People v. Shem
An Art Theft

Featuring a pretrial argument on the Fourth Amendment

OFFICIAL MATERIALS FOR
THE CALIFORNIA MOCK TRIAL COMPETITION
A Program of Constitutional Rights Foundation

Co-Sponsored by:
American Board of Trial Advocates
Daily Journal Corporation
ACKNOWLEDGMENTS

Developed by:
Marshall Croddy, CRF President
Bill Hayes, Senior Writer/Editor
Damon Huss, CRF Writer/Editor
Laura L. Wesley, CRF Sr. Program Director
Lauren Fierro, CRF Intern
Ryan Hemar, CRF Intern

Reviewers:
George Bird, Esq., Los Angeles
Hon. Lawrence Brown, Sacramento
David A. Carrillo, Esq., San Francisco
Hon. Helios J. Hernandez, Riverside
Hon. Ross Klein, Long Beach
Hon. Raquel Márquez-Britsch, Riverside
Justice Miguel Marquez, California Court of Appeal, Sixth District
Jessica Marshall, Esq., San Diego
Sharon Matsumoto, Esq., Los Angeles
Pamela J. McFarland, Esq., Fresno
Nathalie Miller, Esq., San Diego
Justice Steven Z. Perren, California Court of Appeal, Second District
Hon. Ron Rose, Los Angeles
Michael Tiktinsky, Trial Specialist, San Francisco
Detective Don Hrycyk, Los Angeles Police Department
Lisa Sardegna, San Francisco
Professor Paul Von Blum, Esq., Los Angeles

Special Thanks to:
Robert S. Stern, Esq., CRF Board Chair
Andrew Costly, CRF Senior Publications Manager
Keri Doggett, CRF Director of Program
Lourdes Morales, CRF Senior Program Director
Hon. Marjorie Steinberg (Ret.), CRF Board Member, Lesson Reviewer
Aimee Groener

Cover Drawing: Mariel LoGuercio, Los Angeles, Mock Trial Courtroom Art Contest

Participating California Counties for 2014-2015

Alameda  Lake  Napa  San Diego  Shasta
Butte  Los Angeles  Nevada  San Francisco  Sonoma
Contra Costa  Madera  Orange  San Joaquin  Stanislaus
El Dorado  Marin  Placer  San Luis Obispo  Tulare
Fresno  Mendocino  Riverside  San Mateo  Ventura
Imperial  Mono  Sacramento  Santa Barbara  Yolo
Kern  Monterey  San Bernardino  Santa Cruz

Copyright 2014, Constitutional Rights Foundation. All Constitutional Rights Foundation (CRF) publications, including these Mock Trial materials, are protected by copyright. These Mock Trial materials are intended for use solely by teachers, coaches, students and other participants in the 2014-2015 California Mock Trial competition. However, we hereby grant to all recipients a license to reproduce the lesson for distribution to students and educators. It is a violation of this copyright to forward, print or distribute these materials to individual or groups that are not participants in the 2014-2015 California Mock Trial competition, without prior permission from CRF. Any team in violation of this copyright may be disqualified from participation in the competition. All rights reserved.
TABLE OF CONTENTS

Program Objectives .............................................................................. 4
Code of Ethics ............................................................................................ 4
Classroom Discussion Materials .............................................................. 5
Introduction to California Mock Competition ........................................ 10
Fact Situation ................................................................................................ 11
  Charges ........................................................................................................... 12
  Physical Evidence ..................................................................................... 13
  Stipulations ............................................................................................... 13
Pretrial Motion Procedures ...................................................................... 14
  Arguments..................................................................................................... 15
  Legal Authorities ....................................................................................... 15
Witness Statements .................................................................................... 21
Physical Evidence—Official Diagrams .................................................... 43
The Form and Substance of a Trial ............................................................ 45
Team Role Descriptions ............................................................................. 46
Procedures for Presenting a Mock Trial Case .......................................... 50
Diagram of a Typical Courtroom ............................................................... 54
Mock Trial Simplified Rules of Evidence ................................................ 55
  Allowable Evidentiary Objections .............................................................. 55
  Summary of Allowable Objections ............................................................ 63
PROGRAM OBJECTIVES

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

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

CODE OF ETHICS

All participants in the Mock Trial competition must follow all rules and regulations as specified in the California Mock Trial materials or disseminated by CRF staff or County Coordinators. Failure of any member or affiliate of a team to adhere to the rules may result in disqualification of that team.

All participants also must adhere to the same high standards of scholarship that are expected of students in their academic performance. Plagiarism* and scouting of any kind is unacceptable. Students’ written and oral work must be their own.

In their relations with other teams and individuals, students must make a commitment to good sportsmanship in both victory and defeat.

Encouraging adherence to these high principles is the responsibility of each team member and teacher sponsor. Any matter that arises regarding this code will be referred to the teacher sponsor of the team involved.

*Webster’s Dictionary defines plagiarism as, “to steal the words, ideas, etc. of another and use them as one’s own.”
Each year, Constitutional Rights Foundation creates the Mock Trial for students across the state of California. The case provides students an opportunity to wrestle with large societal problems within a structured forum and strives to provide a powerful and timely educational experience. It is our goal that students will conduct a cooperative, vigorous, and comprehensive analysis of these materials with the careful guidance of teachers and coaches.

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

The following lesson concerns the issue of art crimes. In the lesson, students examine the issue of art theft and learn the different types of crimes that can be charged when an art theft is committed. In the activity, students analyze real art-theft scenarios and play the role of prosecutors in deciding what charges to bring against suspects. This lesson is for information purposes only and cannot be used in competitions’ pretrial argument.

CLASSROOM DISCUSSION MATERIALS
Art Crimes

The Louvre, located in Paris, France, is the world’s most visited museum. It houses nearly 35,000 objects from throughout history. Among these historical objects is the Mona Lisa, which has been on permanent display at the Louvre since 1797. Painted by Leonardo da Vinci between 1503 and 1506, this portrait of a woman with a half-smile has been acclaimed as the best known, most visited, and most written about work of art in the world.

On August 21, 1911, Vincenzo Peruggia, an Italian house painter and former Louvre employee, stole the Mona Lisa. Peruggia entered the Louvre in a white smock that was only worn by employees and hid in a closet until closing. He then removed the Mona Lisa from its frame, and when the gallery reopened in the morning, he walked out unnoticed with the painting under his clothes. French detectives searched for the painting for more than two years.

In November of 1913, Peruggia, under a false identity, wrote to a Florence art dealer claiming to be in possession of the portrait. The art dealer responded and asked Peruggia to bring the painting to Florence for examination. Peruggia arrived in Florence on December 10, 1913 and was arrested. Peruggia mistakenly believed that the Mona Lisa had been stolen.
from Florence by Napoleon, and he thought that he deserved a reward for doing his patriotic duty and returning the painting to its true home in Italy.

Crimes like the one committed by Peruggia, though not as widely publicized, have become more common today. Art theft is usually committed for the purpose of resale or ransom, also known as artnapping. Many thieves steal art because valuable art pieces are worth millions of dollars and are relatively easy to transport. Museums take preventive measures against art theft — hiring guards, installing security systems and cameras, and securing paintings to walls — while private owners with multimillion-dollar art collections often have disproportionately poor security.

These crimes result in many costs to society, among them the expense of lengthy investigations and increased security measures. In addition, since only a small percentage of stolen art is recovered (estimates range from 5 to 10 percent) a unique part of culture and history is lost for generations to come.

Art crime can involve many different crimes, including forgery, burglary, larceny, robbery, embezzlement, extortion, and receiving stolen property. The differences depend on how the stealing is done.

**Forgery** is falsely making, altering or counterfeiting a document with the intent to deceive another person and cause a loss of money, goods, services, or something else of value. For example, Homer buys a copy of painting for $30 at the local swap meet. Then, he makes a certificate of authenticity and resells the painting to Moe, an art collector, for $30,000. Homer has committed forgery.

**Burglary** is the unlawful entry into a building with the intent to commit a crime, usually theft. First-degree burglary is the burglary of an inhabited building, while all other burglaries are second-degree. Suppose Homer climbed into the window of Moe’s home when he was sleeping to take a piece of valuable artwork. Homer has committed first-degree burglary.

**Larceny**, or theft, is the taking of someone else’s property without permission and not intending to give it back. There are two categories of larceny: grand theft, which is the theft of property over a certain value, and petty theft, which is the theft of property less than the grand theft amount. In California, grand theft is the theft of property over $950 in value. Suppose Homer was invited to a party at Moe’s and took a piece of art from Moe’s back yard. If the artwork is a vase worth $600, Homer is guilty of petty theft, but if the artwork is a sculpture worth $2,000, Homer is guilty of grand theft.

**Robbery** is the taking of a person’s property by violence or by immediate threat of violence. Suppose Homer saw Moe carrying a painting from his car and threatened Moe with a knife to give him the painting. Homer is guilty of armed robbery.
Embezzlement is the taking of property that a person has been entrusted with legally. Suppose Homer manages Moe’s art studio. Homer regularly moves artwork in and out of the safe where the most valuable pieces of art are kept. Moe has entrusted Homer with his artwork, and thus Homer has rightful possession of it, but he decides to take a piece of art for himself. Homer is guilty of embezzlement.

Extortion is making a threat with the intent of getting property from another person. The threat is usually blackmail, destruction of property, or violence. For example, Homer steals Moe’s most treasured piece of artwork. Then, he threatens to destroy it unless Moe pays a ransom for the artwork’s safe return. Homer is guilty of extortion.

Receiving Stolen Property is when people know or should have known that the property they received is stolen. Suppose Homer steals Moe’s most valuable piece of art, but he decides to sell it to Barney, friend of his who is an art connoisseur. Homer’s selling price is extremely low. Barney asks Homer for proof of ownership, but Homer says, “If you don’t take it now, I’ll get someone else who will take it.” Barney buys the artwork without the proof of ownership because it is such an amazing deal. Barney should have known the artwork was stolen because of the price and Homer’s failure to provide proof of ownership. Therefore, Barney is guilty of receiving stolen property.

For Discussion

1. How was Vincenzo Peruggia different from most art thieves?

2. What is the difference between larceny and embezzlement?

3. Two examples: (a) Homer walks up to Moe, sticks a gun in his stomach, and says, “Hand over your best painting or else.” Moe complies. (b) Homer tells Moe, “If you don’t hand over your best painting to me by Friday, I will kill you.” What crime did Homer commit in (a)? In (b)? Explain.

4. Which of the crimes listed in the article do you think is most serious? Least serious? Why?
ACTIVITY
What Are the Charges?

In this activity, students role play prosecutors and decide what charges should be brought against suspects in various real art-theft cases.

1. Divide the class into small groups. Assign each of the groups one of the cases: A, B, C, D, E, or F. (If you have more than six groups, some groups can have the same case.)

2. Each group should do the following:
   a. Read the case scenario.
   b. Using the descriptions of the crimes in the article, discuss and decide which crimes should be charged in the case.
   c. Be prepared to report to the class your decision and reasons for it.
   d. If you finish early, read another scenario and discuss and decide it.

3. When groups finish, call on the groups deciding Case A to report on their decision. Hold a class discussion on the case. Repeat this process for each remaining case.

Case A: The Butler Did It
An oil tycoon and his wife lived in their Bel-Air mansion filled with fine art and antiques. The mansion was surrounded by high walls and protected by 24-hour armed guards, an alarm system, and a full-time house staff. One of the artworks hanging in the home was an oil painting by a Swedish impressionist named Anders Zorn. One day, the wife touched the painting and realized someone replaced it with a high-resolution photo of the painting. Immediately, the detectives suspected the theft was an inside job. Detectives learned that the family butler, who was a Swedish national, had unexpectedly quit his job three months earlier and was frequently traveling to Sweden. During his travels, he auctioned off the Anders Zorn painting, along with another one, at a famous Swedish auction house.

Case B: The Con Artist
One of the most exhibited painters in the world is actually a con artist. This con artist did not copy the famous works of artists; instead, he painted something he believes artists might have done if they had had the time. In a sense, all of his paintings are originals, but he lied about who painted them. He then sold his artwork with the help of his wife. They invented a story that her grandfather hid his art collection at his country estate in Germany during the war, and she inherited it. To make the paintings appear dated, they used old canvases found at flea markets, created fake labels of German dealers, and sent paint pigments to a lab to determine whether they were available when the paintings would have been created. The con man even took bogus photos on warped paper of his wife dressed as her grandmother with the artwork hanging in the background to further support their story. It was one tube of white paint with traces of titanium white that was unavailable during the period of his forged artwork that got this con artist caught.
Case C: A Popular Painting Among Thieves
One of four versions of *The Scream* by Edvard Munch was stolen in 1994 from Oslo’s National Art Museum in Norway. The thieves held the painting for ransom, threatening to destroy it if the money was not paid. After detectives fooled the thieves into believing they would pay the ransom, it was returned unharmed. Another version of the Munch painting hung in Oslo’s Munch Museum where it was stolen in 2004. One Sunday afternoon, two men dressed in black ski masks and armed with guns walked into the Munch Museum. The men took two Munch paintings off of the walls, *The Scream* and *Madonna*, threatened the guards with their guns, and carried the paintings out of the museum in broad daylight. The thieves made it to their getaway car with more than $100 million in art.

Case D: Art or Scrap Metal
An abstract artist creates metal sculptures and stores them in a storage yard attached to his studio. In 1998, a Hollywood movie studio featured one of his sculptures in a film. Shortly after the sculpture was returned, it was stolen from his storage yard. The thieves then took the sculpture to a scrapper at a metal recycling dealer and sold it for scrap metal. The sculpture was worth $10,000, but the scrapper only paid the thieves $9.10 for it. After a lengthy investigation, it was discovered that the thieves had taken several of the artist’s sculptures and sold them to the scrapper. The thieves and the scrapper were arrested.

Case E: A Really Ugly Picasso
While a movie producer was on vacation, the property manager noticed that someone had broken into his home and stolen over $400,000 in artwork, which included a valuable Picasso drawing. Five months later, a man, claiming to be a professional football player, called a Beverly Hills auction house looking for a buyer for his “really ugly” Picasso drawing. The worker knew something wasn’t right with his story, so she checked the stolen artwork database. When she discovered the Picasso was likely stolen, she asked him to come in to have a Picasso expert look at the drawing. The police were contacted, and the suspect was arrested.

Case F: An Untrustworthy Employee
The manager of a well-known art gallery oversaw millions of dollars-worth of artwork. A few months into his employment, the owner noticed pieces of artwork missing from the gallery. The manager claimed that some pieces were lent to potential buyers, but he had no paperwork to prove this was true. Some of the missing pieces were returned soon after the investigation began, but their catalog numbers, used to keep record of the gallery’s collection, had been covered and rewritten. Upon further investigation, detectives discovered that the artwork supposedly lent to potential buyers had never been requested or received, and the changes to catalog numbers were made with a special pen found in the manager’s apartment. The manager was arrested.
Introduction to 2014-2015 Mock Trial Competition

This packet contains the official materials required by student teams to prepare for the 34th Annual California Mock Trial Competition. In preparation for their trials, participants will use information included in the *People v. Shem* case packet (except for the classroom discussion materials). The competition is sponsored and administered by Constitutional Rights Foundation. The program is co-sponsored by the Daily Journal Corporation.

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 Riverside, March 20–22, 2015. In May, 2015, the winning team from the state competition will be eligible to represent California at the National High School Mock Trial Championship in Raleigh, North Carolina, May 14-16th.

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

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

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

IMPORTANT
Please visit our Facebook page AND Twitter page for all program and case updates “CRF California Mock Trial” or our web site at: www.crf-usa.org

© 2014 Constitutional Rights Foundation 10  People v. Shem
Marty McCulloch, an heir to a railroad fortune, lives in a lakeside mansion in the town of Hamiltonia, located in Day County, California. Over many years, McCulloch amassed a prestigious collection of artwork. McCulloch’s home art gallery contains exquisite paintings from various artists, including classics from Renoir, Goya, and Cassatt to modern and contemporary works by Andy Warhol, Jackson Pollock, and Faith Ringgold. Art aficionados regularly visit the mansion to admire the paintings.

Evan Shem is a second-year graduate student at Hamiltonia University. Shem is studying for a master’s of fine arts, with an emphasis in the painting styles and techniques of mid-20th century abstract expressionists. Shem acquired a considerable amount of debt as an undergrad, and anticipated graduate school would cost even more. Shem allowed a childhood friend, Charlie Gibbons, to move in to Shem’s apartment, but later asked Gibbons to leave.

McCulloch is a professor of art history at Hamiltonia University. During Shem’s first year, Shem was in a class taught by McCulloch. Shem’s contributions to the classroom environment, along with Shem’s performances on projects and exams, earned Shem an internship at McCulloch’s mansion, where Shem was tasked with maintaining McCulloch’s vast collection of artwork.

During the internship, Shem became interested in a particular painting, titled *Treason*, by Fletcher Yazoo. *Treason* was a small, 11 inch by 14 inch canvas painting mounted in the original wood frame from 1977 when it was painted. Edward McCulloch, McCulloch’s father, left the painting to McCulloch when he died.

As had become an annual tradition, McCulloch hosted an exclusive Fourth of July party at the mansion for the high society of Hamiltonia. The living room of the mansion had floor-to-ceiling glass windows facing the back patio as well as sliding glass doors that were open and led to the back patio with a view of the estate. Nearly 200 guests attended the party. Shem was invited to the party, and Gibbons attended as Shem’s guest. McCulloch had asked Shem to serve as a docent for the evening. As docent, Shem watched over the artwork and offered insight into the history and technique of the paintings. Sidney Ogden, Shem’s and Gibbons’s childhood friend, was working as a parking attendant that evening.

McCulloch’s gallery was open for viewing from 7:00 p.m. to 9:00 p.m. When guests were not perusing the gallery, they were enjoying hors d’oeuvres and champagne in McCulloch’s spacious living area and open patio that overlooked rolling grass hills and Hamiltonia Lake.

Just before 9:00 p.m., the sky was dark, and McCulloch directed all the attendees to come outside onto the patio where they could watch a display of fireworks illuminating the sky. Then, after the firework show, McCulloch instructed everyone to enter the mansion where dessert was served. The party concluded about midnight.
On July 5 around 12:00 p.m., McCulloch received a call from MT's Fine Art Auction House (MT), informing McCulloch that someone had previously called MT regarding the value of *Treason*. McCulloch had not made the previous call to MT. After the call, McCulloch examined *Treason* and determined that the painting was not the real *Treason*. McCulloch then telephoned the police. Detective Reese Barron arrived to investigate that same afternoon. After Detective Barron questioned McCulloch, Barron identified Shem as a person of interest. First, Shem had greatly admired *Treason*. Second, McCulloch thought that Shem was a talented artist. Finally, Shem was serving as McCulloch's docent that evening and was instructed to lock the gallery at 9:00 p.m. when the firework show was scheduled to begin.

With McCulloch’s permission, Detective Barron took the painting to police headquarters for further investigation by Bernie Worcester, the official art expert retained by the police department. On July 6, Worcester concluded that the painting was a fake.

Detective Barron went to Shem’s apartment to investigate the matter further. Shem was not home, but Gibbons was outside when Barron arrived. During a casual discussion, Gibbons told the detective that Shem had a knack for creating near-identical replicas of artwork. In addition, Gibbons explained how Shem’s apartment functioned as a makeshift art studio, as Shem possessed a thorough collection of brushes, paint, easels, and canvasses.

On July 7, Detective Barron went to Shem’s apartment and got Shem’s consent to search it. When Barron searched the apartment, Barron found numerous recreations of many famous pieces of artwork as well as Shem’s own original pieces. Barron discovered in the apartment a painting that appeared identical to the one that Worcester had identified as a copy of *Treason*. Barron seized the painting and brought it to the police station to be examined by Worcester. Worcester concluded that the painting found in Shem’s home was the original *Treason* by Fletcher Yazoo that had allegedly been stolen from Marty McCulloch’s home.

[While at Shem’s apartment, Detective Barron also searched the storage cabinet located near the front of two parking spaces in Shem’s carport. The storage cabinet contained boxes full of knick-knacks, old clothes, and additional art supplies. When looking through a box, Barron found a folder containing a handwritten note that had the word “Treason” on it with additional notes listing four names of private collectors who own works by the artist Fletcher Yazoo. Barron seized the handwritten note and booked it into evidence.]

The following day, Detective Barron received and executed a warrant for the arrest of Shem for the theft of the painting *Treason* from McCulloch’s home.

**STATEMENT OF CHARGES**

**Count One**

*California Pen. Code Sec. 484 (Theft by Larceny)*

Every person who takes the personal property of another (and the property taken is of value exceeding nine hundred fifty dollars ($950)), without the consent of the owner, with the intention to deprive the owner of it permanently, is guilty of theft by Grand Larceny.
PHYSICAL EVIDENCE

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

1. Exhibit A, a photo of the painting found at Evan Shem’s apartment
2. Exhibit B, a photo of the painting found at Marty McCulloch’s mansion
3. Exhibit C, a diagram of Marty McCulloch’s mansion
4. Exhibit D, a note found during the search of Evan Shem’s storage cabinet

*ALL reproductions can be as small as the original found in this packet but no larger than 22x28 inches.

STIPULATIONS

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

1. Exhibits A and B may be reproduced in color, however there may not be any alterations in color between the two exhibits (e.g. brightness, tone, etc.) Any alterations to the exhibits may be grounds for disqualification from the competition. Teams are not required to reproduce the exhibits in color, however if both teams have exhibits and one is in color and the other is in black and white, the trial will be conducted with the color exhibits. Teams will not be penalized if they choose not to reproduce and enlarge the exhibit as found in the packet. (NOTE: Mock Trial teams are encouraged to access and download color images of Exhibits A and B from the CRF website for reference and for preparing expert witnesses for testimony, even if the teams reproduce black-and-white images for use at trial.)

2. At the time of arrest, there was sufficient probable cause to issue an arrest warrant for Evan Shem.

3. All physical evidence and witnesses not provided for in the case are unavailable and their availability may not be questioned.

4. Beyond what’s stated in the witness statements, no other forensic evidence found was in this case.

5. All witness statements were taken in a timely manner.

6. Bernie Worcester and Jamie Sardegna are qualified expert witnesses and can testify to each other’s statements and relevant information they would have reasonable knowledge of from the fact situation and witness statements.

7. Up until July 4 there is no chain of custody issue, and the painting belonging to Marty McCulloch was in fact an authentic Yazoo painting.

8. If the defense’s pretrial motion is granted, the bracketed information is excluded from trial, and it may not be used for impeachment purposes. However, in middle school trials the evidence may be used at trial.

9. The search of Evan’s apartment is a valid search and there may not be an objection to the validity of the search.

10. [Evan Shem wrote the note listed as Exhibit D and the note contained the names of private collectors of artwork by Fletcher Yazoo.]

11. The best evidence rule does not apply.

12. There are no known photographs of the original painting *Treason*, by Fletcher Yazoo.
This section contains materials and procedures for the preparation of a pretrial motion on an important legal issue. The judge’s ruling on the pretrial motion will have direct bearing on 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.

The pretrial issue involves the Fourth Amendment protection against unreasonable searches and seizures. The question is whether Detective Barron’s search of Evan Shem’s storage cabinet on July 7 was constitutional. If the search was unconstitutional, the handwritten note about private art collectors found in Shem’s storage cabinet may not be used at trial. This is the only issue at pretrial.

The Fourth Amendment protects individuals, their homes and their belongings from unreasonable police searches. If the police have obtained a valid warrant, they are allowed to make a search within the bounds of the warrant. Searches outside of the bounds of the warrant, or in the absence of a warrant, can also be legal if a court recognized exception applies. The exceptions include: the motor vehicle exception, the stop and frisk exception, searches incident to lawful arrests, consent, and exigent circumstances. If the search was either inside the scope of the warrant, or within the warrantless search exceptions, then the search was constitutional.

Here, we focus on the consent exception. Detective Barron received consent to search Evan’s apartment. However, the question is whether Evan’s consent extended to the search of the storage cabinet. If Evan’s consent did not extend to the storage cabinet, the question becomes whether Charlie consented to the search of the storage cabinet and did Charlie have the authority to consent to a search.

The search of the storage cabinet, where the handwritten note was found, will only be deemed constitutional if the person consented to the search. An individual may sometimes consent to the search of another’s property when that individual owns or shares the property with the one being searched. For example, a girlfriend can consent to the search of an apartment she shares with her boyfriend.

The sources cited below will help you determine whether Detective Barron’s search of the storage cabinet was constitutional. For mock trials without pretrial hearing, the search of Evan Shem’s storage cabinet is considered constitutional, and the handwritten note can be used during the trial. The pretrial motion is the only allowable motion for the purposes of this competition.
ARGUMENTS

Prosecution should argue that Detective Barron acted in good faith because it was reasonable for Detective Barron to believe Evan Shem consented to the search of both the apartment and the storage cabinet. Even if Shem did not consent to the search of the storage cabinet, it was reasonable for Detective Barron to believe that Gibbons gave consent for the search. First, Detective Barron saw Gibbons at Shem’s apartment throwing out the trash the day before the search. Then, Gibbons was parked in one of the parking stalls designated for apartment B on the day of the search. Furthermore, when Detective Barron asked Gibbons if the storage cabinet belonged to apartment B, Gibbons confirmed and directed Detective Barron to the key. If it is reasonable for Detective Barron to believe that Gibbons was a resident of Shem’s apartment, then Gibbons’s consent of the search of the storage cabinet is valid. Thus, no warrant is required to search the storage cabinet.

Defense should argue that Gibbons did not give consent to the search of the cabinet, nor did Gibbons have the right to give consent. Even if it were reasonable for Detective Barron to believe Gibbons was a resident of Shem’s apartment, Gibbons would have had to consent to the search. Defense should argue that Gibbons was unaware that Detective Barron was requesting consent. Additionally, Gibbons was no longer a resident of Shem’s apartment as of June 30 when Gibbons was asked to move out. Defense should point out that Detective Barron assumed Gibbons lived there, but never asked Gibbons, and therefore, Detective Barron was not acting in good faith.

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. The materials include excerpts from the U.S. Constitution, the California Constitution, the California Penal Code, edited court opinions, the Mock Trial Fact Situation, and all relevant testimony to be found in the Witness Statements of Officer Reese Barron, Evan Shem and Charlie Gibbons.

The U.S. Constitution, U.S. Supreme Court holdings, and 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. Shem.

LEGAL AUTHORITIES
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.

Amendment XIV
Section 1. All persons born or naturalized in the United States, and subject
to the jurisdiction thereof, are citizens of the United States and of the States
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.

California Constitution
Article I
Section 13. The right of the people to be secure in their persons, houses,
papers, and effects against unreasonable seizures and searches may not be
violated; and a warrant may not issue except on probable cause, supported
by oath or affirmation, particularly describing the place to be searched and
the persons and things to be seized.

Statutory
California Pen. Code Sec. 484 (Theft by Larceny)
Every person who takes the personal property of another (and the property
taken is of value exceeding nine hundred fifty dollars ($950)), without the
consent of the owner, with the intention to deprive the owner of it
permanently, is guilty of theft by Grand Larceny.

CALCRIM 1800 (Jury Instructions)
The defendant is charged with grand theft by larceny. To prove that the
defendant is guilty of this crime, the People must prove that:
1. The defendant took possession of property worth more than $950.00,
owned by someone else;
2. The defendant took the property without the owner’s [or owner’s
agent’s] consent;
3. When the defendant took the property (he/she) intended to deprive the
owner of it permanently or to remove it from the owner’s possession for
so extended a period of time that the owner would be deprived of a major
portion of the value or enjoyment of the property;
AND
4. The defendant moved the property, even a small distance, and kept it
for any period of time, however brief.

CALCRIM 223 (Jury Instructions)
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. 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.

CASE LAW
FEDERAL CASES

Stoner v. California, 376 U.S. 483 (1962)
Facts: Stoner was suspected of robbing a bank. Police learned that he was staying at a hotel. A clerk at the hotel consented to a search of his room. The police found a gun in the room. Stoner moved to exclude the evidence because it was obtained during an unreasonable search.

Issue: Could the clerk give consent to the search of the defendant’s hotel room?

Holding: No. The hotel clerk had no authority to give consent to a police search, and the police had no reason to believe the clerk had such authority. Even though the clerk could enter the room to perform his duties, he could not consent to a police search. It did not matter that the police officer believed the clerk had authority if such a belief was not objectively reasonable.

Facts: The police came to the defendant’s house to investigate a bank robbery. Mrs. Graff, who shared the house and a bedroom with the defendant, answered the door. She consented to a search, and police found
money in the bedroom closet. The defendant claimed the search was unconstitutional and the money was inadmissible.

Issue: Could Mrs. Graff consent to a search of defendant’s house?

Holding: Yes. Mrs. Graff had joint access and control of the room and therefore could consent to a search. It did not matter that the house belonged to the defendant or that he did not give Mrs. Graff the authority to consent to a search. Co-occupants can consent to searches of common areas.

_Fernandez v. California, 134 S.Ct. 1126 (2014)_

Facts: Police officers followed the suspect in a violent robbery into an apartment building, and shortly after, they heard screams coming from one of the apartments. When they knocked on the door, an assaulted woman opened the door and claimed that no one else was home except her and her children. When the police asked to enter the apartment and look around, the defendant came to the door and refused to let the police into the apartment. Under suspicion that he had assaulted the woman, the police removed the defendant and placed him under arrest. After the suspect was detained, the police received written and verbal consent from the woman to search the apartment.

Issue: Can police officers search jointly occupied premises if one occupant consents while the other occupant is detained?

Holding: Yes. An occupant can only object to the search of a premise where the other occupant is consenting if the objecting occupant is physically present. Where the objecting party is absent due to lawful detention or arrest, the other occupant can consent to a search in their absence, even where the detained occupant had previously objected to a search.

_Illinois v. Rodriguez, 497 U.S. 177 (1990)_

Facts: Gail Fischer came to police and told them that the defendant had drugs in “our apartment.” Gail brought the police to the apartment and opened the door with a key. There were drugs in plain view and the police arrested the defendant. Later, it was determined that Gail did not have joint access or control over the apartment, and the defendant moved to have the drugs taken out of the evidentiary record.

Issue: Is the search constitutional if based on consent by someone who did not have access or control over the apartment?

Holding: Yes, because the police reasonably believed Gail had joint access, the police were acting in good faith. The Fourth Amendment only protects against unreasonable searches. Gail had a key, had belongings in the apartment, and claimed to live there. The police had an objectively reasonable basis of believing that Gail could give consent to a search. It did not matter that the belief turned out to be wrong.
People v. Shem


Facts: A husband and wife were pulled over for a traffic infraction. The officer said he believed they were carrying narcotics and asked to search the car. The husband consented. During the course of the search, the officer found a paper bag in the car. After opening it, the officer found cocaine. The defendant moved to suppress the cocaine on the grounds that the defendant did not specifically consent to a search of the bag.

Issue: Did the defendant’s general consent of the car include consent to search the bag?

Holding: Yes. It was objectively reasonable for the policeman to believe that the scope of defendant’s consent included the paper bag. The officer told the defendant that he was looking for narcotics, so it was reasonable that the officer would want to look in small containers. The defendant needed to tell the officer if he did not want the officer to search the bag.

*U.S. v. Pena*, 143 F.3d 1363 (10th Cir. 1998)

Facts: The defendant was staying in a hotel room when police arrived and asked to search the room. The defendant said, “Go ahead.” The officers found a couple of marijuana cigarettes in the bathroom ceiling and arrested the defendant. The defendant claimed that he had not consented to the search of the bathroom and therefore the cigarettes were inadmissible.

Issue: Did defendant’s consent to a search of the room allow the officers to search the bathroom?

Holding: Yes. An objectively reasonable person would have considered the bathroom as included in the officer’s request to search the room. They were both part of the same accommodation, and the bathroom was implied in the officer’s request. Also, the defendant did not object to the officer entering the bathroom.

*U.S. v. Davis*, 332 F.3d 1163 (9th Cir. 2003)

Facts: One of two roommates in a two-bedroom apartment consented to a police search of the entire premises. The officers found a gun in a duffel bag, under the bed of the non-present roommate. The roommate moved to exclude the gun from evidence as he did not consent to the search.

Issue: Could the roommate give consent to search the duffel bag of her absent roommate?

Holding: No. The gun was in a bag and under the non-present roommate’s bed. The consenting roommate did not have joint access over the duffel bag and did not have express authorization from the other roommate to make the search. Thus, the police did not act in good faith and the search was illegal, so the gun could not be brought into evidence.
People v. Cruz, 61 Cal.2d 861 (1964)

Facts: A few temporary guests at an apartment were suspected of possession of marijuana. One of the transient guests, Ann, told the officer he could “look around.” The officer conducted an extensive search lasting several hours. The officer found marijuana in a suitcase of another transient guest, the defendant.

Issue: Could Ann’s consent allow the officer to search the defendant’s suitcase?

Holding: No. The officer was aware that both Ann and the defendant were temporary guests. Ann could only give consent to items that were hers. Thus, the search of the suitcase was outside the scope of Ann’s consent. The officer did not ask the defendant for permission to search the suitcase and such consent would have been necessary for a search. Thus, the police did not act in good faith and the marijuana was suppressed.


Facts: The defendant was staying in the home of a woman. He carried a case in which the woman had stored some personal items. The woman’s items were removed, but she kept a key to the case. The police arrested the defendant near the house. When they arrived at the woman’s home, she consented to a general search of the apartment and later told the officers that the drugs were in defendant’s case. The case was locked, but the police found a key on the defendant, searched the case, and found heroin. The defendant was charged with possession of heroin.

Issue: Did the woman give lawful consent to search the case?

Holding: No. The police were not aware that the woman had a key to the case. Therefore, the police could not have considered the woman’s possession of the key when determining the scope of her consent. Her general consent of the house was not sufficient for the officers to open the container, even though the woman alerted the police of the container’s contents. The defendant was in the room at the time and his specific consent was needed to remove the key from his pocket and open the case.

People v. Jenkins, 22 Cal.4th 900 (2000)

Facts: In a murder investigation, the police asked Diane if they could search her apartment. Diane consented. The police asked if there were any items that belonged to her brother. Diane gave them her brother’s unlocked briefcase. The police opened it and found the gun used in the murder. In a trial for murder, the defendant moved to have the briefcase removed from evidence.

Issue: Did Diane have the authority to consent to a search of the briefcase?

Holding: Yes. It was objectively reasonable to assume that Diane had not only joint, but exclusive access over the case at the time of the search. Diane was a family member of the defendant, and the briefcase was kept in her bedroom. When the defendant gave the case to Diane, he reasonably should have assumed the risk that she would consent to a search of it.
WITNESS STATEMENTS

WITNESS STATEMENT—Prosecution Witness: Detective Reese Barron

My name is Reese Barron. I am 42 years old and a detective with the Hamiltonia Police Department. My specialty, within the department, is crimes concerning artwork and cultural property, which usually are theft and forgery. I have worked exclusively with art crimes for 16 years.

On July 5, I was contacted to respond to the theft of a painting that had been reported stolen from Marty McCulloch’s mansion. I drove straight there and, upon arrival, was greeted by McCulloch, who looked upset. McCulloch showed me the gallery and the painting and repeatedly insisted that it was a fake. McCulloch explained that someone must have replaced the real painting of Treason with this imposter.

This was quite unusual to me. In most cases of art theft, owners are confronted with a blank, empty space where their painting used to be. Here, however, it seemed as though a thief was hoping McCulloch wouldn’t notice. The thief expected to steal McCulloch’s painting, replace it with a fake, and continue business as usual.

Not having the alleged original to compare it to, I was unable to make a preliminary determination as to whether the painting was a fake. I surveyed the perimeter of the structure to locate any break-in points, but nothing I observed suggested an illegal entry. I formed the opinion that this could have been an inside job. We dusted the doorknobs and entryways for fingerprints and took them back to the lab for analysis. Although we found some smudged fingerprints, none were identifiable.

I asked McCulloch if anyone was recently granted access to McCulloch’s home, and McCulloch told me that a large party had been held the previous day. I asked McCulloch to go over the guest list with me. McCulloch drew my attention to a young person by the name of Evan Shem. Apparently, Shem began working for McCulloch in the months leading up to the theft. Shem had a talent for copying other artists’ works and had consistently expressed an interest in Treason. Furthermore, Shem’s job the night of the party was to escort the guests through the gallery, and when the last of the guests had viewed the art collection, Shem was instructed to turn off the lights and lock the gallery door by arming the security system. On the night of July 4, Shem had been the last person to leave McCulloch’s gallery where Treason was kept. From my investigation and my interview with McCulloch, I formed the opinion that Shem was a person of interest in this case. Although I focused my attention on Shem, the department continued to investigate other guests, but they found no promising witnesses or suspects. We also dusted the frame for fingerprints, and none were identifiable.

With McCulloch’s permission, I took the painting to headquarters, and after a thorough examination of it, art expert Bernie Worcester concluded the next day, that the painting was indeed a fake. On that day, July 6, I went to Shem’s apartment. When I arrived, I saw someone leave apartment B with a
trash bag. I approached the individual, who self-identified as Charlie Gibbons. I asked, “Do you know Evan Shem?” Gibbons responded, “Yes.” I continued to ask Gibbons a few questions. According to Gibbons, Shem had developed a hobby of replicating famous artwork. Shem possessed a respectable collection of various paints and art supplies and would create almost perfect recreations of paintings of various styles. I asked Gibbons, “What does Shem do with these paintings once they are finished?” Gibbons was unable to provide a satisfactory answer. Gibbons said, “You know what? I’m not exactly sure. Once the paintings are done, Evan simply moves on to the next one. It’s as though Evan’s more interested in the process of creating the painting than having a finished product.” I asked Gibbons for permission to enter the apartment and look around, but Gibbons declined.

On July 7, I returned to Shem’s apartment. When I arrived, I asked Shem if I could search the apartment. With a wave of the hand, Shem said “Sure, take a look around.” I surveyed the apartment and discovered that Shem’s apartment was functioning as a makeshift art studio. The place was covered with paintings, paint supplies, and art books. When I explained why I was there, Shem seemed concerned and confused. Shem kept saying that it was unbelievable that anyone would ever steal *Treason*. Also, Shem remarked how *Treason* was not even that valuable in comparison to the rest of McCulloch’s collection, thus making the theft all the more senseless. Furthermore, Shem readily admitted to attempting to make a replica of *Treason*. Shem said, “Sure I attempted to make a copy of *Treason*. I make copies of all my favorite paintings, but they’re never as good as the originals. After all, I’m only a student. I’m still learning.”

After searching through Shem’s extensive collection, I discovered a loose canvas painting that looked strikingly similar to the one found in McCulloch’s mansion. I had a suspicion that the painting was the real *Treason*.

[After conducting a full search of the apartment, I stepped outside to look around and be sure I did not miss anything. At that time, I noticed a carport adjacent to the building. Near the front of each pair of piggybacked parking spots, there was one storage cabinet. On the ground, the parking spots were marked with white paint that said “Reserved” and an apartment number, which was A, B, C and D. Shem lived in apartment B, so I proceeded over to the spot marked “B.” There, I ran into Gibbons, who was getting out of the driver’s side door of a car parked in one of apartment B’s designated spots. Gibbons was sweating although it wasn’t hot outside. I wasn’t sure if Gibbons was nervous or just sweats a lot. I asked Gibbons if the storage cabinet belonged to apartment B, and Gibbons replied, “Yes.” I then asked if I could search the storage cabinet, and Gibbons replied, “The key is in the kitchen.” I believed that Gibbons was Shem’s roommate, and I believed that Gibbons gave consent to search the cabinet.

Then, I proceeded into the kitchen through the back door and found the storage key hanging on a hook beside the refrigerator. Shem was sitting on the living room sofa and did not see me take the key. When I opened the storage cabinet, I saw several containers that were labeled neatly. I continued to look for something related to the theft of *Treason*. That was
when I found a folder inside a box labeled “art supplies” that contained a handwritten note with “Treason” written at the top. The note listed four names. I seized this note as part of my investigation. My research later revealed to me that these were names of private art collectors who each owned Fletcher Yazoo paintings.]

I asked Gibbons if Gibbons knew anything about McCulloch’s Fourth of July party. Gibbons told me that Gibbons and Shem had both been there, and that Gibbons had seen Shem running toward the gallery holding a backpack.

I seized the painting that I suspected to be Treason, brought it to headquarters, and contacted Worcester. Worcester authenticated the painting as the real Treason. On July 8, McCulloch met me at the police station to look at the painting taken from Evan’s apartment. McCulloch confirmed that the painting I seized from Evan’s apartment was the real Treason. I took a photograph of each painting and those photographs are listed as Exhibit A and Exhibit B.

Based on this information, later that day I secured a warrant for Shem’s arrest. I arrived at Shem’s apartment, arrested Shem, and went to the station for booking. Shem insisted I was arresting the wrong person and that there had been some sort of mistake. In a subsequent interview, I learned from T.M. Little that Little saw Shem at the Fourth of July party with a backpack.
WITNESS STATEMENT—Prosecution Witness: Bernie Worcester

My name is Bernie Worcester. I am an art expert retained by the Hamiltonia City Police Department from time to time. In addition, I am the lead curator at MT’s Fine Art Auction House. I earned a master’s degree in Art History from Notre Dame in 1989, and over the past 25 years, I have attended numerous nationwide seminars, meetings, and forums on appraising techniques. I am a well-known authority on art authenticity, and I have been called on to authenticate paintings worth millions of dollars.

In my role as the curator of MT’s Fine Art Auction House, I frequently receive requests from people all over the world who seek to sell or consign paintings. For someone seeking to sell a painting, we follow a routine procedure for evaluation and authentication before putting anything up for auction. Upon receiving an initial request, we will provide an estimate to the seller as to the price we expect to obtain for such a piece. If the seller remains interested, we require the seller to bring in the painting and paperwork for inspection.

On July 2, we received a call by someone requesting to sell Treason by Fletcher Yazoo. Although Treason is a relatively obscure painting, I estimated that it would sell for $100,000. There is currently a flourishing market for abstract paintings like Treason, and collectors are willing to pay top dollar. Yazoo’s recent death has resulted in a surge in the market-price for his work. When artists die, their artwork often increases in value because they will never produce more. Treason would likely sell for a relatively substantial sum. I remember the caller was excited when I stated the expected dollar amount of the painting. As I recall, the caller uttered, “Oh my goodness! $100,000? I can’t believe it’s worth that much!” Other than that, I do not recall anything particularly unusual about the caller or any details about the sound of the caller’s voice.

In evaluating the authenticity of the painting found at Evan Shem’s apartment, I can confidently say, in my expert opinion, that it is authentic. A careful visual examination is all I needed to conclude that the painting found in Shem’s apartment was the original Treason by Fletcher Yazoo, as I will explain.

Authenticating artwork is an art in itself. Three common approaches are used to determine a painting’s authenticity; they are provenance, scientific testing, and connoisseurship. I will address these three in order.

Provenance pertains to a painting’s chain of custody or ownership. Here, given the relatively short lifespan of Treason, its provenance is easy to trace. Treason was painted by Fletcher Yazoo in 1977, and Edward McCulloch purchased it at an art show in 1978. Upon his death in 1982, Edward McCulloch left Treason, in his will, to Marty McCulloch. Thus, McCulloch is the last legitimate owner of the painting. Therefore, the provenance of Treason is undisputed.

Scientific examination involves a variety of complex methods of investigation, such as testing the chemical composition of paint samples and
carbon dating. Here, we are dealing with modern art. Testing the chemical composition of the paint would not be useful because the painting was made with acrylic paint that has been commercially available since the 1940s, and carbon dating is usually only used for ancient artifacts. As such, scientific testing is not necessary.

Connoisseurship is the method of studying and examining the unique and particular stylistic techniques of particular artists. Connoisseurship involves a mastery and appreciation of the art form, paying particular attention to the minute, nuanced details that contribute to a painting’s overall appearance. The precision and thoroughness of a connoisseur’s analysis lends credibility to their determinations of authenticity. As of now, no computer out there can do the work of a trained and experienced expert.

There is ordinarily room for argument and debate in the realm of connoisseurship, as I’ve spent many nights engaged in debate about the particular shading of Dali’s clouds or the curvature of Seurat’s umbrellas, but here we have an obvious case. It is my professional opinion that the painting found in McCulloch’s home is a fake Treason; meanwhile, the painting that was found in Shem’s apartment is unquestionably the original Treason by Fletcher Yazoo.

Like Jamie Sardegna, I too used traditional Morellian analysis of the two paintings found in Shem’s home and McCulloch’s home, respectively. This method of analysis, named after 19th century Italian art historian Giovanni Morelli, involves identifying paintings by examining the “signature” techniques of the artist in question, like brushstrokes, thickness of paint, palette (range of colors), and the like. I then examine a painting to see if the painting shares those unique facets, and if it does, I can authenticate it. A fraud may have the “gist” of the original without the details I mentioned.

Fletcher Yazoo was known for his harsh and vigorous painting style. He would rarely simply apply paint to the canvas with gentle brushstrokes. Instead, he tended toward a “painterly style,” where the brushstrokes are visible, and even attacked the canvas with his paintbrush. The painting found in Shem’s apartment (“Exhibit A”) contains the characteristics of authentic Fletcher Yazoo work. The pressure that Yazoo applied with his brush to the canvas is evinced by the trailing remnants of paint that accentuate the primary paint streaks. By pressing the brush up against the canvas, individual bristles of the brush leave rough-edged, irregular lines in Treason as opposed to smooth and even lines. He applied the paint thickly almost completely throughout. In my professional opinion, this is the original Treason.

The painting found in McCulloch’s home (“Exhibit B”) has several of the particularities of Yazoo’s work, but there are telltale signs that it is a fake. First, the arrowhead-shaped white paint just above the central circle-form has paint too thickly applied. It looks carefully painted compared to Exhibit A, and Yazoo was not so careful. Just to the right of the “arrowhead” there is a very small pinkish oval. In Exhibit A, however, there is no oval, but rather a tiny pink “streak,” clearly a remnant of red paint left on the brush
when Yazoo dipped it in white paint. In Exhibit B, it appears to me that the
copyist added the pink oval as an afterthought, trying to match the original.

Moving clockwise from the pink marking, at about three o’clock, there is a
downward-pointing white arrow-shape. Again, in Exhibit B, the white paint
appears too thick, as if it was carefully applied. By contrast, in Exhibit A,
the same shape appears quickly or vigorously applied, consistent with
Yazoo’s style. This tells me that the copyist painting Exhibit B was stopping
and starting to paint, as copyists have to do because they are usually
looking back-and-forth from the original (or from a photo) to their own
canvas during the painting process.

Finally, just below the downward-arrow shape is a white streak of paint
that resembles a white bone. In Exhibit B, the lower edge of the “bone-
shape” appears smoother than in Exhibit A. The same shape in Exhibit A
has the signature Yazoo rough edge.

Treason was kept in its original form: a small, lightweight canvas pressed
into the original wood frame. Neither the canvas found in McCulloch’s
gallery nor Shem’s apartment has markings or adhesive that would indicate
either one was framed with tacks or staples. After further examination of
the frame, I have concluded that the original Treason could have been very
easily removed and replaced with the replica using no tools at all.
**WITNESS STATEMENT—Prosecution Witness: Charlie Gibbons**

My name is Charlie Gibbons. I am 23 years old and currently unemployed. For the past three years, I worked for a hardware store, but I was recently fired due to a misunderstanding. I was a good employee, but my boss just did not like me and, one day, falsely accused me of stealing his sunglasses and fired me on the spot, without even offering me an opportunity to defend myself.

Evan Shem and I have been friends since third grade. We were inseparable until our freshman year of high school when we began to drift apart. Evan began hanging out with the artsy theater-kids and got really into painting and drawing. We were no longer a part of the same scene. Also, around this same time, I began shoplifting from local businesses and getting into all kinds of trouble at school. I’m embarrassed about it today, but Evan understandably kept some distance from me back then.

After high school, Evan went off to college, while I stayed in town and took odd jobs until I landed the job at the hardware store. Evan and I had completely lost touch until Evan moved back to town to start graduate school. Once we started hanging out again, it was like we had never stopped. We did a lot of reminiscing about the good old days. I was also quite impressed to hear about Evan’s accomplishments and to see the artist Evan was becoming. Evan even showed me some paintings. I couldn’t believe how professional they looked.

After the hardware store fired me, I lived off my savings for a few months, until I was forced to move out of my apartment. Out of desperation, I asked if I could crash at Evan’s place for a couple weeks, just until I found a new job. I could tell Evan seemed reluctant, but still Evan said “all right.” Over the next few months, and with the economy the way it’s been, finding a job was tough. Evan generously allowed me to stay but eventually asked me to contribute to the rent or leave. I decided to leave at the end of June, but I was crashing on a friend’s couch until a room became available for rent. In the meantime, I was storing most of my belongings in my car’s trunk, and some of my large belongings were still at Evan’s apartment. So, I still had the key to Evan’s apartment.

When I was staying with Evan, I spent most of my days looking for a job. Otherwise, I was hanging out, flipping through the pages of Evan’s art books. I had never been interested in art before, but seeing Evan work and watching paintings take shape allowed me to appreciate the skill involved in creating such elaborate work. Evan had developed a unique style, and I felt privileged to witness the creation of Evan’s masterpieces.

Evan was also really good at copying classic artwork. Evan always said that the best way to learn from the masters is to duplicate their work. I remember seeing Evan recreate many famous paintings, sometimes completely from memory. The paintings Evan made looked exactly like the paintings I saw in books and online. I was joking around one day after Evan had painted a near identical replica of Magritte’s *The Treachery of Images*. I
said something about whether any of those art snobs would be able to tell
the difference between Evan’s fakes and the real thing. We shared a laugh,
and I thought nothing of it, at the time.

I remember when Evan started working for McCulloch and wouldn’t stop
talking about this one painting, called *Treason*. Evan managed to work it
into almost all of our conversations, so I learned a lot about this painting
that I had never seen. One day, I think it was July 2, I was at the apartment
packing up some things, and I overheard Evan making a phone call to
someone about *Treason*. Evan asked about selling *Treason*. It seemed
strange to me because Evan had never mentioned that McCulloch wanted to
sell the painting. Anyway, I figured this had something to do with Evan’s
job at the mansion. What stood out as weird to me was the way Evan
referred to the painting as “my painting” on the phone. Evan even made a
phony sounding voice during the call, like a weird accent. Evan said
something about $100,000 and sounded excited.

I don’t recall asking Evan about the phone call or how much the painting
was worth. In all honesty, I had grown sick and tired of hearing about
*Treason*. Also, if Evan was up to no good, I wanted no part in it. Those days
for me were long gone, in high school. I also knew that Evan was upset
with Professor McCulloch because the professor never paid Evan or
something.

When Evan and I attended McCulloch’s party, I thought at least I would see
this “incredible” painting for myself. I figured that maybe if I saw the real
painting in person, I would be able to understand Evan’s obsession. I
decided to wear my tan trench coat to the party because I thought it added
style to my outfit, besides I had never been to a fancy party before. Once we
arrived at McCulloch’s mansion, Evan took me down a long hallway and
into McCulloch’s art gallery. When I saw the painting, I was not impressed.
It was much smaller than I expected, and it appeared like the paint was just
thrown on in a hurry. I couldn’t understand why Evan was so interested in
such a tacky, uninspiring painting.

That evening, when McCulloch asked everyone to go outside to watch the
fireworks, I couldn’t find Evan. I watched the fireworks from the corner of
the patio near the wall that divided the living room and kitchen. At some
point during the show, I turned around and looked into McCulloch’s
mansion. Through the window, I could see Evan holding Evan’s own
backpack, running toward the hallway that led to the gallery. At the time, I
was approximately 90 feet away with an unobstructed view. Looking back
on it now, it definitely seems strange, but at that moment I figured maybe
Evan was doing some routine work. I didn’t go inside the mansion until the
fireworks show was over and McCulloch invited us inside for dessert.

I didn’t see Evan the rest of that night, and after the party I called a taxi to
get a ride back to Evan’s place. Evan had agreed to let me sleep on Evan’s
couch that night. When I got back to the apartment, Evan was already
asleep. The next morning, I asked Evan why Evan had left the party without
me, and Evan made an excuse about not feeling well.
A few days after the party, a police officer arrived at the apartment while I was throwing some of my stuff into the trash and began questioning me about Evan’s ability to recreate paintings. The whole situation made me nervous, I don’t like talking with authority figures. I immediately began talking fast and boasting about how incredibly talented Evan was and how Evan creates perfectly identical recreations of artwork right there in the apartment. I thought I was doing a favor by speaking so highly of Evan’s talent, but it must have made matters worse.

[On July 7, I arrived at the apartment to grab the last of my things. I pulled into one of the designated parking spots for Evan’s apartment because there was no street parking, and I was going to make a few trips back and forth to get my things. I knew Evan was home because Evan’s car was parked in the carport, but I didn’t know the detective was searching the apartment. When the detective approached me and asked me about the storage cabinet, I confirmed that it belonged to Evan, and I said that the key was in the kitchen. I knew where the key was because I had stored my bike in there when I was staying with Evan. I did not think much of it, as I figured that Evan was inside and would need to give the detective the key anyway.]
WITNESS STATEMENT—Prosecution Witness: Marty McCulloch

My name is Marty McCulloch. I am 52 years old, and I have a PhD in art history from NYU. I am a professor of art history at Hamiltonia University. Many students there are training to become studio artists, like photographers, painters, or sculptors, but are required to take art history courses. In addition, I have inherited the family fortune, which my great-great grandfather made during the railroad boom in the 19th century.

Artwork was an important part of my upbringing. My parents were always taking my siblings and me to local museums and art galleries, and our home was elaborately decorated with fine artwork.

As a teenager, I remember my father being particularly fond of this one painting called Treason that hung in our living room. When I was younger, I never could quite fathom what he found so compelling about this piece. He told me that he had bought it at an art show directly from the artist, who himself was kind of a recluse. My father fell in love with Treason the moment he saw it.

When my father passed away, I inherited not only the family fortune, but also many works of art, including the bizarre little painting. Over the years, however, I have grown to appreciate its quirky artistry and my father’s amusement with it. It has since become one of my most cherished heirlooms. It is not the most valuable painting in my collection by far, but to me it has enormous sentimental value.

Throughout the years, I’ve put together an extensive art collection. Many paintings hang on the walls in my home. But in order to store and protect my most cherished or most valuable paintings, I have a designated a room in my estate as a gallery. The climate-controlled room has no windows and only one entrance. Except for visits from art historians and the like, I always keep my gallery locked. The only way to gain entry is to use a passcode on the electronic keypad. A passcode is used to unlock and lock the door. Entering the code to lock the door automatically arms the alarm system. Currently, I am the only person that can unlock the gallery, as it has its own unique passcode that is distinct from the passcode used to lock the doors. Evan knows the code to lock the gallery and has used the code often.

Last fall, I had a student in my class named Evan Shem. Evan was a remarkable student, with a brilliant mind, and exuded a true passion for artwork. Evan actively participated in class discussions and would often visit my office to discuss matters further. Evan was a talented painter, too. I was thrilled that a young person like Evan possessed a knack for painting. I did have to occasionally remind Evan that it requires hard work to be a master painter.

I decided to offer Evan an internship to help me maintain and preserve my collection. I even mentioned to Evan that this could eventually turn into a paid position, but we never discussed the details. I should emphasize how extremely protective I am over my art. When I offered Evan the internship, I made sure Evan understood the significance of the position I was offering.
Evan promised to take care of my paintings and ensure they were faithfully preserved. Evan proved to be a competent and loyal intern, always on time and eager to lend a helping hand.

I was surprised when Evan began expressing interest in *Treason*. It seemed peculiar to me that of all the great artwork in my collection, Evan was most impressed with *Treason*. To be frank, I have paintings worth millions of dollars, and I had never given much thought to the monetary value of this painting. When I last checked, many years ago, it was worth a few thousand dollars. My father had bought it for a few hundred. Again, to me, it was a family heirloom with great sentimental value.

To Evan, however, it became something of an obsession. Nearly every day, Evan stood in front of the painting, just gazing at it. Evan would be eager to analyze it and discuss it with me. I must admit that these moments were rewarding for me, to see a young artist so inspired by a painting. It also reminded me of when I would discuss the painting with my father.

I have a tradition of hosting an annual Fourth of July party at my estate. Since Evan was working for me that summer, I invited Evan to the party, including a “plus one” on the invitation. Everyone seemed to have a great time. As the host, I was quite busy the entire evening, making sure everything was going according to plan. I recall seeing Evan arrive with a guest around 6:45 p.m. Upon their arrival, I introduced Evan to several guests, but we didn’t see too much of each other for the rest of the night. With a party of this magnitude, it’s nearly impossible to keep track of everyone’s whereabouts.

I had also asked Evan to work as a docent that evening, escorting guests through the gallery and sharing knowledge about the paintings. I instructed Evan to keep the gallery open for viewing from 7:00 p.m. until 9:00 p.m. when the firework show would begin. Evan was supposed to turn off all of the lights and lock the door, just as Evan had done before leaving everyday over the course of the internship.

I am aware that art dealer with whom I have worked in the past, T.M. Little, is testifying on the defendant’s behalf. I am unsure what T.M. would know about *Treason*, as we had never done business with regard to this painting. T.M. attended my party, even though we recently ended our business relationship. I felt that T.M. had taken advantage of me when T.M. had insisted that I invest over $2 million in the purchase of three paintings by Anselm Kiefer. I asked T.M. to allow me time to think it over, but before I knew it, T.M. was demanding my share of the purchase price. I decided that I would no longer need T.M.’s services. T.M.’s presence at the party was a surprise to me, but I do not like kicking guests out and making a scene. We did not, however, acknowledge one another.

Sometime during the morning after the party, I went into the gallery, just like I do most mornings. I looked at *Treason*, but it failed to elicit its familiar emotional response in me. Something was strange about it, but I couldn’t pinpoint what.
My suspicions were confirmed when I received a phone call from a local art
gallery asking about an offer to sell Treason. I thought, there must be some
mistake, as I would never sell Treason. I hung up from that phone call,
marched straight into the gallery, looked at the painting, and realized that
this was not Treason. Some of the brushstrokes just seemed more controlled
than I remembered. This was a fake, a fraud. I immediately telephoned the
police.

An hour or so later, an officer arrived at my estate. We discussed the
circumstances and looked over the guest list. I had unlocked the gallery at
the start of the party, and I trusted Evan to supervise my guests, and arm
the alarm system at 9:00 p.m. I noted that the canvas painting was pressed
into its original wood frame which would have made it relatively easy to
remove and replace.

After speaking with the police, I called someone who I knew would
understand my pain: Evan. Evan answered the phone and, to be perfectly
honest, when I shared the news, Evan didn’t seem all that upset. As I recall,
Evan said, “Oh no! That’s terrible Professor McCulloch. I can assure you I
would never do anything like that.” The reaction was odd, as I was not
calling to accuse Evan. I merely wanted empathy and support. If anything, I
was actually expecting Evan to be more upset than I was. After all, Evan
was utterly obsessed with Treason.

On July 8, Detective Barron had me stop by the police station to look at the
painting taken from Evan’s apartment. When I looked at it up close, I knew
it was the original. All the details matched my memory of the painting,
which I had been looking at since my teenage years.

I concluded that Evan was somehow involved in this fiasco. I sent Evan an
email saying Evan’s services would no longer be needed, and I refuse to let
Evan return to my gallery.
WITNESS STATEMENT—Defense Witness: Evan Shem

My name is Evan Shem. I am 24 years old and a graduate student at Hamiltonia University. Since January, I’ve been working as an intern, curating the art gallery maintained at the home of my art history professor, Marty McCulloch. My fascination with art started while I was in high school. I realized that art, especially painting, was my one true love.

Around the same time I developed an interest in art, I began to drift apart from my childhood best friend, Charlie Gibbons. We became part of different scenes, so to speak. Also, I was aware that Charlie had started to get in trouble with the law, stealing things at school and around town. I didn’t have time for that stuff. I just wanted to focus on my art.

After high school, I moved away to go to college, where I received my Bachelor of Fine Arts degree. I did well in my classes. My passion for artwork far exceeded my interest in anything else, and I just knew I would be a renowned artist one day. During undergrad, I was living off student loans and credit cards, and I had acquired nearly $50,000 in debt. I knew that I would need a graduate degree to be taken seriously in the art world, but I was worried that it would cost another $75,000.

After college, I enrolled as a graduate student in Hamiltonia University, located in my hometown. I rented an apartment near the school, purchased new art supplies, and planned to pursue my dreams.

While walking to school one day, I ran into Charlie. It must have been about four years since we last talked. It was refreshing to see Charlie again, but after we had a long talk, it was clear we still had little in common. I was still pursuing art, and Charlie hadn’t changed much since high school.

When Charlie asked to move in with me, I was conflicted. I really did not want to live together, but I felt sorry for my old friend and let Charlie move in. I figured it’d be only a couple of weeks until Charlie found somewhere else to go.

During my first semester of graduate school, I was enrolled in an art history class taught by Professor McCulloch. From day one, I loved the class. The subject matter was thoroughly captivating, and McCulloch was an unbelievable professor. I was excited to attend class every day. When I would turn in assignments for class, Professor McCulloch and I would have in-depth discussions of art and of my own work. In my free time, I would recreate famous paintings from history. I must admit that I became quite good at this. I would bring these paintings to Professor McCulloch’s office for feedback and advice on how to improve my abilities.

The following semester, I was offered an internship at McCulloch’s home to oversee the professor’s vast art collection. Professor McCulloch said that after one semester, this internship would become a paid position. Although I was not thrilled by the thought of working without pay, I was willing to make the sacrifice to eventually be paid to do what I love. I knew that
unless I became a famous painter in record time, I would be bound to have
trouble making my student loan payments after graduation.

I knew how protective Professor McCulloch was of these paintings and felt
privileged to be given such an opportunity. I remember when I first saw the
renowned collection. It was the single most comprehensive and impressive
private collection I had ever seen.

One painting in particular stood out. The first time I saw it, I was stunned.
It had a hypnotic quality. When I asked Professor McCulloch about the
painting, it was explained to me that the piece, titled Treason, was inherited
from Professor McCulloch’s father, and it was the most meaningful painting
in the entire collection.

I worked at Professor McCulloch’s mansion two days a week for the
remainder of my first year of school and into the summer. The paid position
I had been promised never materialized. I asked Professor McCulloch about
the offer one day while we were contemplating Treason, and Professor
McCulloch responded by telling me to be patient because paid positions in
the art world are hard to come by. This marked the turning point in my
relationship with Professor McCulloch. I knew that I would need to start
looking for a real job right away.

Charlie was still living with me. What was only supposed to be a couple of
weeks had turned into many months. I didn’t mind it too much, though;
Charlie had developed a curiosity about art. Charlie frequently asked about
the various paintings I was studying, and Charlie appreciated my ability to
recreate famous works of art. I brought most of my art supplies to my
apartment and did a lot of my work there. I remember that one day Charlie
was so impressed with my near- replica of Magritte’s The Treachery of
Images, that Charlie thought that even art experts wouldn’t be able to tell
the difference between my fakes and the real thing. It was humorous to me
to think of my work on that level.

Although it was fun having Charlie around while I did my work, Charlie’s
sudden interest in artwork struck me as somewhat odd. Charlie even
accompanied me as we traveled from thrift store to thrift store looking for
old canvas paintings to wash and paint over. I would often wash old
canvas and do my paintings on them because it was less expensive than
using new canvas, and it helped give the feel of the time period if the
canvas was dated.

As much as I enjoyed Charlie, Charlie had undoubtedly overstayed the
welcome. I gave Charlie an ultimatum: Either start paying rent or move out
on June 30. Charlie took it rather well and promised to leave by the end of
the month. When July 1 rolled around, and all of Charlie’s stuff wasn’t out
of my apartment, I told Charlie that it was OK to keep the key for a few
more days until all of Charlie’s belongings were out.

Back in March, I decided to undertake the challenge of attempting a
recreation of my beloved Treason. I did not tell Professor McCulloch about
this new project because I didn’t want the professor to be overly critical of
The difficulty I encountered in my attempt to recreate it only increased my appreciation of the piece. My discussions with Professor McCulloch regarding *Treason* grew richer and livelier. One day I commented on how brilliant I thought the artist was and how his paintings must be really valuable. Much to my surprise, McCulloch responded that *Treason* was not worth much money at all compared to other works in the collection, insisting that the sentimental quality of the piece was what gave it value. I just couldn’t imagine that a painting as brilliant as *Treason* wasn’t worth a lot of money.

I thought it’d really impress Professor McCulloch if I found out that *Treason* was worth a lot of money. I figured the best way to find its market value would be to contact MT’s Fine Art Auction House. I called the auction house and asked about the value of *Treason*. I was very clear that my intention was to know the value of a painting. I did not refer to the painting as mine, nor did I attempt to disguise my voice. I was overjoyed when they told me the estimated value was $100,000. I was so excited that I couldn’t wait to tell Professor McCulloch. I just knew Professor McCulloch would be delighted to hear the news. The annual Fourth of July party was the next day, and I had planned on telling Professor McCulloch then.

Charlie insisted on coming as my guest to the party. Charlie wore a ridiculous tan overcoat, but I didn’t say anything. I didn’t want Charlie to feel uncomfortable. When we arrived at the party around 6:45 p.m., we ran into T.M. Little, one of Professor McCulloch’s good friends that I have met several times when working in the gallery. Little asked why I brought along my backpack to the party, and I informed Little that I brought my art supplies, as I was hoping to sketch a scene of the guests watching the firework display. Then, Professor McCulloch greeted both Charlie and me. Given the enormous crowd of people at the mansion, I thought it would be a little inappropriate to talk about *Treason’s* value on the night of the party. I decided to wait to tell Professor McCulloch on a day when we were alone.

I found it odd that Charlie seemed especially enthusiastic about *Treason*, insisting that we go see it and inquiring as to how much it was worth. I don’t recall telling Charlie how much the painting was worth. Nonetheless, I showed Charlie the gallery and the painting. Charlie seemed impressed, but I wasn’t sure if Charlie was just humoring me.

I had been assigned to be a docent for the evening. Professor McCulloch asked me to escort people through the gallery, talk about the pieces on display, and just generally monitor things there. I was happy to help people appreciate the artwork. I spent a majority of the evening in the gallery.

As the fireworks display began, and everyone went outside, I escorted the last guests out of the gallery and joined them for the show. That was when I suddenly realized I had forgotten to lock the doors to the gallery. I was instructed by Professor McCulloch to lock and secure the gallery at 9:00 p.m. when the fireworks were scheduled to begin. I couldn’t have been gone more than ten or fifteen minutes when I realized I had forgotten to secure the gallery. I rushed back inside and ran to arm the gallery door. I opened the door to quickly ensure no one was inside. Once I saw the gallery
was empty I closed the door and punched in the security code to lock and
arm the security system. Once everything was secure, I headed back
outside. On my way outside, I passed T.M. Little in the foyer, and Little
asked how my sketch was coming along. I knew my supplies were still
untouched in my backpack that I was carrying but I politely replied,
“Great.” I hurried outside but I never really had a chance to start my sketch.
Shortly after the fireworks display I tried to find Charlie. I had agreed to let
Charlie crash on my couch for the night but I wasn’t going to spend all
night looking. I had been a long evening and I was ready to go with or
without Charlie.

The following day, I received a call from McCulloch, who said that someone
stole Treason. Upon hearing the news, I went into a state of shock. Believe
me, I was more upset than Professor McCulloch. I assured Professor
McCulloch that I had nothing to do with the theft, as I had been in charge of
the gallery the entire night, and I was certain that not a single painting had
been disturbed.

When Detective Barron arrived at my apartment on July 7, I was shocked.
When the detective asked to search the apartment, I said, “Sure.” I had
nothing to hide. Charlie mentioned that a police officer had come by the day
before when I was at a family gathering, but I presumed the officer was just
doing routine questioning of people who were present at McCulloch’s party.
I did not understand how McCulloch could believe I would ever do such a
thing. I did paint a replica of Treason a few months ago, but that painting
was still in my apartment. Detective Barron took the replica I had made.

[As Detective Barron was searching my apartment, I sat in the living room
and waited. I was stunned to learn after the search that the detective went
into my storage cabinet in the carport outside without my permission,
especially because the cabinet was locked. I later found out that Charlie,
who was no longer living with me, told Detective Barron where the key to
the cabinet was located, and while I sat in the next room patiently waiting
for the search of my apartment to end, Detective Barron took my key and
went through my cabinet. I would have never consented to the search of my
cabinet, as that is where I have many keepsakes and personal items. My
understanding was that the search was going to be conducted inside my
apartment only.

The notes that Detective Barron found were just part of my research into
Treason. I looked up some Yazoo collectors to see if Treason was worth
more than some of Yazoo’s other works. I had planned to contact them but
never did. I thought the professor would be happy to know that Treason
was, perhaps, Yazoo’s most valuable piece.]

On July 8, I found out that I had been fired from my internship with
Professor McCulloch via email. I was devastated. I was planning to quit
once I found a job, but I did not want my relationship with the professor to
end on bad terms. On that same day, I was arrested for the theft of Treason.
WITNESS STATEMENT—Defense Witness: Sidney Ogden

My name is Sidney Ogden, and I am 24 years old. I work as a librarian at the Hamiltonia Public Library, and on the weekends, I work a second job for a valet company to make some extra money. I attended school in Hamiltonia, along with Evan Shem and Charlie Gibbons. After high school, I went out of state for college and obtained my bachelor’s degree in English literature, followed by a master’s in library science. I have always enjoyed reading great works of literature. I also found a passion for acting my sophomore year, which was when Evan and I became good friends.

Before high school, Charlie and Evan were inseparable, but when Evan and I began spending time together, Charlie was no longer around. I overheard that Charlie mingled with the wrong crowd, but I never really saw for myself. I remember Evan talking endlessly about this newfound love of art. As a fellow art enthusiast, Evan and I had much in common. Evan even joined the drama club, and we co-starred in a rendition of The Scottish Play in our junior year. I have some great memories of those days. It seemed as though we spent every waking moment with one another, reciting lines, working on technique, and analyzing Shakespeare’s every word. Evan was a great companion. I would even venture to say that Evan is one of the most reliable, hard-working, and honest people I know.

Evan always had a knack for art, which is why it comes to no surprise that Evan has a talent to replicate famous paintings. When we were in high school, Evan could imitate nearly anyone or anything, always having an eye for the minutest details. Evan had the natural ability to write poems and sketch scenes that everyone would believe were works of professionals. I saw something special in Evan from the moment we met, as did many other people we knew.

Evan and I had lunch at Evan’s apartment back in February. Charlie was not yet staying there, but I knew that Charlie had asked Evan to stay because we discussed it that day. Evan was reluctant to let Charlie move in because of the fear that Charlie did not have much going on, and if Evan helped Charlie too much, Evan feared that Charlie would become lazy and complacent. At the time, Evan was submerged in artwork. Since Evan was not spending much time at home, I suggested that it might be a good idea to have someone around the apartment.

Evan and I spoke briefly about art school and the new internship in Professor McCulloch’s art gallery. When Evan spoke of the collection, I could hear how much Evan cared for each and every piece of art. It was as though Evan cared for the art as much as its owner. I remember thinking that Professor McCulloch’s art collection was in good hands; if you were going to trust anyone with millions of dollars and family heirlooms, it would be Evan.

Before I left, Evan had thought it over and told me that Charlie would likely move in for a while, at least until Charlie found work. Evan didn’t really want a roommate, but Evan wanted to help an old friend until Charlie figured things out. I remember thinking that Charlie was lucky to have a
friend like Evan. That was when I knew that my good friend Evan from
high school hadn’t changed one bit.

After hearing about how amazing Professor McCulloch’s collection was, I
was more than delighted when I found out that the company I work for on
the weekends was providing parking attendants for the annual Fourth of
July party. I was hoping to catch a glimpse of the professor’s amazing
paintings. The night went by smoothly. I greeted everyone who came and
left the party. Evan and Charlie arrived relatively early, as Evan had to
prepare the gallery for the guests.

Later that night during the fireworks display, I stood on the covered porch,
as there were no cars to attend to. From the covered porch, I could see
through the massive living room clear through the rear glass walls to the
back of the house where the 200 or so guests stood outside waiting for the
firework display. Charlie was standing near the back of the crowd close to
the living room and kitchen. I had to strain to see the fireworks in the
distance through the glass walls from the front of the house, but I caught
some glimpses of them. A couple of minutes into the fireworks, I saw
Charlie leaving the hallway where the gallery is located. I thought it was
strange that Charlie was wandering around in Professor McCulloch’s home
when everyone else was outside, but I assumed Charlie must have gotten
lost looking for a restroom, as I did earlier when I was trying to find the
restroom near the stairs. I did not see Charlie’s hands but I did remember
that Charlie was wearing a tan trench coat. I found that strange on a
beautiful summer night. I resumed trying to catch the fireworks and didn’t
see where Charlie went. That McCulloch really knows how to put on a
show!
WITNESS STATEMENT—Defense Witness: T.M. Little

My name is T.M. Little. I am 52 years old, and I have been working as an art dealer for nearly 30 years. I began my art career in Amsterdam, where I spent several years working as a curator at the Rijksmuseum. Eventually, I earned a fellowship under the noted Austrian dealer Thaddaeus Ropac. In the mid-1990s, I returned to the States and started my own business, buying and selling artwork for high-end clientele. As an art dealer, I travel all over the world, frequenting auctions, exhibitions, and artists’ studios in search of exciting new works, little-known treasures, and good buys for my clients.

I met Marty McCulloch shortly after I started my own business, and ever since our first transaction, we have been loyal business partners and lifelong friends. We often buy and resell contemporary artwork as partners, investing together and sharing the profits and losses as they come. Before a recent falling out between the two of us, I would visit Marty’s mansion often, both for business and social reasons.

Back in May of this year, Marty and I had set out to purchase works by a famous German painter and sculptor by the name of Anselm Kiefer. I was concerned that I did not have the bankroll to fund such an investment on my own, but I was sure that we would be able to resell the art and make a profit instantly, as long as we displayed the pieces at Marty’s annual Fourth of July soirée. Many of Marty’s guests would also attend an event at the Swing Auction Gallery at the end of July, which is the biggest art auction in all of Day County, and if we displayed the Kiefer pieces at the party, we would be able to expose the artwork to potential buyers, thus building interest. Marty agreed to my request, just as my dear friend has many times over the past 20 years, and I quickly made an offer on the Kiefer paintings.

Much to my surprise, once I had already transferred the funds and completed the purchase, Marty withdrew from our deal. I was expecting Marty to reimburse me for 50 percent of the cost of this purchase, as this is our normal course of dealing. If I’d known that Marty was going to back out, I would have never fronted the money for those paintings. This really puts me in a financial bind until I get those paintings sold. I emailed Marty asking for an explanation, and I never received a response. For the first time in 20 years, I was let down by my dear friend Marty McCulloch.

Although I was upset about the recent deal that went bad, I still decided to attend the Fourth of July party, as I had too many clients who would be there, and I could not afford to allow other art dealers a chance to mingle with them and possibly lose their business. I was not surprised when Marty ignored me at the party. I did not even receive a simple greeting. I was unsure if this was intentional, as I could chalk it up to Marty’s being busy; after all, it was quite a party.

I have met Evan Shem at Marty’s mansion on several occasions. Evan always came across as a nice kid, a hard worker, and Marty had boasted about Evan’s talent as well. Evan, Charlie Gibbons, and I arrived at the party at the same time. This was the first time I met Gibbons. My first impression of Gibbons was not the best. Gibbons’ clothes appeared
winkled, plus Gibbons seemed nervous and didn’t look me in the eye when we shook hands. I remember thinking that Gibbons was going to stick out like a sore thumb in this party full of the high society of Hamiltonia.

I did see Evan with a backpack, and I asked what it was for. Evan told me that the bag contained art supplies, as Evan was planning to sketch a scene of the party guests enjoying the firework show later that evening. Throughout the party, as I mingled with my clients, I observed Evan offering explanations of the artwork to guests as they went through the gallery. Evan was courteous, polished, and well versed on the origins and history of each piece of art in Marty’s collection.

In fact, the last time I saw Evan was during the firework show. I stepped inside to use the restroom near the stairs and we crossed each other’s paths in the foyer. Evan was walking out of the gallery hallway adjacent to the restroom. I asked Evan how the sketch was coming along, to which Evan replied, “Great!” I cannot testify as to whether or not Evan was acting suspiciously, but I can say that I did not notice anything in Evan’s hands or anything unusual. I was shocked when I found out that Evan had been arrested.
WITNESS STATEMENT—Defense Witness: Jamie Sardegna

My name is Jamie Sardegna. I am currently employed by Art Experts, Inc., in New York City, where I have worked for the past 15 years. I have a master’s in art history from NYU and provide professional research and art analysis to anyone who needs a certificate of authenticity. My specialization in grad school was modern abstract painters, and I did become very familiar with the work of Fletcher Yazoo, among others. Yazoo had a cult following but was reclusive and considered obscure during his lifetime, only occasionally showing works in public. I have seen firsthand what relatively little there is of Yazoo’s work. I once briefly viewed Treason three years ago when I was brought as a guest to Marty McCulloch’s Fourth of July party.

As for art authenticity, many art authenticators advertise bogus “secret methods” or “secret computer technology,” but the fact is that there are no secret methods, and for now, computers cannot authenticate art. At most, material tests would show whether or not a part of the painting was repainted or if an older painting is a forgery because of the materials used. Here, we have a modern acrylic painting, and material tests will not be of any use in the authentication. By and large, authenticity is determined by examining the painting itself, possibly with the help of special digital image analysis software.

Now that I have explained the methods used by the Art Experts, I can offer some insight into the painting in question: Treason. I was asked to examine the painting found in Evan Shem’s apartment as well as the painting found in Marty McCulloch’s art gallery and to verify which painting was, in fact, Treason by Fletcher Yazoo. In my expert opinion, the painting in Shem’s apartment is not a genuine Yazoo, and the real Treason is the painting that was in McCulloch’s possession the entire time.

I find it hard to believe that any art expert would conclude a painting is authentic before taking the necessary steps of authentication. Art authenticators use the three common approaches to determining a painting’s authenticity, all more vigorous than a cursory, visual examination, which are: provenance, scientific testing, and connoisseurship. Based on the prosecution art expert’s testimony, the determination of authenticity was made first, followed by an examination of connoisseurship. This expert failed to base the conclusion on facts, but rather based the facts on a conclusion.

It is true that provenance and scientific testing are not issues in the case of Treason. We know that the painting’s chain of custody was not broken, as Edward McCulloch purchased the painting at an art show from the original artist just one year after the painting was finished, and Marty McCulloch directly inherited the painting from Edward. We also know that the painting was finished by Fletcher Yazoo in 1977, and because the painting is not that old, scientific examination would not provide much insight. The chemical composition of paint samples would not differ today from 30 to 40 years ago.

However, my concern comes about with connoisseurship, which is the method of studying and examining the stylistic techniques of the artist. In this case, Fletcher Yazoo has a distinct style, which makes it harder to replicate his work. In order to authenticate Treason, I spent a tremendous amount of time studying the painting, along with other works by Yazoo,
and referencing images with the assistance of digital image analysis software. I found several inconsistencies in the painting found in Shem’s apartment that I did not find in the painting found in McCulloch’s gallery.

I realize that my determination is in direct contradiction to the determination made by Bernie Worcester, the Hamiltonia City Police Department’s hired art expert; so, please allow me to explain the method I used to make my determination.

Here, at the Art Experts, we use a method called Morellian analysis, in which we determine whether a painting is false or genuine by examining idiosyncrasies or repeated stylistic details of a particular artist’s work, which we think of as the characteristic “hands” of the painter, through scrutiny of minor details that reveal an artist’s subconscious touches. One important factor of this analysis is the use of brushstrokes and the application of paints. When looking closer at these brushstrokes, with the help of digital image analysis, we can see everything from the amount of pressure applied to each individual stroke, to the angle in which the painter’s hand was working at any given time.

My analysis of the painting found at McCulloch’s mansion on July 5 (“Exhibit B”) shows me that it is a genuine Fletcher Yazoo. First and foremost, all of the brushstrokes, to me, appear to be vigorous and quickly applied to the canvas, consistent with Yazoo’s style. In almost every place, I see indicators of brush-bristles leaving rough edges of paint, especially in the white streaks. The arrowhead-shape in the center of the painting does appear thicker than the corresponding shape in Exhibit A. The same is true for the so-called “downward arrow” that Worcester discusses. Worcester is correct that copies tend to show stop-start motions, since copyists may need to look away from the canvas. But my analysis is that the thicker paint areas in these two “arrow” shapes are in themselves consistent with Yazoo’s trademark style of unevenly applying paint in vigorous motions.

The pink oval mentioned by Bernie Worcester looks like a remnant of red paint mixed with white on the brush. It is certainly possible that it is an “afterthought” and an “add-on” of pink paint by a copyist, but that interpretation is too subjective. Under the close analysis I did of these areas of the painting, I can say, at best, that it is inconclusive whether or not that pink oval is an add-on. Even if it was, Yazoo himself could have added it. He would add a little spontaneous detail from time-to-time if he was inspired.

Finally, the lower-right white “bone-shaped” streak in Exhibit B mentioned by Worcester does have fewer brush-bristle markings of white paint around the lower edge than in Exhibit A. But no art expert could say that Yazoo’s brushstrokes were 100 percent identically harsh in every instance. The edge appears to me to be rough enough to be authentic Yazoo. By contrast, that same edge in Exhibit A could be the work of a copyist trying too hard to meticulously add “bristle marks” in order to make it more “Yazoo-like.” In other words, this particular detail is inconclusive at best. With regard to the painting found in Shem’s apartment, I have formed the professional opinion that this painting is a very good copy of Yazoo’s Treason, but a copy nonetheless, while the painting found in McCulloch’s gallery is the original Treason.
EXHIBIT A
Photo of the Painting Found at Evan Shem’s Apartment

EXHIBIT B
Photo of the Painting Found at Marty McCulloch’s Mansion
EXHIBIT C
Layout of the First Floor of Marty McCulloch’s Mansion

EXHIBIT D
Photo of the Note Found at Evan Shem’s Storage Cabinet

* TREASON
- MATTHEW STERN
- DEBBIE HECHT
- ETHAN SCHNEIDER
- DEREK CARRILLO
THE FORM AND SUBSTANCE OF A TRIAL

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

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

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

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

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

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

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

TEAM ROLE DESCRIPTIONS

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

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

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

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

Trial attorneys will:
- Conduct direct examination.
- Conduct cross-examination.
- Conduct re-direct 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 in 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 reasonably would 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.

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 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 re-direct examination, record only time spent by attorneys asking questions and witnesses answering them.

Do not include time when:
- witnesses are called to the stand.
- attorneys are making objections.
- judges are questioning attorneys or witnesses or offering their observations.

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

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

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

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

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

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

When a witness is called to testify, you must swear in the witness as follows:
“Do you solemnly affirm that the testimony you are about to give will faithfully and truthfully conform to the facts and rules of the Mock Trial competition?”

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

Duties of the Unofficial Timer

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

If timing variations occur 15 seconds or more 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 courts attention 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 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 at the end of 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 ________, the defendant in this action."

Proper phrasing includes:
- "The evidence will indicate that . . ."
- "The facts will show . . ."
- "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 witness to tell the story rather than using leading questions, which call for "yes" or "no" answers. (An opposing attorney may object to the use of leading questions on direct examination)
- Make the witness seem believable.
- Keep the witness from rambling about unimportant matters.

Call for the witness with a formal request:

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

The witness will then be sworn in before testifying.

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

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

Examples of proper questions on direct examination:
- "Could you please tell the court what occurred on ___(date)?"
- "What happened after the defendant slapped you?"
- "How long did you see . . .?"
- "Did anyone do anything while you waited?"
- "How long did you remain in that spot?"

Conclude your direct examination with:

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

(The witness remains on the stand for cross-examination.)
Cross-Examination
Cross-examination follows the opposing attorney’s direct examination of the witness. Attorneys conduct cross-examination to explore weaknesses in the opponent’s case, test the witness’s credibility, and establish some of the facts of the cross-examiner's case whenever possible. Cross-examination should:

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

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

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

Cross-examination should conclude with:

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

Impeachment During Cross-Examination
During cross-examination, the attorney may want to show the court that the witness on the stand should not be believed. This is called impeaching the witness. It maybe 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 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’s 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.

Re-Direct Examination
Following cross-examination, the counsel who called the witness may conduct re-direct examination. Attorneys conduct re-direct 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 re-direct examination. If an attorney asks questions beyond the 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 should enhance the witness’s truth-telling image in the eyes of the court.

Work closely with your attorney coach on re-direct 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 “pre-packaged.” 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**
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 the 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 cases. The purpose of using rules of evidence in the competition is to structure the presentations to resemble an actual 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. 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 object to questions that call for improper answers before the answer is given.

For the purposes of this competition, teams will be permitted to use only certain types of objections. The allowable objections are found in this 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 note the objection for later consideration. **Judges’ rulings are final.** You must continue the presentation even if you disagree. A proper objection includes the following elements. The attorney:

1. addresses the judge,
2. indicates that he or she is raising an objection,
3. specifies what he or she is objecting to, i.e., the particular word, phrase, or question, and
4. attorney 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.”

**Allowable Evidentiary Objections**

1. **Creating a Material Fact (CMF)**
   
   This objection is specific to the competition and is not an ordinary rule of evidence. The (CMF) objection applies if a witness creates a material fact not included in his or her official record. It is not a CMF violation for a witnesses to make a logical inference from their statement, that does not materially impact the case. When making an objection to CMF, students should be able to explain to the court what material fact is being created and why it is material to the case. A material fact is one that would likely impact the case.
Form of Objection: “Objection, your honor. The witness is creating a material fact that is not in the fact situation or his/her witness statement,” or “Objection, your honor. The question seeks material testimony that goes beyond the scope of the record.”

2. Relevance
Relevant evidence makes a fact that is important to the case more or less probable than the fact would be without the evidence. To be admissible, any offer of evidence must be relevant to an issue in the trial. The court may exclude relevant evidence if it is unfairly prejudicial, confuses the issues, or is a waste of time.

Either direct or circumstantial evidence may be admitted in court. Direct evidence proves the fact asserted without requiring an inference. A piece of circumstantial (indirect) evidence is a fact (Fact 1) that, if shown to exist, suggests (implies) the existence of an additional fact (Fact 2), (i.e., if Fact 1, then probably Fact 2). The same evidence may be both direct and circumstantial depending on its use.

Example: Eyewitness testimony that the defendant shot the victim is direct evidence of the defendant’s assault. Testimony establishing that the defendant had a motive to shoot the victim, or that the defendant was seen leaving the victim’s apartment with a smoking gun, is circumstantial evidence of the defendant’s assault.

Form of Objection: “Objection, your honor. This testimony is not relevant. Your honor, I move that the witness testimony about… be stricken from the record because it is not relevant.” or “Objection, your honor. Counsel’s question calls for irrelevant testimony.”

3. Laying a Proper Foundation
To establish the relevance of circumstantial evidence, you may need to lay a foundation. Laying a proper foundation means that, before a witness can testify to certain facts, it must be shown that the witness was in a position to know and had personal knowledge of those facts.

Sometimes when laying a foundation, the opposing attorney may object on the ground of relevance, and 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.

Example: If attorney asks a witness if he saw X leave the scene of a murder, opposing counsel may object for a lack of foundation. The questioning attorney should ask the witness first if he was at or near the scene at the approximate time the murder occurred. This lays the foundation that the witness is legally competent to testify to the underlying fact.

Form of Objection: “Objection, your honor. There is a lack of foundation.”
4. Personal Knowledge
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. 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. Upon investigating, the witness found the victim at the foot of the stairs, and saw the defendant on the landing, smirking. The witness cannot testify over the defense attorney’s objection that the defendant had pushed the victim down the stairs, even though this inference seems obvious.

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

“Our honor, I move that the witness’s testimony about . . . be stricken from the case because the witness has been shown not to have personal knowledge of the matter.” (This motion would follow cross-examination of the witness that revealed the lack of a basis for a previous statement.)

5. Character Evidence
Evidence of a person’s character or a trait of his or her character is inadmissible when offered to prove his or her conduct on a specified occasion. Witnesses generally cannot testify about a person’s character unless character is an issue. Such evidence tends to add nothing to the crucial issues of the case.

The credibility of a witness, however, is one aspect of character always at issue. In criminal trials, the defense may introduce evidence of the defendant’s good character and, if relevant, show the bad character of a person important to the prosecution’s case. Evidence that a person committed a crime, civil wrong or other act may be admissible when relevant to show proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident by the defendant.

In cases where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation. On cross examination, questions may be asked regarding relevant specific conduct. Also, evidence of the habit of a person is relevant to show the conduct of the person on a particular occasion was in conformity of the habit.

Examples:
1. The defendant’s minister testifies that the defendant attends church every week and has a reputation in the community as a law-abiding person. This would be admissible.

2. The prosecutor calls the owner of the defendant’s apartment to testify. She testifies that the defendant often stumbled in drunk at all hours of the night and threw wild parties. This would probably not be admissible as the prejudicial nature of the testimony might outweigh its probative value making it inadmissible.
Form of Objection: “Objection, your honor. Character is not an issue here,” or
“Objection, your honor. The question calls for inadmissible character evidence.”

6. Speculation/Opinion of Lay Witness (non-expert)
Opinion includes inferences and other subjective statements of a witness. In general, lay witness opinion testimony is inadmissible as the witness is speculating rather than testifying to facts. It is admissible where it is (a) rationally based upon the perception of the witness (five senses) and (b) helpful to a clear understanding of the testimony. Opinions based on a common experience are admissible. Some common examples of admissible lay 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.

Example: A witness could testify that, “I saw the defendant who was crying, looked tired, and smelled of alcohol.” All of this statement is proper lay witness opinion testimony as long as there is personal knowledge and a proper foundation.

Form of Objection: “Objection, your honor. The question calls for speculation on the part of the witness. I move that the testimony be stricken from the record.”

7. Expert Witness and Opinion Testimony
An expert witness may give an opinion based on professional experience. A person may be qualified as an expert if he or she has special knowledge, skill, experience, training, or education. Experts must be qualified before testifying to a professional opinion. Qualified experts may give an opinion based upon personal observations as well as facts made known to them outside the courtroom. 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 in issue.

Example: A doctor bases 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 but are proper basis for opinion testimony because they are reasonably relevant to a doctor’s diagnosis.

Form of Objection: “Objection, your honor. There is a lack of foundation for opinion testimony,” or
“Objection, your honor. The witness is improperly testifying to defendant’s mental state in issue.”

8. Hearsay
Hearsay evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. Hearsay is considered untrustworthy because the
speaker of the out-of-court statement is not present and under oath and therefore cannot be cross-examined. Because these statements are unreliable, they ordinarily are not admissible.

However, testimony not offered to prove the truth of the matter asserted is, by definition, not hearsay. For example, testimony to show that a statement was said and heard, to show that a declarant could speak in 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 probably would not be admitted over an objection.

2. However, if the witness testifies, “I went looking for Eric because Sally told me that Eric did not come home last night,” this could be admissible. This is an out-of-court statement, but is not offered to prove the truth of its contents (that Eric did not come home). Instead, it is being introduced to show why the witness looked 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.”

Out of practical necessity, courts have recognized types of hearsay that may be admissible. Exceptions have been made for certain types of out-of-court statements based on circumstances that promote greater reliability. The exceptions listed below may be used in the Mock Trial.

a. Declaration against interest—Evidence of a statement by an unavailable declarant is not made inadmissible by the hearsay rule if the statement, 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 made shortly after a startling event, while the declarant is still excited or under the stress of excitement.

c. State of mind—a statement that shows the declarant’s mental, emotional, or physical condition.

d. Records made in the regular course of business (including medical records)—the custodian of records is not required.
e. Official records and writings by public employees

f. Past recollection recorded—something written by a witness when events were fresh in that witness’s memory, used by the witness with insufficient recollection of the event and read to the trier of fact. (The written material is not admitted as evidence.)

g. Statements for the purpose of medical diagnosis or treatment

h. Reputation of a person’s character in the community

i. Dying declaration—a statement made by a dying person respecting the cause and circumstances of his or her death, which was made upon that person’s personal knowledge and under a sense of immediately impending death.

j. Co-conspirator’s statements—(a) The statement was made by the declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of that conspiracy; (b) the statement was made prior to or during the time that the party 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 (a) and (b) or, in the court’s discretion as to the order of proof, subject to the admission of this evidence.

k. Admission by party opponent—Evidence of any statement by a party in an action is not inadmissible hearsay 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.

Allowable Objections for Inappropriately Phrased Questions

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

Example:
Counsel for the prosecution asks the witness, “During the conversation of 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 8th?”

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

10. 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 marks, such as debris in the road?”

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

The best response if the objection is sustained on these grounds would be, “Your honor, I will rephrase the question,” and then break down the question accordingly. Remember that there may be another way to make your point.

11. Narrative
A narrative question is too general and calls for the witness in essence to “tell a story” or make a broad-based 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.

Example: The attorney asks A, “Please tell us all of the conversations you had with X before X started the job.”

The question is objectionable, and the objections should be sustained.

Form of Objection: “Objection, your honor. Counsel’s question calls for a narrative.”

Other Objections

12. Argumentative Question
An argumentative question challenges the witness about an inference from the facts in the case. A cross-examiner may, however, legitimately attempt to force the witness to concede the historical fact of a prior inconsistent statement, as long as the cross-examiner does not harass a witness, become accusatory toward a witness, or unnecessarily interrupt the witness’s answer. These behaviors are known as “badgering the witness.”

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 facts.

Form of Objection: “Objection, your honor. Counsel is being argumentative.” or

“Objection, your honor. Counsel is badgering the witness.”

13. 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.

Examples:
On Direct Examination—Counsel A asks B, “Did X stop for the stop sign?” B answers, “No, he did not.” A then asks, “Let me get your testimony straight. Did X stop for the stop sign?”

Counsel for X correctly objects and should be sustained.

BUT:

On Cross-Examination—Counsel for X asks B, “Didn’t you tell a police officer after the accident that you weren’t sure whether X failed to stop for the stop sign?” B answers, “I don’t remember.” Counsel for X then asks, “Do you deny telling him that?”

Counsel A makes an asked and answered objection. The objection should be overruled. Why? In the above example, Counsel for X rephrased the question based upon B’s answer.

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

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

Example: “Does it all happen at once?”

Form of Objection: “Objection, your honor. This question is vague and ambiguous as to what ‘it’ refers to.”

15. Non-Responsive Witness
Sometimes a witness’s reply is too vague and doesn’t answer the attorney’s question. For example, the attorney asks “What did you see that night?” The witness answers “I would never do anything to hurt anybody!” That is non-responsive. Other times, a witness might entirely “forget” the event in question, even though it is in their witness statement in the case packet. It is possible that the witness might be using this tactic to prevent some particular evidence from being brought forth.

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

16. Outside the Scope of Cross-Examination
Re-direct examination is limited to issues raised by the opposing attorney on cross-examination. If an attorney asks questions beyond the issues raised on cross, opposing counsel may object to them.

Form of objection: “Objection, your honor. Counsel is asking the witness about matters that did not come up in cross-examination.”
Summary of Allowable Evidentiary Objections
for the California Mock Trial

1. **Creating a Material Fact:** “Objection, your honor. The answer is creating a material fact that is not in the record,” or “Objection, your honor. The question seeks testimony that goes beyond the scope of the record.”

2. **Relevance:** “Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record,” or “Objection, your honor. Counsel’s question calls for irrelevant testimony.”

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

4. **Personal Knowledge:** “Objection, your honor. The witness has no personal knowledge to answer that question,” or “Your honor, I move that the witness’s testimony about ___ be stricken from the case because the witness has been shown not to have personal knowledge of the matter.”

5. **Character Evidence:** “Objection, your honor. Character is not an issue here,” or “Objection, your honor. The question calls for inadmissible character evidence.”

6. **Speculation/Lay Witness Opinion:** “Objection, your honor. The question calls for speculation (or inadmissible opinion testimony) on the part of the witness.”

7. **Expert Opinion:** “Objection, your honor. There is lack of foundation for opinion testimony,” or “Objection, your honor. The witness is improperly testifying to defendant’s mental state in issue.”

8. **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.”

9. **Leading Question:** “Objection, your honor. Counsel is leading the witness.”

10. **Compound Question:** “Objection, your honor. This is a compound question.”

11. **Narrative:** “Objection, your honor. Counsel’s question calls for a narrative.”

12. **Argumentative Question:** “Objection, your honor. Counsel is being argumentative,” or “Objection, your honor. Counsel is badgering the witness.”

13. **Asked and Answered:** “Objection, your honor. This question has been asked and answered.”

14. **Vague and Ambiguous:** “Objection, your honor. This question is vague and ambiguous as to ______.”

15. **Non-Responsive:** “Objection, your honor. The witness is being non-responsive.”

16. **Outside Scope of Cross-examination:** “Objection, your honor. Counsel is asking the witness about matters that did not come up in cross-examination.”