



**2006-2007
Minnesota State Bar Association
High School Mock Trial Program**

Case Materials

**State of Rigor
v.
Jesse Dubois and Pat Dowling**

*Adapted with permission from an original case written by the
Illinois State Bar Association
Standing Committee on Law-Related Education for the Public*

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Special thanks to the Mock Trial Advisory Committee!

Committee members include: Allen Giles, Chair, Minneapolis; Honorable Jim Dehn, Cambridge; Trina Alvero Phelan, Duluth; Kyle Kaiser, Minneapolis; Paul Godfrey, St. Paul; James Hoeft, Coon Rapids; Steve Ott, Red Wing; Steve Schwegman, St. Cloud; Madge Thorsen, Golden Valley; and Ken White, Mankato.



To: MSBA High School Mock Trial Program Participants

**From: Allen Giles, Esq., Chair, MSBA Mock Trial Advisory Committee
Emily R. Reilly, Mock Trial Manager, 612.278.6306**

RE: 2006-2007 Mock Trial Program

Date: October 3, 2006

On behalf of the Minnesota State Bar Association and the Mock Trial Advisory Committee, welcome to the 21st season of the MSBA High School Mock Trial Program!

This year's case tells the story of criminal charges brought by the People of the State of Rigor against Jesse Dubois and Pat Dowling for criminal trespass and vandalism occurring at the Mortis County Cemetery. The state alleges that Dubois and Dowling are responsible for vandalism that resulted in the damage of several gravestones in the Mortis County Cemetery. Dubois and Dowling deny any involvement in the vandalism and maintain that they were not present at that time the vandalism took place.

As you prepare for your roles, please remember that the primary goal of this program is to provide you with a practical understanding about the American legal system. Your introduction to the American legal system through this program is very unique and would not be possible without the over 600 program volunteers. The mock trial website, located at <http://www2.mnbar.org/mocktrial/>, will be your source for information regarding the case and the tournament throughout the next several months.

The success of this program relies heavily on the hundreds of volunteers acting as coaches and judges; be sure to extend your gratitude to these individuals whenever given the chance throughout the season! Best of luck and enjoy the case!

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Section 1: MSBA Mock Trial Outstanding Professionalism Performance Award

The MSBA Mock Trials are conducted with the same high professional standards expected of all attorneys and judges within the State of Minnesota. The Mock Trial Outstanding Professional Performance Awards were created by the MSBA Professionalism Committee to recognize Mock Trial Participants demonstrating high professional standards while competing in Mock Trials. Student attorneys and judges are invited to nominate participants demonstrating high professional standards. Awards are given in three categories: individual, team and attorney coach.

2006 Mock Trial Outstanding Professionalism Performance Award Recipients:

Individual: Tyler Anderson- Eagan High School

Team: Hill-Murray Blue

Attorney Coach: Terry Karkela- Perham High School

We congratulate those recipients and challenge all 2007 participants to follow their example in conducting themselves as professionals and examples for all in the legal profession. Nomination forms are available on the Mock Trial website. In addition, all judges will be provided with forms during the competition. Nominations will be reviewed by the Professionalism Committee. Selection will be based on civility, courtesy, honesty, integrity and trustworthiness demonstrated during the 2006-2007 Mock Trial Competition. The Professionalism Aspirations and Attorney Core Value messages are resources to review to become familiar with these expectations. The MSBA Professionalism Committee looks forward to presenting the 2007 Mock Trial Outstanding Professionalism Performance Award at the 2007 State Tournament in Rochester, MN on March 14, 2007.

PROFESSIONALISM ASPIRATIONS

Adopted by the MSBA House of Delegates January 14, 2000
Amended by the MSBA Board of Governors September 14, 2000
Approved by the Minnesota Supreme Court January 11, 2001

PREAMBLE

We, the judges and lawyers of Minnesota, have a special responsibility for the quality of justice. We have taken an oath to conduct ourselves in an upright and courteous manner with fidelity to the court and the client, promising no falsehood or deceit. Commensurate with this responsibility and unique oath is the obligation to conduct our affairs according to the highest standards of professionalism.

The following standards reflect our commitment to professionalism. They memorialize our obligations to each other, our clients and to the people of the State of Minnesota. They are designed to raise public confidence in the legal profession and the justice system through the promotion and protection of professionalism and civility. The Professionalism Aspirations are not intended to be used as a basis for discipline by the Lawyers Professional Responsibility Board.

STANDARDS I. OUR LEGAL SYSTEM

A lawyer owes personal dignity, integrity, and independence to the administration of justice. A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms.

II. LAWYER TO CLIENT

A lawyer owes allegiance, learning, skill, and diligence to a client. As lawyers, we shall employ appropriate legal procedures to protect and advance our client's legitimate rights, claims, and objectives. In fulfilling our duties to each client, we will be mindful of our obligation to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

III. LAWYER TO LAWYER

A lawyer owes courtesy, candor, cooperation, and compliance with all agreements and mutual understandings to opposing counsel whether in the conduct of an office practice or in the pursuit of litigation. As professionals, ill feelings between clients should not influence our conduct, attitude, or demeanor toward opposing counsel. Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. A lawyer owes the same duty to an opposing party who is pro se.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the court and the profession.

COMMENTARY

I. OUR LEGAL SYSTEM

A lawyer owes personal dignity, integrity, and independence to the administration of justice. A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms.

Commentary

A. Respect And Dignity We will uphold the respect and dignity of judges, each member of the Bar, the law and the legal system.

B. Honesty We will conduct our affairs with candor and honesty. Our word is our bond.

C. Equal Access We will dedicate and commit ourselves to equal access to the legal system.

D. Education We will educate our clients, the public, and other lawyers regarding the spirit and letter of these Professional Aspirations.

E. Appearance of Impropriety We will always endeavor to conduct ourselves in such a manner as to avoid even the appearance of impropriety.

II. LAWYER TO CLIENT

A lawyer owes allegiance, learning, skill, and industry to a client. As lawyers, we shall employ appropriate legal procedures to protect and advance our clients' legitimate rights, claims, and objectives. In fulfilling our duties to each client, we will be mindful of our obligation to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

Commentary

A. Independent Judgment

1. We will be loyal and committed to our clients' lawful objectives, but will not permit that loyalty and commitment to interfere with our duty to provide objective and independent advice.
2. We will always be conscious of our duty to the system of justice.
3. We reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect our clients' lawful objectives.
4. We will advise our clients, if necessary, that they do not have a right to demand that we engage in abusive or offensive conduct and we will not engage in such conduct.
5. We will neither encourage nor cause clients to do anything that would be unethical or inappropriate if done by us.

B. Proper Conduct on Behalf of Clients

1. We will affirm among parties and other lawyers that civility and courtesy are expected and are not a sign of weakness.
2. We will endeavor to achieve our clients' legitimate objectives in our office practice work and in litigation as expeditiously and economically as possible.
3. We will not employ tactics that are designed primarily to delay resolution of a matter or to harass or drain the financial resources of the parties.

III. LAWYER TO LAWYER

A lawyer owes courtesy, candor, cooperation, and compliance with all agreements and mutual understandings to opposing counsel, in the conduct of an office practice and in pursuit of the resolution of legal issues. As professionals, ill feelings between clients should not influence our conduct, attitude, or demeanor toward opposing counsel. Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. A lawyer owes the same duty to an opposing party who is pro se.

Commentary

A. Courtesy and Punctuality

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.
2. We will not, even when called upon by a client to do so, abuse others or indulge in offensive conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.
3. We will be courteous, civil and prompt in oral and written communications and punctual in honoring scheduled appearances, meetings, depositions, appointments, etc. with opposing counsel.
4. We will disagree without being disagreeable. We recognize that effective representation does not require antagonistic or obnoxious behavior.
5. We will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations or acrimony toward opposing counsel, parties, and witnesses.

6. We will not ask a witness or an opposing party a question solely for the purpose of harassing or embarrassing that individual.

7. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

B. Drafting

1. We will not quarrel over matters of form or style, but concentrate on matters of substance.

2. We will try to achieve the common goal in the preparation of agreements.

3. When we purport to identify for other counsel or parties changes we make in documents submitted for their review, we will identify all such changes accurately.

4. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party.

5. We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

6. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

C. Scheduling, Extensions, Cancellations

1. We will not arbitrarily schedule a meeting, deposition, court appearance, hearing, or other proceeding until a good faith effort has been made to schedule it by agreement. If we are unable to contact the other lawyer, we will send written correspondence suggesting a time or times that will become operative unless an informal objection is directed to us within a set reasonable time.

2. We will endeavor in good faith to honor previously scheduled trial or hearing settings, vacations, seminars, meetings or other functions that produce good faith calendar conflicts on the part of opposing counsel. We will not seek accommodation from another member of the Bar for the rescheduling of any court setting, discovery, hearing, meeting, etc. unless a legitimate need exists.

3. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of our clients will not be adversely affected.

4. We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

5. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed.

D. Discovery

1. We will make reasonable efforts to conduct discovery by agreement.

2. We will refrain from excessive and/or abusive discovery.

3. We will comply with all reasonable discovery requests. We will not resist discovery requests that are not objectionable.
4. We will not seek court intervention to obtain discovery that is clearly improper and not desirable.
5. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.
6. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.
7. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party.
8. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.
9. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge. We will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. We will encourage witnesses to respond to all deposition questions that are reasonably understandable.
10. We will not use any form of discovery or discovery scheduling as a means of harassment.
11. We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.

E. Sanctions We will not seek or threaten sanctions or disqualifications without first conducting a reasonable investigation and unless it is necessary for protection of our client's lawful objectives or fully justified by the circumstances.

F. Opportunity to Respond

1. We will not serve motions, pleadings or briefs in any manner that unfairly limits another party's opportunity to respond. We will not seek ex parte relief without first attempting to notify the opposing party or attorney. We will not file memoranda or affidavits that are not permitted by court rules. We will furnish opposing counsel copies of all submissions to the court either contemporaneously or as soon as practical.
2. We will not cause a default or dismissal to be entered, when we know the identity of an opposing counsel, without first making a good faith attempt to inquire about the counsel's intention to proceed.

G. Settlement

1. We will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.
2. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

H. Request During Trial or Hearing During trial or hearing we will honor reasonable requests of opposing counsel that do not prejudice the rights of our clients or sacrifice tactical advantage.

I. Conduct of Others We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the court and the profession.

Commentary

A. Lawyers' Duties to Court and Administrative Tribunal

1. We will speak and write civilly and respectfully in all communications with the court or administrative tribunal.
2. We will be punctual and prepared for all appearances so that all hearings, conferences, and trials may commence on time to the greatest extent possible.
3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.
4. We will not engage in any conduct that brings disorder or disruption to the courtroom or administrative hearing area. We will advise our clients and witnesses appearing in these settings of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.
5. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication to the court or administrative hearing officer.
6. We will avoid argument or posturing through sending copies of correspondence between counsel to the court, unless specifically permitted or invited by the court.
7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any problems.
8. We will act and speak civilly to all other court staff with an awareness that they, too, are an integral part of the judicial system.

B. The Duties of Judges, Referees, and Administrative Law Judges to Lawyers and Parties

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that we have both the obligation and the authority to insure that all proceedings are conducted in a civil manner.
2. If we observe a lawyer being uncivil to another lawyer or others, we will call it to the attention of the offending lawyer on our own initiative.
3. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.
4. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.
5. In scheduling all hearings, meetings and conferences, we will be considerate of time schedules of lawyers, parties, and witnesses.
6. We will make all reasonable efforts to decide promptly all matters presented to us for decision.
7. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

8. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by exigencies of litigation practice.

9. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a party has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

10. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom, or the causes which, a lawyer represents.

11. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

12. We will not adopt procedures that needlessly increase litigation expense.

C. The Duties of Judges, Referees, and Administrative Law Judges to Each Other

1. We will be courteous, respectful, and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.

2. In all written and oral communications, we will abstain from disparaging personal remarks, criticisms, or sarcastic or demeaning comments about another colleague.

3. We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.

The Aspirations were approved by the Minnesota Supreme Court on January 11, 2001 and are included in the current edition of the Minnesota Rules of Court.

Respect & Fairness

A message from the MSBA Student & Professionalism Committees

This is the second in a series of five messages regarding the core values in the legal profession that cover: 1) Respect & Fairness; 2) Service; 3) Honesty, Integrity, and Trustworthiness; 4) Competent, Prompt, and Diligent Representation; and 5) Quality of Justice. This piece addresses Respect & Fairness.

The cliché is true: we are guardians of our profession. The legal profession is one of the remaining self-regulating professions. It is an awesome responsibility and we must fiercely protect its integrity. Take the time now, while you are in a learning environment, to practice respect and fairness.

Core Value: Respect & Fairness

The Preamble of the **Minnesota Rules of Professional Conduct** states that:

A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

Rule 4.4 of the Minnesota Rules of Professional Conduct states:

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Examples In Action

In a settlement conference, an Attorney cursed at opposing party and then refused to respond to her complaint. After an investigation the court stated: "Lawyers must be encouraged to represent their clients vigorously and we are hesitant in any way to interfere . . .; yet there is a line that should not be crossed and respondent has crossed it." Attorney's comment served no legitimate purpose and was made only to burden or embarrass the other person. - *In re Getty*, 401 N.W.2d 688, 671 (Minn. 1987), www.courts.state.mn.us/lprb/fc051799.html



What does this mean for me?

Practicing core values forms solid skills:

- **Respect** does not necessarily mean agreement. It means independent regard of another's perspectives, ideas, and contributions. Disagree without being disagreeable.
- **Fairness** includes sharing resources in school and the community. We all use the same materials so be considerate of others.
- **Listening.** You can not win an argument without first listening to and understanding your opponents, your colleagues and your future clients.
- **Promote and celebrate diversity.** Determine what diversity means to you. Familiarize yourself with different cultures, religious beliefs, and ideologies through clubs and organizations.
- **Spirited Debate.** Classroom debate should be spirited and zealous while remaining fair and respectful.
- **Professionalism and ethics.** Good lawyers are ethical, disciplined, and value their reputation. Your reputation never leaves you.
- **Civility.** The law community is surprisingly small. Act civilly in all your dealings. Your colleague may become your boss or a judge.
- **Anger.** Reflect before you act. For example, don't send a hostile e-mail in anger only to regret it later.

Public Service

A message from the MSBA Professionalism Committee

There are five core values in the legal profession: 1) Respect and Fairness; 2) Public Service; 3) Honesty, Integrity and Trustworthiness; 4) Competent, Prompt, and Diligent Representation; and 5) Quality of Justice. .

Society depends upon lawyers to provide services to those who cannot afford them. But public service is more than just providing free legal services. It is about committing ourselves to civic engagement. As members of the legal profession we are obligated to give back to the community and make it stronger.

Core Value: Pro Bono Service

Rule 6.1 of the **Minnesota Rules of Professional Conduct** states that:

[a] lawyer should aspire to **render at least 50 hours of *pro bono publico* legal services per year.** In fulfilling this responsibility, the lawyer should provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to (1) persons of limited means or (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means.

The comment to Rule 6.1 calls pro bono service a “professional responsibility” and an “individual ethical commitment of each lawyer.”

Examples In Action

Some simple ways to serve others include volunteering in a local soup kitchen, reading books to children, volunteering with a restorative justice program, and volunteering with the Minnesota Justice Foundation (MJF).

“How wonderful it is that nobody need wait a single moment before starting to improve the world.”

Anne Frank

What does this mean for me?

Maintaining the value to serve others means that you:

- **Actively participate in the community.** Seek out volunteer opportunities which interest you.
- **Make time for others.** No matter how busy you are, serving others should be high on your priority list.
- **Use your special gifts and abilities** to give back to your community. Lawyers have a privileged role in society. This privilege comes with responsibility to try to improve our communities.
- **Treat others with fairness and respect.** Recognize that we all contribute differently to a common goal. Make your goal the improvement of the common good.
- **Seek to grow professionally** by learning new areas of law and to grow personally by developing diverse relationships.
- **Help others.** Be committed to promoting equal access to the legal system and educate others about the law.
- **Learn what resources are available** in your community to assist others. When you cannot provide assistance yourself, be able to refer people to agencies that can help them.

Why wait until after law school to begin serving those around you? Life will always be busy and there will always be competition for your time. By serving others as you build your legal career you begin forming the patterns that you should aspire to throughout your legal career. You are developing your credibility as a lawyer by living out the core values of the legal profession.

Honesty, Integrity, & Trustworthiness

A message from the MSBA Professionalism Committee

There are five core values in the legal profession: 1) Respect and Fairness; 2) Public Service; 3) Honesty, Integrity, and Trustworthiness; 4) Competent, Prompt, and Diligent Representation; and 5) Quality of Justice.

Attorneys are officers of the court appointed to assist the court in the administration of justice. Property, liberty, and sometimes the lives of our clients are committed into our hands. This commitment demands a high degree of intelligence, knowledge of the law, respect for its function in society, sound and faithful judgment and, above all else, integrity of character in conduct.

Core Values: Honesty, Integrity, & Trustworthiness

Rule 8.4 of the **Minnesota Rules of Professional Conduct** states in part that:

It is professional misconduct for a lawyer to:

- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with a lawyer's professional activities; or
- (h) commit a discriminatory act, prohibited by federal, state or local statute or ordinance, that reflects adversely on the lawyer's fitness as a lawyer. . .

"Prefer a loss to a dishonest gain; the one brings pain at the moment, the other for all time." *Chilon*

What does this mean for me?

- **Meet commitments and deadlines.** Allow enough time to get assignments and other commitments completed on time.
- **Live up to the aspirations of the legal profession.** Your behaviors should always measure up to the aspirations of the profession. Professional misconduct jeopardizes our ability to be self-regulating.
- **Make your word your bond.** Every day you are building the reputation that will stay with you throughout your career. Do what you say you are going to do.
- **Protect Confidences.** Recognize the conversations that you should not share with others. A casual social story may be a serious breach of confidence. If you are acting as a student lawyer, realize you have both an ethical and legal obligation to protect your client's confidences. Remind your peers when you hear disclosures that you think should be confidential.
- **Candidly complete your applications.** You place yourself at serious risk if you fail to be forthright and candid in your applications for employment and to the Bar.

Resources

For additional resources on honesty, integrity, and trustworthiness in the legal profession, refer to:

- Association of Professional Responsibility Lawyers, <http://www.aprl.net>
- Legalethics.com, <http://www.legalethics.com>
- ABA Center for Professional Responsibility, <http://www.abanet.org/cpr/home.html>
- The Trusted Advisor by David H. Maister, Charles H. Green, Robert M. Galford

Competent, Prompt, and Diligent Representation

A message from the MSBA Professionalism Committee

There are five core values in the legal profession: 1) Respect and Fairness; 2) Public Service; 3) Honesty, Integrity, and Trustworthiness; 4) Competent, Prompt, and Diligent Representation; and 5) Quality of Justice.

People will rely on you to have the judgment and expertise to serve their legal needs. As a professional you are expected to know the law, the legal process, and how to interact with your clients.

Core Value: Competence, Promptness and Diligence

The **Minnesota Rules of Professional Conduct** state in part that:

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Rule 1.3 Diligence [and Promptness]

A lawyer shall act with reasonable diligence and promptness in representing a client.

Resources:

Minnesota State Bar Association
612-333-1183
www.mnbar.org

Minnesota Continuing Legal Education
612-227-8266
www.minncle.org

Hennepin County Bar Association
612-752-6601
www.hcba.org

Ramsey County Bar Association
651-222-0846
www.ramseybar.org

What does this mean for me?

Maintaining these values means that you:

- **Be punctual and meet deadlines.** Meet your deadlines whether in class or a clinic. Punctuality is essential whenever you are dealing with the court. Being late is not tolerated in practice, and jeopardizes client interests.
- **Work hard.** Invest time and effort in all assignments. Recognize that you are learning skills that will help you represent real people with real problems. Practicing law is a vocation, not an academic exercise.
- **Expand your knowledge.** Look at research projects as opportunities to further your legal knowledge. The greater your knowledge, the better able you will be to give legal advice to clients in a wider array of situations.
- **Recognize limitations.** The law is highly specialized. Do not expect to be knowledgeable in every area of the law. Your client has the right to demand your utmost competence.
- **Utilize CLE courses and lunchtime lecture opportunities.** The bar offers many opportunities for law students to attend CLE courses for free or at a reduced rate.
- **Seek help when you need it.** If you are working as a student attorney, never hesitate to seek advice and help when you are not sure what to do. Never guess. As you begin your career, seek out a mentor and others to help you provide the best representation you can.



Quality of Justice

A message from the MSBA Professionalism Committee

There are five core values in the legal profession: 1) Respect and Fairness; 2) Public Service; 3) Honesty, Integrity and Trustworthiness; 4) Competent, Prompt, and Diligent Representation; and 5) Quality of Justice.

Core Value: Responsibility for the Quality of Justice

The first sentence of the Preamble to the **Minnesota Rules of Professional Conduct** states that: “[a] lawyer is a representative of clients, an officer of the legal system and a public citizen *having special responsibility for the quality of justice.*”

The Preamble continues, “A lawyer should **demonstrate respect for the legal system** and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.”

“As a public citizen, a lawyer should **seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession.** As a member of a learned profession, a lawyer should **cultivate knowledge of the law** beyond its use for clients, employ that knowledge in **reform of the law and work to strengthen legal education.** A lawyer should **be mindful of deficiencies** in the administration of justice and of the fact that the poor and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence on their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.”

What does this mean for me?

Maintaining this value means that you:

- **Actively participate in the legal community.** Seek out ways to improve the law and the legal system by joining and participating in Bar activities and events. Offer your expertise and contribute the skills you are learning to improve justice issues in your community. Find ways to get involved.
- **Consider the public policy when evaluating case decisions.** Public policy arguments are often an expression of the need for justice to be done. These are ways in which lawyers help steer the law in the direction it should go.
- **Understand the legal process.** The public's faith in the justice of the legal process depends upon having a voice in the process.
- **Treat others with fairness and respect.** Recognize that we all contribute differently to a common goal. Make your goal the improvement of the common good.

Examples In Action

A *non-lawyer* by the name of Clarence Earl Gideon working pro se petitioned the Supreme Court to ensure that a person charged with a crime, for which his freedom could be taken away, was entitled to the assistance of an attorney.

Today, law students across the United States assist inmates on death row with appeals through organizations such as the Innocence Project. Law Students participating in national and local bar associations are partnering to improve the law and strengthen legal education. This series of letters on professionalism was developed for you by law students.



MINNESOTA STATE BAR ASSOCIATION
2007 HIGH SCHOOL MOCK TRIAL PROGRAM

Sponsored by
Minnesota State Bar Association

Adapted with permission from an original case by the Illinois State Bar Association

<i>People of the State of Rigor,</i>)	
<i>On behalf of Mortis County Cemetery,</i>)	
<i>Its personnel and patrons</i>)	
v.)	<i>No. 424 2006</i>
<i>Jesse Dubois and Pat Dowling</i>)	

Stipulations:

1. The event being prosecuted occurred on the evening of September 28, 2006, and the early morning of September 29, 2006; summer visiting hours were in effect as the event fell during Daylight Savings Time.
2. All parties agree that the weather was rainy off and on all day on the 28th, with periods of heavy rain and all parties agree that the rain stopped sometime before midnight.
3. It is also stipulated that Shelby Cullom is the owner of the 2004 Volkswagen Galactic Blue Beetle, with a distinctive white half-moon logo on the driver's side door; Rigor license SC 2004.
4. Shelby Cullom's plea agreement is recognized by all parties as being valid and an official offer by the State's Attorney that has been accepted by Cullom and entered by the Judge.
5. All parties agree that damages to the monuments and markers at the Cemetery exceed \$500 total.
6. All students in the trial problem are to be considered minors. As such, Cullom's plea agreement is not public; however, his/her admission information is in his/her witness statement.
7. Police officers and government officials adhered to all constitutionally and statutorily required investigative procedures, including administering proper *Miranda* warnings prior to custodial interrogation, contacting parents prior to questioning minors, securing warrants consent, or having probable cause with exigencies prior to conducting any search of persons or property. The parties do not stipulate to the weight, credibility or admissibility under the rules of evidence of any evidence gathered by the police; the parties merely stipulate that no evidence should be suppressed or excluded based on unconstitutional investigative techniques.

8. Officer Mathewson is qualified as an expert in the field of fingerprint and shoe print analysis and may testify as to the forensics report with a reasonable degree of scientific certainty.
9. All sentences given in the State of Rigor are imposed by the Judge after a defendant is guilty as charged. Therefore, the sentence to be imposed, other than the fact that the defendants may receive a sentence of imprisonment should they be convicted of any of the charged offenses, should not be the subject of questioning, discussion or argument in the case.
10. Each witness is bound by the facts contained in his/her witness statement. The statements should be considered signed and sworn statements of the witnesses, regardless of the presence or absence of a signature on the statement.

Statement of the Case

[THIS STATEMENT IS NOT EVIDENCE, IS NOT ADMISSIBLE AT TRIAL AND MAY NOT BE RELIED UPON BY ANY WITNESSES. IT IS PROVIDED AS BACKGROUND INFORMATION ONLY TO ALLOW FAMILIARIZATION WITH THE CASE.]

On the evening of September 28, 2006 and into the early morning hours of September 29, 2006, Mortis County Cemetery, in rural Springfield, Rigor experienced acts of vandalism considered serious enough to bring criminal charges against three Springfield teens (class three felony charges).

Eye witness, Skeeter Ferris, employed by the Cemetery, witnessed three youths exiting the cemetery as they climbed a fence at the walk-in gate, a gate not currently in use, at approximately 2:00 a.m. on the morning of September 29. Ferris also witnessed a car owned by one of the youths leaving the perimeter of the cemetery immediately following the youths climbing the fence and running away. Ferris was able to note distinctive markings on the car and get a partial license plate.

Ferris' dog, Wolf, led Ferris to a part of the cemetery that had been vandalized following the departure of the students. Ferris immediately reported the incident to the Director of the Cemetery, who notified police. An extensive search of the property ensued, during which additional vandalism was discovered. Also discovered was a student identification card, which matched the name of the owner of the car Ferris had seen departing the cemetery with the three youths inside.

Three youths were arrested, based on a partial license plate and the confession of witness Shelby Cullom. Cullom testifies that he/she did enter the cemetery after hours, accompanied by Jesse Dubois and Pat Dowling; all three are students at Herndon High School. Cullom admits to being on the property after hours and has agreed to cooperate with police and the State's Attorney and, under a plea agreement, will testify against Dubois and Dowling at trial. The plea agreement is stipulated as including a plea of guilty, with 20 hours of community service and six months of supervision, after which, if Cullom has no additional legal problems, the record will be expunged.

Dubois denies having been in the cemetery after hours, but does admit to being on the property during the day on September 28.

Dowling admits to being on the property, but denies that any of the damage caused was intentional vandalism.

Definition of Vandalism: the crime of intentionally damaging property belonging to other people.

consent by defacing or otherwise damaging property within Mortis County Cemetery. Criminal Defacement of Property is a Class 4 felony if the damage to the property exceeds \$300.

Criminal Trespass to a Cemetery, A Class A Misdemeanor.

Should the trier of fact find inconclusive on charges of Class 3 or Class 4 Felony Vandalism of a Cemetery, and/or Criminal Defacement of Property, State's Attorney Tracy Anders, representing the People of the State of Rigor, complainant, would ask that Defendants, Pat Dowling and Jesse Dubois be found guilty of Criminal Trespass to a Cemetery, a Class A Misdemeanor, as on or about the late evening and/or early morning hours of September 28 and/or September 29, 2006, in Mortis County, Rigor, defendants knowingly entered the premises of a public or private cemetery without authorization and did so during the hours that the cemetery was posted as closed to the public.

Signature: _____
Tracy Anders, State's Attorney, Mortis County

I have examined the above complaint and the person presenting same and have heard evidence thereon and am satisfied that there is probable cause of filing same. Leave is given to file said complaint.

Summons issued by Judge Barry Lyman

_____(Signature)

Witness Statements

Prosecution:

Reece Mathewson, Mortis County Sheriff's Department – Police Officer
Skeeter Ferris, Cemetery After-Hours Watchperson
Shelby Cullom, Student

Defense:

Lee Dubois, Parent of Jesse Dubois
Jesse Dubois, Student
Pat Dowling, Student

1 Prosecution Witness

2 **Reece Mathewson**, Mortis County Sheriff's Deputy

3

4 1. My name is Sheriff's Deputy Reece Mathewson. I have been employed as a
5 Deputy in Mortis County for 15 years and have two citations for excellence. My routine
6 patrol takes me past the Mortis County Cemetery almost daily. I am quite familiar with
7 the entire property and the surrounding area.

8

9 2. At 0325 hours on 29 September 2006, I responded to a call from Robin
10 McDermott, Director of Mortis County Cemetery, indicating that there had been an
11 overnight breach of cemetery security and that significant damage had been done to some
12 historical markers on the property. Director McDermott relayed a report from the night
13 watch person, Skeeter Ferris, indicating that Ferris had witnessed intruders leaving the
14 property and had found a number of damaged headstones in the general vicinity of where
15 Ferris believed the intruders to be loitering.

16

17 3. McDermott apprised me that Ferris had chased three youths to the walk-in gate
18 and Wolf; his/her dog, had chased them over the fence at approximately 0130 hours.
19 Skeeter proceeded back to the phone and had reported the incident to the Director of the
20 Cemetery, Robin McDermott, who advised Ferris to stay inside with the dog so the crime
21 scene would not be disturbed, pending arrival of the police. McDermott placed a call to
22 the Sheriff's department, indicating that the youths had already left the crime scene.
23 After a preliminary discussion with Director McDermott, and because the rain occurring
24 earlier had stopped and the sky was clear, I, in consultation with the Sheriff, concluded
25 that the proper course of action was to wait for daylight to conduct the investigation of
26 the scene. Sheriff's deputies were posted around the damaged monuments and officers
27 set up perimeter tarps in case the rain started again. This was done to protect any
28 fingerprints and other evidence that might lead to finding the vandals. As identified in
29 the forensics report attached to my statement as Exhibit B, fingerprints and footprints
30 were identified that conclusively show that three suspects were present at the property on
31 the late evening hours of 28 September 2006 or early morning hours of 29 September
32 2006—one Jesse Dubois, one Pat Dowling and one Shelby Cullom. All three suspects
33 were minors at the time in question.

34

35 4. A temporary investigation headquarters was set-up near the caretaker's residence,
36 as that area is enclosed by a fence and would not be subject to disturbance by visitors
37 after the cemetery opened at 0900 hours.

38

39 5. Following the initial police investigation, which included taking a statement from
40 Skeeter Ferris, and surveying the grounds with Ferris, I led a group of law enforcement
41 officials and trained cemetery volunteers in a sweep of the entire property to determine
42 the extent of the damage. All volunteers were briefed on procedures, which included
43 obtaining the assistance of a police officer to a suspected site to protect evidence. This
44 search was conducted with the assistance of the Mortis County Association for the
45 Preservation of Historic Graves. They are perhaps the most familiar with the various
46 markers and their condition. They have provided a map of the damaged markers. This

47 group of individuals are qualified and highly professional and underwent police training
48 in how to identify and preserve evidence. The volunteers worked in teams, and those
49 teams each had a police officer present to ensure a proper line of evidence, if any was
50 found.

51

52 6. At approximately 0835 hours, while surveying the grounds of the cemetery as part
53 of a sweep team, I located what appeared to be a plastic identification badge lying on the
54 ground, near the Dowling monument, partially obscured by grass and mud specks. With
55 tweezers, I picked up the identification badge and swept a few specks of mud off of the
56 badge. The badge displayed the name, picture and student identification of suspect
57 Shelby Cullom. After ascertaining the identity on the badge, the ID was properly bagged,
58 tagged and preserved as a piece of evidence, with no possibility that fingerprints were
59 damaged.

60

61 7. Given the muddy conditions, it was evident that we would be able to obtain a
62 number of excellent fingerprints on various toppled monuments. The fingerprints all
63 matched Dowling and Dubois. None of the fingerprints matched Cullom, though
64 Cullom's fingerprints were found on the walk in gate, as were those of Dowling and
65 Dubois. Cullom subsequently admitted to being present on the night in question.
66 Cullom's admission was corroborated by Ferris' observation of Cullom's car and coat
67 while Cullom was leaving the property. In fact, Cullom has provided assistance to our
68 case by agreeing to plead guilty to the crime and receive court supervision in exchange
69 for testifying against the other two involved in this vandalism.

70

71 8. It is obvious that Cullom's story is accurate. These three students were all in the
72 same areas of the cemetery and at least two of the students could be linked to the two
73 major damage sites with excellent fingerprint evidence. Forensics has confirmed that the
74 cloth swatches are from the jacket owned by Cullom.

75

76 9. Cullom, in his/her statement, indicates that the damage started at the Dubois
77 monument. There is no conclusive evidence that all the damage to the markers in
78 question in this case might have been caused by the accused. However, the damage included
79 on the abbreviated forensics report is consistent with vandalism. I do not believe that
80 natural causes were the cause of the damage to the monuments. I am no geologist or
81 weather guy, but mud does not get smeared all over gravestones and stones do not get
82 toppled over by regular rain or wind. It is merely common sense.

83

84 10. Nothing in this state's Cemetery Protection Act limits the liability of any party.
85 As some of the monuments damaged are large and historically significant, the parties
86 who are found guilty, and if they are minors, their parents are looking at a hefty
87 restitution payment for fixing the damage that was done.

88

89 11. I am also aware, and this information is posted around the perimeter of the
90 cemetery for the public, that there are posted hours when the public is allowed on the
91 property. That law states that any person who knowingly enters or knowingly remains
92 upon the premises of a public or private cemetery without authorization during hours that

93 the cemetery is posted as closed to the public is guilty of a Class A misdemeanor. This
94 law is a step in the right direction but I firmly believe that it should be strengthened and
95 provide much stiffer penalties to those that enter or remain on cemetery properties after
96 hours. These people should be able to rest in peace, and we have a responsibility to
97 honor our heritage, including our fallen relatives. I imagine that a large percentage of
98 people who do remain or enter after hours are intending no good. Perhaps a greater
99 penalty would serve as a more effective deterrent.

100

101 12. I was also present for some of the questioning of the three minor suspects. We
102 made three separate arrests in this case and separately interviewed Dubois, Cullom, and
103 Dowling before they could get together to discuss their stories. Sheriff's deputies went
104 into their homes with duly authorized and executed search warrants. At each of the
105 minors' homes, Sheriff's deputies collected one (1) pair of muddy shoes, which each
106 student voluntarily admitted belonged to them. At Cullom's home, I recovered one (1)
107 pair of muddy shoes and one (1) torn jacket matching the description provided by Ferris
108 at the cemetery. Cullom also admitted that these items belonged to him/her. I personally
109 arrested Cullom and Dubois and they voluntarily turned over their muddy shoes. Other
110 officers were dispatched to arrest Dowling. I must say I was impressed with the two kids
111 I arrested. At least they showed respect for their elders. Other Sheriff's deputies reported
112 to me that Dowling struggled during the arrest. They said that Dowling was pretty
113 confrontational and verbally abusive.

114

115 13. During my years as a deputy, I have observed and investigated this kind of
116 vandalism before. There are problems in this county with ritualistic violence, or violence
117 conducted as part of an initiation. While there is no current evidence that these three
118 students were participating in a ritual initiation, which may have included an act of
119 vandalism, we aren't ruling that out. If evidence is found that links additional individuals
120 to this case, we will provide that information to the state's attorney to bring additional
121 charges against any other punks or vandals.

122

123 14. Shelby Cullom has cooperated with our office and the State's Attorney and is
124 going to help us prosecute the other two kids. Cullom's truthful statements provided as a
125 result of the plea agreement will help us in this case. Cullom has admitted to the
126 vandalism and will be able to testify as to what happened at the cemetery and, in return, I
127 hope the judge will grant supervision and community service. Of course, there is no
128 guaranty as to what sort of break Cullom will receive for his/her assistance, as Cullom
129 did plead guilty to a crime and was not granted immunity. There is, I believe, some
130 possibility that the college will allow Cullom to keep his/her scholarship. It's nice to see
131 a kid admitting to his/her mistakes and taking responsibility for them.

1 Prosecution Witness
2 **Skeeter Ferris**, Cemetery Watchperson
3

4 1. My name is Skeeter Ferris. I am an employee of Mortis County Cemetery. I
5 work three nights a week at the Cemetery, as a night watch person. On the nights I work,
6 my dog, his name is Wolf, and I arrive at 6:00 p.m. and work until 6:00 a.m. It's a long,
7 twelve-hour shift, but the work is quiet and we like it. We walk the perimeter of the
8 grounds at least twice each shift, and occasionally use one of the cemetery golf carts to
9 cruise around the place. There are cameras posted at the official entrances still in use
10 with tapes in them. I also monitor those cameras when we're not out walking or driving
11 the grounds. There is no camera at the old walk-in gate as it's padlocked. It's a small
12 cemetery. It's only about 50 rather hilly acres, with some beautiful trees, but it's easy to
13 walk.

14
15 2. I've worked for the cemetery for about 25 years now. I'm 45 years old. In
16 addition to working for the cemetery as a night watch person, I also serve on the
17 Cemetery Board, I am familiar with virtually every aspect of the Cemetery's
18 management. I am also a member of the Mortis County Association for the Preservation
19 of Historic Graves. It's a citizen's group that meets once a month to talk about history,
20 geology, and archeology with professors from Mortis Community College, and to raise
21 money for historic preservation. The group has been a whole lot of fun. I've met a
22 couple of people there to date, since they don't get all jittery when they hear that I work
23 in a cemetery and I found a weekly poker group there. I usually win, since I'm used to
24 being up all night. Oh, and through the Association, I learned a bunch about cemetery
25 restoration and maintenance. I love the cemetery—its quiet peacefulness, its history, its
26 ability to tie us to the past.

27
28 3. On the night of September 28-29, I had been on duty for about six hours or so
29 when Wolf started acting funny and pulling on his leash. He almost never does that.
30 He's a calm old pooch, not easily riled. When he tugs like that, it usually means
31 something's up so I follow his nose. He pulled me along at a right good clip until we
32 came across one of the damaged markers. I'd never seen that damage before, that's when
33 I knew for sure he was on to something serious.

34
35 4. I don't carry a cell phone or a flashlight. It's light enough in the cemetery with the
36 security lighting, or the moon, and the cell phone would just be another thing to carry and
37 make noise if it happened to ring. Wouldn't like to disturb the peace of the place. Funny,
38 I know, but that's how I think. I respect those who rest there. Anyhow, my pockets are
39 usually full of dog treats for Wolf.

40
41 5. Wolf and I like the quiet times we spend at the cemetery at night. Lots of folks
42 might think it's a creepy job, or a nervous kind of thing to do, but it's not. It's like
43 spending time in a park. Only this park has lots of statues and monuments in it. And it's
44 also got quite a few very old markers, and some of the first citizens of this county rest
45 here. Some of the markers date back to 1865, and mark the graves of the pioneers and

46 founding fathers of Rigor. Guess you could say that about any old cemetery, but this one
47 is ours and we're proud of it.

48

49 6. Anyhow, I made a mental note of where the broken marker was located, (I have a
50 very good memory—photogenic, I think they call it), and kept following Wolf. He
51 dragged me toward the walk-in gate. As we approached, we saw three young people
52 running toward the fence. Wolf was begging for me to drop the leash so he could go
53 chase them. I knew Wolf wouldn't hurt anyone, so I let him go.

54

55 7. He dashed toward those kids like he was on fire. You should have seen those
56 kids. The one in the jacket turned toward me and yelled. Got me to almost laughing,
57 seeing those kids scramble over the fence. Afraid of a dog like Wolf. Wolf's nothing but
58 a tiny old Yorkshire Terrier, weighs in at a full five pounds soaking wet, and these kids
59 were yelling and making a big deal like Wolf was going to rip them apart. It was a sight
60 to see.

61

62 8. Those three kids climbed the fence with no problems, except for Wolf jumping at
63 their toes and barking. They were obviously young people, and in good shape. I didn't
64 run after them, because I knew there was no way I could catch them. I couldn't tell if
65 they were boys or girls, but one had on a pretty distinctive plaid jacket. I could see it
66 very well as the streetlights were on at the gate, lighting the area pretty well. Goofy place
67 for kids to sneak in and out, it's so well lit. Guess they were relying on the fact that the
68 lane outside the gate isn't much traveled anymore, especially at night.

69

70 9. Anyhow, after the kids made their escape, I walked over to the gate to see if
71 they'd bent or damaged anything there. As I got to the gate, I leashed Wolf and then we
72 heard a car engine start up the street a bit and then tires squealing. The car came right
73 past the gate. There were three people in it, and because of the lights, I could see that one
74 of the people had that same plaid jacket on. Those three were the ones that had climbed
75 the fence just minutes before. I made a note of the type of car, a dark blue or black
76 Volkswagen with a white thing painted on the driver's side door, and got a partial license
77 plate, letters SC and the first three of four numbers. I remember that clearly because my
78 folks came from South Carolina, I'm pretty sure I told the police the numbers, but I can't
79 remember them now. The police, from that, were able to find the car owner.

80

81 10. After that, I walked back through the cemetery through some of the older
82 sections, where I'd seen the kids running from, checking on the condition of some of the
83 oldest markers. Wolf pulled me to some of the ones that had been knocked down. Wolf
84 was a tremendous asset. I think he should get some sort of commendation for his work
85 that night.

86

87 11. Anyhow, by about 2:00 a.m. it was clearing enough to see better by moonlight,
88 and I could see additional damage in some areas. That's when I walked back to the
89 Cemetery office and placed a call to the Director reporting the incident. At that time, I
90 told the Director that I had a partial license plate ID of people who could be questioned
91 about the damage.

92
93 12. It was Wolf, by the way, who helped the police find the swatches of cloth from
94 that plaid coat. One swatch was found at a headstone, and another was found at the walk-
95 in gate. Kid must have torn it when climbing on the way in or out.
96
97 13. The next day, a meeting of the Board was called and I attended that meeting. We
98 toured the cemetery property again and viewed the damage. Because we had the full
99 cooperation of the police, we very quickly were able to figure out the full extent of the
100 damages in a timely manner.
101
102 14. Our cemetery has experienced an aggressive act of destruction. Approximately 10
103 stones in the cemetery, which was founded in the 1830's, were marred, toppled, damaged
104 or destroyed. Because some of the stones are old, and are those of locally significant
105 persons, directly relating to the history of Rigor, and in particular Mortis County, we can't
106 be satisfied with simply gluing or cementing them together. They must be restored.
107 They are fragile pieces of art that must be carefully pieced together and secured,
108 remounted, and leveled. Families of the deceased must be consulted. At least that's
109 what the professors who spoke to our group said, and, based on all my time in the group,
110 I know they're right.
111
112 15. Repairs are going to be expensive. The reason for the expense is based on many
113 factors. It varies depending on the damage done. If there's minor damage, and we are
114 able to mount the stone back on its footings and seal it without complications, the
115 expense may be minimal. However, sometimes lifting the broken pieces causes
116 additional damage to the more fragile pieces. Some of the stones are made of sandstone
117 or limestone and they've been out in the elements for almost 100 years. Some we may be
118 able to refit and epoxy or cement back together, but the breakage will always be visible.
119 Some may be damaged to the point where they need to be replaced entirely. Special
120 machinery may be needed to jack the heavier pieces into position. And, given the age of
121 the cemetery, the age of the monuments in the areas having the most damage, we're not
122 going to be able to drive a lift into the area. This is going to cost us in hours, sweat and
123 labor, as well as for materials and professional consultations. I know all of this because
124 the Association helped with some restorations in another cemetery in the county—I
125 forget the name—about five years ago when another group of hooligans busted up a
126 bunch of monuments to get into a club or gang or something.
127
128 16. I've been asked if the cemetery's visiting hours are clearly posted. They are.
129 Signs are at all official entrances still in use that indicate hours of operation when the
130 public is welcome to visit. We try to make the property as accessible as possible while
131 protecting the historical and significant monuments that are entrusted to our care.
132
133 17. We all know that after dark a cemetery is "spooky" and most youths would not
134 dare enter a cemetery's protected and sacred ground, especially at night. Most teens are
135 raised to respect public and private property. There are some, the more curious,
136 adventurous, lonely, rowdy and "just for the heck of it" type teens that seem to perceive a
137 cemetery as a challenge. They're the ones who cause these problems. They see the

138 cemetery as an irresistible temptation...a challenge...a place to smoke, drink, make out
139 and not be hassled by adults. It's been like this for generations. We are lucky that laws
140 have been implemented to protect our cemeteries, the dearly departed that are laid to rest
141 in them, and the historical monuments and works of art that can be found in many
142 cemeteries.

143
144 18. When you see damage in a cemetery, it's not always vandalism. Metal pinning
145 causes condensation, rusting and movement. The pins will eventually bend or break, and
146 the weight of the stone will naturally topple the monument. The defense will probably
147 try to tell you that the area damaged on the night in question is one of the oldest in the
148 cemetery and that the damage could have been natural. If you'd seen it, you'd know it
149 wasn't natural aging that damaged those stones. It was reckless destruction that followed
150 a direct path, cutting a swath through one of the most historically significant areas of the
151 cemetery. The muddy footprints left clearly indicate the path of destruction and there are
152 fingerprints. It's about time the Sheriff is doing something about this kind of vandalism.
153 After all, the elections are coming up, and there are a lot of us in the Association who
154 want to know our Sheriff will get after these sorts of kids.

1 Prosecution witness

2 **Shelby Cullom**, Student

3
4 1. My name is Shelby Cullom. I'm a 17-year old senior at Herndon High School. I've never
5 been in trouble before. I've never been arrested. I've never even been sent to the principal's
6 office. I'm a good student, with about a 3.5 grade point average on a four-point scale. I've been
7 accepted to Rigor State Teacher's College, as I want to be a history teacher. I have a full
8 scholarship to college, based on my SAT and ACT scores and my participation in the history
9 club. The scholarship is also based on an essay I wrote on the social responsibilities of teens.

10
11 2. I've agreed, on the advice of my lawyer and after consulting with my parents and school
12 counselor, that I should plead guilty and accept an agreement proposed by the State's Attorney;
13 in return I'll testify about the events of the night of September 28-29. I don't feel particularly
14 proud of what I'm doing, but I have to do what's best for my family and me. So, I'll testify and
15 I'll be able to do the community service and keep my nose clean for six months and my record
16 will be spotless. I've also heard from my college that I'll be able to keep my scholarship. I've
17 also decided to write letters of apology to the cemetery and to the families affected by our acts.
18 We did something wrong and I'm trying the best way I know how to make it right.

19
20 3. I think the idea of visiting the cemetery came up after our history club read a booklet on
21 the history of Mortis County Cemetery. It was sort of cool to realize that someone with my
22 name was buried there. I wanted to visit the grave and talked with Pat Dowling and Jesse
23 Dubois about it. I specifically mentioned it to them as their names appeared in the same booklet.
24 We had been friends since grade school and usually agree on just about everything. This time
25 we didn't agree. I wanted to visit the cemetery during the daytime so I could get some good
26 photos of the markers to send to one of my cousins, also named Shelby Cullom. Jesse and Pat
27 had other ideas. They wanted to sneak in after dark. They thought it would be more challenging
28 and interesting. I guess I let myself get talked into it, even though I knew it wasn't a good idea. I
29 didn't want to appear to be scared or timid, and when I voiced my concerns, they called me
30 "chicken".

31
32 4. I will admit that the idea of visiting the cemetery after hours did become more
33 challenging and exciting when we started to actually plan the visit, but as we pulled up to park
34 along the lane by the walk-in gate, I remember saying out loud that I thought this might not be
35 such a good idea. Dowling and Dubois laughed at me. They called me "chicken" again. I don't
36 think of myself as being afraid, I just didn't think it was a good idea. I don't like being in trouble.
37 I don't like disappointing my parents. They work hard and trust me to do the right thing. I know
38 I let them down when I climbed that fence.

39
40 5. I was the one who drove to the cemetery. I guess I thought that if I were driving, I'd have
41 some control of the situation and would be able to leave when I wanted to leave. When I
42 realized my ID was missing, I got nervous. I wanted to retrace our steps to see if I could find it.
43 Not just because I was nervous about losing the ID, and maybe having someone find it and know
44 we were in the cemetery after hours, but I'd need it to get into school the next day.

45
46 6. I realized that my student ID was missing when I reached into my pocket for a tissue.

47 I have allergies and my nose was running. I had to stop once in awhile to blow my nose
48 as I'd forgotten to take my allergy medicine. Pat and Jesse teased me and said I was a
49 crybaby. I quickly became a target of verbal abuse from Pat and Jesse. Maybe that's
50 because they were afraid and they were picking on me to cover up their jitters. I don't
51 know. It wasn't fun.

52
53 7. I parked about a half a block away from the walk-in gate. I parked under some
54 trees so the car wouldn't be too obvious to any passers by that might be in the area. I was
55 driving my car, a 2004 Volkswagen Beetle in Galactic Blue. It was a gift from my parents
56 when I learned about my college scholarship.

57
58 8. After we parked, I guess that was around midnight, we walked to the gate and
59 climbed over with no problems. That was what I thought was going to be the hard part.
60 There was a dim security light over the gate, making us entirely visible to anyone passing
61 by.

62
63 9. Once we got inside the cemetery, I noticed it was really muddy from the rain that
64 night. Sometimes my shoes would sink in the mud all the way. But once we trudged
65 through the sludge, it was easy to find the Cullom gravesite. It's close to the gate we'd
66 just climbed. The streetlights helped us find it. It was still really damp and had just
67 stopped raining and I suggested leaving again. Jesse and Pat laughed at me. Told me to
68 button my jacket and chill. They walked off toward the north end of the cemetery,
69 looking for Dowling's marker.

70
71 10. We stopped and scraped the mud off our shoes on a big marker with some sort of
72 seat. The thing was massive. I don't know whose it was. I guess we figured the next time
73 it rained, the mud would wash away. Didn't see any harm in it, but now they've included
74 that marker as one they've accused us of damaging. Is a little bit of mud considered
75 damage?

76
77 11. We stayed as close to the fence as we could while we walked toward the North
78 end of the cemetery; I suppose we were all thinking that if we were seen, we could jump
79 the fence and run to the car. I think by this time even Jesse and Pat were feeling nervous.
80 We were all pretty quiet.

81
82 12. We found the Cullom monument and moved on to the Dowling plot toward the
83 north. We found that easily enough. Then we were on to the Dubois marker. This one
84 was much harder to find as it's in a more central part of the cemetery. I remember saying
85 that we'd already seen two of the monuments at night, why do the third? Jesse and Pat
86 laughed at me again and sort of shoved me, trying to kid me out of being so cautious, I
87 suppose. I wasn't happy. That I do know. I am really sorry that I ever agreed to go to
88 the cemetery and even sorrier that I didn't leave when I knew I should have left.

89
90 13. We eventually found the Dubois marker and I said, "Great, now let's get out of
91 here." That's when the real problems started. I turned around and started to walk toward
92 the walk-in gate and tripped over something on the ground. I caught myself but cut

93 myself and hurt my wrist when I fell. I remember yelling to Pat and Jesse, "Now can we
94 leave?" They laughed. Turns out I fell over a marker that was already broken and
95 sticking out of the ground.
96

97 14. Pat and Jesse thought I was faking it, until I showed them I was bleeding and had
98 ripped my jacket during the fall. It wasn't until later that I realized a piece of cloth had
99 torn away and was left on the ground.
100

101 15. I begged them to leave. I didn't know how I was going to explain my cuts, the
102 sprained wrist and my ruined jacket to my parents. I said, "I'm leaving, you do whatever
103 you want." And I started to walk away. The ground was soggy and I was miserable.
104 There was thunder and a bit of lightening, but the rain had stopped a while ago, when
105 we'd gotten to the cemetery I think. I didn't even turn around to look back to see if they
106 were following me. I just kept on walking back toward the Dowling monument where I
107 thought I might have lost my school ID.
108

109 16. I guess I got far enough ahead of Jesse and Pat that I couldn't hear what they were
110 doing. I was concentrating on holding my wrist so it wouldn't hurt. I was also trying not
111 to bleed all over myself. I found the Dowling monument pretty easily, but didn't find my
112 ID. I did turn around then to see if Pat and Jesse were behind me. They were there, but
113 they were pretty far away. As they caught up with me, I heard one of them say, "They'll
114 never be able to pin that one on us." I am positive it was Jesse who said that. I waited as
115 they caught up with me and we three walked along the East side of the cemetery,
116 following the fence again, until we got near the walk-in gate. We were all muddy as all
117 get out so we stopped by some big monument and scraped our shoes and boots on the
118 seats until we were relatively clean.
119

120 17. We all three got to the gate at about the same time. Then some little dog came
121 barking at us out of nowhere and we had to really scramble to get away without being
122 nipped. We got to the car with no problems and I gunned the engine and raced away. I
123 think I got home at about 2:30 a.m. or so, after dropping Jesse and Pat at the school
124 where Jesse's car was parked. I must have torn more of my jacket when we climbed over
125 the fence, as the police have another piece that they found there. My new shoes, which
126 my parents got for me for getting my scholarship, have been confiscated as evidence.
127

128 18. It wasn't until the police came to my house the next day to arrest me that I really
129 heard the extent of the damage Jesse and Pat were doing behind me.
130

131 19. My parents are so disappointed. I hate seeing them so upset and sad. I'd do
132 anything to undo what's happened.
133

134 20. I'm willing to take responsibility for my actions. I admit to being in the cemetery
135 after hours, I admit to tripping over a marker that was already destroyed. I admit that I
136 lost my student ID and ripped my coat when I fell and again when we left the cemetery.
137 But, I had absolutely nothing to do with the rest of the destruction that happened that

138 night and I was not aware that it was going on. As I said, I got nervous and afraid after I
139 hurt myself and I walked pretty far ahead of Jesse and Pat to get to the gate.

140

141 21. I haven't spoken to either Jesse or Pat since the incident, but I do believe that they
142 are responsible for the damages.

143

1 Defense Witness

2 **Pat Dowling**, student

3

4 1. My name is Pat Dowling. I'm a senior at Herndon High School. I am 17 years
5 old. I deny having anything to do with the damage in the cemetery. We were there at the
6 cemetery during the afternoon.

7

8 2. I already have a bit of a record and I'm an easy target. I once got caught
9 shoplifting, and I've got a reputation for being a bit of a daredevil. I'll try almost
10 anything, so long as it's legal.

11

12 3. They're trying to make me a scapegoat because Shelby Cullom's precious college
13 scholarship was in jeopardy. Shelby and his/her family are trying to make me the
14 scapegoat, and they're dragging Jesse Dubois into the story for good measure.

15

16 4. I thought the three of us were friends, but I can't say that now that there are all
17 these accusations and I've been arrested. For crying out loud, I know I have to behave.
18 I'm on probation now at school, and was when this happened, so this will probably get
19 me expelled for the rest of my senior year. I'll have to either transfer to a private school,
20 which my parents won't be able to afford, drop out, or spend a year waiting to come back
21 to try my senior year again.

22

23 5. My family has money problems. I'm not an only child, like Cullom. I have to
24 share and help out around the house. I've made mistakes, but I got my head on straight
25 now and I want to make something of myself. I have a part time job after school,
26 working at a grocery store. Most afternoons and evenings I'm there. I don't have much
27 time to hang with my friends anymore. That's turned out to be a good thing. I've been
28 staying out of trouble.

29

30 6. About a week before the incident, Cullom and Dubois came up to me during
31 lunch one Friday and asked if I'd be interested in going to the cemetery to check out the
32 graves with our family names on them. I thought, what the heck, sure. It would be
33 interesting. It might make my parents proud of me to know that I care about my
34 ancestors and learning more about them.

35

36 7. And we did go to the cemetery, but it was the afternoon before the destruction
37 happened and we left way before dark. I went there with Cullom and Dubois, like they
38 said, to see the monuments with our family names on them. I was going to do rubbings
39 of some of the monuments. We had a map of the cemetery that showed where the family
40 markers could be found.

41

42 8. Anyhow, that afternoon it was rainy, so I didn't bring paper and pencils with me,
43 but I did bring a map. The cemetery was a nice place to visit. Like a big park. We
44 walked in the area where the damage was done, but I'm guessing that most of the damage
45 we're accused of doing was already stuff that was broken. We sure didn't do anything
46 intentional. It was pretty muddy and slippery and we may have slipped and fallen into

47 some monuments, maybe once or twice, but we didn't mean to harm anything. I sure
48 don't remember any stones breaking or moving very much. We were just there to look.
49

50 9. That's probably when my fingerprints got all over the place. I guess the cemetery
51 wants payment or satisfaction or something...but I'm telling you that if we did hurt
52 anything, we didn't mean to. We're not vandals. The police are saying that my
53 fingerprints being found means that I was there at night. They're saying something about
54 all the rain having washed them away if they'd been made during the day. Well, all the
55 places where the most damage occurred were under huge trees, full canopies of leaves.
56 Sure it was muddy because it had been raining for days, but the rain in the afternoon and
57 evening was pretty light, as I recall, and it might not have touched those fingerprints at all
58 because of all the trees and leaves around.

59
60 10. The cemetery guard says there were three people running for the fence, but this
61 Skeeter Ferris, the guard, says he/she couldn't see faces. So how come they're accusing
62 us? They're saying that Cullom's coat was ripped and pieces were left all over the
63 cemetery. Cullom's ID was also supposedly found in the cemetery, and I've heard that
64 Cullom admits to being in there after hours. So what if none of his/her fingerprints were
65 found? It's pretty obvious that Shelby Cullom is more interested in a college scholarship
66 than in friendship and telling the truth.

67
68 11. The police arrested all of us separately and I've had no contact with Cullom or
69 Dubois since being arrested so I don't have any idea what they're saying. We're all
70 grounded, according to what my parents say. I'm not allowed to use the phone and I'm not
71 allowed to use the computer. I'm allowed to go to classes and to work. I don't have
72 classes with either Cullom or Dubois, so it's been easy not to see them.

73
74 12. I'm betting that Cullom's exaggerating the entire event, making it into an ordeal
75 for him/her and playing the innocent kid, all brilliant and talented. Bet he/she is saying
76 none of this was his/her idea and he/she got forced into everything that may have gone
77 on. Cullom knew about my history and knew people would believe that I had done these
78 things. I don't know if Cullom is just covering his/her own vandalism or what, but I
79 didn't do what they're accusing me of.

1 Defense witness

2 **Jesse Dubois**, student

3

4 1. My name is Jesse Dubois; I'm a junior at Herndon High School. I'm 16 years old.
5 I'm friends with both Shelby Cullom and Pat Dowling and have been for years. The three
6 of us have always been a team. Even though I'm a year younger, we've been close.

7

8 2. I remember well the night we were supposed to have been at the cemetery. We'd
9 been there the afternoon before when it was raining and we decided that coming back at
10 night would be fun. We were all laughing about it. Pat didn't have to work that night, the
11 first night he/she had had off in some time. We were all looking forward to spending time
12 together. But even though we talked about it, we didn't go through with it.

13

14 3. Pat's been having trouble in senior year. Pat got caught shoplifting, but no
15 charges were filed. Pat's parents were called and they took care of the punishment. And
16 Pat's been having trouble maintaining grades, so we've been seeing less than we'd like of
17 him/her. Pat, to his/her credit, has admitted to making mistakes and has been working
18 hard to rectify the situation. I can't say I'd mind Pat doing senior year again, as we'd get
19 to be in class together, but that's not what Pat wants. Me neither really.

20

21 4. Pat and I sometimes think Shelby's a bit of a brainiac, always thinking about
22 grades and school and the future and making his/her parents proud. Pat doesn't share that
23 same commitment to excellence and I guess neither do I. Pat and I like to have fun.
24 Shelby's more serious.

25

26 5. Anyhow, we went to the cemetery the afternoon in question and walked around in
27 the rain for a while. It was pretty muddy, so I'm sure we left tracks all over the place. We
28 didn't see anyone at all while we were there. We found all of the markers we were
29 looking for and it was cool seeing our names carved out like that. I don't think any of us
30 are really related to those folks, it's a coincidence, but it's pretty eerie. Seeing your name
31 on a monument makes you think about being dead. Pretty creepy stuff. But we
32 mentioned, I remember, that maybe those folks buried there would think it was cool that
33 folks were still walking around with names the same as theirs. Different kind of
34 conversation for us, as we're usually talking about movies or TV shows and junk like
35 that. I think we felt grown up, thinking about mortality and being remembered after
36 death.

37

38 6. So, we were at the cemetery that afternoon, and that's when we decided to go back
39 that evening...but we didn't go. We decided against it. I remember while talking that
40 Shelby even offered to drive later that night. While walking around the cemetery during
41 the afternoon, we found the walk-in gate and decided that's where we'd enter later, if we
42 came back. It wouldn't have been a big deal... the gate's pretty easy to climb and there
43 are no houses around so no one would have seen us. But we didn't go back.

44

45 7. We didn't think much about it the rest of the afternoon. Pat decided to go home
46 and check in with the parents and then come back to my house.

- 47
48 8. Shelby came over to my house after dinner. We went to the basement and started
49 watching movies, waiting for Pat to show up. Pat got there at about 9:00 p.m. We knew
50 my parents were home and we kept watching movies until we fell asleep.
51
- 52 9. I remember I wore a pair of old work boots to the cemetery in the afternoon
53 because I knew it would be muddy because of the rain. They're pretty worn, but they're
54 comfortable and keep my feet dry. After the afternoon trip to the cemetery, I didn't wear
55 them again. The police took them when they came to my house. The police haven't
56 returned them to me yet. Evidence I guess.
57
- 58 10. A little after Pat arrived, I think Mom called down to the basement and asked how
59 much longer we were going to be there and did we want a pizza. That's when I asked if
60 Shelby and Pat could spend the night. Mom said it was ok with her if it was ok with their
61 parents. We assured her it was and I think Mom and Dad went to bed then or soon after.
62
- 63 11. I've seen the list of damage we're supposed to have done. Could it be possible
64 that the cemetery is trying to take advantage of us kids and our parents by charging us for
65 damages to monuments we never went near? Some of the damage is for chipping. We
66 didn't have anything with us that afternoon we went there that could have chipped a
67 stone. Wouldn't that take a tool of some kind?
68
- 69 12. And they're charging us for damages to some Governor'¹s monument and we
70 didn't go near it. And they're also saying we damaged the Lindsay and the Broadwell
71 stones. Never saw them. Sure didn't go near them. Couldn't have been us that did that
72 damage. I'm betting those particular monuments crumbled or leaned or collapsed on their
73 own due to negligence on the part of the cemetery, or cemetery staff knocked them when
74 mowing and they're blaming us to get us to pay for the damages. I hear that the "guard"
75 Ferris stumbles around in the dark at night. Weirdo. He probably knocked the stones
76 over during the night and is looking for someone to blame.
77
- 78 13. Cullom probably pointed a finger at us to get off the hook and keep his/her
79 reputation and scholarship in good order. Disappointing to have a friend like that.

¹ This refers to the Northcott monument, near the walk in gate.

1 Defense witness

2 **Mr/Mrs. Lee Dubois**, Parent of Jesse Dubois

3

4 1. My name is Lee Dubois, I am the parent of Jesse Dubois. We have three other
5 children and live about five blocks from the Mortis County Cemetery.

6

7 2. Jesse is our oldest child and we are very proud of him/her. Ours is a very open
8 and trusting family. We believe in our children and had no reason to believe that Jesse,
9 Pat and Shelby were up to any mischief. In fact, I am willing to testify under oath that all
10 three of the accused in this matter were at our home when the infractions took place.

11

12 3. On the night in question, Jesse had been to the cemetery in the afternoon helping
13 Pat with a school project. Pat has had some problems and Jesse has been very supportive
14 and helpful in helping Pat find direction. Another reason we are proud of Jess.

15

16 4. We were aware of the afternoon cemetery trip and approved of it. I think history
17 is important and our children should learn from the past and respect it. I was delighted
18 that the three were taking such an interest in local history.

19

20 5. I'm not sure what time they returned from the cemetery that afternoon, but Jesse
21 said that he/she had invited Pat and Shelby over for the evening to watch television and
22 hang out in our basement. This was fine with me. I like having the kids around our
23 home. That way we know what they are doing and I think the other parents feel the same
24 about our home and our parenting. We have good children. They obey and are nice, good
25 kids. They don't fight or argue or get into trouble. All our children have good grades and
26 have no behavior problems. I've never received a phone call from school complaining
27 about any of our children.

28

29 6. That evening, we ate dinner as a family and at about 8:00 p.m. Shelby arrived.
30 Shelby is a wonderful child. So bright and outgoing. We chatted for a bit about the
31 scholarship Shelby had been awarded and then Shelby and Jesse went to the basement
32 family room and I heard the television set go on. Around 9:00 p.m. or so, Pat arrived and
33 I sent him/her to the basement to join the others. Pat was very polite and sweet, thanking
34 me for letting him/her come over for the evening.

35

36 7. As I said, I don't believe it could possibly have been these three children who did
37 the damage at the cemetery. They were, I am confident, in our basement enjoying the
38 evening.

39

40 8. We ordered a pizza at about 9:15 or so and it was delivered very quickly. I
41 remember thinking that the kids were eating rather late and might end up staying until
42 about midnight, which wasn't unusual at all. That was fine because Jesse had asked if the
43 others could spend the night and we had approved, and I knew they would all be with us
44 all night. I was also very glad that they were at our house on such a rainy evening. I
45 don't like Jesse out driving in bad weather. Especially in heavy rain.

46

47 9. After the pizza was delivered, our younger children were put to bed. This is
48 sometimes a time consuming project. By 10:00 they were tucked in and asleep, leaving
49 only Jesse and the other kids in the basement.
50

51 10. I remember we called down the basement stairs later in the evening to see if the
52 kids needed anything else and Jesse said no, they were great. They were laughing and
53 having fun. Jesse came upstairs a little later to get sodas for the others and went right
54 back down. That's when we said good night and locked the house and went upstairs to
55 our bedroom.
56

57 11. We left the lights on in the kitchen in case the kids needed anything. There is a
58 bathroom in the basement, and blankets and pillows in a closet, so I didn't think we'd hear
59 anything more from the kids during the evening. The basement is furnished with a
60 television, video games, a computer with internet access and two sofas that pull out into
61 beds. We often have kids spend the night at our home because the room is so
62 comfortable and there is so much they can do.
63

64 12. I remember that I stayed up until about midnight reading and never heard
65 anything other than the television and an occasional laugh from the basement. I know
66 those kids were in our home the whole night. Even though I didn't go down to check, I
67 am confident that they were there. The police have asked if the kids might have been
68 able to sneak out that evening after we went to sleep. I just can't imagine that we
69 wouldn't have heard or sensed something. I was up until around midnight or a little
70 before and I know I heard them laughing and I heard the television set as I turned out the
71 light.
72

73 13. I'm not a heavy sleeper and neither is my spouse. I think we'd have known if the
74 kids had snuck out. I remember that I woke up in the early morning hours and looked at
75 the clock in our bedroom. It was 3:12 a.m. I don't know what woke me; it may have been
76 a noise of some kind. I got out of bed and went to the basement to check on the kids.
77 They were sprawled all over the basement, sleeping soundly.
78

79 14. I got up early the next morning and I was quiet in the kitchen, as I thought the
80 kids were still asleep in the basement. Jesse's muddy boots were in the laundry room at
81 the head of the basement stairs, where they must have been since they got home from the
82 cemetery in the afternoon. Jesse came upstairs at about 7:30 and said that the others had
83 left already. He said that they hadn't slept much and Pat and Shelby had left at about an
84 hour earlier. That wasn't unusual either. I know Pat has a job and might have needed to
85 get some sleep at home before going to work.
86

87 15. I was absolutely shocked and horrified when the police came to our home that day
88 and arrested Jesse for what had happened at the cemetery. Again, I honestly and truly
89 don't believe these kids are capable of that kind of activity.
90

91 16. I heard that Shelby Cullom has pleaded guilty and has reached an agreement with
92 the State's Attorney that will probably wipe the slate clean. I don't know why Shelby did

93 that. I think any reasonable person would believe these kids and understand that there's
94 been a horrible misunderstanding. I think Shelby was afraid of losing that scholarship
95 and decided to admit to anything in order to keep it. After all, what's community service
96 and six months of good behavior in exchange for a college scholarship?
97

98 17. The cemetery board has contacted us to say that they will be filing a lawsuit for
99 the damage to the monuments in the cemetery under the state's parental responsibility
100 law. We are responsible parents. Responsible enough to know that our child was in our
101 home on the night this happened.

EXHIBITS

EXHIBIT A

Estimates - Based on damages as indicated by search of Mortis County Cemetery property morning after September 28 incident¹

- #32 **Dr. Gershom Jayne (1867)** (damaged, fingerprints found)
REPAIR ESTIMATE - stone off base, base shifted requiring jacking and reinforcement of footings. Repair includes stone masonry work to refit after reinforcing footings.
Estimate - \$775
- #27 **General John Cook (1920)** (damaged, fingerprints found)
REPAIR ESTIMATE - stone off base, base shifted requiring jacking and reinforcement of footings. Repair includes stone masonry work to refit after reinforcing footings.
Estimate - \$775
- #63 **William A. Northcott (1917)** (smeared with mud, looked as if shoes had been cleaned off on stonework)
REPAIR ESTIMATE - hand wash of entire monument to remove excessive mud, twigs, sod, etc. from seat area.
Estimate - \$200
- #11 **Nellie Grant Jones (1922)** (smeared with mud, scratched)
REPAIR ESTIMATE- hand wash of entire monument to remove excessive mud, twigs, sod, etc. from seat area.
Estimate - \$100
- # 45 **James Conkling** (smeared with mud, scratched)
REPAIR ESTIMATE - hand wash of entire monument to remove excessive mud, twigs, sod, etc. from seat area.
Estimate - \$100
- Monument A**, Unreadable due to age (smeared with mud)
REPAIR ESTIMATE - hand wash of entire monument to remove excessive mud, twigs, sod, etc. from seat area.
Estimate - \$200
- Monument B**, Unreadable due to age (smeared with mud)
REPAIR ESTIMATE - hand wash of entire monument to remove excessive mud, twigs, sod, etc. from seat area.
Estimate - \$200
- Monument C**, Unreadable due to age (smeared with mud)
REPAIR ESTIMATE - hand wash of entire monument to remove excessive mud, twigs, sod, etc. from seat area.
Estimate - \$200
- #57 **Nicholas Vachel Lindsay** (sunken on base, leaning)
REPAIR ESTIMATE- to re-seat and secure - \$300
- #58 **Moses Broadwell** (students deny--sunken on base, leaning)
REPAIR ESTIMATE- to re-seat and secure - \$500

¹ Please note: This exhibit is provided by the cemetery personnel and their listing breakdown is their own and may not accurately reflect what is stated in witness statements or forensics report (Exhibit B). This exhibit should be used only for purposes of confirming amounts of damages.

EXHIBIT B

Abbreviated Forensics Report - No damage found at Monument No. 31 (Dubois), but muddy footprints around base match those of footwear worn by Cullom and Dowling. No footprints could be matched to Dubois at this location.

1. Dr. Gershom Jayne, Monument No. 32
Stone pushed off base. Base has shifted. Footprints are consistent with those taken from the shoes of the two defendants.
2. General John Cook, Monument No. 27
Stone pushed off base. Base has shifted. Footprints are consistent with those taken from the shoes of the two defendants.
3. Monument A, Unreadable due to age
Mud smeared on face, top and back of monument. Fingerprints are consistent with those of the two defendants.
4. Monument B, Unreadable due to age
Mud smeared on face, top and back of monument. Fingerprints are consistent with those of the two defendants.
5. Monument C, Unreadable due to age
Mud smeared on face, top and back of monument. Fingerprints are consistent with those of the two defendants.
6. Monument No. 57 (Lindsay)
Monument sunken on base and leaning. No official report made in Cemetery records prior to night in question. No conclusive forensic evidence indicating whether damage was done by defendants.
7. Monument No. 58 (Broadwell)
Monument sunken on base and leaning. No official report made in Cemetery records prior to night in question. No conclusive forensic evidence indicating whether damage was done by defendants.
- 8.. Monument No. 63 (Northcott)
Muddy footprints located around and on monument. Footprints consistent with shoes² worn by Shelby Cullom, Jesse Dubois and Pat Dowling. Dubois fingerprints match those on edge of monument. No fingerprints conclusively linking Cullom or Dowling to the monument. Fingerprints were also clean, not smeared.
9. Monument No. 11 (Jones)

² In this report "consistent" means that the prints matched at least two identifying characteristics of the subject (whether a piece of footwear or a suspect's fingerprints) to a reasonable degree of scientific certainty.

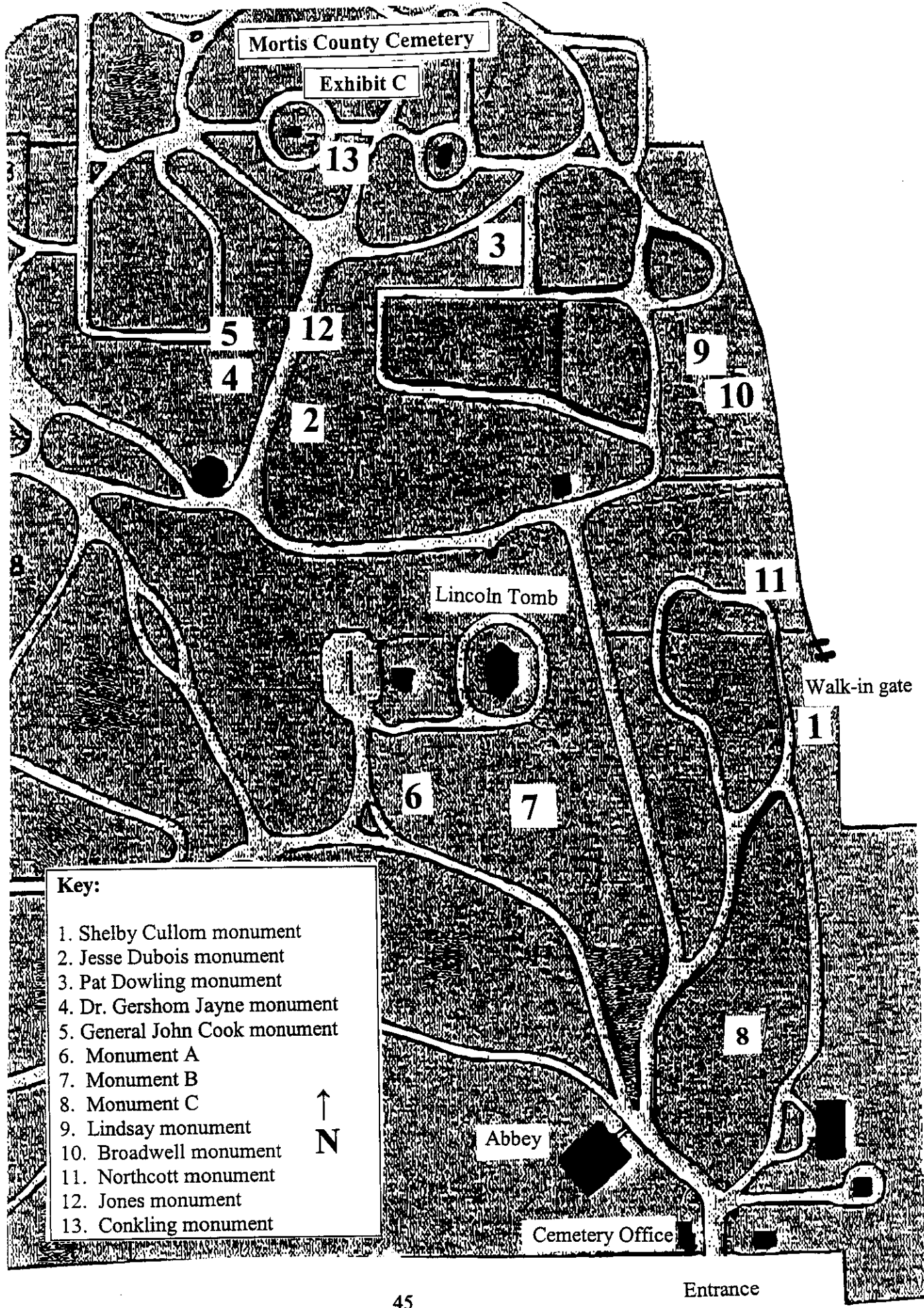
Muddy footwear was discovered at the homes of each of the suspects. Each suspect admitted that the muddy footwear belonged to him/her. At Cullom's residence an extremely expensive pair of a popular brand of sneaker, virtually brand new, were recovered. At Dubois' residence a pair of very worn work boots, with a distinctive wear pattern and a crack across the right foot toe area, were recovered. At Dowling's residence a pair of commonly available sneakers, no unusual wear pattern, were recovered.

Monument smeared with mud and scratched. Some footprints found, but are not consistent or inconsistent with either of the defendant's.

10. Monument No. 45 (Conkling)

Monument smeared with mud and scratched. Some footprints found, but are not consistent or inconsistent with either of the defendant's.

All of the defendants' shoes were found in their homes and have been preserved as evidence, though will not be available at trial. Officer Reece Mathewson may testify as she/he was the arresting officer in two of the three arrests and Mathewson took possession of the shoes of Dubois and Cullom.



Mortis County Cemetery

Exhibit C

Lincoln Tomb

Abbey

Cemetery Office

Walk-in gate

- Key:**
- 1. Shelby Cullom monument
 - 2. Jesse Dubois monument
 - 3. Pat Dowling monument
 - 4. Dr. Gershom Jayne monument
 - 5. General John Cook monument
 - 6. Monument A
 - 7. Monument B
 - 8. Monument C
 - 9. Lindsay monument
 - 10. Broadwell monument
 - 11. Northcott monument
 - 12. Jones monument
 - 13. Conkling monument



EXHIBIT D

September 30, 2006

Mortis County Cemetery Director and Cemetery Personnel

To Whom It May Concern:

My name is Shelby Cullom and I have admitted to entering Mortis County Cemetery after hours. I have been charged with vandalism and destruction of some historically significant monuments in the Cemetery. Even though I had nothing to do with the vandalism, I am writing to apologize for all the problems my friends and I have caused based on our sneaking onto the property after hours.

I will happily do whatever I can to make things right. I will help pay for repairs, even though I am not responsible for the damage. I will work at the cemetery as a volunteer to clean gravesites and mow and trim. I will do what ever it takes to make things right again.

I have disappointed my parents and I very much want to make them proud of me again and I want to earn back the trust that they have lost.

I hope you will let me know if there is anything I can do to make things right. Remember, I didn't vandalize anything, but I will help clean up what was damaged. It's the right thing to do.

Thank you.

Shelby Cullom

Cc: Mom and Dad
Sheriff's Office
State's Attorney's Office

EXHIBIT E

3 Juveniles In Custody In Cemetery Vandalism

Springfield Star, September 30, 2005

By Tracy Lyman

SPRINGFIELD - After only hours of investigation, the Mortis County Sheriff's Office arrested three local teens in connection with damages discovered at Mortis County Cemetery in the early morning hours of September 29. The three are all currently students at Herndon High School.

The reported damages could exceed \$5,000 and include destruction of at least two historically significant monuments and defacing of three additional historically significant headstones.

The State's Attorney has determined that this case is serious enough to warrant charges under Rigor' Cemetery Protection Act. This law deals with desecration of headstones and/or monuments and provides that any person who "willfully and knowingly defaces, vandalizes, injures, or removes a gravestone or other memorial, monument, or marker commemorating a deceased person or group of persons...is guilty of a Class 4 felony for damaging at least one but no more than 4 gravestones, a Class 3 felony for damaging at least 5 but no more than 10 gravestones, or a Class 2 felony for damaging more than 10 gravestones." If found guilty, the teens will be required to "provide restitution to the cemetery authority or property owner for the amount of any damage caused."

Mortis County Cemetery is famous as the final resting place of many people who made historically significant contributions to the community and the State of Rigor. Some of the damaged gravestones date back to 1899.

Cemetery spokesperson, Burke Vonnahmen, Director of Mortis County Cemetery and President of the Mortis County Association for the Preservation of Historic Graves, has indicated that damaged monuments include those honoring Dr. Gershom Jayne, General John Cook and William A. Northcott as well as those honoring the daughter of Ulysses S. Grant, Nellie Grant Jones and James Conkling. Investigations continue that could also link the three arrested students to damages found at the monuments honoring a local poet and author.

Director Vonnahmen said, "I am very grateful for the incredible job the police have done in investigating this case and am confident that the people responsible for this abomination will be brought to justice. We will use every law we can find to ensure that an example is set and people know that this kind of behavior is not going to be allowed."

If the students are found guilty of desecration or vandalism of between five and ten headstones or monuments, they may face prison time as well as a fine; and, under the parental responsibility laws currently in place, the three, if unable to offer financial restitution, will have to face their parents, who may be responsible for monetary damages under the Rigor Parental Responsibility Law.

Rigor State Statutes & Jury Instructions

PROPERTY Cemetery Protection Act.

This Act may be cited as the Cemetery Protection Act.
(Source: P.A. 86-1324.)

Rigor Revised Statute § 21.15.1

(a) Any person who acts without proper legal authority and who willfully and knowingly destroys or damages the remains of a deceased human being or who desecrates human remains is guilty of a Class 3 felony.

(b) Any person who acts without proper legal authority and who willfully and knowingly removes any portion of the remains of a deceased human being from a burial ground where skeletal remains are buried or from a grave, crypt, vault, mausoleum, or other repository of human remains is guilty of a Class 4 felony.

(c) Any person who acts without proper legal authority and who willfully and knowingly:

(1) obliterates, vandalizes, or desecrates a burial ground where skeletal remains are buried or a grave, crypt, vault, mausoleum, or other repository of human remains;

(2) obliterates, vandalizes, or desecrates a park or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons;

(3) obliterates, vandalizes, or desecrates plants, trees, shrubs, or flowers located upon or around a repository for human remains or within a human graveyard or cemetery; or

(4) obliterates, vandalizes, or desecrates a fence, rail, curb, or other structure of a similar nature intended for the protection or for the ornamentation of any tomb, monument, gravestone, or other structure of like character; is guilty of a Class A misdemeanor if the amount of the damage is less than \$500, a Class 4 felony if the amount of the damage is at least \$500 and less than \$10,000, a Class 3 felony if the amount of the damage is at least \$10,000 and less than \$100,000, or a Class 2 felony if the damage is \$100,000 or more and shall provide restitution to the cemetery authority or property owner for the amount of any damage caused.

(5) Any person who acts without proper legal authority and who willfully and knowingly defaces, vandalizes, injures, or removes a gravestone or other memorial, monument, or marker commemorating a deceased person or group of persons, whether located within or outside of a recognized cemetery, memorial park, or battlefield is guilty of a Class 4 felony for damaging at least one but no more than 4 gravestones, a Class 3 felony for damaging at least 5 but no more than 10 gravestones, or a Class 2 felony for damaging more than 10 gravestones and shall provide restitution to the cemetery authority or property owner for the amount of any damage caused.

* * *

(d) The provisions of this Section shall not apply to the removal or unavoidable breakage or injury by a cemetery authority of anything placed in or upon any portion of its cemetery in violation of any of the rules and regulations of the cemetery authority, nor to the removal of anything placed in the cemetery by or with the consent of the cemetery authority that in the judgment of the cemetery authority has become wrecked, unsightly, or dilapidated.

(e) If an unemancipated minor is found guilty of violating any of the provisions of subsection (b) of this Section and is unable to provide restitution to the cemetery authority or property owner, the parents or legal guardians of that minor shall provide restitution to the cemetery authority or property owner for the amount of any damage caused, up to the total amount allowed under the Parental Responsibility Law.

(f) Any person who shall hunt, shoot or discharge any gun, pistol or other missile, within the limits of any cemetery, or shall cause any shot or missile to be discharged into or over any portion thereof, or shall violate any of the rules made and established by the board of directors of such cemetery, for the protection or government thereof, is guilty of a Class C misdemeanor.

(g) Any person who knowingly enters or knowingly remains upon the premises of a public or private cemetery without authorization during hours that the cemetery is posted as closed to the public is guilty of a Class A misdemeanor.

(h) All fines when recovered, shall be paid over by the court or officer receiving the same to the cemetery association and be applied, as far as possible in repairing the injury, if any, caused by such offense. Provided, nothing contained in this Act shall deprive such cemetery association, or the owner of any lot or monument from maintaining an action for the recovery of damages caused by any injury caused by a violation of the provisions of this Act, or of the rules established by the board of directors of such cemetery association. Nothing in this Section shall be construed to prohibit the discharge of firearms loaded with blank ammunition as part of any funeral, any memorial observance or any other patriotic or military ceremony. (Source: P.A. 92-419, eff. 1-1-02.)

Rigor Revised Statute § 21.15.3

The directors of any cemetery society, or cemetery association, may appoint policemen to protect such cemetery and preserve order therein, and such policemen shall have the same power in respect to any offenses committed in such cemetery, or any violation of this act, that city marshals or policemen in cities have in respect to maintaining order in such cities or arresting for offenses committed therein.

(Source: Laws 1885, p. 57.)

Rigor Revised Statute § 19.1.3 Criminal defacement of property.

(a) A person commits criminal defacement of property when the person knowingly damages the property of another without his or her consent by defacing, deforming, or otherwise damaging the property by the use of paint or any other similar substance, or by the use of a writing instrument, etching tool, or any other similar device.

(b) Criminal defacement of property is a Class A misdemeanor for a first offense if the damage to the property does not exceed \$300. Criminal defacement of property is a Class 4 felony if the damage to property does not exceed \$300 and the property damaged is a school building or place of worship. Criminal defacement of property is a Class 4 felony for a second or subsequent conviction or if the damage to the property exceeds \$300. Criminal defacement of property is a Class 3 felony if the damage to property exceeds \$300 and the property damaged is a school building or place of worship. In addition to any other sentence that may be imposed for a violation of this Section that is chargeable as a Class 3 or Class 4 felony, a person convicted of criminal defacement of property shall be subject to a mandatory minimum fine of \$500 plus the actual costs incurred by the property owner or the unit of government to abate, remediate, repair, or remove the effect of the damage to the property. To the extent permitted by law, reimbursement for the costs of abatement, remediation, repair, or removal shall be payable to the person who incurred the costs.

CIVIL LIABILITIES
Parental Responsibility Law.

This Act shall be known and may be cited as the Parental Responsibility Law.
(Source: P. A. 76-1679.)

Rigor Revised Statute § 25.1.1

Sec. (a). As used in this Act, unless the context otherwise requires, the terms specified have the meanings ascribed to them:

(1) "Legal guardian" means a person appointed guardian, or given custody, of a minor by a circuit court of the State, but does not include a person appointed guardian, or given custody, of a minor under the Juvenile Court Act or the Juvenile Court Act of 1987.

(2) "Minor" means a person who is above the age of 11 years, but not yet 19 years of age.
(Source: P.A. 85-1209.)

Sec. (b). Liability. The parent or legal guardian of an unemancipated minor who resides with such parent or legal guardian is liable for actual damages for the willful or malicious acts of such minor which cause injury to a person or property, including damages caused by a minor who has been adjudicated a delinquent for violating Section 21-1.3 of the Criminal Code of 1961. Reasonable attorney's fees may be awarded to a plaintiff that is not a governmental unit in any action under this Act.
(Source: P.A. 90-311, eff. 1-1-98.)

Sec. (c). Any municipal corporation, county, township, village or any other political subdivision or department of the State of Rigor, or the United States or any of its instrumentalities, or any person, partnership, corporation, association or any incorporated or unincorporated religious, educational or charitable organization is entitled to enforce the liability imposed by this Act.
(Source: P.A. 88-406.)

Sec. (d). Limitation on damages; damages allowable. No recovery under this Act may exceed \$2,500 actual damages for each person, or legal entity as provided in Section 4 of this Act, for each occurrence of such willful or malicious acts by the minor causing injury, in addition to taxable court costs and attorney's fees. In determining the damages to be allowed in an action under this Act for personal injury, only medical, dental and hospital expenses and expenses for treatment by Christian Science practitioners and nursing care appropriate thereto may be considered. (Source: P.A. 90-311, eff. 1-1-98.)

Sec. (e). This Act shall not affect the recovery of damages in any other cause of action where the liability of the parent or legal guardian is predicated on a common law basis. (Source: P. A. 76-1679.)

JURY INSTRUCTIONS

11.83 Definition of Cemetery Vandalism

A person commits the offense of cemetery vandalism when he/she willfully and knowingly obliterates, vandalizes or desecrates a grave and the amount of damage is at least \$10,000 and less than \$100,000;

or

defaces, vandalizes, injures or removes a gravestone or other memorial or monument, or marker commemorating a deceased person or group of persons and damages at least five (5) but no more than ten (10) gravestones.

11.84 Issues In Cemetery Vandalism

To sustain the charge of cemetery vandalism, the State must prove the following proposition:

1. That the defendant(s) willfully and knowingly obliterated, vandalized or desecrated a grave and the amount was at least \$10,000 and less than \$100,000;

or that the defendant(s) willfully and knowingly defaced, vandalized or injured a gravestone or other memorial, monument or marker commemorating a deceased person and damaged at least five but no more than ten gravestones.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant(s) guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant(s) not guilty.

16.01 Issues in Criminal Defacement to Property

A person commits the offence of criminal defacement of property when he knowingly damages the property of another without that person's consent by defacing, deforming, or otherwise damaging such property by the use of paint or any similar substance or by the use of a writing instrument, etching tool, or any other similar device and such damage to the property exceeds \$300.

To sustain the charge of criminal defacement of property, the State must prove the following propositions:

1. That the defendant(s) knowingly damaged the property by defacing, deforming, or otherwise damaging such property by the use of paint or any similar substance or by the use of a writing instrument, etching tool, or any other similar device; and
2. The defendant(s) did so without the consent of property owner; and
3. The damage to the property was more than \$300.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant(s) guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

16.23 Definition Of Criminal Trespass To A Cemetery

A person commits the offense of criminal trespass to a cemetery when he intentionally violates any of the rules made and established by the board of directors of a cemetery for the protection or government thereof.

Or

Knowingly enters or remains upon the premises of a public or private cemetery without authorization during hours that the cemetery is posted as closed to the public.

16.24 Issues In Criminal Trespass To A Cemetery

To sustain the offense of criminal trespass to a cemetery, the State must prove the following proposition(s):

1. That the defendant(s) knowingly violated any of the rules made and established by the board of directors of a cemetery for the protection or government thereof.

Or

2. That the defendant(s) knowingly entered the premises of a public or private cemetery without authorization and did so during the hours that the cemetery was posted as closed to the public.

If you find from your consideration of all the evidence that the proposition or propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the proposition or propositions have not been proved beyond a reasonable doubt, you should find the defendants not guilty.

MINNESOTA HIGH SCHOOL MOCK TRIAL COMPETITION RULES

Any clarification of rules or case materials will be issued in writing to all participating teams no less than two weeks prior to the tournament.

Each team is responsible for the conduct of persons associated with the team throughout the mock trial event.

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Team Roster Sample Form

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I. RULES OF THE COMPETITION

A. ADMINISTRATION

Rule 1.1. Rules

All trials will be governed by the Rules of the Minnesota High School Mock Trial Competition and the Minnesota High School Mock Trial Rules of Evidence.

Questions or interpretations of these rules are within the discretion of the Minnesota State Bar Association (MSBA), whose decision is final.

Rule 1.2. Code of Conduct

The rules of competition, as well as proper rules of courthouse and courtroom decorum and security, must be followed. The MSBA possesses discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations or breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program.

Rule 1.3. Emergencies (NHSMTC)

B. THE PROBLEM

Rule 2.1. The Problem

The problem will be a fictional fact pattern which may contain any or all of the following: statement of facts, indictment, stipulations, witness statements/affidavits, jury charges, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

The problem shall consist of three witnesses per side, all of whom shall have names and characteristics which would allow them to be played by either males or females. All three of the witnesses must be called.

The fact that information is contained in a statement of facts, indictment, witness statement/affidavit, or exhibit does not mean that the information is admissible or has been admitted into evidence. Proffers of evidence must be made and ruled upon during the course of the trial itself.

Rule 2.2. Witnesses Bound by Statements

While students are encouraged to research the topic for their own general benefit or as part of a class project, the information, data, or citations generated from outside research may not be introduced at trial, and may result in point deductions. Thus, students may cite only the cases and laws given in the official case materials, and may introduce as evidence only those documents provided as exhibits in the trial script.

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. Some extrapolations of facts not in the record are allowed since some additional information may be necessary to make the case realistic. As an example of a fair extrapolation, background information

such as date or place of birth would be a minor construction and allowed to amplify or humanize the case. Unfair extrapolation that would not be allowed includes information pivotal to the particular facts at issue. Only those facts which are neutral to both sides are fair extrapolations. If you have a question as to whether a particular added fact would be allowable background information, or if you believe it might be an unfair extrapolation, do not add the questionable fact. As a general rule of thumb, the more the “supplemental” information helps your case, the more cautious you should be in adding it to the witness’ testimony. *When in doubt, leave it out!*

It is virtually impossible to provide witnesses with detailed answers to every conceivable question that lawyers can 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 materially affect the witness’ testimony. Try to avoid a rigid, mechanical approach to the trial (the witness statements are not scripts), but stay within the bounds of honest competition. Remember that your *presentation* is graded –not the merits of the case. Just as in our judicial system, lawyers must deal with the facts which exist. Attempts to bolster the witness’ testimony with added facts may be met with disapproval from the judges.

If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 2.3, “unfair extrapolation.”

If, in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness’ statement or affidavit and does not materially affect the witness’ testimony (i.e., would not be considered “unfair extrapolation” under Rule 2.3).

A witness is not bound by facts contained in other witness statements. Witnesses must be prepared to deal with any inconsistencies between their own statement and the case materials. Witness statements are subject to all of the human inaccuracies that people make in similar situations. These include distortion and even dishonesty.

Rule 2.3. Unfair Extrapolation

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral.

Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation.

If a witness is asked information not contained in the witness’ statement, the answer must be consistent with the statement and may not materially affect the witness’ testimony or any substantive issue of the case. If the question would elicit an unfair extrapolation the witness may answer, “There is no information in my witness statement to answer this question.”

When an attorney objects to an extrapolation, a witness responds to an extrapolation, or a witness responds to a question with an answer of “no information in my statement,” the judge should rule immediately in open court to clarify the course of future proceedings. The purpose of the rulings is to avoid an irrelevant digression from the statement of facts either through attorney questions or witness responses. Participants should understand that any ruling by a judge from the bench is not to be taken

as an indication of scoring merit or of the eventual outcome of the trial. Student attorneys should be aware of these alternatives and feel free to use them as they might benefit the strategy of the team. Do not become overly obsessed with handling extrapolations. *Bring your concerns to the judges' attention and move on* with the rest of the trial.

Attorneys for the opposing team may refer to Rule 2.3 in a special objection, such as "unfair extrapolation" or "This information is beyond the scope of the statement of facts."

Possible rulings by a judge include:

- a. No extrapolation has occurred;
- b. An unfair extrapolation has occurred;
- c. The extrapolation was fair.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings.

The decision of the presiding judge regarding extrapolations or evidentiary matters is final. Judges should use their scores to reflect whether they believe that unfair extrapolation has occurred, but scoring judges may not do so if the presiding judge has ruled in open court that no such extrapolation has occurred.

Rule 2.4. Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender.

Rule 2.5. Voir Dire

Voir dire examination of a witness is not permitted.

C. TEAMS

Rule 3.1. School and Student Eligibility

The competition is open to students currently enrolled in grades seven through twelve in all Minnesota schools. Program information and registration forms are mailed to appropriate school personnel at the beginning of the school year.

To participate in the competition schools must return a completed entry form and registration fee for each team entered. Registration forms received after October 23 will not be guaranteed trials in the competition.

On a pilot program basis for the 2006-2007 school year, schools may enter any number of teams in the competition.

For schools with more students interested in participating than can be accommodated on the number of mock trial teams for which the school is eligible, there are various options:

- Hold tryouts for the mock trial team(s) and have the teacher coach (the attorney coach may also want to participate) select team members.
- Hold intraschool rounds to determine which students will represent the school in regional and state competition.

- Create “practice teams” comprised of less experienced members and allow only upper class students to be on the school’s “official” teams.

Schools must follow the MSBA procedures for confirming their trial schedules or be disqualified from entering the competition the following year.

Rule 3.2. Team Composition

Each team must consist of at least **eight** primary members: three attorneys, three witnesses, a timekeeper and one alternate. In addition to these eight, each team is also encouraged to have at least one other alternate so that the team can proceed with the trial in the event of a team member’s illness at the time of the scheduled trial. Roles for the alternates might include bailiff or the alternates may be used in any manner the coaches choose. However, in the best interest of the alternates, it is highly recommended that each alternate be allowed to participate in at least one trial.

Students may switch roles for different rounds of trials (i.e., a student may be an attorney for the prosecution but a witness for the defense).

Students may officially participate on only one team, i.e., once a student has played the role of an attorney or witness in a trial during the competition, s/he is considered a member of that team. Thus, an alternate for the Blue Team who was a *bailiff* during Round 1 could become a witness for the Green Team during Round 2. This alternate would then be considered a member of the Green Team and would not be able to attend the Blue Team’s trial during Round 2 or thereafter. But, if the Blue Team alternate had been called on to be a *witness* in Round 1, s/he would then not be eligible to play *any* role for the Green Team in *any* round.

A team can also select an entirely new member after the first round of trials, even if this person was not officially listed as an alternate on the team roster. This person could serve in any capacity during Round 2 or thereafter. Team rosters cannot be altered after second round of competition.

Teams can be composed of up to 25% seventh and eighth grade students. Any school that has seventh and eighth grade participants cannot field more than two teams. Teams should be advised that the team representing Minnesota at the National High School Mock Trial Championship must be comprised of 9-12 grade students and that its team roster cannot be altered between or during the National Competition.

*****IMPORTANT NOTE:** Up to 4 attorney and/or witness roles may be substituted for during any round of trials. ***This means that at least 2 students must perform in both Round 1 and Round 2 in the role of attorney and/or witness.*** An official mock trial team can thus have as many as 14 members.

Every team must be fully prepared to argue both sides of the case. Schools cannot have a separate “prosecution team” and “defense team.” Only one team from each school will compete at the state tournament.

Students who have participated in previous mock trials may participate again. However, teacher coaches are encouraged to recruit new team members so additional students will have a chance to get a better understanding of the judicial process through this law-related educational program.

Refer to Section D: The Trial for more details on the student attorney roles.

Refer to Mock Trial Time Sequence (Rule 4.5) for more details on the timekeeper's role.

Rule 3.3 Team Presentation (NHSMTC)

Rule 3.4 Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct examination and one cross-examination; in addition, one will present the opening statement and another will present the closing argument and rebuttal. [See Rule 4.5]

The attorney who will examine a particular witness on direct examination is the only person who may make the objections to the opposing attorney's questions of that witness' cross-examination, and the attorney who will cross-examine a witness is the only one permitted to make objections during the direct examination of that witness.

Each team must call each of the three witnesses. Witnesses must be called only by their own team during their case-in-chief and examined by both sides. Witnesses may not be recalled by either side.

Rule 3.5 Team Roster

Copies of a Team Roster must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified *only* by the side they are arguing (e.g. prosecution or defense). No information identifying team origin (name, location, etc.) should appear on the roster. Before beginning a trial, the teams must exchange copies of their Team Roster. The roster should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster also should be given to the judging panel and presiding judge before each round. A sample roster format is included at the end of the case packet.

D. THE TRIAL

All trials will be governed by the "Simplified Rules of Evidence" contained in these materials. Other more complex rules may not be raised in the trial.

Rule 4.1 Courtroom Setting (2-5, Minnesota only)

1. The Plaintiff/Prosecution team shall be seated closest to the jury box. If a team wants to rearrange the courtroom, the teacher coach must ensure that the courtroom is returned to its original arrangement before the team leaves the courtroom at the end of the trial.

2. Coaches must sit so they are behind the student attorneys (i.e., coaches should not be visible to the attorneys during their presentations).

3. All participants are expected to display proper courtroom behavior. The following rules should be observed in the courtroom at all times:

A. Students should dress appropriately for a courtroom setting. (Suits are not required.) A student playing the part of a witness may wear clothing consistent with that witness' character, but may not wear a costume. [Refer to Rule 4.11 for rule about costumes.]

- B. Be courteous and respectful to witnesses, other attorneys, and the judge.
 - C. Ask permission of the judge to approach the witness.
 - D. If you receive a ruling against your side on a point or on the case, accept the decision gracefully.
4. All participants are expected to display proper behavior in the courthouse. The following rules should be observed in the courthouse at all times. Any violation of these rules (e.g., going into other parts of the courthouse) will be grounds for requesting that school to leave the courthouse.
- A. Each team must have an adult chaperone assigned to it while at the courthouse. The chaperone must remain with the team at all times, while the team is waiting for a trial to begin, competing in the courtroom, waiting for another team to finish competing, etc.
 - B. All students must stay in the area of the courthouse where the competition is being held. Students will be allowed to use the restrooms which are nearest to the courtroom being used for competition.
 - C. Students may not have in their possession any food, beverage or gum while in the courtroom.
 - D. Following completion of the trial, the coaches will inspect the area used for the competition, including the restrooms, to ensure that everything is left in the same condition in which it was found. ***Any furniture in the courtroom that was moved before or during the trial MUST be restored to its original configuration!***
 - E. If requested to do so by the Court Administrator, the coaches will notify the administrator's office when their team arrives and when it leaves. The latter will provide an opportunity for the Court Administrator to arrange for an inspection of the area.
5. In order to avoid the appearance of impropriety or bias, coaches should not interact with the judges until after the trial.

Rule 4.1(A) Pretrial Matters (Minnesota only)

1. Teams are expected to be present in the courtroom fifteen minutes before the starting time of the trial. To assist in enforcing these rules, presiding judges, upon taking the bench before the start of the trial, will handle the following pre-trial matters:
- A. Ask each side if it is ready for trial. Ask each side to provide the judges with copies of its team roster (a sample roster is provided in the back of these rules). Ask each member of a team to rise and identify himself/herself by name and role.
 - B. If video recorders are present, the judge will remind the teams that the tape cannot be shared with any other team. (See Rule 4.14 for more on videotaping.)
 - C. The judge will remind all present in the courtroom of the rule prohibiting verbal or written communication between the team members and the coaches, spectators or anyone else throughout the trial round, including any recesses. (This is to be especially stressed in crowded court settings where there is close proximity between audience and teams.)

Communication is allowed once the trial is complete. Judges should announce that the trial is complete and communication is permitted.

2. The judge will remind all present that the courtroom should be put back in order, all trash removed, and that no food or drink is allowed anywhere, at any time, by anyone.
3. Team members will meet the judges for introductions and to assure that the rules of evidence and procedure are uniformly interpreted. Each team should submit to the judges a roster of the students' names and the roles they will play. The Mock Trial Program will receive team rosters from all judges. The parties should also ask the judges when the exhibits (if any) should be marked for identification.
4. The starting time of any trial will not be delayed for longer than ten minutes, except with the agreement of the teacher coaches for both teams and the presiding judge. Incomplete teams may proceed with the trial by having one or more members play up to two roles. However, incomplete teams will be assigned a two (2) point deduction by each judge for each missing attorney, witness or timekeeper.
5. Once a trial has been scheduled, the trial will not be rescheduled due to the absence of a team member or illness, unless approved by the Mock Trial Manager. Teams should include alternates to replace absent members. Trials may be rescheduled due to inclement weather conditions at the discretion of the Mock Trial Manager.
6. All team members must remain in the courtroom during the entire trial. During a formal recess called by the judge, team members may leave the courtroom but should not communicate with anyone other than their student team members.

Rule 4.2 Stipulations

Stipulations shall be considered part of the record and already admitted into evidence.

Rule 4.3 Reading Into The Record Not Permitted

Stipulations, the indictment, or the Charge to the Jury will not be read into the record.

Rule 4.4 Swearing of Witnesses

The following oath may be used before questioning begins:

"Do you promise that the testimony you are about to give will faithfully and truthfully conform to the facts and rules of the mock trial competition?"

Rule 4.5 Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and Redirect (optional) Examination (25 minutes per side)
3. Cross and Re-cross (optional) Examination (18 minutes per side)
4. Preparation for closing argument (2 minutes)
5. Closing Argument and Rebuttal (7 minutes per side).

The prosecution/plaintiff attorney may reserve up to 3 minutes of his/her time for rebuttal. The attorney must advise the court at the beginning of his/her argument what portion (if any) of the allotted 3 minutes s/he wishes to set aside for rebuttal.

6. Team Conference (2 minutes)

The Prosecution/Plaintiff gives the opening statement and the closing argument first.

The Plaintiff's Opening Statement must be given at the beginning of the trial. The Defense may choose to postpone its Opening Statement until after the conclusion of the Plaintiff's case-in-chief.

Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

Rule 4.6 Timekeeping

Time limits are mandatory and will be enforced. Each team is required to have its own timekeeper and timekeeping aids. (See sample timekeeping aids in the back of case materials and rules.)

Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

Time does not stop for introduction of exhibits.

Every effort should be made to respect the time limits. Judges will be asked to use their scores to reflect a team's ability to adhere to the time guidelines. Perceived time violations are an issue which generates much controversy every year during the Mock Trial Competition. Due to the nature of the event and in the interest of keeping the competition good-spirited, teams are urged to adhere to the time limits indicated and to give their opponents the benefit of the doubt if minor infractions occur.

Rule 4.7 Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the presiding judge should request that the student stop his/her presentation. Scoring judges shall determine individually whether or not to discount points in a category because of over-runs in time.

Rule 4.8 Motions Prohibited

Motions which defeat the purpose of the trials (such as those to dismiss or to sequester or motions in limine) will not be allowed.

Rule 4.9 Sequestration

Teams may not invoke the rule of sequestration.

Rule 4.10 No Bench Conferences

All matters should be handled in open court, without bench conferences.

Rule 4.11 Supplemental Material/Costuming/Exhibits

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories, and makeup which are case specific.

The only documents which the teams may present to the presiding judge or scoring panel are the team roster forms and the individual exhibits as they are introduced into evidence. Exhibit notebooks are not to be provided to the presiding judge or scoring panel.

In order to allow teams to use Exhibit C during the trial, teams may laminate and enlarge this exhibit to a maximum size of 24 by 36 inches. There can be no other enhancement of the exhibits (e.g., color, additional words), but they can be mounted on poster board or foam core in order to allow them to be handled more easily.

No other chalkboards, posters or other visual aids are permitted during the trial, except that during closing arguments a flip chart or other paper (e.g. newsprint) with hand lettering or hand drawing may be used.

Rule 4.12 Trial Communication

Instructors, alternates and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any emergency recess which may occur. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar. Attorneys and witnesses may communicate with each other during the trial. During the permitted conference at the close of the trial regarding rules infractions, all team members (witnesses, attorneys, bailiff and time keeper) may communicate with each other. No disruptive communication is allowed.

Rule 4.13 Viewing a Trial

Team members, alternates, attorney/coaches, teacher-sponsors and any other persons directly associated with a mock trial team, except for those authorized by the MSBA, are not allowed to view other teams' performances, so long as their team remains in the competition.

Everyone attending a trial should be reminded that appropriate courtroom decorum and behavior must be observed and that absolutely no food or drink is permitted in the courtroom.

Rule 4.14 Videotaping/Photography

Videotaping can be an effective teaching tool and is permitted in each round of competition provided that:

1. Courthouse policy permits videotaping.
2. A team only tapes a trial in which it is competing.
3. The taping must not disrupt the trial. Photographers should position themselves carefully to avoid distracting the participants during the course of the trial.

4. The tape will be used only by the competing team and will not be shared with any other team (even from the same school) or used for the purposes of “scouting.”
5. There are no objections to videotaping from either team or any judge(s).

Rule 4.15 Jury Trial (NHSMTTC only)

Rule 4.16 Standing During Trial

Unless excused by the judge, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections.

Rule 4.17 Objections During Opening Statement/Closing Argument

No objections may be raised during opening statements or during closing arguments.

If a team believes an objection would have been proper during the opposing team's opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that _____." The presiding judge will not rule on this "objection," but all of the judges will weigh the "objection" individually and use their scores to reflect whether they believe a rules violation has occurred. No rebuttal by opposing team will be heard.

Rule 4.18 Objections

The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge should ask the reason for it. Then the judge should allow the attorney who asked the question to explain why the objection should not be accepted (“sustained”) by the judge. The judge will then decide whether a rule of evidence has been violated (“objection sustained”), or whether to allow the question or answer to remain on the trial record (“objection overruled”).

1. Argumentative Question: An attorney shall not ask argumentative questions, i.e. one that asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. The court, however, in its discretion, may allow limited use of argumentative questions on cross-exam.

2. Assuming Facts Not in Evidence: Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a "hypothetical question").

3. Badgering the Witness: An attorney may not harass or continue to annoy/aggravate a witness.

4. Beyond the Scope: Refer to Rule 611(b); applies only to redirect & re-cross.

5. Character Evidence: Refer to Rule 608.

6. Hearsay: Refer to Mock Trial Rules of Evidence, Article VIII for an explanation of hearsay and the exceptions allowed for purposes of mock trial competition.

7. Irrelevant: Refer to Article IV.

8. Lack of Personal Knowledge: A witness may not testify on any matter of which the witness has no personal knowledge. (See Rule 602, Article VI)

9. Lack of Proper Predicate/Foundation: Attorneys shall lay a proper foundation prior to moving the admission of evidence. The basic idea is that before a witness can testify to anything important, it must be shown that the testimony rests on adequate foundation. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

10. Lack of Qualification of the Witness as an Expert: See Rule 702.

11. Leading Question: Refer to Rule 611(c).

12. Non-Responsive Answer: A witness' answer is objectionable if it fails to respond to the question asked.

13. Opinion on Ultimate Issue: Refer to Rule 704.

14. Question Calling for Narrative or General Answer: Questions must be stated so as to call for a specific answer. (Example of improper question: "Tell us what you know about this case.")

15. Repetition: Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

16. Speculation: A witness' testimony should be based on the facts and issues of the case being argued. An attorney shall not ask a question which allows the witness to make suppositions based on hypothetical situations.

17. Unfair Extrapolation: Refer to explanation in Rule 2.3.

Note: Teams are not precluded from raising additional objections which may be available under the Minnesota Mock Trial Competition Rules of Evidence.

Rule 4.19 **Reserved.**

Rule 4.20 **Procedure for Introduction of Exhibits**

As an example only, the following steps effectively introduce evidence:

1. All evidence will be pre-marked as exhibits.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No. ___?"
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness.
5. "I now hand you what has been marked as Exhibit No. ___ for identification."

6. Ask the witness to identify the exhibit. "Would you identify it please?"
7. Witness answers with identification only.
8. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. __ into evidence at this time. The authenticity of this exhibit has been stipulated."
9. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
10. Opposing Counsel: "No, your Honor", or "Yes, your Honor." If the response is "yes", the objection will be stated on the record. Court: "Is there any response to the objection?"
11. Court: "Exhibit No. __ is/is not admitted."

Witness affidavits may be used to impeach or refresh recollection and when used for those purposes, need not be admitted into evidence.

Rule 4.21 Use of Notes and Standards for Judging

The standards for judging are contained in the MSBA Mock Trial Performance Rating Standards. Reliance on notes by attorneys during opening, closing or examinations is subject to a point deduction. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes.

Rule 4.22 Redirect/Re-cross

Redirect and re-cross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Minnesota High School Mock Trial Rules of Evidence.

Rule 4.23 Scope of Closing Arguments

Closing Arguments must be based on the actual evidence and testimony presented during the trial.

Rule 4.231 Team Conference (Minnesota Only)

The following rule is designed to deal with the extraordinary circumstance where a team believes that a significant rules violation occurred during the trial which the judges may not have observed. This rule is not designed to increase the contentiousness of the trial process or to encourage teams to try to find rules violations. At the conclusion of final arguments, the presiding judge will allow two minutes for the three student attorneys, three witnesses bailiff and timekeeper to confer. The purpose of this team conference is to give these team members a chance to discuss among themselves whether they believe any significant rules violations occurred during the trial of which the judges could not be aware or have observed themselves.

After the allotted two minutes, the presiding judge will ask if either team wishes to report any significant rules violations. If a team feels point deductions should be assessed against the opposing team, one attorney from the team will have two minutes to explain why point deductions should be assessed. Following this explanation, one attorney from the opposing team will have two minutes to explain why point deductions should not be assessed. Further discussion will be limited to five

minutes total, at which time the judges will decide individually about making any point deductions on their scoresheets. The amount of such point deductions, if any, is at the discretion of each individual judge. **These decisions (about point deductions) are final!**

Of course the judges may, at their discretion, award point deductions for a rules violation regardless of whether the opposing team brings a rules violation to the attention of the judges.

If the presiding judge fails to ask the teams if they wish to ask for point deductions, and one or both teams wish to do so, it must be brought to the attention of the judge at this time.

Rule 4.24 The Critique

The judging panel is allowed 10 minutes for debriefing. The timekeeper will monitor the critique following the trial. Presiding judges are to limit critique sessions to a combined total of fifteen minutes.

The presiding judge will render two decisions at the end of the trial:

1. The merits of the legal case and the applicable law (i.e., a decision about guilt or innocence in a criminal trial, or in favor of the plaintiff or respondent in a civil trial). **This decision is not used to determine the team's win/loss record or standing in the competition** (i.e. you can win the case on the merits but still lose the trial for mock trial purposes, or you can lose on the merits and still be the trial winner for mock trial purposes).

2. The quality of the teams' performances, i.e., the nature/success of the team's strategy, the students' level of preparedness, the individual student performances, etc.. The total points awarded to each team by each judge will be added together; the team with the higher point total will be considered the winning team. **The team that wins on its performance is considered the winner of the trial for mock trial purposes.**

Rule 4.25 Offers of Proof.

No offers of proof may be requested or tendered.

E. JUDGING AND TEAM ADVANCEMENT

Rule 5.1 Finality of Decisions

All decisions of the judging panel are **FINAL**. The only exception is when there is a computational error in the math on a judge's scoresheet. In the event of a mathematical error, the trial will be awarded to the team with the higher number of ACTUAL ballots or points as determined by the corrected math, even if this result is different than the one announced to the teams by the judge(s).

PLEASE NOTE: Many trial lawyers say that trial is an art and not a science. Thus, as beauty is in the eye of the beholder, trial performance may also lie in the eye of the beholder. This competition makes every effort possible to establish objective criteria by which student competitors are to be evaluated. However, it is a fact of life that not every attorney will evaluate a competitor the same. It is also true that not every juror will evaluate an attorney and his or her case the same. Thus trial competitions are very similar to real trials and the tournament could not progress without the selection of winners. We have therefore developed a rather detailed scoring process for the judges to use. Once the scoring process is complete, the decision of the judge(s) is final, as long as the team's scores have been added correctly.

It is also true that judges will often make different rulings on motions and objections during trial. That is true in real life as well. It is an inherent part of the trial system based on judges' discretion. Therefore, as in real life, the rulings of the trial judge are final, even if you disagree.

This competition is intended to not only teach students about how the legal system functions, but also to provoke thought about the issues involved. We encourage instructors to use this packet as a vehicle for education toward both goals.

Rule 5.2 Composition of Judging Panels (Minnesota only)

Every effort is made to have two lawyers evaluating each trial at the regional level. One is the presiding judge, whose role is to both conduct the trial and to evaluate the teams' performances. The other judge's responsibility is solely that of an evaluator. Both judges have been instructed to rate the performance of all witnesses and attorneys on the team. In the event only one lawyer is able to judge a trial, the one score will be doubled for purposes of calculating the point differential score. If there are three judges during a regional tournament trial, the evaluating and presiding will be handled in the same fashion as the state finals: one judge will be the presiding judge, the other two will be the evaluating judges. The scoring judges' evaluations will determine the trial winner. In the event of a tie, the presiding judge's ballot will determine the winner.

There will be three judges for each trial in the state finals. One judge will be the presiding judge, the other two will be the scoring judges. The scoring judges' evaluations will determine the trial winner. In the event of a tie, the presiding judge's ballot will determine the winner.

Rule 5.3 Score Sheets/Ballots (NHSMTC)

Rule 5.4 Completion of Score Sheets

Score sheets are to be completed individually by each judge without consultation with the other judges. Each scoring judge shall record a number of points (1-10) for each presentation of the trial. At the end of the trial, each judge shall total the sum of each team's individual point and place this sum in the Column Totals box.

Rule 5.5 Contest Format/Team Advancement (Minnesota only)

In the Minnesota competition there are three phases: sub-regionals (Rounds 1 & 2), regional playoffs (Rounds 3, 4 & 5), and the state finals.

Team attendance is expected at all trials in each phase of the competition for which the team is eligible.

1. Invitationals: Mock Trial Invitationals, camps and other non-MSBA Mock Trial related events are encouraged by the MSBA. The MSBA's Mock Trial webpage is available to serve as a place for such events to be publicized, however the MSBA and its Mock Trial program does not specifically endorse such events. The MSBA encourages such events to include teams/individuals from schools across Minnesota and also encourages organizations hosting these events to establish subsidies to enable all teams/individuals who are interested in attending to do so.

2. Sub-regionals: For mock trial purposes, the state will be divided into regions. The exact number of regions will be determined by the number of teams entered in the competition.

All teams shall compete in two trials (Rounds 1 and 2), the MSBA makes every effort to ensure each team argues both sides of the case.

The MSBA shall set the trial schedule and determine which teams compete against each other. The fact that a team has scrimmaged another team will not preclude the same two teams from facing each other in competition. Teams from the same school may compete against each other at the option of the Mock Trial Manager, although every effort will be made to guarantee “immunity” for teams from the same school in Rounds 1 and 2.

3. Regionals: After all teams in a region have argued two times, teams will be ranked based first upon win-loss record and second upon the cumulative point differential scores. [Note: A team’s point differential score is the total point spread between that team’s score and its opponent’s score in a given trial. For example, if team A scores 95 points in a trial and its opponent, team B, scores 92 points, then team A will have an adjusted score of plus 3 and team B will have an adjusted score of minus 3.] The top half of the teams in the region (if the top half results in an uneven number of teams, it will be the top half plus one) will be considered regional finalists. There shall be no more than eight regional finalists per region.

a. Regional finalists will compete in a single elimination playoff format to determine the region winner (Rounds 3, 4 and 5). Pairings for these Rounds will be done according to a *power-match system*, with the highest-ranked team matched with the lowest-ranked team, the next highest with the next lowest, and so on until all of the teams are paired. Power matching may be superseded by travel considerations in regions where the sites for Rounds 3 & 4 would require significant additional travel for a team. Teams from the same school will not be immune from meeting one another if their ranking within the region results in their being paired.

b. Sides for Round 3 will be assigned in advance. Teams with a 1-1 record will be assigned the side on which they *lost* in Round 1; if this would result in the same pairing/sides as a trial in Round 1 or 2, the teams will switch sides (so, if it was Liberty Blue v. City Green in Round 2, and power-matching would result in the exact same pairing in Round 3, the teams would switch sides). Otherwise, sides will be assigned at random. To the greatest extent possible, teams will switch sides in subsequent rounds if both teams can do so; otherwise, the team that is first alphabetically will present the defense side of the case.

4. State Finals: Each regional champion is eligible to attend the state competition. Only one team from each school shall compete at the state tournament. If the first place team from a region decides it does not want to attend the state tournament, the second place team will be eligible to compete. All teams at the State Competition will participate in at least three rounds of trials. The state champion is then eligible to represent Minnesota at the annual National High School Mock Trial Championship, which is held in a different city each year (2007 in Dallas, TX; 2008 Wilmington, DE).

Rule 5.6 **Power Matching/Seeding** (NHSMTTC Only; see Rule 5.5(3) for MN version)

Rule 5.7 **Selection Of Sides For Championship Round** (NHSMTTC)

Rule 5.8 **Effect of Bye/Default** (NHSMTTC)

F. DISPUTE RESOLUTION

Rule 6.1 Reporting a Rules Violation/Inside the Bar (NHSMTC Only)

Disputes which (a) involve students competing in a competition round and (b) occur within the bar, must be filed immediately following the conclusion of that trial round. Disputes must be brought to the attention of the presiding judge at the conclusion of the trial.

If any team believes that a substantial rules violation has occurred, one of its student attorneys must indicate that the team intends to file a dispute. The scoring panel will be excused from the courtroom, and the presiding judge will provide the student attorney with a dispute form, on which the student will record in writing the nature of the dispute. The student may communicate with counsel and/or student witnesses before lodging the notice of dispute or in preparing the form.

At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure.

Rule 6.2 Dispute Resolution Procedure

During trial: If a team has serious reason to believe that a significant rules violation has occurred during the course of a trial, and that the violation involved an act that may be corrected during the course of the trial, a member of that team shall make an objection and communicate the complaint to the presiding judge. To the extent possible, the presiding judge will attempt to resolve the dispute during the course of the trial without disrupting the trial, and may consider the validity or invalidity of the complaint in his/her determination of which team gave the better performance during the trial.

After trial: After the trial has been completed, if a teacher coach or attorney coach has serious reason to believe that a significant rules violation has occurred of which their team members could not have been aware, the coach shall communicate the complaint to the presiding judge while the judges are still in the courtroom. In this case the presiding judge will give the teams two minutes to discuss the alleged violation among themselves.

Each team will then designate one team member to present its case to the judges. Each team must limit its statement to two minutes.

The judges will be allowed to consider the dispute before completing their scoresheets. The dispute may or may not affect the scoring. The matter will be left to the discretion of the judges.

The judges' decision will be final.

Refer to Rule 4.231 for dealing with student team members' concerns about rules violation.

Rule 6.3 Effect of Violation on Score (NHSMTC)

Rule 6.4 Reporting of Rules Violation/Outside the Bar (NHSMTC)

MINNESOTA MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

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

For purposes of the 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 and these Minnesota High School Mock Trial Rules of Evidence govern the Minnesota High School Mock Trial Program.

The fact that information is contained in a statement of facts, indictment, witness statement/affidavit, or exhibit does not mean that the information is admissible or has been admitted into evidence. Proffers of evidence must be made and ruled upon during the course of the trial itself.

Article I. General Provisions

Rule 101. Scope

These Minnesota High School Mock Trial Rules of Evidence govern the trial proceedings of the Minnesota High School Mock Trial Program.

Rule 102. Purpose and Construction

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

Article II. Judicial Notice

Rule 201. Judicial Notice

1. This rule governs only judicial notice of adjudicative facts.
2. A judicially noticed fact must be one not subject to reasonable dispute in that it is either
 - a. generally known within the territorial jurisdiction of the trial court or
 - b. capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
3. A judge or court shall take judicial notice if requested by a party and supplied with the necessary information.
4. Judicial notice may be taken at any stage of the proceeding.

5. In a civil action or proceeding, the judge shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the judge shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Article III. Reserved

Article IV. Relevancy and its Limits

Rule 401. Definition of "Relevant Evidence"

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

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided in these Rules. Irrelevant evidence is not admissible.

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

Although relevant, evidence may be excluded if its probative value is 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 607-609.

2. 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 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 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 (a) 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 (b) 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.

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. (See Rule 2.2.)

Rule 607. Who may Impeach (i.e., show that a witness should not be believed)

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:
 - (a) the evidence may refer only to character for truthfulness or untruthfulness, and
 - (b) 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
 - (a) concerning the witness' character for truthfulness or untruthfulness, or
 - (b) 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

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 (a) 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 (b) 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 but the court may, 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.

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
 - a. make the *questioning* and presentation effective for ascertaining the truth,
 - b. avoid needless *use* of time, and
 - c. 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 & 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/Re-cross. After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross exam. Likewise, additional questions may be asked by the cross examining attorney on re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

Rule 612. Writing Used to Refresh Memory

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

Rule 613. Prior Statements of Witnesses

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.

Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate.

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

1. Rationally based on the perception of the witness and
2. 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. Basis 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 therefor without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may, in any event, be required to disclose the underlying facts or data on cross examination.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

1. Statement: an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
2. Declarant: a person who makes a statement.
3. Hearsay: 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. 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
 - (i) 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
 - (ii) 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
 - (iii) 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
- (i) the party's own statement in either an individual or a representative capacity or
 - (ii) a statement of which the party has manifested an adoption or belief in its truth, or
 - (iii) a statement by a person authorized by the party to make a statement concerning the subject, or
 - (iv) 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
 - (v) 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.

Example: Witness A testifies, "Some of the other tenants told me that Jones often failed to keep his apartments in good repair." This would not be admissible to prove that Jones often failed to keep his apartments in good repair, which was the matter asserted in the out-of-court statement. But, it might be admissible to prove that A had some warning that Jones did not keep his apartments in good repair, if that were an issue in the case, since it would not then be offered for the truth of the matter asserted.

Comment: Why should the complicated and confusing condition be added that the out-of-court statement is only hearsay when "offered for the truth of the matter asserted?" The answer is clear when we look to the primary reasons for the exclusion of hearsay, which are the absence in hearsay testimony of the normal safeguards of oath, confrontation, and cross-examination which test the credibility and accuracy of the out-of-court speaker.

For example, if Ms. Jones testified in court, "My best friend, Ms. Smith, told me that Bill was driving 80 miles per hour" and that out-of-court statement was offered to prove the truth of the matter asserted (that Bill was driving 80 miles per hour), we would be interested in Smith's credibility, i.e., her opportunity and capacity to observe, the accuracy of her reporting, and tendency to lie or tell the truth. The lack of an oath, confrontation, and cross-examination would make the admission into evidence of Smith's assertion about Bill unfair to the opposing party. If the statement was offered, however, to show that Ms. Smith could speak English, then its value would hinge on Ms. Jones' credibility (who is under oath, present, and subject to cross-examination) rather than Ms. Smith's, and it would not be hearsay.

Another example: While on the stand, the witness says, "The salesperson told me that the car had never been involved in an accident." This statement would not be hearsay if offered to prove that the salesman made such a representation to the witness. (The statement is not offered to prove the truth of the matter asserted.) If offered to prove that the car had never been in an accident, it would not be allowed because it would be hearsay.

Objections: "Objection. Counsel's question is seeking a hearsay response," or "Objection. The witness' answer is based on hearsay. I ask that the statement be stricken from the record."

Response to objection: "Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show..."

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

1. **Present sense impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
2. **Excited utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
3. **Then existing mental/emotional/physical conditions.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, 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 made for purposes of medical diagnosis or treatment.**
5. **Recorded Recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.
6. **Records of regularly conducted activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
7. **Learned treatises.** To the extent called to the attention of an expert witness upon cross exam 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 judgment finding a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

Rule 804. Hearsay Exceptions; Declarant Unavailable

- a. **Definition of unavailability.** "Unavailability as a witness" includes situations in which the declarant

1. is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
2. persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
3. testifies to a lack of memory of the subject matter of the declarant's statement; or
4. can't be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
5. is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

1. Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

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

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

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

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

Rule 805. Hearsay within Hearsay: Hearsay included within hearsay is not excluded if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

ARTICLE IX. Authentication and Identification - Not applicable.

ARTICLE X - Contents of Writing, Recordings and Photographs - Not applicable.

ARTICLE XI - Other

Rule 1001. Title

These rules may be known and cited as the Minnesota High School Mock Trial Rules of Evidence.

SAMPLE TEAM ROSTER

Below is a suggested format for a roster sheet to be provided at the pre-trial conference to each of the judges at a trial. This sheet is for the judges' convenience in identifying the team members and the roles they will play. Some teams include a photo of each team member but this is completely optional.

MINNESOTA MOCK TRIAL PROGRAM

SIDE: Prosecution LOCATION: Rock Cty Courthouse

DATE: _____

ATTORNEYS

Name	Gender
Student _____	(M / F)
Opening, Direct of <u>insert witness' name here</u> , Cross of <u>insert witness' name here</u>	
Student _____	(M / F)
Direct of _____, Cross of _____	
Student _____	(M / F)
Direct of _____, Cross of _____, Closing	

WITNESSES (in order of appearance)

	<u>Gender</u>
<u>Witness #1 name</u>	<u>Student's name</u> (M / F)
<u>Witness #2 name</u>	<u>Student's name</u> (M / F)
<u>Witness #3 name</u>	<u>Student's name</u> (M / F)

Bailiff Student's Name

Timekeeper..... Student's Name

Mock Trial State Champions

2006	South, Minneapolis
2005	South, Minneapolis
2004	Meadow Creek Christian, Andover
2003	South, Minneapolis
2002	South, Minneapolis
2001	Meadow Creek Christian, Andover
2000	Meadow Creek Christian, Andover
1999	South, Minneapolis
1998	Fergus Falls
1997	St. Thomas Academy, Mendota Heights
1996	Eden Prairie
1995	Dassel-Cokato
1994	Christ's Household of Faith, St. Paul
1993	Kennedy, Bloomington
1992	South, Minneapolis
1991	Visitation, Mendota Heights
1990	South, Minneapolis
1989	Chisago Lakes
1988	Waseca
1987	Waseca