prosecution will argue that Det. Perren had appropriately executed similar warrants in the past with magistrate approval, that Det. Perren did not hold any malicious intent in executing the warrant, and that Det. Perren acted as a reasonably well-trained officer in light of the lack of existing jurisprudential guidance on the execution of geofence warrants. The prosecution will further argue that Det. Perren made a sincere effort to follow available guidelines in applying a novel technology to the investigation.

Pretrial Supplemental Fact Situation

[[On the afternoon of July 17, 2023, Detective Perren applied to a magistrate for a geofence warrant in this case. In the warrant application, Det. Perren sought location data for all mobile devices within the circular geofence indicated in Exhibit A and at the time of 11:00 PM. The detective included the following statement of probable cause to support the warrant:

> **Statement of Probable Cause:**
>
> On July 16, 2023, Kieran Sunshine was staying at the Bells Hotel. Kieran's suite was on the 10th floor of the building in the northwest corner of the floor, overlooking the intersection of Great Avenue and 5th Street. At around 11:10 PM, Gerri Moayed in the hotel room next door to Kieran's suite overheard arguing that appeared to be coming from Kieran's suite. Gerri Moayed was Kieran Sunshine's personal wellness coach or life coach.
>
> The next day, on July 17, at approximately 8:00 AM, Moayed entered Kieran Sunshine's suite and found Sunshine's dead body, apparently stabbed. A bloody blade that appeared to be a saber lay on the floor next to the corpus (body of Kieran Sunshine). My own observation of the corpus indicated the time of death to be approximately eight and-a-half or nine hours before 8:00 AM. Gerri reported to me about the argument the night before and said Gerri recognized Kieran's voice and one other voice Gerri believed was that of Tobie Clark.
>
> I have probable cause to believe that whoever committed homicide against Kieran Sunshine did so on July 16, 2023,

sometime around 11:00 PM or soon thereafter. I have probable cause to believe that if the perpetrator carried a cellphone, a geofence warrant would capture information about that cellphone in the vicinity of Kieran Sunshine's suite, if not inside the suite.

I also have probable cause to believe that a geofence centered outside Kieran Sunshine's suite with about a 75-foot radius would capture the mobile devices in the nearby hallways on the 10th floor and in Kieran's suite. The perpetrator could only have entered Kieran's suite through the door from the hallway and likely staked out the suite from the hallway to avoid being seen entering. The perpetrator could have been anywhere in the hallways nearby close to the time of the killing.

The magistrate approved the warrant, and Det. Perren submitted it to Google to retrieve the phone numbers present in the geofence. On July 18, Google supplied Det. Perren with cellphone numbers associated with 80 cellphones in the geofence. Sixty of those numbers were present within the Bells Hotel, and 20 of them appeared to be present on the sidewalk outside the hotel at the corner of Great Avenue and 5th Street.

Det. Perren then identified five cellphone numbers that appeared in the vicinity of Kieran Sunshine's suite at 11:00 PM on July 16. Det. Perren made a second request to Google to provide the de-anonymized (specific user-account) information for those five devices and for a four-hour timeframe between 10:00 PM and 2:00 AM. One device appeared in the room adjacent to Kieran's suite throughout the four-hour span, which was Gerri Moayed's room. Another appeared in the north-south hallway adjacent to Kieran's suite at 11:00 PM as seen in Exhibit A, but then did not ping anywhere in the geofence after that. Two others in the central north-south hallway and one in the east-west hallway at the top of the map in Exhibit A appeared to move into and out of a couple of rooms on the 10th floor within the geofence, and also disappeared a couple of times from the geofence entirely.

Finally, Det. Perren requested de-anonymized data for the five devices. The device in Gerri Moayed's room belonged to Gerri Moayed. The device in the north-south hallway adjacent to Kieran's suite belonged to Tobie Clark. The three additional numbers belonged to persons that Det. Perren determined were not connected to this case and whose names have remained confidential.]]

Pretrial Sources

The sources for the pretrial motion arguments are a "closed library," which means that Mock Trial participants may only use the materials provided in this case packet. These materials include: the fact situation, exhibits, any relevant testimony to be found in any witness statements, excerpts from the U.S. Constitution, and edited court opinions.

Relevant witness testimony is admissible in the pretrial hearing without corroborative testimony for the purposes of the pretrial motion only. Exhibits referenced during the pretrial hearing have not been entered into evidence for the trial. Teams will still need to enter those exhibits into evidence during the trial.

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

Constitutional

U.S. Constitution, Amendment IV
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amendment XIV
Persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Case Law

U.S. Supreme Court Cases

***Stanford v. State of Texas**., 379 U.S. 476 (1965)*
Facts: Police conducted a search of Petitioner's home and seized more than 2,000 items pursuant to a warrant which authorized seizure of "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party." Petitioner argued that the warrant was overbroad and insufficiently particular, invalidating the search under the Fourth Amendment.

Issue: Was the warrant overbroad?

Holding: Yes. The Court found the warrant insufficiently particular and overbroad. The Court explained that "the constitutional requirement that warrants must particularly describe the 'things to be seized' is to be accorded the most scrupulous exactitude when the 'things' are books, and the basis for their seizure is the ideas which they contain." The "indiscriminate sweep of that language" in the warrant did not pass constitutional muster under the Fourth Amendment.

***United States v. Leon**, 468 U.S. 897 (1984)*
Facts: Relying on a tip from confidential information, police began an investigation into Defendant for selling narcotics. After police searched Defendant's residence pursuant to a warrant and recovering narcotics, the District Court found that parts of the warrant were unsupported by probable cause. The prosecution objected to this suppression order, arguing that the Fourth Amendment exclusionary rule should not apply where evidence is seized in reasonable, good faith reliance on a search warrant.

Issue: Is it an exception to the exclusionary rule if police conduct a search in good faith based on a search warrant that is later found to be invalid?

Holding: Yes. In this case, the district court found the warrant to be facially deficient after the search had been completed. The U.S. Supreme Court agreed with the prosecution that the exclusionary rule can be modified in certain circumstances "without jeopardizing its ability to perform its intended functions." The exclusionary rule itself is a remedy intended to deter police misconduct, not a separate right belonging to defendants. Where "law enforcement . . . acted in objective good faith or their transgressions have been minor," the court must weigh the costs versus the benefits of applying the

exclusionary rule. Where police act in good faith based on an invalidated search warrant, the costs of applying the exclusionary rule may be "allowing some guilty defendants to go free" and generating "disrespect for the law." The benefits in that case, however, are "marginal or nonexistent."

***Groh v. Ramirez**, 540 U.S. 551 (2004)*
Facts: ATF agents prepared a warrant to search Defendant's residence for alleged weapons, explosives, and records. The agents mistakenly omitted the items the agents intended to seize. The warrant was approved by a magistrate (judge). Upon conducting the search, no weapons or explosives were recovered. Defendant brought suit, arguing that the search warrant was invalid because it did not particularly describe the items to be seized, but rather described where the search occurred.

Issue: Is a warrant that does not describe the area to be searched and items to be seized invalid under the Fourth Amendment? Also, can the police executing the warrant be sued for misconduct?

Holding: Yes to both questions. The Court held that the warrant was plainly invalid because it did not describe the weapons and explosives to be seized during the search with sufficient particularity. Therefore, "the warrant was so obviously deficient that [the Court] must regard the search as 'warrantless' within the meaning of . . . case law." Finally, the Court refused to grant police qualified immunity (protection from being sued for misconduct) because the warrant was "so facially deficient . . . that the executing officers cannot reasonably presume it to be valid."

Other Federal Cases

***Matter of S**earch Warrant Application for Geofence Location Data Stored at Google Concerning an Arson Investigation, 497 F. Supp. 3d 345 (N.D. Ill. 2020)*
Facts: There was a series of arsons in Chicago and during the course of the investigation, investigators identified two vehicles that were seen at both locations 1 and 3. Because of this information, the government believed geofence data would help them locate the person who committed the arson. The government sought a warrant for geofence data from Google. The warrant specified the location and time for the geofence data. Google provided information about the location of cell phone users in six locations where the arsons occurred.

Issue: Was the geofence warrant supported by probable cause and was it sufficiently particular and not overbroad?

Holding: Yes. The court found that the geofence warrant

satisfies the probable cause and particularity requirement of the 4th Amendment. The court found that the government had probable cause to believe that the geofence data would contain evidence of arsons. The warrant was not overbroad because the geographical area was small and limited in time.

United States v. Lofstead, 574 F. Supp. 3d 831 (D. Nev. 2021)
Facts: When Defendant was arrested for certain crimes against children, police seized his cellphone. Police then applied for a warrant to search the cellphone. The items to be searched and seized were listed as follows: "Any and all records and materials that may be found within [the phone], in any format or media . . . pertaining to the Target offenses." Other items were similarly listed, such as "Any and all documents, records, or correspondence . . . pertaining to the Target offenses." Defendant moved to suppress evidence recovered from a search of his cellphone, arguing that the search warrant was impermissibly broad. The government conceded that the warrant was "in some ways overbroad, but counter[ed] . . . that exclusion is not justified because the good faith exception applies."

Issue: Was the warrant sufficiently particular and not overbroad in identifying items to be searched ?

Holding: No. General warrants lack "clear limitations on the items to be searched for and seized" and are unconstitutional. The court noted that general warrants "motivated the framing and adoption of the Fourth Amendment." In this case, the court found the warrant to be overbroad and insufficiently particular because there was no temporal limitation on the warrant's execution. To be valid, warrants must have specificity, which requires *particularity* and *breadth*. The Court explained these terms:

> Particularity is the requirement that a warrant must clearly state what is sought. Breadth deals with the requirement that the scope of the warrant be limited by the probable cause on which the warrant is based.

Particularity prohibits "exploratory rummaging in a person's belongings." Further, description of items to be seized in this case were "so numerous and unspecific to create an unrestricted 'dragnet' search," which is akin to the general warrant prohibited by the Fourth Amendment. The court refused to apply the good faith exception to the exclusionary rule, explaining that "the warrant's scope is *per se* unreasonable" and "[t]he defect [in the warrant] arises not from a lack of compliance with the warrant's terms, but from the failure of executing officers to recognize that the warrant authorizes a general search."

State Cases

***People v. Meza**, 90 Cal. App. 5th 520 (2023)*
Facts: Police used a geofence warrant to tie defendant Daniel Meza to the murder of Adbadalla Thabet after it was discovered that Meza's cellphone had "ping'ed" in several of the same locations as Thabet on the day of the murder. The trial court refused to suppress the geofence evidence over Meza's objections, and Meza was convicted of first-degree murder.

Issue: Was the geofence warrant supported by probable cause, particular enough, and sufficiently narrow so as to comply with the Fourth Amendment, as applied to the states through the 14th Amendment? If not, did the police nonetheless act in good faith in executing the warrant so as to render the search valid, despite its issues?

Holding: No to the first question. Yes to the second question. The police had probable cause to believe that Meza was using a cellphone on the day of the murder, given how common cellphones are in modern society. While the warrant described the places searched and things to be seized with appropriate particularity, police had too much discretion to broaden these categories by asking Google for more information without obtaining a second warrant, ultimately invalidating the warrant. Further, the geofence was too broad to be supported by probable cause for each customer "ping'ed" in the fence. The court was concerned about "the potential of sweeping up the location data of a substantial number of uninvolved persons." This was especially so because "[t]he [geolocation datapoint] recorded by Google as the device's location is not a physical actual location of the device. It's just the estimate derived from the measurement that they took." Finally, the court found that the police acted in good faith, even though they were working with scant judicial precedent and a brand-new investigative tool. Police conduct therefore fell within the good faith exception to the warrant requirement established in *United States v. Leon* and the Court affirmed Meza's conviction.

***Price v. Superior Ct. of Riverside Cnty.,** No. E078954, 2023 WL 4312776 (Cal. Ct. App. July 3, 2023)*
Facts: Defendant Ahmad Raheem Price was charged with first-degree murder in the shooting death of the victim. In this case, the deputy sheriffs' geofence described in the warrant covered the victim's front yard, including the front porch where the shooting occurred, and the street in front of the house for the lengths of two houses in each direction. The timeframe of the geofence was a 22-minute period during which several 911

calls had been made. In the first stage, Google provided information showing five mobile devices in the geofence period. In the second stage, deputy sheriffs requested more information where those devices were before and after the 22-minute period. Two of the devices were shown to have left the geofence area to a new location. In the third stage, the deputy sheriffs requested de-anonymized information about those two devices, one of which belonged to Price.

Issue: Was the geofence warrant supported by probable cause, particular, and sufficiently narrow so as to comply with the Fourth Amendment, as applied to the states through the 14th Amendment? If not, did the police act in good faith in executing the warrant so as to render the warrant valid, despite its issues?

Holding: Yes to both questions. The police had probable cause to believe that Price was using a cellphone on the day of the murder, given how common cellphones are in modern society. The warrant was also particularized because it was "narrowly tailored to minimize the potential for capturing location data for uninvolved individuals." This does not mean that "the warrant . . . eliminate[d] every possibility that it will capture location data and identifying information of individuals for whom there is no probable cause to believe are suspects or witnesses to the crimes." The court merely decided that the warrant was reasonable in size under the circumstances. At the time the warrant was issued, there were no published cases on the constitutionality of geofence warrants; the Court found that the police here acted in good faith in any case.

***United States v. Chatrie**, 590 F. Supp. 3d 901 (E.D. Va. 2022)*
Facts: After a bank robbery, the suspect exited the bank and went into an adjacent building west of the bank. After conducting an initial investigation, including interviewing eyewitnesses, the police detective was granted a geofence warrant that covered a circle with a 300-meter (or 984-foot) diameter, which spanned 17.5 acres of land. (The court noted that is about three-and-a-half times the size of a New York City block.) The geofence timeframe was one hour on the day of the robbery. In stage one, the warrant garnered mobile device data for 19 phones within the geofence. In stage two, the detective did not narrow the list of 19 users in his request for de-anonymized data, and he expanded the timeframe to 30 minutes before and after the one-hour period. At the prompting of Google, the detective narrowed the list to nine users without explanation. In stage three, the detective requested more de-anonymized data for three of the nine devices, again without explanation. The detective finally requested additional information on one of the devices, which Google did not comply with because the three-step process had

already been completed. The entire process led the detective to Okello Chatrie who was charged with two crimes related to the robbery.

Issue: Was the geofence warrant supported by probable cause, particular, and sufficiently narrow so as to comply with the 4th Amendment, as applied to the states through the 14th Amendment? If not, did the police act in good faith in executing the warrant so as to render the warrant valid, despite its issues?

Holding: No to the first question. Yes to the second question. The court found that police did not have probable cause as to every cellphone customer within the geofence, invalidating the warrant. This was partially due to Google's own admission that "Google aims to accurately capture [only] roughly 68 percent of users" within a geofence. The warrant lacked particularized probable cause, which would have allowed him to seize only evidence of a particular crime. Police also had too much discretion in de-anonymizing customer accounts without obtaining a second warrant. The court then briefly addressed issues about the third-party doctrine, but found that Chatrie could not have "in a meaningful sense . . . voluntarily assumed the risk of turning over a comprehensive dossier of his physical movements to law enforcement." Finally, the court refused to suppress the geofence evidence because it found that the police acted in good faith, even though the warrant had defects (described above). Here, the detective had three prior geofence warrants approved, even though it was a novel technology, and had consulted with government attorneys before applying for this warrant. The warrant lacked particularity, but not so much that future improper police conduct would be deterred by applying the exclusionary rule. The court noted that "the legality of [geofence warrants] is unclear." Even though the detective acted in good faith, "the Court nonetheless strongly cautions that this exception may not carry the day in the future . . . . If the Government is to continue to employ these [geofence] warrants, it must take care to establish particularized probable cause."

Unpublished

The following case is as yet unpublished. Unpublished cases cannot be used as binding precedent (i.e., courts do not have to follow its ruling). However, they can be cited as guidance for the analytical persuasiveness of the case. In other words, this case can help the judge understand the issues in the case in chief before coming to a ruling on the motion.

***People v.* Dawes (Laquan Dawes, Superior Court of California for the County of San Francisco Dept. 23, Court No. 19002022, SW # 42739 (Sept. 30, 2022)**

Facts: A burglary occurred at a home in a densely populated area with a lot of foot traffic. The suspects were captured on video. The officers were unable to identify the suspects from the video and requested a geofence warrant to obtain location data for the area of the burglary, during the suspected time of the crime. The officer's geofence was a trapezoid that included five other private homes located near the burglarized home and the entire street area where the home was located. Without requesting another warrant, the officers returned to Google to unmask information about specific devices and obtain identifying information.

Issue: Was a geofence that was supported by probable cause also sufficiently particular and narrow as to comply with the Fourth Amendment?

Holding: No. The court concluded that the warrant was supported by probable cause but was not sufficiently particular because it did not narrowly tailor the search to the specific crime being investigated. In coming to this conclusion, the court cited the warrant's 100-meter radius around the victim's home was too large an area and could include many innocent people who were not involved in the crime. The police had an obligation to narrow the geometric shape to exclude areas where the crime and suspects were not present, thereby limiting the number of devices provided to police. Also, the warrant did not specify the types of location data, thus requiring Google to turn over sensitive data such as the user's home address, and personal locations they visited. Finally, because the officers did not return to the court for judicial oversight before requesting identifying information, the court determined the officers exercised too much discretion during the execution of the warrant.

Law Review Journal Article

"Geofence Warrants and the Fourth Amendment." *Harvard Law Review*, Vol. 134, No. 7 (May 2021)

Geofence warrants "rely on the vast trove of location data that Google collects from Android users — approximately 131.2 million Americans — and anyone who visits a Google-based application or website from their phone, including Calendar, Chrome, Drive, Gmail, Maps, and YouTube, among others." Over the years, law enforcement officers have relied heavily on the execution of geofence warrants which allows them to obtain information about cell phones that were in a specific area at a specific time.

Supporters say that geofence warrants are valuable tools for law enforcement to investigate crimes. They are similar to traditional search warrants as they allow law enforcement to search a specific location for evidence of a crime. They are also helpful in tracking the movements of a suspect in cases where it is difficult to identify them. Supporters also argue that geofence warrants are less intrusive compared to other investigative techniques as they only disclose location not the content of communications.

Those who caution against enforcement of geofence warrants argue that the warrants violate the Fourth Amendment's protections against unreasonable searches and seizures. It does so by allowing law enforcement to collect data about people's movements, without any indication that those people were involved in criminal activity. This could have a "chilling effect on free speech and association." Furthermore, the current process for approving geofence warrants is too secretive and lacks judicial oversight in each step of the process. This makes it difficult for the public to hold law enforcement accountable for the implementation of these warrants.

WITNESS STATEMENTS

Prosecution Witness – Detective Nova Perren

My name is Detective Nova Perren with the Kingsley County Police Department. I am 38 years old. I am the lead investigator in the homicide of Kieran Sunshine. I was a beat cop for seven years before I became a detective in 2015. I have successfully managed dozens of homicide cases. I have special certifications in forensic investigation and analysis, as well as crime scene forensic training. I also have extensive experience in using technology to aid in criminal investigations, specifically police searches and seizures.

I responded to the report of the homicide of Kieran Sunshine on the morning of July 17 and headed to the Bells Hotel. When I arrived at Kieran's suite, I was met at the door by a hotel staff person and Gerri Moayed. Moayed said that Moayed was the person who found Kieran Sunshine's body.

I entered the suite and saw that Kieran was on his back in the suite's living room. There was a visible, bloody wound on the right side of his upper abdomen. Blood had pooled on the floor next to the body. I did a quick pulse check and was unable to find one. I conducted a visual inspection of the body. Kieran was wearing a black two-piece suit and a white collared shirt with a gray tie. Based on my training and experience, my visual observation of the body's lividity (discoloration of the skin indicating the settling of blood within the body at the lowest point of gravity) showed me Kieran had died approximately 8.5–9 hours before. I knew the medical examiner would confirm or refine this fact.

There was a saber on the ground next to the right side of the decedent's body. There was a partial bloody shoeprint also on the right side of the decedent's body. I took a photo of the print and the saber before the medical examiner moved the body, and also took a sample of the blood from the saber and footprint to confirm that it came from the deceased. Forensic testing eventually revealed that the shoeprint came from an expensive athletic shoe brand manufactured in Belgium called Magnates and based on my observation of the dimensions of the partial shoeprint, the print indicated a shoe that was between a European size 41-42. I also recovered five mixed red and blue fibers from Kieran's suit jacket sleeve.

The blade of the saber is 13 inches long. I found fingerprints on the grip, also often called the handle of the saber and I

preserved those prints. There were two sets of prints, one of which consisted of four prints that were later confirmed to be Tobie Clark's. Clark's fingerprints were on the grip, near the blade of the saber. There was another unidentified set of three fingerprints near the end of the handle. They were not very clear and I was unable to find a match with any of the witnesses in the case or the national fingerprint database.

After I secured the scene, I interviewed Gerri Moayed, the person who discovered the body. Moayed told me Moayed had been Kieran's personal life coach and confidant. Moayed stated that the pair had a planned meeting for morning yoga and herbal tea at 8:00 AM. When Moayed arrived at Kieran's suite there was no answer, so Moayed used a key to enter the room. Moayed saw the body on the floor of the living room of the suite and called 911. When I asked Moayed if Kieran had any problems with anyone recently, Moayed stated that Tobie Clark had come by Kieran's suite the night before around 11ish, and that Moayed had heard the two yelling. Moayed told me that Clark and Kieran had been at odds since January regarding the ForeverFlex, a product of Sunshine Medical Components, where Moayed, Kieran, and Clark worked.

According to Moayed, Kieran had confided that the ForeverFlex caused serious health problems for patients and that this flaw would have likely put an end to the product. Moayed said that since early January, Clark was pressuring Kieran not to divulge the truth about the product's flaw to the SMC board. Moayed shared that Kieran went along with Clark's plan but had recently changed his mind and planned to tell the truth about ForeverFlex's problems to the board at the board meeting. Moayed also stated that Clark had purchased the saber to be used to open an expensive champagne bottle at the board meeting.

Two days after the death of Kieran, Gerri Moayed came to the station to be fingerprinted and told me Gerri had seen a blue latex glove in the trash can by the elevators on the same floor as Kieran's suite. I did not, however, see this glove there on July 17 when I conducted my investigation.

I then interviewed Arian Sunshine. Arian shared that Arian had not noticed any signs of contention between Clark and Kieran. Arian told me that Emari Sunshine, the eldest Sunshine sibling and the VP of Research & Development for SMC, stood to inherit Kieran's financial interest in the company if Kieran died. Emari became a person of interest in this investigation. (A person of interest is someone who could be involved in a crime but is not yet a suspect.)

Emari Sunshine voluntarily came to the police station on July 18 for an interview. Emari revealed to me a history of tension between Clark and Kieran. Emari also was suspicious that Tobie might be committing fraud. Emari provided a statement claiming Emari saw Clark walking toward Kieran's suite the night of the murder around 11:00 PM. I had been informed that the fibers I found on Kieran's jacket sleeve appeared to be made out of silk, so I asked if Emari owned any silk garments. I also asked if Emari owned a pair of Magnates tennis shoes. Emari denied owning any silk but did admit to owning a pair of Magnates. Emari did not provide the shoes to forensics, claiming that the shoes were lost. Gerri Moayed also stated that they owned a pair of Magnates shoes but was unable to locate them.

Finally, I interviewed Tobie Clark at the police station on July 19. Clark, who appeared voluntarily and was represented by an attorney, admitted to going to Kieran's room on the morning of July 16, around the time Gerri Moayed overheard an argument. Clark stated that it was a scheduled meeting to discuss preparations for the board meeting and reception. Clark stated that at that meeting, Clark showed Kieran the saber and champagne bottle. According to Clark, Kieran stated that ForeverFlex didn't work, and that Kieran planned to lie to the board in hopes of buying more time to get the product to work.

I then let Clark know that others alleged that Clark intended to carry out the fraud by lying to the board. Clark claimed not knowing that anything was wrong with the ForeverFlex until the morning of July 16, and that they were following orders from Kieran. I asked Clark what Kieran had been wearing at the meeting, and Clark described his outfit as a black two-piece suit, a white collared shirt, and a gray tie. At this time, Clark voluntarily gave fingerprints and DNA samples. I was later able to match Clark's fingerprints definitively to the prints obtained from the saber.

[[To corroborate or refute any alibis my interviewees might present, on July 17 I first requested and received a geofence warrant to request information from Google, the company that retains all electronic geolocation data on cellphone and mobile device users. Here's how a "geofence" works: When a person activates their cellphone in a geographic area covered by cell towers in that area, the cellphone sends a unique electronic signal or "ping" to a tower, which is then stored by the cellphone company and traceable by law enforcement at a later time. The "geofence" is a virtual perimeter around an area created by the pings sent by someone's cellphone. The

geolocation data is normally very accurate, with a small margin of error within a few feet, but at times there can be margins of error of 60-75 feet from where the ping is located.

I had executed five geofence warrants during my tenure with the police department, all of which resulted in a positive suspect identification. Those warrants had all been approved by different magistrates.

In my warrant, I asked for all "pings" that were received by cell towers within the area around the hotel at 11:00 PM. I requested that Google provide the following information for each customer account:

1) the telephone call number for each wireless device;
2) the telephone numbers being called in each communication, if any;
3) the date, time, and duration of each communication; and
4) the type of communication transmitted (i.e., whether text or phone call).

I received a large amount of data back from Google. Using my interviews with witnesses and the analysis of evidence I could do prior to receiving the forensic report, I narrowed down my list to five phone numbers that "ping'ed" within the geofence. I did not request a separate warrant to de-anonymize customer accounts (or show users' account information). Instead, I sent a request to Google to de-anonymize these five customer accounts. I also expanded the timeframe of the geofence in my request to four hours, from 10:00 PM (July 16) to 2:00 AM (July 17). I wanted to see where these five phones might have gone within that span of time.

I discovered that one of the accounts belonged to Tobie Clark, whose phone did not ping after 11:00 PM. Tobie Clark's 11:00 ping was about 75 feet from Kieran's suite and in a location close to where Emari Sunshine claims to have seen Clark from the back, at around that exact same time, rounding a corner toward Kieran's suite. Another de-anonymized phone belonged to Gerri Moayed, whose phone pinged consistently for the full four hours within the room that Gerri Moayed occupied adjacent to Kieran's suite. I investigated the three other customers. I determined that none of these three customers had anything to do with Kieran's murder.]]

Based on the evidence, Tobie Clark became my primary suspect. I obtained a warrant to search Tobie Clark's home for clothes that may have been worn during the killing, Magnates shoes, and any type of silk garment or fabric that could be a match to the fibers collected from Kieran's suit jacket.

I executed the search warrant on July 20. Tobie Clark was present. I seized a red-and-blue colored silk scarf from Clark's home closet that appeared to match the colors of the fibers I had retrieved from Kieran's lower sleeve. I asked Clark about the scarf, and Clark stated that Kieran gave Clark the scarf as a gift on the morning of July 16. The medical examiner later confirmed that the fibers from that scarf and those five fibers I found on Kieran's person were forensically consistent. No shoes matching the description of the bloody shoeprint were located in the home. Clark admitted to previously owning a pair of Magnates but claimed to have donated the pair a few weeks prior to July 16. I did not locate any bloody clothes. Clark's suitcase had already been completely unpacked, and everything from the trip to the Bells Hotel had been put away or had been taken to the dry cleaners.

On August 1, the medical examiner completed Kieran's autopsy, as well as a forensic examination of other physical evidence from the crime scene. Based on all the evidence I had collected, I submitted and obtained an arrest warrant for Tobie Clark for the murder of Kieran Sunshine on August 2. I personally executed the warrant on August 3 at Clark's residence and took Clark into custody.

Prosecution Witness – Dr. K.C. Vasquez (Medical Examiner)

My name is Dr. K.C. Vasquez. I am 63 years old. I have served as the county medical examiner for almost 20 years. I am certified by the American Board of Pathology and I have testified for the county in many criminal cases, especially those that rely on complicated forensic evidence. I received my bachelor's degree in biology from Boston University, then completed medical school at the University of Washington. I completed my forensic pathology residency at the Denver Office of the Medical Examiner. I completed my fellowship at the University of Michigan.

I conducted an autopsy on Kieran Sunshine which showed that Kieran died from a stab wound to his upper-right abdomen. I ruled that the manner of death was homicide. The cause of death was uncontrolled hemorrhaging. The stab wound penetrated his liver, and the weapon was removed from the wound quickly. He was likely dead within minutes of the stabbing. He died in the position in which his body was found, on his back on the floor of the hotel suite.

Given the degree of rigor mortis and the pattern of livor mortis on the body, Kieran died sometime between the hours of 10:00 PM and 2:00 AM on the night of July 16. Rigor mortis is the stiffening of the body that occurs after death, usually beginning about 2 hours after death and lasting in some cases up to 24 hours after death. I arrived at the scene at 8:30 AM to find most of Kieran's body rigid, suggesting it had been more than eight hours since he died. Livor mortis is the color pattern of blood which collects in a dead body as it sits. Since the heart is no longer pumping blood through the veins, gravity forces the blood to pool wherever the body is positioned in death. Here, I found Kieran on his back and there were large patches of discoloration on his posterior thighs where Kieran's body made contact with the floor. Based on this degree of discoloration in Kieran's skin, I estimated that he had been dead for less than 12 hours.

The fatal wound was located on the upper-right-hand side of Kieran's abdomen and was approximately an inch and half wide, and six inches deep. Microscopic analysis of the edges of the lacerations showed that the weapon was likely sharp on one side and smooth on the other, with a semi-pointed tip. Analysis of the internal wound showed that the weapon was curved at the point of the blade to some degree. Microscopic analysis of Kieran's lower ribs revealed notching in the bones

consistent in size with the saber blade as well. In my professional opinion, the champagne saber found at the scene is consistent with the type of weapon that caused Kieran's fatal injury.

The saber weighs 2 ½ pounds. The point could easily cause the deep wound found on Kieran if the wielder used sufficient force. I disagree with Dr. Turner's assertion that Tobie could not have used the saber to stab Kieran based on a previous shoulder injury. I examined Tobie's shoulder X-ray and although there was scar tissue present, the saber itself was not heavy enough to prevent Tobie from lifting it in a way that would cause deadly harm to the victim.

The detective provided me with Tobie's fingerprints. I examined the fingerprints on the saber's handle close to the blade and was able to confirm they matched those of Tobie Clark. I examined the second set of three prints from the saber handle. These were partial prints and a little fuzzy, so I used digital technology to enhance and clean-up the photo by changing the light, contrast, clarity and background patterns. From what I was able to gather from the prints, they did not match anyone's fingerprints in this case. I also tested the blood on the floor and the blood on the saber and confirmed both samples to be Kieran's blood.

The crime scene investigation team also recovered several fibers from Kieran's body on the sleeves of his jacket. Tests revealed the fibers to be silk. Detective Perren requested that I test a French scarf that was recovered from Tobie's home to compare the fibers microscopically. In my professional opinion, there was no discernible material difference between the fibers recovered from Kieran's body and the fibers taken from Tobie's scarf; they are consistent with being the same color and material.

Finally, there was a smudged and bloody shoeprint left near the body. The blood was tested and found to be Kieran's. The tread pattern is from the brand Magnates. All Magnates shoes share the same type of tread on the sole of the shoe. The shoeprint itself was too badly degraded for me to estimate the height and weight of its wearer, but it looks like the footprint belongs to a person who wears between 41 and 42 in European shoe size. However, I can't be completely sure as it was only a partial footprint.

Prosecution Witness – Gerri Moayed (Holistic Wellness Coach and Personal Advisor)

My name is Gerri Moayed. I am 39 years old. I am a holistic wellness coach at SMC and former personal advisor to Kieran Sunshine. I have been a professional wellness coach for ten years. A holistic wellness coach generally helps people achieve their happiest, healthiest, most successful lifestyle. Most wellness coaches focus on physical activity, but I believe that we need to focus on our minds before improving our body. I mentor my clients and serve as a personal counselor to them.

It is true that I lied to get the job at SMC when I was hired in 2018. On my resume, I said that I had a degree in integrative wellness from a well-known holistic health college. I am very good at what I do, but I am not "credentialed" like other coaches. After about six months, my conscience got to me, and I felt comfortable enough with Kieran that I told Kieran the truth about my resume. I explained that there are also numerous other famous motivational speakers who do not have specialized degrees. Like them, I am a gifted motivator and do not need one. In reality, becoming a holistic wellness coach isn't something you excel at in classes and degree programs. I have a degree in life and years of experience with satisfied, enlightened clients to back me up. Like other clients I have had, Kieran saw my healing and soul-strengthening abilities and forgave me for lying on my resume.

In my work for SMC, I have meetings with each employee every few months, and I meet with the executive staff more frequently. My focus is on Kieran as Kieran's personal coach. Over the past five years, Kieran and I cultivated a deep, spiritual friendship based on mutual understanding, respect for nature, and responsibility to our communities. When we worked together, Kieran was able to learn techniques to help himself stay calm and make rational decisions, even while under pressure.

On January 3, in the late morning, I saw Kieran go into Tobie's office and close the door. They were both in there for quite some time. Maybe after an hour, Kieran walked out and he looked like he aged 1,000 years. Both of their moods changed over the next few months. Kieran became more introverted. He wasn't as excited about ForeverFlex or the company. He seemed more fidgety, snapped at people more often, and kept the door to his office closed. Tobie, however, seemed really

amped up after the January 3 meeting. I noticed Tobie started coming into the office early and leaving late. Tobie was always working, rarely even taking a break.

When I had my regular counseling session with Kieran on June 2, Kieran kept dodging my questions. I asked Kieran what was bothering him, and Kieran quietly admitted to me that he was worried that the company would go bankrupt if ForeverFlex didn't work out. I asked him what made him think that ForeverFlex wouldn't work, and Kieran broke down. Kieran told me that he's known since receiving a report on January 3 that the product was causing infections in test subjects during the clinical tests, but that Tobie convinced him to lie to the board members about it at the board meeting. Kieran told me that Tobie believed that lying to the board would buy them time to try to get the product fixed.

When I asked Kieran what he planned to do, he told me that he wasn't sure. But he knew that whatever he did would affect Tobie as well because Tobie has been the one that's been signing contracts and monitoring the patent application for ForeverFlex. Kieran told me that he stopped advertising and trying to bring in more clients for ForeverFlex as soon as he received the poor test results in January, but Tobie clearly hadn't stopped.

Kieran was distraught over his decision on whether to lie to the board about the ForeverFlex failure, but he knew that things could go horribly wrong either way. Kieran was terrified that Kieran and Tobie could be sued by the board for not disclosing the clinical test results and that they both faced potential jail time for criminal fraud if the lie came out. The company would be ruined. I told Kieran that the company was a reflection of who he is as a person and who he wants to be. Kieran then told me that in order to keep the company the way his father always wanted, he would tell the board everything about the ForeverFlex.

I didn't meet with Tobie again after that meeting with Kieran. Usually, Tobie would see me at least once a month, as required by company policy. However, after my meeting with Kieran, Tobie didn't bother coming around to our wellness sessions. I did not trust Tobie. Tobie was an obstacle to Kieran's healing process. Tobie frequently called my holistic therapy practices "all that woo-woo stuff" to my face.

Before the board meeting, I arrived at the Bells Hotel late on July 15 and checked into my adjoining room next to Kieran. Kieran and I weren't scheduled to meet the next morning, so I was

looking forward to sleeping in. But that didn't happen. Sometime on the morning of July 16, a little after 9:00 AM, I was awakened by loud yelling coming from Kieran's room.

I placed my ear on the connecting door on Kieran's side that was closed and locked. (I always kept the adjoining door on my room's side unlocked and open in case Kieran needed me.) I heard Tobie yell at Kieran about how much trouble they would both be in. Tobie reminded Kieran that Kieran had done so much good for the company already, and Kieran had the chance to do even more good right now. Kieran told Tobie that this was his "final decision." Tobie slammed the door shortly afterwards and stormed out of the place. I then peeked through the peephole on my door and watched Tobie walk away from Kieran's room and toward the elevators. Tobie seemed agitated.

I went into Kieran's room to check up on him shortly after I heard the argument. Kieran said that he told Tobie that he was going to tell the board members the truth. Kieran told me that he always knew he was going to tell Tobie that he wanted to tell the truth to the board, but he just didn't know how or when he would do it. Kieran showed me the champagne and saber and said that Tobie's generosity just made him feel worse about ruining the IPO announcement and putting the company at risk. I assured him that this was the best plan. Kieran thanked me for the advice but told me he needed some alone time before the chaos of board meeting preparation set in. I was proud of Kieran for standing up for his principles, even if it risked costing him everything. I left, reminding Kieran that I was always free to talk.

Later that day, around 1:00 PM, I went downstairs to grab lunch, but I caught up with Arian instead. Arian and I were standing in the hallway directly outside the meeting space when Tobie stormed out of the meeting space and said, "If this doesn't get fixed, there's going to be a bloodbath." When Tobie saw Arian and me standing outside of the room, Tobie looked surprised to see us there. It felt like I just overheard something I wasn't supposed to. Tobie then walked over to us and said, "The staff here is incompetent." At that moment, Kieran appeared from the same meeting space and walked the other way, leaving us with Tobie. I believed that the comment was meant for Kieran, though. I did not see Kieran or Tobie the rest of the day.

That evening, around 11:10 PM, I was getting ready to take a shower when I heard what sounded like arguing. It sounded like it was coming from Kieran's suite. I was in the bathroom of my suite this time. The bathroom door was open, but I couldn't hear what was going on as well as before. I heard

Kieran's voice say, "No!" I heard another voice say, "You would ruin everything." I am almost positive that the second voice was Tobie, even though the voices were slightly muffled. Those were the only words that I could make out, but the arguing continued. I then took a shower. I finished my shower about 11:30 PM, turned on some relaxing music and went to bed. I did not hear anything else from Kieran's room the rest of the night. I never went into Kieran's room until the following morning. I am horrified that Tobie would ever kill Kieran over greed.

The day of the board meeting, on the 17th, I went into Kieran's room at about 8:00 in the morning. We were scheduled to do our morning yoga, and instead I found him in a pool of blood. I was devastated when I saw him lying there. I immediately called 911. I couldn't stand to see him like that, so I rushed out of Kieran's suite into the hallway. On my way down the hall, I spotted a hotel staff member. As I went to notify the staff member, I passed by an open trash can that had a blue latex glove inside of it. It was resting inside on top of all of the trash. The staff member waited for the police with me.

I didn't think much of the blue latex glove then because I was in shock over Kieran's death. But a few days later, it did seem weird to me that there was just one glove laying there. I went to the police department to give my fingerprints as part of the investigation and reported to the detective what I recalled seeing about the glove.

I wasn't able to bring my Magnates shoes to the detective because they were lost. Besides, they weren't really my style. I bought them when I first entered SMC because they were a popular brand there, but I never loved them and wore them only a couple of times. I can't even recall where I last placed them.

Prosecution Witness – Emari Sunshine (Victim's Older Sibling)

My name is Emari Sunshine. I am 45 years old. I am the Vice President of Research and Development at SMC. I have a Ph.D. in biomedical engineering, and my job mainly consists of managing engineering teams that are working to develop new products for the company, helping guide them and reviewing their data. I am also Kieran's older sibling and the oldest Sunshine child. My interest has always leaned more toward science than business, which put my father and I at odds before his death. If it hadn't been for our personal differences, I'm sure that he would have wanted me to be CEO instead of Kieran.

On January 3, I saw Kieran storm into Tobie's office with a set of papers in hand. Kieran shut the blinds and didn't come out of Tobie's office until an hour later. When Kieran finally came out of Tobie's office, he looked stressed. He took his tie off and his hair was disheveled, like he ran his hands through it a lot. I didn't see Tobie come out of Tobie's own office on that day.

After that day, the pair acted differently. Usually, Tobie and Kieran were inseparable. But after that meeting, they didn't really talk to each other. Kieran became more introverted. Whenever Kieran did talk to someone, including me, he was hostile. Tobie seemed generally confident but also a little frazzled. Tobie seemed busier with work than usual, taking meetings with suppliers for the ForeverFlex and marketing consultants.

On February 13, I received a heavily redacted report claiming to be the ForeverFlex test results from January. I met with Kieran to inquire about the redactions, telling him that I couldn't understand any of the results without more information. Kieran brushed me off, telling me to "butt out" and that he and Tobie were "handling things," and that Dad had always believed that Kieran was capable of running things. It was at this moment that I became suspicious that Kieran and Tobie were involved in trying to conceal something about ForeverFlex.

That's when I began to look more closely at the other paperwork involved in the patent application. Tobie had signed off on the patent and then attempted to expedite it shortly afterwards. I didn't see why we would need the patent expedited and that made me more confused. I knew something wasn't right, so I decided to talk to Tobie directly. I thought that maybe Tobie would be more honest with me since we didn't

have any family drama coloring our relationship.
I approached Tobie in early March with the redacted documents. I told Tobie that something didn't seem right with the ForeverFlex. I mentioned that I had discussed this issue with Kieran, but Kieran had not been receptive. I told Tobie that I figured Tobie might have the full story. Tobie claimed to be simply helping Kieran plan and execute SMC's proposed IPO announcement and the ForeverFlex patent process before the big meeting at the Bells Hotel. Tobie stated that Kieran had promised Tobie that the test results went well, and everything would be set for the July board meeting. Tobie reassured me that Kieran had everything handled.

I checked into the Bells Hotel late on July 15. On the 16th, in the late morning, I decided to go to Kieran's suite and ask if they needed help with setting up. I had told Kieran and Tobie that it was a waste of money to hold the board meeting at this fancy hotel; we should have it at SMC's spacious conference room, as always. But Kieran insisted on going "all out" for the big IPO announcement, arguing that we needed to impress potential new shareholders and such.

Later that day, I went to meet with Kieran at Kieran's suite. I saw the saber on display on top of the fireplace. Kieran said that Tobie had bought it, along with an expensive bottle of champagne. I thought it was ridiculous, and I told Kieran that spending money on something so frivolous as a champagne saber was tacky. Kieran didn't respond to my comment, but Kieran told me that they didn't need help, so I went back to my suite. I had a lot of work to do to get ready for the meeting and reception, so I didn't see Kieran the rest of the day.

Around 11:00 PM, on the 16th, I was having trouble sleeping. I heard loud voices that sounded like they were coming from the hallway, and I need complete silence to be able to fall asleep. When I opened my door to see if there was anyone standing out there, I caught sight of who I believed to be Tobie turning the corner into the north hallway, most likely going to Kieran's room at the end of that hall. I don't remember what Tobie was wearing. I went back into my hotel room and went to bed.
Kieran's death was a huge shock, of course. Sure, Kieran and I didn't have an amazing relationship when we were younger, but it's not like I ever did anything specific to harm Kieran. I don't know anything about the incidents that Arian is talking about. Kieran and I played a few pranks on each other, but that's it. At the end of the day, we were siblings, and we both wanted to make sure Dad's legacy continued. We just had different ideas on how to continue that legacy.

I understand that police need to rule out certain people in order to move an investigation forward, so I cooperated completely with Detective Perren and went to the station on July 18. I told the detective that I did not own any silk garments or fabric, but I did own a pair of Magnates tennis shoes, I just couldn't find them. I explained that I had lost them months ago. I wanted to help Detective Perren as much as I could, but I have no idea where the shoes are.

I wanted the ForeverFlex to work well. It's unfortunate that it had to come to this, but I am now taking over as CEO. I'm planning on moving forward with the ForeverFlex, with a different name, of course. We were close to bankruptcy when my brother was murdered. I salvaged what I could of the company, but I wanted a fresh start, so I hired an entirely new staff and am trying to distance myself from the ForeverFlex mess and my brother. I hope to honor my father's legacy by doing business on the straight-and-narrow.

Defense Witness – Tobie Clark (Defendant)

My name is Tobie Clark. I am 44 years old. I am an attorney licensed to practice in the State of California and certified to practice in patent matters. I also have an M.S. in Neurobiology. I have worked for SMC as general counsel for eight years now. As general counsel, I advise the company on legal matters and provide protection in whatever way I can. I prepare and negotiate company contracts and submit patent applications. I've always known that Kieran's dream was to create a long-lasting artificial joint replacement, and the idea is very important to me as well.

I severely injured my rotator cuff in my right shoulder in college during a lacrosse game. I was lucky enough to receive early intervention and treatment so that I did not need any prosthetics. Had the injury been any worse, that could have been my future. I am right-handed.

I've worked every day to make sure that this company was successful even if that meant not taking any vacations, which is why I was so excited about this board meeting. I really thought the ForeverFlex would help a lot of people. That's why I went to law school. I recall telling my classmates that I wanted to be a patent attorney in the tech sector so I could help people. I truly believe medical care should be affordable and high quality for everyone.

Kieran came into my office on January 3, 2023, to tell me that the research team ran more test results on ForeverFlex and they came out positive. He told me that the new testing confirmed that the product was working smoothly, and it was expected to continue to do so. Because of this, I moved forward with filing the patent. I didn't really look over the research too much, I just filed for the patent and didn't ask Kieran any questions. I know now that I should have done my due diligence on the patent, but I trusted Kieran. I didn't think he could let me down because we had been through so much together.

I was really excited about the news. I wanted to make sure everyone had the opportunity to have this product, so I did what I needed to do, even if that meant I was staying a little later and doing a little more extra work. Not to mention if the product was a success, I would receive a seven-figure bonus. I was talking to more distributors and creating contracts for the product. We wanted ForeverFlex widely distributed so I worked on contracts for hospitals and doctors. I wanted to expedite the patent so we could announce our patent at the board meeting. I had a friend who worked at the U.S. Patent and Trademark Office. I did

them a favor a couple of years ago, so they told me they would pull some strings on my behalf.

Sometime in early March, Emari came to me at the SMC offices and asked about some heavily redacted ForeverFlex reports that Emari received. I didn't know why Kieran gave Emari redacted reports. I knew there was a small problem with the ForeverFlex, but Kieran promised me that the test results were good, and everything would be set for the July board meeting, and that's what I told Emari. Emari didn't seem to like this answer, but I figured that was just because Emari hated the fact that Kieran knew more than Emari did.

The only important thing to Emari was wealth and status. Emari took a cushy VP position so that they could have status and money without doing any real work. Emari always made snide comments like "that's not what Dad would have done" or scoffed at anything Kieran would say in a meeting. When we first started the ForeverFlex project, Emari sulked for weeks because Kieran was the one who got to name the product. At a meeting where I was present, Emari told Kieran that the name of the product "lacked originality" and "would be an embarrassment to Dad's legacy." Emari also repeatedly told Kieran that if things went south with the project, Emari would easily be able to convince the board that Emari should take over as CEO of the company, given the wishes expressed in their father's will.

The patent for the ForeverFlex was going to be a game changer for SMC and I wanted to help Kieran make the announcement exciting. It took a lot of my time and money, but I found a rare bottle of DeLulu champagne and had it shipped from France. I also purchased a beautiful champagne saber so that Kieran could use it to open the bottle on stage during the big announcement. I spent a lot of money on this surprise for Kieran. I almost let it slip out a few times – I've never been good at keeping secrets.

I checked into the hotel on July 15. The next morning, on the 16th, I met with Kieran around 9:00 AM to prepare for the meeting. I told Kieran that I had a surprise for him, and he said he had one for me as well. He gave me a really nice silk scarf. He said he had gotten it on one of his recent trips and said he was proud he wrapped it himself. It was a nice gesture; I wore it that day. I took the scarf off in the evening; I didn't want to ruin it. When the champagne arrived, I took the saber out of its casing and showed it off to Kieran, then set the bottle and saber on the fireplace mantel. But he looked more disappointed than excited when he saw my surprise. That's when he

confessed to me that the metals used in ForeverFlex were found to cause bacterial infections in patients in the clinical study tests. He also said he had known since January 3.

I then realized that everything in the patent was based on false terms. I had trusted Kieran. When he came into my office on January 3 to tell me that the product tests showed amazing results, he apparently was lying to me. Kieran only told me that there was a small hiccup in the product, but that he was taking care of it. I filed the patent application a few days later. I know I should have looked over the test results and made sure everything was in line, but I'm just a patent lawyer. Kieran did all of the research and development on the product. I relied on Kieran's representations that everything was going smoothly, and I relied on the research Kieran provided for filing the patent.

On July 16, Kieran also told me that he planned to keep all of this hidden from the board. He said that he needed to buy some time to come up with a plan on how all of this was going to work out. The company really needed this to work because if it didn't, we'd be in huge financial trouble. I pleaded with Kieran to tell the truth. But Kieran refused. We argued. Kieran started screaming at me that he knew what was best for the company. I tried to tell him about all of the repercussions that came with that lie: both he and I could be liable for fraud. That would ruin both of our careers. I pleaded with Kieran that the best course was to cut our losses and just withdraw the patent application. Again, Kieran refused.

I felt so betrayed because Kieran was someone, I considered a friend as well as a boss. Not only was he not listening to me, but he had lied to me all along. I was more disappointed than angry. I was shocked that Kieran had abused our friendship in this way. I know now that I should have conducted more research and asked more questions, but I trusted that Kieran knew best.

Defense Witness – Dr. Parker Turner (Independent Forensic Pathologist)

My name is Dr. Parker Turner. I am 57 years old. I have been an independent forensic pathologist for over 20 years. I earned a bachelor's degree in chemistry from the University of Wisconsin, then received my M.D. from Emory University. I completed a residency at Emory University Hospital, then completed a forensic pathology fellowship at the Office of the Chief Medical Examiner in Raleigh, North Carolina. I spent the majority of my career working and teaching at the University of Tennessee's Anthropological Research Facility. I occasionally testify in violent crime cases where forensic evidence is at the forefront of the case. I have testified both for the state and for defendants in the past. I also have a thorough background in computer engineering and technology-enhanced police investigation techniques.

I've never seen a champagne saber used as a deadly weapon before. Champagne sabers are generally somewhat dull on the blade's edge and not particularly heavy. Based on this, the perpetrator would need to use a significant amount of force to create a deadly wound. In my professional opinion, it would have been extremely difficult for Tobie to wield the saber in such a way. I'm aware that when Tobie was in college, Tobie experienced an injury to Tobie's right-shoulder rotator cuff. Even as it is now healed, an x-ray showed there is an immense amount of scar tissue and withering of the muscle around the joint as a result of Tobie not using the joint as often.

The puncture wound suggests that the weapon went into the body while Kieran was lying on his back, and the weapon was held perpendicular to his abdomen while it was pushed through his body. The perpetrator likely stood over Kieran and stabbed downward with some force. Given the injury to Tobie's shoulder, it would have been very difficult and painful for Tobie to stand and swing the saber in the manner needed to create such a wound as the one that killed Kieran.

I'm not surprised to find that the first set of fingerprints belonged to Tobie. Tobie stated that Tobie handled the saber and showed it to Kieran. The second set of fingerprints were of poor quality. You cannot rule out or confirm any suspects based on those prints. Fingerprint analysis can be very subjective, especially with partial prints that are digitally enhanced, as Dr. K.C. Vasquez did in this case.

I'm surprised that the fiber evidence is being introduced and relied upon so heavily. When someone is involved in a crime, it is likely that the person will leave some fibers on the scene from their clothing. But the same thing can be said when someone

makes any contact with another person. In the present case, Tobie is testifying that Kieran gave Tobie the scarf on July 16. This means Kieran handled the scarf in close temporal proximity to when the fibers were recovered from his body. It would have been very easy for Kieran to unknowingly collect and retain some scarf fibers on his suit due to this activity. Further, new research suggests that fiber evidence is not reliable especially when the evidence collected is only a small number of fibers, such as in this case. Furthermore, since we know that Kieran handled the scarf before giving it to Tobie, especially in wrapping the scarf himself, it is plausible that fibers from the scarf could have transferred from the scarf to Kieran's sleeve.

Additionally, like the prosecution, I found it hard to make a conclusion about the size of the partial shoeprint. Based on its dimensions and the smudged condition of the shoeprint, the print could be anywhere between a European size 41-42. Because police never recovered a pair of shoes from Tobie to test against this shoeprint, I am unable to say that Tobie's shoes left the print at the crime scene.

[[The prosecution alleges it has evidence showing that Tobie was near Kieran's room around the time the murder took place, but this is a gross exaggeration of what the evidence actually shows. The prosecution's data only shows that Tobie's cellphone was probably in the Bells Hotel near the time that Kieran was murdered, and Tobie does not deny being in the hotel at that time. Google's location data technology is pretty advanced, but its accuracy cannot be relied on 100 percent. In fact, the location data can even be off by hundreds of feet, sometimes because of factors like tall buildings in a dense urban environment, as we see here, which can interfere with the accuracy of a cellphone's GPS and Wi-Fi access. That means it can place people inside the geofence area who were not in fact inside the area and conversely place those who were inside the geofence, outside the geofence area.]]

Defense Witness – Arian Sunshine (Victim's Younger Sibling)

My name is Arian Sunshine. I am 42 years old. I am Kieran's younger sibling and the VP of Marketing at SMC. My work consists of developing and managing marketing materials for SMC's products, as well as working on advertising campaigns and other methods of attracting investors. Kieran and I got along well throughout our lives, and I get along moderately well with Emari. Emari and Kieran had a tense rivalry when we were growing up that did not dissipate with age or maturity. They were always competing to get the better grades or to become team captain in whatever sports they played, but Kieran always prevailed in a fair contest.

When we were younger, Kieran got a full scholarship to his dream college. But Emari found Kieran's email password somehow and opened Kieran's email. When Kieran was out of town on a school trip, Emari was in Kieran's room and motioned me to come over to the computer to see what Emari was doing. I saw Emari delete the college email and then block every email from that school. When the mail came in, I saw Emari take that acceptance letter, too. I wanted to stay out of my siblings' rivalry, so I left it alone. By the time Emari told Kieran what Emari had done, it was too late for Kieran to accept the scholarship. We three were in Kieran's room when Emari told Kieran. Emari laughed when Kieran understandably got upset.

A few years later, when Dad announced that he wanted Kieran to be the CEO of SMC someday, I swear I saw steam coming out of Emari's ears. The next day Dad's vintage Bronco "mysteriously" disappeared. The police found it a month later, unsalvageable and nearly completely destroyed. I caught Emari with the stereo from the Bronco, selling it to a friend right in Emari's own living room. When I confronted Emari about Dad's car, Emari told me to mind my own business.

Oddly enough, Dad left 50 percent of the company to Emari, 30 percent to Kieran, and 20 percent to me. Dad built the company from nothing and knew that Emari had the medical device background, but that Kieran had the business know-how to continue Dad's legacy. I think that's why Dad's dying wish was for Kieran to become CEO.

The relationship between Kieran and Emari only got worse after Dad died. Emari constantly complained to me that Kieran had no respect for Emari. Kieran constantly complained that Emari was bossy and overbearing. It was exhausting always having to be the referee and keep them from fighting with each other.

Emari stood to make the most money from ForeverFlex. Dad also stated in his will that if anything happened to Kieran, or if Kieran ever stepped down, Dad wanted the CEO position to go to Emari. It was something that Emari loved to rub in my face. Emari would always say things like “What's it feel like to be the least favorite child?” or condescendingly say, “When Kieran plummets the company, I'll see what I can do about you keeping your little marketing job.”

I don’t remember January 3 exactly. All I saw was Kieran rush into Tobie’s office. But I did notice a change in both Tobie and Kieran afterwards. Tobie was unusually upbeat and positive in the weeks and months following January. But Kieran was the exact opposite. Kieran would snap at everyone. He was always tense and was not open to having a conversation. Kieran and Tobie used to have a great relationship; they’d frequently go out to lunch together or go to a baseball game. But after that meeting, it was like they never spoke to each other unless it was about work.

In late May, Kieran came to my place at night clearly having just come from a bar. While I made Kieran coffee, Kieran explained that he had been at the bar with Emari and as they drank, Emari began to taunt and belittle Kieran, telling Kieran that the new ForeverFlex was going to fail, and it was going to stain his reputation as CEO. I didn’t know that there was any trouble with the ForeverFlex. However, I knew that the company did have some financial struggles. I only knew this because there were a lot of budget cuts a few years back and marketing was the first department to be impacted. I had to let go of a few of my graphic designers on the team. When I asked Kieran about what was going on he told me that the company was going through some “financial difficulties.” He told me not to worry though, because the ForeverFlex would fix all of those problems.

I checked into the hotel on the 15th, and everything seemed fine. Kieran and Tobie had been so stressed about this big IPO announcement, and that’s a big reason why they decided to have the board meeting at the fancy Bells Hotel. I don’t know a lot about the corporate governance part of the business, but I do love a good historic building!

Then on the 16th, we did have a small incident. I was standing outside the meeting space with Gerri. We were having a conversation when Tobie and Kieran came out of the meeting room. Tobie shouted, “If this doesn’t get fixed there’s going to be a bloodbath!” Tobie walked towards Gerri and me, and Tobie told us that the staff was incompetent. Tobie looked upset; Tobie kept pulling on the silk scarf that Tobie was wearing.

Kieran came out of the room and walked the other way.
A little while later, I visited Kieran in his suite. I just wanted to check up on him and ask if there was anything I could do to help set up for the board meeting. Kieran said that it was fine, there wasn't much else to do. He showed me the champagne and saber that Tobie bought. The saber was displayed on the fireplace mantel. I did not think anything of it. I did not touch the saber.

Defense Witness – Nic Yang (Law School Friend of the Defendant)

My name is Nic Yang. I am 45 years old. I currently work as an entertainment lawyer in New York City where I represent high-profile professional athletes and other celebrities. I attended law school with Tobie. During our time in law school, Tobie was helpful to anyone and everyone. Law school is a competitive and sometimes stressful place, but Tobie was always thinking of ways to help people there. Tobie earned the Humanitarian Award at our school because Tobie completed the most pro bono service hours.

While in law school, we would always talk about how we wanted to do something with our law degrees to actually help people. I remember in one of our classes together in our first year, the professor made us go around and introduce ourselves. Tobie told the class that Tobie decided to go to law school to become a patent attorney and help the tech sector make society better and to make medical care more affordable for everyone.

During our second year, Tobie worked to pay rent and bills but still managed to find time to volunteer. We both volunteered at a health law pro-bono clinic-on-wheels that parked near our school's campus. We assisted attorneys with research and writing for their cases. Tobie specifically focused on assisting in litigation against unfair private health insurance practices. One of the best cases we assisted with was a case of medical negligence against a child; Tobie worked so hard on that case. Tobie stayed up all night looking for the perfect cases that ultimately helped the attorney win that case.

In law school, Tobie made sure to do everything by the book. Tobie was the perfect example of a model student.
When we graduated law school, I begged Tobie to move to New York and work with me at the entertainment law firm where I am now currently a partner (an attorney who co-owns the firm). We both had thousands of dollars in student debt, and the position would eventually become a partner-track position where we could each make six figures per year. But Tobie insisted that Tobie wanted to practice law to help other people. Tobie has always been focused on making a difference in the world.

I kept in touch with Tobie for many years after we graduated. When Tobie got the job as general counsel at SMC and assumed a managerial role in the company, SMC won the

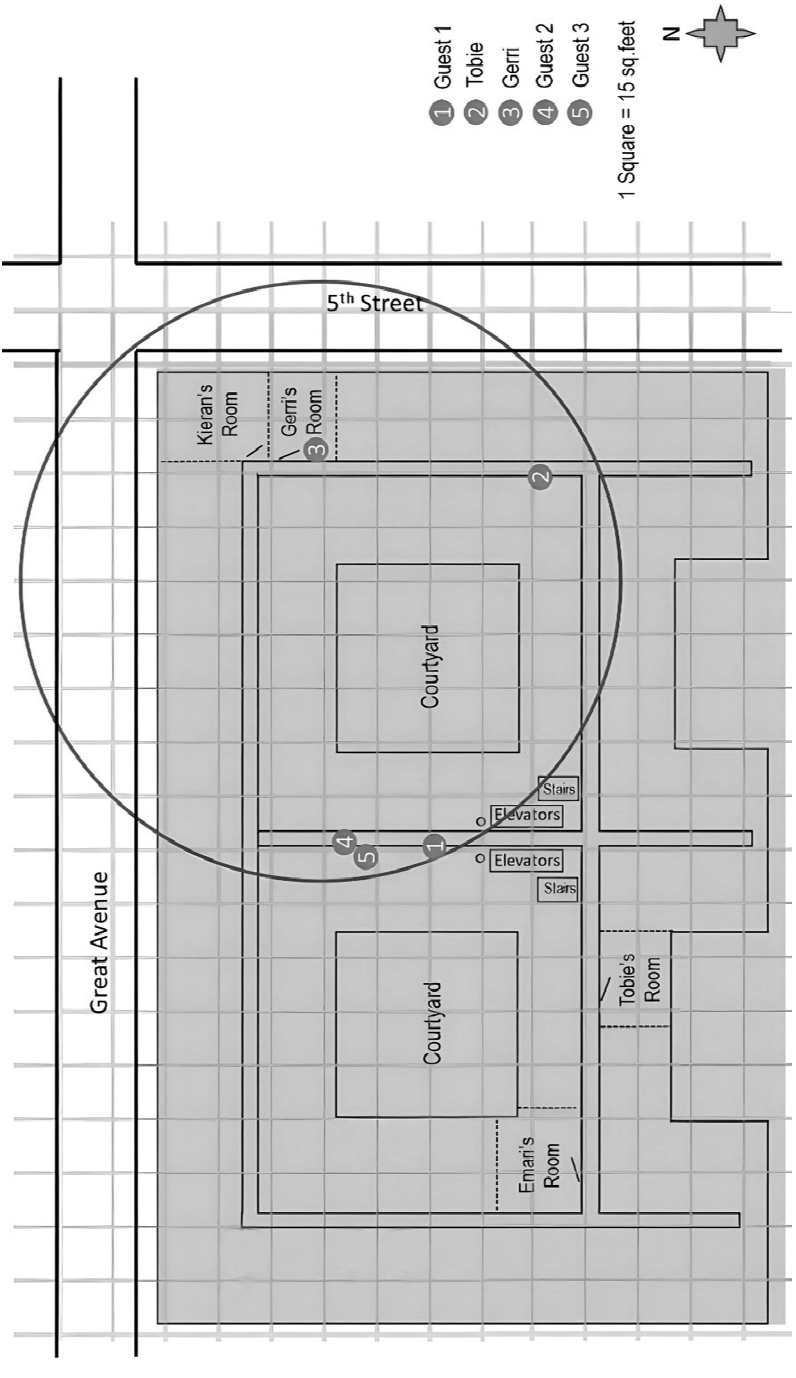
sustainable business award in just two years because of how Tobie improved environmentally beneficial policies at the company and community involvement for SMC's staff. Tobie once told me that Kieran Sunshine and Tobie worked together at SMC to donate 500 artificial knee joints to the humanitarian organization Doctors Without Borders, free of charge.

Honestly, I can't imagine Tobie doing anything like what Tobie is being accused of. Tobie is an honest person. You can ask anyone we went to law school with. Tobie was known to be a straight-talker, always honest and to the point. Tobie has always been proud of being an ethical attorney.

We made a pact when we graduated law school that we would see each other at least once a year, although recently we haven't been able to keep up that pact. I mostly keep up with Tobie through social media. Even after becoming general counsel and keeping up this demanding job, Tobie still continued to take pro bono cases. In fact, Tobie posted something last year about a big win in a case where Tobie represented a child's family for free after the child fell ill due to a faulty asthma inhaler. Tobie liked to focus on healthcare and make sure that people were receiving equal treatment.

Exhibit A

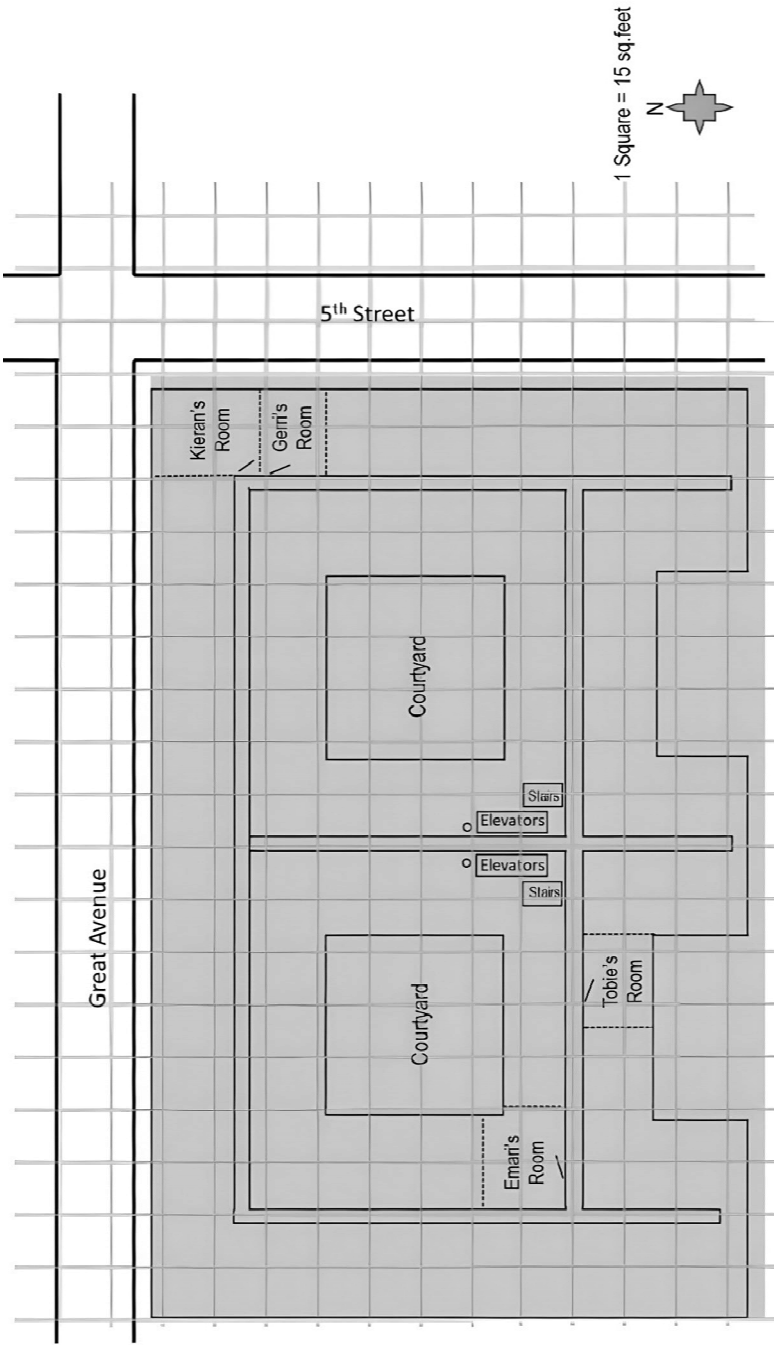
Diagram of the 10th floor of the Bells Hotel with the geofence



This diagram is not necessarily to scale.

Exhibit B

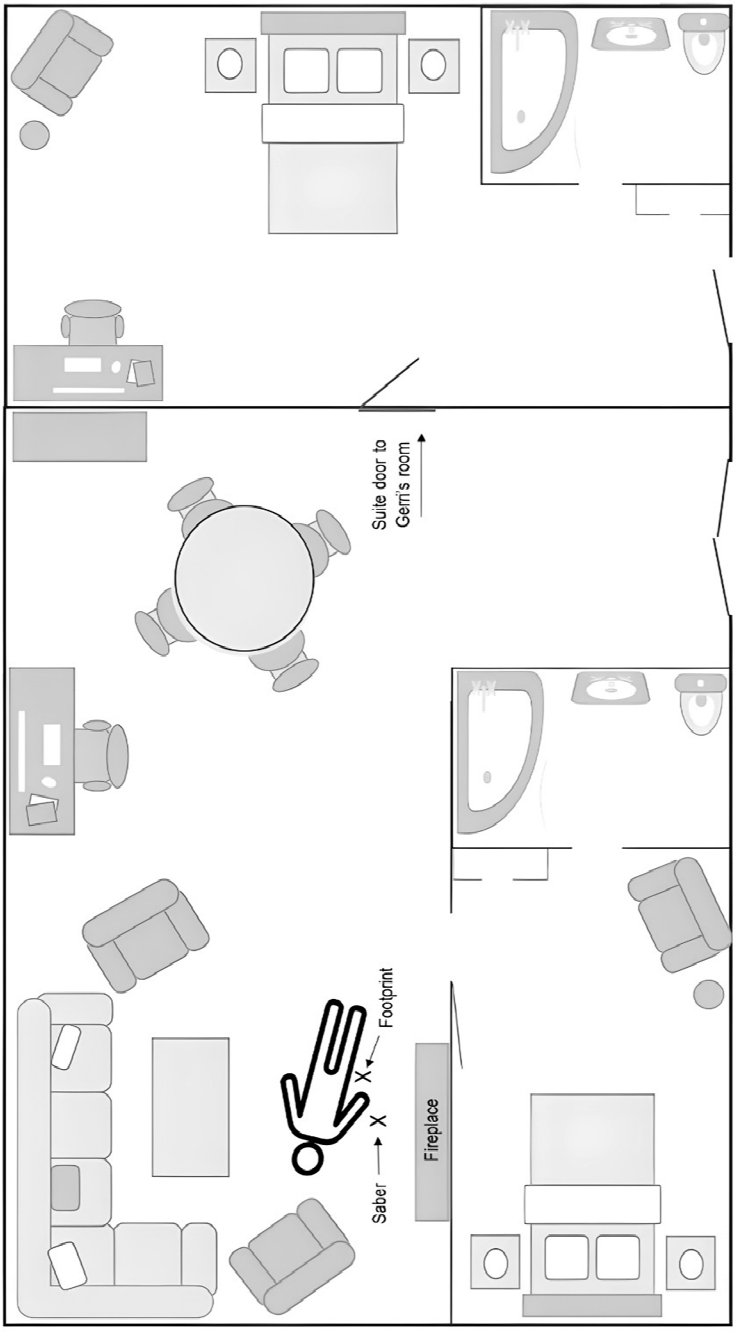
Diagram of the 10th floor of the Bells Hotel (no geofence)



This diagram is not necessarily to scale.

Exhibit C

Diagram of the crime scene



This diagram is not necessarily to scale.

Exhibit D

A partial footprint found at the crime scene

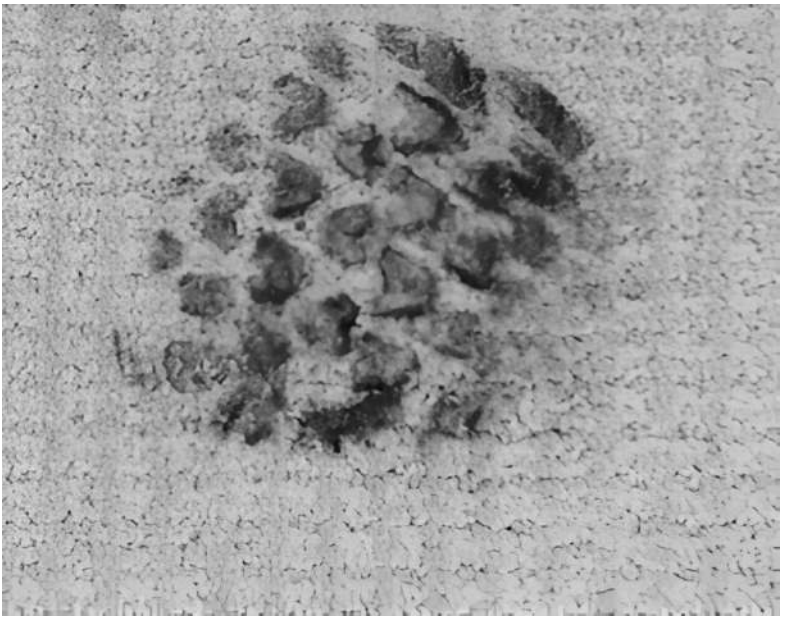


Exhibit E

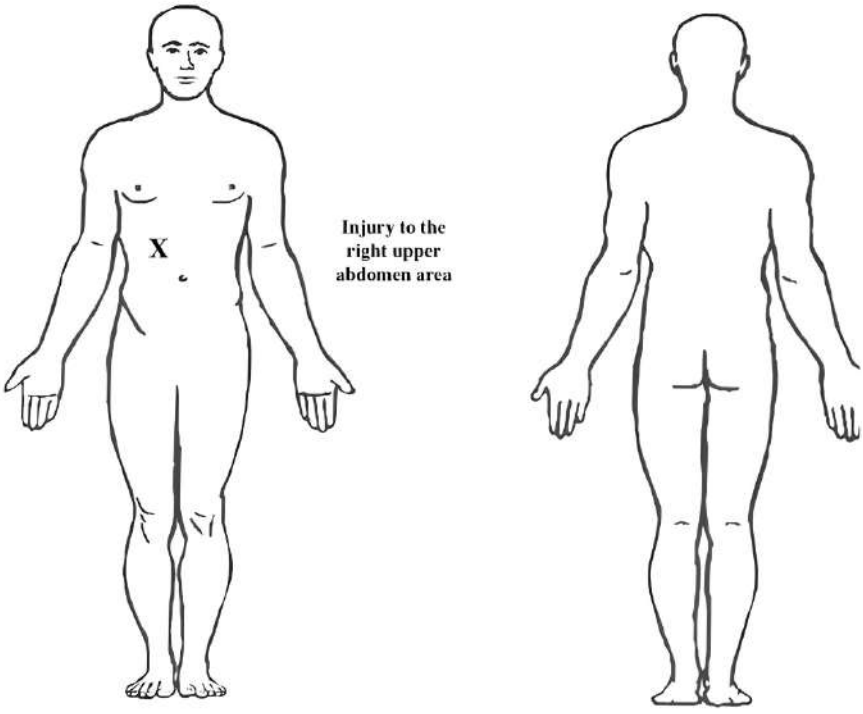
Tobie's silk scarf

Exhibit F

Saber found at the crime scene

Exhibit G

Medical examiner's diagram of Kieran Sunshine's body



FORM AND SUBSTANCE OF A TRIAL

The Elements of a Criminal Offense

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

The Concept of Reasonable Doubt

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

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

A guilty verdict may be based upon circumstantial (indirect) evidence. However, if there are two reasonable interpretations of a piece of circumstantial evidence, one pointing toward guilt of the defendant and another pointing toward innocence of the defendant, the trier of fact is required to accept the interpretation that points toward the defendant's innocence. On the other hand, if a piece of circumstantial evidence is subject to two interpretations, one reasonable and one unreasonable, the trier of fact must accept the reasonable interpretation, even if it points toward the defendant's guilt. It is up to the trier of fact to decide whether an interpretation is reasonable or unreasonable.

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

TEAM ROLE DESCRIPTIONS

Attorneys

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

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

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

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

Trial attorneys will:

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

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

Witnesses

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

as signed statements made to the police by the witnesses.

You may testify to facts stated in or reasonably inferred from your record. If an attorney asks you a question, and there is no answer to it in your official testimony, you can choose how to answer it. You can either reply, "I don't know" or "I can't remember," or you can infer an answer from the facts you do officially know. Inferences are only allowed if they are *reasonable*. Your inference cannot contradict your official testimony, or else **you can be impeached** using the procedures outlined in this packet. Practicing your testimony with your attorney coach and your team will help you to fill in any gaps in the official materials (see Unfair Extrapolation on p. 74).

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

Court Clerk, Court Bailiff, Unofficial Timer

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

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

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

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

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

Duties of the Court Clerk

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

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

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

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

Do not include time when:

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

The clerk will stop students both visually and verbally at the end of the allotted time for each section. Both visual and verbal warnings will be given a two-minute, one-minute, 30 second, and STOP before the end of each section. The time remaining cards must be displayed in a manner to ensure that there is a clear view for the counsel and presiding judge. Remember to speak loud enough for everyone to hear you.

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

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

Duties of the Bailiff

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

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

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

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

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

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

Duties of the Unofficial Timer

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

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

Any objections to the clerk's official time must be made by this unofficial timer during the trial, before the verdict is rendered. The judge shall determine whether to accept the clerk's time or make a time adjustment.

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

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

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

Be prepared to show your records and defend your requests.

Team Manager

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

PROCEDURES FOR PRESENTING A MOCK TRIAL CASE

Introduction of Physical Evidence

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

1. Present the item to an attorney for the opposing team prior to trial. If that attorney objects to the use of the item, the judge will rule whether the evidence is appropriate or not.

2. Before beginning the trial, mark all exhibits for identification. Address the judge as follows: "Your honor, I ask that this item be marked for identification as Exhibit #_____."

3. When a witness is on the stand testifying about the exhibit, show the item to the witness and ask the witness if he/she recognizes the item. If the witness does, ask him or her to explain it or answer questions about it. This shows how the exhibit is relevant to the trial.

Moving the Item into Evidence

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

1. "Your honor, I ask that this item (describe) be moved into evidence as People's (or Defendant's) Exhibit # and request that the court so admit it."

2. At this point, opposing counsel may make any proper objections.

3. The judge will then rule on whether the item may be admitted into evidence.

The Opening Statement

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

- Explain what you plan to prove and how you will prove it.
- Present the events of the case in an orderly sequence that is easy to understand.
- Suggest a motive or emphasize a lack of motive for the crime.

Begin your statement with a formal address to the judge:

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

Direct Examination

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

- Call for answers based on information provided in the case materials.
- Reveal all of the facts favorable to your position.
- Ask the witnesses to tell the story rather than using leading questions, which call for "yes" or "no" answers. (An opposing attorney may object to the se of leading questions on direct examination.)
- Make the witnesses seem believable.
- Keep the witness from rambling about unimportant issues.
- Call for the witness with a formal request:
- "Your honor, I would like to call (name of witness) to the stand."
- The witness will then be sworn in before testifying

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

- The witness's name.
- Length of residence or present employment, if this information helps to establish the witness's credibility.
- Further questions about professional qualifications, if you wish to qualify the witness as an expert. Examples of proper questions on direct examination:

- "Could you please tell the court what occurred on (date)?"
- "What happened after the defendant slapped you?"
- "How long did you see…?"
- "Did anyone do anything while you waited?"
- "How long did you remain in that spot?" Conclude your direct examination with:
- "Thank you, Mr./Ms. (name). That will be all, your honor." (The witness remains on the stand for cross-examination.)

Cross-Examination

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

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

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

Examples of proper questions on cross-examinations:

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

Cross examination should conclude with:

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

Impeachment During Cross-Examination

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

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

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

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

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

Mr. Jones responds, "Yes."

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

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

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

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

Redirect Examination

Following cross-examination, the counsel who called the witness may conduct redirect examination. Attorneys conduct redirect examination to clarify new (unexpected) issues or facts brought out in the immediately preceding cross-examination **only.** They may not bring up any issue brought out during direct examination. Attorneys may or may not want to conduct redirect examination. If

an attorney asks questions beyond the scope of issues raised on cross, they may be objected to as “outside the scope of cross-examination.” It is sometimes more beneficial not to conduct re-direct for a particular witness. To properly decide whether it is necessary to conduct re- direct examination, the attorneys must pay close attention to what is said during the cross-examination of their witnesses.

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

Closing Arguments

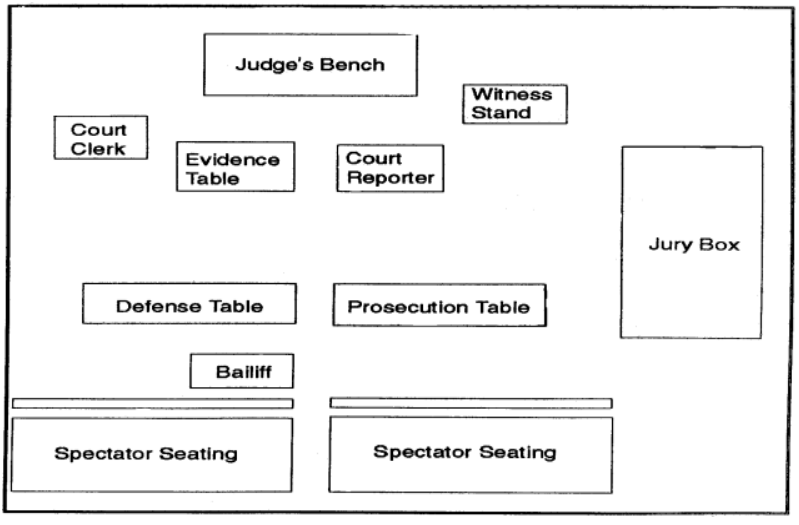
A good closing argument summarizes the case in the light most favorable to your position. The prosecution delivers the first closing argument. The closing argument of the defense attorney concludes the presentations. A good closing argument should:

- Be spontaneous, synthesizing what actually happened in court rather than being “prepackaged.” NOTE: Points will be deducted from the closing argument score if concluding remarks do not actually reflect statements and evidence presented during the trial.
- Be emotionally charged and strongly appealing (unlike the calm opening statement).
- Emphasize the facts that support the claims of your side, but not raise any new facts.
- Summarize the favorable testimony.
- Attempt to reconcile inconsistencies that might hurt your side.
- Be well-organized. (Starting and ending with your strongest point helps to structure the presentation and gives you a good introduction and conclusion.)
- The prosecution should emphasize that the state has proven guilt beyond a reasonable doubt.
- The defense should raise questions that suggest the continued existence of a reasonable doubt.
- Proper phrasing includes:
    - “The evidence has clearly shown that…”
    - “Based on this testimony, there can be no doubt that…”
    - “The prosecution has failed to prove that…”

- "The defense would have you believe that..."
- Conclude the closing argument with an appeal to convict or acquit the defendant.

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

DIAGRAM OF A TYPICAL COURTROOM



MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

Criminal trials are conducted using strict rules of evidence to promote fairness. To participate in a Mock Trial, you need to know its rules of evidence. The California Mock Trial program bases its Mock Trial Simplified Rules of Evidence on the California Evidence Code.

Studying the rules will prepare you to make timely objections, avoid pitfalls in your own presentations, and understand some of the difficulties that arise in actual court trials. The purpose of using rules of evidence in the competition is to structure the presentation of testimony to resemble a real trial.

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

Objections

It is the responsibility of the party opposing the evidence to prevent its admission by a timely and specific objection. Objections not raised in a timely manner are waived or given up. An effective objection is designed to keep inadmissible testimony, or testimony harmful to your case, from being admitted. A single objection may be more effective than several objections. Attorneys can, and should, pay attention to objections that need to be made to questions and those that need to be made to answers. Remember, the quality of an attorney's objections is always more important than the quantity of the objections.

For the purposes of this competition, teams will be permitted to use only certain types of objections. The allowable objections are found in the case packet. Other objections may not be raised at trial. As with all objections, the judge will decide whether to allow the testimony, strike it, or simply not the objection for later consideration.

The rulings of the trial judge are final. You must continue the presentation even if you disagree. A proper objection includes the following elements. The attorney:

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

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

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

ALLOWABLE EVIDENTIARY OBJECTIONS

1. Unfair Extrapolation (UE)

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

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

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

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

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

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

a) No extrapolation has occurred;

b) An unfair extrapolation has occurred;

c) The extrapolation was fair.

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

Usage comments — The most common example of an unfair extrapolation would be if an expert witness or police officer is questioned about research and procedures that require them to have specialized knowledge outside what is contained in their official records. This type of unfair extrapolation is illustrated in

Example #1 below.

Example #2 provides a set of facts and an example of fair and unfair extrapolation based on a sample fact scenario.

Example #1:

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

Example #2: Sample Fact Scenario

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

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

Unfair Extrapolation: At trial, John Doe testifies to the following: “I pulled into the parking lot of the Acme Grocery Store and parked my car. I walked into the store, purchased some groceries, and

withdrew $200 from the ATM." The fact that John Doe withdrew cash is an unfair extrapolation because the fact John withdrew $200 on the night of the crime is material to the charge of buying stolen goods because it impacts the substantive issues of his motive and means to later buy stolen goods.

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

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

2. Relevance

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

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

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

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

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

3. More Prejudicial than Probative

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

Usage Comments — This objection should be used sparingly in

trial. It applies only in rare circumstances. Undue prejudice does not mean "damaging." Indeed, the best trial evidence is always to some degree damaging to the opposing side's case. Undue prejudice instead is prejudice that would affect the impartiality of the judge, usually through provoking emotional reactions. To warrant exclusion on that ground, the weighing process requires a finding of clear lopsidedness such that relevance is minimal and prejudice to the opposing side is maximal.

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

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

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

4. Laying a Proper Foundation

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

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

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

5. Personal Knowledge/Speculation

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

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

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

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

6. Opinion Testimony (Testimony from Non-Experts)

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

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

Form of Objection**: “Objection, your honor. Improper lay witness**

opinion." Or "Objection, your honor. The question calls for speculation on the part of the witness."

7. Expert Witness

A person may be qualified as an expert witness if he or she has special knowledge, skill, experience, training, or education in a subject sufficiently beyond common experience. An expert witness may give an opinion based on professional experience if the expert's opinion would assist the trier of fact (judge) in resolving an issue relevant to the case. Experts must be qualified before testifying to a professional opinion.

Qualified experts may give an opinion based upon their personal observations as well as facts made known to them at, or before, the trial. The facts need not be admissible evidence if they are the type reasonably relied upon by experts in the field. Experts may give opinions on ultimate issues in controversy at trial. In a criminal case, an expert may not state an opinion as to whether the defendant did or did not have the mental state at issue.

Usage Comments — Examples:

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

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

8. Character Evidence

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

1. **Defendant's own character**
   The defense may offer evidence of the defendant's own character (in the form of opinion or evidence of reputation) to prove that the defendant acted in accordance with his or her character on a specific occasion (where the defendant's character is inconsistent with the acts of which he or she is accused). The prosecution can rebut the evidence (See Usage Comments below).
2. **Victim's character**
   The defense may offer evidence of the victim's character (in the form of opinion, evidence of reputation, or specific instances of conduct) to prove the victim acted in accordance with his or her own character on a specific occasion (where the victim's character would tend to prove the innocence of the defendant). The prosecution can rebut the evidence (See Usage Comments below).
3. **Witness's character**
   Evidence of a witness's character for dishonesty (in the form of opinion, evidence of reputation, or specific instances of conduct) is admissible to attack the witness's credibility. If a witness's character for honesty has been attacked by the admission of bad character evidence, then the opposing party may rebut by presenting good character evidence (in the form of opinion, evidence of reputation, or specific instances of conduct) of the witness's truthfulness.

Admission of Prior Acts for Limited Non-Character Evidence Purposes

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

Prior Act to Prove Motive, Intent, Knowledge, Identity, or Absence of Mistake
Nothing in this section prohibits the admission of evidence that the defendant committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, intent, knowledge, identity, or absence of mistake or

accident) other than his or her disposition to commit such an act.

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

Examples:

Admissible character evidence

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

Inadmissible character evidence

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

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

9. Hearsay

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

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

Examples:

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

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

Hearsay Exceptions

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

a. **Declaration against interest:** a statement which, when made, was contrary to the declarant's own economic interest, or subjected the declarant to the risk of civil or criminal liability, or created a risk of making the declarant an object of hatred, ridicule, or social disgrace in the community. A reasonable person in the declarant's position

would not have made the statement unless the person believed it to be true.

b. **Excited Utterance:** a statement that describes or explains an event perceived by the declarant, made during or shortly after a startling event, while the declarant is still under the stress of excitement caused by the event.

c. **State of mind:** a statement that shows the declarant's then-existing state of mind, emotion, or physical condition (including a statement of intent, plan, motive, mental state, pain, or bodily health).

d. **Records made in the regular course of business (including medical records):** writings made as a record of an act or event by a business or governmental agency (Mock Trial does not require the custodian of the records to testify). To qualify as a business record, the following conditions must be established: (1) The writing was made in the regular course of business; (2) The writing was made at or near the time of the act or event; and (3) The sources of information and method of preparation are trustworthy.

e. **Official records by public employees:** writing made by a public employee as a record of an act or event. The writing must be made within the scope of duty of a public employee.

f. **Prior inconsistent statement:** a prior statement made by the witness that is inconsistent with the witness's trial testimony.

g. **Prior consistent statement:** a prior statement made by a witness that is consistent with the witness's trial testimony. Evidence of a prior consistent statement can only be offered after evidence of a prior inconsistent statement has been admitted for the purpose of attacking the witness's credibility. To be admissible, the consistent statement must have been made before the alleged inconsistent statement.

h. **Statements for the purpose of medical diagnosis or treatment:** statements made for purposes of medical diagnosis or treatment, describing medical history, past or present symptoms, pain, or sensations.

i. **Reputation of a person's character in the community:** evidence of a person's general reputation with reference to his or her character or a trait of his or her character at a relevant time in the community in which the person then resided or in a group with which the person habitually associated.

j. **Dying Declaration:** a statement made by a dying person about the cause and circumstances of his or her death, if

the statement was made on that person's personal knowledge and under a sense of immediately impending death.

k. **Co-Conspirator's statements:** statements made by the declarant while participating in a conspiracy to commit a crime or civil wrong. To be admissible, the following must be established: (a) The statement was made in furtherance of the objective of that conspiracy; (b) The statement was made prior to or during the time that the declarant was participating in that conspiracy; and (c) The evidence is offered either after admission of evidence sufficient to sustain a finding of the facts specified in (1) or (2) or, in the court's discretion as to the order of proof, subject to the admission of this evidence.

l. **Adoptive admission:** a statement offered against a party, that the party, with knowledge of the content of that statement, has by words or other conduct adopted as true.

m. **Admission by a party opponent:** any statement by a party in an action when it is offered against that party by an opposing party. The statement does not have to be against the declarant's interest at the time the statement was made.

Objections for inappropriately phrased questions

10. Leading Questions

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

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

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

11. Compound Question

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

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

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

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

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

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

12. Narrative

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

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

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

13. Argumentative Question

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

Usage Comments — Example: Questions such as “How can you

expect the judge to believe that?" are argumentative and objectionable. The attorney may argue the inferences during summation or closing argument, but the attorney must ordinarily restrict his or her questions to those calculated to elicit relevant facts.

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

14. Asked and Answered

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

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

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

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

15. Vague and Ambiguous Questions

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

Usage Comments — Example: "Does it happen at once?"

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

16. Non-responsive Witness

A witness has a responsibility to answer the attorney's questions. Sometimes a witness's reply is vague, or the witness purposely does not answer the attorney's question. Counsel may object to the witness's non-responsive answer.

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

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

17. Outside the Scope of Cross-Examination

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

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

SUMMARY OF ALLOWABLE EVIDENTIARY OBJECTIONS FOR THE CALIFORNIA MOCK TRIAL

Argumentative Question: "Objection, your honor. Counsel is being argumentative." Or, "Objection, your honor. Counsel is badgering the witness."

Asked and Answered: "Objection, your honor. This question has been asked and answered."

Character Evidence: "Objection, your honor. Inadmissible character evidence," or, "Objection, your honor. The question calls for inadmissible character evidence."

Compound Question: "Objection, your honor, on the ground that this is a compound question."

Expert Opinion: "Objection, your honor. There is a lack of foundation for this opinion testimony," or, "Objection, your honor. Improper opinion."

Foundation: "Objection, your honor. There is a lack of foundation."

Hearsay: "Objection, your honor. Counsel's question calls for hearsay." Or, "Objection, your honor. This testimony is hearsay. I move that it be stricken from the record."

Leading Question: "Objection, your honor. Counsel is leading the witness."

More Prejudicial than Probative: "Objection, your honor. The probative value of this evidence is substantially outweighed by the danger of undue prejudice (or confusing the issues, or misleading the trier of fact)."

Narrative: "Objection, your honor. Counsel's question calls for a narrative." Or, "Objection, your honor. The witness is providing a narrative answer."

Non-Responsive: "Objection, your honor. The witness is being non-responsive."

Opinion Testimony (Testimony from Non-Experts): "Objection, your honor. Improper lay witness opinion." Or, "Objection, your honor. The question calls for speculation on the part of the witness."

Outside the Scope of Cross-Examination: "Objection, your honor. Counsel is asking the witness about matters beyond the scope of cross-examination.

Personal Knowledge/Speculation: "Objection, your honor. The witness has no personal knowledge to answer that question." Or, "Objection, your honor, speculation."

Relevance: "Objection, your honor. This testimony is not relevant," or, "Objection, your honor. Counsel's question calls for irrelevant testimony."

Unfair Extrapolation: "Objection, your honor. This question is an unfair extrapolation," or, "That information calls for information beyond the scope of the statement of facts."

Vague and Ambiguous: "Objection, your honor. This question is vague and ambiguous as to..."

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CONSTITUTIONAL RIGHTS FOUNDATION

is now

TEACH DEMOCRACY

Civic participation begins with civic education

Since 1963, we've been known as Constitutional Rights Foundation. Now, six decades later, in 2023, we have changed our name to Teach Democracy! Our materials, our approach, and our vision have not changed. But the scope of our work has expanded beyond teaching about the Constitution to include engaging students in all facets of civic learning. We know that civic participation begins with civic education. That's why we are more committed than ever to ensuring that our representative democracy is brought alive for those who hold its future in their hands: students.

Join us as we - Teach Democracy!

TeachDemocracy.org

601 S. Kingsley Dr., Los Angeles, CA 90005, 213.487.5590

To donate to Mock Trial or any of the other essential programs of Teach Democracy, go to **teachdemocracy.org/donate**. You can also donate from your phone:

1. Text the word "Donate" to 213-894-9432.
2. Response will pop up: "Help Teach Democracy! Donate at **teachdemocracy.org/donate**
3. Click on the link to complete your donation.