

---

---

**Michigan High School  
Mock Trial Tournament 2010  
Materials**

---

---



# Introduction

Welcome to students, teachers, attorneys, educators, judges, law students, legal assistants and others who will participate in the 2010 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.

The Michigan Center for Civic Education is grateful to the Rhode Island Legal/Education Partnership for their permission to adapt *State of Rhode Island v. Brit Reynolds*, their 2007 adaptation of the Idaho Law Foundation's 2005 case, *State of Idaho v. Brit Reynolds*, an adaptation of the Constitutional Rights Foundation's 2002 original case, *People v. Martin*.

Special thanks to attorneys Gordon Gold, Dennis Perkins, and Greg Townsend for their help and advice putting together the case materials, and to mathematician John Wagner for the same.

# Michigan High School Mock Trial Tournament 2010 Materials

## Table of Contents

<b>A.</b>	<b>General Tournament Rules .....</b>	<b>5-8</b>
1)	Eligibility to Participate.....	5
2)	Regional Tournaments.....	5
3)	State Final Tournament .....	5
4)	Tournament Structure .....	5-7
5)	Power Matching.....	7
6)	Tournament Logistics .....	7-8
<b>B.</b>	<b>Rules of Procedure for Trials .....</b>	<b>8-15</b>
1)	Competitors .....	8
2)	Timekeepers .....	8
3)	Judges and Bailiffs .....	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
9)	Claims of Rule Violations .....	9-10
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.....	14-15
<b>C.</b>	<b>Rules of Evidence .....</b>	<b>15-25</b>
	<b>Article I General Provisions</b>	
101)	Scope .....	15
102)	Purpose and Construction .....	15
	<b>Article IV Relevancy and Its Limits</b>	
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
405)	Methods of Proving Character.....	17
406)	Habit, Routine Practice.....	17
407)	Subsequent Remedial Measures .....	17
408)	Compromise and Offers to Compromise .....	17
409)	Payment of Medical or Similar Expenses.....	17
410)	Inadmissibility of Pleas, Plea Discussions, and Related Statements .....	18
411)	Liability Insurance (civil cases only).....	18
	<b>Article V Privileges</b>	
501)	General Rule.....	18
	<b>Article VI Witnesses</b>	
601)	General Rule of Competency .....	18
602)	Lack of Personal Knowledge.....	18
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
612)	Writing Used to Refresh Memory .....	20
613)	Prior Statements of Witnesses .....	21
<b>Article VII Opinions and Expert Testimony</b>		
701)	Opinion Testimony by Lay Witness .....	21
702)	Testimony by Experts.....	21
703)	Bases of Opinion Testimony by Experts .....	21
704)	Opinion on Ultimate Issue.....	21
705)	Disclosure of Facts or Data Underlying Expert Opinion.....	22
<b>Article VIII Hearsay</b>		
801)	Definitions .....	22
802)	Hearsay Rule .....	22
803)	Hearsay Exceptions, Availability of Declarant Immaterial .....	23-24
804)	Hearsay Exceptions, Declarant Unavailable.....	24-25
805)	Hearsay within Hearsay.....	25
<b>D.</b>	<b>Code of Proper Conduct &amp; Signature Form .....</b>	<b>26-27</b>
<b>E.</b>	<b>Sample Official Team Roster .....</b>	<b>28</b>
<b>F.</b>	<b>Judges' Instructions .....</b>	<b>29</b>
<b>G.</b>	<b>Unfair Extrapolation .....</b>	<b>30</b>
<b>H.</b>	<b>Guidelines for Performance Rating.....</b>	<b>31-32</b>
<b>I.</b>	<b>Performance Rating Sheet .....</b>	<b>33</b>
<b>J.</b>	<b>Bailiffs' Instructions .....</b>	<b>34</b>
<b>K.</b>	<b>Time Sheet .....</b>	<b>35</b>
<b>L.</b>	<b>Dispute Form .....</b>	<b>36</b>
<b>M.</b>	<b>Basic Trial Techniques.....</b>	<b>37-44</b>
<b>N.</b>	<b>Case Materials .....</b>	<b>45-79</b>
	Fact Situation .....	46
	Information.....	47
	Joint Pre-Trial Statement.....	48-49
	Jury Instructions .....	50-51
	Statement of Pat Harding .....	52-56
	Statement of Officer Kris Bonds.....	57-60
	Statement of Dr. Morgan Sanford .....	61-63
	Statement of Alex Johnson.....	64-68
	Statement of Dr. Taylor Van Doren .....	69-71
	Statement of Ranger Jamie Almonte.....	72-76
	Exhibit 1: Map of Ballena Beach .....	77
	Exhibit 2: Map of the Cove .....	78
	Exhibit 3: Coroner's diagram of Anne Marcus' body.....	79

## **A. General Tournament Rules**

### **1. Eligibility to Participate**

The Tournament is open to all high schools in Michigan. A school may enter teams in either of the regional tournaments, but not both. An official team consists of from six to ten students from the same school and one or more adult coaches. Since 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 on Saturday, March 6, 2010, and of the Oakland County Courthouse in Pontiac on Saturday, March 13, 2010.

### **3. State Final Tournament**

Ten teams will compete in the State Finals Tournament on Saturday, March 27, 2010 in Lansing. The ten finalists will be selected from the teams that performed the best in the two 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 Prosecution 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. Each round will be judged by three Tournament judges, who will be 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 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 first rounds of the Regional Tournaments will be determined in advance by random drawing. In the remaining rounds teams will be power matched (see Rule 5 below). 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:

First Round	Second Round
10 v. 1	1 v. 6
9 v. 2	2 v. 7
8 v. 3	3 v. 9
7 v. 4	4 v. 8
6 v. 5	5 v. 10

- 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 shall 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 shall represent the prosecution. If the coin comes up tails, the Designated Team shall 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" (no opponent for a single trial round) in rounds two or three will, by default, receive a win and three ballots for that round.
  - ii.) For the purpose of power-matching, the team drawing the "bye" in the second round will temporarily be given points equal to their points earned in the first round. At the end of the third round, the average from both actual trial rounds participated in by the team will be used for the final points given for the team's bye round.
  - iii.) The team drawing the "bye" in the third round will be given points equal to the average of its own points earned in its preceding trials.
  - iv.) A team receiving a "bye" in the first round will be awarded the average number of points for all round-one winners, which total will be adjusted at the end of each round

to reflect the actual average earned by that team.

## 5. Power Matching

Score sheets are to be completed individually by the judges. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The ballot votes determine the win/loss record of the team for power matching and ranking purposes.

Power matching will provide that:

1. Pairings for the first round will be at random;
2. All teams are guaranteed to present each side of the case at least once;
3. At the conclusion of the first round, four pools will be determined by win/loss record and by the side of the case portrayed in the first round. The first pool will consist of all teams with a record of (1-0) that portrayed the Prosecution team. The second pool will consist of all teams with a record of (1-0) that portrayed the Defense team. The third pool will consist of all teams with a record of (0-1) that portrayed the Prosecution team, and the fourth pool will consist of all teams with a record of (0-1) that portrayed the Defense team. Sorting within pools will be determined in the following order: (1) win/loss record; (2) ballots; (3) points, (4) point spread. For determining pairings for the second round, *if the total number of teams in the first and second pools is equal*, the team at the top of the first pool will be paired with the team at the bottom of the second pool. The next highest team in the first pool will be paired with the next lowest team in the second pool, and so on until all teams in the first and second pools are paired for the second round. The process will then be repeated with the third and fourth pools;
4. If the first and second pools are unequal in number, excess teams from the *bottom* of the pool with the greater number will be moved to create a fifth pool, and a sixth pool will be created from the *top* of either the third or fourth pool, whichever has the surplus. Pairings will then be made as described above, matching teams from the first and second pools, the third and fourth pools, and the fifth and sixth pools;
5. Following the second round, three pools will be created, based upon win/loss record; (2-0), (1-1), and (0-2); and sorted as described above. If the first pool has an even number of teams, pairings for the third round will be determined by pairing the team at the top of the pool with the team at the bottom; the next highest to the next lowest, and so on until all teams are paired. If there are an odd number of teams in the first pool, the team at the bottom will be paired with the top team from the second pool. Team pairings in the first pool will then proceed as described above. The pairing of teams in the second and third pools will follow the same procedure.
6. Teams will not meet the same opponent twice;
7. Bracket integrity in power matching will supersede alternate side presentation in the third round. If teams are paired for the third round that portrayed the same side of the case in the second round (for example, both teams portrayed the Defense), the lower team in the pool will be assigned the same side of the case that they portrayed in the second round.

## 6. 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, and Rule 8, p. 9.

## **B. Rules of Procedure for Trials**

### **1. Competitors**

- a. Each participating high school team shall 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. All witnesses are gender neutral and may be played by either male or female students.

### **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. In the event that a courtroom does not have a bailiff assigned, both team's official timekeeper will be called forward by the presiding judge and seated in view of each team. The only bailiff duty that timekeepers will assume in the absence of a bailiff is that of keeping time. All other bailiff duties will be performed by the judges.
- 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 of the competition where there is not a bailiff present.
- 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 Bailiffs**

- a. A single Tournament judge shall preside at the trial. Two other judges shall be present at all times to judge the performance of the competing teams; however, they shall not participate in conducting the trial. The non-presiding judges shall sit in the jury box and the participants shall address them as though they were the jury. All three judges shall score the competitors.
- b. Every attempt will be made to recruit a bailiff for each courtroom. The bailiff will swear the witnesses, keep time, act as liaison to the Tournament Director and generally assist and advise the judges. In the event that a courtroom is without a bailiff, each team in the courtroom will be asked to provide a trained timekeeper to perform those duties. All other bailiff duties will be assumed by the presiding judge and tournament staff. Coaches may not serve as timekeepers.



- c. Each judge and bailiff will be supplied with a full Tournament packet and will attend an Orientation Meeting. Each Team's designated timekeeper will attend a short training session immediately preceding the first round of the tournament.

#### **4. Identification of Teams**

A team's identity shall not be revealed to any judge. Team numbers (or letters) will be randomly drawn in advance. Team members shall 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, the three attorneys trying the case and the three witnesses may not engage in conversation with 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 shall report it immediately to the presiding judge. The judge shall order the clock stopped and shall inquire into the circumstances of the accusation. Where a violation is found, the judges shall 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 which may occur.

#### **6. Ban on Scouting**

No team members, alternates, teachers or attorney coaches or any other persons associated with the team's preparation shall 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 bailiff 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 bailiff will provide the student attorney with a dispute form. In the absence of a bailiff, a dispute form can be taken from the tournament rules packet. 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 bailiff will show the dispute form to the judges, who will determine whether the dispute should be heard or denied. In the absence of a bailiff, 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.
- e. 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.
- f. 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 shall report to the bailiff in their assigned courtroom prior to the time set for trial. In the absence of a bailiff, teams should present themselves to the presiding judge.
- b. The bailiff, or presiding judge, shall 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 bailiff, or presiding judge, will call the courtroom to order to commence the trial. The Presiding Judge shall ask counsel to state their appearances for the record and thereafter the trial shall 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 bailiff, and one copy will be given to the opposing team. In the absence of a bailiff, rosters will be given to the presiding judge. The roster must include 1) the name of each attorney and the names of each witness that attorney will examine; 2) the name of each student who is portraying a witness, which witness that student will portray and the gender of that witness.  
Each team should bring 12 copies of the roster with them on tournament day. See a sample roster on page 28.

**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 in order 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 shall 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 examination of the witnesses for the Prosecution.
- c. The bailiff, or timekeepers, will be provided with a stopwatch and one-minute warning signs. The bailiff, or timekeepers, shall keep track of time on a time sheet, which shall be available for inspection by either side at any time. The bailiff, or timekeepers shall 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 bailiff, or 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 for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements. Time does not stop for introduction of exhibits.

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

### **13. Attorneys**

- a. Of the three attorneys on a team, one shall give the opening statement, and another shall give the closing statement. The same attorney may not give both the opening and the closing statement. Each of the three attorneys shall 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 shall stand whenever addressing the court, a witness or the jury. When arguing a point, attorneys should direct their remarks to the court and not to opposing counsel.

### **14. Opening Statements**

- a. Each side shall have up to five minutes to present its opening statement. The Prosecution gives the opening statement first. The Defense may present its opening statement immediately after the Prosecution's opening statement or may reserve it until after the close of the Prosecution'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 an opening statement.

### **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 shall 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. Nor may witnesses 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 bailiff.
- m. Rosters are to be provided to the opposing team and the bailiff before the trial commences. In the absence of a bailiff, rosters will be collected by one of the judges.

### **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 No. \_\_\_?”
- 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 shall have five minutes for closing argument. Prosecution 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 shall complete his or her rating sheet. The Judge shall give the completed sheets to the bailiff who shall double-check the scores. In the absence of a bailiff, the presiding judge will collect the three rating sheets and hold them until they are collected by tournament staff.
- c. The bailiff 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. In any round where the total time used for the trial meets or exceeds two hours, the judging panel is limited to 10 minutes for comments to the teams. The bailiff, or timekeepers, will monitor the time spent on comments. Presiding judges are to limit the session to a combined total of ten minutes.
- 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 data 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 shall 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 shall 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, the three attorneys trying the case and the three witnesses should not engage in conversation with 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 bailiff.
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 the bailiff or 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**

### **2010 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 2010 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*

*TEAM ID* \_\_\_\_\_

### Prosecution 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: \_\_\_\_\_ .

**Pat Harding** will be portrayed by \_\_\_\_\_ (Student Name).  
Male or Female. Circle one.

**Kris Bonds** will be portrayed by \_\_\_\_\_ (Student Name).  
Male or Female. Circle one.

**Morgan Sanford** 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: \_\_\_\_\_ .

**Alex Johnson** will be portrayed by \_\_\_\_\_ (Student Name).  
Male or Female. Circle one.

**Taylor Van Doren** will be portrayed by \_\_\_\_\_ (Student Name).  
Male or Female. Circle one.

**Jamie Almonte** 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.** Every attempt will be made to have a bailiff present in each courtroom to swear in witnesses, keep time, act as liaison to the Tournament Director, and generally assist and advise the Judges. In the event that a courtroom is without a bailiff, each team in the courtroom will be asked to provide a trained timekeeper to perform those duties. All other bailiff duties will be assumed by the presiding judge and tournament staff. Coaches may not serve as timekeepers.
- 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 bailiff, or 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 bailiff will take all of the Rating Sheets to Tournament Headquarters. In the absence of a bailiff, 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 10 minutes for oral comments. Judges are encouraged to offer positive and constructive comments to the teams after the bailiff has left with the sheets. 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).**

<u>Points</u>	<u>Performance</u>	<u>Criteria for Rating Performance</u>
1–2	Not Effective (Poor)	Disorganized, unsure of self, illogical, uninformed, demonstrates lack of preparation and understanding of task, simply ineffective in communications.
3–4	Fair	Minimal performance and preparation; performance is passable but lacks depth in terms of knowledge of task and materials; communication lacks clarity and conviction.
5–6	Good (Average)	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.
7–8	Excellent	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.
9–10	Outstanding	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.

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)

Prosecution: 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}*

		PROSECUTION	DEFENSE
Opening Statements:			
Prosecution First Witness Name:	Direct examination by attorney		
	Cross examination by attorney		
	Witness's Performance		
Prosecution Second Witness Name:	Direct examination by attorney		
	Cross examination by attorney		
	Witness's Performance		
Prosecution Third Witness Name:	Direct examination by attorney		
	Cross examination by attorney		
	Witness's Performance		
Defense First Witness Name:	Direct examination by attorney		
	Cross examination by attorney		
	Witness's Performance		
Defense Second Witness Name:	Direct examination by attorney		
	Cross examination by attorney		
	Witness's Performance		
Defense Third Witness Name:	Direct examination by attorney		
	Cross examination by attorney		
	Witness's Performance		
CLOSING STATEMENTS (and rebuttal, if any):			
Overall team performance (award 1-10 points):			
<b>TOTAL POINTS:</b>			

## **J. Bailiffs' Instructions**

**1. Materials.** Every bailiff should have the Tournament Packet and a Judges Scoring Folder.

**2. Orientation.** All bailiffs must attend the bailiffs' orientation. Bailiffs will receive two stopwatches for timekeeping and will be given time to practice using the stopwatches.

**3. Procedure Before Trial.** Bailiffs should check in the teams and turn on the microphone in the witness box.

When everyone is ready, the Bailiff should ask the judges to leave the courtroom so they can make an "entrance." As the judges enter the courtroom, the bailiff should stand and say, "All rise. The court is now in session." The bailiff should then sit at the clerk's desk in front of the bench.

**4. Procedure During Trial.** Bailiffs 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.

As each witness is called, the bailiff should see that they come forward and stand before the bailiff, who shall tell them to raise their right hand and shall use the following "oath" for each witness: "Do you promise that the testimony you are about to give will faithfully conform to the rules of this mock trial tournament?"

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

Bailiffs should insure that all participants and observers adhere to items 7 through 9 of the Code of Proper Conduct.

**5. Procedure After Closing Arguments.** The Judges have 10 minutes to complete their Performance Rating Sheets. It is the bailiff's responsibility to enforce this time limit.

The bailiff should ask everyone to leave the courtroom or have the Judges retire to an office or jury room, if available. If the teams must wait in the hall while the Judges are deliberating, the bailiff should remind team members to not disturb other courtrooms with noise.

When the Judges have completed their Performance Rating Sheets, the bailiff will call the court back to order. The bailiff 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 bailiff will return to the courtroom and watch the clock. If the judges' comments threaten to delay the teams' departure for their next round, or lunch, the bailiff should firmly but politely tell the Judges that time has expired.

**6. Dispute Settlement**

Bailiffs shall be familiar with the Rule 9, Claims of Rule Violations, as they have a role to play in distributing and transporting the Dispute Form.

## K. Time Sheet

Courtroom # _____	A.M. - 1 <sup>st</sup> _____	A.M. - 2 <sup>nd</sup> _____	P.M. _____
Prosecution – Team # _____		Defense - Team # _____	

Prosecution	Time	Defense	Time
Opening Statement (max 5 min) Give 1 min warning at 4 minutes		Opening Statement (max 5 min) Give 1 min warning at 4 min	
Prosecution team has 25 min for this entire section, give one minute warning at 24 minutes		Defense team has 20 min for this entire section, give one minute warning at 19mins	
1 <sup>st</sup> Witness Direct Exam	<i>S</i>	1 <sup>st</sup> Witness Cross Exam	
1 <sup>st</sup> Witness Redirect (optional)	<i>T</i>	1 <sup>st</sup> Witness Re-cross (optional)	
2 <sup>nd</sup> Witness Direct Exam	<i>A</i>	2 <sup>nd</sup> Witness Cross Exam	
2 <sup>nd</sup> Witness Redirect (optional)	<i>R</i>	2 <sup>nd</sup> Witness Re-cross Exam	
3 <sup>rd</sup> Witness Direct Exam	<i>T</i>	3 <sup>rd</sup> Witness Cross Exam	
3 <sup>rd</sup> Witness Redirect (optional)		3 <sup>rd</sup> Witness Re-cross Exam	
Prosecution team has 20 min for this entire section, give one minute warning at 19mins		Defense team has 25 min for this entire section, give one minute warning at 24 minutes	<i>S</i>
1 <sup>st</sup> Witness Cross Exam		1 <sup>st</sup> Witness Direct Exam	<i>T</i>
1 <sup>st</sup> Witness Re-cross Exam		1 <sup>st</sup> Witness Redirect Exam	<i>A</i>
2 <sup>nd</sup> Witness Cross Exam		2 <sup>nd</sup> Witness Direct Exam	<i>R</i>
2 <sup>nd</sup> Witness Re-cross Exam		2 <sup>nd</sup> Witness Redirect Exam	<i>T</i>
3 <sup>rd</sup> Witness Cross Exam		3 <sup>rd</sup> Witness Direct Exam	
3 <sup>rd</sup> Witness Re-cross Exam		3 <sup>rd</sup> Witness Redirect Exam	
Each team is allowed 5 min for their closing arguments, Prosecution is allowed to use part of the time to follow the Defense with a rebuttal.			
Closing		Closing	
Rebuttal			

# L. Dispute Form

MICHIGAN HIGH SCHOOL  
MOCK TRIAL COMPETITION

**DISPUTE FORM**

(Please Print)

Round Number \_\_\_\_\_ Prosecution 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

## **M. 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 1999 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.
  - b. A short summary of the facts.
  - c. The burden of proof (amount of evidence needed to prove a fact) and who has it.

- d. A clear and concise overview of the witnesses and physical evidence that you will present and how each will contribute to proving your case.
  - e. What relief you are seeking.
3. Advice in presenting an opening statement
- a. Appear confident.
  - 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. Prosecution 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.

## **N. Case Materials**

Case No. 2010 MT

**People of the State of Michigan vs. Alex Johnson**

**IN THE CIRCUIT COURT FOR THE COUNTY OF MADISON**

## FACT SITUATION

1 Clearwater has a community that is proud of its high school. Its graduates are well known for  
2 going to prestigious colleges and universities. Competition at the school is tough.

3 Clearwater High School ("CHS") has honor students who vigorously compete with each other  
4 hoping to gain entry to the nation's top colleges. Every year, the Language Arts Department  
5 creates a final exam for all its honors literature classes. The department administers the exam  
6 both as a grade in Honors English Literature and to determine the recipients of three  
7 Distinguished Writers Foundation ("DWF") scholarships to college. The DWF was established  
8 by graduates of CHS to promote the school and the study of literature. The scholarship  
9 recipients are announced at graduation. In 2009, the exam was given on May 28, two weeks  
10 before graduation.

11 In recent years, there have been problems with cheating at CHS. To crack down on  
12 cheaters, the administration instituted an honor system in which students are required to  
13 report incidents of cheating. Those who know about cheaters and who fail to report them are  
14 treated the same as the cheaters themselves. For a first offense, the offender gets a one-day  
15 suspension and a failing grade on the assignment in question. A second offense results in an  
16 "F" in the class and a permanent demerit in the student's school record. This rule is rigorously  
17 enforced and allows for no exceptions.

18 In the spring of 2009, Alex Johnson, Pat Harding, and Anne Marcus were seniors at CHS.  
19 They had known each other for years from participating together in academic programs, and  
20 all three had been on the honor roll. Anne was a tall 17-year-old girl and an avid rock climber,  
21 known to climb regularly at Ballena Beach. Alex was the captain of the school's soccer team.  
22 Pat ran cross-country. All three were in Chris Jackson's Honors English Literature class, and each  
23 had been accepted at State University for the fall. They took the test on May 28, as scheduled.

24 Ballena Beach is on the coast highway. Anne was known to climb on Sundays, often at  
25 Ballena Beach. The beach is a mile-long stretch of sand bordered on its southern side by an  
26 enormous cliff, 75-feet high, which forms a promontory above the water. There is also a  
27 narrow ridge of rocks that forms a gradually rising path that leads from the beach around the  
28 promontory and then descends on the southern side of the promontory into a small and  
29 somewhat hidden cove. The ridge reaches a height of about 40 feet before it leads around to  
30 the cove. In the cove, there is a narrow strip of sand surrounded on three sides by rocky cliffs.  
31 There are also large boulders in the surf, preventing anyone from swimming safely. Students  
32 often went to the cove, despite its isolation.

## **INFORMATION**

### **STATE OF MICHIGAN, COUNTY OF MADISON**

**IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:** The prosecuting attorney for this county appears before the court and informs the court that on June 7, 2009, at Ballena Beach, the defendant

**COUNT: 1 HOMICIDE – MURDER FIRST DEGREE – PREMEDITATED**

did deliberately, with the intent to kill and with premeditation, kill and murder one Anne Marcus;  
contrary to MCL 750.316.

FELONY: Mandatory Life in Prison

**COUNT: 2 HOMICIDE - SECOND DEGREE MURDER**

did , with the intent to kill or do great bodily harm, kill and murder one Anne Marcus;  
contrary to MCL 750.317

FELONY: Life in Prison, or any term of years, in the discretion of the court trying the same.

**COUNT: 3 HOMICIDE - VOLUNTARY MANSLAUGHTER**

did cause the death of one Anne Marcus;

contrary to MCL.321

FELONY: Imprisonment, not more than 15 years or by fine of not more than 7,500 dollars, or both, at the discretion of the court.

**STATE OF MICHIGAN**

**IN THE CIRCUIT COURT FOR THE COUNTY OF MADISON**

PEOPLE OF THE STATE OF MICHIGAN,

Prosecution,

Hon. Raymond C. Justice

vs.

Circuit Court No. 2010 MT

ALEX JOHNSON,

Defendant.

---

**JOINT PRETRIAL STATEMENT**

**1) WITNESSES EXPECTED TO BE CALLED AT TRIAL**

a) For the Prosecution:

- (1) Pat Harding
- (2) Officer Kris Bonds
- (3) Dr. Morgan Sanford

b) For the Defendant:

- (1) Alex Johnson
- (2) Dr. Taylor Van Doren
- (3) Ranger Jamie Almonte

**2) EVIDENCE EXPECTED TO BE INTRODUCED AT TRIAL**

- a) Map of Ballena Beach
- b) Map of the Cove
- c) Coroner's diagram of Anne Marcus's body



### 3) STIPULATIONS FOR TRIAL

Prosecution and defense stipulate to the following facts:

1. The authenticity and admissibility of the evidence listed above, but reserve the right to dispute any other legal or factual conclusions based on these items.
2. All information in the “Fact Situation” is considered common knowledge and may be referenced by any witness.
3. In 2008, Alex Johnson and Pat Harding were caught cheating. Alex used a “cheat sheet” during an algebra exam, and Pat plagiarized writing off a website. Both were first-time offenders.
4. The English exam photocopy had both Alex Johnson's and Pat Harding's handwriting on it.
5. Anne Marcus and Alex Johnson have Type A blood.
6. Dr. Morgan Sanford and Dr. Taylor Van Doren are qualified expert witnesses and can testify to each other's statements.
7. Chris Jackson, Aunt Myra, Alex Johnson's parents and minister, and the individual who found the body are unavailable to testify.
8. All witness statements were taken in a timely manner.
9. The vandalized locker belonged to Anne Marcus.
10. For purposes of this trial, on June 7, 2009, sunset was at 8:04 p.m.

/s/  
\_\_\_\_\_  
Prosecuting Attorney

/s/  
\_\_\_\_\_  
Attorney for Alex Johnson

## **JURY INSTRUCTIONS**

### **CJI2d 16.1 First-degree Premeditated Murder**

(1) The defendant is charged with the crime of first-degree premeditated murder. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant caused the death of Anne Marcus, that is, that Anne Marcus died as a result of the defendant striking her on the head with a rock, leading to her subsequent drowning.

(3) Second, that the defendant intended to kill Anne Marcus.

(4) Third, that this intent to kill was premeditated, that is, thought out beforehand.

(5) Fourth, that the killing was deliberate, which means that the defendant considered the pros and cons of the killing and thought about and chose [his / her] actions before [he / she] did it. There must have been real and substantial reflection for long enough to give a reasonable person a chance to think twice about the intent to kill. The law does not say how much time is needed. It is for you to decide if enough time passed under the circumstances of this case. The killing cannot be the result of a sudden impulse without thought or reflection.

(6) Fifth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.

### **CJI2d 16.5 Second-degree Murder**

(1) You may also consider the lesser charge of second-degree murder. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant caused the death of Anne Marcus, that is, that Anne Marcus died as a result of the defendant striking her on the head with a rock, leading to her subsequent drowning.

(3) Second, that the defendant had one of these three states of mind: [he/she] intended to kill, or [he/she] intended to do great bodily harm to Anne Marcus, or [he/she] knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his/her] actions.

(4) Third, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.

### **CJI2d 16.9 Voluntary Manslaughter as a Lesser Included Offense of Murder**

(1) The crime of murder may be reduced to voluntary manslaughter if the defendant acted out of passion or anger brought about by adequate cause and before the defendant had a reasonable time to calm down. For manslaughter, the following two things must be present:

(2) First, when the defendant acted, [his/her] thinking must be disturbed by emotional excitement to the point that a reasonable person might have acted on impulse, without thinking twice, from passion instead of judgment. This emotional excitement must have been the result of something that would cause a reasonable person to act rashly or on impulse. The law doesn't say what things are enough to do this. That is for you to decide.

(3) Second, the killing itself must result from this emotional excitement. The defendant must have acted before a reasonable time had passed to calm down and return to reason. The law doesn't say how much time is needed. That is for you to decide. The test is whether a reasonable time passed under the circumstances of this case.

### **CJI2d 3.2**

(1) A person accused of a crime is presumed to be innocent. This means that you must start with the presumption that the defendant is innocent. This presumption continues throughout the trial and entitles the defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that [he / she] is guilty.

(2) Every crime is made up of parts called elements. The prosecutor must prove each element of the crime beyond a reasonable doubt. The defendant is not required to prove [his / her] innocence or to do anything. If you find that the prosecutor has not proven every element beyond a reasonable doubt, then you must find the defendant not guilty.

(3) A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence. It is not merely an imaginary or possible doubt, but a doubt based on reason and common sense. A reasonable doubt is just that -- a doubt that is reasonable, after a careful and considered examination of the facts and circumstances of this case.

## STATEMENT OF PAT HARDING

1           My name is Pat Harding, and I live at 42 Niekro Road in Clearwater. I am 18 years  
2 old, and I graduated from Clearwater High School in August after completing summer school. I  
3 took Chris Jackson's Honors English Literature course in the spring. Both Anne Marcus and  
4 Alex Johnson were also in the class. I had studied hard all semester because I had applied to a  
5 number of schools, and I awaited hearing about scholarship information. Among the colleges I had  
6 been accepted to was State University, which honored scholarships from the Distinguished Writers  
7 Foundation. I knew that in the past, the top three grades on the honors literature exam received these  
8 scholarships and received honors at the graduation ceremony, too. My older brother had received  
9 the award two years ago, and my sister received the award last year. I really felt like I had to follow  
10 in their footsteps. The whole atmosphere of the class was competitive. The students compared their  
11 quiz and essay grades with each other. It was intimidating. I know I am a good student, but I still  
12 felt the pressure.

13           Maybe that explains why I agreed with Alex to cheat on the exam. Alex had a  
14 school volunteer service job working in the Language Arts Department and snooped around  
15 to find the extra keys to Mr. Jackson's cabinets. One day, probably in early May, Alex came up  
16 to me after school and showed me a copy of Jackson's exam. There were multiple choice and  
17 essay questions. I could not believe my eyes. Alex was angry that there were no answers  
18 written on it, but told me that the questions gave us an opportunity to prepare in advance. At  
19 first, I told Alex to put the exam back. I had already been caught the year before for  
20 plagiarism. I had learned my lesson, or so I thought, but Alex was insistent, telling me that I had

21 to go along with it because now I knew too much. I guess I ought not to blame Alex. It was my  
22 stupid decision to go ahead with Alex's plan.

23 So, we prepared our answers before the exam and did very well. I suppose we were  
24 pretty bold because on June 5, we started talking about it in the hall at school. Alex was  
25 handing me the prepared exam and telling me to get rid of it. I said it was not my job to do  
26 that, when Anne Marcus came over to us and grabbed the exam paper. She looked at it and  
27 then at us and said, "I can't believe this! You guys cheated." We pleaded with her to keep it  
28 quiet and give us back the paper, but she refused. She said she was going to tell the principal  
29 about it on Monday if we did not turn ourselves in by then. Then she stuffed the papers in her  
30 backpack and threw the backpack into her locker right there. She locked it up and walked  
31 away. I felt like we were doomed.

32 On Sunday, June 7, Alex asked me to drive us to Ballena Beach to talk with Anne. I  
33 asked, "Why? Do you want to try to frame her for drugs or something?" Ballena Beach is a  
34 cesspool of drunks and drug dealers. Having a "picnic" at the beach has whole new meaning  
35 there. I guess it's good rock climbing though. I thought going would be a complete waste of  
36 time because I knew Anne would not change her mind. But I had nothing else to do, and  
37 Alex insisted we go. I borrowed my dad's car, a white Mazda Miata. On the way there,  
38 Alex talked about Anne and became more and more agitated. Alex called Anne a  
39 "backstabber" for threatening to turn us in. I was afraid of getting in trouble, but I could see that  
40 Anne risked getting in trouble for not turning us in. I asked Alex what good it would do to talk  
41 to Anne, but Alex would not listen to me.

42           When we arrived, the toll booth was empty as usual, so we just parked. Most of the  
43 time the rangers are off yelling at people for having glass bottles on the beach or something,  
44 and not collecting the entrance fee. People park for free more often than not. We hiked up  
45 the ridge of the rock face where Anne was climbing. We waited for a couple of minutes, and  
46 when Anne reached the ridge, Alex just snapped. Anne was standing there, gathering up the  
47 rope when Alex lunged forward and grabbed Anne's collar. Alex muttered something and  
48 made a noise. Then I saw Anne swinging her arms like she was trying to keep her balance.  
49 She yelled and had this terrified look on her face. Before I could do anything, Alex let go of  
50 her collar, and the two of them stood there for a few seconds. Anne did not move. Alex dusted  
51 off her shoulder and said, "We don't want you to get hurt, do we?" Then Anne coiled up her  
52 rope and said she wanted to leave.

53           Alex mentioned the exam to Anne. Alex said, "Let's go talk about this at the Cove."  
54 Anne did not say anything, but just stared at Alex. They started walking together in the direction  
55 of the Cove, and I followed. I had second thoughts at this point about trying to convince Anne.  
56 She seemed determined to turn us in. But before I knew it, the two of them started screaming  
57 at each other. I am not sure who screamed first, but it startled me. Alex's face turned red, and Alex  
58 grabbed Anne's arm. Anne tried to get out of Alex's grip, but could not do it. So Anne just  
59 punched Alex in the shoulder and screamed, "Let me go!" By this time, we were at the tip of  
60 the promontory where the trail curved around toward the Cove. The two of them would not  
61 stop screaming at each other. Alex let go of her arm, but stood there on the ridge between her  
62 and me. Alex then pushed Anne's shoulder, and Anne pushed back. I said, "This is a total  
63 waste of time, Alex." I told them I was going back to my car rather than watch them beat each

64 other up. They ignored me and walked toward the Cove. I turned and headed back to the car. I  
65 walked slowly, being careful on the rocky trail.

66           When I got back, the clock on the dashboard said it was 7:50 p.m. I sat in the car and  
67 turned on the radio. I only got out of the car to go to the restroom once or twice over the next  
68 hour or so while I waited for Alex. It was very dark when Alex finally showed up at the car at  
69 9:00 p.m. I asked where Anne was. Alex said, "At least I got one more day out of her." I  
70 assumed this meant that Anne was not going to tell on us. That seemed odd because the two  
71 of them had been fighting so fiercely. Alex seemed angry, and we argued. Alex accused me of  
72 ditching them on the ridge, and I accused Alex of keeping me waiting for so long. We got in  
73 the car, and I drove us back to the city. On the way back, I turned on the car's interior lights to  
74 look for something, and I noticed a small spot on the inside of Alex's right wrist. It looked like  
75 dried blood. I did not think anything of it at the time. We did not talk at all during the ride  
76 home. Alex still seemed angry and ignored me. I was also fed up with Alex. That kid was  
77 always getting me in trouble.

78           I arrived at school the next day at 11:00 a.m., after a doctor's appointment. A little  
79 later, the principal announced Anne's death. I was shocked, and I almost fainted. Just after  
80 lunch, around 1:15, I got a note to go to the office. There I saw Officer Bonds and the principal,  
81 but the principal left the room. The officer talked with me for a few minutes and told me that  
82 Anne had turned us in for cheating. I thought I had my college plans all wrapped up, but at  
83 that moment, I realized my plans were destroyed. I explained that Alex and I had been with  
84 Anne at the beach the night before. I told the officer about Alex's and Anne's fight and that  
85 Alex was with her for a long time alone. I remembered the strange stain on Alex's wrist, and I

86 told the officer about it and that it looked like dried blood. Then the officer thanked me and let  
87 me go back to class.

/s/ \_\_\_\_\_  
**Pat Harding**



## STATEMENT OF OFFICER KRIS BONDS

1           My name is Kris Bonds. I am 32 years old, and I have been an officer in the Clearwater  
2 Police Department for five years. In addition to investigative and other police duties, I have  
3 been the School Resource Office ("SRO") at Clearwater High School for the past three years.  
4 I investigated Anne Marcus's death.

5           As SRO, I know that most Clearwater High graduates go on to attend college, and honor  
6 students in advanced classes tend to be accepted at some of the country's top schools. Image is  
7 important, and classes are competitive. Students are known to taunt, even sabotage, each other  
8 to get good grades.

9           The administration tries to keep a lid on cheating which has become rampant over the  
10 past couple of years because of the Internet. An honor system was developed two years ago to  
11 educate students about the pitfalls, discourage would-be cheaters, and require students to  
12 report incidents of cheating. In the spring of 2008, Pat Harding and Alex Johnson were  
13 among the students caught cheating. Both of them received the punishment for a first offense  
14 knowing that a second offense would get them into more serious trouble.

15           Alex and Pat stood out among the students in their class for both academic and athletic  
16 honors. Alex is on the soccer team, trains hard, and lifts weights. Alex has leadership qualities,  
17 too, but was known to use them negatively and tended to be sarcastic. Pat has a similar  
18 personality, though Pat's hostility was known to go beyond sarcasm at times with other  
19 students. At the beginning of last year, Pat was reported to the Principal for taunting and  
20 punching a transfer student. Pat was suspended for a day from school, and there was a parent  
21 conference. That year, Pat was also disciplined one other time for a similar incident.

22           Students in Pat's or Alex's situation know that if they got in any more trouble, they  
23 could fail their honors class and have to repeat the course over the summer. They would not  
24 walk across the stage at graduation, and they would lose their chance of receiving the DWF  
25 scholarship. All of these factors would probably jeopardize their chances to go to a  
26 prestigious college, like State, even if they had been accepted already.

27           On the morning of Monday, June 8, at approximately 7:00 a.m., I received a call  
28 from dispatch that someone had found a body washed up on the shore at Ballena Beach. When  
29 I arrived on the scene a few minutes later, I found out that the body was not on the main beach,  
30 where I had assumed it would be, but was in a little cove just south of the main beach. When I  
31 saw the body, I immediately recognized it as that of Anne Marcus. There was a small crowd of  
32 onlookers that had gathered in the Cove, and I had to clear them out of there up to the ridge  
33 until the coroners arrived.

34           I conducted a search of the Cove and visually examined the body. One of the first things  
35 I noticed were some reddish marks on her wrists. The first thought I had was that she had been  
36 bound. She was wearing climbers' clothes and still had her belt on with utility pouches and  
37 some small metal rings, which are called carabineers. I noticed that there was a ledge of rock  
38 a few inches above the sand at the foot of the southern cliff face in the Cove. The ledge was  
39 about four feet wide and sparsely covered with sand. It had no puddles or moisture on it. On  
40 this ledge, I also found a small rock that was just big enough to fit into my hands, and it had  
41 dried blood on it.

42           At about 11:00 a.m., the medical examiner ("M.E.") called me to give a report. The M.E.  
43 confirmed that the deceased was Anne Marcus and that the cause of death was drowning. The

44 M.E. also told me that a forensics test showed that the blood on the rock I found positively  
45 matched the blood of the victim, and that there was a laceration on the side of her head that  
46 was consistent with receiving a blunt force blow to the head.

47 I was officially assigned to investigate the case. I called the high school around 11:30  
48 a.m. and informed the Principal that Anne Marcus's body had been found that morning at the  
49 Cove. I said that the matter was being investigated, but that I had no other facts at that time.

50 I arrived at CHS and learned about Anne's school friends and possible enemies by  
51 asking routine questions. I learned that Anne was a studious and popular girl. I also  
52 learned that Anne had confidentially reported to the administration an incident of cheating the  
53 previous Friday. The cheaters were Alex Johnson and Pat Harding, and they both believed that  
54 Anne was going to report them on Monday. I also learned that Anne's locker had been  
55 vandalized that same Monday morning.

56 In my conversations with administrators and staff, I learned that everything looked  
57 normal at 6:30 in the morning. But during first period, Anne Marcus's locker was found open  
58 with the door bent in the middle and with a cracked combination lock. Papers were reportedly  
59 strewn on the floor of the locker, and a backpack inside was turned over and unzipped.  
60 Additionally, at about 7:00 a.m., before school started, Alex Johnson was seen near the school  
61 entrance.

62 I decided it was a good idea to talk with Alex and Pat about what they knew. Pat  
63 arrived first. I asked Pat a few questions. I said that I knew about the cheating and asked if  
64 Pat could tell me anything special about Anne. Pat told me that Pat and Alex had talked to

65 Anne at Ballena Beach the previous evening. Pat also mentioned that Alex and Anne had  
66 been fighting there, that Pat had left them alone on the trail to the Cove, and that Alex did not  
67 return until around 9:00 p.m. Pat also mentioned that Alex had a stain on the inside of Alex's  
68 right wrist that looked like blood.

69 When Pat left the room, I asked for Alex to be brought in. Alex soon arrived, and I  
70 told Alex that I needed to ask a few questions. I told Alex to sit down, and I read the *Miranda*  
71 rights just in case. I used a conversational tone and sat in the Principal's chair so that I would  
72 not be standing over Alex. I asked if Alex and Anne Marcus were friends. Almost  
73 immediately, Alex said how sad it was that Anne hit her head and died. I knew that no one  
74 else beside myself and the M.E. knew anything about Anne's head wound. I had not told  
75 anyone, not even Anne's parents.

76 Based on the information I had from the M.E. and conversations with Pat Harding,  
77 Alex Johnson, and others around school, I had enough evidence to present to a judge for an arrest  
78 warrant. I knew that Alex had been alone with Anne Marcus for a substantial time and was the  
79 last known person to see her alive. With the warrant, I arrested Alex Johnson later that day.

/s/ \_\_\_\_\_  
**Officer Kris Bonds**

## STATEMENT OF DR. MORGAN SANFORD

1           My name is Morgan Sanford. I earned a bachelor's degree in chemistry from Grand  
2 Valley State University and then went on to State University Medical School. I graduated  
3 from medical school with distinction in 1990 and did my residency training at Clearwater  
4 Hospital's pathology lab before taking a position as an Assistant Coroner for Madison  
5 County. During my first year as a coroner, I was assigned to be director of the forensic serology  
6 lab. I am now assistant chief coroner and have been appointed chairperson to the State  
7 Committee for Professional Standards in Forensic Pathology for the last three years. I am also  
8 the medical examiner in the death of Anne Marcus.

9           As part of my initial examination of the body on the beach, I observed several  
10 things. Marcus was wearing climbers' garb, a short-sleeved T-shirt, shorts, and shoes. There  
11 were ligature marks on her wrists. There was also an injury on her head, just above the left  
12 temple, which looked like a laceration. The area around her left eye was swollen, which  
13 appeared to me to be the result of some kind of trauma, like getting punched in the eye. At  
14 7:30 a.m., when I examined the body, she was in an advanced state of rigor mortis. Her whole  
15 body was stiffened, except for the large muscles in her lower legs. There were some small  
16 cuts and bruises, consistent with her being bumped around in the rocky surf.

17           Back at the medical examination lab, I discovered water in Marcus's lungs. I  
18 surmised that Anne had drowned. By the state of rigor mortis of the body, I estimated that she  
19 had died sometime between 8:00 p.m. and midnight on June 7. Rigor mortis is a process by which  
20 the compounds in the body's muscles that provide muscular energy are lost. As the heart stops  
21 beating and respiration ceases, these compounds lose a necessary supply of oxygen and

22 nutrients, and the muscles stiffen. The process starts with the small muscles in the head and  
23 neck and progresses downward to the toes over the course of 8-12 hours for a body of average  
24 weight and musculature like that of Anne Marcus. Also, it can take longer in cold  
25 temperatures. Marcus died in the lake and at night when the air temperature drops  
26 significantly. Assuming she died at about 8:30 p.m., then she would be in full rigor by 8:30  
27 a.m. the following day. Yet probably because of the cold, her legs generally remained flaccid  
28 at the time of my laboratory examination. If she had died only eight hours before her body  
29 was found, far fewer of her muscles would be in a state of rigor.

30           While conducting the autopsy at my lab, I looked more closely at the ligature marks on  
31 Marcus's wrists. In the course of rock climbing, it would be highly unusual for a climber to  
32 sustain virtually congruent injuries to both wrists. It would mean the climber would have to  
33 hold on to the rope with both hands and then to fall, sustaining almost identical rope burns on  
34 both wrists. The chances for this happening are very small, as there is no reason for an  
35 experienced climber to make such a gesture. I have seen congruent marks like these in only  
36 nine or ten other cases I have dealt with, both as a pathologist and as student intern. In each of  
37 those cases, the victim was tied up by someone else.

38           I also examined the wound above Marcus's left temple. I believe the only way she could  
39 have sustained this would be from some blunt force instrument or object. There is a five  
40 centimeter laceration, which tapers at one end. Directly underneath, her skull has a hairline  
41 fracture. This is consistent with someone else holding out an object and hitting Marcus directly  
42 on the side of the head. It is not consistent with Marcus falling onto the rocks. To sustain a  
43 falling injury to the head like this, she would have had to tilt her head dramatically toward her  
44 right shoulder in order to connect her temple squarely against the rocks. No one in a falling

45 motion, even from the 25-foot height of the particular cliff in the Cove, would have the time  
46 or the presence of mind to do so. Moreover, the small rock on which Officer Bonds found the  
47 dried blood itself could not have caused the injury if Marcus fell on it unless it was tightly  
48 wedged into a larger rock, which from the officer's report was not the case.

49         As for the blood on the rock, early testing revealed that it was Type A, the same as  
50 Marcus's. Medical records show that Alex Johnson also has Type A blood. In a murder  
51 investigation of a brutal crime, this can pose a problem for a forensic investigator, but we  
52 have a different situation here. First, on June 8, Johnson did not claim to have sustained any  
53 injury, so there is no reason to believe that the blood could belong to Johnson. Secondly, blood  
54 is identifiable by more than just type. Everyone's blood contains enzymes and proteins with a  
55 myriad of potential chemical make-ups. Scientists have identified 12 such "genetic markers,"  
56 each of which has between three and ten separate types. I found in the sample of dried blood  
57 on the rock two of the six identifiable genetic markers that were present in a blood sample  
58 taken from Marcus's body. Moreover, these two genetic markers were of the same type as those  
59 markers from Marcus's body. The chances for this being a coincidence are, again, very small.

60         Therefore, it is my professional opinion that Anne Marcus was struck on the side of the  
61 head and perhaps knocked unconscious as a result, before or after being bound with rope. Her  
62 body was thrown or pushed into the water where she subsequently drowned.

/s/ \_\_\_\_\_

**Dr. Morgan Sanford**

## STATEMENT OF ALEX JOHNSON

1           My name is Alex Johnson. I am 18 years old. I live at 789 Clinton Road in Clearwater.  
2           During the 2008-09 school year, I was a co-captain of the CHS soccer team. Throughout high  
3           school, I had won many awards for academic decathlons, debate society competitions, and  
4           fiction writing.

5           I will admit up front that I cheated on the Honors English Literature exam in Mr.  
6           Jackson's class. I am deeply ashamed that I did this. The irony is that I think I would have done  
7           well on the exam anyway. I had an "A" in that class already. But my parents were really counting  
8           on me to earn a scholarship to enable me to go to State University. It is a family tradition to  
9           excel in school. That DWF scholarship was very important to me. I was afraid of getting  
10          anything less than an "A" in Mr. Jackson's class. That is also why I cheated on algebra that  
11          other time.

12          In early May, I took the spare key to Mr. Jackson's cabinet from the office of the  
13          Language Arts department. I was an intern in the department as part of the school  
14          volunteer community service program. In Mr. Jackson's cabinet, I found a blank exam,  
15          photocopied it, and returned the blank exam and the cabinet key. No one was the wiser until Pat  
16          Harding noticed me taking the key from my pocket as I walked into the English department's  
17          empty office. Pat asked what I was doing, but I did not want to say. Pat threatened to tell the  
18          principal that I was nosing around without permission, so I showed Pat the exam photocopy.  
19          Pat asked to get a copy of that, too. I said, "OK" After that, we worked together over the next  
20          couple of weeks preparing all the answers in advance. We aced the exam, of course.



21           At school on June 5, I asked Pat to get rid of the exam copy we had used. I took it out  
22 of my backpack and handed it to Pat. That is when Anne Marcus approached us and grabbed  
23 the exam from Pat's hands. She looked at it, and I could tell she knew right away what it was.  
24 She accused us of cheating. Of course, she was right. We begged her to keep her mouth shut  
25 about it. She was angry, though. She accused us of destroying her chances for getting the  
26 scholarship. Then she put the exam in her backpack and locker. She said it would stay there  
27 either until we turned ourselves in, or until she told on us sometime Monday.

28           I was afraid, so I tried calling Anne's phone number many times over the weekend.  
29 When Anne did not return any of my calls, I decided to talk to my minister that Sunday  
30 morning. Just before church began, I told him that I cheated and that I wanted to turn myself in.  
31 The Reverend agreed that was the best thing to do. I just wanted a little more time to do it. I  
32 had a similar conversation with Jamie Almonte at church. I wanted Anne not to turn us in  
33 until Tuesday, so I could think about how to explain it to my parents. I felt like my life was  
34 ruined, so I needed courage. I wanted to tell them when they called Monday night. They called  
35 me every Monday night while they were away in Europe.

36           I called Pat in the afternoon. Pat insisted that I find out where Anne was. I knew Anne  
37 was an avid rock climber and that she loved to climb the rock face at Ballena Beach. Pat  
38 offered to drive us down there so that we could talk to her. I did not tell Pat about my plan to try  
39 to get Anne just to postpone telling on us.

40           Ballena Beach is the place to go if you're a teenager looking for an absence of adult  
41 supervision. The picnic area is notorious for being the place for underage drinking, and just  
42 about everyone has a story about one party or another at the Cove. When we got to the beach,

43 we saw Anne. She was the only climber on the rock face. We walked along the ridge and  
44 waited for her. When Anne reached the ridge, I had the fright of my life. A piece of rock gave  
45 way under her foot when she turned to gather up her rope. I grabbed her quickly to keep her  
46 from falling. She seemed startled. It all happened within a few seconds. Pat laughed and did  
47 not even attempt to help, which I thought was a bizarre reaction.

48 Anne started to walk toward the Cove, and we went with her. Pat lagged behind a bit, and Anne  
49 and I talked. I asked Anne to wait until Tuesday because I wanted to explain it to my parents  
50 before the school told them. Anne refused. Still, I begged Anne, though she said she would  
51 not change her mind. We argued about it. Anne was annoyed that we had come down to see  
52 her and that Pat kept laughing. When we were almost at the Cove, I turned around and saw that  
53 Pat was gone. Anne and I walked down to the Cove. There we talked for a while, and she finally  
54 said she would not turn us in until Tuesday morning. She still seemed annoyed with me and  
55 said, "Whatever. You have until Tuesday." She started climbing up the southern cliff. I watched  
56 her climb for a little while and then I left.

57         It took me awhile to walk back to Pat's car as it got darker. It was 8:30 p.m. according  
58 to my watch when I arrived at the car, but Pat was not there. I was upset because Pat stranded  
59 us on the trail and now was gone. I decided to take a walk to cool off, so I headed north up the  
60 beach. It was about 9:00 p.m. and totally dark when I came back.

61         Back at the car, I saw Pat was waiting for me this time, sitting on the hood of the car.  
62 His/her T-shirt looked like it was sweaty, as if he had been running or something. I was mad  
63 at Pat for ditching me. I told Pat that Anne would wait one more day. I also said, "I thought we  
64 were in this together." Pat laughed again, which I thought was a weird response to what I said.

65 We shouted a little at each other, but then Pat drove me home. We were both silent all the  
66 way home. I do not know where Pat got this idea about a spot on my wrist. I never saw  
67 anything on my wrist that day.

68 On Monday, I arrived at school at 7:00 a.m. Sometimes I come early to work out in the  
69 gym. I also thought I might confess about cheating, but I chickened out. I was scared because I  
70 never got along very well with the administration. A couple of hours later, the Principal  
71 announced that Anne had died. I was shocked. I realized that I might have been the last  
72 person to ever see Anne. That cove can be a dangerous place.

73 Just after 1:30 or so, I was told to go to the Principal's office. I went there, and I saw  
74 Officer Bonds. I sat down. The officer read me the rights they say on the cop shows. I  
75 thought I was under arrest, and I was nervous because I had never been questioned by the  
76 police before. Then the officer asked me about Anne at the beach.

77 This did not sound right to me. I had no idea what this was about, so I asked to see  
78 my Aunt Myra who lived down the street from us. Since my parents were gone, I wanted to  
79 talk to her before talking to the officer. The officer said that my aunt was not going to be  
80 called, but that I could have an attorney. This frightened me, but I felt I needed permission to  
81 get up, so I did not move. The whole situation was intimidating.

82 Then the officer asked me if Anne and I were friends. I was so horrified that she was  
83 dead that the officer's question just jolted me. I mentioned that I assumed she had fallen from  
84 the cliff where I last saw her and possibly hit her head. She was an experienced climber, but

85 she had had minor accidents before. The whole questioning had me confused. The officer's  
86 tone of voice was very stern.

87 When the questioning ended, I was sent back to class. I was totally shocked when I  
88 was arrested later. I cannot believe that anyone would think that I killed Anne.

/s/ \_\_\_\_\_  
**Alex Johnson**

## STATEMENT OF DR. TAYLOR VAN DOREN

1           My name is Taylor Van Doren. I retired in 2007 from the Madison County Coroner's  
2 Office after working for 18 years as an assistant coroner. I earned my bachelor's degree in  
3 biology from Northern New York College in 1961. I worked in the Peace Corps in West Africa  
4 for two years before returning to earn my medical degree from Massachusetts Medical School  
5 in 1978. I entered private practice and, in 1987, began teaching a clinical course at State  
6 University Medical School. In 1988, I changed the emphasis of my career and became certified  
7 in forensic pathology. In 1989, I was hired by the Madison County Coroner's Office. I have since  
8 worked as a coroner, taught seminar courses, and have published nine articles in professional  
9 journals on the practice of forensic pathology. My book, *Traumatic Anatomy and Physiology:  
10 Conversing with Cadavers*, has become a standard introductory text in forensic medicine  
11 programs nationwide. Since retirement, I have continued teaching at the university. I am also a  
12 past president of Clearwater Rock Climbers.

13           I also provide forensic pathology consultation on a contract basis. It was in this  
14 capacity that I was hired by Alex Johnson's attorney to render an opinion as to the cause of death of  
15 Anne Marcus. I have reviewed the records of the Madison County Coroner's Office and have  
16 been able to examine the physical evidence, morgue photographs, and tissue samples. With all  
17 due respect to Dr. Sanford, I have some problems with the conclusions reached regarding the  
18 death of Anne Marcus.

19           First, I will begin with the so-called ligature marks on her wrists. Ligature marks indicate  
20 binding of some kind, as in a person being tied-up. The photos I saw of Marcus's wrists certainly  
21 showed reddish marks. They looked like marks from a rope. However, I disagree with the  
22 examining coroner's analysis. First of all, the marks were not even all the way around the wrist.

23 On the left wrist, the marks did not appear on the underside, indicating that the rope, which  
24 caused the mark, was not wrapped around the entire wrist. Also, Anne Marcus was a rock climber,  
25 and so am I. I have seen numerous climbers give themselves similar rope marks on their arms  
26 and legs during moments of carelessness or when a sudden gust of wind causes them to slip. I  
27 believe there is not enough evidence to call the marks on Marcus's wrists "ligature marks."

28           Second, the wound on Marcus's head may have come from a variety of causes. The  
29 records show that the wound opening was five centimeters long. It is also slightly triangular in  
30 shape, which to me indicates a kind of scraping motion. This could easily be the result of  
31 Marcus's falling from the cliff. If her head had turned in a certain way, her striking the bottom  
32 could have caused this type of injury. The force of the fall on even a small rock, like the palm-  
33 sized one in question here, would have resulted in a nasty head wound. Even if Marcus fell  
34 from a low elevation, maybe 10 feet, she could have received an injury such as the one we see  
35 on her temple. Such a wound could also have easily disoriented her and led her to stumble into  
36 the rocky water.

37           Third, the swelling of her left eye is consistent with one of two causes. The first is a  
38 blunt force blow, such as a blow from a fist to the eye. The second, and far more likely cause is  
39 swelling related to the head injury and fall from the cliff. This collateral swelling of the  
40 capillaries around the eye frequently comes from suffering a blow to the temple, as I have seen in  
41 numerous cadavers. The cuts and bruises on her body, including the eye, appear to have come  
42 from her falling on the rocks and from the rocks below the surface of the water.

43           Fourth, we cannot easily approximate the time of Marcus's death. The certificate of  
44 death indicates that Marcus was pronounced legally dead at 7:30 a.m. on June 8, when Dr. Sanford

45 arrived at the Cove. Of course, physiologic death is much harder to pinpoint. Rigor mortis is  
46 generally unreliable as a means to determine time of death when compared to other methods, such  
47 as body temperature or stomach contents, because of all the variables. Though the water and  
48 weather were cold, which can slow the process of rigor, Anne was also slender, which can speed up  
49 the process. Judging from the records, I believe there is not enough evidence to say she died as  
50 early as 8:00 or 8:30 p.m. on June 7.

51 Finally, the blood analysis is not conclusive. Usually, it takes three or four matching  
52 genetic markers shared between two blood samples in order for scientists to have a fairly definite  
53 claim that the samples are from the same source. With each unmatched marker, the chance of  
54 their being from the same person decreases exponentially. All of us share genetic markers in  
55 many of the same combinations. Identification through exact matches is more rare than is usually  
56 thought. Even so, once blood leaves the body, the enzymes that make up these genetic markers  
57 begin to deteriorate. Dried blood on a rock out in the open air is probably the worst sample from  
58 which to draw any conclusions without DNA evidence. No DNA testing was done here.

59 In my professional opinion, Anne Marcus died an accidental death in the Ballena Beach  
60 Cove. She fell from the cliff and scraped her wrists on the climbing rope in the process. She hit  
61 her head and tragically stumbled into the waves that swept her under the water's surface, where  
62 she drowned. The rocks and boulders in the water prevented her body from drifting away.

63  
64

/s/ \_\_\_\_\_  
**Dr. Taylor Van Doren**

## STATEMENT OF RANGER JAMIE ALMONTE

1           My name is Jamie Almonte. I have been a ranger with the Michigan State Parks for 14  
2 years. I have worked at the Ballena Beach Station for the last three years. Working at the beach  
3 has numerous responsibilities. I have to patrol the beach itself and outlying areas nearby,  
4 including camping areas up the coast from the beach and over 20 miles of hiking trails in the  
5 hills on the eastern side of the highway. I have to perform many duties, such as park  
6 maintenance and enforcing park rules governed by state law. It's a demanding job, but worth  
7 it. The kids seem to love the park so much. I'm happy to serve.

8           When I'm not on patrol, I monitor the day-use parking lot for Ballena Beach. This  
9 requires me to be on duty in a kiosk, greet visitors, collect the day-use fee, and to see everyone  
10 is out by sunset when the park closes. Any car in the parking lot after sunset will also receive a  
11 citation. I warn all visitors of this when they arrive because the rule is intended to dissuade  
12 visitors from sleeping there overnight. Due to budget cuts, there is only one ranger on duty at  
13 a time. When I am away from the kiosk attending to my other duties, I have to survey the  
14 parking lot when I return, to see if anyone arrived during my absence. If they did, I put a  
15 notice to pay on their windshield. The system seems to work well enough. The people in this  
16 area value the park and are happy to pay for the privilege of using it.

17           The Ballena Beach State Park has a distinctive geography. The beach itself is about a  
18 mile long and is popular with sunbathers and as a gathering spot for local youth. They like to  
19 get together on the beach and play a little Frisbee or volleyball, or have a good old-fashioned  
20 cook out in the picnic area. At the southern end of the beach is the promontory, quite popular  
21 for rock climbers. Around the promontory, beyond the park's southern border is a place



22 everyone calls the Cove where a bend in the cliff face has created a small sandy area. The Cove  
23 is surrounded by cliffs, and at the top of these cliffs are a few private residences.

24 The residences are set back from the edges of the cliffs. Once in a while, I patrol  
25 around the promontory to make sure that no one is trespassing in this private area. Sometimes I  
26 have seen the residents climbing down to the Cove, though I would advise them against it  
27 because the area can be dangerous.

28 There are two routes to the Cove from the beach, the ridge trail around the  
29 promontory and a dirt hiking trail behind the eastern side of the promontory. The hiking trail is  
30 not much used, probably because it is very steep in places.

31 On June 7, at about 6:15 p.m., I greeted a young woman in her car at the gate to the parking  
32 area. She appeared about 17 or 18 years old. I later learned that she was Anne Marcus when I saw  
33 her picture in the newspaper.

34 Later, at around 7:00 p.m., I was on the other side of the highway cleaning up a mess  
35 some hikers had left behind. They must have been diabetics or something because there were  
36 needles here and there along the trail. I was cleaning up some broken glass and shell casings  
37 near the road when I noticed a white two-door sports car entering the park. From where I  
38 was, I couldn't identify either of the car's occupants, but I know I saw two people in the car.  
39 No other visitors arrived after them.

40 I closed the kiosk at sunset, about 8:05 p.m., and walked up the road north to make my  
41 inspection of the picnic area. There was nothing out of the ordinary, just the usual rows of  
42 empties people seem to like to leave on the picnic tables for the park's can drive. It would

43 sure be a lot more efficient if they would just put them in the bin by my kiosk. We'll have  
44 enough for a new tether ball soon. When I returned to the parking lot at 8:40 p.m., I saw there  
45 were still two cars in the parking lot. One was the white sports car, and the other was the car  
46 that arrived at 6:15. I approached both cars and saw that they were empty. I decided to check  
47 around the beach area just to see if the owners of the cars were nearby.

48 I walked down the sand to the bottom of the north face of the promontory. It was  
49 almost dark, but there was still some twilight left. It must have been about 8:50 p.m. when I  
50 saw someone walking along the ridge on the promontory. The person was walking toward me  
51 and away from cove. I would say this person was about 75 or 80 feet away from me, which  
52 made it hard for me to get a good description. I called up to the person that the beach was  
53 closed. I wondered if it was one of the two people from the white car or the young woman,  
54 though the local residents above the cove sometimes use the promontory trail as beach access.  
55 It looked like the person waved at me, and I turned to walk north up the beach.

56 As I walked I saw someone cross my path about thirty feet ahead of me, moving  
57 toward the parking lot. I waved and called out that the beach was closed. The person, not  
58 the same person I had seen up on the ridge, may have been the passenger in the sports car  
59 that arrived at 7:00 p.m., but I can't be sure. After scouring the beach for a few more  
60 minutes, I returned to the parking lot and the white sports car was gone. I wrote up a  
61 citation for the one car left in the parking lot. I drove back to the Ranger Station, and my  
62 workday was done.

63 I spend a great deal of my free time with youth activities at my church, the same church the  
64 Johnson family attends. So I have known Alex Johnson for years. Many of the teenagers and

65 young adults, including Alex Johnson, are involved in charitable events. For the last two years,  
66 Alex helped organize monthly food drives for the local homeless shelter. In fact, the local chamber  
67 of commerce awarded Alex a community service medal last year for this work. Even when  
68 other kids did not follow through, I knew I could count on Alex to come through. It is impressive  
69 to see a teenager as mature as Alex Johnson. Alex has a good reputation in church and in the  
70 community.

71           We had a program in conflict resolution at the church not too long ago, and Alex  
72 participated. Alex must have taken the messages to heart because I have seen Alex settle  
73 arguments among others. Once there was a disagreement between two members about where  
74 some records of donations were kept. It was a trivial argument about some clutter that had  
75 built up in the youth ministry office. However, these two young people blamed each other for  
76 losing the donations records and were ready to fight over it. Alex stepped in and talked to each  
77 of them individually, and then together. Within a couple of minutes, they were shaking hands.  
78 It was amazing. Perhaps Alex will make a good minister or counselor one day.

79           Alex also confided in me on the morning of Sunday, June 7, that Alex had cheated  
80 on an exam. Alex really seemed distraught by it. I understood because I know Alex's parents.  
81 Alex's parents are professional people and very well educated. Alex wanted nothing more than  
82 to follow in their footsteps. They had attended prestigious universities and assumed that Alex  
83 would do the same. Alex seemed worried that Mr. and Mrs. Johnson would be severely  
84 disappointed about the cheating. I reassured Alex that they could also be forgiving. Alex was  
85 shaking during our conversation. Alex seemed remorseful about the cheating and told me that s/he  
86 would probably confess to the principal sometime on Tuesday after Alex's parents returned.

87 I think a lot about whether the people I saw in the park that night were Alex and Alex's  
88 friend. I wish I could say for sure. The fact is, it was just too dark, and I was too far away.

/s/

\_\_\_\_\_  
**Ranger Jamie Almonte**

EXHIBIT 1

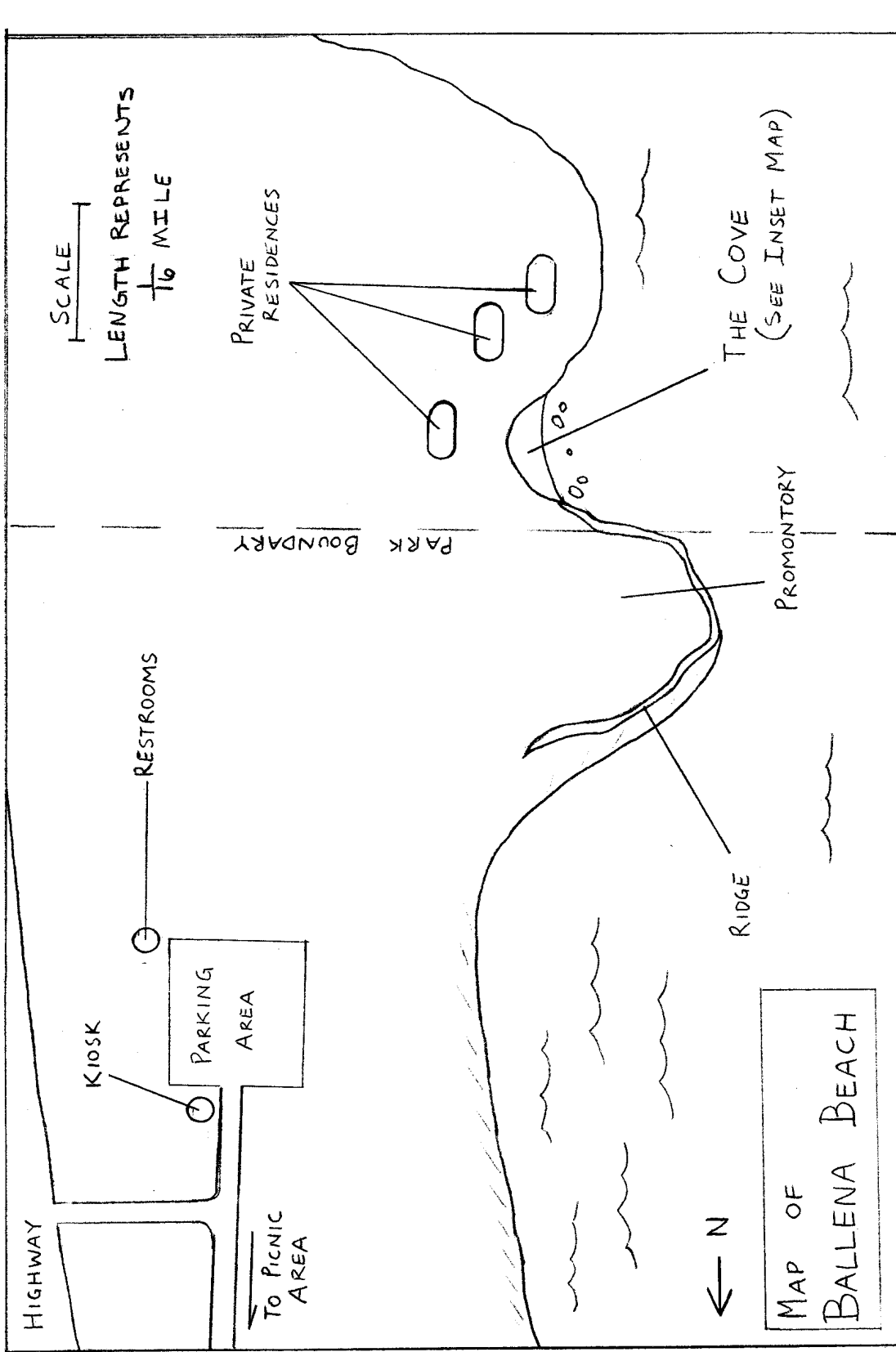
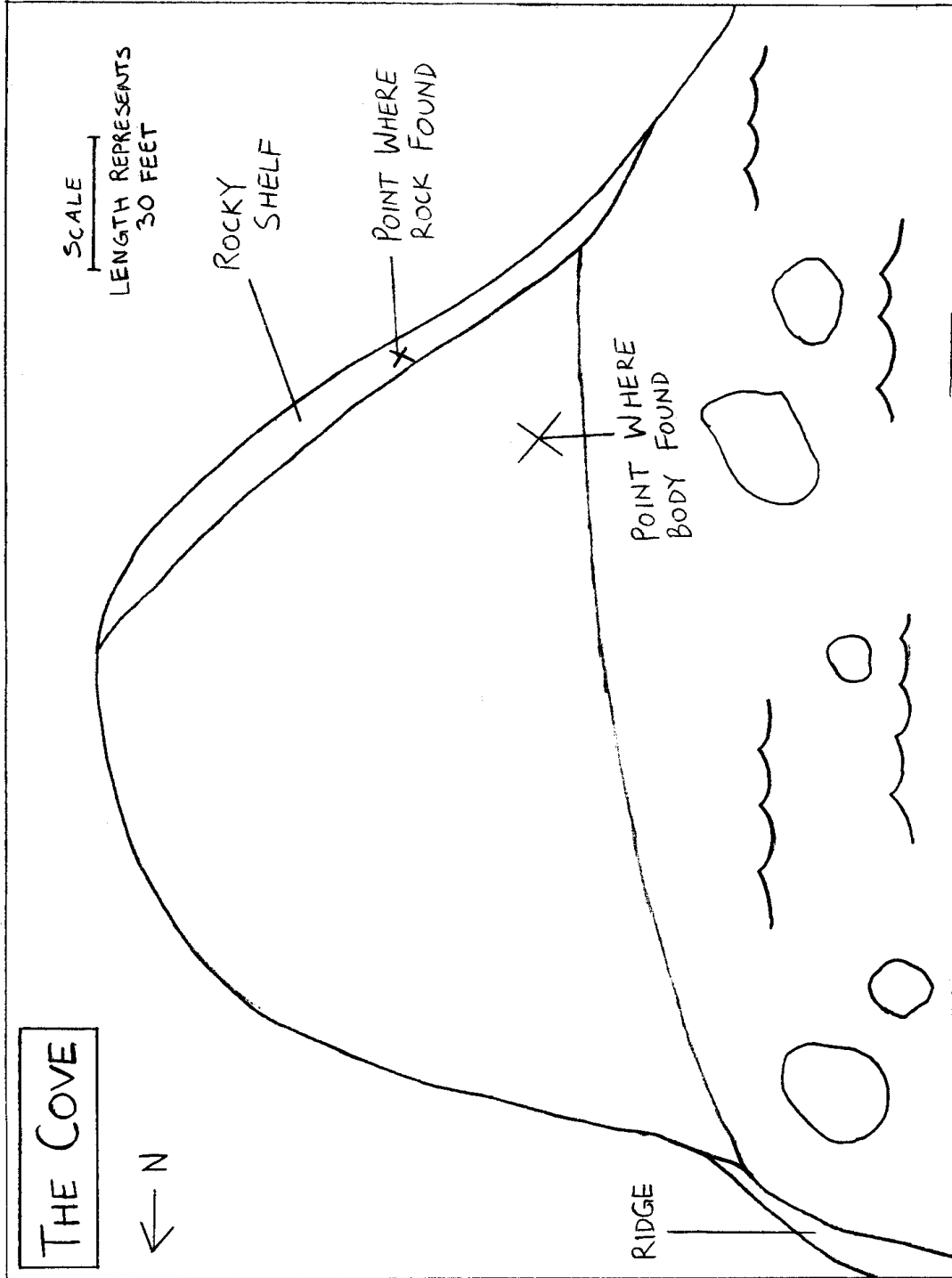


EXHIBIT 2



**EXHIBIT 3**

**CORONER'S DIAGRAM OF ANNE MARCUS'S BODY**

