

California Attorneys for Criminal Justice

Hastings College of the Law

2016 National Criminal Trial Advocacy Competition



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National Criminal Trial Advocacy Competition
October 13-16, 2016 in San Francisco, California

**FACT PATTERN AND OFFICIAL RULES
“NCTAC”**

Competition Timeline

Problem Posted & Emailed:	September 6, 2016
Deadline for Submitting Questions:	September 23, 2016 by 5:00 PM
Questions Answered by CACJ Team:	October 3, 2016
Competition:	October 13-16, 2016
Coaches Meeting:	October 13, 2016 2:00 PM Attorney Lounge, District Court
Round 1:	October 13, 2016 6:00 – 9:00 PM
Round 2:	October 14, 2016 6:00 – 9:00 PM
Results/Social Mtg. (Soluna Café/Bar):	October 14, 2016 9:30 PM
Quarter-Final Round:	October 15, 2016 9:00 AM – 1:00 PM
Semi-Final Round:	October 15, 2016 1:00 – 4:00 PM
Final Round:	October 16, 2016 9:00 AM – 1:00 PM

All rounds (with the exception of the final round) will be held at:
Federal District Courthouse for the Northern District of California
450 Golden Gate Ave., San Francisco, CA

Final round takes place at Hastings College of Law
100 McAllister Street, San Francisco, CA

Soluna Café/Bar, 272 McAllister Street, San Francisco is approximately one – two blocks from
the Federal Courthouse

CACJ’s 2016 Fact Pattern is authored by the CACJ NCTAC Team.
We greatly thank everyone for his and her part on this project.

Questions and comments concerning the CACJ NCTAC should be directed by email to:
CACJ Mock Trial Team: mocktrial@cacj.org
(916) 643-1800

STATE OF SUNSHINE

vs.

Robert Burnett

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**IN THE SUPERIOR COURT FOR THE STATE OF SUNSHINE
COUNTY OF SUNSHINE, CRIMINAL DIVISION**

STATE OF SUNSHINE
vs.

ROBERT BURNETT

Case No. 23556

Charges: Manslaughter

**Prepared by:
CACJ NCTAC Committee**

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COUNT VI

On or about January 4, 2016 in the County of Sunshine, **ROBERT BURNETT** committed the crime of **Vehicular Manslaughter** in violation of SUNSHINE PENAL CODE SECTION 192 (c),1, a felony, to wit: **ROBERT BURNETT** did unlawfully kill, Laurie Spangler, a human being.

COUNT VII

On or about January 4, 2016 in the County of Sunshine, **ROBERT BURNETT** committed the crime of **Vehicular Manslaughter** in violation of SUNSHINE PENAL CODE SECTION 192 (c),1, a felony, to wit: **ROBERT BURNETT** did unlawfully kill, Cord Spangler, a human being.

COUNT VIII

On or about January 4, 2016 in the County of Sunshine, **ROBERT BURNETT** committed the crime of **Vehicular Manslaughter** in violation of SUNSHINE PENAL CODE SECTION 192 (c),1, a felony, to wit: **ROBERT BURNETT** did unlawfully kill, Kylie Spangler, a human being.

NOTICE: Conviction of these offenses will require the defendant to provide DNA samples and print impressions pursuant to the Penal Code. Willful refusal to provide the samples and impressions is a crime.

BY: STERLING MONAHAN, DEPUTY DISTRICT
ATTORNEY

WITNESS LIST

Each side will present two witnesses as follows:

WITNESS LIST (Gender Neutral)

Witnesses for the Prosecution:

1. Officer Mojo
2. Kirsten Skor

Witnesses for the Defense:

1. Taylor Anderson
2. Jesse Potter

GENERAL STIPULATIONS REGARDING EVIDENTIARY MATTERS AND RULES

1. The Federal Rules of Criminal Procedure and Federal Rules of Evidence apply (supplemented by local rules and stipulations set out below).
2. All the witnesses called to testify in the preliminary hearing have identified the defendant, other individuals, and other tangible evidence and can, if asked, identify the same at trial.
3. Each witness who testified at the preliminary hearing did agree, under oath, at the outset of his/her testimony to give a full and complete description of what occurred.
4. All preliminary hearing testimony was given under oath.
5. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury a signature appearing on an exhibit is not authentic.
6. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses or the defendant that would bolster or detract from their credibility. Teams cannot create impeachment evidence other than what has been provided in the materials; CACJ has provided all necessary information for this problem. No outside medical/ forensic research is permitted and no other research may be cited.
7. This competition does not permit a listed witness, while testifying, to “invent” an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that invented individual. However, reasonable inferences, based solely on the materials provided, may be made.
8. “Beyond the record” shall not be entertained as an objection. Rather, teams shall utilize cross-examination as to inferences from material facts.
9. Both the prosecution and the defendant must call the two witnesses listed on their Respective witness list.
10. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.
11. It is stipulated that all witnesses are deemed sworn and under oath.
12. The trial commences in the current year, 2016.
13. Presentation and argument on pretrial motions shall be limited to a total time of four minutes for each side as follows: two minutes for prosecution to present their in limine motions; two minutes for other side to respond; two minutes for defense to present in limine motions, two minutes for prosecution to respond.
14. Witnesses must not make up facts nor have “temporary memory loss” in response to questions.

THIS COMPETITION IS UNIQUE IN THAT WITNESS FRAUD CAN COST A TEAM POINTS.

15. This competition does permit teams to argue additional case law and other relevant authority to support the team's argument on in limine motions and evidentiary issues. However, no additions are permitted to the provided jury instructions.

SPECIFIC TRIAL STIPULATIONS

1. William and Robert Burnett were originally charged together; however, the trial court has granted a motion to sever and Robert Burnett will be tried alone.

2. Pursuant to stipulation by the prosecution and defense, the prior testimony of Linda Masonry has been admitted into evidence at trial, together with the three exhibits referenced in her testimony. The judge and jury have read her testimony and the exhibits have been provided to them. Either side may freely reference these exhibits and testimony during trial.

3. Thirteen exhibits have been provided with this problem. Exhibits 1, 2 and 3, admitted at the time of the preliminary hearing, have been admitted at trial as part of Linda Masonry's testimony. No other exhibits have been admitted at trial and the teams are permitted to make use of them as they see fit. All exhibits provided have been referenced and described in the preliminary hearing.

4. Officer Mojo obtained the toxicology report for the victims regarding their blood alcohol. He may testify to their results. Neither side may object on hearsay or other grounds to the blood alcohol test results. In addition, the blood alcohol results of the PAS (preliminary alcohol screening) administered by Officer Mojo to various witnesses/parties may not be objected to by either side.

5. Grand Jury proceedings and testimony are referenced throughout the problem. The Grand Jury transcripts are not available to the teams.

6. There were double yellow lines, with reflective bott-dots dividing on the roadway where the Silverado was abandoned, and where the collision occurred. The shoulder in this location was 5.5 feet wide on both sides of the road. A fog line and bicycle lane existed on Garrison Road. A *fog line* is the line painted on the right side of the road to stop individuals from driving off the road in fog when there's no curb or other obvious edge to the driving surface. The bicycle lane is on the right side of the fog line.

7. A yellow nylon rope was found tied to the front bumper of the Silverado.

8. The cost to tow a vehicle from the Burnett property to the nearest tow yard is \$35.00.

DEPARTMENT OF HIGHWAYS

Misdemeanor Domestic Violence (Refer HPM 100.68)

ARREST - INVESTIGATION REPORT
CHP 216 CARS (Rev. 1-89) OPI 004

Felony Other
COURT: **Sunshine** FILE NUMBER:
AREA: BEAT: COLLISION REPORT NUMBER:

EVIDENCE/PROPERTY
YES NO

DATE/TIME OF ARREST REPORT: **1-4-2016 2336**
DATE/TIME OF INCIDENT: SAME
LOCATION OF ARREST/INCIDENT: **Garrison Road**

CITATION NUMBER: OFFENSE(S) CHARGED OR INVESTIGATED: **192 (a) P.C.** JUS8715 REQUIRED NUMBER: YES NO

SUBJECT NO **2** OF **3**

NAME (Last, first, middle): **Burnett, Robert** RESIDENCE ADDRESS: **2456 Garrison Road, Sunshine**

AXA: HOME PHONE: MAILING ADDRESS: SAME

RACE/ETHNICITY: **White** SEX: **M** BIRTHDATE: **10-2-69** HAIR: **BRN** EYES: **BLU** HEIGHT: **6-01** WEIGHT: **210** PLACE OF BIRTH (city, state, country): DISPATCH NOTIFIED: YES NO

DRIVERS LICENSE NUMBER: **B45269551** STATE: DOL STATUS: **Valid** MISC (SSN, INS #, ETC.): TIME TO LOG: YES NO

EMPLOYER: BUSINESS PHONE: BUSINESS ADDRESS: FINGERPRINTED: YES NO

BOOKING, CIL, FBI, ETC., NUMBER(S): WHERE BOOKED/CORRUPTED: DATE/TIME:

NOTIFICATION (Who, How, When) EXPLAIN IN NARRATIVE: NOTIFIED BY:
 JUVENILE FOREIGN NATIONAL IMMUNITY CLAIM

VEHICLE

LICENSE: STATE: YEAR: VIN/EN NUMBER: **SEE NARRATIVE** VEHICLE WAS: STORED PARKED RECOVERED RELEASED IMPOUNDED STORAGE AUTHORITY:

VEH YEAR: MAKE: BODYSTYLE: COLOR: BODY TYPE: LOCATION OF VEHICLE/RELEASED TO ADDRESS/TELEPHONE NUMBER:

NAME OF REGISTERED OWNER: SAME AS SUBJECT ADDRESS: SAME AS SUBJECT

NAME OF LEGAL OWNER: SAME AS RIO ADDRESS: LOCATION OF KEYS:

WITNESS

BIRTHDATE: SEX: NAME: WITNESS PASSENGER ADDRESS/AGENCY: **SEE NARRATIVE** RES: BUS:

WITNESS PASSENGER RES: BUS:

WITNESS PASSENGER RES: BUS:

WITNESS PASSENGER RES: BUS:

VICTIM INFORMATION

NAME: ADDRESS: **SEE NARRATIVE**

BIRTHDATE: SEX: CLR: STATE: DAY PHONE: EVENING PHONE:

VEHIC #: STATE: YEAR: MAKE: BODY STYLE: COLOR: BODY TYPE:

NAME: ADDRESS:

BIRTHDATE: SEX: CLR: STATE: DAY PHONE: EVENING PHONE:

VEHIC #: STATE: YEAR: MAKE: BODY STYLE: COLOR: BODY TYPE:

MISDEMEANOR INCARCERATION (To be completed upon physical arrest for any misdemeanor, pursuant to Penal Code Section 853.6.)
As determined by the arresting officer, the person arrested:

- 1. was so intoxicated as to be a danger to himself/herself or others.
- 2. required medical examination or medical care or was otherwise unable to care for his/her own safety.
- 3. was charged with one or more of the offenses listed in Sections 40302 and 40303 of the Vehicle Code.
- 4. had one or more outstanding arrest warrants issued.
- 5. could not provide satisfactory evidence of personal identification.
- 6. if released immediately, would jeopardize the prosecution of the offense or offenses for which arrested or the prosecution of any other offenses.
- 7. would be reasonably likely to continue the offense or offenses, or the safety of persons or property would be imminently endangered if immediately released.
- 8. demanded to be taken before a magistrate or refused to sign the citation.
- 9. would not appear at the time and place specified in the notice.
- 10. domestic violence (refer to HPM 100.68)

ENTERED

ARRESTING/INVESTIGATING OFFICER: (Print name/rank) REVIEWED BY: (Print name/rank) IO NUMBER: DATE:

DEPARTMENT OF HIGHWAYS

ARREST - INVESTIGATION REPORT
CHP 218 CARS (Rev. 1-99) CP1004

Misdemeanor
 Felony
Other

COURT: SUNSHINE
FILE NUMBER: /
EVIDENCE/PROPERTY: YES NO
AREA: SEAT COLLISION REPORT NUMBER: 5

TIME OF ARREST REPORT: 1-4-2016 2338
DATE/TIME OF INCIDENT: [x] SAME
LOCATION OF ARREST/INCIDENT: Garrison Road

CITATION NUMBER: 192 (a) o.c.
OFFENSE(S) CHARGED OR INVESTIGATED:
JUS 8715 REQUIRED NUMBER: [x] YES NO

SUBJECT NO 1 OF 3

NAME (last, first, middle): BURNETT, WILLIAM
RESIDENCE ADDRESS: 2456 Garrison Road, Sunshine

AKA: HOME PHONE: MAILING ADDRESS: [x] SAME

RACE/ETHNICITY: White
SEX: M BIRTHDATE: 7.2.67
HAIR: BR EYES: BLU
HEIGHT: 6-00 WEIGHT: 180
PLACE OF BIRTH (city, state, country):
DISPATCH NOTIFIED: YES NO

DRIVERS LICENSE NUMBER: STATE: CDL STATUS: Suspended
MISC (SSN, INS #, ETC):
TIME: ID LOG: YES NO

EMPLOYER: BUSINESS PHONE: BUSINESS ADDRESS:

BOOKING, CILFSL, ETC., NUMBER(S): WHERE BOOKED/CONFINED: DATE/TIME: FINGERPRINTED: YES NO

NOTIFICATION (Who, How, When) EXPLAIN IN NARRATIVE: NOTIFIED BY:

VEHICLE

LICENSE: STATE: YEAR: VEHICLE NUMBER: VEHIC: RELEASED/IMPOUNDED: STORAGE AUTHORITY:

VEH YEAR: MAKE: BODY STYLE: COLOR: BODY TYPE: LOCATION OF VEHICL/RELEASED TO/ADDRESS SITE/PHONE NUMBER:

NAME OF REGISTERED OWNER: [] SAME AS SUBJECT: ADDRESS: [] SAME AS SUBJECT:

NAME OF LEGAL OWNER: [] SAME AS RIO: ADDRESS: LOCATION OF KEYS:

WITNESS

Table with columns: BIRTHDATE, SEX, NAME, WITNESS/PASSENGER, ADDRESS/AGENCY, PHONE. Includes 'SEE NARRATIVE' for address/agency.

VICTIM INFORMATION

NAME: SEE NARRATIVE ADDRESS:

BIRTHDATE: SEX: DU: STATE: DAY PHONE: EVENING PHONE:

VEH LIC #: STATE: YEAR: MAKE: BODY STYLE: COLOR: BODY TYPE:

NAME: ADDRESS:

BIRTHDATE: SEX: DU: STATE: DAY PHONE: EVENING PHONE:

VEH LIC #: STATE: YEAR: MAKE: BODY STYLE: COLOR: BODY TYPE:

MISDEMEANOR INCARCERATION (To be completed upon physical arrest for any misdemeanor, pursuant to Penal Code Section 853.6)

- 1. [] was so intoxicated as to be a danger to himself or others.
- 2. [] required medical examination or medical care or was otherwise unable to care for his/her own safety.
- 3. [] was charged with one or more of the offenses listed in Sections 40302 and 40303 of the Vehicle Code.
- 4. [] had one or more outstanding arrest warrants issued.
- 5. [] could not provide satisfactory evidence of personal identification.
- 6. [] if released immediately, would jeopardize the prosecution of the offense or offenses for which arrested or the prosecution of any other offenses.
- 7. [] would be reasonably likely to continue the offense or offenses, or the safety of persons or property would be imminently endangered if immediately released.
- 8. [] demanded to be taken before a magistrate or refused to sign the citation.
- 9. [] would not appear at the time and place specified in the citation.
- 10. [] domestic violence (refer to HPM 100.09)

ARRESTING/INVESTIGATING OFFICER (Print name/rank): I.D. NUMBER: I.D. NUMBER:

ENTERED

NARRATIVE/SUPPLEMENTAL POLICE REPORT

On January 4, 2016 at approximately midnight I received a telephone call of a fatal traffic collision on Garrison Road near Shadow Road. I arrived on scene at approximately 0100.

At the scene of this collision, I observed that Garrison Road east of Shadow Road is a two lane, asphalt, paved, straight roadway. Garrison is oriented in an east/west direction and is maintained by the Department of County Roads. I measured the lanes which are approximately 12 ft. in width and are delineated by solid double yellow lines and raised reflectorized bott-dots. The area consists of wide asphalt shoulders, delineated by white lines. Garrison Rd is bordered to the north by residential homes and businesses. The weather at the time of the collision was clear and dry, and was not a contributing factor in the collision. It was dark at the time of the collision and there were no street lights in the area.

Upon arrival I observed the Jeep Cherokee at its point of rest. I was told that there were four fatalities as a result of this collision – three were still inside the vehicle and one had been ejected. The Jeep Cherokee had been traveling westbound when it swerved to avoid several vehicles that had stopped for an abandoned Silverado. As a result of this maneuver the Jeep Cherokee had struck a GMC pickup truck and a Hummer and flipped over several times killing all occupants.

I observed the abandoned Silverado on the north shoulder of Garrison Road. The vehicle had two flat tires, the vehicle's lights were not activated and there was a yellow nylon rope attached to the front of the vehicle. The rope had a hook on one end, and appeared to be cut or broken on the other. Upon inspection of the vehicle it appeared that this was an abandoned vehicle.

I spoke with witness Taylor Anderson. Anderson stated that she/he arrived at the scene of an abandoned vehicle blocking the westbound lane of Garrison Road east of Lupe Road approximately seven minutes prior to the collision occurring. An older gentleman driving a white car was stopped just west of the abandoned vehicle facing east with its headlights and emergency flashers operating. Anderson indicated the older man had called 9-1-1. Anderson stated she/he parked her/his vehicle with headlights on in the westbound lane just east of the abandoned vehicle and activated her/his vehicle's emergency flashers. She/He exited her/his vehicle and was attempting to locate her/his flares when a white pickup approached traveling westbound. The pickup stopped just east of his vehicle in the westbound lane and the driver activated his emergency flashers. A second car approached traveling westbound and stopped just east of the pickup. The driver of the second car activated the emergency flashers of their vehicle and remained stopped behind the pickup in the westbound lane. A third car approached traveling westbound and stopped behind the second car, but Anderson was unsure if that driver activated the vehicle's emergency flashers. Anderson said she/he saw another vehicle approaching from the east that she/he believed was the Jeep Cherokee involved in the collision. Anderson

stated that she/he could not locate her/his flares and she/he moved to the right front of the pickup to direct it around the abandoned vehicle. Anderson observed a Hummer approaching her/his location traveling eastbound. The Hummer slowed to a near stop approximately 300 feet west of her/his location and she/he waved the Hummer through using her/his flashlight to signal the driver. The Hummer continued very cautiously driving approximately 5 mph by her/his location. Anderson said she/he observed the involved Jeep Cherokee still approaching now approximately a half mile away, but her/he did not believe it was close enough to be a hazard. Anderson looked to the west and after observing no approaching vehicles, waved the driver of the pickup around the abandoned vehicle. As the pickup started into the eastbound lane she/he observed the involved Jeep Cherokee suddenly appear from behind the last stopped westbound vehicle which was approximately 75 to 100 feet east of her/his location. Anderson said the eastbound Hummer was in the vicinity of the Jeep Cherokee and the Jeep Cherokee, traveling in excess of 75 mph, (Speed limit is 50 mph), swerved into the eastbound lane around the last vehicle in line. Anderson immediately signaled the pickup driver to stop and the pickup came to an immediate stop sitting diagonally across the double yellow lines. The Jeep Cherokee continued in the eastbound lane and sideswiped the left front of the pickup. The Jeep Cherokee swerved towards the south shoulder. The Jeep's driver appeared to attempt to correct by steering to the right. The Jeep rotated to the right approximately 25 to 30 degrees in relation to the direction it was traveling as it continued towards the south edge of the road. Anderson said she/he momentarily glanced at the driver of the pickup to see if he was okay and when she/he looked back at the Jeep it had slid off the south edge of the road and had begun to overturn. Anderson stated she/he saw the left rear corner of the Jeep in the area of the drainage ditch with the remainder of the vehicle in the air. The front of the Jeep was facing a northwesterly direction and over the south shoulder. Anderson said that the Jeep tumbled several times and she/he recalled seeing the front bumper separate from the vehicle. She/He observed a large amount of debris flying from the vehicle, but after its lights extinguished he couldn't see much of anything else. Anderson told everyone to remain stopped and she/he drove to the location where the Jeep came to a rest. She/He immediately observed the male driver and the right front female passenger were deceased. Anderson did not initially see the child in the rear seat until I arrived less than five minutes after the collision had occurred. The child was also obviously dead.

While at the collision scene, I spoke with Detective Smith of the Sunshine County Coroner's Office. He told me that it is possible that the abandoned vehicle originated from the Burnett's residence since it was only a few feet from their driveway at 2456 Garrison Road. I walked to the driveway and I observed what appeared to be tire tracks on dirt driveway leading from the rear of the property to Garrison Road. The Burnett residence shares their driveway with Fransby Chickens and is on the same piece of property. I walked along the driveway toward two trailers and a shed on the property. Toward the rear of the driveway the dirt was muddy. It was here that I could see actual tire tread impressions. I photographed the impressions and walked back to the Silverado to see if the tread patterns appeared similar. Upon inspection of the Silverado, it appeared that some of the tires had consistent tread patterns. I also noticed that the tires had dirt on the tread pattern. Since the dirt was on top of the tread pattern, this would indicate that the vehicle had not traveled a long distance because the dirt would have been wiped off the tread pattern as it rotated along the roadway. Additionally, there were several vehicles parked along the driveway of the Burnett residence. None of these

vehicles left any tire tracks in the dirt driveway except for the one set of tire tracks from the rear of the property. It appears that these tracks were caused by disturbing the dirt on the driveway. This would be consistent with the Silverado being towed out of the driveway because the Silverado's tires were flat which would have caused the tires to slide and plow through the dirt instead of smoothly rolling over the dirt like the inflated tires of all of the other vehicles in the area. I also observed a tan and brown Chevrolet Suburban registered to James Albee at 2456 Garrison Road. I saw that the vehicle had a trailer hitch and observed what appeared to be fibers on the hitch. At this time, I placed crime scene tape around the area to prevent destruction of evidence.

I determined that the residents at 2456 Garrison Road should be contacted and a search warrant should be obtained for 2456 Garrison Road as well as the trailer directly behind 2456 Garrison Road.

I knocked on the front and side doors of 2456 Garrison. Even though dogs were barking, no one came to the door.

I obtained a search warrant for the following items: yellow nylon rope, indicia of ownership and control of the Chevrolet Suburban, indicia of ownership of the Silverado, Fingerprints, DNA, tire tread impressions and shoe impressions. I seized yellow nylon rope that was found on the property and appeared to match that that was tied to the front bumper of the Silverado. I obtained tire impression marks, and dusted the Silverado for fingerprints.

I interviewed several witnesses as follows:

Kirsten Skor – was contacted as he was leaving the residence at 2456 Garrison Road in the early morning hours. He related that he had gotten to the residence the night before around 10 pm. He said that he saw a black Silverado out in the street and asked the people inside what was up with it. They informed him not to worry about it. When he heard the collision later, he said he saw the emergency lights but was told not to go out of the house. When asked who had told him this he would not say. Skor was very vague when relating his story. When asked who had put the vehicle in the roadway he stated that he had an idea who did it but would not divulge what he thought or knew.

Investigator Jones and I spoke with Bob Burnett. We interviewed Bob in what appeared to be the kitchen area. After being Mirandized, I asked Bob if he knew why we were there. He immediately said that if it was about the crash, he knew who took the car. Bob went on to say that the "county" came by the day before and Bob was told that he needed to get rid of cars. That same day, at approximately 5:00 or 6:00 an acquaintance he had known for about a year, stopped by the house. Bob asked him if he wanted any cars, because he liked to fix up cars. This person stated that he wanted the Silverado, which Bob said he could have. This person said he would be back in an hour to get the car. Bob said that he went to bed and assumed that the car had been picked up by this person whom he ultimately identified as Carlos. When asked, Bob stated that Carlos drives a white and brown pickup truck. Bob said he does not know where Carlos lives or how to contact him.

Bob said that he did not hear me knocking at the door during the night. He learned about the collision in the morning from his sister, Judy Burnett. When asked when was the last time he had driven the Suburban, Bob first said that he does not drive it, but later said that he had driven it a long time ago. When asked who inflated the tire on the Suburban yesterday, Bob admitted

that his brother did it. When I told Bob that there was evidence to suggest that he towed the vehicle onto the road with the Suburban, he denied involvement. He also said that he wouldn't leave it in the middle of the road, and that he learned from Judy that the vehicle had been in the middle of the road because she was outside. When confronted with the statement from Kirsten Skor that Skor told Bob that the car was in the road, Bob denied that Skor made that statement. As I spoke with Bob I could smell the odor of an alcoholic beverage emitting from his breath. I performed a PAS on Bob at 1343 hours with a result of a .13 blood alcohol. Bob claimed that he had consumed a pint of Vodka the previous day and had stopped drinking at 4:00 or 5:00 p.m. As I continued to interview Bob, he admitted to abandoning cars in the roadway – five or six over the last few years – but he did not dump this car in the roadway. Bob stated that he had purchased the Silverado a few years ago for \$600 and that the car hasn't run for two years.

At approximately 13:55 I spoke with Bill Burnett. Bill was also Mirandized. Bill related in essence that around 2:00 or 3:00 p.m. the previous day Bob told Bill that someone was coming to get the Silverado. Bill used his Suburban and a chain to pull the Silverado forward in the driveway so that it was somewhere alongside Fransby Chickens. He then parked the Suburban at its point of rest, went inside to bed, and fell asleep around 9:00 p.m. Bill said that he did not know who was coming to get the vehicle, but did know that Bob told him that someone was coming to get it. When asked why his story did not match his brother's, he could not provide an explanation. When asked if he had a yellow cord, he said "no." I also asked why he did not come out to contact us, and he said that having all of the police in his driveway was intimidating.

At approximately 1410 hours I interviewed Judy Burnett in the kitchen. I Mirandized Judy and told her that she was not under arrest. Judy told me that she had seen the car abandoned in the roadway with another car shining headlights on it and flashlights. Cars were going around the stopped car until a Lincoln or a Cadillac came by at 75 mph or more and rolled several times. Judy then called 911 after the collision. Judy claimed that this occurred at 7:30 or 8:00 p.m. while she took her dog for a walk. Judy claimed that at the time she did not realize that it was the Silverado from her yard.

Judy claimed that she got up around 9:30 a.m. the day before. Sometime around 12:00 and 2:00 p.m. the "county lady" came by and was talking about the car. Judy claimed that her brothers and sister were present when the county lady was there. After the county lady left there was some discussion about the cars, but it was more of an argument. Judy said that they did not come to a consensus. When I asked about Carlos, she first said that he was one of the Mexicans who comes around, but then said that she does not specifically know who Carlos is and that he was not there yesterday. She said no one had come by the home yesterday. I asked her if anybody had driven the Suburban. She said that someone had put air in the tires because the county lady told them to fill the tires. Judy stated that Bob had told her that Carlos was going to pick up the car.

I interviewed Arthur Bell at 1500. Bell related in essence that he lives in a trailer on the property at 2456 Garrison Road. When I talked to Mr. Bell about determining exactly what happened and who towed the Silverado, Mr. Bell related the following:

Sometime between 2130 and 2230 hours he was asleep in his trailer. Janet Prock who lived at the Garrison Road home, came into his trailer and woke him up. She told him that they needed him to move his cars out of the way because "they" wanted to move some cars around. He got up and moved his cars.

Mr. Bell then wanted to explain the situation with the rest of his family members. He stated that when Iris Burnett, Bob and Bill Burnett's mother, was alive she was always on the other family members to stop drinking. When Bell talked to the other family members about their drinking he was told to mind his own business. So he has tried to disassociate himself from the others. He said that they all have serious drinking problems, and that the drinking was the root of all their problems.

Mr. Bell said that if the family discovered he had spoken to me, that they would be very angry. Bell then told me that after he had moved his vehicles and before he had gone to bed he saw that the Silverado was hooked up to the van and they had pulled it out to the road. He then said that he went back to bed. I then asked Bell who was outside on the property and he said Bill, Bob, Kirsten, Judy and Jane. Janet was outside for a while but she went back inside.

Mr. Bell told me that Bill and Bob had criminal records and were facing jail time. He said that he felt that Bob and Bill were trying to save \$35.00 by towing the car out to the road.

I then asked him who was driving the Suburban and he said he has diabetes and doesn't see that well but had heard that it was Kirsten Skor and thinks Bob and Bill helped.

Judy Burnett refused to speak with me.

Jane Burnett agreed to be interviewed and stated the following: On January 4th around midnight, she observed her brother Bill tow the Silverado out of the yard using the Suburban. The Silverado was towed to Fransby Chickens where Carlos used his pickup truck to hook up the Silverado. When asked to describe the pickup truck, Jane was only able to describe it as white. When asked where Bob was at this time Jane said that she didn't know. She also told us that she did not actually see Carlos but was told by her brother Bob that Carlos was supposed to pick up the Silverado. She could not provide a phone number or contact information for Carlos.

Jane said some time later she saw the Silverado abandoned in the road. She told her brothers and they were angry at Carlos. When asked why she and her brothers did not go push the truck off the road, she said because they saw all of the lights and thought that it was already under control.

Approximately four days later I received a telephone call from Jane Burnett. She said that she wanted to tell me the truth about what happened. She explained that her brother Bill had pulled the car onto the roadway. Bob was also involved in the towing, though Jane did not know exactly what he was doing nor did she know who was steering the Silverado. She said that the only reason they left it on the road is that Bill has a warrant and Bob is on probation. Apparently they tried to push the car off the road without success. According to Jane, Kirsten was involved but she didn't know his exact involvement. Jane told me that Carlos does not exist, that they had a family meeting and decided upon the Carlos story.

I attempted to interview Bob Burnett. After being Mirandized Bob stated he wishes to remain silent. While speaking with him I could smell alcohol. I requested that Bob take a PAS test which results of .13/.13 blood alcohol.

I interviewed Janet Prock, who also lived at the Garrison Road home. She confirmed that the family had met and decided upon the Carlos story. She stated that Bill's main concern is that the police took away his Suburban as evidence and he wants to get it back. Prock stated that Kirsten was driving the Suburban that towed the Silverado to the roadway. While speaking to Prock I

smelled alcohol. I requested that she take a PAS test; the results were .21/.21 blood alcohol.

I re-contacted Kirsten Skor and convinced him to come to the station for a second interview on January 8, 2016. Skor said the following in summary: Skor wanted to come clean as his conscience had been bothering him over the case because of the deaths of the two children. Skor said that Bob and Bill Burnett were people he'd known for some years and who he sometimes helps out. Bob and Bill had asked him to come and drive the Suburban to tow the Silverado to the roadway so the Highway Patrol would tow it away. The Burnetts were very poor and could not afford to pay to tow the vehicle off the yard. They said that the county told them that they had to remove the vehicle immediately. They wanted Skor to drive because neither Bob nor Bill has a valid driver's license.

Skor said that he would be willing to testify against the brothers and wanted to know if he did whether he could escape punishment. We informed him that that would be up to the District Attorney. Skor was read his Miranda rights and chose to make a statement. He stated that he had arrived over to the Burnett's earlier in the day and agreed to come back around 11:00 p.m. to help them tow the Silverado to a place off of the highway. Bill and Bob had done this in the past with other vehicles that they could not afford to get towed. They were concerned about losing the property if they were not in compliance with the county.

Skor said that he got over to the Burnett's around 10:30 or 11:00 p.m. Bob or Bill, he wasn't sure exactly which one did what, but one of them hooked up the Silverado to the Suburban using a yellow nylon rope. Bob and Bill tied the rope to the front bumper and signaled for him to move forward in the Suburban. When Skor got onto the roadway the yellow nylon rope jerked like Bob had stepped on the brake, and he felt the rope snap. The rope pulled the front bumper partially off the Silverado. The Silverado was difficult to tow because at least one tire was flat. After the rope broke Bob and Bill started back to their house. I said "hey, we can't leave this car in the road like this." I asked who he said that to, and Skor said he believed it was Bob Burnett. I asked how Bob and Bill responded, and Skor said that they said to "leave it." Skor said that he didn't feel like that was right, but didn't feel like he had the right to tell Bob and Bill what to do. Bill and Bob went back to the house and drank alcohol. Skor said Bill and Bob are alcoholics and likely they had been drinking prior to towing the vehicle, because they always drank.

Skor stated that one of the sisters came in the house and told them about the wreck just before midnight. Bob and Bill told him not to go outside. Skor admitted that they all heard the police knocking at the door but the family did not want to answer the door and told him not to answer the door or go outside.

Skor said that they didn't intend for anyone to get hurt, and they thought that the police had things under control because they could see the cars outside with their lights and flashlights on. He said that one of the sisters, Janet or Judy, was outside when the crash happened and said that the car that had wrecked had been flying.

The identities of the deceased were obtained as follows: the driver was identified as Mark Spangler. The right front passenger was identified as Laurie Hernandez; the right rear passenger was identified as the couple's five year old daughter, Kylie Spangler. Cord Spangler, age seven, was ejected from the Jeep and found on the roadway. A follow up investigation revealed that the Spangler's had been visiting friends the evening of January 4th, the Potters. On January 8, 2016, I interviewed Jesse Potter who stated the following:

She and her/his husband/wife had grown up with Mark Spangler and Laurie Hernandez and the two families ended up having kids that were the same age. Spangler and Hernandez had been together for years and had two children but had never married because Mark didn't want to feel tied down. Mark and Laurie had just bought a Jeep Cherokee to move the family to Mexico. Mark loved the Jeep. Mark and Laurie had decided that they would move to Mexico and manage the family's vacation home. They wanted a slower pace of life and more family-oriented lifestyle, which is why they decided to move the family down to Mexico. Mark had quit his job as a bartender and Laurie had quit her job and they had sold most of their belongings. The visit with the Potter's was to say goodbye.

The Spangler's had arrived at the Potter's house around 5:30 p.m. They were drinking wine, and had dinner. Mark and Laurie both were drinking, although Mark had more to drink. In all, Potter believes they had about 2 ½ bottles of wine. Potter reported that Mark had also smoked some weed out in the back of their house.

Potter stated that she/he and her/his husband/wife had tried to get them to stay the night, but Mark was adamant that they needed to leave. Potter was surprised to hear that Mark was not over the legal limit; Potter felt like she should not have let him get in the car and drive that way. Potter was surprised to hear that Cord was not seat belted in; Mark and Laurie were very conscientious about strapping the kids into their car seats.

Potter also wasn't surprised to hear that Mark was speeding because Mark likes to drive fast, even with the kids in the car. Potter thinks Mark was angry when he left, because he wanted to go get more alcohol but Laurie didn't want him to, so they kind of got into a bit of a discussion. Potter stated that the incident had been hard on her family, as they had been with the Spangler minutes before they died.

I contacted the coroner and obtained a copy of the toxicology results for Mark Spangler and Laurie Hernandez. Mr. Spangler's blood alcohol was .07. Ms. Hernandez's blood alcohol was a .08.

Officer Mojo, Sunshine Police Department

IN THE SUPERIOR COURT FOR STATE OF SUNSHINE

APPLICABLE LOCAL RULES AND JURY INSTRUCTIONS:

Rule of Court 12(a): In all Felony matters there shall be a preliminary hearing which is defined as follows: A court proceeding held soon after arraignment, a "trial before the trial" at which the judge decides, *not* whether the defendant is "guilty" or "not guilty" but whether there is enough evidence to force the defendant to stand trial. In making this determination, the judge uses the "probable cause" legal standard, deciding whether the government has produced enough evidence to convince a reasonable jury that the defendant committed the crime(s) charged.

State of Sunshine Penal Code § 192. Manslaughter; voluntary, involuntary, and vehicular

Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

(a) Voluntary-upon a sudden quarrel or heat of passion.

(b) Involuntary-in the commission of an unlawful act, not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle.

(c) Vehicular-

(1) Except as provided in subdivision (a) of Section 191.5, driving a vehicle in the commission of an unlawful act, not amounting to a felony, and with gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(2) Driving a vehicle in the commission of an unlawful act, not amounting to a felony, but without gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.

(3) Driving a vehicle in connection with a violation of paragraph (3) of subdivision (a) of Section 550, where the vehicular collision or vehicular accident was knowingly caused for financial gain and proximately resulted in the death of any person. This paragraph does not prevent prosecution of a defendant for the crime of murder.

(d) This section shall not be construed as making any homicide in the driving of a vehicle punishable that is not a proximate result of the commission of an unlawful act, not amounting to a felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

(e)(1) For purposes of determining sudden quarrel or heat of passion pursuant to subdivision (a), the provocation was not objectively reasonable if it resulted from the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance towards the defendant, or if the defendant and victim dated or had a romantic or sexual relationship. Nothing in this section shall preclude the jury from considering all relevant facts to determine whether the defendant was in fact provoked for purposes of establishing subjective provocation.

(2) For purposes of this subdivision, "gender" includes a person's gender identity and gender-related appearance and behavior regardless of whether that appearance or behavior is associated with the person's gender as determined at birth.

Jury Instruction 1.00: The defendant is charged in Counts I-IV with involuntary manslaughter in violation of Penal Code §192(b).

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant committed a lawful act, but acted with criminal negligence;

AND

2. The defendant's acts caused the death of another person.

The People allege that the defendant committed the following lawful act with criminal negligence: towing then abandoning Chevrolet Silverado on Garrison Road.

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when:

1. He or she acts in a reckless way that creates a high risk of death or great bodily injury;

AND

2. A reasonable person would have known that acting in that way would create such a risk.

In other words, a person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.

There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.

Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

Jury Instruction 2.00: The defendant is charged in Counts V-IIX with vehicular manslaughter in violation of Penal Code §192(c)(1).

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant drove or operated a vehicle;

2. While driving or operating that vehicle the defendant committed an act that might cause death;

3. The defendant committed the act that might cause death with gross negligence;

AND

4. The defendant's grossly negligent conduct caused the death of another person.

The People allege that the defendant committed the following act that might cause death: towing then abandoning Chevrolet Silverado on Garrison Road.

Gross negligence involves more than ordinary carelessness, inattention, or mistake in judgment.

A person acts with gross negligence when:

1. He or she acts in a reckless way that creates a high risk of death or great bodily injury;

AND

2. A reasonable person would have known that acting in that way would create such a risk.

In other words, a person acts with gross negligence when the way he or she acts is so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.

There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.

The People have the burden of proving beyond a reasonable doubt that the defendant committed gross vehicular manslaughter. If the People have not met this burden, you must find the defendant not guilty of that crime.

Jury Instruction 3.00: In order to be guilty of the crime of involuntary manslaughter, a person must do an act or fail to do an act with criminal negligence. In order to be guilty of the crime of vehicular manslaughter, a person must do an act or fail to do an act with gross negligence. Criminal negligence and gross negligence are defined in the instructions on those crimes.

Jury Instruction 4.00: An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence.

There may be more than one cause of death. An act causes death, only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor. However, it does not have to be the only factor that causes the death.

The failure of Mark Spangler or another person to use reasonable care may have contributed to the death. But if the defendant's act was a substantial factor causing the death, then the defendant is legally responsible for the death even though Mark Spangler or another person may have failed to use reasonable care.

Jury Instruction 5.00: A person *drives* a vehicle when he or she intentionally causes it to move by exercising actual physical control over it. The person must cause the vehicle to move, but the movement may be slight.

Jury Instruction 6.00: Taylor Anderson who was not testifying as an expert, gave his opinions during the trial. You may but are not required to accept those opinions as true or correct. You may give the opinions whatever weight you think appropriate. Consider the extent of the witness's opportunity to perceive the matters on which his or her opinion is based, the reasons the witness gave for any opinion, and the facts or information on which the witness relied in forming that opinion. You must decide whether information on which the witness relied was true and accurate. You may disregard all or any part of an opinion that you find unbelievable, unreasonable, or unsupported by the evidence.

Jury Instruction 7.00: Evidence will be presented that a prosecution witness, Kirsten Skor, was a co-defendant in this case along with Robert Burnett. Evidence will also be presented that Kirsten Skor pleaded guilty to a crime in exchange for his testimony against Robert Burnett.

The fact that Kirsten Skor pleaded guilty to any offense does not imply the guilt of Robert Burnett or even that a crime was in fact committed. You are not to consider the fact that Kirsten Skor pleaded guilty to an offense to infer the guilt of the defendants or even that a crime was in fact committed. That is for you to decide after hearing all the evidence.

Jury Instruction 8.00: A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in the case of reasonable doubt whether his guilt is satisfactorily shown, he/she is entitled to a verdict of not guilty. This presumption places upon the people the burden of proving him guilty beyond a reasonable doubt. Reasonable doubt is defined as follows: it is

not a mere possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction of the truth of the charge.

Jury Instruction 9.00: “Evidence” is the sworn testimony of witnesses, the exhibits admitted into evidence, and anything else I told you to consider as evidence. During the trial, you were told that the People and defense agreed, or stipulated, to certain facts. This means they both accept those facts as true. Because there is no dispute about those facts you must also accept them as true.

Jury Instruction 10.00: Before you 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. This finding must be 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.

Jury Instruction 11.00: A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence, or the lack of evidence. If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty. It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable or less reliable than other evidence.

Jury Instruction 12.00: In evaluating testimony, you should consider how the witness acted, as well as what he or she said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see, hear, or otherwise know the things about which the witness testified?
2. Did the witness seem to have an accurate memory?
3. How well was the witness able to recall and describe what the witness perceived?
4. Was the witness honest and straightforward in answering the attorneys' questions?
5. Did the witness have an interest in how the case should be decided?
6. Does the witness's testimony agree with the other testimony and other evidence in the case?
7. Has the witness been offered or received any money, preferred treatment, or other benefit in order to get the witness to testify?
8. Had any pressure or threat been used against the witness that affected the truth of the witness's testimony?
9. Did the witness at some other time make a statement that is inconsistent with the testimony he gave in court?
10. How reasonable was the witness's testimony in light of the other evidence?
11. Did other evidence prove or disprove any of the witness's testimony?
12. Was it proved that the witness had been convicted of a crime?

You may rely upon your own conclusion about the witnesses. The testimony of one witness can prove, or disprove, any fact. A juror may believe or disbelieve all or any part of the evidence or

the testimony of any witness.

Jury Instruction 13.00: You have heard statements that a witness made before trial. If you decide the witness made those statements, you may use the statement in two ways: 1) to evaluate the credibility for the witness's in-court testimony, and 2) as evidence the information in the earlier statements is true.

An act causes a result if the result is the direct, natural, and probable consequence of the act and the result would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence.

Jury Instruction 14.00: There are some general rules that apply to your discussion. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.
2. This case must be decided only upon the evidence that you have heard from the answers of the witnesses and have seen in the form of the exhibits in evidence and these instructions.
3. This case must not be decided for or against anyone because you feel sorry for anyone or are angry at anyone.
4. Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.
5. Your duty is to determine if the defendant is guilty or not guilty, in accord with the law. It is the judge's job to determine what a proper sentence would be if the defendant is guilty.
6. Whatever verdict you render must be unanimous; that is, each juror must agree to the same verdict.
7. It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited for talking to a lawyer about his testimony.
8. Feelings of prejudice, bias, or sympathy are not legally reasonable doubts, and they should not be discussed by any of you in any way. Your verdict must be based on your views of the evidence and on the law contained in these instructions.

IN AND FOR THE COUNTY OF SUNSHINE

CRIMINAL DIVISION VERDICT FORM

Case No. 23556

STATE OF SUNSHINE

V.

ROBERT BURNETT

We, the Jury, find as to the Defendant, Robert Burnett, as follows:

_____ Guilty of count one, a violation of Penal Code Section 192(b)
_____ Not Guilty of count one

_____ Guilty of count two, a violation of Penal Code Section 192(b)
_____ Not Guilty of count two

_____ Guilty of count three, a violation of Penal Code Section 192(b)
_____ Not Guilty of count three

_____ Guilty of count four, a violation of Penal Code Section 192(b)
_____ Not Guilty of count four

_____ Guilty of count five, a violation of Penal Code Section 192(c)(1)
_____ Not Guilty of count five

_____ Guilty of count six, a violation of Penal Code Section 192(c)(1)
_____ Not Guilty of count six

_____ Guilty of count seven, a violation of Penal Code Section 192(c)(1)
_____ Not Guilty of count seven

_____ Guilty of count eight, a violation of Penal Code Section 192(c)(1)
_____ Not Guilty of count eight

So say we all.

Foreperson of Jury

Date: _____

2016 NATIONAL CRIMINAL TRIAL COMPETITION RULES

CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE (CACJ) & HASTINGS COLLEGE OF THE LAW

1. CACJ created the NCTAC to stimulate student interest in developing trial and advocacy skills in criminal law and to encourage law schools to teach trial advocacy skills, particularly in criminal/constitutional law. Students should consider becoming CACJ members by the start of the competition. Membership information can be requested from CACJ by visiting their website at: <http://www.cacj.org>.
2. These competition rules apply to the annual competition held by CACJ and Hastings College of the Law. Requests for interpretation of these rules should be sent in writing to the NCTAC committee at mocktrial@cacj.org. The committee, as described further *below*, will issue written responses in accordance with these rules and in their sole discretion, will interpret these competition rules; all decisions are final. The NCTAC committee, in their sole discretion, may create additional rules to address situations not presently covered by these competition rules.
3. The conduct of all participants in the competition, including team members and coaches, will be governed by these Rules and by the standards set out in the ABA-Model Code of Professional Responsibility and the ABA-Model Rules of Professional Conduct. As set out in further detail below, violation of any of these Rules, depending on seriousness of the violation, may result in disqualification of the team or other sanctions, including but not limited to exclusion from future participation in this competition. Note further that scoring jurors are permitted to reduce points of any team violating these Rules.
4. The two finalists are guaranteed to be invited back for the next competition, unless the NCTAC committee determines that a rules violation occurred, and thus is authorized to rescind the invitation.
5. To maintain the objective scoring process, each team will be randomly assigned a team letter for competition purposes. No law school will be identified by school name.
6. Each team must be accompanied by a Faculty Advisor or an attorney designated by their law school to act as the Faculty Advisor. Only the Faculty Advisor is to attend the Faculty Advisors' pre-competition meeting. Without a Faculty Advisor present, a school will not be permitted to compete. A student may not serve as the Faculty Advisor without express approval, after a special request for accommodation has been made. If the NCTAC committee permits, a student may serve as Faculty Advisor.
7. Each school is responsible for funding its team's travel, hotel and meals. Upon request, CACJ can provide information about hotels in the area.
8. Each student participating on a team must be currently enrolled in a J.D. program. It is up to the individual schools how they pick their teams.
9. Geoffrey Hansen, Cris Lamb, Bobbie Stein, Julie Traun and Orchid Vaghti will act as the CACJ Competition Committee. All controversies will be referred to this Committee and those designated by the Committee for final resolution. Questions

concerning the merits of the case will not be answered. Any questions that arise during trials should be relayed to a Committee member by the Faculty Advisor.

10. The problem and rules will be provided to all teams simultaneously via e-mail no later than SEPTEMBER 6, 2016. The problem may include pleadings, witness statements, police reports, discovery, photographs, diagrams, jury instructions, research relevant to expert witnesses, if any, and other materials. All questions about the rules as well as the problem or the case-file must be submitted by e-mail from Faculty Advisors no later than SEPTEMBER 23, 2016 by 5PM PST to mocktrial@cacj.org. Responses to all questions submitted in a timely fashion will be sent by simultaneous e-mail to advisors/coaches by OCTOBER 3, 2016. All questions and responses will be contained in this single email.
11. Each team will have a minimum of two trials. The two preliminary rounds, one on Thursday and one on Friday, as well as the quarter-final and semi-final rounds on Saturday will be held at the Phillip Burton Federal Courthouse located at 450 Golden Gate Avenue, San Francisco. The final round on Sunday morning will be held at Hastings College of the Law, located at 100 McAllister Street, San Francisco. Quarter finalists will be announced at the Friday night reception held at Soluna Café/Bar, located at 272 McAllister Street, San Francisco, approximately one – two blocks from the Federal Courthouse.
12. The standings after two rounds will be based on number of wins first, number of judges ballots second, followed by head-to-head result (if any) and, finally total points. For example, a team will be evaluated as such... Joe Smith Law School, 2 wins and zero losses, 6 ballots, no head-to-head, and 189 points.
13. Pairings in the two preliminary rounds will be at random, and will be announced at the coaches' meeting on Thursday afternoon. Each team must represent the prosecution and the defense at least once. No two teams will compete against each other more than once during the preliminary rounds.
14. In the quarter-final rounds, the first ranked team will compete against the eighth ranked team, the second against the seventh, and so on. If the paired teams in the playoff rounds have already competed against each other, they will switch sides from their previous meeting. If they have not competed against each other before, they will flip a coin for the choice of sides.
15. The teams in the semi-final round will represent different sides than they did in the quarter-final round. If they both had the same side in the quarter-final round, they will flip a coin for sides. The teams in the final round will represent different sides than they did in the semi-final round. If they both had the same side in the semi-final round, they will flip a coin for sides.
16. Each team will have ONLY four members. There will be no stand-by substitutes. Two students are to represent the prosecution and the other two the defense; each pair of students will act as the other pair's witnesses. This means that each of the four

team members must participate as an advocate – either as a prosecuting attorney or as a defense attorney - in the competition. There are to be no independent witnesses.

17. All witnesses in the case-file are gender neutral. A separate sheet will be sent asking for the team to designate which witnesses each team member will be and whether they will testify as a male or female.
18. During a round, each team member who is an advocate must participate in three of the six aspects of the trial. The opening and closing must be done by different students. Each student must conduct one direct examination and one cross examination. There will be NO recalling of witnesses, but the prosecution may ask the court to reserve time for rebuttal argument. Pre-trial motions will be oral and will be heard before the opening statements. Each issue brought up in pre-trial motions will be argued and responded to by one member of each team only. If there is more than one issue, the other team member may raise that issue and the other member of the opposing team may respond. Please remember that this is a TRIAL competition, not a moot court competition, and to conduct yourselves in that spirit. Presentation and argument of pre-trial motions will be limited to eight (8) minutes total and divided equally between the parties as follows:
 - a) The prosecution shall have two (2) minutes to present any pretrial motions;
 - b) The defense shall have two (2) minutes to respond to the prosecution's motions;
 - c) The defense shall have two (2) minutes to present any pretrial motions;
 - d) The prosecution shall have two (2) minutes to respond to the defense motions.
19. Objections will be made during direct examination by the opposing team member who is to cross-examine that witness and vice-versa. There is to be no double-teaming.
20. Objections during Opening and Closing, if necessary, will be made only by the team member handling that portion of the trial for the objecting team. The person raising the objection will be expected to argue it (again, no double teaming). The person giving the Opening or Closing will be the team member who will respond to the objection.
21. Objections must be brief, limited to the legal basis and applied to the specific facts at issue. Length of objections and argument is in the discretion of the judge and the clock will not be stopped, so it is imperative that objections be well thought out and as brief and to the point as possible. Please remember that coaches should be teaching non-speaking objections. Rarely, and only for unanticipated circumstances, should the objections and subsequent argument become too lengthy, we will instruct the clock keeper to stop the clock. This is NOT an invitation to argue at length and do remember that speaking objections are not permitted. Yet we understand that on occasion, exceptions should apply. Remember, the time-keeping is decided exclusively by the CACJ designated time-keeper. The presiding judge, in the judge's

discretion, may order time charged against any team that makes excessive objections or uses excessive time to argue or respond to objections.

22. Use of demonstrative evidence is limited to that which is provided in the problem materials. Teams may enlarge any portion of the record that they wish to use. Teams may diagram or make charts in open court to highlight an aspect of the case when appropriate, such as bullet points or review of the facts. No other demonstrative evidence is to be created that is outside the problem. All demonstrative evidence enlarged, etc. must be shown to all Faculty Advisors at the Advisors' meeting on Thursday afternoon. Teams must bring their own easel, markers, display boards and other equipment as these will not be provided by CACJ or the courthouse(s).
23. In all trial competitions there is, unfortunately, the inevitable problem of teams seeming to go outside the record. There is no need to go outside the record; this should never be done and doing so violates these Rules. If this inadvertently happens, the judge will not accept an "outside the record objection," as straying from the record can be cured by the opposing team during cross-examination and closing argument. Advisors, please encourage students to act in the highest spirit of professionalism, and strongly discourage the win-at-all-costs mentality that sometimes creeps into our profession. Any school whose teams has made up facts or has gone outside or contrary to the record is in violation of the Rules.
24. Due to time constraints of completing the entire competition in a four-day period, the demands already placed upon the volunteers who judge each round, and many other considerations, there will be no lengthy appeals process. If your team encounters a team who has violated the letter or spirit of the Competition, the NCTAC Committee should be made aware of such alleged violations by the Faculty Advisors. The NCTAC committee will make the final determination of whether a breach of the Rules should result in disqualification from the competition or other appropriate sanctions. It is up to the students, however, to be prepared through effective trial advocacy techniques, to make such deviations from the record apparent during the trial. The judges will be instructed to consider the ethics of the teams participating in the evaluation process. Should it become clear during a round that a team has breached the ethics of the competition, that fact shall be considered in evaluating the overall performance of the team in question. At the conclusion of each trial, however, the results will be final!
25. During the trials, Faculty Advisors may sit in with their teams, but may not have ANY contact with their teams until the trial is over, including during any breaks in the trial. Faculty Advisors may sit in on the critiques at the conclusion of each round. No team may receive advice or assistance from a Faculty Advisor, supervisor, school personnel, non-team member students, or observer(s) between the time a round commences and concludes. Faculty Advisors, supervisors, school personnel, non-team member students, and observers may not talk to, signal, communicate with, or otherwise coach their teams during the trials.
26. Teams will be identified by a team letter (A, B, C, etc) assigned by the Committee, and

may not tell or indicate in any manner to the judges what school they represent, except as specifically provided below. Team members may not say, wear, bring, or do anything that identifies their school until the judges' decision is announced. Family members and friends, if attending as part of the audience should be advised that they too should not wear or do anything that identifies the school. This includes bringing any materials to the courtroom bearing the identity of your school in a way that could be seen by any judge (for example: notebooks, pads of paper, library books, pens, etc. bearing your school name or logo). Identify yourself by team number only. At the conclusion of a round, (i.e. AFTER the completed ballots of the judges have been collected), students may reveal the identity of their school only if asked by a judge or judges. Judges will be instructed not to request such information if there is the potential that any one of those judges might serve as a judge in a future round. The trial is limited to 80 minutes per side (pretrial motions [for which a total of 8 minutes are permitted] are not included in the 80 minutes). You may determine how best to apportion your time. This will be a factor in judging. The judges will be keeping time, and if any round goes over the time limit it will be peremptorily stopped by the Committee so the next round or event can begin on time.

27. Teams must call each witness for their side of the case as assigned in the problem. Teams may choose in which order to call their witnesses but must adhere to the time constraint. The problem is to be tried in accordance with the Federal Rules of Evidence and Procedure and the jury instructions provided. The defense may not reserve their opening statement.
28. Each round of the competition will be judged by a panel of three experienced lawyers/judges. All judges and jurors will attend a judges' meeting. One judge/lawyer will be designated as the presiding judge and will make all rulings. The other two judges/lawyers will make up the jury and one will double as clerk/bailiff. All judges and jurors will receive a bench brief and copy of these Rules prior to the competition. They will be well aware that the actual merits of the case should play no role in their deliberations. Overall performance and competency of advocacy are the only standards. Each lawyer/judge will deliberate and file an individual ballot. The three judges may not confer on their ballots. Overall Records and Total Ballots Received will be posted after the conclusion of the preliminary round of trials. Please be patient and give us time and space to do the calculations. It is a tedious endeavor which requires significant concentration. Results will NOT be provided on a trial by trial basis. At NO time during or after the Competition will individual judges' ballots be made available to any team or advisor until the competition has concluded or the departing team has been eliminated from participating in a subsequent round. Judges will be encouraged to do brief oral critiques of the participants at the conclusion of each trial, with the emphasis on brief, in order to keep things moving along.

29. The presiding judge will make a note of any conduct worthy of being held in contempt should he/she feel the advocate's behavior falls into this category. A student receiving a contempt notation will be ineligible to be chosen as best advocate for that round. Additionally, any student who is rude/unprofessional to the Committee or our staff or judge/jurors will be ineligible to be chosen for any advocate award. Having practiced law and having coached competition teams ourselves, we realize students are under pressure, but all should learn early on that there is no excuse for unprofessional behavior. This will be strictly enforced.
30. Team awards will be given to First, Second, Third and Fourth Place teams. Honorable mention will be given to teams in 4th-8th place. The Best Overall Advocate award will be given to the student in the final round who has the overall best point record. The trophy for this award will be given to the student and a main trophy board will be kept in the CACJ office in Sacramento. Each year the winning name and school will be added to the trophy board.
31. There will be an awards ceremony on Sunday at the conclusion of the Final round. All competitors and advisors still in town are encouraged to attend. There will be a reception/social gathering on Friday night at 9:00 p.m. where the eight quarter-finalists will be announced. As space is very limited, this gathering is limited to students and coaches.

2016 NATIONAL CRIMINAL TRIAL COMPETITION SCORING CRITERIA

CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE (CACJ) & HASTINGS COLLEGE OF THE LAW

Opening Statement

(One advocate will present opening for each team)

1. Generally confined to outline of evidence to be presented?
2. Clearly and persuasively presented theory of case?
3. Personalized himself/herself and client?
4. Made appropriate objections/responses?

Direct examination

(Each advocate will conduct the direct examination of one witness)

1. Questions generated minimum number of valid objections?
2. Made or failed to make objections with tactical or substantive merit?
3. Appropriately responded to objections made?
4. Appropriate general attitude and rapport with jury?
5. Testimony developed in interesting and coherent fashion?
6. Listened to and followed up on witness answers?
7. Showed strength and weakness of witness in most favorable light?

Cross-examination

(Each advocate will cross-examine one witness)

1. Questions generated minimum number of valid objections?
2. Made or failed to make objections with tactical or substantive merit?
3. Appropriately responded to objections made?
4. Used leading questions appropriately and advantageously?
5. Listened to and followed up on witness answers to elicit helpful testimony?
6. Used impeachment opportunities and demonstrated same effectively?

Closing Argument

(One advocate will present closing for each team)

1. Presented cohesive theory of the case and dealt effectively with the weaknesses in counsel's own case?
2. Effectively called attention to opponent's flaws?
3. Presented persuasive argument?
4. Utilized effective style and law?
5. Inappropriately interrupted argument of opposing counsel?
6. Properly confined rebuttal to rebuttal materials?
7. Effectively countered opponent's argument in rebuttal?