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School Service**

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Including rules, order of events, preparation, timing, scoring calculations, evaluation guidelines and criteria, scoresheets, team roster sheets, agreement forms, and special instructions for judges and attorneys. Teachers, refer to this section for information not listed above.	

## **PROGRAM OBJECTIVES**

**For the students**, the Mock Trial Competition will:

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

**For the school**, the competition will:

1. Provide an opportunity for students to study key concepts of law and the issues of youth violence, homicide, and privacy.
2. Promote cooperation and healthy academic competition among students of various abilities and interests.
3. Demonstrate the achievements of high school students 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 participating teachers.

## **CODE OF ETHICS**

**At the first meeting of the Mock Trial team, this code should be read and discussed by students and their teacher.**

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

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

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

**\*Webster's Dictionary defines plagiarism as, "to steal the words, ideas, etc. of another and use them as one's own."**

1 **CALIFORNIA MOCK TRIAL FACT SITUATION**

2  
3 Twin Lakes is a town of 40,000 people just outside the larger city of California City. Twin  
4 Lakes is a close-knit community where everybody knows each other's business and  
5 truth and fiction spread rapidly. Many families have lived in the Twin Lakes region for  
6 generations.

7  
8 Devon Kelmar's family moved from California City to Twin Lakes in 1992, just before  
9 Devon's junior year at Twin Lakes High School. Devon was active in school, and began  
10 playing in a local band with a neighbor friend, Jamie Fergusson. During Devon's senior  
11 year, Devon experienced trouble in school. Early September 1993, Devon's father died.  
12 Devon's mother sought advice from a close friend and family therapist, Dr. Carmen  
13 Nichols. Devon went to see Dr. Nichols twice. In January 1994, Devon turned 18 years  
14 old and was looking forward to graduation from Twin Lakes High. Kendall Lynch and  
15 Cory Jackson were also seniors at Twin Lakes High.

16  
17 On Friday, February 25, 1994, Kendall Lynch had a party. Cory, Devon, and Jamie all  
18 attended the party. Cory and Devon saw each other and briefly spoke. February 26 was  
19 the championship basketball game at Twin Lakes High School. Devon went to the game  
20 early and parked in a lot across the street from the school. Jamie arrived later and sat  
21 with Devon during the game. Cory and Kendall were at the game, as well as Vice Principal  
22 Lynden Murphy. After the game, Devon and Jamie stayed to congratulate their friends  
23 on the team's victory. They left the gym together. Jamie went to the locker area and  
24 Devon went to the parking lot. Devon and Cory met in the parking lot near Devon's car.  
25 Shortly thereafter, several shots were fired. Cory sustained three gun shot wounds--one  
26 through the left forearm, one to the upper left chest, and a third through the middle of the  
27 head. Devon ran from the scene. Jamie heard shots fired. Kendall and Vice Principal Murphy  
28 saw the incident.

29  
30 Jamie called 911 and several police officers arrived on the scene. Officer Lee Kim  
31 checked the body for vital signs and found none. Officer Kim recovered two shell casings  
32 but no bullets from the scene. After interviewing the witnesses, Officer Kim and partner  
33 Lynn Estrada patrolled the area. Approximately 1/4 mile from Twin Lakes High, they saw  
34 a person they thought to be the suspect, Devon Kelmar. The officers stopped Devon  
35 who said, "I had to do it. Cory threatened me with a knife." Officer Kim asked Devon  
36 some routine questions and then arrested and Mirandized Devon. In a search incident to  
37 the arrest, Officer Kim searched Devon's backpack and recovered a .25 caliber, 6-shot,  
38 semiautomatic handgun.

39  
40 The coroner, Dr. Merrill Roth, determined that Cory had suffered massive hemorrhaging  
41 from three gunshot wounds. Dr. Roth measured the path angles of the bullets and the  
42 probable distance Cory was from the weapon which fired the shots. Dr. Roth found a  
43 small folding pocket knife similar to a swiss army knife in Cory's left rear pant pocket.

1 During the investigation, Officer Kim spoke with Dr. Nichols. Dr. Nichols gave  
2 information about therapy sessions with Devon believing it to be a therapist's duty under  
3 Tarasoff and the dangerous patient exception to the psychotherapist-patient privilege.  
4

## 5 **CHARGES**

6 The prosecution charges Devon Kelmar with one count:  
7

8 Count 1 - Murder, a violation of California Penal Code section 187 - a felony.  
9

10 The judge (or jury) will determine whether a first or second degree murder verdict is  
11 appropriate. The court may also consider the lesser included offense of voluntary  
12 manslaughter, if evidence is offered for voluntary manslaughter.  
13

14 Under Cal. Pen. Code § 187, murder is the unlawful killing of a human being, or fetus,  
15 with malice aforethought. "Unlawful" means without justification or excuse recognized  
16 by law. Malice may be expressed or implied. It is expressed when there is a deliberate  
17 intention unlawfully to take away another's life. It is implied, when there is no  
18 considerable provocation, or when the circumstances around the killing show an  
19 abandoned or malignant heart. When the killing resulted from the intentional doing of an  
20 act with expressed or implied malice, no other mental state need be shown for malice  
21 aforethought.  
22

23 Murder can be either first or second degree. Murder in the first degree is a willful,  
24 deliberate, and premeditated killing with express malice aforethought. "Willful" means  
25 intentional. "Deliberate" means decided upon after careful thought and weighing of  
26 considerations for and against the action. "Premeditated" means thought about  
27 beforehand. In other words, if the killing is preceded and accompanied by a clear  
28 deliberate intent to kill that was formed upon a pre-existing reflection, and not under  
29 sudden heat of passion, it is murder in the first degree. The true test is not the duration of  
30 time but rather the extent of reflection. A cold, calculated judgment and decision may be  
31 arrived at in a short period of time. A rash impulse, even with the intent to kill, is not  
32 deliberate and premeditated.  
33

34 Murder in the second degree is the unlawful killing of a human being with malice  
35 aforethought, but the evidence is insufficient to establish deliberate and premeditated.  
36

37 Under Cal. Pen. Code § 192, manslaughter is the unlawful killing of a human being  
38 without malice. Voluntary manslaughter requires an intent to kill. There is no malice if the  
39 killing occurred upon a sudden quarrel or heat of passion. The provocation, or stimulus,  
40 must be of the kind and degree as naturally would excite such quarrel or passion in the  
41 mind of a reasonable person. Also, the assailant must act under the influence of the  
42 sudden quarrel or heat of passion. Provocation may occur over a short or long time. If the  
43 provocation is insufficient to arouse passion in a reasonable person, or if enough time  
44 has passed between provocation and fatal blow for passion to subside and reason to  
45 return, and if all elements of murder exist, then slight or remote provocation will not  
46 reduce murder to manslaughter.  
47

## 48 **DEFENSES**

1 The defendant may invoke the right to perfect self-defense or imperfect self-defense.  
2

3 Perfect self-defense has two requirements: The killing of another person in self-defense  
4 is justifiable and not unlawful when the person who kills honestly and reasonably  
5 believes (1) that there is imminent danger of death or great bodily injury from an attack or  
6 threat by the victim, and (2) it was necessary under the circumstances to kill the other  
7 person to prevent death or great bodily injury. Perfect self-defense requires both  
8 subjective honesty and objective reasonableness. Perfect self-defense is a complete  
9 defense to the charge of murder and thus, the defendant would not be guilty of any  
10 crime.

11  
12 Imperfect self-defense is where a person kills another person in the honest but  
13 unreasonable belief in the necessity to defend against imminent danger to life or great  
14 bodily injury. This defense negates the element of malice aforethought necessary for  
15 murder and reduces the homicide to manslaughter. This is true even if a reasonable  
16 person in the same circumstances seeing and knowing the same facts would not have  
17 had the same belief. Imperfect self-defense is not a defense to voluntary manslaughter.  
18

19 Imminent danger means the defendant must fear another whom he or she knows, or has  
20 reason to believe, is armed with a deadly weapon in order to take the life or inflict great  
21 personal injury. Fear of future harm, no matter how great the fear or likelihood of harm, is  
22 not enough. Threats alone do not justify taking another's life in self-defense. Evidence  
23 that the victim made prior threats against the defendant is admissible if there is evidence  
24 that the victim intended to attack the defendant at the time of the killing. Evidence of the  
25 reputation of the victim (good or bad) is admissible only if it can be shown that the  
26 defendant had knowledge of such reputation.  
27

28 The defense is not required to prove self-defense. The burden is on the prosecution to  
29 prove beyond a reasonable doubt each of the elements of the crime and that the killing  
30 was unlawful and not justifiable.  
31

32 **EVIDENCE:** Map of the scene  
33 Coroner's diagrams  
34 [Prosecution is responsible for bringing the evidence to trial. Only faithful  
35 reproductions, no larger than 22x28 inches, are acceptable.]  
36

37 **Note:** No guns, knives, or facsimiles are allowed in the courthouse at any time.

1       **STIPULATIONS:** Prosecution and defense stipulate to the following:  
2

- 3       1.       Devon Kelmar, the defendant, and Cory Jackson, the victim, are the same  
4            gender.  
5  
6       2.       Both parties will be present and argue the pretrial motion. It will not be in camera  
7            since Dr. Carmen Nichols told Officer Lee Kim all potentially relevant information  
8            to this proceeding. (In camera means in the judges chambers or a non-public  
9            hearing.)  
10  
11       3.       Devon Kelmar was properly Mirandized and no Fifth Amendment argument will  
12            be heard at pretrial regarding any statements made by the defendant at the time  
13            of the arrest.  
14  
15       4.       Devon Kelmar's backpack was properly searched in accordance with the  
16            warrant exception of a search incident to an arrest. No Fourth Amendment  
17            argument will be heard at pretrial regarding this search.  
18  
19       5.       Officer Lee Kim is a fingerprint expert and is qualified to give opinion testimony.  
20  
21       6.       Dr. Carmen Nichols and Dr. Denali Moorad are psychotherapists within the  
22            meaning of Cal. Evid. Code § 1010 and are medical expert witnesses who are  
23            qualified to provide opinion testimony.  
24  
25       7.       Devon Kelmar was a patient of Dr. Carmen Nichols within the meaning of Cal.  
26            Evid. Code § 1011.  
27  
28       8.       Dr. Merrill Roth, the coroner, is a medical expert witness qualified to provide  
29            opinion testimony.  
30  
31       9.       Any issues over the liability of Dr. Carmen Nichols for violation of the  
32            psychotherapist-patient privilege were adjudicated in and settled upon in  
33            separate proceedings.  
34  
35       10.       The defense will make no argument at pretrial as to admissibility of two portions  
36            of Dr. Nichols' testimony. Part I regarding background information and Part IV  
37            about lay witness, non-privileged observations can be offered as testimony  
38            regardless of the pretrial ruling, subject to the Simplified Rules of Evidence.