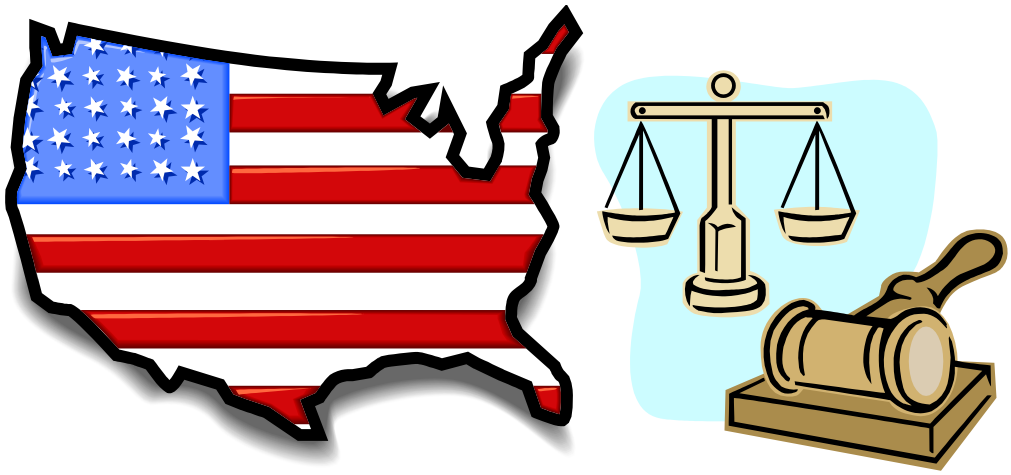
Mock trial 2008



Presented By: PHI ALPHA DELTA: Pre-Law Fraternity

STATE OF FLORIDA

V.

JOE LOW

STATE OF FLORIDA V. JOE LOW

Mock Trial Statement of Stipulated Facts

The city of Banks is the state capitol and largest city in Florida. The Banks River runs through the center of the city, and a majority of the riverbank is comprised of public parks. There are, however, some private developments along the river. Approximately 20 years ago the city annexed 30 feet of property along the bank of the river within the city limits for the development of a greenbelt on both sides of the river. This greenbelt stretches for 30 miles along both banks. Because of the private developments, there are some stretches where private property restricts access to the greenbelt.

In response to complaints from property owners about greenbelt users cutting across their yards, the city has recently passed a specific trespassing ordinance and posted "No Trespassing" signs at the edge of the path where the greenbelt meets private properties. The city has engaged in a public relations campaign reminding people to avoid cutting across private property to access the greenbelt. They are instead encouraged to use public access paths. Admittedly, the city does not actively enforce the municipal ordinance.

One particular development that abuts the greenbelt for a three-mile stretch is the Haycock development. This is the most prestigious development in Banks. All lots in the development are in excess of an acre and homes are valued in the millions of dollars.

Some of the most prominent members of Banks reside in the Haycock development, including Joe Low, who has a home on the banks of the river, and Billy Bob, who lived across the street from Joe. Both Joe Low and Billy Bob are natives of Banks, but they took far different paths to celebrity status. Joe Low graduated at the top of his/her class from Banks High School and enrolled at Florida Institute of Technology (FIT). After graduation from FIT, Joe started a computer software company. The company was successful beyond anyone's wildest imagination, developing operating software now used in every personal computer around the world. Joe retired at age 29, a multi-billionaire, to travel extensively, but maintains a main residence in Banks.

The other prominent resident of Haycock prior to his death was Billy Bob. Billy graduated from Banks High School the same year as Joe Low. While in high school, Billy excelled in various athletics and was the state player of the year in soccer his senior year. Billy committed to go to college at Duke to play soccer, but didn't get the scholarship he wanted because of low grades. Consequently, Billy went right from high school to the professional soccer league.

In that league, Billy excelled and became a nationally recognized athlete. Billy also endorsed several products worldwide. However, in recent years Billy's status had been slipping, and it was rumored that he might be traded or even cut the next year if he did not agree to a salary cut.

On August 10, Sgt. Krystal Ball was dispatched at 1820 hours to 912 River Street in response to a domestic disturbance call. Upon arriving at the residence of Joe Lows, Sgt. Ball discovered a person, later identified as Billy Bob, being attacked by a Rottweiler. Sgt. Ball was unable to draw the dog away from the victim, and fearing for the victim's safety, s/he shot the dog. Forensic examination determined the dog died within minutes. The victim was unconscious with severe lacerations to his head and neck. Paramedics were called, but the victim was pronounced dead on arrival at Banks Memorial Hospital. Sgt. Ball made contact with the owner of the residence where the attack occurred, Joe Low, who allegedly gave a statement to Sgt. Ball.

CHARGES

The prosecution charged Joe Low with Murder, with the lesser-included charge of voluntary manslaughter

Brief Explanation:
A lesser-included offense is one in which all of the elements of the included offense are elements of the charged offense. In this case, Voluntary Manslaughter is an included offense of Murder because Murder contains all of the elements of Manslaughter plus the additional element of malice. The prosecution should make an effort to prove the elements of Murder, but the jury could find the Defendant guilty of Murder or Voluntary Manslaughter, but not both. Reference the attached jury instructions.

EVIDENCE

1. Exhibit 1--A faithful reproduction of the diagram of the Haycock development, created by Sgt. Ball the day after the incident, contained in the packet. The reproduction should be no larger than 22 in. x 28 in.

2. Exhibit 2--A faithful reproduction of the No Contact Order contained in the packet. This is the no contact order that is referred to in Joe Lows' statement. The reproduction should be no larger than 22 in. x 28 in.

3. Exhibit 3--A faithful reproduction of the article written by Moel Joel for ADTA and referred to in his/her witness statement. The reproduction should be no larger than 22 in. x 28 in.

STIPULATIONS

1. There are no Fourth, Fifth or Sixth Amendment issues.

2. Joe Low was not in custody when s/he spoke to Sgt. Krystal Ball on August 10th, and s/he gave that statement freely.

3. All witness statements were taken in a timely manner.

4. A charge of Assault was pending against Billy Bob before his death, and the No Contact Order was signed by the Magistrate Judge as a result of the pending charge.

5. Any other witnesses to the fight at the Levings' pool party are unavailable to testify.

6. All witnesses and the defendant can be played be either male or female students. The student's gender does not impact the gender role of the witness (e.g. A female student may choose to play the role of a male witness and visa versa).

7. The groups must choose only two witnesses to call upon. Which two witnesses is up to the groups discretion.

WITNESSES
Prosecution

1. Krystal Ball, patrol sergeant, Banks Police Department

2. Betty Boop, nurse, Mercy Medical Hospital

3. Michelle Tyson, legal spouse of Billy Bobs at the time of his death

Defense

1. Dinky Pinky, ex-spouse of Billy Bobs

2. Moel Joel, owner of Kanine Kennel

3. Joe Low, defendant

TITLE XLVI

CRIMES

CHAPTER 782

HOMICIDE

782.02 Justifiable use of deadly force.--The use of deadly force is justifiable when a person is resisting any attempt to murder such person or to commit any felony upon him or her or upon or in any dwelling house in which such person shall be.

History.--ss. 4, 5, ch. 1637, 1868; RS 2378; ch. 4967, 1901; s. 1, ch. 4964, 1901; GS 3203; RGS 5033; CGL 7135; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 45, ch. 75-298; s. 1197, ch. 97-102.

782.03 Excusable homicide.--Homicide is excusable when committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution, and without any unlawful intent, or by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, without any dangerous weapon being used and not done in a cruel or unusual manner.

History.--s. 6, ch. 1637, 1868; RS 2379; GS 3204; RGS 5034; CGL 7136; s. 1, ch. 75-13.

782.035 Abrogation of common-law rule of evidence known as "year-and-a-day rule".--The common-law rule of evidence applicable to homicide prosecutions known as the "year-and-a-day rule," which provides a conclusive presumption that an injury is not the cause of death or that whether it is the cause cannot be discerned if the interval between the infliction of the injury and the victim's death exceeds a year and a day, is hereby abrogated and does not apply in this state.

History.--s. 1, ch. 88-39.

782.04 Murder.--

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;

2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

a. Trafficking offense prohibited by s. 893.135(1),

b. Arson,

c. Sexual battery,

d. Robbery,

e. Burglary,

f. Kidnapping,

g. Escape,

h. Aggravated child abuse,

i. Aggravated abuse of an elderly person or disabled adult,

j. Aircraft piracy,

k. Unlawful throwing, placing, or discharging of a destructive device or bomb,

l. Carjacking,

m. Home-invasion robbery,

n. Aggravated stalking,

o. Murder of another human being,

p. Resisting an officer with violence to his or her person,

q. Felony that is an act of terrorism or is in furtherance of an act of terrorism; or

3. Which resulted from the unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,

is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.

(b) In all cases under this section, the procedure set forth in s. 921.141 shall be followed in order to determine sentence of death or life imprisonment.

(2) The unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, is murder in the second degree and constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) When a person is killed in the perpetration of, or in the attempt to perpetrate, any:

(a) Trafficking offense prohibited by s. 893.135(1),

(b) Arson,

(c) Sexual battery,

(d) Robbery,

(e) Burglary,

(f) Kidnapping,

(g) Escape,

(h) Aggravated child abuse,

(i) Aggravated abuse of an elderly person or disabled adult,

(j) Aircraft piracy,

(k) Unlawful throwing, placing, or discharging of a destructive device or bomb,

(l) Carjacking,

(m) Home-invasion robbery,

(n) Aggravated stalking,

(o) Murder of another human being,

(p) Resisting an officer with violence to his or her person, or

(q) Felony that is an act of terrorism or is in furtherance of an act of terrorism,

by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony is guilty of murder in the second degree, which constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) The unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

(a) Trafficking offense prohibited by s. 893.135(1),

(b) Arson,

(c) Sexual battery,

(d) Robbery,

(e) Burglary,

(f) Kidnapping,

(g) Escape,

(h) Aggravated child abuse,

(i) Aggravated abuse of an elderly person or disabled adult,

(j) Aircraft piracy,

(k) Unlawful throwing, placing, or discharging of a destructive device or bomb,

(l) Unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,

(m) Carjacking,

(n) Home-invasion robbery,

(o) Aggravated stalking,

(p) Murder of another human being,

(q) Resisting an officer with violence to his or her person, or

(r) Felony that is an act of terrorism or is in furtherance of an act of terrorism,

is murder in the third degree and constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) As used in this section, the term "terrorism" means an activity that:

(a)1. Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or

2. Involves a violation of s. 815.06; and

(b) Is intended to:

1. Intimidate, injure, or coerce a civilian population;

2. Influence the policy of a government by intimidation or coercion; or

3. Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

History.--s. 2, ch. 1637, 1868; RS 2380; GS 3205; RGS 5035; s. 1, ch. 8470, 1921; CGL 7137; s. 1, ch. 28023, 1953; s. 712, ch. 71-136; s. 3, ch. 72-724; s. 14, ch. 74-383; s. 6, ch. 75-298; s. 1, ch. 76-141; s. 290, ch. 79-400; s. 1, ch. 82-4; s. 1, ch. 82-69; s. 1, ch. 84-16; s. 6, ch. 87-243; ss. 2, 4, ch. 89-281; s. 4, ch. 90-112; s. 3, ch. 93-212; s. 11, ch. 95-195; s. 18, ch. 96-322; s. 1, ch. 98-417; s. 10, ch. 99-188; s. 16, ch. 2000-320; s. 2, ch. 2001-236; s. 2, ch. 2001-357; s. 1, ch. 2002-212; s. 12, ch. 2005-128.

782.051 Attempted felony murder.--

(1) Any person who perpetrates or attempts to perpetrate any felony enumerated in s. 782.04(3) and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life, or as provided in s. 775.082, s. 775.083, or s. 775.084, which is an offense ranked in level 9 of the Criminal Punishment Code. Victim injury points shall be scored under this subsection.

(2) Any person who perpetrates or attempts to perpetrate any felony other than a felony enumerated in s. 782.04(3) and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, which is an offense ranked in level 8 of the Criminal Punishment Code. Victim injury points shall be scored under this subsection.

(3) When a person is injured during the perpetration of or the attempt to perpetrate any felony enumerated in s. 782.04(3) by a person other than the person engaged in the perpetration of or the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, which is an offense ranked in level 7 of the Criminal Punishment Code. Victim injury points shall be scored under this subsection.

History.--s. 1, ch. 96-359; s. 18, ch. 97-194; s. 12, ch. 98-204; s. 4, ch. 2001-236.

782.07 Manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.--

(1) The killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification according to the provisions of chapter 776 and in cases in which such killing shall not be excusable homicide or murder, according to the provisions of this chapter, is manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who causes the death of any elderly person or disabled adult by culpable negligence under s. 825.102(3) commits aggravated manslaughter of an elderly person or disabled adult, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who causes the death of any person under the age of 18 by culpable negligence under s. 827.03(3) commits aggravated manslaughter of a child, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who causes the death, through culpable negligence, of an officer as defined in s. 943.10(14), a firefighter as defined in s. 112.191, an emergency medical technician as defined in s. 401.23, or a paramedic as defined in s. 401.23, while the officer, firefighter, emergency medical technician, or paramedic is performing duties that are within the course of his or her employment, commits aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--RS 2384; GS 3209; RGS 5039; CGL 7141; s. 715, ch. 71-136; s. 180, ch. 73-333; s. 15, ch. 74-383; s. 6, ch. 75-298; s. 12, ch. 96-322; s. 2, ch. 2002-74.

782.071 Vehicular homicide.--"Vehicular homicide" is the killing of a human being, or the killing of a viable fetus by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.

(1) Vehicular homicide is:

(a) A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

1. At the time of the accident, the person knew, or should have known, that the accident occurred; and

2. The person failed to give information and render aid as required by s. 316.062.

This paragraph does not require that the person knew that the accident resulted in injury or death.

(2) For purposes of this section, a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.

(3) A right of action for civil damages shall exist under s. 768.19, under all circumstances, for all deaths described in this section.

(4) In addition to any other punishment, the court may order the person to serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents, under the supervision of a registered nurse, an emergency room physician, or an emergency medical technician pursuant to a voluntary community service program operated by the trauma center or hospital.

History.--s. 16, ch. 74-383; s. 6, ch. 75-298; s. 12, ch. 86-296; s. 14, ch. 96-330; s. 9, ch. 98-417; s. 1, ch. 99-153; s. 2, ch. 2001-147.

782.072 Vessel homicide.--"Vessel homicide" is the killing of a human being by the operation of a vessel as defined in s. 327.02 by another in a reckless manner likely to cause the death of, or great bodily harm to, another. Vessel homicide is:

(1) A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(a) At the time of the accident, the person knew, or should have known, that the accident occurred; and

(b) The person failed to give information and render aid as required by s. 327.30(1).

This subsection does not require that the person knew that the accident resulted in injury or death.

History.--s. 1, ch. 87-20; s. 15, ch. 96-330; s. 2, ch. 99-153.

782.08 Assisting self-murder.--Every person deliberately assisting another in the commission of self-murder shall be guilty of manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 9, ch. 1637, 1868; RS 2385; GS 3210; RGS 5040; CGL 7142; s. 716, ch. 71-136.

782.081 Commercial exploitation of self-murder.--

(1) As used in this section, the term:

(a) "Deliberately assisting" means carrying out a public act that is intended to:

1. Aid, abet, facilitate, permit, advocate, or encourage;

2. Publicize, promote, advertise, operate, stage, schedule, or conduct;

3. Provide or secure a venue, transportation, or security; or

4. Result in the collection of an admission or fee.

(b) "Self-murder" means the voluntary and intentional taking of one's own life. As used in this section, the term includes attempted self-murder.

(c) "Simulated self-murder" means the artistic depiction or portrayal of self-murder which is not an actual self-murder. The term includes, but is not limited to, an artistic depiction or portrayal of self-murder in a script, play, movie, or story presented to the public or during an event.

(2) A person may not for commercial or entertainment purposes:

(a) Conduct any event that the person knows or reasonably should know includes an actual self-murder as a part of the event or deliberately assist in an actual self-murder.

(b) Provide a theater, auditorium, club, or other venue or location for any event that the person knows or reasonably should know includes an actual self-murder as a part of the event.

(3) This section does not prohibit any event during which simulated self-murder will occur.

(4) It is not a defense to a prosecution under this section that an attempted self-murder did not result in a self-murder.

(5) A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) The Attorney General or any state attorney may bring a civil proceeding for declaratory, injunctive, or other relief to enforce the provisions of this section.

History.--s. 1, ch. 2004-30; s. 141, ch. 2005-2.

782.09 Killing of unborn quick child by injury to mother.--

(1) The unlawful killing of an unborn quick child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed murder in the same degree as that which would have been committed against the mother. Any person, other than the mother, who unlawfully kills an unborn quick child by any injury to the mother:

(a) Which would be murder in the first degree constituting a capital felony if it resulted in the mother's death commits murder in the first degree constituting a capital felony, punishable as provided in s. 775.082.

(b) Which would be murder in the second degree if it resulted in the mother's death commits murder in the second degree, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Which would be murder in the third degree if it resulted in the mother's death commits murder in the third degree, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) The unlawful killing of an unborn quick child by any injury to the mother of such child which would be manslaughter if it resulted in the death of such mother shall be deemed manslaughter. A person who unlawfully kills an unborn quick child by any injury to the mother which would be manslaughter if it resulted in the mother's death commits manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) The death of the mother resulting from the same act or criminal episode that caused the death of the unborn quick child does not bar prosecution under this section.

(4) This section does not authorize the prosecution of any person in connection with a termination of pregnancy pursuant to chapter 390.

(5) For purposes of this section, the definition of the term "unborn quick child" shall be determined in accordance with the definition of viable fetus as set forth in s. 782.071.

History.--s. 10, ch. 1637, 1868; RS 2386; GS 3211; RGS 5041; CGL 7143; s. 717, ch. 71-136; s. 2, ch. 2005-119.

782.11 Unnecessary killing to prevent unlawful act.--Whoever shall unnecessarily kill another, either while resisting an attempt by such other person to commit any felony, or to do any other unlawful act, or after such attempt shall have failed, shall be deemed guilty of manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 13, ch. 1637, 1868; RS 2388; GS 3213; RGS 5043; CGL 7145; s. 719, ch. 71-136.

[1]**782.30 Short title.**--Sections 782.30-782.36 may be cited as the "Partial-Birth Abortion Act."

History.--s. 1, ch. 2000-142.

[1]**Note.**--Section 5, ch. 2000-142, provides that "[t]his act shall be liberally construed to effectively carry out its purposes. In the event of conflict between this act and any other provision of law, the provisions of this act shall govern."

[1]**782.32 Definitions.**--As used in this act, the term:

(1) "Partially born" means the living fetus's intact body, with the entire head attached, is presented so that:

(a) There has been delivered past the mother's vaginal opening:

1. The fetus's entire head, in the case of a cephalic presentation, up until the point of complete separation from the mother whether or not the placenta has been delivered or the umbilical cord has been severed; or

2. Any portion of the fetus's torso above the navel, in the case of a breech presentation, up until the point of complete separation from the mother whether or not the placenta has been delivered or the umbilical cord has been severed.

(b) There has been delivered outside the mother's abdominal wall:

1. The fetus's entire head, in the case of a cephalic presentation, up until the point of complete separation from the mother whether or not the placenta has been delivered or the umbilical cord has been severed; or

2. Any portion of the child's torso above the navel, in the case of a breech presentation, up until the point of complete separation from the mother whether or not the placenta has been delivered or the umbilical cord has been severed.

(2) "Living fetus" means any unborn member of the human species who has a heartbeat or discernible spontaneous movement.

(3) "Suction or sharp curettage abortion" means an abortion, as defined in chapter 390, in which the developing fetus and the products of conception are evacuated from the uterus through a suction cannula with an attached vacuum apparatus or with a sharp curette.

History.--s. 2, ch. 2000-142.

[1]**Note.**--Section 5, ch. 2000-142, provides that "[t]his act shall be liberally construed to effectively carry out its purposes. In the event of conflict between this act and any other provision of law, the provisions of this act shall govern."

[1]**782.34 Partial-birth abortion.**--Except as provided in s. 782.36, any person who intentionally kills a living fetus while that fetus is partially born commits the crime of partial-birth abortion, which is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 3, ch. 2000-142.

[1]**Note.**--Section 5, ch. 2000-142, provides that "[t]his act shall be liberally construed to effectively carry out its purposes. In the event of conflict between this act and any other provision of law, the provisions of this act shall govern."

[1]**782.36 Exceptions.**--

(1) A patient receiving a partial-birth-abortion procedure may not be prosecuted under this act.

(2) This act does not apply to a suction or sharp curettage abortion.

(3) This act does not constitute implicit approval of other types of abortion, which remain subject to all other applicable laws of this state.

(4) This act does not prohibit a physician from taking such measures as are necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, provided that every reasonable precaution is also taken, in such cases, to save the fetus's life.

History.--s. 4, ch. 2000-142.

[1]**Note.**--Section 5, ch. 2000-142, provides that "[t]his act shall be liberally construed to effectively carry out its purposes. In the event of conflict between this act and any other provision of law, the provisions of this act shall govern."

Witness Statement Prosecution Witness
Krystal Ball

I am a patrol sergeant with the Banks Police Department. My current assignment is supervisory patrol officer for all canine units. As part of my supervisory responsibilities I also work a patrol shift and am a drug recognition expert. I have been with the department for 20 years and have been a canine officer for 17 of those years. Currently, my canine partner is a four-year-old German Shepherd named "Oky." Oky has been with me for 18 months. I have won multiple awards at canine handling competitions.

I was on patrol on August 10th when I received a call regarding a domestic disturbance on River Drive at around 1810 hours. This subdivision is comprised of very large homes on multi-acre lots. When I arrived at the scene, I observed a male adult being attacked by a Rottweiler. The dog was vigorously biting at the victim's neck, and the victim appeared to be unconscious. I attempted to yell at the dog, hoping to distract it from the victim, but was unsuccessful. Fearing for the safety of the victim, at that point I discharged two rounds from my firearm into the dog, and it stopped instantly.

I then approached the victim who had severe lacerations to the head and neck. I attempted to stop the bleeding for several minutes while waiting for an ambulance to arrive at the scene. During that time, I identified the victim as Billy Bob. Billy is sort of a local hero, having made it big in professional soccer. He is also a big financial supporter of the police/youth athletic programs, and has donated large sums of money and time to the programs. I have worked on these programs as a volunteer with Billy on several occasions and found him to be an outstanding role model for our city's youth.

Once the ambulance arrived, I checked the dog and it was dead. I then attempted to contact the dog's owner. The area of the attack is a common path from the Haycock neighborhood to the river greenbelt, but I believe it is actually the property of the nearest home, so I knocked on that door. Although I heard someone moving around inside, it took several minutes and multiple knocks on the door to get an answer. Finally, a man/woman who identified her/himself as Joe Low answered the door. S/he appeared very upset, and had scratches on his/her arms. I asked Joe if s/he knew what happened, and s/he said that it was his/her dog that attacked Billy. Joe stated s/he was working in the garden with the dog when Billy cut through his/her lawn. Joe stated that s/he had filed a no contact order against Billy, and that Joe told Billy to get off his/her property.

Joe claimed that Billy did not leave but started toward Joe in a very threatening manner. Joe stated that at that point his/her dog attacked Billy. I asked Joe whether s/he gave any command to attack, and s/he said, "I didn't say a thing." Joe then stated s/he tried to pull the dog off, screaming "Foos", which is the command to stop the attack. Chris said the dog began to bite at Joe and would not retreat. Joe then stated s/he went into the house to call 911. However, an examination of 911 logs for that day indicated the only 911 call received was from Betty Boop's house. There was no call logged that day from Joe Low.

Billy was pronounced dead at the hospital a short time later. The next day I attended the autopsy. The cause of death was determined to be severe lacerations to the neck aorta and loss of blood. One additional fact worth noting was that the autopsy showed the presence of performance enhancing steroids, an illegal substance, in the victim's blood at the time of death.

After speaking with all the witnesses in this case, I was troubled by the story given to me by the Mr./Mrs. Low. Based upon my training and experience, protection dogs, even those with minimal training, will not attack unprovoked. Unless the dog itself is attacked, it will only attack when

commanded by its handler. This is most commonly accomplished by the giving the command "Blitz." Furthermore, even with the most rudimentary of training, a dog will cease to attack when ordered to do so by his handler, most commonly by giving the command "Foos." Thus, there is no way if the dog was properly trained, it would attack without command, or not withdraw when commanded.

Furthermore, all trained dogs instinctively meet force with force in an attack. That is to say, dogs will cease being aggressive when the combatant stops being aggressive. In fact, it is the rare dog that will not release immediately after biting. A dog has to be specifically trained to maintain a bite. There is only one documented fatality in the United States involving a police dog. For a dog's aggression to rise to the level that it could kill an adult, it would have to have been specifically trained and rewarded in the past for such violent behavior.

My investigation indicates that the dog in this attack came from Kanine Kennel. Kanine Kennel was recently investigated for providing dogs to a criminal dog-fighting ring in California, although no charges were ever filed against the kennel or its owner.

It appeared to me that this was not an accidental attack. Based upon the inconsistency of witness statements, the prior history of Joe Low and Billy Bob, and my own experience with dogs, I felt the case should be referred to the prosecutor's office.

Witness Statement—Prosecution Witness
Betty Boop

My name is Betty Boop. I am 34 years old and I have lived in Banks for most of my life. I am a nurse at Mercy Hospital. I am single, but I live with my two cats on River Street.

I grew up with Joe Low and Billy Bob. In fact, we all went to school together at Banks High School. When my great uncle died two years ago, we discovered that he had been investing quite successfully in the stock market. He left me the bulk of his money because I nursed him through the last year of his life. I just recently built my home on River and was surprised to learn Billy and Joe live on the same street. I live right beside Joe at 914 River and Billy lived across the street.

Billy and Joe were not the best of friends in high school. It was the typical jock versus computer geek. I didn't run with either crowd. I enjoyed horseback riding and 4-H. But we went to a small school, so you always knew the latest gossip. From what I remember, Billy always made fun of Joe because Joe wasn't an athlete and spent all of his/her time playing video games. Eventually, Joe had had enough. The story was Joe somehow got past the firewall on the school's computer system and changed Billy's biology grade on the final exam. As a result, Billy couldn't get the scholarship he wanted from Duke to play soccer. I guess that one grade made all the difference. I don't think Billy found out what Joe had done until the summer after graduation. It's a good thing because Billy really had it out for Joe after that. After graduation Joe went away to some prestigious West Coast school and stayed away from Banks for a while. Billy left Banks and became a famous soccer star. I stayed in Banks and went to nursing school.

On August 10th, I was just getting home from work. It was about 6:00 p.m., and I was letting my cat, Sadie, outside to the front porch. She loves to sit in the windowsill. I can't let her out in the backyard anymore because Joe's dog (I think he's a Rottweiler) is really mean. He almost killed Sadie last fall when he literally lashed out at her through the wrought iron fence. Sadie was just minding her own business in the backyard. She was about to hop the fence when Joe' dog went crazy. That horrible dog tried to grab her in his huge jaws but luckily she was too quick and he only caught hold of her back legs before Joe, who was in the backyard at the time, came and pulled the dog off. I had some serious veterinary bills to get Sadie fixed up. That dog is scary!

Anyway, as I was letting Sadie out on the porch, I saw Billy cutting across Joe' lawn. It looked like he was carrying some hand weights--probably going for a run on the greenbelt. The greenbelt runs along the river right behind our houses so a lot of neighbors just cut through our yards. It's no big deal and everybody does it, but this time was different. I didn't think that Joe and Billy were supposed to be around each other because of a fight they had about two months ago. On this day, Billy looked pretty mad and Joe looked like s/he was about to go into Joe' house. I saw Joe and Billy exchanging words. I couldn't really hear exactly what they said because I have a screened-in porch. I just noticed Joe and his/her Rottweiler "Rocky" approaching Billy. I knew things were getting heated because I saw Joe and Billy getting in each other's faces. The dog was barking ferociously. I heard Joe yell something like "Letts" which sounded like some sort of command for his/her dog. Suddenly, the dog leaped up on Billy, pushed him to the ground and looked like he had Billy by the throat. Joe was yelling at the dog, but I couldn't hear what s/he was saying. All I know is the dog wasn't letting go.

I ran inside and dialed 911. When I got back outside, Rocky was still on top of Billy, and Joe was nowhere to be seen. The next thing I knew, I heard sirens and the police showed up.

Witness Statement – Prosecution Witness
Michelle Tyson

My name is Michelle Tyson and I am…I mean was… married to Billy Bob. We lived at 913 River Street and had been married for almost a year at the time of the murder. I did not grow up in Banks, but met Billy while he was on the professional soccer circuit. I was a marketing consultant for Billy's team and we met during the filming of a commercial. We hit it off right away. Billy was in the process of a divorce when we started dating, and we got married right after the divorce was final. I moved to Banks right after we were married.

The day of the murder I was at home with Billy. That evening around 6:00 p.m., Billy left to go for a run. He took his hand weights because he likes to run with some resistance. Right after Danny left his agent called. I knew that Billy had been waiting all morning for that phone call, so I ran out to try and catch Billy. He usually cuts across our neighbor, Joes' yard, to get to the greenbelt. That was a very bad idea on this day.

As soon as I stepped outside, I heard yelling. I realized that the voices were Billy's and Joe', but I couldn't tell what they were saying. I could see the two of them yelling near Joes' backyard. Joe said some really nasty stuff to Billy about pushing people around for fun. Billy got upset and started shaking. Before Billy could even say anything though, Joe yelled out something that sounded like "Blitz" and after Joe yelled, Rocky attacked Billy. There was blood everywhere. I passed out at that point and do not know what happened after that.

Joe has had it out for Billy ever since they were in high school. Joe couldn't handle that Billy was a successful professional athlete who had become a household name. S/He was so jealous of Billy's success. Even after high school, Joe wouldn't let things go. Billy told me that over the years Joe tried to break up different endorsement deals Billy had. Billy also told me that Joe did some things that prevented Billy from going to college.

After Billy's pro soccer career was over, Joe still could not let it go. Joe went so far as to pick a fight with Billy at the Levings' pool party and then got the police to charge Billy with assault. Anybody who was there that night knew that Billy did not start anything. Billy wouldn't hurt a fly. He had some problems in the past with trumped up domestic violence charges, but he has never laid a hand on me. Plus, Billy did a lot of work with the Banks Boy's and Girl's Club, and never once lost his temper or got violent with anybody. Anyway, after the pool party, Joe got this vicious attack dog. Joe would walk that stupid dog up and down the street and practice attack commands in the front yard of his/her house. Total intimidation tactics! I knew it was just a matter of time until Joe snapped and did something stupid.

Witness Statement—Defense Witness
Dinky Pinky

My name is Dinky Pinky. I used to be married to Billy Bob. We were married for almost five years. I eventually left Billy because he had some serious anger issues. About four years into our marriage, we got into a huge argument (one of many). Billy was traveling all the time with his soccer career so we didn't get to see each other very often. Things were always tense. The night we fought, Billy was accusing me of cheating. It's not like I had done anything wrong. I just went to dinner with some friends one night when Billy was out of town and I ended up having coffee with an old friend. Anyway, Billy found out, and things got so out of hand I actually had to call the police. Billy came at me with one of our kitchen knives and threatened to kill me. Billy used to take some performance enhancement drugs and I think that made the anger problems even worse. Billy was eventually prosecuted and convicted of domestic assault. That was the straw that broke the camel's back for our marriage. Several months later, I filed for divorce. The court made Billy do some domestic violence classes but things were never the same.

I didn't know Joe Low very well when Billy and I were married. Joe lived across the street from us. Billy always said that Joe ruined his soccer career but I never really knew what happened. I do know that I was at this neighborhood party about two months ago. I don't live in that neighborhood anymore, but I'm still friends with everyone. Anyway, the Levings had a big pool party. I was uncomfortable because Billy was there and it was the first time we had seen each other since the divorce. Everyone was having a great time and the cocktails were flowing. I was standing in the kitchen when I heard a ruckus outside by the pool. I didn't see what started it, but I did see Billy pushing Joe backwards. Joe fell into the pool and a couple of people pulled Billy back before things got any worse. I think they were both drinking too much. I heard Billy has been charged with assault and that there is a no contact order that prevents Billy from being within 100 yards of Joe. I think they were supposed to go to court sometime in August to get that whole mess worked out.

Since then, I've actually talked to Joe about the incident. Joe told me the next time s/he gets a chance s/he was going to "mess Billy up."

Witness Statement--Defense Witness
Moel Joel

I am the owner of Kanine Kennel, and I sold the dog in question to Joe Low. I have been in business for eight years, and have sold dogs to many famous individuals for protection. We also supply a large number of dogs to police departments around the country. As part of our business practice, all our dogs are AKC registered with examined pedigrees. Our kennel is also a member of the American Dog Trainers Association (ADTA), a highly reputable training organization, which requires our staff to attend animal behavior courses, seminars and workshops annually. Private purchasers are also required to attend a one week class at our facility in California where we familiarize the owner with his or her dog and teach them proper training and care of the dog.

I am familiar with the dog in question, and did some of the early training myself. You have to understand that even the best-trained dog has the mentality of a four year old. Thus, even the best-trained dog sometimes demonstrates behavioral problems. We did have some difficulty training this dog at first, as he was a bit more aggressive than most.

I have developed a specialty in the area of aggression training. One of my articles has even been published by the ADTA. Early and appropriate socialization is critical with aggressive breeds. We spent a lot of time with this dog identifying what was influencing his aggression and teaching alternative behavior. By the time Joe came to take him home, he was much gentler, more controllable, and well on his way to becoming a great family pet. In fact, I remember when Joe came down to our training class, s/he and the dog seemed to hit it off right from the start, and the dog seemed to respond extremely well to Joes' commands given their new relationship.

I remember when Joe first contacted me about a purchase. Joe stated that s/he had been assaulted by a neighbor recently and wanted some protection to make sure nothing like that ever happened again. Joe also wanted to make sure the dog would only attack on command, and not be otherwise aggressive, because of neighborhood children the dog may have contact with. I recommended this particular breed because of the generally gentle nature they have except when under command to attack.

I cannot explain the dog's behavior on the day in question. The dog should have obeyed the commands. Sometimes dogs will attack a person who is attacking their handler, but only after a dog has developed a long-term relationship with the handler over a number of years. Regardless, any dog would obey a handler's command to withdraw, which is given by forcefully stating "Foos," a German word meaning retreat.

The only thing I can think of is there may have been an odor that further provoked the dog. Many of our dogs have some drug detection training, and become more aggressive at even the slightest hint of illegal substances. If the victim had any illegal substances, including illegal steroids, in his system, that may have made the dog more aggressive.

As to allegations that we train fighting dogs under the table--that is preposterous. We were investigated based upon accusations of a competitor, but were cleared of all charges. We do have a reputation of providing effective guard dogs, but always well trained. That is what our clientele demands.

Witness Statement – Defendant
Joe Low

My name is Joe Low. I am 35 years old and a retired computer software engineer. I grew up in Banks. After graduating from FIT I started my own software business on the West coast. The business flourished and I later sold it for quite a bit of money. At that time I retired so I could travel and engage in some philanthropic activities and moved back to Banks. I am divorced and have no children.

Billy Bob and I were high school classmates. I was not the most popular student in school because my interests were math, science and computers. I was constantly made fun of by the other kids. Billy always seemed to be leading the teasing and bullying and really made my high school experience one I would rather forget. Billy was your typical jock-type. He was a soccer star and did not care about grades or college. While I was worrying about my grades and whether I could get into a great school, Billy was out partying and doing what he could to make my life unbearable. I have never been able to forgive Billy for what he did to me back then. That was part of the reason I made sure to pick a college far away from Banks.

But I got older and missed Banks. All of my family was here, and Banks has always been a great place to raise a family. Trying to get my career going left me without much time to meet someone and settle down. After I sold my dot com business for millions of dollars, I began to think about moving back to Banks. I considered my options and moved back several years ago, hoping to meet someone and settle down and start a family.

When I started looking at homes, I found the neighborhood I live in now. I loved the homes and the safety the neighborhood provides. It's the nicest neighborhood in town and provides numerous security measures. The safety aspect was especially important to me because while running my business, I received several death and kidnap threats. It seems like people will do just about anything to make a buck these days.

Billy moved in across the street shortly after I moved in. I have to admit that I was not happy about that at all. It dredged up all sorts of painful high school memories. Billy would shoot me dirty looks from across the street and make snide comments about what a nerd I still was. Billy had recently retired from professional soccer and was always bragging about how his name was a household word. I tried my best to ignore Billy and make my dream of settling down with a family in Banks a reality.

So, I went on about my life, ignoring Billy's attitude and nasty comments. But things really blew up at a pool party at the Levings' house. I was there, talking to people and having some drinks with other people in the neighborhood. Dinky Pink, Billy's ex was there, and we were chatting when Billy arrived. Billy looked really angry. Billy walked around and had some drinks and chatted with people, but kept looking at Dinky and me. We were really hitting it off and I think that Billy just did not like the looks of it. Billy finally approached me and started pointing at me and asking me what I thought I was doing. I told Billy that it was a free country and I could talk to whomever I wanted. I also told Billy that he should take his washed-up soccer career and go home. Billy was drunk and I guess my comment pushed him over the edge because he took a swing at me. I ducked, but Billy pushed me into the pool. I was pretty mad, but the other people at the party separated Billy and me. I called the police and signed a citation charging Billy with assault. The next day, the judge signed a no contact order requiring Billy to stay 100 yards away from me and from my home.

Needless to say, I was a little scared after the pool party. Billy used to push me around in high school and the pool party was the first time Billy had tried to hit me since then. I also knew that Billy was not happy that I had filed charges. So I went out and got a protection dog. I figured that with everything going on with Billy, and the other threats to my safety that come with my wealth, a protection dog would be a good idea. I had heard that Germany was where the best dogs came from so I started calling around. I found Moel Joel, who was recommended to me by a friend. Moel imported dogs from Germany and was really well respected among the rich and famous.

Moel agreed to sell me a dog, but I had to go to California and spend a week learning the different commands and how to work with the dog. I got a male Rottweiler named Rocky. He is such a great dog. He is trained to attack anybody who attacks me, with or without command. He is very business-like when he needs to be, but very sweet and a great family pet. I've had him for about a month and a half and when my nieces and nephews come over to play, he acts just like a puppy with them. He's so gentle. They pull on his ears and everything and he has never once growled at them. That's why I was so shocked when he attacked Billy the way he did.

The attack itself is still so fresh in my mind. It was a summer evening and I was in my front yard doing some gardening. Rocky was outside with me like usual and he was playing with some dog toys. I was bent down over some flowerbeds when I heard him start growling. I looked up and saw Billy walking right next to my house with these things that looked like brass knuckles in his hands. I got really worried because Billy was just staring at me as he walked by.

I yelled to get away and that I was going inside to call the police. Billy started yelling at me that adults fight their own battles and don't go running to mommy or the police to fix things for them. Billy yelled that he would make sure that I paid for calling the police. Billy was just so mad. He started walking towards me and yelling about how nobody wanted him to do endorsement deals anymore and how his life was falling apart because of me.

I was really afraid at this point because Billy's face was beet red and he was yelling so loud. But I was also getting really mad. I was just so sick and tired of always being afraid of Billy and worrying about what he was going to do to me. I felt like a baby for not taking care of my own problems. I was so mad at that point that almost before I knew what I was doing I told Billy that he was the loser because he got off on beating up other people, especially Dinky Pinky. It was common knowledge that Billy had been convicted of domestic violence for pulling a knife on Dinky while they were married. I told Billy to get off my property and that there was a no contact order. Billy didn't leave my property but just kept walking toward me in a threatening manner. I guess Rocky thought the same thing because he jumped up and knocked Billy to the ground.

It all happened so fast after that. The next thing I knew Rocky had Billy by the throat. Billy was screaming and there was blood everywhere. I was yelling "Foos" at Rocky, which means to release and return, but Rocky just kept attacking. After trying that command a couple of times, I ran up and tried to pull Rocky off Billy, but he was clamped on. I couldn't pull him off. Rocky even turned around and bit me a couple of times. I was afraid he would start attacking me, and so backed off and went into the house to call 911. I was in the house when the police arrived.

Billy and I were both taken to the hospital. While I was being treated for cuts and dog bites, I found out that Billy had died.

Exhibit 1

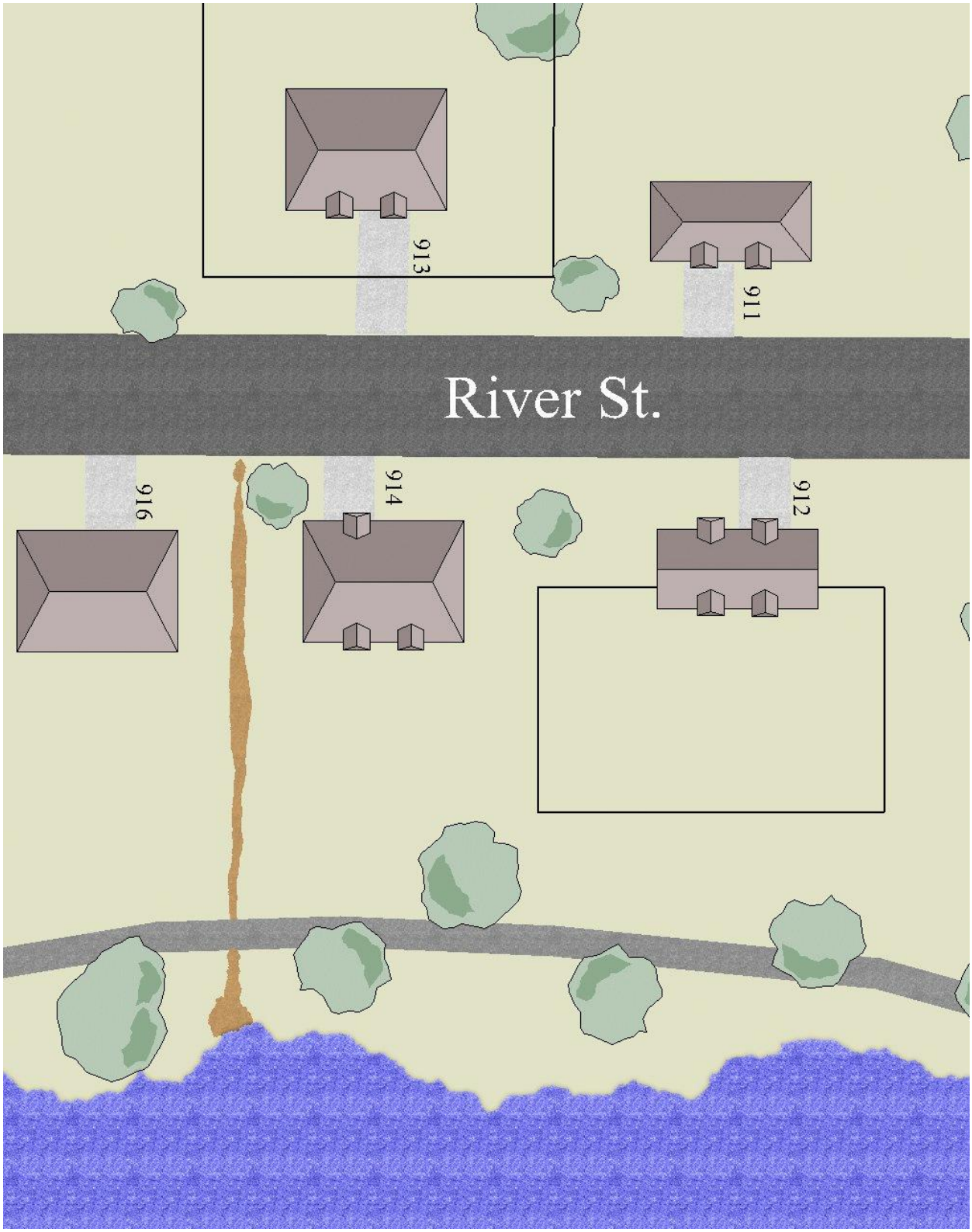


Exhibit 2

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF

THE STATE OF FLORIDA

THE STATE OF FLORIDA,) Case No. C0420823
)
Plaintiff,)
)
vs.) NO CONTACT ORDER
)
Billy Bob ,)
)
Defendant.)

The above entitled matter having come before the Court, and good cause appearing,

IT IS HEREBY ORDERED that the above named defendant shall not harass, follow, contact, communicate with, or remain within 100 feet of: Joe Low

IT IS FURTHER ORDERED that the above named defendant shall not go within 300 yards of the above named person's residence as set forth below:
912 River Dr.
Residence Address

There are no exceptions to this Order which shall expire on end of case .

/s/ **/s/ 6-11-03**
Defendant Magistrate Date

Exhibit 3

Training Dogs with Aggressive Tendencies

by Moel Joel

1) Start training your puppy early on. While old dogs can be taught new tricks, what's learned earliest, is often learned quickest and easiest. Moreover, the older the dog, the more bad habits will likely need to be "un-learned". When it comes to raising and training a dog, an ounce of problem prevention is certainly worth a pound of cure!

2) Train your dog gently and humanely, and whenever possible, teach him using positive, motivational methods. Keep obedience sessions upbeat so that the training process is enjoyable for all parties involved.

3) Does your dog treat you like "hired help" at home? Does he treat you like a human gymnasium when you're sitting on the furniture? Jump up on visitors? Demand your attention by annoying you to death? How well your dog responds to you at home affects his behavior outdoors as well. If your dog doesn't respond reliably to commands at home (where distractions are relatively minimal), he certainly won't respond to you properly outdoors where he's tempted by other dogs, pigeons, passersby, sidewalk food scraps, etc.

4) Avoid giving your dog commands that you know you cannot enforce. Every time you give a command that is neither complied with nor enforced your dog learns that commands are optional.

5) One command should equal one response, so give your dog only one command (twice max!), then gently enforce it. Repeating commands tunes your dog out (as does nagging) and teaches your dog that the first several commands are a "bluff '. Simply give your dog a single "Sit" command and gently place or lure your dog into the sit position, then praise/reward.

6) Avoid giving your dog combined commands which are incompatible. Combined commands such as "sit-down" can confuse your dog. Using this example, say either "sit" or "down". The command "sit-down" simply doesn't exist.

7) When giving your dog a command, avoid using a loud voice. Even if your dog is especially independent/unresponsive, your tone of voice when issuing an obedience command such as "sit" or "stay", should be calm and authoritative, rather than harsh or loud.

8) Whenever possible, use your dog's name positively, rather than using it in conjunction to reprimands, warnings or punishment. Your dog should trust that when it hears its name or is called to you, good things happen. His name should always be a word he responds to with enthusiasm, never hesitancy or fear.

9) Correct or, better yet, prevent the misbehavior, don't punish the dog. Teaching and communication is what it's all about, not getting even with your dog. Additionally, after-the-fact discipline does NOT work.

10) When training one's dog, whether praising or correcting, good timing is essential. Take the following example: You've prepared a platter of hors d'oeuvres for a small dinner party, which you've left on your kitchen counter. Your dog walks into the room and smells the hors d'oeuvres. He air-sniffs, then eyes the food, and is poised to jump up. This is the best, easiest and most effective time to correct your dog.

11) Often, dog owners inadvertently reinforce their dogs' misbehavior, by giving their dogs lots of attention (albeit negative attention) when they misbehave. Needless to say, if your dog receives lots of attention and handling when he jumps up on you, that behavior is being reinforced, and is therefore likely to be repeated.

12) Keep a lid on your anger. Never train your dog when you're feeling grouchy or impatient. Earning your dog's respect is never accomplished by yelling, hitting, or handling your dog in a harsh manner. Moreover, studies have shown that fear and stress inhibit the learning process.

Rules of Competition
and
Procedures

RULES OF COMPETITION

The Mock Trial Competition is governed by the rules set forth below. These rules are designed to ensure excellence in presentation and fairness in judging all competition trials.

The competition is, first of all, an exposure to the functions of our legal system. It is also an exercise in communication and the art of advocacy, which is the basis of our adversary system of justice. Our judicial system is based upon the belief that a court will be better able to make a well-informed decision by hearing a vigorous and zealous presentation of each side of a case.

This is not a speech or debate tournament, and it is not a dramatic presentation, although some lawyers may utilize elements of all three in their style. First, understand the mechanics of a trial and the function of each part. Then, try to blend the parts into an overall presentation that effectively communicates your position. Style, voice, diction, and the like are valuable tools - but their merit is lost unless the court understands your overall message and is persuaded to agree with you. **It is extremely important to remember that our judicial system, just as this competition, is run by people and, therefore, subject to individual interpretations.** Unexpected obstacles in the course of a trial are the rule, rather than the exception. Being prepared to deal with the unexpected obstacles that will inevitably arise is an important part of being prepared for the competition.

TEAM PRESENTATIONS

1. The Witness Statements included in the case materials comprise the sole source of information for testimony. Witnesses may testify to any matter directly stated or reasonably implied in their statements.

2. Each witness is bound by his/her individual witness statement. These witness statements, or affidavits, should be viewed as signed statements made to the police or attorneys by the witnesses as identified. Witnesses can be impeached if they contradict the material contained in their witness statements. (See Simplified Rules of Evidence for further clarification.)

    a. **Fair extrapolations which are consistent with facts contained in the witness statements and do not materially affect the witness' testimony are permitted.** It is important for the witnesses to exercise caution in such extrapolations in order to avoid (a) initiation of a dispute over a rules violation which could be brought to the attention of the judges and (b) impeachment of the witness' credibility by the use of his or her prior written statement which was, presumably, all the witness could recall, under oath, at a time much closer to the events in controversy. Just as in our judicial system, lawyers must deal with the facts that exist.

    b. If an attorney believes that a witness has contradicted a prior statement (or affidavit), that testimony may be impeached during cross-examination of the witness through correct use of the statement. This procedure is outlined in the Simplified Rules of Evidence and the Mock Trial Procedures.

    c. Witness affidavits are subject to all of the human errors of judgment people may make in similar situations, including distortion and varying perceptions.

d. A witness is not bound by facts contained in other witness affidavits or the pleadings.

e. It is virtually impossible to provide witnesses with detailed answers to every conceivable question that lawyers may ask. The witness statements are not intended as a complete life history and, for the most part, information not in the statements will be irrelevant and should be subject to objection. If an attorney's question solicits unknown information, the witness may supply an answer of his/her choice, **so long as it does not contradict other information contained in the statement and does not materially affect the witness' testimony.**

f. **If a witness invents an answer which is likely to affect the outcome of the trial, the opposition may object.** The judge will decide whether to allow or exclude the testimony. (See Simplified Rules of Evidence). **Judges will be instructed that testimony, not reflecting information in the casebook, which bolsters a witness, and is generally immune from impeachment, should be ruled inadmissible.**

g. The witness statements or affidavits may be introduced into evidence during the trial as a prior inconsistent or prior consistent statement in concert with the applicable rules of evidence.

3. Participants must display proper courtroom decorum and sportsmanlike conduct. The decisions of the judge with regard to rule challenges are final.

4. Students may read other cases, materials, articles, etc., in preparation for the mock trial. However, they may only cite the materials included in the packet. They may introduce into evidence only those items listed in the official mock trial packet as evidence.

5. The trial proceedings are governed by the Mock Trial Simplified Rules of Evidence. Other more complex rules may not be raised in the trial.

6. Tape recording or videotaping of trials is prohibited.

7. Teams will be assigned by the Mock Trial Coordinator. The teams will be either Defense or Prosecution.

8. Teams must provide the physical evidence as listed under evidence in the case materials. No other physical evidence will be allowed. Whether a team introduces, uses and moves the physical evidence into evidence is entirely optional, but all physical evidence must be available at trial for either side to use.

9. Witnesses are **not** permitted to use notes in testifying during the trial. However, attorneys may utilize witness statements to refresh recollection of witnesses in accordance with the applicable rules of evidence. Additionally, attorneys **may** use notes in the presentation of their material.

10. Redirect and recross examination will be allowed.

Each trial shall be a total of 65 (fifty) minutes. Time in each category may be divided among team attorneys as they choose, but overall time limits must be observed. Time will be halted by the judge at 1 minute over the time allotted. Teams may divide time as needed; for example instead of Plaintiff's Opening Statement 5min it can be 4min and the one minute can be given to another category for example the Direct Examination. The person up must tell the judge that they want to use a minute of their time for towards another category.

The following trial sequence and time categories are recommended as a guideline, overtime penalties will be assessed ONLY for each minute a team exceeds in each category:

Plaintiff's Opening Statement: 5 minutes

Defense's Opening Statement: 5 minutes

Plaintiff's Direct Examination: 5 per witness **or** 10 minutes total

Defense's Cross-examination: 4 per witness **or** 8 minutes total

Plaintiff's Redirect Examination (optional): 2 minutes per witness

Defense's Re-cross (optional): 2 minutes per witness

Defense's Direct Examination: 5 minutes per witness **or** 10 minutes total

Plaintiff's Cross-examination: 4 minutes per witness **or** 8 minutes total

Defense's Redirect (optional): 2 minutes per witness

Plaintiff's Re-cross (optional): 2 minutes per witness

Plaintiff's Closing Argument: 5 minutes

Defense's Closing Argument: 5 minutes

Plaintiff's Rebuttal (optional): 1 minute

REMEMBER: Being a good lawyer often involves knowing when not to speak. Sometimes the best closing argument is the shortest closing argument. Often no redirect or re-cross examination is necessary.

11. The Bailiff will keep the evidence, call court to order, and swear in witnesses. The Bailiff will be independent of teams, will be one of the Mock Trial Staff or Phi Alpha Delta member.

12. Neither team may introduce surprise witnesses or call witnesses from the other side. All witnesses (two for each side) must take the stand.

13. Teams are expected to be present 15 minutes before the starting time of the trial.

14. Within reasonable consideration of weather, road conditions, etc., the starting time of any trial will not be delayed for longer than 5 minutes. Incomplete teams will have to begin without their other members, or with alternates. Teams without a sufficient number of participants to start the trial will forfeit the match.

B. TEAM COMPOSITION

1. **A team will consist of a six students.**

a. For prosecution or Defense there must be four attorneys.

b. The plaintiff team will consist of two witnesses (chosen by the team); the defense team will consist of two witnesses one whom is the defendant (other is chosen by the team).

2. A team may use its members to play different roles in if they advance to further rounds. For example, a student playing attorney in round 1 can be a witness in round 2.

C. JUDGING

1. There will be a judge each round. Attorneys, judges or professors from the state of Florida will play the roles of the presiding judge.

2. Each judge will receive the Mock Trial Handbook prior to the trial and is expected to read the case and rules.

3. Judges are asked to make two decisions: (a) the legal merits of the case, and (b) the best team presentation. The merits decision is a decision based on what would happen in an actual court of law according to the facts presented. **This decision has no affect on team advancement.** The decision on the best team presentation is made by all judges who score the teams on performance using the Performance Rating Sheet as found in the handbook. **The presentation decision, based on the scoring sheet, determines the winner of the round.**

D. ADVANCEMENT

1. Each team will participate in at least one trial. Four teams will move onto semi-finals. Two teams from the semi-finals will move onto the finals.

2. There will be no ties in the total score between two competing teams.

    a. If there is a tie in the scoring. Then it will be up to the judge to decide what team they believe to have done better based on any criteria they believe to be a necessary factor.

3. A the Finale the teams will be given a surprise witness for both sides.

    a. The witness will be one of the mock trial staff or Phi Alpha Delta member.

    b. The teams will know the witnesses relation to the case beforehand.

    c. Same time limits exist for the surprise witness.

    d. There is no witness statement. Whatever the witness says will be assumed true. It is up to the teams to use it towards their advantage.

    e. The surprise witness will work as one determinate factor between the top two teams to aid the judge's decision.

E. MISCELLANEOUS RULES

1. Regulations

    a. A maximum 72 people in the competition.

    b. Each team member must be at least at one seminar.

    c. The teams must work collaboratively to reach decisions. Disputes that cannot be resolved shall be brought to the directors attention.

2. Dress of participants.

    a. Witness costumes or props are allowed.

    b. Keeping in mind that dress and appearance can create a favorable or negative impression, participants should dress as if they were "real" attorneys appearing in front of "real" judges in a courtroom. Any questions about appropriate attire should be directed to the mock trial coordinator.

    c. No gum chewing is allowed in the courtroom.

3. All student attorneys need to wear a large nametag with their name on it for each round. Students playing the roles of witnesses should wear the witness' name on their nametags. Nametags will be provided by mock trial competition staff and should be filled out by the team members when they check-in.

F. TEAM RESPONSIBILITIES

Each team is responsible to bring the following items to competition:

1. A completed Daily Sheet, with names of team members for prosecution or defense roles.

2. Physical evidence if outlined in the mock trial case.

H. DISPUTE RESOLUTION PROCEDURE.

1. Rule Adherence Disputes.

Any question over an alleged rules violation should be brought to the attention of the presiding judge during the trial as an objection in accordance with the Simplified Rules of Evidence procedure for objections. The presiding judge shall rule on the matter, and the trial shall continue. The decision of the presiding judge is final.

2. Timekeeping/Scoring Disputes.

a. The judge shall score the teams and keep time. As well there will be another Mock Trial Staff member keeping time so time is accurate.

b. At the conclusion of each round, timekeeping sheets will be presented to the presiding judge. The judge will check for discrepancies and resolve any inconsistencies in timekeeping. The decision of the presiding judge about timekeeping discrepancies is final.

3. Master Scorekeeper/Procedures Official.

Mock Trial Coordinator will be designated to be the Master Scorekeeper/Procedures Official. This person will:

a. be available to consult with presiding judges on questions of rules upon request;

b. be responsible for all score keeping computations; and

c. be responsible for monitoring and enforcing all mock trial procedures in accordance with the Mock Trial Handbook.

Mock Trial Procedures

B. STEPS IN A MOCK TRIAL

1. **The Opening of the Court**

The Clerk-bailiff calls the court to order by saying, "All rise for the Honorable Judge_____. The_____District Court is now in session, the Honorable Judge_____presiding." After the judge are seated, everyone may sit down. The case is announced by the presiding judge (i.e., "The Court will now hear the case of State of Florida v. [insert case name]). The presiding judge then asks the attorneys for each side if they are ready.

2. **Opening Statements**

Statements should outline the case and should not be argumentative. The plaintiff delivers the first opening statement. The defense may follow immediately or may delay its opening statement until the plaintiff has finished presenting its witnesses. A good opening statement should:

---explain what you plan to prove and how you will do it;

---present the events of the case in an orderly sequence that is easy to understand; and

---suggest a motive or emphasize a lack of motive for the crime (in a criminal case).

a. **Plaintiff**

Begin your statement with a formal address to the judge: "Your Honor, my name is (full name), counsel for (plaintiff's name) in this action, and my colleagues are (names)." After this introduction, the plaintiff should outline the case from their point of view, mentioning key witness testimony and telling the judges what verdict is being requested. Proper phrasing includes:

"The evidence will indicate that ..."

"The facts will show..."

"Witness (name) will testify that..."

b. **Defense**

Begin your statement with a formal address to the judge: "Your Honor, my name is (full name), counsel for (the defendant's name), and my colleagues are (names)." After this introduction, summarize the evidence which will be presented to rebut the case the prosecution plans to make.

Proper phrasing includes:

"The defendant will testify that..."

c. Avoid too much narrative detail about witness testimony, and exaggeration or overstatement of facts that may not be proven. This is not the appropriate place to argue or discuss the law. Avoid reading too much. The defense should not repeat undisputed facts.

3. **Direct Examination by Plaintiff**

The attorney for the plaintiff conducts direct examination (questioning) of each or one of the plaintiff's witnesses. At this time, testimony and other evidence to prove the plaintiff's case is presented. The purpose of direct examination is to allow the witness to narrate the facts in support of the case. Try to show your own witnesses at their best.

a. The attorneys for both sides, on both direct and cross-examination, should remember that their only function is to ask questions. Attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

b. Avoid complex and verbose questions. Keep it simple. Take the witness by small steps. Don't attempt to elicit conclusions - that is the court's job. Avoid redundant, monotonous questions. It is dangerous if the witness gets out of your control. When the essential facts to support your case are in evidence, cease questioning.

NOTE: In Mock Trial Competition, a motion by the defense to the judge at the close of the state's case for a directed acquittal is not allowed.

4. **Cross Examination by the Defense**

After the attorney for the plaintiff has finished questioning each witness, the judge then allows the defense attorney to cross-examine the witness. The cross examiner seeks to discredit, clarify, or cast doubt upon the testimony of opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judges through cross-examination.

a. Avoid hostility toward the witness. Don't engage in "fishing expeditions" by giving the witness a chance to clarify damaging statements. When you receive a favorable answer, drop the matter and wait for closing argument to emphasize it.

b. Impeachment: If testimony is given which you feel contradicts the witness' affidavit, wait until cross-examination, then confront the witness with the affidavit and bring out inconsistencies with testimony given.

5. **Direct Examination by the Defense**

Direct examination of each defense witness follows the same pattern as the process for plaintiff's witnesses.

6. **Cross examination by the Plaintiff**

Cross examination of each witness follows the same pattern as cross-examination by the defense.

7. **Redirect Examination** (optional)

Redirect examination is allowed. 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 several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness' truth-telling image in the eyes of the court. Redirect examination is limited to issues raised by the attorney on cross examination.

8. **Re cross Examination** (optional)

Attorneys may ask questions pertaining to the preceding redirect examination.

NOTE: At the conclusion of plaintiff's evidence, the plaintiff should state: "The plaintiff rests its case, your Honor." At the conclusion of defense evidence, defendant's counsel should state: "The defense rests its case, your Honor." This lets the court know to proceed with the rest of the trial.

9. **Introduction of Physical Evidence**
Attorneys may introduce physical exhibits, provided the objects correspond to the description given in the evidence section of the case materials. Attorneys should follow these steps:

a. Present the item(s) to an attorney for the opposing side prior to trial. If that attorney objects to use of the item, the judge will rule whether it fits the official description.

b. Request permission from the judge when you wish to introduce the item during trial. For example, say: "Your Honor, I ask that this item be marked for identification as Exhibit #_____."

c. Show the item to the witness on the stand. Ask the witness if s/he recognizes the item. If the witness does, ask the witness to explain it or answer questions about it. (Make sure you show the item to the witness, don't just point).

d. When finished using the item, give it to the clerk-bailiff to hold until needed again by you or another attorney.

10. **Moving the Court to Admit an Exhibit into Evidence**
Exhibits must be introduced into evidence if attorneys wish the court to consider the items themselves as evidence, not just the testimony about the exhibits. At the end of the witness examination, attorneys may ask to move the item into evidence in this manner:

a. "Your Honor, I ask that Exhibit be admitted into evidence."

b. At this point opposing counsel may make any objections they have.

c. The judge will then rule on whether the item may be admitted into evidence.

11. **Closing Arguments**
Closing arguments should consist of persuasive statements and conclusions that are based on evidence that was brought out in the trial. They may not include discussion of evidence not introduced during the trial.

a. **Plaintiff**

A closing argument is a review of the evidence presented. It should point out testimony that supports your case and damages your opponent's. It should indicate how the evidence has satisfied the elements of the charge, point out the law applicable to the case, and ask for a finding (verdict) of guilty (criminal case) or to rule in favor of your client in a civil case.

This is where you put the pieces together for the judges. Argue what you feel is important and discard the unimportant. Be an advocate - forcefully urge your point of view. Be dynamic - avoid a boring review of the facts. This is high drama so take full advantage of it. State your case simply so you are sure it is fully understood. Correct any misunderstandings the judges may

have. You may use all exhibits that have been admitted into evidence at this point. Point out bias, credibility, self-interest or prejudice of witnesses.

Avoid assuming the judges have understood the full impact of all the testimony. Be cautious in using ridicule - while it can be effective, it is also dangerous. Avoid illogical or confusing arguments. Organize in advance by anticipating your opponent's argument. Avoid weak words such as "we believe" and "we think." Be positive.

Because the burden of proof rests with the plaintiff, the plaintiff's lawyer may make a closing rebuttal argument in the case. The plaintiff's rebuttal is limited to the scope of defendant's closing argument. This rebuttal is optional and should be no longer than one minute.

NOTE: Asking the judges to put themselves in your client's position is improper. Appeals to sympathy and prejudice of judges are also improper.

b. **Defense**

The closing argument for the defense is essentially the same as for the plaintiff. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not satisfy the elements of the charge, stresses the facts favorable to the defense and asks for a finding favorable to the defendant.

12. **Closing Court**

The clerk-bailiff closes official proceedings with: "All rise, The Honorable Court is hereby adjourned."

13. **Wrap-up**

The Master Scorekeeper and/or Mock Trial Coordinator will be responsible for obtaining all score sheets from the judges and tallying the results.

C. THE JUDGE'S ROLE AND DECISION

The judge is the person who presides over the trial to ensure that the parties' rights are protected and that the attorneys follow the rules of evidence and trial procedure. In trials held without a jury, the judge also has the function of determining the facts of the case and rendering a judgment.

Mock Trial Competition uses a three-member judging panel. The presiding judge, upon consultation with the panel judges, will determine the winner on the merits of the case; the three-member judging panel will independently determine the winning team on the basis of best presentation. In Mock Trial, the winning team on best presentation, based upon a determination of the majority of the judges, is the winner of that round of competition.

Simplified Rules of Evidence

Introduction

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 evidence will probably be allowed by the judge. The burden is on the mock trial team to know the Federal Rules of Evidence (Mock Trial Version) 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.

The Mock Trial Rules of Competition, the Rules of Procedure, and these simplified Rules of Evidence govern the FGCU Mock Trial Competition.

Article I. General Provisions

Rule 101. Scope

These rules govern proceedings in the Idaho Mock Trial Competition.

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.

Rule 105. Limited Admissibility

When evidence which is admissible as to one party or for one purpose, but is not admissible as to the other party or for another purpose is admitted, the judge, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106. Remainder of or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Article II. Judicial Notice

Rule 201. Judicial Notice of Adjudicative Facts

1. Scope of rule.-This rule governs only judicial notice of adjudicative facts.

2. Kinds of facts.-A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

3. When discretionary.-A court may take judicial notice, whether requested or not.
4. When mandatory.-A court shall take judicial notice if requested by a party and supplied with the necessary information.
5. Opportunity to be heard.-A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
6. Time of taking notice.-Judicial notice may be taken at any stage of the proceeding.
7. Instructing jury.-In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Article III. Presumptions in Civil Actions and Proceedings (not applicable in criminal cases)

Rule 301. Presumptions in General in Civil Actions and Proceedings
In all civil actions and proceedings . . . a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.

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

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, if it confuses the issues, if it is misleading, or if it causes undue delay, wastes time, or is a needless presentation of cumulative evidence.

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

1. Character evidence.-Evidence of a person's character or character trait, is not admissible to prove action regarding a particular occasion, except:

a. Character of accused.-Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;

b. Character of victim.-Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;

c. Character of witness.-Evidence of the character of a witness as provided in Rules 607, 608 and 609.

d. Other crimes, wrongs, or acts.-Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. 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.

Rule 405. Methods of Proving Character

1. 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.
2. 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 eye-witnesses, 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 measures are taken after an event which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. 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 (civil case rule)

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or

invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Payment of Medical and Similar Expenses (civil case rule)
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 procedure regarding either of the forgoing pleas; or

4. any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

However, such a statement is admissible (i) 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 (ii) 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 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.

Rule 603. Oath or Affirmation
Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation, administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

Rule 604. Interpreters
An interpreter is subject to the provisions of these rules relating to the qualification as an expert and the administration of an oath or affirmation to make a true translation.

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

1. 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.

2. Specific instances of conduct.-Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, 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 asked 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.

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 with respect to matters related only to credibility.

Rule 609. Impeachment by Evidence of Conviction of Crime (This rule applies only to witnesses with prior convictions.)

1. General Rule.-For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

2. 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 that the value of the conviction 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.

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

4. Juvenile adjudications.-Evidence of juvenile adjudications 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.

5. Pendency of appeal.-The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

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

1.Control by Court.-The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to (1) make the questioning and presentation effective for ascertaining the truth, (2) to avoid needless use of time, and (3) protect witnesses from harassment or undue embarrassment.

2.Scope of cross examination.-The scope of 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.

3. 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 are permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.

4. Redirect/Recross.-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 on recross, 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 witness uses a writing to refresh memory for the purpose of testifying, either-

1. while testifying, or

2. before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness.

Rule 613. Prior Statements of Witnesses

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.

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.

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 in the form of an opinion or otherwise.

Rule 703. Bases of Opinion Testimony by Experts
The facts or data upon which an expert bases an opinion 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 field in forming opinions or inferences, the facts or data need not be admissible in evidence.

Rule 704. Opinion on Ultimate Issue

1.Opinion or inference testimony otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.

2. In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion
The expert may testify in terms of opinion or inference and give reasons therefore without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event may 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:

1. 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.
2. Declarant.-A "declarant" is a person who makes a statement.
3. 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.
4. Statements which are not hearsay.-A statement is not hearsay if:

a. 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

b. Admission by a 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 co-conspirator of a party during the course in furtherance of the conspiracy.

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- statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

2. Excited utterance- 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- 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 the purpose of medical diagnosis or treatment.

5. Recorded Recollection- 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.

6. Records of regularly conducted activity- These records include any memo, record, report, or other compilation of data in any form, which meets the following requirements:

A. It must be kept in the ordinary course of business or as part of the ordinary conduct of an organization or enterprise;

B. It must be part of the ordinary business of that organization, business, or enterprise to compile the data or information;

C. The information must be made for the purpose of recording the occurrence of an event, act, condition, opinion, or diagnosis that takes place in the ordinary course of the business or enterprise;

D. The entry in the record or the compiling of the data must be made at or near the time when the event took place;

E. The recording of the event must be made by someone who has personal knowledge of it. In order for a document or other form of data to be admissible under this rule, a foundation must be laid as to all of the foregoing requirements by the custodian of the records or other witness found by the Court to be qualified.

7. 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.

8. Reputation as to character-Reputation of a person's character among associates or in the community.

9. 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. The pendency of an appeal may be shown but does not affect admissibility.

Rule 804. Hearsay Exceptions; Declarant Unavailable

1. Definition of unavailability.-"Unavailability of a witness" includes situations in which the declarant-(1) is exempted by a ruling of the court of 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 subdivisions (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 or 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.
2. Hearsay exceptions.-The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

A. 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.

B. Statement under belief of impending death.-In a prosecution of a 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 the impending death.

C. 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.

D. 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 states; or (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 to be likely to have accurate information concerning the matter declared.

E. Other exceptions.-A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party is a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant. For the purposes of the mock trial competition, required notice will be deemed to have been given. The failure to give notice as required by these rules will not be recognized as an appropriate objection.

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.

Rule 806. Attacking and Supporting Credibility of Declarant

When a hearsay statement has been admitted, the credibility of the declarant may be attacked and supported by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls

the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross examination.

ARTICLE X. Contents of Writing, Recordings, and Photographs

Rule 1002. Requirement of Original
To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required. . . . Copies of any case materials are considered as originals.

ARTICLE XI. Miscellaneous Rules

Rule 1103. Title
These rules may be known and cited as the Federal Rules of Evidence (Mock Trial Version).

PRACTICAL TIPS FOR THE USE OF RULES OF EVIDENCE

A. WITNESS EXAMINATION (following opening statements)

1. Direct examination (attorneys call and question their own witnesses)

a. Form of questions

Witnesses should **not** be asked **leading** questions by the attorney who calls them. A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a "yes" or "no" answer. **Direct** questions generally are phrased to evoke a set of facts from the witness.

Example of a direct question: "Describe the man you saw running from the bank."
Example of a leading question: "The man you saw running from the bank was white, six-feet tall, and looked just like the Defendant, right?"

b. Narration

While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. Narrative questions are objectionable.

Example of a narrative question: "What happened after you arrived at the crime scene?"
Narrative answers: At times, a direct question may be appropriate, but the witness' answer may go beyond the facts for which the question asked. Such answers are subject to objection on the grounds of narration.

c. Scope of witness examination

Direct examination may cover all facts relevant to the case of which the witness has firsthand knowledge. Any factual areas covered in the witness statements may be subject to cross examination.

d. Character

For mock trial purposes, evidence about the character of a party may not be introduced unless the person's character is at issue in the case. For example, whether one spouse has been unfaithful to another is a relevant issue in a civil trial for divorce, but is not an issue in a criminal trial for larceny. Similarly, a person's violent temper may be relevant in a criminal trial for assault, but it is not an issue in a civil trial for breach of contract.

e. Refreshing Recollection

If a witness is unable to recall a statement made in the affidavit, or if the witness contradicts the affidavit, the attorney who does the direct examination may seek to introduce into evidence that portion of the affidavit that will help the witness to remember. (See Introduction of Physical Evidence.)

Example: A witness sees a purse snatching, offers to testify at the trial and gives a statement of events to the attorney. At trial, the witness has trouble remembering the events s/he saw. The attorney can help the witness remember by showing the statement to the witness. (Note: The attorney must first mark and identify the statement and show the other side a copy. However, it need not be actually introduced into evidence.)

2. **Cross Examination** (questioning of the opponent's witnesses)

a. **Forms of questions**

An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided. (These usually begin with "how," "why," or "explain.") The purpose of cross-examination is to break down the witness's story to discredit him/her in the eyes of the judges.

Example of a leading question: "Isn't it true that you can only see about five feet in front of you without your eyeglasses?" "On the night you claim to have seen my client, you were standing about thirty feet from the person leaving the bank, were you not?" "At that time, you were not wearing your eyeglasses were you?"

b. **Scope of witness examination**

The scope of cross examination shall not be limited to the scope of the direct examination. During cross-examination, attorneys 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. This includes facts and statements made by the witness for the opposing party.

c. **Impeachment**

During cross-examination, the attorney may want to show the court the witness should not be believed. This process is called impeaching the witness and may be accomplished in three ways:

1. By asking the witness questions about prior conduct that lessens his or her credibility (truth-telling ability);
2. By asking the witness about evidence of certain types of criminal convictions;
3. By introducing the witness' affidavit and asking the witness whether s/he has contradicted some statement in the affidavit.

Example: (Prior Conduct) "Isn't it true you were suspended from school for cheating on an exam?"
Example: (Past Conviction) "Isn't it true that you've been convicted of forgery?"

To impeach with a prior inconsistent statement the attorney should:
1. Allow the witness to make the inconsistent statement.
2. Ask the witness if s/he made a statement to the police at an earlier time.
3. Ask the witness if s/he told the truth when making the earlier statement.

4. Show the witness the earlier statement and ask if the statement is her/his own.
5. Read the inconsistency from the earlier statement and ask the witness if s/he in fact said it.
6. Stop. Do not accuse the witness of lying. That can be done in the closing argument.

NOTE: These types of questions may only be asked when the questioning attorney has information that indicates the conduct actually happened.

3. Redirect and Re-cross examination

Redirect and Re-cross are allowed. See "Steps in a Mock Trial"

B. USE OF VARIOUS RULES OF EVIDENCE

1. **Hearsay**

Hearsay is evidence (written or oral) of an out-of-court statement offered to prove the truth of the matter asserted. In other words, a statement, other than one made by the person while testifying at trial, which is offered to prove its truth is hearsay. Hearsay is not admissible unless it falls within an exception.

Exceptions cited in the Rules of Evidence include:

1. Present sense impression

2. Excited utterance

3. Then existing mental, emotional or physical conditions

4. Statements for purpose of medical diagnosis or treatment

5. Recorded recollection

6. Records of regularly conducted activity

7. Learned treatises

8. Reputation as to character

9. Judgment of previous conviction

10. Declarant unavailable

See MT Rules of Evidence 801-806 for more information about hearsay exceptions.

2. **Opinions of Witnesses/Qualification of "Expert" Witnesses**

As a general rule, witnesses may not give opinions. Certain witnesses who have special knowledge or qualifications may be qualified as "experts." An expert is a person who, because of their knowledge, skill, experience, training and/or education has a greater understanding of scientific, technical or specialized knowledge which, if explained to the jury or judge would assist the jury or judge in understanding the evidence. An expert must be qualified by the attorney for the party for which the expert is testifying. This means before an

expert can be asked an expert opinion, the questioning attorney must bring out the expert's qualifications and experience.

To qualify a law enforcement officer to testify as to undercover operations, you would have to ask questions like:

What is your name and address?
Q: What is your business or profession?
Q: What type of professional training have you had?
Q: How long have you been a police officer?
Q: What type of training have you had regarding undercover operations?

All witnesses may testify about what they saw and heard based upon first hand knowledge. If a witness is not testifying as an expert, he may still testify as to his opinions or inferences which are rationally based on the perception of the witness and helpful to a clear understanding of his testimony or the determination of a fact in issue.

Example: Frank is testifying at trial and says, "In my opinion, Jane was driving faster than the speed limit at the time of the accident." (Allowed, only if a proper foundation can be established that Frank is qualified as an expert to give that specific opinion --- that he has some knowledge, skill, education or training that would enable him to testify as to speed.)

Expert testimony in the form of an opinion or inference otherwise admissible is NOT objectionable just because it embraces an ultimate issue to be decided by judge or jury. However, such testimony is limited to that which would assist the trier of fact in understanding the evidence and determining a fact at issue. For example, an expert may not give an opinion such as "The defendant is guilty of this charge." Further, evaluation of the credibility of witnesses is for the judge or jury to determine, not for an expert's testimony.

Example: "In your opinion, is the defendant guilty of murder?" (Not allowed) "In your opinion was the defendant physically capable of throwing the victim off the cliff?" (Allowed)

If an attorney believes that a witness has not been qualified as an expert, the attorney should object to the lack of foundation at the time the witness is asked to give his or her opinion.

3. **Lack of Personal Knowledge/Speculation**

A witness may not testify to any matter of which the witness has no personal knowledge.

Example: John was not at the party. John could not testify, "I'm sure Jim took a drink at the party."

4. **Relevance of Evidence**

Generally, only relevant testimony and evidence (meaningful to the issues in this trial) may be presented. This means the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the judge. This may include testimony, physical evidence and

demonstrations which have no direct bearing on the issues of the case, or which have nothing to do with making the issues clearer.

Example: The defense asks, "James, how many people have had cherry trees chopped down by trespassers in this town?" This is irrelevant unless it is somehow related to the case.

5. Introduction of Physical Evidence

There is a special procedure for introducing physical evidence (called exhibits) during a trial. Physical evidence includes written materials, diagrams, photos, guns, or any other object which might help clarify what happened. The attorney must be prepared to defend its use on that basis. Below are the basic steps to use when introducing a physical object or document for identification and/or use as evidence. **Note: Guns, knives, or facsimiles are not permitted in the courtroom at any time.**

Merely referring to or identifying an exhibit does not cause it to be admitted as evidence. An item may only be admitted by the judge.

a. Mark and Identify:
(1) Mark Exhibit: "Your Honor, I ask that this diagram be marked for identification as State's Exhibit A." (Show item to the judge and hand it to Clerk/Bailiff for marking.)
(2) Show Counsel: Show exhibit to opposing counsel, who may make an objection to the offering at this time.
(3) Show Witness: Show exhibit to witness. "George, do you recognize what has been marked for identification as State's Exhibit A?" (The witness should say yes and identify the document.)

b. Lay Foundation:
At this point, the attorney may proceed to ask the witness a series of questions about Exhibit A, such as: "Are you familiar with the orchard on Old Man Petty's property?" or "Does the diagram accurately reflect the area of Old Man Petty's property?"

c. Admission:
An item itself may not be considered until it is admitted by the judge.
(1) Request Admission: If the attorney wishes to place the item into evidence, s/he says, "Your Honor, I offer this diagram for admission into evidence as State's Exhibit A, and ask the Court to so admit it."
(2) Opportunities to Object: Opposing counsel may then object to the exhibit's admission (if there is some basis for objection), and the judge will decide whether the exhibit is admitted. If it is admitted, it should be given to the judge.

C. OBJECTIONS

An attorney can object any time he or she thinks the opposing attorneys are attempting to introduce improper evidence or are violating the rules of evidence. The attorney wishing to object should stand up at the time of violation.

When an objection is made, the judge will ask the reason for the objection. Then the judge will turn to the attorney who asked the question, and that attorney usually will have a chance to

explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether the question or answer must be discarded because it has violated a rule of evidence ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

It is the responsibility of the party opposing evidence to prevent its admission by a timely and specific objection. Attorneys can and should object to questions that call for improper answers. They do not have to wait for an improper answer.

A proper objection includes the following elements:

1. attorney **stands up** and addresses the judge;
2. attorney indicates that s/he is raising an objection;
3. attorney specifies what s/he is objecting to, e.g. the particular word, phrase or question; and
4. attorney specifies the legal grounds the opposing side is violating.

Example: (1) "Your Honor, (2) I object (3) to that question (4) on the grounds that it is hearsay."

1. Following are standard objections:

a. **Irrelevant Evidence**
To be admissible, any offer of evidence must be relevant to an issue in the trial. This rule prevents confusion of the essential facts of the case with unnecessary details.

Either direct or circumstantial evidence may be admitted in court. Direct evidence proves the fact asserted without requiring an inference. Circumstantial evidence is a fact (Fact 1) which, if shown to exist, suggests (implies) the existence of an additional fact (Fact 2). (i.e. If Fact 1, then probably Fact 2). The same evidence may be both direct and circumstantial depending on its use.

Examples:

1. A witness may say she saw a man jump from a train. This is direct evidence the man had been on the train. It is indirect evidence the man had just held up the passengers.
2. Eyewitness testimony that the defendant shot the victim is direct evidence of the defendant's assault, while testimony establishing that the defendant had a motive to shoot the victim, or that the defendant was seen leaving the victim's apartment with a smoking gun is circumstantial evidence of the defendant's assault.

"I object, your Honor. This testimony is irrelevant to the facts of this case."
"Objection, Your Honor. Counsel's question calls for irrelevant testimony."

b. **Leading Questions**
As a general rule, the direct examiner should not ask leading questions: s/he cannot ask questions suggesting the desired answer. Leading questions are permitted on cross examination.

Example: Counsel for the prosecution asks the witness, "During the conversation, didn't the defendant declare he would not deliver the merchandise?" On the other hand, counsel could rephrase

his question, "Will you state what, if anything, the defendant said during this conversation, relating to The delivery of the merchandise?"

"Objection. Counsel is leading the witness." (Remember, this is only objectionable when done on direct examination.)

c. **Improper Character Testimony**
"Objection. The witness' character or reputation has not been put at issue."
"Objection. Only the witness' reputation/character for truthfulness is at issue here."

d. **Hearsay**

If a witness offers an out-of-court statement to prove a matter asserted in the witness' own testimony, the statement is hearsay. Because they are very unreliable, these statements ordinarily may not be used to prove the truth of the witness' testimony. For reasons of necessity, a set of exceptions allows certain types of hearsay to be introduced.

Example: Joe is being tried for murdering Henry. The witness testifies, "Ellen told me Joe killed Henry." If offered to prove Joe killed Henry, this statement is hearsay and probably would not be admitted over an objection;

However, if the witness testifies, "I heard Henry yell to Joe to get out of the way," this is an out-of-court statement, but is not offered to prove the truth of its contents. Instead, it is being introduced to show that Henry had warned Joe by shouting.

"Objection. Counsel's question /The witness' answer is based on hearsay." (If the witness makes a hearsay statement, the attorney should also say, "and I ask the statement be stricken from the record.")

e. **Opinion**

Witnesses may not normally give their opinions on the stand. Judges and juries must draw their own conclusions from the evidence. However, estimates of the speed of a moving object or the source of a particular odor are allowable opinions.

"Objection. Counsel is asking the witness to give an improper opinion."

f. **Lack of Personal Knowledge**

The witness must have a personal knowledge of the matter. Only if the witness has directly observed an event may the witness testify about it.
Witnesses will sometimes make inferences from what they actually did observe. An attorney may properly object to this type of testimony because the witness has no personal knowledge of the inferred fact.

"Objection. The witness has no personal knowledge which would enable him to answer this question."

g. **Argumentative Question**

An argumentative question challenges the witness about an inference from the facts in the case. Attorneys cannot badger or argue with the witness. Questions may also not be argumentative in tone or manner.

Example: Assume the witness testifies on direct examination that the defendant's car was going 80 m.p.h. just before the collision. You want to impeach the witness with a prior inconsistent statement. On cross examination, it would be permissible to ask, "Isn't it true you told your neighbor, Mrs. Ashton, at a party last Sunday that the defendant's car was going only 50 m.p.h.?"

The cross examiner may legitimately attempt to force the witness to concede the historical fact of the prior inconsistent statement. If the witness admits the statement, it would be impermissibly argumentative to ask, "How can you reconcile that statement with your testimony on direct examination?" The cross-examiner is challenging the witness about an inference from the facts.

Questions such as "How can you expect the judge to believe that?" are similarly argumentative and objectionable. The attorney may argue the inferences during summation or closing argument, but the attorney must ordinarily restrict his or her questions to those calculated to elicit facts.

"Objection. That question is argumentative."

h. **Speculation**

Witnesses may not normally speculate on the stand. Judges and juries must draw their own conclusions from the evidence.

"Objection. Counsel is asking the witness to speculate in order to answer the question."

2. One objection available to the mock trial competition which is not an ordinary rule of evidence allows you to stop an opposing witness from creating new facts. If you believe a witness has gone beyond the witness statement and is making statements that are totally out of character **and will change the outcome of the trial**, use the following objection:

"Objection. The witness is creating a material fact which is not in the record."
Do not use this objection indiscriminately; **only object if the new facts will definitely affect the outcome of the trial.**

3. Procedures for Objections

a. Only object when you are **sure** there is a reason and you have a **specific** objection in mind. Remember, too many objections during a trial are objectionable!
b. Only one attorney can stand and object at a time. The attorney assigned to do the direct or cross examination of a particular witness should be the attorney to raise objections when the opposing side conducts its examination of that witness.
c. If the judge rules against you on a point in the case, take the defeat gracefully and act cordially toward the judge and other side. Don't be afraid to object again.

III. TIPS FOR STUDENT ATTORNEYS

A. SUGGESTIONS FOR PREPARATION

1. **OPENING STATEMENT**

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

b. Preparation.

(1) Write a clear, concise and well-organized statement of the facts of the case.

(2) Prepare to mention the burden of proof (the amount of evidence needed to prove a fact). In a criminal case, the state has the burden of proof, and guilt must be proven "beyond a reasonable doubt" in a criminal case and "by a preponderance of the evidence" in a civil case.

(3) Prepare to mention the applicable law.

(4) Write a clear and concise overview of the witnesses, physical evidence you plan to present, and how each contributes to proving your case.

c. Presentation.

(1) Introduce your colleagues.
(2 Know your case well so that you can appear confident.
(3) Maintain eye contact with the judges. Do not read too much. Use of notes is allowed, but a highly effective presenter will not be dependent upon reading notes.
(4) Use the future tense in describing what you will do (e.g., "the facts will show," "our witnesses' testimony will prove..."). Don't ever promise to prove something you won't or can't prove.

2. **DIRECT EXAMINATION**

a. Objective: To prove the facts of your case through testimony from favorable witnesses.

b. Preparation.

(1) Identify the information each witness can contribute to the proof of the case, and prepare a series of questions designed to obtain that information.
(2) Plan to present all information needed to prove your case through the testimony of your witnesses.

c. Presentation.

(1) Ask a limited number of questions, using the questions you practiced with your witnesses.
(2) Listen carefully to the witness' answers. If the witness gives you an unexpected answer, follow-up with a question to obtain the testimony you need.
(3) Be relaxed and clear in the presentation of your questions. Use of notes is appropriate, but do not read. Make eye contact with witnesses and judges.
(4) If you need a moment to think, ask the judge for permission to confer briefly with your co-counsel.
(5) Have all documents marked for identification before you refer to them at trial. Refer to evidentiary items as Exhibit A, Exhibit B, etc. After you have used an item of evidence and if that item helps your case, ask the judge to admit it as evidence. (See Simplified Rules of Evidence for procedures regarding introduction of evidence.)

3. **CROSS EXAMINATION**

a. Objective: To make the opponent's witnesses less believable in the eyes of the judge.

b. Preparation.
Anticipate asking questions that:

(1) point out inconsistencies in the witness' statement.
For example, question the witness if s/he first testifies to not being at the scene of the accident and soon after admits to being there.
(2) show prejudice or bias on the part of the witness.
For example, question the witness if s/he testifies that s/he has hated the defendant since childhood.
(3) weaken the testimony of the witness by showing his/her opinion is questionable.
For example, question the witness with poor eyesight who claims to have observed all the details of a fight taking place 500 feet away in a crowded bar.
(4) show that an expert witness who has testified to an opinion is not competent or qualified due to lack of training or experience.
For example, question the testimony of a psychiatrist who speaks to the defendant's need for dental work or the testimony of a high school graduate who says the defendant suffers from a chronic blood disease.
(5) show the witness has given a contrary statement at another time, thus calling into question his/her credibility.
For example, question the witness if s/he testifies opposite of what s/he said in a written statement. This may be done by asking the witness, "Did you make this statement on June 1st?" and then read it or show a signed statement to the witness.

c. Presentation.

(1) Listen carefully to the witness' testimony and be ready to adapt your anticipated questions to the actual testimony given during the direct examination.
(2) Avoid giving the witness an opportunity to emphasize his/her strong points made during direct examination.
(3) Do not argue with the witness. (see Simplified Rules of Evidence, Objections, Argumentative Question)
(4) Do not allow the witness to explain anything. Ask questions which can be answered yes or no whenever possible. Try to stop the witness if his/her answer or explanation is going on and hurting your case. Say, "You may stop there. Thank you." or "That's enough. Thank you."

(5) Do not harass or intimidate the witness.

d. Other Suggestions.

(1) Anticipate the witness' testimony and write possible questions accordingly. Adapt your questions at the trial depending on the actual testimony.

(2) Remember, leading questions (questions which suggest the answers and require only a yes or no response) are allowed on cross examination only.

(3) Be brief and avoid repetition.

(4) Ask only questions to which you already know the answer.

4. **CLOSING ARGUMENTS**

a. Objective: To provide a clear and persuasive summary of the evidence presented to prove your side of the case and the weaknesses of your opponent's case. This is the place to argue for your position.

b. Preparation and Presentation.

(1) Thank the judges for their time and attention.

(2) Identify the primary issues and describe how your presentation resolved these issues.

(3) Review the witness testimony. Outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses. Remember to adapt your statement at the end of the trial to reflect what the witnesses actually said as opposed to the anticipated statements of the witnesses.

(4) Do not make objections during the other side's closing argument.

(5) Notes are permissible, but do not simply read your closing argument. Make eye contact with the judges.

IV. TIPS FOR STUDENT WITNESSES

A. SUGGESTIONS FOR PREPARATION AND PRESENTATION

l. DIRECT EXAMINATION

a. Preparation

(1) Learn the case inside out, especially your witness statement.

(2) Know the questions that your attorney will ask you, and prepare clear and convincing answers containing the information the attorney is trying to get you to say.

(3) Practice with your attorney.

b. Presentation

(1) Be relaxed and in control. An appearance of confidence and trustworthiness is important. Speak clearly, slowly and project your voice.

(2) Do not recite your witness statement verbatim. You should know its content beforehand. You are not allowed to use notes on the witness stand.

(3) Be sure that your testimony is consistent with the facts set forth in your affidavit.

(4) Don't panic if the attorney or judge asks you a question you haven't rehearsed.

(5) Try to avoid a rigid, mechanical approach to the trial. The witness statements are not scripts. Remember, it is your representation of your client that is judged. Students should feel free to let their own personalities and backgrounds show through to bring the mock trial characters to life and to make the mock trial presentation more realistic, spontaneous, and believable, rather than stiff, staged and rehearsed.

2. CROSS EXAMINATION

a. Preparation

(1) Learn the case thoroughly, especially your witness statement.
(2) Anticipate what you will be asked on cross-examination and prepare answers accordingly. Identify the possible weaknesses, inconsistencies, and problems in your testimony and be prepared to explain them.
(3) Practice.

b. Presentation

(1) Be sure your testimony is consistent with the facts set forth in the witness statement.
(2) Cross examination can be tough, so don't get flustered.

Forms

Explanation of Performance Rating Form

Performance Rating Form

Daily Sheet

EXPLANATION OF PERFORMANCE RATING FORM

Teams will be rated on a scale of 1-10. The evaluator is scoring STUDENT PERFORMANCE in each category. The evaluator is NOT scoring the legal merits of the case.

On a scale of 1-10 (with 10 being the highest), rate the performance of the two teams in the categories on the score sheet. Each category is to be evaluated separately. DO NOT GIVE FRACTIONAL POINTS.

POINT	PERFORMANCE	CRITERIA: Evaluating Student Performance
1-2	Not Effective	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, ineffective in communication.
3-4	Fair	Minimally informed and prepared. Performance is passable, but lacks depth in terms of knowledge of task and materials. Communication lacks clarity and conviction
5-6	Average	Good, solid, but less than spectacular performance. Can perform outside the script but with less confidence than when using script. Logic and organization are adequate. Grasps major aspects of the case, but does not convey mastery of same. Communications are clear and understandable, but could be stronger in fluency and persuasiveness
7-8	Excellent	Fluent, persuasive, clear, and understandable. Organizes materials and thoughts well, and exhibits mastery of the case and materials.
9-10	Outstanding	Superior in qualities listed for 7-8 points performance. Thinks well on feet, is logical, keeps poise under duress. Can sort out essential from nonessential and use time effectively to accomplish major objectives. Demonstrates the unique ability to utilize all resources to emphasize vital points of the trial.

DAILY SHEET

MOCK TRIAL COMPETITION

Team Color:	Team Color:
Date:	Date:
Time:	Time:
PLAINTIFF:	**DEFENSE:**
TEAM MEMBERS:	TEAM MEMBERS:
Student Attorneys:	Student Attorneys:
1.	1.
2.	2.
3.	3.
4	. 4.
Officer Krystal Ball:	Joe Low, Defendant:
Betty Boop:	Moel Joel:
Michelle Tyson:	Dinky Pinky: