



MONTEREY COUNTY ELEMENTARY LAW TRIAL SCRIPT

Elementary Law Attorney:

Welcome to the Monterey County Elementary Law Program! Today we will join our enthusiastic fifth-grade students as they lead us on a thought-provoking examination of the American justice system.

Videotaping and photography by spectators are permitted. Only our Student Actors and Student Jurors are admitted to the area forward of this railing, however. *[Point to the courtroom's railing.]* In Medieval times, a single pole – a single “bar” – separated the courtroom’s “working area” up here from the courtroom’s “spectator area” back there. Only Court officials, jurors, parties, witnesses, and attorneys are permitted on this side of the “bar.” Incidentally, that is why “being admitted to the practice of law” is also known as “being admitted to the bar.” I was “admitted to the bar” in *[state your year of bar admission]*. The Elementary Law Program is brought to you by the Monterey County Office of Education – and by the Monterey County “Bar Association”!

Bailiff, begin our trial.

Bailiff *[standing, addressing the Courtroom]:*

All rise! Court is now in session, the Honorable Whitney Wise, Judge of the Monterey County Superior Court, presiding!

[Everyone in the Courtroom stands.]

[Judge Wise walks forward and sits at the bench.]

Bailiff: Please be seated!

[Everyone in the Courtroom sits.]

Judge Wise: Good day. We are on the record in the case of the People of the State of California versus Alex Accused. Counsel will state their appearances.

Pat Prosecutor *[standing]*: Pat Prosecutor for the Prosecution, Your Honor.

Drew Defender *[standing]*: Drew Defender for the Defendant, Alex Accused, who is present in Court, Your Honor.

Judge Wise: Thank you, Counselors. The Clerk will now call the name of each of our twelve Jurors. When the Clerk calls your name, walk forward and take your place in the Jury box. The first Juror called will take the seat to my far left in the back row. After the back row is filled, the seventh Juror will take the seat to my far left in the front row.

[Clerk reads each Juror's name from the filled-out Juror List.]

[Jurors take their seats.]

Judge Wise: Members of the Jury, you will now hear the case of the People of the State of California versus Alex Accused. The crime charged is theft.

Alex Accused, like every person in America charged with a crime, is protected by certain rights guaranteed by the United States Constitution. One of those rights is the presumption of innocence. As Alex sits here before you today, you must presume that Alex is innocent of theft, and you must continue to presume that Alex is innocent of theft unless and until the Prosecution proves beyond a reasonable doubt that Alex is guilty of theft.

Another Constitutional right that Alex has is the right to remain silent. Alex may decide to testify in this trial but is not required to do so. If Alex decides not to testify, you may not use that fact as a reason to believe that Alex is guilty.

You must not make up your mind about this case until you have heard all the evidence and I have instructed you on the laws which you are to apply.

The Jury will now rise, and the Clerk will administer the oath.

*[Clerk stands with right hand raised and faces the Jury.
Jury members stand and face Clerk.]*

Clerk: Raise your right hands.

[Jurors raise their right hands.]

When I have finished reading the oath, each of you should answer “I do.”

Do you solemnly state under penalty of perjury that you will fairly try the case now pending before this Court and render a true verdict according to the law and the evidence introduced?

Jury *[all together]*: I do.

Clerk *[to the Jury]*: Please be seated.

[Clerk and Jurors sit down.]

Judge Wise *[to Pat Prosecutor]*: The Prosecution may make its opening statement.

Pat Prosecutor: Thank you, Your Honor.

***[to the Jury]*:** Members of the Jury, my name is Pat Prosecutor. I am the attorney representing the People of the State of California.

Today, you will hear the story of a cookie theft. Specifically, you will hear the story of the theft of Vaughn Victim’s Fudge Farm cookie from Vaughn’s lunch box in Teacher Kindly’s classroom last Tuesday morning. After you hear the evidence, you will be convinced that Alex Accused stole that cookie.

You will hear testimony from Vaughn Victim and Reese Rodent. You will learn that they – and Alex Accused – are students in Teacher Kindly’s fifth-grade class at Monterey County Elementary School.

You will hear about the kitchen in Vaughn’s house where the Fudge Farm cookie was packed in Vaughn’s lunch box last Tuesday morning. You will hear Vaughn’s testimony that the cookie was missing from the lunch box after last Tuesday’s morning recess.

You will hear Reese Rodent’s testimony that during morning recess last Tuesday, when the other students were out in the playground, Reese entered Teacher Kindly’s classroom and saw Alex Accused sitting at Alex’s desk in the classroom.

You will hear Deputy Sheriff Protector’s testimony about finding cookie crumbs on Alex’s desk, collecting those crumbs, and bringing those very crumbs to Court today.

You will hear Prosecution expert witness Terry Taster identify the crumbs taken from Alex’s desk as Fudge Farm cookie crumbs.

At the conclusion of this trial, the Prosecution will ask you to return a verdict finding Alex Accused guilty of the crime of theft.

Judge Wise [to Drew Defender]: The Defense may make its opening statement.

Drew Defender: Thank you, Your Honor.

[to the Jury]: Members of the Jury, my name is Drew Defender. I am the attorney representing the Defendant, Alex Accused.

Will the Prosecution be able to prove beyond a reasonable doubt that a Fudge Farm cookie was even in Vaughn Victim’s lunch box before morning recess last Tuesday? Maybe “yes,” maybe “no.” Time will tell.

Will the Prosecution be able to prove beyond a reasonable doubt that the crumbs found on Alex’s desk were, in fact, Fudge Farm cookie crumbs? Maybe “yes,” maybe “no.” Time will tell.

Will the Prosecution be able to prove beyond a reasonable doubt that Alex stole Vaughn’s cookie? Absolutely not. The reason is that Alex did not steal Vaughn’s cookie!

You will learn that Alex entered the classroom during morning recess last Tuesday to study for a spelling test – and not to steal a cookie! You will learn that Alex was in the classroom during only the first five minutes of the twenty-minute morning recess and that Alex was out on the playground during the final fifteen minutes of that recess. It was during those final fifteen minutes of morning recess that some other student must have entered the classroom and stolen the cookie!

Alex Accused is not guilty of the crime of theft. At the conclusion of this case, the Defense will ask you to return a verdict of not guilty.

Judge Wise: The Prosecution may call its first witness.

Pat Prosecutor: Thank you, Your Honor. The People call Vaughn Victim to the stand.

Bailiff: Vaughn Victim, step forward.

*[Clerk stands with right hand raised.
Vaughn walks forward and faces Clerk]:*

Clerk: Raise your right hand. *[Vaughn does so.]* Do you solemnly state under penalty of perjury that the testimony you will give in this case shall be the truth, the whole truth, and nothing but the truth?

Vaughn Victim: I do.

Clerk: State your name for the record.

Vaughn Victim: My name is Vaughn Victim.

Judge Wise: Please be seated.

[Vaughn sits in the witness box.]

Pat Prosecutor: Vaughn, what is your occupation?

Vaughn Victim: I am a fifth-grade student in Teacher Kindly's class at Monterey County Elementary School.

Pat Prosecutor: Did you take a lunch box to school with you last Tuesday?

Vaughn Victim: Yes.

Pat Prosecutor: What was in the lunch box?

Vaughn Victim: A turkey-and-cheese sandwich on wheat bread, an apple, and a Fudge Farm cookie.

Pat Prosecutor: Was that your normal lunch?

Vaughn Victim: Yes. That is the same lunch I have every day.

Pat Prosecutor: You must really like turkey-and-cheese sandwiches on wheat bread.

Vaughn Victim: No.

Pat Prosecutor: Do you like apples?

Vaughn Victim: No.

Pat Prosecutor: Do you like Fudge Farm cookies?

Vaughn Victim: I love Fudge Farm cookies! I live my life for that special moment at the end of my lunch every day when I bite into my Fudge Farm cookie!

Pat Prosecutor: Did you eat a Fudge Farm cookie during your lunch last Tuesday?

Vaughn Victim: *[Vaughn cries quietly.]* No.

Pat Prosecutor: Why not?

Vaughn Victim: Because there wasn't one in my lunch box then!

Pat Prosecutor: After morning recess last Tuesday, did you see cookie crumbs anywhere in Teacher Kindly's classroom?

Vaughn Victim: Yes, I did!

Pat Prosecutor: Where did you see cookie crumbs?

Vaughn Victim: On Alex Accused's desk!

Pat Prosecutor: Do you see Alex Accused in the Courtroom today?

Vaughn Victim: Yes.

Pat Prosecutor: Would you point out Alex Accused, please?

Vaughn Victim *[pointing at Alex]:* Right there!

Pat Prosecutor: May the record reflect that the witness has identified the Defendant?

Judge Wise: The record shall so reflect.

Pat Prosecutor: What, if anything, did you do when you saw the cookie crumbs?

Vaughn Victim: I showed them to Teacher Kindly.

Pat Prosecutor: Did you see or hear Teacher Kindly do anything?

Vaughn Victim: Yes.

Pat Prosecutor: What did you see or hear Teacher Kindly do?

Vaughn Victim: I watched and listened as Teacher Kindly telephoned the Sheriff's Department.

Pat Prosecutor: The Prosecution has no further questions for this witness.

Judge Wise: Does the Defense have any cross-examination?

Drew Defender: Yes – thank you, Your Honor.

[to Vaughn]: Vaughn, did you pack your own lunch box last Tuesday morning?

Vaughn Victim: No.

Drew Defender: In that case, isn't it true that you never personally saw a Fudge Farm cookie in your lunch box at all last Tuesday?

Vaughn Victim: Well, that is true. But my cousin told me that my cousin had packed the Fudge Farm cookie in my lunch box.

Drew Defender [to Judge Wise]: Objection: hearsay. I move to strike the second sentence of the answer and request the Jury be instructed to disregard it.

Judge Wise: Motion granted. The second sentence of the answer is stricken from the record.

[to the Jury]: The Jury shall disregard the second sentence of the answer.

Vaughn Victim: But can't I say what my own cousin told me?

Judge Wise [to Vaughn]: No, you cannot. The issue of whether a Fudge Farm cookie was in your lunch box before morning recess last Tuesday is important. For the Prosecution to prove that a cookie was stolen from your lunch box during morning recess last Tuesday, the Prosecution seeks to prove that the cookie was actually in your lunch box before morning recess last Tuesday.

What someone might have said outside of this Courtroom is called a “hearsay” statement and a hearsay statement cannot be used as evidence. The speaker of every statement used as evidence in Court must be sitting in the witness box and therefore be available for cross-examination.

If our law allowed you to tell the Jury things that you say your cousin told you, the Defense would not be able to cross-examine your cousin about those things. The Defense would not be able to ask your cousin questions to test your cousin’s ability to observe, or your cousin’s memory, or your cousin’s honesty. Everyone can understand how unfair that would be.

For example, just now when you testified about a Fudge Farm cookie being in your lunch box last Tuesday morning, you gave the Jury – and me – the impression that you knew from your own observation that there had been a Fudge Farm cookie in your lunch box last Tuesday morning. It was only after the Defense’s cross-examination of you that the Jury – and I – learned that you never personally saw a Fudge Farm cookie in your lunch box last Tuesday morning. Everyone can understand why our law cannot allow “hearsay” statements to be used as evidence.

Drew Defender: I repeat my last question of this witness: “In that case, isn’t it true that you never personally saw a Fudge Farm cookie in your lunch box at all last Tuesday?”

Vaughn Victim: Yes, that is true. I never personally saw a Fudge Farm cookie in my lunch box at all last Tuesday.

Drew Defender: When was it last Tuesday that you observed that there was not a cookie in your lunch box?

Vaughn Victim: It was just as morning recess ended. I opened my lunch box to take a little peek at my cookie. You know, with love. But it was gone!

Drew Defender: Are the desks in Teacher Kindly’s classroom identified in some manner?

Vaughn Victim: Yes. Taped to each desktop is a card with the name of the student who sits there.

Drew Defender: Are the student desks in Teacher Kindly's classroom arranged the same way today as they were last Tuesday?

Vaughn Victim: Yes.

Drew Defender: Where is your desk located?

Vaughn Victim: My desk is in the middle of the front row.

Drew Defender: Where is Alex's desk in relationship to your desk?

Vaughn Victim: Alex's desk is in the front row immediately to the right of my desk.

Drew Defender: Where was your lunch box last Tuesday morning?

Vaughn Victim: It was on the floor under the right side of my desk.

Drew Defender: The Defense has no further questions for this witness.

Judge Wise: Does the Prosecution have any re-direct examination?

Pat Prosecutor: No, Your Honor.

Judge Wise: Very well.

[to Vaughn]: You may step down.

[Vaughn leaves the witness box.]

Judge Wise: The Prosecution may call its next witness.

Pat Prosecutor: The People call Dr. Morgan Mender to the stand.

Bailiff: Dr. Morgan Mender, step forward.

[Clerk stands with right hand raised.

Dr. Mender walks forward and faces Clerk.]

Clerk: Raise your right hand. *[Dr. Mender does so.]* Do you solemnly state under penalty of perjury that the testimony you will give in this case shall be the truth, the whole truth, and nothing but the truth?

Dr. Mender: I do.

Clerk: State your name for the record.

Dr. Mender: I am Morgan Mender, M.D.

Judge Wise: Please be seated.

[Dr. Mender sits in the witness box.]

Pat Prosecutor: What is your occupation?

Dr. Mender: I am a medical doctor.

Pat Prosecutor: Are you related to Vaughn Victim?

Dr. Mender: Yes, I am.

Pat Prosecutor: How are you related to Vaughn Victim?

Dr. Mender: I am Vaughn Victim's cousin.

Pat Prosecutor: Where do you live?

Dr. Mender: I live with Vaughn and Vaughn's parents.

Pat Prosecutor: Did you pack Vaughn's lunch box last Tuesday morning?

Dr. Mender: I did.

Pat Prosecutor: What did you pack in Vaughn's lunch box?

Dr. Mender: I packed a turkey-and-cheese sandwich on wheat bread, an apple, and a Fudge Farm cookie.

Pat Prosecutor: The Prosecution has no further questions for this witness.

Judge Wise: Does the Defense have any cross-examination?

Drew Defender: Yes – thank you, Your Honor.

[to Dr. Mender]: Dr. Mender, did anything unusual occur at the Victim residence last Tuesday morning?

Dr. Mender: No, not really. Well, come to think of it, I did receive an emergency telephone call from the hospital regarding a patient of mine. I was able to resolve the situation over the phone, however.

Drew Defender: Did you receive the phone call before or after you packed Vaughn's lunch box?

Dr. Mender: It was just before I packed the lunch box.

Drew Defender: Isn't it true that you were thinking about your patient's problem while you packed Vaughn's lunch box?

Dr. Mender: I do not recall specifically but yes, that is certainly possible.

Drew Defender: And isn't it also possible that your concern for your patient's problem made you forget to pack a Fudge Farm cookie in Vaughn's lunch box?

Dr. Mender: Well, it is possible I suppose, but not likely. I am in the habit every morning of packing a Fudge Farm cookie in Vaughn's lunch box.

Drew Defender: The Defense has no further questions for this witness.

Judge Wise: Does the Prosecution have any re-direct examination?

Pat Prosecutor: No, Your Honor.

Judge Wise: Very well.

[to Dr. Mender]: You may step down.

[Dr. Mender leaves the witness box.]

Judge Wise: The Prosecution may call its next witness.

Pat Prosecutor: The People call Deputy Sheriff Parker Protector to the stand.

Bailiff: Deputy Sheriff Parker Protector, step forward.

[Clerk stands with right hand raised.

Deputy Protector walks forward and faces Clerk.]

Clerk: Raise your right hand. *[Deputy Protector does so.]* Do you solemnly state under penalty of perjury that the testimony you will give in this case shall be the truth, the whole truth, and nothing but the truth?

Deputy Protector: I do.

Clerk: State your name for the record.

Deputy Protector: I am Deputy Sheriff Parker Protector.

Judge Wise: Please be seated.

[Deputy Protector sits in the witness box.]

Pat Prosecutor: Deputy Protector, what is your occupation?

Deputy Protector: I am a deputy sheriff with the Monterey County Sheriff's Department.

Pat Prosecutor: How long have you worked there?

Deputy Protector: I have served as a deputy sheriff there for seven years.

Pat Prosecutor: Did you receive a telephone call from Monterey County Elementary School Teacher Kindly last Tuesday?

Deputy Protector: Yes.

Pat Prosecutor: What was the nature of the call?

Deputy Protector: Teacher Kindly asked me to come to the Monterey County Elementary School to investigate a suspected theft.

Pat Prosecutor: Did you respond to the school?

Deputy Protector: I did.

Pat Prosecutor: Did you conduct an investigation there?

Deputy Protector: I did.

Pat Prosecutor: Did your investigation produce any results?

Deputy Protector: It did.

Pat Prosecutor: What results did your investigation produce?

Deputy Protector: I found cookie crumbs on a desktop having the name “Alex Accused” on a card taped to it.

Pat Prosecutor: Did you collect those crumbs in some manner?

Deputy Protector: Yes, I did.

Pat Prosecutor: How did you collect the crumbs?

Deputy Protector: Following established Sheriff’s Department procedures, I placed the crumbs into a Sheriff’s Department evidence container. I wrote on the container the date, time, and place of the collection. I signed the container and wrote my badge number next to my signature.

Pat Prosecutor: What, if anything, did you do with the container?

Deputy Protector: I drove the container to the Monterey County Sheriff’s Office, where I logged the container into evidence and had the container placed into its assigned evidence locker.

Pat Prosecutor: Did you obtain the container today?

Deputy Protector: Yes.

Pat Prosecutor: How did you obtain the container?

Deputy Protector: This morning, I retrieved the container from its evidence locker at the Monterey County Sheriff’s Office.

Pat Prosecutor: Did you bring the container to Court with you today?

Deputy Protector: Yes, I did.

Pat Prosecutor: Where is the container?

Deputy Protector: Here it is.

[Deputy Protector hands the baggie containing cookie crumbs to Pat Prosecutor.]

Pat Prosecutor [to Judge Wise]: The People offer this container into evidence as People's Exhibit "1."

Judge Wise [to Drew Defender]: Any objection, Counselor?

Drew Defender: No, Your Honor.

Judge Wise: The container is admitted into evidence as People's Exhibit "1."

[Pat hands the baggie to Clerk.

Clerk pretends to place an evidence sticker on the baggie.

Clerk keeps the baggie.]

Pat Prosecutor: The Prosecution has no further questions for this witness.

Judge Wise: Does the Defense have any cross-examination?

Drew Defender: No, Your Honor.

Judge Wise: Very well.

[to Deputy Protector]: You may step down.

[Deputy Protector leaves the witness box.]

Judge Wise: The Prosecution may call its next witness.

Pat Prosecutor: The People call Terry Taster to the stand.

Bailiff: Terry Taster, step forward.

[Clerk stands with right hand raised.

Terry walks forward and faces Clerk.]

Clerk: Raise your right hand. *[Terry does so.]* Do you solemnly state under penalty of perjury that the testimony you will give in this case shall be the truth, the whole truth, and nothing but the truth?

Terry Taster: I do.

Clerk: State your name for the record.

Terry Taster: My name is Terry Taster.

Judge Wise: Please be seated.

[Terry sits in the witness box.]

Pat Prosecutor: Terry, what is your occupation?

Terry Taster: I am employed as the official cookie taster for Fudge Farm Cookies, Incorporated.

Pat Prosecutor: What are your job duties?

Terry Taster: I taste Fudge Farm cookies to make sure they taste good. I am required to taste one cookie from each batch baked at the Fudge Farm Cookie Facility.

Pat Prosecutor: Tough job.

Terry Taster: Somebody has to do it.

[Pat Prosecutor takes the baggie from the Clerk and hands the baggie to Terry.]

Pat Prosecutor [to Judge Wise]: Your Honor, may the record reflect that I have handed the witness People's Exhibit "1"?

Judge Wise: The record shall so reflect.

Pat Prosecutor [to Terry]: Please taste these crumbs.

[Terry tastes some crumbs from the baggie, chews thoughtfully, swallows, then smiles broadly.]

Pat Prosecutor: Can you identify the crumbs?

Terry Taster: Yes, I can!

Pat Prosecutor: What are they?

Terry Taster: They are Fudge Farm cookie crumbs!

Pat Prosecutor: The Prosecution has no further questions for this witness.

Judge Wise: Does the Defense have any cross-examination?

Drew Defender: Yes – thank you, Your Honor.

[to Terry]: Terry, how long have you worked for Fudge Farm Cookies, Incorporated?

Terry Taster: For two weeks.

Drew Defender: Did you ever work as a food taster before you began your employment with Fudge Farm two weeks ago?

Terry Taster: No.

Drew Defender: What was your prior work experience, if any?

Terry Taster: Before I landed the Fudge Farm gig, I worked as Goofy at Disneyland. But when I discovered how hot and stuffy the Goofy costume was, I pursued other professional opportunities.

Drew Defender: Did Fudge Farm Cookies, Incorporated, provide any special training in cookie tasting for you?

Terry Taster: No. No need. I am just naturally good at food tasting. Especially cookie tasting. I really know my cookies!

Drew Defender: Well, let's see how good you are.

[Drew hands a baggie containing cookie crumbs to Clerk.]

Drew Defender [to Clerk]: May I please have this baggie marked as Defense Exhibit “A” for identification?

Judge Wise [to Clerk]: It shall be so marked.

[Drew hands the baggie to Clerk.

Clerk pretends to place an evidence sticker on the baggie.

Clerk hands the baggie back to Drew.

Drew hands the baggie to Terry.]

Drew Defender [to Judge Wise]: Your Honor, may the record reflect that I have handed the witness Defense Exhibit “A” for identification?

Judge Wise: The record shall so reflect.

Drew Defender [to Terry]: Please taste these crumbs.

Terry Taster: My pleasure!

[Terry tastes some crumbs from the baggie, chews thoughtfully, swallows, then smiles broadly.]

Drew Defender: Can you identify the crumbs?

Terry Taster: Yes, I can!

Drew Defender: What are they?

Terry Taster: These crumbs are from a Merry Munch cookie! The Merry Munch cookie is a product of Tasty Treats, Incorporated, which has its corporate headquarters in Boston. This cookie has a little too much salt, which means it was baked at the Reno facility of Tasty Treats, Incorporated. Too much salt is frequently added at the Reno facility.

Drew Defender: The Defense has no further questions for this witness.

Judge Wise [to Drew]: Counselor, will you be offering Defense Exhibit “A” for identification into evidence?

Drew Defender: No, Your Honor.

Judge Wise: Well, what are the crumbs in Defense Exhibit “A” for identification, Counselor?

Drew Defender: The crumbs are from a Merry Munch cookie. It was baked at the Reno facility of Tasty Treats, Incorporated.

Judge Wise: Hmm, I see. Does the Prosecution have any re-direct examination?

Pat Prosecutor: No, Your Honor.

Judge Wise: Very well.

[to Terry]: You may step down.

[Terry leaves the witness box.]

Judge Wise: The Prosecution may call its next witness.

Pat Prosecutor: The People call Reese Rodent to the stand.

Bailiff: Reese Rodent, step forward.

*[Clerk stands with right hand raised.
Reese walks forward and faces Clerk.]*

Clerk: Raise your right hand. *[Reese does so.]* Do you solemnly state under penalty of perjury that the testimony you will give in this case shall be the truth, the whole truth, and nothing but the truth?

Reese Rodent: I do.

Clerk: State your name for the record.

Reese Rodent: My name is Reese Rodent.

Judge Wise: Please be seated.

[Reese sits in the witness box.]

Pat Prosecutor: Reese, what is your occupation?

Reese Rodent: I am a fifth-grade student in Teacher Kindly's class at Monterey County Elementary School.

Pat Prosecutor: Did you observe any events occurring in Teacher Kindly's classroom during morning recess last Tuesday?

Reese Rodent: I did.

Pat Prosecutor: Please describe what you observed.

Reese Rodent: Well, morning recess had just begun. The minute I walked onto the playground with my friends, I remembered that I had not fed Binky yet that day.

Pat Prosecutor: Who is Binky?

Reese Rodent: Binky is my pet rat. Teacher Kindly let me keep Binky and her cage at the back of our classroom last Tuesday. For the class to observe.

Pat Prosecutor: What did you do?

Reese Rodent: I turned around, went back into the classroom, and fed Binky.

Pat Prosecutor: How long after the recess started did you go back into the classroom?

Reese Rodent: I went back in immediately. As I mentioned, I had barely made it to the playground before I remembered that I had forgotten to feed Binky.

Pat Prosecutor: Did anyone go back into the classroom with you?

Reese Rodent: No, I went by myself.

Pat Prosecutor: Was anyone in the classroom when you walked in?

Reese Rodent: Only one person: Alex Accused.

Pat Prosecutor: Do you see Alex Accused in this Courtroom?

Reese Rodent: Yes, I do.

Pat Prosecutor: Would you point Alex out, please.

Reese Rodent *[pointing at Alex]*: Right there.

Pat Prosecutor: May the record reflect that the witness has identified the Defendant?

Judge Wise: The record shall so reflect.

Pat Prosecutor: Where was Alex?

Reese Rodent: Sitting at Alex's desk.

Pat Prosecutor: What was Alex doing?

Reese Rodent: I don't know. Because Binky's cage was at the rear of the classroom and Alex was facing forward, all I could see was Alex's back.

Pat Prosecutor: Did either of you say anything?

Reese Rodent: No.

Pat Prosecutor: Was Alex still in the classroom when you left it?

Reese Rodent: Yes.

Pat Prosecutor: Had anyone else entered the classroom?

Reese Rodent: No.

Pat Prosecutor: The Prosecution has no further questions for this witness.

Judge Wise: Does the Defense have any cross-examination?

Drew Defender: Yes – thank you, Your Honor.

[to Reese]: Reese, how long was morning recess last Tuesday?

Reese Rodent: It was twenty minutes long, the same as it always is.

Drew Defender: How long would you say you spent in the classroom during that morning recess?

Reese Rodent: Oh, not very long – just long enough to feed Binky. Probably five minutes.

Drew Defender: Where did you spend the final fifteen minutes of that morning recess?

Reese Rodent: Out on the playground with my friends.

Drew Defender: Isn't it true that you would have had no way of knowing which, if any, other student entered Teacher Kindly's classroom during the final fifteen minutes of morning recess last Tuesday?

Reese Rodent: That is true.

Drew Defender: Isn't it true that you could not have seen another student enter the classroom?

Reese Rodent: That is true. I was unable to see the classroom door from where I was on the playground.

Drew Defender: Isn't it also true that you could not have seen another student leave the classroom?

Reese Rodent: That is true. As I said, I couldn't see the classroom door.

Drew Defender: While you were in the classroom, you did not hear the sound of somebody eating a cookie, did you?

Reese Rodent: No.

Drew Defender: While you were in the classroom, you did not see Alex making movements as though trying to hide something from you, did you?

Reese Rodent: No.

Drew Defender: The Defense has no further questions for this witness.

Judge Wise: Does the Prosecution have any re-direct examination?

Pat Prosecutor: No, Your Honor.

Judge Wise: Very well.

[to Reese]: You may step down.

[Reese leaves the witness box.]

Judge Wise: The Prosecution may call its next witness.

Pat Prosecutor: The People rest.

Judge Wise: Does the Defense choose to introduce any evidence?

Drew Defender: Yes, Your Honor. The Defense calls Alex Accused to the stand.

Bailiff: Alex Accused, step forward.

*[Clerk stands with right hand raised.
Alex walks forward and faces Clerk.]*

Clerk: Raise your right hand. *[Alex does so.]* Do you solemnly state under penalty of perjury that the testimony you will give in this case shall be the truth, the whole truth, and nothing but the truth?

Alex Accused: I do.

Clerk: State your name for the record.

Alex Accused: My name is Alex Accused.

Judge Wise: Please be seated.

[Alex sits in the witness box.]

Drew Defender: Alex, what is your occupation?

Alex Accused: I am a fifth-grade student in Teacher Kindly's class at Monterey County Elementary School.

Drew Defender: Last Tuesday, did you go into Teacher Kindly's classroom during the morning recess?

Alex Accused: Yes, I did.

Drew Defender: Why?

Alex Accused: I went there to look over the spelling word list. I knew that Teacher Kindly would be giving us a spelling test before lunch. I was worried about the test and thought some extra study would help me.

Drew Defender: How long did you stay in the classroom?

Alex Accused: Only for about five minutes.

Drew Defender: Did you do anything else besides study for the spelling test while in the classroom?

Alex Accused: No.

Drew Defender: Did you steal Vaughn Victim's cookie?

Alex Accused: No, I did not.

Drew Defender: Did you open Vaughn's lunch box?

Alex Accused: No, I did not.

Drew Defender: Did you touch Vaughn's lunch box?

Alex Accused: No, I did not.

Drew Defender: How did cookie crumbs come to be on your desk last Tuesday morning?

Alex Accused: I don't know.

Drew Defender: The Defense has no further questions for this witness.

Judge Wise: Does the Prosecution have any cross-examination?

Pat Prosecutor: Yes – thank you, Your Honor.

[to Alex]: It is your testimony that you were in Teacher Kindly's classroom last Tuesday morning to study for a spelling test, is that correct?

Alex Accused: Yes.

Pat Prosecutor: And it is also your testimony that you did study for the spelling test while in the classroom, is that also correct?

Alex Accused: Yes.

Pat Prosecutor: What grade did you receive on the spelling test last Tuesday?

Alex Accused: I got a “60.”

Pat Prosecutor: The Prosecution has no further questions for this witness.

Judge Wise: Does the Defense have any re-direct examination?

Drew Defender: Yes – thank you, Your Honor.

[to Alex]: Alex, why didn’t you receive a better grade on your spelling test last Tuesday?

Alex Accused: Probably because I was so nervous. I had been told that I would be arrested when the sheriff’s deputy arrived. I was awfully upset.

Drew Defender: The Defense has no further questions for this witness.

Judge Wise: Does the Prosecution have any re-cross-examination?

Pat Prosecutor: No, Your Honor.

Judge Wise: Very well.

[to Alex]: You may step down.

[Alex leaves the witness box.]

Judge Wise: The Defense may call its next witness.

Drew Defender: The Defense rests.

Judge Wise: Very well.

[to Pat]: Does the Prosecution any have rebuttal evidence?

Pat Prosecutor: No, Your Honor.

Judge Wise: Very well. The case stands submitted.

[to the Jury]: The time has come for the lawyers to make their closing arguments. First the Prosecution will speak, then the Defense will speak. Because the Prosecution bears the burden of proof, the Prosecution will then speak a second time.

[to Pat]: The Prosecution may proceed.

Pat Prosecutor: Thank you, Your Honor.

[to the Jury]: Members of the Jury, thank you very much for the close attention you have paid to the facts of this case.

The Defense's attempts to create doubts in your minds have failed. The Defense attempted to cast doubt on the fact that the crumbs found on Alex's desk were, in fact, Fudge Farm cookie crumbs. You saw what an excellent cookie taster expert witness Terry Taster is. Terry's testimony proved beyond a reasonable doubt that the crumbs on Alex's desk were, in fact, Fudge Farm cookie crumbs!

The Defense also attempted to cast doubt on the fact that Dr. Mender had, in fact, packed a Fudge Farm cookie in Vaughn's lunch box last Tuesday morning. Terry Taster's proof that the crumbs on Alex's desk were Fudge Farm cookie crumbs also proved that Dr. Mender had, in fact, packed a Fudge Farm cookie in Vaughn's lunch box!

Of course, if Alex had actually been studying spelling words during morning recess last Tuesday, Alex would have scored better than a "60" on the spelling test. Alex was not studying spelling words! Alex was stealing and eating Vaughn's cookie!

You have before you a simple matter. There is no doubt that someone stole Vaughn's Fudge Farm cookie during morning recess last Tuesday. Who did Reese Rodent see sitting in Teacher Kindly's classroom during morning recess last Tuesday? Only Alex. On whose desk were Fudge Farm cookie crumbs found? On Alex's desk. Was Alex studying spelling words? No, Alex was not.

The Prosecution asks you to find Alex Accused guilty of the crime of theft.

Judge Wise: The Defense may proceed.

Drew Defender: Thank you, Your Honor.

[to the Jury]: Members of the Jury, thank you very much for the close attention you have paid to the facts of this case.

The Defense agrees that the Prosecution has proven two contentions. The Defense agrees that the Prosecution has proven that the crumbs on Alex's desk were Fudge Farm cookie crumbs. The Defense also agrees that the Prosecution has proven that Dr. Mender did pack the Fudge Farm cookie in Vaughn's lunch box last Tuesday morning. Like everyone else, the Defense was impressed with Terry Taster's cookie-tasting abilities.

But, of course, those are not the important issues.

The important issue is whether the Prosecution has proven beyond a reasonable doubt that Alex stole the cookie. The answer to that question is clearly "No"!

You have learned that Alex's desk is located immediately to the right of Vaughn's desk – and therefore located right next to Vaughn's lunch box! Any student wanting to steal an item from Vaughn's lunch box would have naturally sat at Alex's desk to commit the theft!

The actual thief must have been some other student – a student who entered the classroom during the final fifteen minutes of morning recess, sat at Alex's desk, stole Vaughn's cookie, and ate it, thus leaving those crumbs on Alex's desk!

Alex didn't score better than a "60" on the spelling test because Alex was understandably upset over being wrongfully accused of theft. Every one of us would have been just as upset. Alex is before you today standing trial for a crime that Alex did not commit. The actual thief is somewhere out in our community right now – perhaps looking for more cookies to steal!

It is time to let this kid return to studying spelling words. It is time for you to do the fair thing, the right thing, the only thing supported by the evidence. Consider the facts of this case logically and use your common sense. The Defense asks you to find Alex not guilty of theft.

Judge Wise: The Prosecution may make its final closing argument.

Pat Prosecutor: Thank you, Your Honor.

[to the Jury]: It is true that no one actually saw Alex steal Vaughn's cookie last Tuesday. Many crimes occur where no one actually saw the crime committed. The law does not require eyewitness evidence in order for a jury to return a guilty verdict. If the law required a jury to be absolutely 100% certain of a Defendant's guilt before returning a guilty verdict, too many crimes would go unpunished. Fortunately, the law requires only proof beyond a reasonable doubt.

The Defense seeks to distract you by creating in your minds a picture of an imaginary student. This imaginary student “coincidentally” just happened to enter Teacher Kindly’s classroom at the perfect time last Tuesday – during the final fifteen minutes of morning recess – and “coincidentally” just happened to steal Vaughn’s cookie during those final minutes. There is a reason these convenient “coincidences” do not seem believable. The reason is that they never happened. Do not be misled by these distractions.

Alex should learn that crime doesn’t pay. Now is the time – before sticky fingers and a taste for crime lead Alex to commit more serious offenses. It is time for you to do the fair thing, the right thing, the only thing supported by the evidence. Consider the facts of this case logically and use your common sense. The Prosecution asks you to find Alex guilty of theft.

Judge Wise [to the Jury]: Members of the Jury, you have heard the evidence and it is now my duty to instruct you on the law that applies to this case. Every person who steals the property of another is guilty of the crime of theft. You must apply this law to the facts. Your decision, called your “verdict,” must be based on the facts and the law.

As I previously mentioned, Alex Accused is presumed to be innocent. You must not be influenced against Alex because Alex has been arrested, charged with a crime, and brought to trial. None of these circumstances is evidence of guilt. You must not be swayed by pity for Alex or by prejudice against Alex. The Prosecution has the burden of proving Alex guilty beyond a reasonable doubt.

Reasonable doubt is defined as follows: it is not a mere doubt, because everything relating to human affairs is open to some possible or imaginary doubt. Reasonable doubt means that you, as Jurors, are not convinced that Alex is guilty of the crime. If you are convinced beyond a reasonable doubt that Alex stole Vaughn’s cookie, I instruct you to find Alex guilty. If you are not convinced beyond a reasonable doubt that Alex stole Vaughn’s cookie, I instruct you to find Alex not guilty. All twelve of you must agree for you to reach a verdict. Notify the Bailiff if you are all in agreement.

Judge Wise [to Clerk]: The Clerk will now swear in the Bailiff.

[Clerk and Bailiff both stand and raise their right hands.]

Clerk [to Bailiff]: Do you solemnly state under penalty of perjury that you will keep this Jury together in a private place; that you will allow no person to communicate with them, except by order of the Court; and that you will return them into Court when they have so agreed, or when ordered by the Court?

Bailiff: I do.

Elementary Law Attorney *[addressing the Jurors]:*

Because we do not have enough time for Jury deliberations today, we will hear from each Juror individually.

Each Juror in turn – beginning with the Juror in the back left corner of the jury box – will now stand and state: (1) whether you believe Alex Accused should be found “guilty” or “not guilty” of theft, and (2) the main reason or reasons for your belief.

[Each Juror states those things.]

Elementary Law Attorney *[addressing the Courtroom]:*

A criminal trial ends in one of these three ways:

1. If all twelve Jurors agree that Alex is not guilty, the Jury returns a “not guilty” verdict and Alex walks free.
2. If all twelve Jurors agree that Alex is guilty, the Jury returns a “guilty” verdict. The Probation Department prepares a sentencing report for Judge Wise containing information about Alex, such as any prior convictions. Alex returns to the Courtroom in a week or two, at which time Judge Wise pronounces Alex’s punishment – known as Alex’s “sentence.”
3. If – after making sincere efforts – the Jurors are unable to reach a unanimous verdict, Judge Wise declares a “mistrial,” which means that this trial is over. Pat Prosecutor’s Office then decides whether to: (1) dismiss the case, in which case Alex walks free, or (2) conduct a new trial against Alex. The United States Constitution provides Alex a protection called the “protection against double jeopardy.” This protection only means that Alex cannot be retried if Alex is found “not guilty.” This protection does not prevent Alex from being retried if there is a “mistrial,” however.

Congratulations to our talented and enthusiastic students for jobs well done! (*Begin applause.*)

To everyone, thank you for your participation in the Monterey County Elementary Law Program!