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NOTICE:

This tryout packet was authored for the sole purpose of providing aspiring USC Mock Trial Team members with a dynamic tryout opportunity. The characters are intentionally edgy and eccentric for that reason.

This year’s packet was inspired by headlines concerning a very popular recording artist’s comments at a concert and the ramifications of those comments. As is the case with almost everything that happens in America, there are plenty of legal issues involved – and many differences of opinion. This year’s tryout exercises explore those issues and differences.

Nothing is to be inferred, interpreted or gleaned from the extremities these characters traverse or the issues their materials encompass. These materials are not intended to communicate or advance any member (coaches & students, alike) of the Team’s political, religious or socio-economic beliefs. Please prepare carefully and completely. Good luck!

TRYOUT INSTRUCTIONS

ALL STUDENTS MUST DO EVERYTHING (ATTORNEY & WITNESS)

NOTE ABOUT TRYOUTS: You do not have to be perfect, however you **MUST** be impressive. Most folks impress others by focusing on their strengths. For example, this case packet is a little “concept heavy.” If you need a bit more instruction to grasp some of this stuff, don’t worry about it. Blow us away with your presentational skills! If you need a little more work on tapping into your presentational brilliance, do what you can with what you have, but boggle our minds with your command of how the facts of this packet relate to the law! If you can do both, wonderful! If you need help with everything, you may still make the Team if you have a strong enough personality! No matter what you focus on, be impressive. The more impressive, the better. This is about **BEING IMPRESSIVE!** Remember, first impressions last longest!

Your first task (attorney): perform a PLAINTIFF-SIDE opening statement as an attorney for DaChild. This task must be performed within five minutes. Use only the provided witness statements, case law blurbs and other materials. Remember, DaChild is suing upon a claim that his free speech and expression rights were violated.

Your second task (attorney): perform a DEFENSE-SIDE cross examination of Alex Baylor (to benefit UCLF and Jones-Chen). This task must be performed within five minutes. The witness will be provided. Don’t worry about bringing your own.

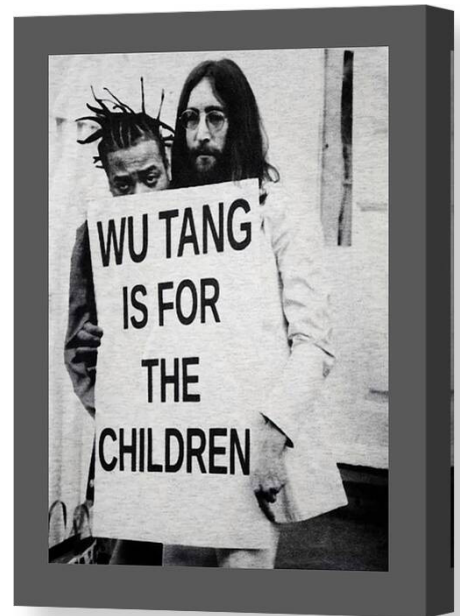
Your third task (witness): we are keeping it REAL again this year. *Usually*, you would portray a key witness in this matter. We would ask you to create and “energize” a character and make us feel it, etc. But, we switched it up last year – because every year we used to do that our takeaways were minimal. We were not left with strong impressions of capability, energy, fearlessness, creativity and dynamics.

1 So, we did a different assignment last year (which you are also doing this year), and
2 it is AWESOME ...

3
4 YOU WILL MEMORIZE AND RECITE A PORTION OF INSPECTAH DECK'S
5 OPENING VERSE ON "TRIUMPH" BY WU-TANG CLAN. You will recite the
6 lyrics from "**I bomb atomically ...**" through "**... melt the steel like blacksmiths.**"
7 Do not recite profanity or expletives (there aren't any in the assigned span of lyrics).
8 The video and lyrics for Triumph are available here:
9 <https://www.youtube.com/watch?v=cPRKsKwEdUQ>

10 WHEN YOU RECITE THE LYRICS, WE
11 WANT TO FEEL IT!!! BE CREATIVE!!! BE
12 BOLD!!! BE GREAT!!! AURA!!!!

13 When performing these exercises, please exhibit
14 the most skill and passion you can muster. We
15 are looking for poise, intensity, oral dynamics
16 and mental acuity. Remember, first impressions
17 last longest.



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20 ... to quote Mayor Mamdani.

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1
2 **Law of the Packet**
3

4 **California Constitution Article I, Section 2:**
5

6 “(a) Every person may freely speak, write and publish his or her sentiments on all
7 subjects, being responsible for the abuse of this right. A law may not restrain or
8 abridge liberty of speech or press.”

9 ***Gerawan Farming v. Lyons*, 24 Cal. 4th 468 (2000)**
10

11 The protection of free expression provided by the California state Constitution is in
12 most ways coextensive with that provided by the U.S. Federal Constitution.

13 ***Tinker v. Des Moines Independent Community School District*, 393 U.S. 503**
14 **(1969)**

15 In order to justify the suppression of speech, the school officials must be able to
16 prove that the conduct in question would "materially and substantially interfere" with
17 the operation of the school. In this case, the school district's actions evidently
18 stemmed from a fear of possible disruption rather than any actual interference.

19 ***Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975)**
20

21 The ability of government, consonant with the Constitution, to shut off discourse
22 solely to protect others from hearing it is . . . dependent upon a showing that
23 substantial privacy interests are being invaded in an essentially intolerable manner.
24 Any broader view of this authority would effectively empower a majority to silence
25 dissidents simply as a matter of personal predilections.

26 The plain, if at times disquieting, truth is that in our pluralistic society, constantly
27 proliferating new and ingenious forms of expression, 'we are inescapably captive
28 audiences for many purposes.' Much that we encounter offends our esthetic, if not

our political and moral, sensibilities. Nevertheless, the Constitution does not permit government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer. Rather, absent the narrow circumstances described above, the burden normally falls upon the viewer to 'avoid further bombardment of (his) sensibilities simply by averting (his) eyes.'

Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986)

These fundamental values of "habits and manners of civility" essential to a democratic society must, of course, include tolerance of divergent political and religious views, even when the views expressed may be unpopular. But these "fundamental values" must also take into account consideration of the sensibilities of others, and, in the case of a school, the sensibilities of fellow students. The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior. Even the most heated political discourse in a democratic society requires consideration for the personal sensibilities of the other participants and audiences.

Cohen v. California, 403 U.S. 15 (1971)

Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us. For, while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric.

Additionally, we cannot overlook the fact, because it is well illustrated by the episode involved here, that much linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech has little or no regard for that emotive function which practically speaking, may often be the more important element of the overall message sought to be communicated. Indeed,

1 as Mr. Justice Frankfurter has said, '(o)ne of the prerogatives of American citizenship
2 is the right to criticize public men and measures—and that means not only informed
3 and responsible criticism but the freedom to speak foolishly and without moderation.'

4 **Meriwether v. Hartop, 992 F. 3d 492 (2021)**

5
6 Universities have historically been fierce guardians of intellectual debate and free
7 speech. ... The First Amendment protects the right to speak freely and the right to
8 refrain from speaking at all. Thus, the government may not compel affirmance of a
9 belief with which the speaker disagrees.

10 Without genuine freedom of speech, the search for truth is stymied, and the ideas and
11 debates necessary for the continuous improvement of our republic cannot flourish.

12 Government officials violate the First Amendment whenever they try to prescribe
13 what shall be orthodox in politics, nationalism, religion, or other matters of opinion,
14 and when they force citizens to confess by word or act their faith therein.

15 Under the First Amendment, “the mere dissemination of ideas . . . on a state
16 university campus may not be shut off in the name alone of ‘conventions of
17 decency.’” ... The mere “fear or apprehension of disturbance is not enough to
18 overcome the right to freedom of expression.”

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20 In sum, “the Founders of this Nation . . . ‘believed that freedom to think as you will
21 and to speak as you think are means indispensable to the discovery and spread of
22 political truth.’”

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1 Duo Lips would not be performing, but at least we had DaChild. That was until the
2 Rolling Quietly Festival incident.

3 It was horrifying to hear such hateful things coming out of DaChild's mouth. I
4 just could not believe my ears. It is hard to believe that in 2021, there are still people
5 who believe in such hateful things against our LGBTQ+ community. After Scarlett
6 heard what DaChild had to say, Scarlett was furious. "There was no way that I would
7 allow someone, no matter who, perform at UCLF after saying hateful, anti-LGBTQ+
8 things like DaChild did," Scarlett screamed at me.

9 Scarlett said how s/he believed that DaChild would say more anti-LGBTQ statements
10 if he were to perform at our UCLF Welcome Back Concert. Scarlett yelled at me for
11 a few minutes then ordered me to cancel DaChild's UCLF performance to prevent
12 more hateful comments from being said. Ever since that day, Scarlett glares at me
13 menacingly. Scarlett used to only glare at me when I made a mistake but now it's
14 24/7. Because of this, now I eat my lunch in the bathroom.

15 The next day, I called DaChild's team and cancelled his performance at our
16 Welcome Back concert. After that, I drafted UCLF's Concert Committee's statement
17 regarding DaChild's canceled performance and I began looking for a new header for
18 our concert. With some luck from Scarlett's contacts, we could probably get Tyler
19 the Destroyer to fill in.

20 While I initially thought that students would be happy to not have an anti-
21 LGBTQ performer on campus, there ended up being a group of students that
22 supported DaChild and wanted him to perform at our concert. The head of the group
23 was the president of the UCLF Branch of DaChild's Fan Club, Alex Baylor.
24 According to a flyer that I retrieved from a board on campus, Alex Baylor was going
25 to be holding a protest in support of DaChild performing on campus. Once again, I
26 was shocked at how hateful people could be. Scarlett was furious. When Scarlett
27 caught wind of a second protest being organized by Alex Baylor in support of
28 DaChild, Scarlett called campus police and had them disperse the protest that was

1 happening on campus. From what I saw that day, there were a lot of students in
2 support of DaChild at the protest.

3 Now it seems like DaChild wants to fight his cancelation by filing a lawsuit
4 arguing that his free speech is being infringed upon. When I began working for the
5 UCLF Concert Committee, I had to do a training on freedom of speech and the First
6 Amendment. It was very bare bones and reminded me of law school. I am no lawyer,
7 but I am starting to worry that DaChild may really have a good case for viewpoint
8 discrimination. We may have really messed this up.

9 I am familiar with the following exhibits: Exhibit 1 is an accurate transcript of
10 the DaChild's Rolling Quietly Festival comments. Exhibit 2 is an accurate picture of
11 the statement released by the UCLF Concerts Committee after DaChild's show was
12 cancelled. Exhibit 3 is an accurate picture of the flyer promoting the
13 #BringBackDaChild protests at UCLF. Exhibit 4 is an accurate copy of the news
14 story about DaChild's lawsuit.

15
16 I swear or affirm the truthfulness of everything stated in this affidavit. Before giving
17 this statement, I was told I should include everything that I know may be relevant to
18 my testimony, and I followed those instructions. I know that I can and must update
19 this affidavit if anything new occurs to me until the moment before opening
20 statements begin in this case.

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22 *Archie Perez*
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24 AFFIANT
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1 *Ladies, if your arm pits are shaved clean and you ain't lookin'*
2 *like you've got Kaepernick in a head-lock, put your cellphone*
3 *light in the air. Fellas, if you ain't wearin' tight pants and*
4 *lipstick in the parking lot, put your cellphone lights in the air.*
5 *Keep it real dammit!"*

6
7 I understand that DaChild's words were very ugly. But, aren't his words
8 always ugly? For years, he's been rapping and talking about selling drugs and killing
9 Black men. But, UCLF and Scarlett still invited him. How come they have a problem
10 with him now – all of a sudden?

11 A few days after the cancellation was announced, I was making ramen in my
12 dorm when I thought of the idea to protest. I handled all of the social media, and
13 promoted the protest using #BringBackDaChild. My club coordinated everything that
14 needed to be done on campus for the protest. We had a really good turnout for both
15 protests! The second protest got shut down almost as soon as it started. Scarlett
16 Jones-Chen showed up with campus police, who then chased everyone off campus.
17 When I found out that DaChild was suing Scarlett Jones-Chen, I did some research. I
18 found out about the California Constitution Free Speech Provision. I emailed it to
19 DaChild and his manager so that they could check it out. Don't ask me how I got
20 DaChild's manager's email; I have my ways.

21 I came to college to express and learn from many different viewpoints. In my
22 opinion, it is a clear violation of free speech for a university to cancel an artist's
23 performance just because *some* people disagree with its content. Can someone please
24 bring back the Constitution!?!?

25 I am familiar with the following exhibits: Exhibit 1 is an accurate transcript of
26 the DaChild's Rolling Quietly Festival comments. Exhibit 2 is an accurate picture of
27 the statement released by the UCLF Concerts Committee after DaChild's show was
28 cancelled. Exhibit 3 is an accurate picture of the flyer promoting the

1 #BringBackDaChild protests at UCLF. Exhibit 4 is an accurate copy of the news
2 story about DaChild's lawsuit.

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5 giving this statement, I was told I should include everything that I know may be
6 relevant to my testimony, and I followed those instructions. I know that I can and
7 must update this affidavit if anything new occurs to me until the moment before
8 opening statements begin in this case.

9
10 *Alex Baylor*
11 _____

12 AFFIANT
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EXHIBITS

TRANSCRIPT OF DACHILD'S COMMENTS

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4 *"If you didn't show up today with syphilis, chlamydia, or any of*
5 *those sexually transmitted diseases that'll have you blistered-up*
6 *for two or three weeks, put your cellphone light in the air.*
7 *Ladies, if your arm pits are shaved clean and you ain't lookin'*
8 *like you've got Kaepernick in a head-lock, put your cellphone*
9 *light in the air. Fellas, if you ain't wearin' tight pants and*
10 *lipstick in the parking lot, put your cellphone lights in the air.*
11 *Keep it real dammit!"*

EXHIBIT 2



CONCERT COMMITTEE

WELCOME CONCERT
INFORMATION

Dear UCLF Community,

It has come to the UCLF Concert Committee's attention that the header for the UCLF Welcome Back Concert, DaChild, made hateful comments towards the LGBTQ+ community during a recent performance. In light of these comments, the UCLF Concerts Committee has decided to end relations with Mr. DaChild and cancel his upcoming performance on our campus.

UCLF would like to remind everyone that our community does not tolerate hate towards any group nor discrimination of any kind. While it is perfectly within Mr. DaChild's right to make certain comments, it is this university's right to cancel Mr. DaChild's performance. As the #1 public university, UCLF is a welcoming community full of diversity and acceptance. We will continue to work towards being inclusive to everyone, one step at a time.

While there is no current information on who will be performing as the UCLF Welcome Back Concert's header, please continue to check our social media accounts for continual updates on our upcoming concert and future events.

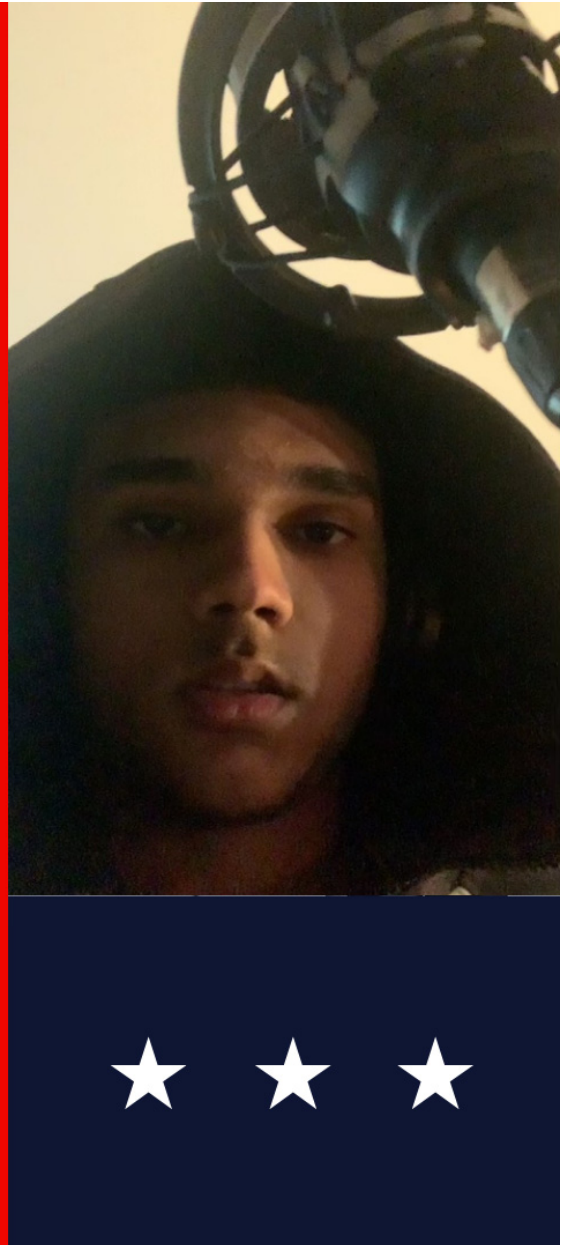
We look forward to welcoming you back to a safe, positive UCLF campus this coming fall. Until then, stay safe and continue to be a mighty Palomino!

**Sincerely,
Scarlett Jones-Chen
UCLF Concert Committee Head**

EXHIBIT 3

#BRING
BACK
DACHILD

Protest Thurs.
@5pm



3 Min Read

August 2021

By: Sanderson Kooper

DACHILD FILES SUIT AGAINST UCLF

BREAKING: Controversial rapper DaChild's lawyers have announced that they recently filed suit in the Superior Court of Los Angeles against UCLF and an employee, Scarlett Jones-Chen. We obtained a copy of the lawsuit and requested comments from DaChild, his lawyers, and Ms. Jones-Chen, and they agreed to speak with us.

DaChild alleges that his freedom of expression rights were violated by UCLF when his concert was cancelled this month. DaChild alleges that he has the right to speak freely, just as any student at UCLF does – and that colleges and universities are places where controversial viewpoints are to be “held up to the light of public scrutiny and debate, rather than suppressed.” His lawsuit also states that the content of his comments at the Rolling Quietly festival should not result in the cancellation of his performance at UCLF, where comments have yet to be made.

UCLF released a statement regarding the cancellation of DaChild's concert, stating, “While it is perfectly within Mr. DaChild's right to make certain comments, it is this university's right to cancel Mr. DaChild's performance.” Scarlett Jones-Chen, the named defendant in this suit, stated that “Mr. DaChild's comments were lewd and inappropriate. My mother and father would never forgive me if I allowed Mr. DaChild to perform on campus.”

DaChild additionally alleges that he was damaged in the amount of \$100,000, for which he was contracted by UCLF in exchange for a 20 minute performance at the UCLF concert.

DaChild's lawyers state that California's Free Speech Provision has been interpreted to apply to any action by government officials to prohibit free expression – and that action can be in the form of a law, policy or other action, such as canceling DaChild's concert because of the view point he expressed at an prior performance. Although most decisional law deals with speech by students on campuses, DaChild's lawyers are relying on well-established precedent that speech to students by non-students on campus has also been extended protection from suppression based upon viewpoint discrimination under the United States and California Constitutions, which both protect expression in the same ways.