Michigan High School Mock Trial Tournament
2013 Case Materials

MICHIGAN CENTER FOR CIVIC EDUCATION
Introduction

Welcome to students, teachers, attorneys, educators, judges, law students, legal assistants and others who will participate in the 2013 Michigan High School Mock Trial Tournament.

We hope that you will find your involvement to be an intellectually stimulating and personally rewarding experience. Beyond that, the Tournament’s goals are to:

- Further understanding of the law, court procedures and the legal system.
- Increase proficiency in basic life skills such as listening, speaking, reading and reasoning.
- Promote communication and cooperation between the school community—teachers and students—and the legal profession.

The Tournament is governed by the rules set out in the pages that follow. The final segment of this packet contains the Case Materials.

This 2013 mock-trial case was initially drafted by the Nebraska State Bar Foundation for their 2011-2012 High School Mock Trial Tournament. We extend our sincere thanks to the Foundation for granting us permission to adapt this case for use in our competition. We would also like to thank attorneys Nicholas Meier and Steven Heisler for their assistance in helping us select and adapt this case for our competition.

We hope you find these materials interesting and educational, and we wish you the best of luck at this year’s tournaments.
Summary

*Perdante v. Dalton Academy*

The plaintiff, a member of an up-and-coming high-school mock-trial team, alleges that the defendant, a rival school, made defamatory statements about the plaintiff in the defendant’s online newspaper. In the article, the deputy student editor of the school’s magazine alleged that the plaintiff appeared to be texting his/her coach during the final round of the competition. According to the article, the plaintiff’s closing argument was unusually effective, and a review of the score sheets shows that the closing argument made the difference. The defendant has denied the allegations and is asserting that the newspaper article is true. As a result of the claimed cheating, the plaintiff lost a scholarship with a prestigious university.

Acknowledgements:

- **Problem Drafter:** Nebraska State Bar Foundation
- **Funding:** The MCCE would like to thank the State Bar of Michigan, the Oakland County Bar Foundation, and the Litigation Section of the State Bar of Michigan for their funding support, without which the High School Mock Trial Tournament would not be possible.

Note: The facts alleged in the case summary are not stipulated facts and may not be used in trial by any party.

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# Table of Contents

## A. General Tournament Rules ................................................................. 6-8
1) Eligibility to Participate ................................................................. 6
2) Regional Tournaments ................................................................. 6
3) State Final Tournament ................................................................. 6
4) Tournament Structure ................................................................. 6-7
5) Tournament Logistics ................................................................. 8

## B. Rules of Procedure for Trials ............................................................... 8-15
1) Competitors .................................................................................. 8
2) Timekeepers ................................................................................. 8
3) Judges and Court Officers ......................................................... 8-9
4) Identification of Teams .............................................................. 9
5) Ban on Coaching During Trial .................................................. 9
6) Ban on Scouting ......................................................................... 9
7) Videotaping ................................................................................ 9
8) Code of Proper Conduct; Signatures of Participants .............. 9-10
9) Claims of Rule Violations ......................................................... 10
10) Commencement of Trial .......................................................... 10-11
11) Governing Law; Motions; Pre-trial Agreements ................. 11
12) Order of Trial; Time Limits ...................................................... 11-12
13) Attorneys .................................................................................. 12
14) Opening Statements ................................................................. 12
15) Evidence ................................................................................... 12
16) Witnesses, Witness Statements; Extrapolation ................. 12-13
17) Procedure for Introduction of Exhibits ............................... 13-14
18) Closing Arguments ................................................................. 14
19) Scoring; Announcement of Results ....................................... 14
20) Judges’ Comments ................................................................. 15

## C. Rules of Evidence .............................................................................. 15-25

### Article I General Provisions
101) Scope .................................................................................. 16
102) Purpose and Construction .................................................. 16

### Article IV Relevancy and Its Limits
401) Definition of “Relevant Evidence” ........................................ 16
402) Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible ......................................................... 16
403) Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time ......................................................... 16
404) Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes ......................................................... 16-17
405) Methods of Proving Character ................................................ 17
406) Habit, Routine Practice .......................................................... 17
407) Subsequent Remedial Measures ........................................... 17
408) Compromise and Offers to Compromise .......................... 17-18
409) Payment of Medical or Similar Expenses ........................ 18
410) Inadmissibility of Pleas, Plea Discussions, and Related Statements ......................................................... 18
411) Liability Insurance (civil cases only) ................................ 18

### Article V Privileges
501) General Rule ................................................................. 18-19

### Article VI Witnesses
601) General Rule of Competency ................................................ 19
602) Lack of Personal Knowledge ................................................ 19
607) Who May Impeach .............................................................. 19
608) Evidence of Character and Conduct of Witness ................ 19
609) Impeachment of Evidence of Conviction of Crime ........................................ 19-20
610) Religious Beliefs or Opinions ................................................................. 20
611) Mode and Order of Interrogation and Presentation ................................. 20-21
612) Writing Used to Refresh Memory .......................................................... 21
613) Prior Statements of Witnesses ............................................................... 21

Article VII Opinions and Expert Testimony
701) Opinion Testimony by Lay Witness ...................................................... 21
702) Testimony by Experts ........................................................................... 21
703) Bases of Opinion Testimony by Experts ................................................ 22
704) Opinion on Ultimate Issue .................................................................... 22
705) Disclosure of Facts or Data Underlying Expert Opinion .......................... 22

Article VIII Hearsay
801) Definitions .............................................................................................. 22-23
802) Hearsay Rule .......................................................................................... 23
803) Hearsay Exceptions, Availability of Declarant Immaterial ....................... 23-24
804) Hearsay Exceptions, Declarant Unavailable ........................................... 24-25
805) Hearsay within Hearsay ........................................................................ 25

D. Code of Proper Conduct & Signature Form .............................................. 26-27

E. Sample Official Team Roster ..................................................................... 28

F. Judges’ Instructions .................................................................................. 29

G. Unfair Extrapolation .................................................................................. 30

H. Guidelines for Performance Rating ......................................................... 31-32

I. Performance Rating Sheet ......................................................................... 33

J. Timekeepers’ Instructions .......................................................................... 34

K. Time Sheet ................................................................................................ 37

L. Court Officer Instructions ......................................................................... 36

M. Dispute Form ............................................................................................. 37

N. Basic Trial Techniques ............................................................................. 38-45

O. Case Materials .......................................................................................... 46-92

Complaint ...................................................................................................... 47-48
Answer and Affirmative Defenses ................................................................. 49-50
Witness and Exhibit List .............................................................................. 51
Trial Stipulations and Rules ......................................................................... 52
Witness Statement of Phoenix O. Perdante .................................................. 59-63
Witness Statement of Sterling Morton ......................................................... 64-66
Witness Statement of Charlie Connor .......................................................... 67-69
Witness Statement of Sylvia/Sal Vester ......................................................... 70-73
Witness Statement of M.J. Hencken ............................................................. 73-76
Witness Statement of J/Joe Serpico ............................................................... 78-81
Exhibit 1: Article – Cheaters Really Do Win Sometimes ............................ 82
Exhibit 2: Scholarship Award Letter ............................................................. 83
Exhibit 3: One-Way Foundation Morals Clause .......................................... 84
Exhibit 4: Scholarship Revocation Letter ...................................................... 85
Exhibit 5: Judges’ Score Sheets ................................................................. 86-88
Exhibit 6: Email from Perdante to Hencken .............................................. 89
Exhibit 7: Diagram of Courtroom ............................................................... 90
Exhibit 8: Photographs of Courtroom ......................................................... 91
Exhibit 9: Undergraduate Cost Calculator .................................................. 92

P. Questions and Clarifications .................................................................... 93
A. General Tournament Rules

1. Eligibility to Participate
The Tournament is open to all high schools in Michigan. A school may enter teams in any of the regional tournaments, but may not register in more than one regional tournament. An official team consists of from six to ten students from the same school and one or more adult coaches. Because there are a total of twelve roles to be played, depending upon the size of the team, two to six members of a team will have to take on dual roles. Requests to combine students from more than one school to form a team will be considered on a case-by-case basis. Such requests must be made before the registration deadline.

2. Regional Tournaments
The regional tournaments will be conducted in the courtrooms of the Kent County Courthouse in Grand Rapids, the Washtenaw County Courthouse in Ann Arbor on Saturday, March 2, 2013, and the Oakland County Courthouse in Pontiac on Saturday, March 9, 2013.

3. State Final Tournament
Ten teams will compete in the State Finals Tournament on Saturday, March 23, 2013 in Lansing. The ten finalists will be selected from the teams that performed the best in the three regional tournaments. The number of teams in the Final Tournament from each regional tournament will be in proportion to the total number of teams competing in each regional tournament.

4. Tournament Structure
a. At each Tournament, there will be three rounds of trials. All teams are guaranteed the opportunity to participate in at least two rounds and are assured to be assigned at least one round as the Plaintiff and at least one as the Defense. Teams may elect to withdraw after the first two rounds of the tournament. The desire to do so must be made known to the tournament director immediately following the completion of the second round or before the start of the tournament. Each round will be judged by three Tournament judges; every effort will be made to ensure that these judges are lawyers or members of the judiciary. In all rounds, each team will face a different opponent.

b. Tournament staff will make every effort to ensure that teams will not present the same side of the case before any judge to whom that team presented its case in an earlier round. However, should this occur, it will not be considered a violation of the Tournament Rules.

c. Advancement to the state finals will be governed by the following criteria:

i) Win/Loss Record – equals the number of rounds won or lost by a team;

ii) Total Number of Ballots – equals the number of scoring judges’ votes a team earned;

iii) Total Number of Points Accumulated;

iv) Point Spread Against Opponents – The point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team’s opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

d. Sides (prosecution or defense) and pairings for the Regional Tournaments will be determined in advance by random drawing. In the State Final Tournament, teams will be paired
depending on their Regional totals.

e. Sides and pairings in the first two rounds of the State Final Tournament will be determined by the teams’ Regional totals. With the ten finalist teams ranked 1 to 10, the pairings for the two rounds will be:

<table>
<thead>
<tr>
<th>First Round</th>
<th>Second Round</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 v. 1</td>
<td>1 v. 6</td>
</tr>
<tr>
<td>9 v. 2</td>
<td>2 v. 7</td>
</tr>
<tr>
<td>8 v. 3</td>
<td>3 v. 9</td>
</tr>
<tr>
<td>7 v. 4</td>
<td>4 v. 8</td>
</tr>
<tr>
<td>6 v. 5</td>
<td>5 v. 10</td>
</tr>
</tbody>
</table>

f. Pairings in the semi-final round of the State Final Tournament will be determined by the totals from the first two rounds. With the four top teams ranked 1-4, the pairings for the semi-final round will be: 1 v. 4, and 2 v. 3.

g. In determining sides in the semi-final round of the State Final Tournament, the following procedure will be used:
   i.) If paired teams represented opposite sides in the previous round, sides will be flipped for the semi-final round.
   ii.) If paired teams represented the same side in the previous round, the following procedure will be used:
       a. The team with the numerical code (not ranking) which comes first numerically will be considered the “Designated Team.”
       b. A coin will be tossed by the tournament director or a designee.
       c. If the coin comes up heads, the Designated Team will represent the prosecution.
          If the coin comes up tails, the Designated Team will represent the defendant.
   iii.) If either method above creates a rematch (pairing and sides) from an earlier round (including regional tournaments), sides will be flipped.
   iv.) At the discretion of the tournament director, this process may be altered to accommodate special circumstances.

h. The same procedure as described above will be used for determining sides in the championship round of the State Final Tournament.

i. A “bye” becomes necessary when an odd number of teams are present for any given round of the tournament. In the event of a circumstance resulting in an odd number of competing teams, the following procedure will apply:

   i.) The team drawing the “bye” will, by default, receive a win and three ballots for that round.
   ii.) For the purpose of determining placing at Regional rounds and for determining rankings at the State Finals, the team drawing the “bye” will be given points equal to the average of its own points earned in its other trials.
5. Tournament Logistics
   a. Coaches must report to the registration table to register their team between 7:45 and 8:15 a.m. on the day of the Tournament.

   b. A Tournament Headquarters location will be announced at each courthouse. Observation of the Tournament is open to all.

   c. We are visitors in these courthouses and all participants should be especially careful to observe appropriate standards of behavior. Among other things, the Code of Proper Conduct provides that participants should not go anywhere in the building other than courtrooms, eating areas, and restrooms and that food or beverages not be brought into the courtrooms or anywhere other than designated eating areas. See Code of Proper Conduct, p. 26-27, and Rule 8, p. 10.

B. Rules of Procedure for Trials

1. Competitors
   a. Each participating high school team must be composed of from 6 to 10 students from that school. During a single trial/round six students from that team must participate, three as attorneys and three as witnesses. No more than six students from a team may participate in a single trial/round.

   b. Where possible, all witnesses are gender neutral and may be played by either male or female students. If a witness must be male or female, the role may still be played by a male or a female student.

2. Timekeepers
   a. Each team is responsible for providing an official timekeeper or timekeepers. The timekeeper may be a member of the team or a student or adult who is not part of the team. Coaches may not be timekeepers. Stopwatches will be provided by the tournament director.

   b. Courtrooms WILL NOT HAVE BAILIFF/TIMEKEEPERS. Team-provided timekeepers must be prepared to keep time during all rounds.

   c. Each team’s official timekeeper is required to attend the scheduled on-site timekeeper orientation. If a team does not send an official timekeeper to the required orientation meeting, that team will defer to its opponents’ official timekeeper(s) in all rounds.

   d. If a team chooses to assign more than one student to the timekeeper role, then all students who will be assigned to the timekeeper role must attend the timekeeper orientation. The team’s official timekeeper will keep time for both sides during all competition rounds.

3. Judges and Court Officers
   a. A single Tournament judge will preside at the trial. Two other judges will be present at all times to judge the performance of the competing teams; however, they may not participate in conducting the trial. The non-presiding judges must sit in the jury box and the participants must address them as though they were the jury. All three judges will score the competitors.
b. The presiding judge will be responsible for swearing in witnesses.

c. We will ensure that every tournament has Court Officers, who will be assigned to a set of 3-4 courtrooms; there will be a minimum of 1 court officer on each floor. Court Officers do not keep time or swear in witnesses; Court Officers act as a liaison to the Tournament Director, collect and check score sheets, and generally assist and advise the judges. Court Officers also track the overall time of the trial to ensure that judges complete feedback in time to allow competitors to reach their next round of competition.

d. Each judge will be supplied with a full Tournament packet and will attend an Orientation Meeting. Each Team’s designated timekeeper and all Court Officers will attend a short training session immediately preceding the first round of the tournament.

4. Identification of Teams
A team’s identity may not be revealed to any judge. Team numbers (or letters) will be randomly drawn in advance. Team members may not wear or carry any item that identifies the school the team members represent.

5. Ban on Coaching During Trial
a. Once the trial begins no coaching is permitted by anyone for the duration of the trial. Student attorneys may consult with one another and with their witnesses.

b. To avoid even the appearance of impropriety, no communication of any kind is allowed between the students participating in the case (the three attorneys and the three witnesses) and other team members, coaches, or observers until after closing arguments.

c. Any team member (including team members not participating in the trial and coaches) who observes any violation of this rule must report it immediately to the presiding judge. The judge must order the clock stopped and inquire into the circumstances of the accusation. Where a violation is found, the judges must deduct 10 points from a team’s total score on the scoring summary sheet.

d. These rules on coaching during trial remain in force during any emergency recess that may occur.

6. Ban on Scouting
No team members, alternates, teachers or attorney coaches or any other persons associated with the team’s preparation may view other teams in competition, other than those paired against them, so long as they remain in competition themselves.

7. Videotaping
A team may videotape its trials. The opposing team and the presiding judge should be notified prior to the calling of the case. The Court Officer should be consulted at the time of courtroom check in. See Code of Conduct, page 26, for further information regarding videotaping.

8. Code of Proper Conduct; Signatures of Participants
a. The Code of Proper Conduct governs all team members, coaches, and supporters, such as fellow students and parents who are present during the Tournament.
b. A copy of the Code must be signed by all team members and coaches and submitted to the Tournament registration table between 7:45 and 8:15 a.m. on the day of the Tournament. Teams are responsible for making invited guests and parents aware of the Code and its rules regarding conduct during the Tournament.

9. Claims of Rule Violations
a. Any claim of a violation of a Tournament rule should be immediately called to the attention of the presiding judge. A claimed violation of the ban on coaching during a trial may be raised by any team member. Only the attorneys trying the case may raise violations of all other rules.

b. If, immediately after closing arguments, a team has serious reason to believe that a material rules violation has occurred, and the team was unable (as opposed to unprepared) to raise the issue at the time the violation occurred, a student member of the team must indicate that the team intends to file a dispute. The judges will proceed with their scoring uninterrupted, and the presiding judge will provide the student attorney with a dispute form. The student may communicate with counsel and/or student witnesses before preparing the form. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure.

c. The presiding judge will collect the form. If the dispute is denied, the presiding judge will record the reasons for this, and announce the decision during the judges’ critique. If the judges feel the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After this, each team will designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare, the presiding judge will conduct a hearing on the dispute, providing each spokesperson three minutes for a presentation. The judge may question the spokespersons. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. The judges’ decision will be recorded in writing on the dispute form and attached to the scoresheets, with no further announcement.

d. The judges will consider the dispute before making their final scoring decisions. The dispute may or may not affect the final decision or scores, but the matter will be left to the discretion of the scoring judges.

e. The above procedure is only intended to be used in the most unusual of circumstances. Routine rule violations, such as the wrong attorney objecting, must be brought to the attention of the presiding judge when the violation occurs. Similarly, any question regarding the application of tournament rules by the presiding judge must be raised prior to closing arguments.

10. Commencement of Trial
a. A team’s six students who will try the case and an adult coach must report to the assigned courtroom and present themselves to the presiding judge.

b. The presiding judge must inquire whether anyone present is connected with any school in the tournament other than the schools competing in that courtroom. Note that the judges should not know the identities of the schools (Rule 4) so this inquiry should be done without
revealing the identity of any team to the judges. Anyone in the wrong courtroom should be directed to the correct courtroom or to Tournament Headquarters.

c. The presiding judge will call the courtroom to order to commence the trial. The presiding judge will ask counsel to state their appearances for the record and thereafter the trial will proceed as in Rule 12.

d. Each team will prepare a typed team roster and will deliver four copies of that roster before each trial. Three copies will be presented to the presiding judge, and one copy will be given to the opposing team. The roster must include (1) the name of each attorney and the names of each witness that attorney will examine; and (2) the name of each student who is portraying a witness, which witness that student will portray and the gender of that witness. (Sample Roster on page 30)

Each team should bring 12 copies of the roster with them on tournament day.

11. Governing Law; Motions, Pre-trial Agreements
   a. All trials will be governed by the Tournament Rules, and may rely on the case law included in the Tournament Materials. No reference to other legal authorities (except for the ones provided in the case materials) should be made.

   b. No motions may be made by either party, nor entertained by the Court. In the event of an emergency, a recess may be called. Should a recess be called, teams are not to communicate with any observers, coaches, or instructors.

   c. Attorneys are encouraged to call the court’s attention to particular parts of the case materials, as well as these Rules, in support of points being urged upon the Court.

   d. Pre-trial agreements between teams (such as agreements to not pursue certain lines of questioning) are not permitted. Agreements between parties are stipulated in the tournament packet. Teams are allowed to confer before trial to determine the gender of witnesses.

12. Order of Trial, Time Limits, etc.
   a. Each party is required to call all three of its witnesses, but may do so in any order. Witnesses may not be ordered sequestered.

   b. The order of the trial and the time limits are as follows:
      1. Opening Statement *……………………………….5 minutes per side
      2. Direct and Redirect (optional) Examination………25 minutes per side
      3. Cross and Recross (optional) Examination………..20 minutes per side
      4. Closing Argument…………………………………..5 minutes per side
         * Defense may reserve Opening Statement until after the Plaintiff’s Case-in-Chief.

   c. Timekeepers will be provided with a stopwatch and one-minute warning signs. The timekeepers must keep track of time on a time sheet, which must be available for inspection by either side at any time. The timekeepers must inform the appropriate participants and the judge whenever a party has one minute left in any portion of its allotted time by holding up a one-minute warning sign. When time is up, the timekeepers will announce “Time.” A side may not continue beyond the time limits unless the presiding judge, for good cause shown, grants additional time.
d. Time DOES NOT STOP for objections, responses, or the introduction of exhibits. Time for administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

e. Attorneys are not required to use the entire time allotted to each part of the trial. However, time left over in one part of the trial cannot be carried over to another part.

f. Requests for additional time at any point in the trial are not permitted. However, on request from a party responding to an objection, the presiding judge may—at his or her discretion—instruct the timekeeper to stop time while handling the issue at hand. Time must start upon the presiding judge’s ruling on the objection.

g. Voir dire examination of a witness is not permitted.

13. Attorneys
   a. Of the three attorneys on a team, one must give the opening statement, and another must give the closing statement. The same attorney may not give both the opening and the closing statement. Each of the three attorneys must also conduct all direct examination and objections as to one witness for the attorney’s side and all cross examination and objections as to one witness for the opposing side. Attorneys may consult with one another and with the witnesses, but with no one else. See Rule 5, Ban on Coaching, p. 9.

   b. The attorney must stand whenever addressing the court, a witness, or the jury. When arguing a point, attorneys should direct their remarks to the court, not to opposing counsel.

14. Opening Statements
   a. Each side will have up to five minutes to present its opening statement. The Plaintiff gives the opening statement first. The Defense may present its opening statement immediately after the Plaintiff’s opening statement or may reserve it until after the close of the Plaintiff’s evidence.

   b. An opening statement should tell the jury and the court what that party intends to prove and should explain that party’s theory of the case. Argument is improper in opening statements.

15. Evidence
   a. No evidence other than the testimony (not affidavits) of the six witnesses, and the exhibits included in the case materials, may be offered.

   b. Stipulations are to be considered part of the record and already admitted into evidence. Stipulations, charges, or the jury instructions will not be read into the record.

   c. No other exhibits or enlargements of exhibits may be offered. No demonstrative evidence should be offered or admitted.

16. Witnesses, Witness Statements; Extrapolation
   a. Witnesses may not refer to notes when testifying. Witnesses may not be recalled.

   b. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories (such as glasses), and
make-up which are case-specific. Witnesses are not permitted to adopt false accents.

c. Each witness must admit that his or her witness statement is a true copy of a statement that he or she made and signed. The statement may be used to impeach the witness where appropriate, but is not itself admissible into evidence.

d. Each witness is bound by the facts contained in his/her own witness statement. A witness is not bound by facts contained in other witness statements. A witness may not be cross-examined about facts or information contained in other witness statements.

e. If a witness is non-responsive, the witness may be instructed by the judge to answer “yes” or “no” on a question by question basis. However, a witness is not bound to answer all questions “yes” or “no.”

f. Minor extrapolations of facts not in the record are allowed, provided they may be reasonably inferred from the case materials and are neutral toward both sides. A fair extrapolation would be background information such as date or place of birth. This would be a minor extrapolation and would be allowed to amplify or humanize the case, assuming those facts are relevant. An unfair extrapolation would be one that adds material support to the party who called the witness or weakens the case of the other party.

g. A party may object to testimony on the ground that it is “beyond the scope of the witness statement” or is an “unfair extrapolation.” Refer to Section G: Unfair Extrapolation for more on this objection. Attorneys are encouraged to refer presiding judges to Section G for instructions on handling the Unfair Extrapolation objection.

h. If the objection is sustained, the court should strike the improper testimony. The Judges must also take account of unfair extrapolation in scoring the witness and opposing counsel.

i. The decision of the presiding judge in ruling on this objection, as with other objections, is final. If the objection is overruled, it may be renewed as to further questions or answers.

j. Attorneys should also recognize that unfair extrapolation can also be challenged through cross examination demonstrating the absence of the extrapolation in the witness’ statement.

k. Publishing to the jury is not permitted. The only documents that teams may present to the court are the individual exhibits as they are introduced into evidence and the team roster form.

l. Exhibit notebooks are not to be provided to the judges. Exhibits are to be shown to opposing counsel and handed to the presiding judge.

m. Rosters are to be provided to the opposing team and the presiding judge before the trial commences.

17. Procedure for Introduction of Exhibits
   As an example, the following steps effectively introduce exhibits:

   a. All evidence will be pre-marked as exhibits.
b. Ask for permission to approach the bench. Show the presiding judge the marked exhibit.
   “Your honor, May I approach the bench to show you what has been marked as Exhibit __?”

c. Show the exhibit to opposing counsel.

d. Ask for permission to approach the witness. Give the exhibit to the witness.

e. “I now hand you what has been marked as Exhibit No. __ for identification.”

f. Ask the witness to identify the exhibit. “Would you identify it please?”

g. Witness answers with identification only.

h. Offer the exhibit into evidence. “Your Honor, we offer Exhibit No. __ into evidence at this
   time. The authenticity of this exhibit has been stipulated.”

i. Court: “Is there objection?” (If opposing counsel believes a proper foundation has not been
   laid, the attorney should be prepared to object at this time.)

j. Opposing Counsel: “No, your Honor,” or “Yes, your Honor.” If the response is “yes,” the
   objection will be stated on the record. Court: “Is there any response to the objection?”

k. Court: “Exhibit No. __ is/is not admitted.”

18. Closing Arguments
   a. Each side will have five minutes for closing argument. Plaintiff may reserve time for
      rebuttal.

   b. Closing argument should be directed at persuading the jury to render a decision for that
      attorney’s side, relying on argument and the testimony of the witnesses and any exhibit
      that was admitted.

   c. It is improper closing argument to: (a) refer to facts where there was no evidence of them; (b)
      state a personal opinion as to the credibility of a witness; or (c) present arguments designed
      to inflame passion or prejudice.

19. Scoring; Announcement of Results
   a. Each judge should mark his or her performance rating sheet during the trial, at the end of
      each segment.

   b. After closing arguments, the Judges will retire to deliberate. Each judge must complete a
      rating sheet. The Judge will give the completed sheets to the Court Officer who will double-
      check the scores. In the absence of a Court Officer, the presiding judge will collect the three
      rating sheets and hold them until they are collected by tournament staff.

   c. The Court Officer must deliver all copies of the rating sheets to Tournament Headquarters at
      the end of each trial.

   d. After the final round is complete, the identities of the advancing teams will be announced.
Within two weeks after each tournament, coaches will receive Performance Summary Sheets for their school.

20. Judges’ Comments

a. After the judges have completed the Performance Rating Sheets and have discussed the comments they will make, the presiding judge will reconvene the proceedings.

b. The judges will not announce the winning team.

c. The judges are encouraged to make brief comments regarding the performances of the attorneys and witnesses. The judges should not indicate how they would rule on the merits of the case.

d. Competition rounds will be limited to two hours, including Judges’ comments. Judges’ comments will be limited to 15 minutes (5 minutes per judge), whether there is time remaining in the two-hour round or not. Moreover, in no event may the Judges’ comments extend beyond the two hour limit for the competition round. Court Officers are responsible for keeping an eye on the time and making sure that judges do not exceed their allotted time.

e. The length of a trial may require the tournament director to exclude the comment session altogether.

C. Rules of Evidence

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the mock trial team to know the Rules of Evidence and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence and its numbering system. Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure. Text in italics or underlined represent simplified or modified language.

Not all judges will interpret the Rules of Evidence (or procedure) the same way, and mock trial attorneys should be prepared to point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate.
ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope

These Rules of Evidence govern the trial proceedings of the Michigan High School Mock Trial Tournament.

Rule 102. Purpose and Construction

These Rules are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.

ARTICLE II. JUDICIAL NOTICE -- Not Applicable

ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS -- Not Applicable

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. Definition of “Relevant Evidence”

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by these Rules. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of accused - In a criminal case, evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404 (a)(2), evidence of the same trait of character of the accused offered by the prosecution;
(2) **Character of alleged victim** - In a criminal case, and subject to the limitations imposed by Rule 412, evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor;

(3) **Character of witness** - Evidence of the character of a witness, as provided in Rules 607, 608 and 609.

(b) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

**Rule 405. Methods of Proving Character**

(a) Reputation or opinion. - In all cases where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.

(b) Specific instances of conduct. - In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person’s conduct.

**Rule 406. Habit, Routine Practice**

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization, on a particular occasion, was in conformity with the habit or routine practice.

**Rule 407. Subsequent Remedial Measures**

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product’s design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

**Rule 408. Compromise and Offers to Compromise**

(a) **Prohibited uses.** Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:
(1) furnishing or offering or promising to furnish—or accepting or offering or promising to accept—a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

(b) Permitted uses. This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness’s bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Payment of Medical or Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements

Except as otherwise provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against a defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;
(2) a plea of nolo contendere;
(3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state proceeding regarding either of the foregoing pleas; or
(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which does not result in a plea of guilty or which results in a plea of guilty which is later withdrawn.

However, such a statement is admissible (1) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (2) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Rule 411. Liability Insurance (civil case only)

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

ARTICLE V. PRIVILEGES

Rule 501. General Rule

There are certain admissions and communications excluded from evidence on grounds of public policy. Among these are:
(1) communications between husband and wife;
(2) communications between attorney and client;
(3) communications among grand jurors;
(4) secrets of state; and
(5) communications between psychiatrist and patient.

ARTICLE VI. WITNESSES

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness’ own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 2.2)

Rule 607. Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' character for truthfulness, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General rule. For the purpose of attacking the character for truthfulness of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been
convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.

(b) **Time limit.** Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) **Effect of pardon, annulment, or certificate of rehabilitation.** Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime that was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) **Juvenile adjudication.** Evidence of juvenile adjudication is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) **Not Applicable**

**Rule 610. Religious Beliefs or Opinions**

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness’ credibility is impaired or enhanced.

**Rule 611. Mode and Order of Interrogation and Presentation**

(a) **Control by Court.** - The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to:

1. make the interrogation and presentation effective for ascertaining the truth,
2. avoid needless consumption of time, and
3. protect witnesses from harassment or undue embarrassment.

(b) **Scope of cross examination.** - The scope of the cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness’ statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.
(c) **Leading questions.** - Leading questions should not be used on direct examination of a witness except as may be necessary to develop the witness’ testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

(d) **Redirect/Re-cross.** - After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney or re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

**Rule 612. Writing Used to Refresh Memory**

*If a written statement is used to refresh the memory of a witness either while testifying or before testifying, the Court shall determine that the adverse party is entitled to have the writing produced for inspection. The adverse party may cross examine the witness on the material and introduce into evidence those portions, which relate to the testimony of the witness.*

**Rule 613. Prior Statements of Witnesses**

(a) **Examining Witness Concerning Prior Statement.** In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) **Extrinsic Evidence of Prior Inconsistent Statement of Witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

**ARTICLE VII.OPINIONS AND EXPERT TESTIMONY**

**Rule 701. Opinion Testimony by Lay Witness**

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

**Rule 702. Testimony by Experts**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.
Rule 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on Ultimate Issue

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination.

ARTICLE VIII. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

(a) Statement. - A “statement” is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. - A “declarant” is a person who makes a statement.

(c) Hearsay. - “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if-- …

(1) Prior statement by witness. - The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is (A) inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant’s testimony and is offered to rebut an express or
implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these Rules.

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. - A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance. - A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical conditions. - A statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant’s will.

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness’ memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.
(6) **Records of regularly conducted activity.** - A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or date compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(18) **Learned treatises.** - To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(21) **Reputation as to character.** - Reputation of a person’s character among associates or in the community.

(22) **Judgment of previous conviction.** - Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

**Rule 804. Hearsay Exceptions, Declarant Unavailable**

(a) **Definition of unavailability.** “Unavailability as a witness” includes situations in which the declarant

1. is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or

2. persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so; or

3. testifies to a lack of memory of the subject matter of the declarant’s statement; or

4. is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

5. is absent from the hearing and the proponent of a statement has been unable to procure the declarant’s attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant’s attendance or testimony) by process or other reasonable means. A Declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) **Hearsay exceptions:** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief or impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant’s death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history. (A) A statement concerning the declarant’s own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other’s family as likely to have accurate information concerning the matter declared.

(5) Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION – Not Applicable

ARTICLE X. CONTENTS OF WRITING, RECORDINGS AND PHOTOGRAPHS – Not Applicable

ARTICLE XI. OTHER – Not Applicable
D. Code of Proper Conduct

1. Students promise to compete with the highest standards of deportment, showing respect for their fellow-students, opponents, Judges, coaches, and tournament personnel. Competitors should focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Students will avoid all tactics they know are wrong or in violation of the Rules, including the use of unfair extrapolations. Students will not willfully violate the Rules of the competition in spirit or in practice.

2. Teacher-Sponsors agree to focus attention on the educational value of the Mock Trial Tournament. They must discourage willful violations of the Rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the tournament’s Rules and this Code of Conduct.

3. Attorney-Coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the Tournament’s Rules and this Code of Conduct. Attorney-Coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.

4. Trial Viewing/Scouting. No team members, alternates, attorney-coaches, teacher-sponsors, or any other persons associated with the team’s preparation may view other teams in competition so long as they remain in competition themselves.

5. Coaching during Trial. Once the trial begins no coaching is permitted by anyone for the duration of the trial. Student attorneys may consult with one another and with their witnesses. To avoid even the appearance of impropriety, no communication of any kind is allowed between the students participating in the case (the three attorneys and the three witnesses) and other team members, coaches, or observers until after closing arguments.

6. Teams and observers may not go anywhere in the building other than the assigned courtrooms, the cafeteria/designated eating areas, and the restrooms.

7. Food or beverages may not be brought into the courtrooms or anywhere other than the cafeteria/designated eating areas.

8. For the first morning and afternoon trials, teams and observers may not enter the courtrooms until given permission to do so by the Court Officer.

9. Teams and observers may not: a) touch any equipment, papers, exhibits, etc. that are not associated with the Tournament, b) erase anything written on a chalkboard unless written during a previous Tournament round, c) move anything in an assigned courtroom (including podium and chairs) without permission from a judge, d) move anything that does not belong to a team member or observer from one courtroom to another.

10. If a team videotapes any of its trials, that videotape is the sole property of the team and may not be made available to any other schools for any reason, especially for the purposes of scouting, etc.
**Code of Proper Conduct continued**

**Signature Form**

**2013 Michigan High School Mock Trial Tournament**

A copy of the Code must be signed by all team members and coaches and submitted by a team coach when s/he registers the team at the registration table between 7:45 and 8:15 a.m. on the day of the Tournament.

____________________________________________________________________________

(Name of School)

*We, the undersigned, have read the Code of Proper Conduct and agree to uphold it throughout our participation in the 2013 Michigan High School Mock Trial Tournament:*

Students:  *Type or print names clearly; sign name next to it.*

Coaches:

Date: ________________________
E. Sample Official Team Roster

OFFICIAL TEAM ROSTER

Plaintiff Case

Attorney 1
Student name:____________________. Name of witness s/he will examine:______________________.

Attorney 2
Student name:____________________. Name of witness s/he will examine:______________________.

Attorney 3
Student name:____________________. Name of witness s/he will examine:______________________.

Timekeeper
Timekeeper name:______________________.

Phoenix O. Perdante will be portrayed by ____________________ (Student Name).
Male or Female. Circle one.

Sterling Morton will be portrayed by ____________________ (Student Name).
Male or Female. Circle one.

Charlie Connor will be portrayed by ____________________ (Student Name).
Male or Female. Circle one.

Defense Case

Attorney 1
Student name:____________________. Name of witness s/he will examine:______________________.

Attorney 2
Student name:____________________. Name of witness s/he will examine:______________________.

Attorney 3
Student name:____________________. Name of witness s/he will examine:______________________.

Timekeeper
Timekeeper name:______________________.

Sylvia/Sal Vester will be portrayed by ____________________ (Student Name).
Male or Female. Circle one.

M.J. Hencken will be portrayed by ____________________ (Student Name).
Male or Female. Circle one.

Jo/Joe Serpico will be portrayed by ____________________ (Student Name).
Male or Female. Circle one.
F. Judge's Instructions

1. Materials. Every judge should have the Rules and Case Materials and the Judges Scoring Packet.

2. Judges roles and Location. The Presiding Judge (as designated by the Tournament Director) should sit alone behind the bench and act as a judge presiding at a common law trial. Rulings should be made according to the Tournament Rules and the Case Materials. Rules of Evidence are adapted from the Federal Rules of Evidence. The two other Judges should sit in the jury box throughout the trial as the jury. They should not participate in rulings by the Presiding Judge in conducting the trial.

3. Opening Court. The trial should commence in accordance with Rule 10.

4. Role of Presiding Judge. The Presiding Judge has a delicate task and restraint is required. A trial is an adversarial proceeding and this Tournament is a competition as well. The central goal is to give the participating young people a positive educational experience. But it would be unfair and contrary to the idea of law if one side or the other was given an unfair advantage. Obviously the judge must be evenhanded. Moreover, the judge should avoid injecting him or her self into the examination of witnesses even though in a real case that would be appropriate. Otherwise one side will gain an advantage they have not earned. In addition, the judge should take special care to avoid intimidating the student lawyers and witnesses so they feel comfortable and free to act at the true level of their capacity. The judge should be encouraging to both sides and still maintain the essential form of a trial.

5. Scoring Student’s Performances. All of the Judges should score the teams according to the instructions in the Guidelines for Performance Rating Sheet. All Judges should familiarize themselves with that sheet in advance of the Tournament.

6. Bailiff. Beginning in 2013, bailiffs will not be provided for any courtrooms. Instead, each team has been asked to provide a trained timekeeper to keep track of time, and Court Officers have been assigned to groups of 3-4 courtrooms to generally assist and advice the judges and act as a liaison with the Tournament Director. For this reason, the presiding judge will be responsible for calling the court to order and swearing in witnesses.

7. Questions Regarding Tournament Rules. If questions arise regarding application of the Tournament Rules, the Presiding Judge should entertain arguments by the attorneys regarding construction of the Rules and should encourage the attorneys to make reference to the Rule in question. The Presiding Judge has the sole authority to make decisions about the conduct of the trial.

8. Procedure at End of Trial. The presiding judge will clear the courtroom (Unless chambers are available) and the Judges should total the scores for each side. After all Judges have completed their Rating Sheets, the Presiding Judge will reconvene the proceedings. The Court Officer will take all of the Rating Sheets to Tournament Headquarters. In the absence of a Court Officer, the presiding judge will collect the three rating sheets and hold them until they are collected by tournament staff. There is a limit of 10 minutes for the Judges to complete the score sheets and 15 minutes for oral comments. In no event may the oral comments extend beyond the two-hour limit set on the competition round. Judges are encouraged to offer positive and constructive comments to the teams. Judges are not to announce the scores or the winner or rule on the merits of the case.
G. Unfair Extrapolation

Background
Each team competing in the Michigan High School Mock Trial Tournament has been provided with the same materials for this year’s problem. Since there are strict time limitations for the examination of witnesses, opening statements and closing arguments, and so that all teams are trying the same case, the trial is limited to the materials provided to each team. Information from outside of the materials provided (known in the Tournament as “unfair extrapolation”) is not permitted unless it is a minor detail used to humanize the case.

Thus a minor extrapolation of a fact not in the materials is permitted so long as it may be reasonably inferred from the case materials and is neutral to both sides. For example, a fair extrapolation would be background information such as the witness’s date of birth or place of birth. An unfair extrapolation is one that strengthens the case of the party attempting to extrapolate or which weakens the case of the other party.

A suggested procedure for dealing with this objection is as follows.

Dealing With an Unfair Extrapolation
When an opposing attorney objects on the basis of unfair extrapolation, the Presiding Judge should ask the questioning Attorney if the information sought is in the materials provided for the Tournament competition. If the Attorney says it is, he should be asked to point it out. If he can point it out, it is not unfair extrapolation and the objection should be overruled.

If the Attorney admits that the information is not in the materials provided, or if he cannot point it out, the Presiding Judge should then ask the questioning Attorney if the information sought is neutral to both sides. (Practice Pointer: If the Attorney is fighting to get the information in, it is probably not neutral to both sides or he/she wouldn’t be wasting his/her time.)

If the Attorney claims it is neutral to both sides, yet it does not involve something innocuous like a date or place of birth, then the Presiding Judge should sustain the objection since information that is neutral to both sides is not going to help a court decide a case.

If the Attorney admits that the information sought is not neutral to both sides, then the objection should be sustained as being unfair extrapolation.
H. Guidelines for Performance Rating

You are rating team performance, not the legal merits of the case presented. In deciding which team (Attorneys and Witnesses) has made the better overall presentation in the case you are judging, please use the following criteria. It is recommended that you use the “5–6” range as an indication of an average performance, and adjust higher or lower for stronger or weaker performances. **Rating must be on a whole point basis (partial points not allowed).**

<table>
<thead>
<tr>
<th>Points</th>
<th>Performance</th>
<th>Criteria for Rating Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–2</td>
<td>Not Effective (Poor)</td>
<td>Disorganized, unsure of self, illogical, uninformed, demonstrates lack of preparation and understanding of task, simply ineffective in communications.</td>
</tr>
<tr>
<td>3–4</td>
<td>Fair</td>
<td>Minimal performance and preparation; performance is passable but lacks depth in terms of knowledge of task and materials; communication lacks clarity and conviction.</td>
</tr>
<tr>
<td>5–6</td>
<td>Good (Average)</td>
<td>Good, but less than spectacular performance; has fundamental understanding of task and can perform outside the “script” but with less confidence that when using the “script”; grasps major aspects of the case but does not convey a mastery of the case; communications are clear and understandable but could be more persuasive; acceptable but uninspired performance.</td>
</tr>
<tr>
<td>7–8</td>
<td>Excellent</td>
<td>Presentation is fluent, persuasive, clear and understandable; organized materials and thoughts well and exhibits a mastery of the case and of the materials provided; presentation was both believable and skillful.</td>
</tr>
<tr>
<td>9–10</td>
<td>Outstanding</td>
<td>Thinks well on feet, is logical, keeps poise under duress; performance was resourceful, original and innovative; can sort out the essential from the non–essential and uses time effectively to accomplish major objectives; knows how to emphasize vital points of trial.</td>
</tr>
</tbody>
</table>

Judges should consider the following criteria when rating each of the following segments of the trial:

**Opening Statement**

In the opening statement, the attorney presented a clear description of their theory of the case, setting forth what their proofs expected to show and why the court should find in their favor.

**Direct Examination**

On direct examination of the witnesses, the attorney used non-leading, non-speculative and non-hearsay questions that brought out key information for their side of the case. The attorney exhibited a clear understanding of trial procedures and responded to objections appropriately.
Cross Examination

On the cross-examination of the witnesses, the attorney effectively impeached the witness or discredited the testimony. The attorney obtained favorable testimony although the other side called the witness. The attorney controlled the witness by asking good leading questions, demanding a “yes” or “no” answer where appropriate. The attorney exhibited a clear understanding of trial procedures and argued objections appropriately.

Witnesses

The witnesses were believable in their characterizations and convincing in their testimony. The witnesses were well prepared for answering the questions posed under direct examination. The witnesses responded well to questions posed under cross-examination.

Closing Argument

In the closing argument, the attorney effectively showed the reasons for their side prevailing and pointed out the flaws in the other side’s case. The attorney exhibited a clear understanding of the facts and the law. The attorney effectively responded to unexpected testimony or rulings.

Team Performance

Team Members were courteous, observed general courtroom decorum, and spoke clearly and distinctly. Team members worked together well. Team members had a coherent theory of the case. Team members exhibited a clear understanding of the facts, issues, and the law.
# I. Performance Rating Sheet

**Judge:** ________________________________

**Round:**  
- A.M. 1  
- A.M. 2  
- P.M. 1  
(circle one)

**Plaintiff:** Team Number __________  
**Defense:** Team Number __________

**Points:**  
- Poor (1-2)  
- Fair (3-4)  
- Average (5-6)  
- Good (7-8)  
- Outstanding (9-10)

(Please consult Performance Rating Guidelines for explanation of rating criteria)

<table>
<thead>
<tr>
<th></th>
<th>PROSECUTION</th>
<th>DEFENSE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Opening Statements:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Plaintiff First Witness</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td></td>
<td></td>
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<tr>
<td>Direct examination by attorney</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cross examination by attorney</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Witness’s Performance</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Plaintiff Second Witness</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct examination by attorney</td>
<td></td>
<td></td>
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<tr>
<td>Cross examination by attorney</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Witness’s Performance</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Plaintiff Third Witness</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct examination by attorney</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cross examination by attorney</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Witness’s Performance</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Defense First Witness</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td></td>
<td></td>
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<tr>
<td>Direct examination by attorney</td>
<td></td>
<td></td>
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<tr>
<td>Cross examination by attorney</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Witness’s Performance</td>
<td></td>
<td></td>
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<tr>
<td><strong>Defense Second Witness</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td></td>
<td></td>
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<tr>
<td>Direct examination by attorney</td>
<td></td>
<td></td>
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<tr>
<td>Cross examination by attorney</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Witness’s Performance</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Defense Third Witness</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td></td>
<td></td>
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<tr>
<td>Direct examination by attorney</td>
<td></td>
<td></td>
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<tr>
<td>Cross examination by attorney</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Witness’s Performance</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CLOSING STATEMENTS (and rebuttal, if any):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Overall team performance (award 1-10 points):</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL POINTS:**

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2013 Michigan High School Mock Trial Tournament CASE MATERIALS  Page 33
J. Timekeepers’ Instructions

1. **Materials.** Every timekeeper should have this Tournament Packet and should read it before the day of the competition.

2. **Orientation.** All timekeepers must attend the timekeepers’ orientation. Timekeepers should bring their own stopwatches if possible, but stopwatches will be available on the day of the tournament. Time will be provided to practice with the stopwatches during the orientation.

3. **Procedure Before Trial.** Timekeepers should then sit at the clerk’s desk in front of the bench. Remember, each trial will have two timekeepers (one from each team). If the clerk’s desk is not large enough for both timekeepers, the timekeepers should coordinate with the presiding judge to find a place to sit where the presiding judge can see the timekeepers during the trial.

4. **Procedure During Trial.** Timekeepers should meet with their panels of judges prior to the beginning of each trial. It is important that all parties understand their responsibilities during the trial. Timekeepers may inform the judges which team they represent, but may only refer to their team by team number or by the side of the case that they represent.

   Accurate timekeeping is very important. It is essential that timekeepers study the time limits (See Rule 12 and the Time Sheet prior to the trial.)

   Timekeepers are responsible for keeping track of the opposing team’s time. Timekeepers may track their own team’s time as well, but the opposing team’s time will be the official time.

5. **Procedure After Closing Arguments.** Timekeepers should give their copies of time sheets to the presiding judge and return to the gallery to await the judges’ comments with their team.
# K. Time Sheet

Courtroom # ________
A.M. - 1\textsuperscript{st} ______ A.M. - 2\textsuperscript{nd} ______ P.M. ______

Plaintiff – Team # ________
Defense - Team # ________

<table>
<thead>
<tr>
<th>Plaintiff</th>
<th>Time</th>
<th>Defense</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening Statement (max 5 min)</td>
<td></td>
<td>Opening Statement (max 5 min)</td>
<td></td>
</tr>
<tr>
<td>Give 1 min warning at 4 minutes</td>
<td></td>
<td>Give 1 min warning at 4 min</td>
<td></td>
</tr>
<tr>
<td>Plaintiff team has 25 min for this entire section, give one minute warning at 24 minutes</td>
<td>\textit{S} \textit{T} \textit{A} \textit{R} \textit{T}</td>
<td>Defense team has 20 min for this entire section, give one minute warning at 19 mins</td>
<td></td>
</tr>
<tr>
<td>1\textsuperscript{st} Witness Direct Exam</td>
<td></td>
<td>1\textsuperscript{st} Witness Cross Exam</td>
<td></td>
</tr>
<tr>
<td>1\textsuperscript{st} Witness Redirect (optional)</td>
<td></td>
<td>1\textsuperscript{st} Witness Re-cross (optional)</td>
<td></td>
</tr>
<tr>
<td>2\textsuperscript{nd} Witness Direct Exam</td>
<td></td>
<td>2\textsuperscript{nd} Witness Cross Exam</td>
<td></td>
</tr>
<tr>
<td>2\textsuperscript{nd} Witness Redirect (optional)</td>
<td></td>
<td>2\textsuperscript{nd} Witness Re-cross Exam</td>
<td></td>
</tr>
<tr>
<td>3\textsuperscript{rd} Witness Direct Exam</td>
<td></td>
<td>3\textsuperscript{rd} Witness Cross Exam</td>
<td></td>
</tr>
<tr>
<td>3\textsuperscript{rd} Witness Redirect (optional)</td>
<td></td>
<td>3\textsuperscript{rd} Witness Re-cross Exam</td>
<td></td>
</tr>
<tr>
<td>Plaintiff team has 20 min for this entire section, give one minute warning at 19 mins</td>
<td></td>
<td>Defense team has 25 min for this entire section, give one minute warning at 24 minutes</td>
<td>\textit{S} \textit{T} \textit{A} \textit{R} \textit{T}</td>
</tr>
<tr>
<td>1\textsuperscript{st} Witness Cross Exam</td>
<td></td>
<td>1\textsuperscript{st} Witness Direct Exam</td>
<td></td>
</tr>
<tr>
<td>1\textsuperscript{st} Witness Re-cross Exam</td>
<td></td>
<td>1\textsuperscript{st} Witness Redirect Exam</td>
<td></td>
</tr>
<tr>
<td>2\textsuperscript{nd} Witness Cross Exam</td>
<td></td>
<td>2\textsuperscript{nd} Witness Direct Exam</td>
<td></td>
</tr>
<tr>
<td>2\textsuperscript{nd} Witness Re-cross Exam</td>
<td></td>
<td>2\textsuperscript{nd} Witness Redirect Exam</td>
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<tr>
<td>3\textsuperscript{rd} Witness Cross Exam</td>
<td></td>
<td>3\textsuperscript{rd} Witness Direct Exam</td>
<td></td>
</tr>
<tr>
<td>3\textsuperscript{rd} Witness Re-cross Exam</td>
<td></td>
<td>3\textsuperscript{rd} Witness Redirect Exam</td>
<td></td>
</tr>
<tr>
<td>Each team is allowed 5 min for their closing arguments, Plaintiff is allowed to use part of the time to follow the Defense with a rebuttal.</td>
<td>\textit{S} \textit{T} \textit{A} \textit{R} \textit{T}</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Closing</td>
<td></td>
<td>Closing</td>
<td></td>
</tr>
<tr>
<td>Rebuttal</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
L. Court Officer Instructions

1. **Materials.** Every Court Officer should have this Tournament Packet and should read it before the day of the competition.

2. **Orientation.** All Court Officers must attend the Court Officers’ orientation.

3. **Procedure Before Trial.** Court Officers should check in with the judges in their assigned courtrooms to introduce themselves. Court Officers should then move from courtroom to courtroom to help competitors find their way and assist where needed.

4. **Procedure During Trial.** Court Officers should keep an eye on the time during trial. Each round is limited to two hours, and it is the Court Officer’s responsibility to keep the rounds moving on time. Court Officers may sit in on competition rounds as spectators.

5. **Procedure After Closing Arguments.** Court Officers should insure that all participants and observers adhere to items 7 through 9 of the Code of Proper Conduct.

   The Judges have 10 minutes to complete their Performance Rating Sheets. It is the Court Officer’s responsibility to enforce this time limit. If the teams must wait in the hall while the Judges are deliberating, the Court Officers should remind team members to not disturb other courtrooms with noise.

   When the Judges have completed their Performance Rating Sheets, the Court Officers will take all copies of the Performance Rating Sheets to Tournament Headquarters. The teams are not to be told their scores or the winner of the trial.

   After turning in the Performance Rating Sheets, the Court Officers will return to the courtroom and watch the clock. If the judges’ comments threaten to exceed the allotted 15-minute limit or delay the teams’ departure for their next round, or lunch, the Court Officers should firmly but politely tell the Judges that time has expired.
M. Dispute Form

MICHIGAN HIGH SCHOOL
MOCK TRIAL COMPETITION

(Please Print)

Round Number_________
Plaintiff Team Number_______ Defense Team Number_______

Number of Team Lodging Dispute___________

Grounds for Dispute:
________________________________________________________________________
________________________________________________________________________

Initials of Team Spokesperson: ________________

Decision of Presiding Judge (CIRCLE ONE) Hearing Granted Hearing Denied

If hearing granted, response of opposing team:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Initials of Opposing Team Spokesperson: _________________

Decision of presiding Judge (DO NOT ANNOUNCE)

___________A substantial Rules Violation has occurred (report to panel).
___________No substantial Rules Violation has occurred (do not report to panel).

Reasons (s) for presiding judge’s decision:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Signature of Presiding Judge
N. Basic Trial Techniques

The following trial tips are being provided to acquaint students with basic trial techniques as they prepare to be witnesses and attorneys in Mock Trials. These tips are adapted and modified in part from the Wisconsin High School Mock Trial Tournament. These tips are an introduction to the trial process and should be used to assist students understand that process. They are not intended to be a substitute for the advice of Teacher and Attorney Coaches.

I. General Suggestions

A. Always be courteous to witnesses, other attorneys and judges.

B. Rise when addressing the judge.

C. Never address remarks to opposing counsel.

D. While natural movement of attorneys during trial is encouraged, do not approach the bench, jury box or witness without permission from the judge.

E. Avoid making objections unless you are relatively sure that the judge will agree with you.

F. If the judge rules against you on a point or in the case, take the defeat gracefully and act cordially toward the judge and jury and the opposing team.

II. Attorneys

A. Opening Statements

1. Objective: to acquaint the judge and jury with the case and to outline what you are going to prove through witness testimony and the admission of evidence.

2. What should be included:

   a. Introduction of you and your client.


   c. The burden of proof (amount of evidence needed to prove a fact) and who has it.
3. Advice in presenting an opening statement

   a. Appear confidant.
   b. Use eye contact when speaking to the judge and jury.
   c. Use the future tense in describing what you will do, i.e. "The facts will show," or "Our witness testimony will prove that..."
   d. Outline the case from your point of view.
   e. Try not to read. Look up at the judge/jury occasionally.
   f. Learn your case thoroughly including the facts, law and burden of proof.
   g. Do not exaggerate or offer facts that will not be proven.
   h. Do not argue the law.

B. Direct Examination

1. Objective: to obtain information from favorable witnesses you call in order to prove the facts of your case, to present your witness to the greatest advantage, to establish your witness' credibility and to present enough evidence to get a favorable verdict.

2. What should be included:

   a. Isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information.
   b. Be sure all items you need to prove your case will be presented through your witness.
   c. Use clear, simple questions.
   d. Never ask a question to which you do not know the answer.
3. Advice in presenting

   a. Try to keep to the questions that you've practiced with your witnesses and ask a limited number.

   b. Be relaxed and clear in the presentation of your questions.

   c. Listen to the answers.

   d. Do not rush yourself or your witness so that the judge and jury cannot hear or understand the question or answer.

   e. Be sure to have all documents marked for identification before you refer to them at trial. Then refer to it by its name/number (i.e. Exhibit 1 or Exhibit A).

   f. Avoid leading questions. These are questions that suggest the answer desired by the questioning attorney to the witness and often only require a "yes" or "no" answer.

   g. Avoid complex and verbose questions.

   h. Avoid redundant, monotonous questioning.

   i. When your facts are in evidence, cease questioning.

C. Cross-examination

   1. Objective: to obtain favorable information from witnesses called by the opposing counsel, and if a witness has no testimony favorable to your case, to make that witness less believable.

   2. Some of the types of questions to ask:

a. Impeachment: These are questions that reflect on a witness' credibility by showing that s/he has given a contrary statement at another time. Counsel may impeach a witness by use of the witness statement. If counsel chooses to proceed in this manner because a witness testifies inconsistently with his statement, wait until cross-examination. First, show opposing counsel the passage in the statement and then, having obtained the Judge's permission to approach the witness, hand the witness the statement. Counsel should ask questions of that witness that establish the witness made the statement. Then the attorney can read aloud, or ask the witness to read aloud, the part of the statement the attorney claims is
inconsistent with the witness' testimony. The attorney may then
further question the witness about the inconsistency or leave the
matter for closing arguments.

b. Questions that indicate bias or prejudice or that the witness has a
personal interest in the outcome of the case (i.e. tenant testifying
against former landlord on trial for shoplifting who evicted tenant a
month earlier).

c. Questions that weaken the testimony of the witness by showing
that his or her opinion is questionable (i.e. a person with poor
eyesight claims to have observed all of the details of a fight that
took place over 50 yards away).

d. Admissions or other testimony that is helpful to your case.

3. Advice in Presenting

a. Anticipate each witness' testimony and write your questions
accordingly, but be ready to adapt your questions at trial depending
on the actual testimony elicited during direct exam.

b. In general, only ask leading questions.

c. Always listen to the witness' answer.

d. Avoid giving the witness an opportunity to re-emphasize the points
made against your case during direct exam.

e. Do not give the witness an opportunity to explain anything. Keep
to the "yes" or "no" answers whenever possible.

f. Do not harass or attempt to intimidate the witness or quarrel with
the witness.

D. Objections

1. Objections are a normal, natural part of any trial. Their purpose is to
present to the judge a rule of evidence that will bar an answer to the
question asked (or result in striking an answer from the record if already
given). In mock trials, they may also be used to bring a procedural
problem to the judge's attention, such as an unfair extrapolation or
continuing past the expiration of time.

2. If you are asking questions either on direct exam or cross-exam and an
attorney from the other side objects to your questions remember:
a. Do not panic, objections are normal.

b. Think about why you decided to ask the particular question in the first place (i.e. if on direct, is it a question that is relevant to proving your case? If on cross, is it asked to impeach the witness by showing bias?)

3. If you are the objecting party remember:

   a. If you are going to object, try to do so before the witness answers the question.

   b. Have the specific objection in mind when you do so. For example, you may say, "Objection Your Honor, the witness is being asked to provide hearsay testimony."

   c. Be prepared to explain to the judge why the question is objectionable and why the witness cannot or should not be permitted to answer it.

E. Redirect/Recross (Optional)

   1. Objective: to rehabilitate a witness or repair damage done by your opponent.

   2. Advice

      a. If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask more questions.

      b. Try to keep questions at a minimum and ask only those necessary to save the witness' truth-telling image in the eyes of the judge and jury.

      c. Limit questions to issues raised on cross-examination.

F. Closing Arguments

   1. Objective: to provide a clear and persuasive summary of the evidence you presented to prove the case, along with the weaknesses of the other side's case, and to argue for your position.

   2. What should be included:
a. This is your opportunity to put the pieces together for the jury and judge.

b. Isolate the issues and describe briefly how your presentation addresses these issues.

c. Review the witnesses' testimony and physical evidence. Outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses (i.e. bias, credibility or self-interest). Indicate why the physical evidence admitted into evidence supports your case or weakens your opponent's case. You may use these exhibits during your argument.

d. This is your opportunity to be an advocate. Forcefully argue your point of view. Argue your case by stating how the law applies to the facts as you have proven them.

e. This is also an opportunity to correct any misunderstandings that the judge or jury may have.

f. Remind the judge and jury of the required burden of proof. If you have the burden, tell how you have met it. If you don't, tell how the other side failed to meet its burden.

g. Try not to read. Maintain eye contact or at least look up occasionally.

h. Be careful to adapt your closing argument at the end of the trial to reflect what the witnesses actually said and what the physical evidence actually showed.

i. Avoid using ridicule. Avoid illogical or confusing arguments.

3. Plaintiff may reserve time for rebuttal. This is limited to the scope of Defense's closing argument.

   a. Listen to Defense's argument carefully.

   b. Pick one or two main points to rebut that can be summarized in several sentences.

III. Witnesses

   A. General Suggestions

      1. Familiarize yourself with your witness statement.
2. If you are going to be testifying about records or documents, familiarize yourself with them before coming to trial.

3. Listen carefully to the questions. Before you answer, make sure you understood what has been asked. If you don't understand, ask that the question be repeated or clarified.

4. When answering questions, speak clearly, don't mumble or mutter.

5. If the judge interrupts your answer or an attorney objects while you are answering, stop talking. If an attorney objects to a question you are asked, do not begin your answer until the judge tells you to do so.

B. Direct Examination

1. Advice in preparing and presenting
   a. Learn the case thoroughly, especially your witness statement.
   b. Review your testimony with your attorney. Know the questions that your attorney will ask and prepare clear and convincing answers that contain the information the attorney is trying to get you to say.
   c. Be relaxed as possible on the witness stand.
   d. Make sure that if you paraphrase or put any of the witness statement in your own words, it is not inconsistent with or a material departure from the case materials.

C. Cross-examination

1. Advice in preparing or presenting
   a. Think about all the possible weaknesses, inconsistencies or problems in your statement and be prepared to answer questions about them as best as you can.
   b. Practice with your attorney, asking him/her to act as opposing counsel.
   c. Be as relaxed and in control as possible.
   d. Listen to the question carefully and make sure you understand what is being asked before you answer it. If you don't understand
the question ask for it to be clarified. If you didn't hear the question, ask that it be repeated.

e. Do not panic if the judge or an attorney asks you a question you haven't rehearsed. Think about your statement and the case materials and answer the question when you are ready.

f. Be sure your testimony is never inconsistent with, nor a material departure from the case materials.
O. Case Materials

Disclaimer: This case and the materials herein have been adapted from the case drafted by the Nebraska State Bar Foundation for their 2011-2012 High School Mock Trial Tournament. The witnesses statements are substantially similar to the witness statements included in the original case materials and are not based on actual people or events. The witnesses and situations depicted herein are not intended, in any way, to characterize anyone, past or present, connected with the MHSMTT.
IN THE CIRCUIT COURT OF NORTHERN COUNTY, SUPERIOR

PHOENIX O. PERDANTE

   PLAINTIFF,                        Case No: 12-1963-CZ

VS.                                          Hon. Ima J. Udge

DALTON ACADEMY

   DEFENDANT.

_____________________________________________________________________________

COMPLAINT

NOW COMES PLAINTIFF, Phoenix O. Perdante, who states as follows:

1. Plaintiff is an individual residing in Northern County, Superior.

2. Defendant is a non-profit corporation organized under the laws of the State of Superior and with its principal place of business in Northern County, Superior.

3. At all relevant times, including on March 24, 2012, Defendant sponsored, maintained, and controlled an online newspaper called “The Wolverine,” written and edited by students and supervised by staff employed by Defendant.

4. On or about March 24, 2012, an article was published in The Wolverine making the following false, defamatory, and malicious statement about Plaintiff: that Plaintiff cheated during the 2012 Superior High School Mock Trial Tournament State Finals.

5. Plaintiff timely requested a retraction of the statement, but Defendant failed to retract said statement.

6. The statement made by Defendant caused damages to Plaintiff, specifically loss of a full scholarship for tuition, books, room, and board at Northern University, having a value exceeding $80,000.00.
WHEREFORE, Plaintiff requests that the Court enter a judgment against Defendant, and award Plaintiff damages consistent with the judgment, in the form of economic damages, exemplary damages, and attorney fees, and all other relief allowed under the law.

PHOENIX O. PERDANTE, Plaintiff

by: /s JF

P13563
Attorney for Plaintiff
IN THE CIRCUIT COURT OF NORTHERN COUNTY, SUPERIOR

PHOENIX O. PERDANTE

PLAINTIFF, Case No: 12-1963-CZ

VS. Hon. Ima J. Udge

DALTON ACADEMY

DEFENDANT.

________________________________________________________________

ANSWER

Defendant Dalton Academy hereby answers Plaintiff’s Complaint as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admit that on or about March 24, 2012, an article was published in The Wolverine on-line newspaper including the statement that Plaintiff cheated during the Superior High School Mock Trial Tournament State Finals; Defendant denies that the statement was false, defamatory, or malicious.

5. Denied.

6. Denied.

AFFIRMATIVE DEFENSES

1. Any statements made regarding Plaintiff were truthful, were not defamatory, and were not made with malice.

2. Any statements made regarding Plaintiff or the Superior High School Mock Trial Tournament were mere opinions.
3. Any statements made regarding Plaintiff were made with qualified immunity and were not made with actual malice.

3. Any loss to Plaintiff of scholarship or other education-related funds was not proximately caused by publication of The Wolverine on-line newspaper.

Defendant prays that Plaintiff’s Complaint be dismissed with prejudice, at Plaintiff’s cost.

DALTON ACADEMY, Defendant

by: /s JG

P40922
Attorney for Defendant
IN THE CIRCUIT COURT OF NORTHERN COUNTY, SUPERIOR

PHOENIX O. PERDANTE

PLAINTIFF,

Case No: 12-1963-CZ

VS.

Hon. Ima J. Udge

DALTON ACADEMY

DEFENDANT.

WITNESS AND EXHIBIT LISTS

Witnesses for Plaintiff
Phoenix O. Perdante
Sterling Morton
Charlie Connor

Witnesses for the Defense
Sylvia/Sal Vester
M.J. Hencken
Jo/Joe Serpico

Exhibits

1. Newspaper Article – Verdict: Cheaters Really Do Win Sometimes
2. One Way Scholarship Foundation Award Letter
3. One Way Scholarship – Morals Clause
4. One Way Scholarship Foundation Revocation Letter
5. Mock Trial Judges Score Sheets
   a. Performance Judge’s Score Sheet (a)
   b. Performance Judge’s Score Sheet (b)
   c. Presiding Judge’s Score Sheet
6. Email from Phoenix O. Perdante to M.J. Hencken
7. Diagram of the Courtroom
8. Photographs of the Courtroom
9. Undergraduate Cost Estimator
**Stipulations and Notices**

1. All exhibits included in the case are authentic and accurate in all respects. No objections to the authenticity of the exhibits will be entertained.

2. The requirements for venue have been met.

3. Whenever a rule of evidence requires that reasonable notice be given, it has been given.

4. Each party is required to accept these facts as true for purposes of this trial. Stipulated facts may be argued to the fact finder.

5. Dalton Academy is a private school.

6. M.J. Henck and Sylvia/Sal Vester were acting in their respective official capacities as student report and teacher at all times relevant to this matter. The Parties stipulate that their actions will be attributed to Defendant for purposes of liability.

7. The parties stipulate that the cell phone records for Phoenix Perdante’s phone calls and text messages at all relevant times are not available.

8. Exhibits 8(a) and 8(b) fairly and accurately depict the courtroom on Wednesday, March 23, 2012.

9. The Superior High School Mock Trial Tournament rule regarding communication between coaches and students during the competition reads as follows:

**Ban on Coaching During Trial**

a. Once the trial begins no coaching is permitted by anyone for the duration of the trial. Student attorneys may consult with one another and with their witnesses.

b. To avoid even the appearance of impropriety, the attorneys trying the case may not engage in tournament-related conversation with coaches or observers until after closing arguments.

c. Any team member (including coaches) who observes any violation of this rule must report it immediately to the presiding judge. The judge must order the clock stopped and inquire into the circumstances of the accusation. Where a violation is found, the judges must deduct 10 points from a team’s total score on the scoring summary sheet.

d. These rules on coaching during trial remain in force during any emergency recess that may occur.
JURY INSTRUCTIONS

Students and Teachers – These jury instructions are provided for your educational benefit. The judges will not/should not recite them aloud at the trial. You are allowed to use and refer to these throughout the trial where appropriate.

INSTRUCTION NUMBER 1

It now becomes my duty to instruct you in the law. All questions of fact are to be decided by you, the jury, and to these facts you will apply the law given to you in all these instructions, even if you believe the law should be otherwise.

No attempt has been made to embody all the law applicable to this case in any one instruction. Therefore, each instruction should be considered in light of all the others.

In determining any questions of fact presented in this case, you should be governed solely by the evidence introduced before you. You should not indulge in speculations, conjectures, or inferences not supported by the evidence. You should not consider any evidence that has been stricken from the record. Each of you may apply to the subject before you that general knowledge that anyone may be presumed to have; yet, if any of you are personally acquainted with any material or particular fact not supported by the evidence, you should not consider your personal knowledge of such fact or mention it to your fellow jurors.

You will allow no sympathy or prejudice to influence you in arriving at your verdict. The law demands of you a just verdict, uninfluenced by sympathy or prejudice or any consideration outside the evidence and the law as given to you in these instructions.

You must not construe any statements, actions, or rulings of the court in the trial of this case, nor any of the inflections of the voice in reading these instructions as reflecting an opinion of the court as to how this case should be decided.

The law does not permit me to comment on the evidence, and I have not intentionally done so. If it appears to you that I have so commented, during either the trial or the giving of these instructions, you must disregard such comment entirely.

The attorneys for Plaintiff and Defendant have a duty to represent the interests of Plaintiff and Defendant respectively. In arguing their case, attorneys may draw legitimate deductions and inferences from the evidence. However, the argument or remarks of an attorney are not evidence, and if an attorney has made any statement of fact that is not supported by the evidence, you should disregard it.

INSTRUCTION NUMBER 2

The evidence from which you are to find the facts consists of the following:

(1) The testimony of the witnesses;
(2) Documents and other things received as exhibits; and
(3) Any facts that have been judicially noticed—that is, facts that I say you must accept as true, even without other evidence.

The following things are not evidence:

(1) Statements, arguments, and questions of the attorneys for the parties in this case;
(2) Objections to questions;
(3) Any testimony I have told you to disregard; and
(4) Anything you may have seen or heard about this case outside the courtroom.

INSTRUCTION NUMBER 3

I. PLAINTIFFS CLAIMS

a. ISSUES

This case involves a claim of defamation, specifically, a claim of libel. Libel is a statement
(1) of and concerning the Plaintiff;
(2) that is false in some material respect;
(3) is communicated to a third party by writing; and
(4) has a tendency to harm a person’s reputation.

Plaintiff alleges that on or about March 23, 2012, Defendant made certain defamatory statements about Plaintiff in Defendant’s online newspaper. Plaintiff further claims that s/he was injured as a result of these statements and seeks a judgment against Defendant for his/her damages. Defendant admits that the statements were contained in the news article but denies that such statements are defamatory, and further alleges that the statements were truthful and protected by privilege.

Throughout these instructions you will hear me refer to “Defendant.” By “Defendant,” I mean Defendant Dalton Academy and its agents, including Sylvia/Sal Vester and M.J. Hencken. Even though Mr./Ms. Vester and Mr./Ms. Hencken are not parties to this matter, their actions must be attributed to Defendant Dalton Academy.

b. BURDEN OF PROOF

Before Plaintiff can recover against Defendant on his claim of defamation, Plaintiff must prove, by a preponderance of the evidence, each and all of the following:

1. That Defendant made the statement complained of to a third person;
2. That the statement was made by writing;
3. That the statement was of and concerning the Plaintiff;
4. That the statement was false in some material respect;
5. That the statement was made intentionally or negligently; and
6. That the statement was the proximate cause of damages to Plaintiff
On the other hand, if Plaintiff has established the above propositions by a preponderance of the evidence, then you must consider Defendant’s defense.

II. DEFENDANT’S DEFENSE

a. ISSUES

Defendant’s defense is that the alleged statement was truthful. Truth is a complete defense to defamation. If Defendant can demonstrate that the statement he/she made about Plaintiff was true, those statements cannot be defamatory.

The Defendant also argues that it was protected by a privilege when it made the alleged statement because the Defendant—through its agent—was acting as a news reporter. The Court has found that, as a matter of law, this is true. Nevertheless, such a privilege is qualified, and the Defendant may only rely on this privilege if Defendant’s agent did not act with Actual Malice.

b. BURDEN OF PROOF

In connection with the defense asserted by Defendant, the burden is on Defendant to prove by a preponderance of the evidence that the statement was truthful.

III. EFFECT OF FINDINGS

If you find that Defendant has established a defense of truthfulness by a preponderance of the evidence, then your verdict will be for Defendant. However, if you find that Defendant has failed to establish a defense of truthfulness by a preponderance of the evidence, then you must consider whether the said statement was made with actual malice. If you find that the Defendant did act with actual malice, then your verdict will be for Plaintiff. If you find that the Defendant did not act with actual malice, then your verdict will be for Defendant.

Actual malice may not be inferred or presumed solely from the publication of the statement. The Defendant acted with Actual Malice if the Defendant wrote the said statement: (1) with knowledge that the statement was false; or (2) with reckless disregard for whether the statement was true or false.

Motive is not an element in this case; that is, why the Defendant made the said statement is not a question that you must answer. Nevertheless, you may consider motive when determining whether or not the Defendant acted intentionally and whether or not Defendant acted with reckless disregard for the truth.

INSTRUCTION NUMBER 4

Any party who has the burden of proving a claim must do so by a preponderance of the evidence. This means evidence sufficient to make a claim more likely true than not true. It does not necessarily mean a greater number of witnesses or exhibits. Any party is entitled to the benefit of any evidence tending to establish a claim, even though such evidence was introduced by
another. If the evidence upon a claim is evenly balanced or if it weighs in favor of the other party, then the burden of proof has not been met.

**INSTRUCTION NUMBER 5**

"Publication" of defamatory matter is its communication intentionally or by a negligent act to one or more other persons than the person defamed.

**INSTRUCTION NUMBER 7**

Negligence is doing something that a reasonable, careful person would not do under similar circumstances, or failing to do something that a reasonable careful person would do under similar circumstances.

**INSTRUCTION NUMBER 8**

The communication that is claimed to be defamatory must be viewed in the context of the entire publication of which the communication is a part. Moreover, the circumstances under which the publication was made and the character of the audience and its relationship to the subject of the publication must be taken into consideration, as well as the effect that the publication complained of may reasonably have had upon such audience.

**INSTRUCTION NUMBER 9**

Proximate cause means that the negligent conduct must have been a cause of plaintiff’s injury, and second, that Plaintiff’s injury must have been of a type that is a natural and probable result of the negligent conduct.

**INSTRUCTION NUMBER 10**

There are two kinds of evidence, direct and circumstantial.

Direct evidence is either physical evidence of a fact or testimony by someone who has first-hand knowledge of a fact by means of his or her senses. Circumstantial evidence is evidence of a fact from which another fact logically can be inferred.

A fact may be proved by direct evidence alone; by circumstantial evidence alone; or by a combination of both.

**INSTRUCTION NUMBER 11**

If you decide for Plaintiff, then you should award Plaintiff any economic damages that Plaintiff has proven. Economic damages are any tangible loss suffered by Plaintiff as a result of Defendant’s statement, such as lost wages, benefits, income, or profits. You should also award Plaintiff any attorney fees incurred by Plaintiff as a result of Defendant’s statement.
If you find that Plaintiff is entitled to economic damages, you may then consider an award of exemplary damages. Exemplary damages may not be awarded to punish or to make an example of Defendant, but may be awarded to compensate Plaintiff for any incremental or increased injury to Plaintiff’s feelings that you find were caused by defendant’s bad faith or ill will.

To recover exemplary damages, Plaintiff has the burden of proving the following:

1. That Defendant published the statements complained of with bad faith or ill will;
2. That before starting this lawsuit, plaintiff gave notice to Defendant to publish a retraction and allowed Defendant a reasonable time to do so;
3. That plaintiff incurred some incremental or increased injury to feelings attributable to his/her sense of indignation and outrage; and
4. That any such incremental or increased injury to feelings was caused by Defendant’s bad faith or ill will.

You may consider the publication, lack of publication, adequacy, or inadequacy of a retraction or correction as bearing on whether Defendant acted in good or bad faith.

If you find that Plaintiff has proven all of these elements, you must determine the amount of money that reasonably, fairly, and adequately compensates him/her.

In determining compensatory damages in a case such as this, no method of exact computation can be devised, and the amount of the recovery must generally be left to your sound discretion.

**INSTRUCTION NUMBER 12**

The law forbids you to return a verdict determined by chance. You may not, for instance, agree in advance that each juror will state an amount to be awarded in damages, that all of those amounts will be added together, that the total will be divided by the number of jurors, and that the result will be returned as the jury’s verdict. A verdict determined by chance is invalid.

**INSTRUCTION NUMBER 13**

You are the sole judges of the credibility of the witnesses and the weight to be given to their testimony. In determining this, you may consider the following:

1. The conduct and demeanor of the witness while testifying;
2. The sources of information, including, the opportunity for seeing or knowing the things about which the witness testified;
3. The ability of the witness to remember and to communicate accurately;
4. The reasonableness or unreasonableness of the testimony of the witness;
5. The self-interest or lack of self-interest of the witness in the result of the case;
(6) The apparent fairness or bias of the witness, or the witness’ relationship to the parties;

(7) Any previous statement or conduct of the witness that is consistent or inconsistent with testimony of the witness at this trial; and

(8) Any other evidence that affects the credibility of the witness or that tends to support or contradict the testimony of the witness.

INSTRUCTION NUMBER 14

This case is now ready to be submitted to you for your consideration. As I said to you at the beginning of the trial, it is your duty to determine what the facts are. You must approach this task with open minds—consulting with one another, freely and honestly exchanging your views concerning this case, and respectfully considering the views of the other jurors. Remember, you are neither partisans nor advocates. Do not hesitate to re-examine your own views and to change your minds, if reason and logic so dictate.
IN THE CIRCUIT COURT OF NORTHERN COUNTY, SUPERIOR

PHOENIX O. PERDANTE

PLAINTIFF, Case No: 12-1963-CZ

VS. Hon. Ima J. Udge

DALTON ACADEMY

DEFENDANT.

Witness Statement of Phoenix Perdante

This whole thing is really, really confusing to me. First, I go through the hard of work of applying for the scholarship from the "One Way Scholarship Foundation" because, I thought, “hey, I like trucks and all and this is a trucking company, plus, bonus, they are willing to give me money.” See, my grandpa used to be a trucker until he couldn’t sit that long anymore, so then he retired, but he always talked about his job and how he liked it and all (except for some medical condition he said he got from sitting around so much), so I thought I could make my grandpa proud. And then, when I actually got the scholarship, I was really proud and so was my grandpa. He didn’t actually know anyone from One Way, but it was nice anyway. The “business” and all. One Way must have really liked my essay “Morality and More” because they picked me! I thought it was really clever of me to use part of the word “morality” and change it to “more.” I thought I’d explain that to you, in case you didn’t get it.

So anyway, I was proud of myself. And then, out comes that stupid article from that stupid reporter person, and then, all of a sudden, One Way pulls the scholarship. See exhibits #2, #3 and #4. Not very Christian of them, if you ask me. Not that I’m all that religious or anything, but if One Way wanted to think that I was, let them. I needed that scholarship. So anyway, they pretty much called me “a bad apple” like what the witch in "Snow White“ gives to
the girl, Snow White, and then she goes into a really deep sleep. You know. Anyway, so I
didn’t die or go into a really deep sleep or anything, but I wish I could go into a really deep sleep
because this is just depressing—and confusing.

Okay, I guess I’d better start at the very beginning because that’s a very good place to
start. I was born to Marian and Joey Perdante here in town in the Northern County Hospital, and
I’m their firstborn child. Right now, I live at home and commute to Northern University. My
address is 8299 N. Crane Street. My younger siblings are Matthew, Naomi, Mark, Ruth, and
Luke—you might know them. They are great athletes, so scholarships will probably be thrown
at them. Me—not so likely. I’m more the quiet, bookish, intellectual type. In school, you know,
you’ve got the freshmen, ROTC guys, preps, jocks, nerds, girls who eat their feelings, girls who
don’t eat anything, desperate wannabes, burnouts, band geeks, show choir divas, plastics. Me—I
just kind of keep to myself and read and study. I graduated from Alexander Hamilton High
School this May, 2012, in the top 25% of my class, which is pretty good considering I didn’t
falsely bolster my grades with easy “A” classes like Band and Choir. Sound like anyone you
know? I know, right?

Anyway, I really needed that scholarship, and it was stolen from me. I was the cheated,
not the cheater. I was cheated by those Dalton dogs: that so-called “reporter,” Hencken, and that
mean coach, Vester. There are two kinds of evil people in this world: those who do evil stuff;
and those who see evil stuff being done and don’t do anything about it. Hencken and Vester are
both kinds of evil. Everyone knows that—their reputations precede or succeed them or
whatever. I’ll tell you more about that later.

So anyway, I’ve been in Mock Trial since my sophomore year, and sure, I stunk those
eyears. I got the boring parts—that witness who didn’t have much to say or add to the story.
Just the easy, to-the-point, direct examination. Then Coach Morton helped me to really find my
groove. S/he helped me remember things and work on my presentation. When my Mock Trial team picked me to do the closing argument, I really worked hard to not let them down. And as you know, practice makes perfect, and personally, I think I did pretty darn good. So we’re at the state finals, and I’m feeling pretty good about things, and then it hits me—my allergies. I’m allergic to dust, corn pollen, cat hair, mold, and something the doctors haven’t been able to identify. Anyway, something in those dusty, old courtrooms or the people around really made my allergies flare up.

So my eyes were watering, my nose was running, and I was getting worried. Coach Morton asked me what was up because s/he saw me blowing my nose a lot. I told him/her about my allergies and that I was feeling lousy. That was right before the second round. I scrounged up some allergy medicine I found in my coat pocket, and by the middle of the third round, I was feeling much better. A combination of the allergy meds and adrenaline; I always do better when I’m under pressure. So it kind of ticked me off when Coach Morton texted something to me during cross exam. My phone was in my lap and when I felt it vibrate; I looked down and saw who texted me. I didn’t see what the text said, but I was mad that my concentration was interrupted, so I glared back at Coach Morton, like “what?” Really, I didn’t need or want a babysitter.

See, me and my teammates already talked during a recess about which of the two closing arguments we had prepared would be used. Because that snooty, snotty team of Jester’s, oh sorry, I mean Vester’s, didn’t do such a great job during their re-direct of Officer Nelson, we all decided I would do a killer closing, talking about witch hunts and the crappy job the cops did and how the burden of proof beyond a reasonable doubt has not been met and how our client, Toakliss, the citizen accused, is NOT guilty. Sorry for that run-on sentence, but I had that puppy memorized, and I did a great job—if I do say so myself. I don’t have a fat head, though, because
it was my team that won. And we wouldn’t have had a chance without the expert guidance and training of Coach Morton. I’m sorry that I threw him/her that dirty look, but in the heat of battle (mentally with the trial and physically with my stupid allergies), I felt like Thor battling the Frost Giants and Volstag interrupting, asking “when are we going to eat?” Jeez. Arg. Anyway, we won! Fair and square. And we were all really happy. We all went out to eat that night to celebrate, and when I got home, it was late and I went straight to bed. Imagine my surprise when a friend texted me to tell me I was being called a cheater by that so-called reporter, Hencken, in their stupid online “newspaper.” That is SUCH a lie! That is just word vomit, and it isn’t the first time that they spewed out a load of it. Everybody knows about that time last year when Hencken assumed (and you know what happens when you do that) that something illegal was going on with Dalton’s show choir, and that was just flat out wrong. Some of my friends from Dalton told me about the whole thing. Hencken has a bad reputation for blowing things way out of proportion or, even worse, making things up out of thin air. Dishonest, life-ruiner if you ask me. At least in the show choir case Hencken had the guts to print a retraction. I didn’t ever get one, even though I demanded one right away. Exhibit #6 is a true and accurate copy of the email I sent to Hencken.

Maybe Hencken was mad and retaliated because I didn’t reply to their dumb Facebook message. Not that I saw it until the next day, after I heard about the slanderous article, but even if I would have, I wouldn’t ever reply to “Stenken” Hencken. Sending me a message like one of my friends; “Frenemy” is more like it. Asking me to “produce phone records?” What the heck is that about? My parents pay for my phone bill, that’s the only record I knew about. My lawyer told me later about trying to get phone records, but they were already gone—just like my scholarship. I have been cheated out of the scholarship I won fair and square. Hencken and Vester need to pay for their lies, and they need to pay me. I’m the victim here.
WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

Phoenix O. Perdante

SIGNED AND SWORN to before me on this 9th day of July, 2012.

Stephanie Egger Gooch, Notary Public
My Commission Expires: December 31, 2012
IN THE CIRCUIT COURT OF NORTHERN COUNTY, SUPERIOR

PHOENIX O. PERDANTE

PLAINTIFF,                    Case No: 12-1963-CZ

VS.                           Hon. Ima J. Udge

DALTON ACADEMY

DEFENDANT.

Witness Statement of Sterling Morton

Hello, my name is Sterling Morton. I live at 1735 New York Avenue in Northern, Superior. I’m married to my high-school sweetheart, Robin. S/he is just the best! We have twin boys, Dallas and Dakota, who are three years old. They keep us on the run! And now, we are expecting a little girl in October. I think we’ll name her either Darby or Daveen. We’ll see.

We have a brown and white Beagle named Coco. She is great with the kids. Robin and I are active and enjoy hiking, biking, mixed martial arts, and watching the Food Network—especially, Guy Fieri’s Diners, Drive-ins and Dives. I heard Guy will be in Northern to sample some food at Billy’s Diner. I’d love to be there when Guy is there filming!

I am a civics teacher at Alexander Hamilton High School (AHHS). For two years now I have also been the faculty sponsor for the AHHS Mock Trial Program. It has been a privilege to work with some of the best and brightest students at Alexander Hamilton High School. I also teach an A.P. course in ethics.

I received my B.S. in American Government from Antioch University in Washington, D.C., with a minor in philosophy in 2005. I earned a Masters degree in Educational Management from Washburn University in 2008. At Washburn, I also took the necessary course
work to obtain a teaching certificate, which transferred to Superior. This means that I am a
certified Superior teacher.

Although I am relatively new to the Mock Trial program here, I have diligently studied
the Rules and believe that I have followed the rules to the letter. I am no deontologist, but I am
careful. I also know that Phoenix Perdante did nothing wrong. S/he did not cheat in round three
of the state finals. It is a shame that the One Way Trucking Corporation has chosen to go the
wrong way in this matter.

On Wednesday, March 23, 2012, we were in round three of the state finals, competing
against Dalton Academy. Phoenix was not feeling well. In fact, I placed a box of tissues on the
table so s/he could reach them. It is true that I texted Phoenix to ask how s/he was feeling. S/he
did not reply. I made no comment about the mock trial or his/her cross examination whatsoever
in my text message. After I sent the text, s/he turned and looked at me but I did not see him/her
open her/his phone. In fact, I do not know if s/he even had her telephone with him/her at the

After the competition, I deleted the text. My duty to protect Phoenix’s health was and is
greater than my duty to prevent the appearance of impropriety, although there was really no basis
for a complaint in the first place.

It is ridiculous to believe that I would help Phoenix cheat. We were winning anyway.

Think about it. Even if I had helped Phoenix rise from the ashes to deliver her/his clever and
insightful closing (which I did not), that alone could not affect the outcome of the competition.

Consequently, there was no incentive for me to violate the rules in this manner. Moreover, it is
hypocritical of the One Way Foundation to punish Phoenix by revoking her/his scholarship.

Although this story is not true in the first place, if it were, it might be reasonable to punish me
somehow, but there is no reason whatsoever to believe that Phoenix himself/herself cheated.
This is the third year for Phoenix on the Mock Trial team. Last year, s/he was shy and a very weak performer. S/he was uncomfortable working without note cards. This year, we worked a lot on helping her/him to develop mnemonics so that s/he could think a bit longer before speaking. Those seconds seem to have really helped. And of course, s/he has another year of experience in the competition. S/he earned the right to do our closing argument and I think s/he is terrific. We developed alternative closing arguments for each party depending on what theory the opposing team used. We were ready for anything. During the break, I did not speak with any of the team members; however, I knew they had chosen wisely in using the closing argument Phoenix made. S/he really hit the nail on the head, but the win was a team victory.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

Sterling Morton

SIGNED AND SWORN to before me on this 9th day of July, 2012.

Stephanie Egger Gooch, Notary Public

My Commission Expires: December 31, 2012
IN THE CIRCUIT COURT OF NORTHERN COUNTY, SUPERIOR

PHOENIX O. PERDANTE

PLAINTIFF, Case No: 12-1963-CZ

VS. Hon. Ima J. Udge

DALTON ACADEMY

DEFENDANT.

Witness Statement of Charlie Connor

My name is Charlie Connor. I am the President of One Way Trucking, LLC, and I am the Director of the One Way Scholarship Foundation. Pat (my husband/wife) and I live at 2801 N. 78th Boulevard in Northern. We have been married for 30 years. Our kids, Rachel, Sam, Aaron, and Ross, are all grown and out of the house. We do have a chocolate brown Doberman named Souka, who scares off any unwanted visitors. Souka sometimes goes with me to work.

In our spare time, we enjoy playing Bunco, gardening, tennis, traveling, and playing the Bonehead board game. We are really good in the Boneheaded People category of that game; you’ll crack up if you play this. Oh, and we are planning a trip to New Zealand in 2013.

One Way Trucking, LLC, has been in business since 1952. That year, my parents, Robert Connor and Nancy Connor, started the operation with just one truck. They began by hauling livestock around the state. Over time, they added more trucks, and now we have over 600 trucks on the road at given time, hauling anything from livestock to windmills.

After my father died in 2001, my mother set up the One Way Scholarship Foundation in his honor. It was her vision to have the Foundation award three full-ride scholarships to deserving Christian students at Northern University. Mom used Dad’s life insurance money to
set up and finance the foundation. However, with rising tuition costs and after the recent stock market crash, we have had to use donations from the trucking business to fund the scholarships.

Candidates for the scholarships must meet rigid standards, and their applications are closely scrutinized. This is because, in one sense, the recipients are representatives of One Way Trucking. That is why we have a morals clause in both our applications and in the scholarship award document. The candidates understand in advance that they must be of good moral character, obey the law, and not get mixed up in anything that will embarrass the Foundation or the trucking firm. The One Way Scholarship Foundation comes by its funding too hard to have its reputation sullied by an errant scholarship recipient.

In recent years, the rising cost of fuel has taken a serious bite out of the bottom line at One Way Trucking, LLC. It has gotten so bad, that in the last year, each of the family members has been asked to personally donate to the foundation to fully fund the scholarships.

That is why I personally do periodic internet searches. I not only check on our applicants, but also on our scholarship holders. That is how I discovered the article on the Dalton Academy’s website that exposed Phoenix O. Perdante as a cheater in the Superior High School Mock Trial Tournament.

I was very disappointed when I saw the article. I immediately notified Phoenix that s/he had violated the morals clause of the scholarship and that his/her scholarship was revoked. One Way Trucking, LLC, and the Foundation simply cannot be associated with any sort of controversial recipient. Our reputation is our most important asset. All of the good that we have done over the years with our scholarship program can be wiped out with one scandal by one bad apple.

WITNESS ADDENDUM
I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

Charlie Connor

SIGNED AND SWORN to before me on this 9th day of July, 2012.

Stephanie Egger Gooch, Notary Public
My Commission Expires: December 31, 2012
IN THE CIRCUIT COURT OF NORTHERN COUNTY, SUPERIOR

PHOENIX O. PERDANTE

PLAINTIFF, Case No: 12-1963-CZ

VS. Hon. Ima J. Udge

DALTON ACADEMY

DEFENDANT.

Witness Statement of Sylvia/Sal Vester

I am the greatest faculty sponsor of Mock Trial of all time. That’s not just the title of my autobiography, which is due out this spring, it’s the truth. I am the six-time repeating champion of the state tournament and the only sponsor in Superior to ever win Nationals—and I’ve done that three times. Well, sure, the students may have had something to do with it, but let’s be honest, they couldn’t do anything without me. When I first came to Dalton Academy, it was after quite a bidding war between several schools. I negotiated the best deal, including my own assistant to boss around and an endless supply of Diet Mountain Dew and cashews.

Well, I was the six-time defending champion, until I was cheated out of my seventh straight championship by Alexander Hamilton High School. There’s no other way about it; they cheated to beat me—they had to. No one beats me, especially Alexander Hamilton High School. They are one of those most pathetic teams in the history of Mock Trial—particularly Phoenix. Pathetic. Once I saw the pairing for the third round competition, I started making flight and hotel reservations for Nationals.

I had scouted Alexander Hamilton High School by talking to my assistant, Della Lane. She told me that Phoenix was the weakest performer. She told me Phoenix easily gets flustered with objections, can’t do a closing without staring at his/her notes, and can’t effectively respond
to the other team’s argument in redirect or in closing. Phoenix is a real deer in the headlights according to Della.

I have to admit that I was on a heightened alert on this round because my students’ e-mail accounts were hacked a few weeks ago. We have the whole team set up on an e-mail joint account so that we can share practice schedules, nutrition supplements, and workout schedules, as well as information and strategy about all things Mock Trial. All signs pointed to Alexander Hamilton High School. One of my kids is a real computer geek—Tommy Keefe. He is on the computer so much he is practically a robot himself. I went to his house to get to the bottom of this. His Golden Retriever, Lucy, jumped up on me. Anyway, he traced it back to an Alexander Hamilton High School account. I told that reporter about it. S/He said s/he couldn’t confirm it, so s/he didn’t use it. I knew it was true. S/HE doubted ME?! Wuss. But I didn’t think much of it at the time. Like I said, they are losers, so what if they steal my champion schedules and insight; they are too pathetic to be able to use it.

As the round started, we were killing Alexander Hamilton High School. It wasn’t even close. I was seated in my lucky seat in the 3rd row. I always sit in the 3rd row. Three is my lucky number. I’m the 3rd born in my family. I have 3 cats: Lombardi, Bo, and Izzo. I have 3 sisters: I don’t remember their names. I live at 3333 Country Club Circle.

Anyway, I have seen Exhibit #7, and it accurately shows where I was seated in the courtroom. I didn’t notice anything at first. I was intently watching my team bobbing and weaving like a prize fighter. Float like a butterfly; sting like a bee. It was so effortless. It was a thing of beauty.

I had met Sterling Morton at a coaches meeting. I didn’t know him/her before this competition. Mock Trial sponsors at that school were like goldfish to me. They weren’t there long enough to bother learning their names. The only important name is mine anyway. I noticed
Sterling was sitting across the aisle from me and up a row. When the Judge entered the room, I nodded to Sterling like it was a civil competition, but I sensed blood in the water and was ready to advance. I could see the back of his/her head and shoulders from where I was sitting during the trial. Sometimes s/he looked up and watched, but sometimes s/he was looking straight down. I thought maybe s/he was taking notes or trying to clean up a stain on his/her shirt that looked like jelly from a donut. During the recess, I saw Phoenix also looking down. S/he had no reason to be looking down. Then I saw the reason, his/her cell phone was in his/her lap and s/he appeared to be using it. Then I looked back to Sterling and it looked like s/he was using it at the same time.

I knew that communication between a sponsor and a student is not allowed during competition. I thought it was pathetic that they were trying to cheat to beat me. They were gonna need a lot more than some tips from a wanna-be coach to a never-gonna-be student. I went over to Jo/Joe Serpico and told him/her that Sterling Morton and Phoenix Perdante had cell phones that weren’t allowed in the courtroom or in competition. I demanded that they both be handcuffed, tazed, and removed from the court. Instead Jo/Joe just told Sterling and Phoenix to turn their phones off.

I didn’t file a dispute. Other than contacting Jo/Joe, I didn’t complain to anyone. I would have needed to do it at the time. I didn’t see any way I would lose that round, so what difference did it make? Like I said, they already had a pathetic reputation. This was just sad. Now I wish I would have.

After I found out we lost the round, I demanded to see the score sheets. The math had to be wrong or something. I went back to Jo/Joe to demand to be allowed into the scoring area. When I finally saw the score sheets, I saw it was Phoenix’s closing argument that made the difference! I couldn’t believe it! Those nitwit judges liked it. This was the biggest crime
against humanity since those Canadian figure skaters, Sale and Pelletier, were robbed of their
gold medal. At least the Olympic Committee did right by them and awarded them a duplicate
gold. I’m not saying the judges here were corrupt, but my team deserved gold too. Apparently, I
threw too big a tantrum and Jo/Joe told me s/he didn’t like the mass-murderous look in my eye
and s/he wouldn’t let me near the judges. When I went looking for the tournament coordinator, I
ran into M.J. Hencken. S/He wanted a quote, so I gave him/her one! They cheated! There’s no
other explanation. I demand my gold.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are
true and correct.

Signed,

Sylvia/Sal Vester

SIGNED AND SWORN to before me on this 9th day of July, 2012.

Stephanie Egger Gooch, Notary Public

My Commission Expires: December 31, 2012
IN THE CIRCUIT COURT OF NORTHERN COUNTY, SUPERIOR

PHOENIX O. PERDANTE

      PLAINTIFF,            Case No: 12-1963-CZ

VS.                       Hon. Ima J. Udge

DALTON ACADEMY

      DEFENDANT.

Witness Statement of M.J. Hencken

Hard-hitting reporting leads to bogus defamation case. That’s what this is all about. But perhaps introductions are in order. This reporter’s name is M.J. Hencken. Currently a first-year student at Northern University: journalism major. Reporter on the campus life beat and working right now on an exposé of the Greek system. Hazing. Debauchery. Elitism. Administration turning a blind eye? Where does the money flow?

But that’s a digression. This is about my reporting on the High School Mock Trial controversy. Last year, I was a senior at Dalton Academy and deputy editor of the school newspaper, The Wolverine. We went to press once a week in hard copy, and the e-version was up and running 24/7—new posts every day. Our teacher, Mr. Murrow, believed in doing it the right way. That’s how he taught us: straight to the facts. None of this touchy-feely intro stuff; you know what I mean: “The faded Christmas ornament knit by her grandmother lay on the rug ...” That kind of drivel.

The Wolverine was my life in high school. It was a double-period class for those of us who were editors, but that was just the beginning. How many nights did I stay in the newsroom at school, room 212, until the janitor kicked me out and walked me across the parking lot to that hand-me-down 1998 Toyota Celica? How many more nights in my room at home at 4220 S 32nd
Street making calls, sending e-mails, researching online, editing and writing my own columns?

Countless—all fueled by coffee and a curiosity that I would like to think is a blessing. But it may also be a curse. Footnote on the coffee: my parents forced a switch to decaf midway through junior year. Now that I’m in college and living in the dorm it’s back to the high-test real-deal stuff.

On March 23, 2012, I went to the High School Mock Trial Tournament, held at the Northern County Courthouse. Dalton squared off against rival Alexander Hamilton High School. It was a story, and in my humble opinion, one deserving coverage every bit as much as the track meet to be held later that day. Athletics are great—I earned three varsity letters on the swim team—but events like mock trial, debate, and the science bowl are generally under-reported. Who’s making money selling hot dogs at the debate tournament? Rhetorical question for those keeping score at home. Also, I had two friends on the mock trial team.

I took up a seat in the back of the courtroom. The air was full of tension, like a sultry August evening when the cobalt sky rumbles, but before the rain falls. There the team members sat, mentally running through their questions and arguments, parents watching from the benches with me, more nervous than the competitors themselves.

But why, I asked myself, did the one competitor keep looking back at someone behind him/her with a concerned or disturbed look? Why was s/he not studying notes or mentally preparing for the opening statement or examination to come? This competitor—who I later learned was Phoenix Perdante—must have looked back four or five times in the general direction of a person who I later learned to be the lawyer/teacher coach for A.H.H.S., Sterling Morton.

Then it began. The “case” was State vs. Toakliss, a criminal case about a Halloween party turned truly frightening with a real death. Opening statements. One witness: direct exam, cross exam. Then another. A seemingly close fight, pitching one way and then back the other.
And then it dawned on me. The little detail that might have gone unnoticed. The dog that wasn’t barking. Morton wasn’t even watching much of the time. S/he sat there, head down, as though looking at something held close to his/her belt. Glancing up occasionally, then back down to whatever held his/her attention.

Odd, I thought. We’ve all seen that posture thousands of times—texting, though I did not actually see Morton’s phone. The coach of our team, Mr./Ms. Vester, by contrast, didn’t take his/her eye off what the teams were doing. S/He was completely engrossed in how his/her team did.

I am no expert on legal matters or skills, but Perdante seemed to do quite well in closing argument. Surprising, given how distracted and nervous s/he looked before starting.

After the trial was over, I stuck around the lobby area, chatted with my friends, and consoled them on the loss. I saw Mr./Ms. Vester and asked for a quote on how the team had fared. S/he responded. An edge in his/her voice. Mr./Ms. Vester told me what s/he had seen: evidence of flagrant cheating by text message, confirming my suspicions about what I had seen.

Mr./Ms. Vester also said something about computer hacking by someone at A.H.H.S. in the weeks leading up to the competition; the idea was that A.H.H.S. team members were spying to get an unfair advantage.

I hadn’t gone looking for an investigative story, but here it was anyway. Potential cheating at a mock trial contest? I had to dig further. And yes, it did occur to me that a year earlier Mr./Ms. Vester gave me some confidential intel on another teacher and allegations of illegally recruiting students outside Dalton’s district for the swing choir. We ran the story and then ran a retraction the next week. The choir director provided addresses for a couple of students who had multiple addresses because of divorced parents.
This is consistent with my experience as a journalist; people aren’t sorry about doing something wrong, but they are very sorry when they’ve been caught. Perdante clearly heard about the story and went into full denial. Now they’re trying to kill the messenger. Another classic tactic.

The truth hurts, and perhaps Perdante can’t handle the truth. But it must be told, even if attempts at intimidation like this lawsuit follow. Wolverines don’t back down.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

M.J. Hencken

SIGNED AND SWORN to before me on this 9th day of July, 2012.

Stephanie Egger Gooch, Notary Public

My Commission Expires: December 31, 2012
IN THE CIRCUIT COURT OF NORTHERN COUNTY, SUPERIOR

PHOENIX O. PERDANTE

PLAINTIFF, Case No: 12-1963-CZ

VS. Hon. Ima J. Udge

DALTON ACADEMY
DEFENDANT.

Witness Statement of Jo/Joe Serpico

My name is Jo/Joe Serpico. I am the head of security at the Northern County Courthouse. It’s an interesting job. You should see some of the things people try to bring into the courthouse—knives, scissors, and other “contraband.” We even had an old lady try to bring in a pair of nail clippers at the Mock Trial State Finals! Crazy! Do they think those metal detectors are just for show? I’ll tell you what, I may be one of the only people that actually sympathizes with the job those TSA agents have to do.

Let me tell you a little about myself. I was born and raised in Northern. I live it 3691 Morrill Hall Road. After high school, I joined the Army Reserves and went part-time to Northern Community College. I joined the Reserves because, first and foremost, I love this country (and hunting and fishing). And the income helped pay my way through school. It took a while, but I finally got a dual degree in Criminal Justice and Landscape Architecture. Odd combination? Well, I like working outside with the land (got that from my grandparents, Molly and Rutger), and I am rule-following, law-and-order kind of person (got that from watching NYPD Blue as a kid). I mean, who wouldn’t want to be Andy Sipowicz, right? By the way, I graduated with Honors, but I can’t prove it because the Administration Building at NCC burned down a couple of years ago. Don’t even bother asking for a transcript of my grades.
I really wanted to be a law-enforcement officer. After graduation, I applied for a job with
the Superior State Police. Unfortunately, I could never pass the physical tests because of my
bum knee. Freak accident involving a bet, an obstacle course, and a pit bull named Baby during
my last week in the Reserves.

Because I wasn’t able to do what I believe I was destined to do, I found this job at the
Courthouse. Fortunately, my knee didn’t scare them off. I’ve worked at this job for 10 years,
slowly rising through the ranks to Supervisor. I have several responsibilities. It’s my job to
formulate and implement a security plan for the courthouse. We recently installed high-tech
body scanners to provide an added layer of security in addition to the metal detectors at the
doors. And no, you don’t have to take off your shoes when you come through the doors.

We also provide security in the courtrooms. The way people act is atrocious, even when
they should be on their best behavior. The judges have provided my staff and me with a copy of
the Local Court Rules, and we have been given authority to enforce any rules related to security
and possible courtroom disruptions.

One major issue we deal with is cell phone usage. The lawyers are the worst. We have
signs posted everywhere stating that cell phones must be turned off inside the courtrooms.
Despite those signs, someone’s phone is always going off. The Lady Gaga ring-tones are the
worst. Smart phones have made it harder to enforce the rules. Many lawyers use them as their
calendars and to check e-mails. The Judges have told my staff that they do not have a problem
with that as long as there is not disruption to the court. As a result of all of this, I am very tuned
into what’s going on with phones in the courtroom.

I remember the Mock Trial Competition from this year very well. My duties include
providing courthouse security even when “real court” is not in session. It’s fun to watch the best
and brightest students of our state duke it out. The cases they try are usually more interesting than the real ones I see every day!

I specifically remember the match-up between Dalton Academy and Alexander Hamilton High. Dalton has always been a powerhouse when it comes to this competition, and they are fun to watch. Coach Vester is quite a handful, though. S/He is very demanding and always bossing those kids around. You’d think s/he had a personal stake in the outcome. I guess that’s why they win a lot.

I also remember that Phoenix Perdante kid, although I didn’t know his/her name at the time. Sniffle, sniffle, cough, cough—the whole way through. I remember thinking “give that kid a tissue for heaven’s sake!” Despite that, Perdante put on a good performance. You see enough of these competitions and real lawyers doing their jobs, and you get to be a pretty good “judge.” I don’t remember Perdante from past competitions.

Coach Morton was such a contrast to Coach Vester. It looked like Morton was barely paying attention—nose in that phone. I assumed s/he was reading e-mails. At one point, Morton began furiously typing on his/her phone and then looked up toward counsel table. Right after that, Perdante looked at his/her phone. I have no idea what they were doing and really didn’t care as long as they weren’t disrupting the courtroom.

After the competition, Vester came up to me and made a big ruckus about the phones. Something about a violation of the rules—blah, blah, blah. Vester lost his/her mind and wanted me to forcibly remove the whole AHHS team from the courthouse. I said, “It’s not my job to worry about the rules of the competition,” but I did tell everyone to turn off their phones just to try to keep the peace.

The lawyers in this case recently contacted me about what I remember from that day. No one talked to me before that. Funny, I don’t remember any reporters asking me what I saw that
day. Exhibit #7 is a copy of the map I drew trying to show you where I was standing when this cell-phone incident took place. It’s just a rough sketch, but it is an accurate depiction of where everyone was located.

At the request of counsel for the Defendant, I also contacted the Honorable Tatum Danger, the presiding Judge in this Judicial District. Judge Danger granted me permission to take some photographs of the courtroom where the mock trial between Dalton and AHHS took place. Exhibit #8(a) is a photograph that fairly and accurately represents my view of where the students, judge, and witness stand were located while I performed my security tasks during the mock-trial competition. Exhibit #8(b) is a photograph that shows my view of the audience seats and where the teacher-coaches were located. It is a fair and accurate representation of my view of the audience seating on that day.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

[Signature]
Jo/Joe Serpico

SIGNED AND SWORN to before me on this 9th day of July, 2012.

[Signature]
Stephanie Egger Gooch, Notary Public

My Commission Expires: December 31, 2012
EXHIBIT #1: Article – Verdict: Cheaters Really Do Win Sometimes

Verdict: Cheaters Really Do Win Sometimes

By: M.J. Hencken, Deputy Editor 3/24/12

The Wolverine Mock Trial team lost a close decision to rival Alexander Hamilton High in yesterday’s third round of the Superior High School Mock Trial Tournament, held at the Northern County Courthouse.

The competition is held annually, and is designed to expose students to the legal system and what it takes to be a lawyer. Students in grades nine through twelve are eligible. The state champion team advances to a national competition.

Yesterday’s loss was not without controversy. A source close to the Dalton squad observed evidence that the A.H.H.S. team, specifically team member Phoenix Perdante and faculty coach Sterling Morton, engaged in text message communication in violation of the Mock Trial Rules. At least one audience member also observed behavior by Perdante and Morton consistent with texting. Perdante declined to comment for this story.

Perdante's performance in closing argument—in which one lawyer from each team summarizes for the jury what the team has proven—was unusually effective compared to his/her performance last year, according to several people affiliated with the Wolverine team. A.H.H.S.’s winning margin was narrow enough that this underhanded electronic skullduggery may well have made the difference between the thrill of victory . . . and the agony of defeat. Cheaters never win and winners never cheat? Tell that to the members of our Mock Trial team.
EXHIBIT #2 – Scholarship Award Letter

One Way Scholarship Foundation
2848 West Hwy 10
Northern, SU 48881

Phoenix O. Perdante
8299 N. Crane Street
Northern, SU 48881

Dear Mr./Ms. Perdante:

It is with great pleasure that I am able to inform you that you have been selected as one of three recipients of the One Way Foundation Scholarship. This scholarship pays for all of your tuition, books, and room and board expenses during the four years that you attend Northern University.

I must tell you that we were most impressed by the essay that you submitted as part of your application. It is refreshing to find an articulate, honest, hard-working, Christian youth such as yourself. In this day and age, it is rare to find people like you who know right from wrong and who are not afraid to stand up for their beliefs.

I was also very impressed with your knowledge of One Way Trucking, Inc. Not to many people know that my husband and I started the operation with just one truck in 1952 and that we began by hauling livestock around the State of Superior.

As you know, the One Way Scholarship Foundation was set up in 2001 in honor of my late husband, Robert Connor. Recipients of the scholarships must be Christians, such as yourself, and must agree to maintain certain rigid standards. This is because the recipients represent One Way Trucking, Inc., and are honoring my husband. That is why you were required to read and sign the morals clause in your application.

If you agree to accept this award, you also are required to read and sign the morals clause that is attached to this letter and return it to the address shown on the letterhead above.

Congratulations to a very deserving young Christian.

Nancy Connor,
Recipient Selection Chair

2013 Michigan High School Mock Trial Tournament CASE MATERIALS Page 83
EXHIBIT #3 – One Way Foundation – Morals Clause

One Way Foundation – Morals clause

If awarded a scholarship by One Way Foundation, I agree to the following:

1. To behave at all times as a good Christian;
2. To obey all state, federal and local laws;
3. To be of good moral character;
4. To act consistently with all public conventions and morals;
5. Not to commit any act that will reasonably tend to degrade applicant, or bring applicant into public distain, hatred, contempt or ridicule; and,
6. Not to commit any act that will shock, or offend the Christian community.

I understand that by receiving this scholarship from One Way Foundation, I become a representative of the good name and reputation of not only One Way Foundation, but also of One Way Trucking, Inc.

I agree that I will not act in any way that will prejudice the interests of One Way Foundation or One Way Trucking, Inc.

I acknowledge and agree that this morals clause is a requirement of the One Way Foundation, to ensure its good will in the community and will help ensure the profitability of the business of One Way Trucking, Inc.

Finally, I acknowledge that any violation of the above-stated terms will result in the immediate revocation of any scholarship awarded to me.

[Signature]

Phoenix Perdante
EXHIBIT #4 – Scholarship Revocation Letter

One Way Scholarship Foundation
2848 West Hwy 10
Northern, SU 48881

Phoenix O. Perdante
8299 N. Crane Street
Northern, SU 48881

Dear Mr./Ms. Perdante:

Please consider this as your formal notice that your scholarship from the One Way Scholarship Foundation is being revoked, effective immediately. It has come to the attention of the Foundation that you have been accused of cheating in a High School Mock Trial event.

A recent article in the Dalton Wolverine school e-paper outlined how you and your coach had cheated to win the State Mock Trial Championship this year. As you may remember, your scholarship was contingent upon your promise to maintain certain rigid standards and to conduct yourself so as not to bring harm or disrespect to the Foundation, the Trucking Company, or yourself.

I must say that we are quite disappointed by all of these developments and especially disappointed by your actions at the mock-trial competition. While, as Christians, we have a duty to forgive you for your trespasses, and we do, I am sure that you will agree with me that you have violated the terms of the morals clause and made it impossible for our organization to be associated with you.

If you can clear your name of the charges of cheating that have been levied against you, we at the Foundation will reconsider our decision to revoke your scholarship.

Very truly yours,

[Signature]

Charlie Connor,
Foundation Chair
**EXHIBIT #5a**

**PERFORMANCE JUDGE’S SCORE SHEET**

Date: 3-23  Round: 3

Prosecution: **Dalton**

Defense: **Alexander Hamilton**

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<th>Ballot</th>
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<th>Defense</th>
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<td>Opening statements</td>
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<td>Closing Arguments</td>
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**TEAM TOTALS** (add scores in each column)

 Prosecution: **85**

 Defense: **87**

Please deliver ballot to coordinator before critique.

Tiebreaker (in case of tie, circle the party that won this round.)

PROSECUTION  DEFENSE

(Signature of Judge)
EXHIBIT 5b

PERFORMANCE JUDGE'S SCORE SHEET

Date: 3/23 Round: 3

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<tr>
<td>Defense first witness</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>Cross Examination</td>
<td>6.4</td>
<td></td>
</tr>
<tr>
<td>Witness Performance</td>
<td></td>
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</tr>
<tr>
<td>Defense second witness</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>Cross Examination</td>
<td>8</td>
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<tr>
<td>Witness Performance</td>
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</tr>
<tr>
<td>Defense third witness</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Cross Examination</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Witness Performance</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Closing Arguments</td>
<td>7</td>
<td>10</td>
</tr>
</tbody>
</table>

TEAM TOTALS (add scores in each column)  86  83

Please deliver ballot to coordinator before critique.

Tiebreaker (in case of tie, circle the party that won this round.)  PROSECUTION  DEFENSE

(Signature of Judge)
EXHIBIT 5c

PRESIDING JUDGE’S SCORE SHEET

Date: 3-23  Round: 3

Plaintiff: PAXTON ACADEMY  Defendant: ALEXANDER HAMILTON

Indicate your decision regarding which team made the best overall performance independent of the decisions of the performance judges. If the decision of the performance judges is split, your decision as to the best overall performance will be used to decide which team wins the trial. If the two performance judges agree regarding which team gave the better performance, your score sheet will not be used in the calculation of the winner, but at the regional or state championships your score sheet may decide pairings and round advancement.

The criteria for BEST OVERALL PERFORMANCE are, among other things, whether ALL team members:
- complied with all rules of the competition and spirit of fair play;
- were poised and spoke clearly and distinctly;
- observed courtroom decorum;
- used their time effectively and stayed within their allotted time; and
- were courteous of their opponent.

PERFORMANCE EVALUATION

In my opinion, the team which gave the BEST OVERALL PERFORMANCE is the:

CIRCLE ONE: Plaintiff OR Defendant

COMMENTS (optional):

BOTH TEAMS DID VERY WELL!

GOOD CLOSING ARGUMENT BY DEFENDANT

_________________________  3-23
Judge’s Signature  Date
EXHIBIT #6 – Email from Phoenix O. Perdante to M.J. Hencken

Subject: DEMAND FOR REDACTION:
Date: Thursday March 24, 2012

“Dear” M.J. Hencken:

I demand an immediate retraction. I, like many of my friends and family and acquaintances, read your article titled “Verdict: Cheaters Really Do Win Sometimes,” dated 3-24-12, and it is a big, fat lie! I did NOT “decline” to comment for your stupid story. I didn’t even get your message until after I heard about the “article.” And I sure didn’t cheat! How stupid is that? Who is your so-called source? Who is your so-called audience member? Because they are liars, too, just like you. Your story is misleading, irresponsible, mean-spirited, and wrong. You better print a retraction right away, and publish it just as much as your dumb article got spread around.

And I want a personal apology. Right now.

Very Sincerely,
Phoenix Perdante
EXHIBIT #7 – Diagram of the Courtroom
EXHIBIT #8a Photograph of the Courtroom

EXHIBIT #8b Photograph of the Courtroom
EXHIBIT #9 – Undergraduate Cost Calculator

*Northern University*
Undergraduate Semester Cost Estimator

**2012/2013 Estimate**

Below you will find an Estimator that will help determine what your approximate NU costs will be for a semester, based on the criteria you enter. **NOTE, some classes have higher associated fees or tuition costs i.e; classes with labs, online cases, etc.** This calculation is meant only to be an approximation of undergraduate semester expenses. Contact the Finance Office for a more exacting calculation.

When you enter the requested data and click on the “Calculate Cost” button, the form will calculate the line items listed below and an estimated semester total.

<table>
<thead>
<tr>
<th>Superior Resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>How many hours will you be enrolled in this semester: <strong>15</strong></td>
</tr>
<tr>
<td>What Residence Hall will you be in: <strong>Yooper Hall</strong></td>
</tr>
<tr>
<td>Will you have a roommate? <strong>Yes</strong></td>
</tr>
</tbody>
</table>
| Other Expenses for the semester? **$1,000**  
(Enter other school related expenses that you personally are aware of – examples: Books, Parking Permits, Enrollment Fees, Etc.) |
| Select a meal plan for this semester: **21 meals** |
| Tuition and Fees | $4,000 |
| Room Charge | $3,000 |
| Meal Plan | $2,000 |
| Other Expenses | $1,000 |
| Total Estimated Semester Cost | $10,000 |
P. Questions and Clarifications

Q: Do the teams in Superior get their scores immediately following the tournament, or do they get the score sheets within two weeks following the tournament like in Michigan?

A. The Superior Rule on this matter is identical to MCCE Rule 19(d) on page 14-15 of the case packet.

Q: Is scouting allowed in the Superior Mock Trial Tournament?

A. The Superior Rule on this matter is identical to MCCE Rule 6 on page 9 of the case packet.

Q: Does Superior also apply MCCE Competition Rules 8 and 9?

A. Rule 8 on pages 9-10 of the case packed does not apply to the case materials as Superior does not require its teams to sign a code of proper conduct. Superior does have a rule identical to MCCE Rule 9 on page 10 of the case packet.

Q: What does the cut-off word say at the bottom left of Exhibit 7?

A. “Door”

Q: It appears that Charlie Connor misspelled his own name on the signature line of Exhibit 4, page 85, where he spelled his last name “Conners.” What is the effect of the misspelling?

A. This is simply a mistake, and competitors are instructed to ignore the misspelling for purposes of the competition. Mr. Connor knows how to sign his last name.