

high school
**MOCK
TRIAL**
Minnesota State Bar
Association

2007-2008
CASE MATERIALS & COMPETITION RULES

State of Felonia
v.
W81925 Oxford Road, Nickeldale, FE, Defendant,
Red Fairfield, Claimant.

*Developed and written by the
MSBA Mock Trial Advisory Committee's
Sub-Committee on Case Development*

*The Mock Trial Program extends its gratitude for
the generous support and assistance of:*

MSBA Civil Litigation Section
MSBA Bankruptcy Section
MSBA Benefits Section
MSBA Appellate Practice Section
Minnesota Continuing Legal Education
Minnesota State Bar Foundation
Third District Bar Association
Fifth District Bar Association
Seventh District Bar Association
Eighth District Bar Association
Ninth District Bar Association
Minnesota Chapter of American Board of Trial Advocates



Special thanks to the Mock Trial Advisory Committee!

Committee members: Madge Thorsen, Chair, Golden Valley; Honorable Jim Dehn, Cambridge; Trina Alvero, Minneapolis; Kyle Kaiser, Minneapolis; Steve Ott, Winona; Amanda Sieling, Cottonwood; Steve Schwegman, St. Cloud and Ken White, Mankato.

**We also extend great appreciation to:
Susan Thill, Esq., Cousineau McGuire and
Richard Zabel, CPA, Robins, Kaplan, Miller & Ciresi
for giving their expertise and time to the Case Development Sub-Committee.**



To: MSBA Mock Trial Program Participants

**From: Madge Thorsen, Esq., Chair, MSBA Mock Trial Advisory Committee
Emily R. Reilly, Mock Trial Manager**

Re: 2007-2008 Mock Trial Program

Date: September 24, 2007

On behalf of the Minnesota State Bar Association and the Mock Trial Advisory Committee, welcome to the 22nd season of the MSBA High School Mock Trial Program!

The MSBA hopes that all the benefits of the Mock Trial Program will go far beyond the rewards associated with competing against one's peers, winning a round or two, or even the state title. The goals of Mock Trial include:

- 1) To develop a practical understanding of the way in which the American legal system functions.
- 2) To enhance cooperation and respect among educators, students, legal professionals and the general community.
- 3) To help students increase basic life and leadership skills such as critical and creative thinking, effective communication and analytical reasoning.
- 4) To heighten appreciation for academic studies and promote positive scholastic achievement.

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. You will find timekeeper's sheets, score sheets, case clarifications and other resources to help you prepare your case.

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!

State of Felonia v.
W81925 Oxford Road, Nickeldale, FE, Defendant, Red Fairfield, Claimant.

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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.

2007 Mock Trial Outstanding Professionalism Performance Award Recipients:

Individual: Hope Hennessey- Princeton High School

Team: Meadow Creek Christian School

Attorney Coach & Teacher Coach: Howard Bass & Ken Williams- Lakeville South HS

We congratulate those recipients and challenge all 2008 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 2007-2008 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 2008 Mock Trial Outstanding Professionalism Performance Award at the 2008 State Tournament in St. Paul, MN on March 12, 2008.

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

I. 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

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.

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.

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 December 10, 2006, Red Fairfield was arrested by Special Agent Kelly Just after being observed weaving across driving lanes in his/her 1983 AMC Pacer. As a result, Red Fairfield was convicted of possession of a controlled substance (Fel. Stat. §611.012) and his/her car was forfeited under Felonia State civil forfeiture statutes. The State of Felonia now seeks the civil forfeiture of Red Fairfield's house, on the allegation that the house was also used in furtherance of Red Fairfield's crime.

Witness Darby Flook will testify that Fairfield received a shipment of illegal drugs and agreed to sell and sold a part of the alleged drug shipment to Flook. Flook will further testify that the physical exchange of the controlled substances occurred at Fairfield's house at approximately 9:45 PM on December 10, 2006. Flook will testify that Fairfield had a history of selling drugs.

Witness Pat Little, Red Fairfield's housemate, will testify that he/she never saw any drugs ever enter the house. Little witnessed Fairfield leaving the house at around 9:15 PM on the night of the alleged drug deal, and no one came to the house that evening nor did any drugs enter the premises. Little will testify that Fairfield had a lot of odd jobs, none of which involve the unlawful manufacture, distribution, dispensement or acquisition of controlled substances of any kind, and that money was tight, but that Fairfield was committed to recovering from drugs and crime.

Fairfield admits that he/she formerly used and sold marijuana, but contends that since Fairfield was first incarcerated (over five years ago), Fairfield has not consumed nor has he/she sold drugs. Fairfield claims that the drugs that were discovered in his/her car on the night in question were there because Fairfield wanted to start a business and that Fairfield's former drug connections persuaded Fairfield into performing one last drug transaction—transporting a large amount of marijuana into town. Fairfield admits to driving the marijuana to a location other than his/her house and believes that Fairfield should accept the consequences for that misjudgment. However, Fairfield denies that the marijuana was ever at the property subject to forfeiture, that any drugs were ever sold on the premises in the last five years—including to Flook, and states that the forfeiture of his/her \$163,000 house is unfair.

Special Agent Kelly Just, the arresting officer, will testify to the history between Fairfield and law enforcement in the area, their efforts to prosecute and apprehend Fairfield, and the events of the night of December 10, morning of December 11, 2006. Just will also testify about the subsequent investigation leading to law enforcement's belief that (a) the drugs found in Fairfield's car had been stored and concealed in Fairfield's house, (b) a drug transaction occurred on the night of December 10 between Fairfield and Flook at Fairfield's house, or (c) other drug transactions and/or exchanges have taken place at the property, making the property subject to civil forfeiture.

Dr. Kim Rodriguez, Fairfield's rehabilitation counselor will testify that Fairfield was committed to recovering and that the business plan Fairfield wanted to implement was a major driving force in his/her recovery. Fairfield's counseling with Rodriguez includes random drug testing for which Fairfield has never tested positive. Dr. Rodriguez will testify that he/she diagnosed Fairfield with substance dependence to cannabis and that Fairfield is currently in sustained remission.

Jo Staid, a forensic accountant, will testify that based upon Fairfield's reported income and the financial documents that he/she has examined, which show an inexplicable money surplus, there is sufficient reason to believe that Fairfield gained income via illegal means. Furthermore, based upon Fairfield's admitted drug history Fairfield's past, the unexplained money was most likely acquired via illegal drug sales.

Civil Forfeiture: A civil forfeiture is intended to confiscate property used or acquired in violation of the law. In a civil forfeiture, the State of Felonia brings an action against the property itself, called an action in rem. Title to property that is used or acquired illegally may be transferred to the State of Felonia if it proves by clear and convincing evidence that the property is forfeitable. A party asserting an interest in the property—called a claimant— may petition to recover that interest, as well as challenge the State of Felonia's basis for forfeiture.

STATE OF FELONIA

DISTRICT COURT

COUNTY OF FT. FATE

SEVENTH JUDICIAL DISTRICT

State of Felonia

File No.: 06-cv-9847

Plaintiff,

STIPULATIONS

vs.

Real Property Located W81925 Oxford Road,
Nickeldale, FE, and all buildings, fixtures,
improvements and appurtenances thereto

Defendant,

Red Fairfield,

Claimant.

COME NOW Plaintiff State of Felonia, by and through its Undersigned Counsel, and Claimant Red Fairfield, by and through Claimant’s Undersigned Counsel, and do hereby stipulate and agree to the following:

1. All signatures on all statements provided in this case are authentic and were signed and sworn by the witnesses thereto attesting.
2. All criminal searches, seizures, and communications by all parties and law enforcement in this case were knowing and voluntary by those parties or made after all *Miranda* rights have been read. Claimant may not object to the introduction of any evidence on the ground that statements elicited violated the defendant, claimant, affiant, or declarant’s constitutional rights. The parties *do not* stipulate that the statements or evidence are otherwise admissible under the Felonia Rules of Evidence (hearsay, relevance, character evidence, etc.) for this civil proceeding. The parties do not stipulate regarding the constitutional issues in this proceeding.
3. All parties agree that Defendant Real Property is owned by Red Fairfield. No disputes regarding the ownership of Defendant Real Property are allowed at trial.
4. All parties agree that the legal description put forth through court documents of Defendant Real Property is accurate.
5. The parties stipulate that Jefferson Bank, N.A. has been severed through judicial notice from this suit and is not participating in the trial of this matter. As such, all parties stipulate that Jefferson Bank, N.A. will not be making any appearances or claims related to this case in any way during these proceedings.
6. All parties agree that Special Agent Kelly Just has knowledge of the affidavit signed by him/herself and the criminal histories included herein of Red Fairfield, Pat Little and Darby Flook.
7. All parties agree that Defendant Real Property’s value is as stated in the complaint.

STATE OF FELONIA

DISTRICT COURT

COUNTY OF FT. FATE

SEVENTH JUDICIAL DISTRICT

State of Felonia

File No.: 06-cv-9847

Plaintiff,

Complaint for Forfeiture in Rem

vs.

Real Property Located W81925 Oxford Road,
Nickeldale, FE, and all buildings, fixtures,
improvements and appurtenances thereto,

Defendant.

COMES NOW Plaintiff, through its attorneys, James J. Tomkovicz, County Attorney for the County of Ft. Fate, State of Felonia, and Susie R. Peterson, Assistant County Attorney for the County of Ft. Fate, State of Felonia, in a civil cause of action for forfeiture, alleges upon information and belief as follows:

1. This is a civil action for forfeiture of property *in Rem* against a parcel of land, together with all buildings, fixtures, improvements and appurtenances thereto, located at **W81925 Oxford Road, Nickeldale, Felonia**, legally described as The South 330 feet of the West 660 feet of the West Half of the Southeast Quarter of Section 15, Township 23, Range 8, Ft. Fate County, Felonia (hereinafter “Defendant Real Property”).
2. This Court has jurisdiction pursuant to **Fel. Stat. § 609.5311**.
3. Venue is appropriate in this Court; the Defendant Real Property has not been seized, but the property sought to be forfeited is located in this County and within the Seventh Judicial District.
4. Defendant Real Property is valued at approximately **\$163,000**.

STATE OF FELONIA

DISTRICT COURT

COUNTY OF FT. FATE

SEVENTH JUDICIAL DISTRICT

State of Felonia

File No.: 06-cv-9847

Plaintiff,

Answer to Complaint for Forfeiture in

vs.

Rem

Real Property Located W81925 Oxford Road,
Nickeldale, FE, and all buildings, fixtures,
improvements and appurtenances thereto,

Defendant,

and

Red Fairfield,

Claimant.

Claimant, Red Fairfield, through his/her undersigned counsel, as and for his/her Answer to Plaintiff’s Complaint, states and alleges as follows:

Claimant denies any factual allegation or legal conclusion unless specifically stated herein.

1. Claimant admits that Plaintiff has framed the Complaint (“Plaintiff’s Complaint”) as one of *in rem* civil forfeiture pursuant to Felonia Statutes, claimant further admits that Claimant is owner to title of Real Property defendant. Claimant denies that Plaintiff is entitled to any relief thereunder.
2. Claimant admits that this Court has jurisdiction over Plaintiff’s Complaint.
3. Claimant admits that because the Defendant Real Property, as defined in the Complaint, is located within this County, venue is proper in this Court.
4. Claimant is without information as to the value of the Defendant Real Property, but upon information and belief, admits that the Property’s value is at least the amount stated in Paragraph 4 of the Complaint.
5. Claimant denies the allegations of Paragraph 5 of the Complaint.
6. Claimant denies the allegations of Paragraph 6 of the Complaint, including the statements in the supporting Affidavit of Special Agent Kelly Just referenced therein.

7. As to the allegations of Paragraph 7 of the Complaint:
 - a. Claimant admits that a writ of entry has been executed. Claimant is without information as to whether an appraisal has been performed and thus denies the same.
 - b. Claimant admits that a Notice of Lis Pendens has been filed.
 - c. Claimant admits that a notice of this action has been posted on Defendant Real Property.
 - d. Claimant admits that notice has been served upon Claimant, the title owner of the Defendant Real Property. Upon information and belief, Claimant admits that any other person or entity that would have an interest in the Defendant Real Property has been served.

AFFIRMATIVE DEFENSES

Further, responding to Plaintiff's Complaint, Claimant additionally affirmatively alleges and states:

8. Plaintiff fails to state a claim upon which relief may be granted.
9. Plaintiff's Complaint, based on any allegations of illegal activity occurring between 1998 and 2003, is barred by the applicable statutes of limitations for civil forfeiture.
10. Defendant Real Property was not the instrumentality of any criminal activity, nor was there a nexus between any alleged criminal activity and Defendant Real Property.
11. Forfeiture of Defendant Real Property would violate Claimant's rights under the Excessive Fines Clause of the Eighth Amendment to the United States Constitution, and the Felonia Constitution, Article 1 § 5, as any forfeiture of Defendant Real Property would be grossly disproportional for the wrongdoing occurring during the relevant statute of limitation period.

Accordingly, Claimant respectfully requests that the Court dismiss Plaintiff's Complaint with prejudice, enter judgment in Claimant's favor, order Plaintiff to withdraw or remove the lis pendens filed against the Defendant Real Property, find that the State's position is not substantially justified, award costs and fees pursuant to the All Defendants Justice Act, and provide other relief that is just and equitable under the circumstances.

GILES & GILES, P.A.

By: /s/
Edna E. Eckhoff (No. #8999847)
321 Ash Ave.
Rigor, Felonia

On this the 28th day of March in the year 2007.

STATE OF FELONIA

DISTRICT COURT

COUNTY OF FT. FATE

SEVENTH JUDICIAL DISTRICT

State of Felonia

File No.: 06-cv-9847

Plaintiff,

Affidavit of Special Agent Kelly Just in Support of Complaint for Forfeiture in Rem

vs.

Real Property Located W81925 Oxford Road,
Nickeldale, FE, and all buildings, fixtures,
improvements and appurtenances thereto,
Defendant.

STATE OF FELONIA)
) ss.
COUNTY OF FT. FATE)

I, Kelly Just, being first duly sworn upon oath, depose and state:

1. I am employed as a Special Agent of the Felonia Bureau of Criminal Investigation. I have conducted numerous investigations into illegal narcotics trafficking and have been involved in numerous searches, arrest, seizures and forfeitures in connection with these investigations.
2. This affidavit is made in support of a Complaint for Forfeiture against the Defendant Real Property as defined in the Complaint. Your affiant believes the Defendant Real Property is subject to forfeiture pursuant to Fel. Stat. § 609.5311, as real property that has been used, or is intended for use, or has in any way facilitated, in whole or in part, the manufacturing, compounding, processing, delivering, importing, cultivating, exporting, transporting or exchanging of contraband or a controlled substance that has not been lawfully manufactured, distributed, dispensed, and acquired, which was associated with a felony-level controlled substance crime and/or had a retail value of \$1,000 or more.
3. This affidavit is based on my own personal knowledge as well as information provided to me by other law enforcement agencies and officers. This affidavit does not contain all facts discovered during the investigation, but only those facts needed to demonstrate a reasonable belief that the Defendant Real Property is subject to forfeiture.
4. Beginning in March 1997 an investigation was initiated by the State of Rigor Department of Criminal Justice into several individuals residing in Rigor and Felonia for the cultivation and distribution of marijuana, including Red Fairfield. Between 1997 and 2006, numerous individuals associated with Red Fairfield and his/her drug trafficking organization were interviewed. Many of these individuals stated that they had purchased marijuana from Fairfield at Defendant Real Property.
5. On April 15, 1999, Jeff Iverson was interviewed regarding the drug trafficking activities of Red Fairfield and stated that he purchased marijuana “many times” from Fairfield at the Defendant Real Property.
6. On June 10, 2001 Pearl Sandman was interviewed. Sandman stated that on one occasion she went to Defendant Real Property to provide Fairfield with a device for smoking marijuana. During this visit, Sandman observed what she believed to be marijuana plants growing near the shed in back of the residence on Defendant Real Property. On another occasion, Sandman stated that she observed marijuana on the coffee table in the living area of the Defendant Real Property. Sandman stated that

Fairfield had a quarter pound quantity of marijuana and a large amount of U.S. currency in \$100 denominations on the coffee table in the living area of the Defendant Real Property.

7. On September 12, 2001, Fairfield was arrested and charged in Felonia with possession with intent to deliver and manufacture controlled substances, a Class C felony punishable by imprisonment for 5 years in that state. After pleading guilty, Fairfield was sentenced to three years' imprisonment, but was granted parole after successfully completing the Modulated Intensive Inmate Substance abuse Treatment Education Program (MIISTEP). He/She was released on or about March 15, 2003.

8. On December 10, 2006, Darby Flook was interviewed subsequent to arrest. Flook stated that he/she engaged in a marijuana transaction on Defendant Real Property with Red Fairfield in which Fairfield possessed over 10 kilograms of marijuana.

9. I have interviewed at least five other witnesses who claim to have purchased or observed sales of marijuana involving Red Fairfield from 1999 through 2006.

10. On February 14, 2007, Fairfield pleaded guilty in Felonia District Court to the charge of intent to distribute greater than 2 kilograms and less than 5 kilograms of marijuana, a Class B felony. The basis of this charge was an arrest I made on December 10, 2006. That night, Fairfield was pulled over in his/her vehicle, a 1983 AMC Pacer, by me on State Highway 141 after his/her car was observed weaving across the center line. Believing him/her to be intoxicated, a lawful *Terry* stop and frisk was conducted. When Fairfield failed the field sobriety test, he/she was arrested, and his/her car was searched incident to lawful arrest. A ten kilogram brick of marijuana sealed in plastic was discovered in the back seat of said automobile. Fairfield pleaded guilty to the aforesaid charge in exchange for a sentencing reduction and in cooperation with police to cooperate to apprehend others in the marijuana transport and sales conspiracy. With Fairfield's assistance, the intended recipient of the 10 kilogram marijuana brick was apprehended. Upon information and belief, Fairfield was sentenced to 12 years' imprisonment and currently resides at the Felonia Adult Detention Center in Clear Lake, Felonia.

11. In the process of interviewing Fairfield in an attempt to further understand the nature of the marijuana conspiracy, Fairfield admitted that the ten kilogram brick had been placed in his/her car, sitting in plain view on the driveway of Defendant Real Property. Upon information and belief, including my years in investigating narcotics offenses, the brick would have to have been stored in the residence on Defendant Real Property.

12. Based on the foregoing, I believe Defendant Real Property was used to facilitate illegal drug exchange in violation of Fel. Stat. § 609.5311.

FURTHER YOUR AFFIANT SAITH NOT.

/s/ Kelly Just

Subscribed and sworn to
before me this 15th day
of March, 2007.

Ida Fector
Notary Public

1 Statement of Darby Flook

2 My name is Darby Flook. I'm 35 years old. I'm not employed, but I graduated from
3 high school, and I've been steadily employed until recently as a cashier at a local gas station. I'll
4 admit I've been arrested a few times. I was a good student in high school, though, and I was
5 accepted to the state university on a scholarship. But my family needed help and I've had some
6 rough times lately. I think I can pull it together this time around, though.

7 I told the police about the drug buy from Red Fairfield. I'm not proud of dragging Red
8 into this, but it was already clear to the cops that I was in possession of controlled substances, and
9 they had to know where I got it. So I told them the truth. I pled guilty and accepted an agreement
10 proposed by the State's Attorney, and in return, I'll testify about the events on the night of
11 December 10, 2006. I'm not telling them anything they can't figure out on their own. It's not a
12 great feeling, feeling like you're ratting out a friend, but I was under the impression that the
13 police had an eyewitness or something. They seemed to know so much. So I just told them what
14 I knew. I'm hoping that this doesn't go on my record. I know I don't have the best record, but
15 one more ding, and it gets awfully hard to find a job. My attorneys tell me that I'm getting close
16 to having to do some pretty serious time. I don't understand how all that works, I just know I
17 can't afford another serious conviction. Besides, what's done is done and there's no use trying to
18 lie about it now that we're caught.

19 Now that everything's gotten to this point, I'm swearing off drugs forever. It's just not
20 worth all this trouble. And if Red had been clean for even a little while, I hope (s)he gets back
21 there.

22 I think that I heard Red was in the business again from another friend who'd bought from
23 her/him. I don't know where it was that I thought I heard that. I called Red up because my own
24 connection was arrested a week before, and I knew Red was dependable for that sort of thing,
25 back when (s)he was a regular. I don't think I was like, a first customer or anything. I
26 understood that this was what Red did. Didn't have anything to do with being desperate for
27 money. This was how things in our neighborhood ran.

28 I will admit that I was the one who called Red, not the other way around. (S)he did tell
29 me that (s)he wasn't in that business anymore, but I thought (s)he was just trying to jack up the
30 price by making me think that the supply was tight. So I offered up more cash. I offered up a lot
31 more. With my usual connection gone, I really thought I needed this. That's what drugs will do
32 to you. You get desperate. Red played along, acting like (s)he was thinking about it, and then
33 said that maybe (s)he could find a source. Since I was so desperate, I thought maybe I should ask
34 for more, to stock up and keep myself supplied in case I lost this connection, too. So I offered
35 Red more money if (s)he could double the ask. Red almost backed out completely, which wasn't
36 what I expected at all, so I did some fast talking to keep her/him interested in making the deal.
37 Now that I think back on it, I realize that maybe Red had been clean all this time, and this deal
38 really was just a quick way for her/him to make some cash. (S)he did sound like (s)he didn't
39 want to be talking about it at all. But (s)he still agreed to do the deal, anyway. Maybe Red
40 rationalized that (s)he was just being a conduit, and that (s)he wasn't really getting back into
41 dealing.

42 I was the one who suggested that we meet at her/his house, then. I thought that since Red
43 seemed uncomfortable, maybe (s)he'd rather do the exchange on her/his home turf. We agreed to
44 meet at her/his house in the early evening, right around 9:45p.m. I didn't know where Red lived
45 these days, so I asked her/him for her/his address. (S)he gave me an address that I thought I
46 recognized as being her/his parents' old house in the neighborhood, but I couldn't be sure. I
47 didn't really pay attention to where the house was. I'll admit that I wasn't really that focused that
48 night; I'd been drinking some. I think I remember going into a house with the T.V. on. I don't
49 remember if anyone else was home.

50 Red walked me back out the door and we talked some in the driveway. I wasn't really
51 nervous or anything, but I did notice that Red seemed nervous. I think we were on the driveway

52 when (s)he held out a bag and I took it. I had a roll of money in my pocket and I gave it to
53 her/him. I asked Red if (s)he could get me some more after this, but (s)he refused. I think I
54 probably begged some more, but Red was insistent that (s)he wouldn't do this again. I thought
55 that (s)he was just jacking me around again on the price. Finally, I think I might have pushed
56 Red down. (S)he didn't say anything and didn't push me back. Red just went back into the
57 house.

58 (S)he stood at the door and said something like, "Fix yourself, Darby. Just fix this." Red
59 knew me since I was a little kid and her/his words made me angry. I'd always looked up to Red
60 and I thought I'd been following in her/his footsteps. Isn't this what everybody did? Now that I
61 look back, I know that I was wrong to see things that way, and that Red just wanted what was
62 best for me. To get clean and straighten out. I could still go back to school. Get a good job. But
63 I didn't know that Red had cleaned up. I don't know why (s)he would do a deal, if that's the
64 advice (s)he had for me.

65 I turned to walk home. I wasn't driving a car that night because my license had been
66 revoked a few months earlier. But it wasn't long before the cops stopped me anyway. They
67 know me around here, so they might have stopped me for anything. Can't remember what they
68 said they stopped me for that night, but I'll admit to being a little punchy - I get angry when I've
69 been drinking and maybe I pushed back at one of them.

70 The bag fell out of my pocket in the scuffle. And that was it.

71 At the station, there was the usual battery of questions. They asked me where I got the
72 bag. I told them. I didn't think I was telling them anything new. They'd seen both me and Red
73 before, and they knew our histories in the neighborhood. I'm told now that Red had been clean,
74 but that's not what I saw that night. I'm just telling what I saw, that's all. I'm really sorry if I
75 pulled Red into some trouble when (s)he was trying to get out of this kind of thing, but if (s)he
76 didn't already have a prior record, (s)he wouldn't be in this sort of a situation. I'm just one more
77 thing in a lot of things. I regret my own actions, but I have enough regretting for myself and I
78 can't add Red's regrets to my own. Those are for Red to deal with.

79 I'm willing to take the responsibility for my own actions. Yes, this statement might get a
80 lighter sentence for me, but it's only the truth. I admit to buying the drugs, and I admit that I got
81 them from Red Fairfield. I didn't force Red to sell me anything, (s)he did that of her/his own free
82 will. If I've got consequences, then so does Red.

83 I haven't spoken to either Red or her/his roommate Pat Little since that night, but I know
84 what I did, and I'm not afraid to own up to it.

/s/

Darby Flook

Subscribed and sworn to before me
on this the 17th day of January in the
year 2007.

Ida Fector

Notary Public

1 **Statement of Kelly Just**

2 I am Special Agent Kelly Just. I am employed as a Special Agent of the Felonia Bureau
3 of Criminal Investigation. I drafted and signed the affidavit supporting the Complaint for
4 Forfeiture. As I understand it, those affidavits are required by law when the government files a
5 forfeiture complaint. This statement supplements that affidavit.

6 I am 40 years old. I have been a Special Agent with the Felonia Bureau of Criminal
7 Investigation for 5 years now. Prior to that, I worked as a sheriff's deputy for Ft. Fate County,
8 where I had grown up. I graduated from Nielsen high school, class of 1985. I went to school
9 with the Claimant in this case, Red Fairfield. Red was a drug pusher even back then. He/She was
10 a couple years older than me and was always trying to get my friends to get high. I partied with
11 Red a few times, and maybe had a few beers once in a while, like lots of high school kids, but I
12 never bought dope from him.

13 I graduated in about the middle of my class (I never could get math) and enrolled in a
14 criminal justice program at Ft. Fate Community College. I graduated and went to the Felonia
15 State Police academy. After that, I returned home and got a job with the Ft. Fate County Sheriff's
16 department. There, I received standard updated training in narcotics enforcement, criminal
17 investigation, forensics, evidence handling, and other areas relevant to my duties.

18 To be honest, I wasn't a particularly good "beat" cop. As a sheriff's deputy, I'd be
19 assigned to drive around to all the small towns in Ft. Fate that couldn't afford officers, break up
20 teenage keggers and bonfires out in fields, sometimes do traffic duty, go on drug raids with the
21 FBI or the Felonia BCI. Oftentimes, I just felt like I wasn't making a difference. I'd catch a load
22 of meth, or stop a domestic disturbance at a farmhouse, only to hear about a bigger load being
23 shipped into the county or that the guy who'd hit his wife came home and shot her after his court
24 date. Because of this, I didn't do my job with all of my heart. I got a written warning in my file
25 for being late to work three times in a week, and the nearby Sherriff's department had to
26 investigate three citizen complaints against me for being abusive toward them during a routine
27 traffic stop. No charges were ever brought, though, and the one citizen who brought a civil case
28 did not last long. It was dismissed by the court.

29 In the course of my duties, I had been made aware of an ongoing investigation of the
30 Claimant during my tenure as a Sheriff's deputy. It was believed that he/she was the primary
31 source of non-local marijuana importation into the county that he/she would sell to individuals for
32 their personal use and to others in larger quantities for resale. Red's base of operations was
33 his/her residence—a rented farmhouse in the 1990s, and the property that is the subject of this
34 dispute which Red acquired sometime after 2000. But because the community is so small, it is
35 very difficult for an officer to get into a drug conspiracy like Red's. Plus, he/she was very careful
36 about the people he/she sold to. So we'd catch him/her here or there with a "nickel bag" (or ¼
37 ounce) of marijuana on her/him, but because of the state's liberal view toward marijuana, this
38 rarely resulted in much more than a fine for Red. Finally, when we had more information about
39 his/her supplier from Mexico, the State Department of Justice, led by the Bureau of Criminal
40 Investigation, began a thorough investigation on Red and his/her co-conspirators in 1997. During
41 this time, I interviewed the witnesses mentioned in the Affidavit, and they provided me the
42 statements I have included in the affidavit. We were still unable to infiltrate the conspiracy,
43 despite our best efforts.

44 During the time I was working the Fairfield case with the BCI, on February 20, 2001, I
45 was still performing my duties as deputy sheriff. One night while I was on call, dispatch received
46 a call that a perpetrator, extremely high on methamphetamine, was robbing a convenience store in
47 the nearby town of Lake View. Because Lake View had no police force, I, along with backup,
48 was dispatched to the store. The perpetrator was still at the location when I arrived, clearly
49 delusional from drugs. He apparently was demanding millions of dollars from the store clerk,
50 even after the register had been cleared out, that he believed was in a locked safe. I intervened
51 and drew my firearm. The perpetrator turned toward me as I entered the convenience store door,

52 pumped the sawed-off 12 gauge shotgun he had in his hands, and fired at me. Some of the shot
53 grazed my left arm, and I returned fire, placing a fatal shot in his chest. After this incident, I was
54 awarded the Governor's Medal for courage and honor during duty. The BCI also took interest in
55 me and, after a special agent left to pursue opportunities as a private security contractor, I was
56 hired and promoted to lead the narcotics investigations in this area. Emboldened with a new
57 sense of importance after seeing the effects of narcotics on our small communities, I made it my
58 mission to bring down every major drug dealer in the County. Starting with Red Fairfield.

59 Finally, in October 2001, our luck changed. An informant, Pearl Sandman, who was
60 close to Red, told us that she was having a huge bonfire out in the middle of the country, and that
61 he/she would be supplying everyone there with marijuana. We set surveillance around the site,
62 and when Red opened his/her car and began distributing marijuana, my deputies and I stormed
63 the scene. Fairfield was convicted of Distribution of a Controlled Substance, a Class "C" Felony.
64 Fairfield pleaded guilty in court and was sentenced to three years' imprisonment.

65 I heard that Fairfield was released after only a year and a half. I was disappointed to say
66 the least. I had hoped that the community would be free of this long-time drug abuser and seller
67 for a longer time, but I guess judges and the legislature don't care very much about the safety of
68 our communities. I also understand the problem of prison overcrowding exists in our state as
69 well.

70 I next encountered Fairfield in the summer of 2003. Fairfield was shopping at the local
71 market in town, when I approached him/her. I told Fairfield that Fairfield "better not endanger
72 the safety of the communities in Ft. Fate County, and I would do anything to protect the citizens
73 and children of Felonia." Fairfield said that, while in prison, Fairfield had undergone drug
74 treatment and was done with drugs completely, and that Fairfield was working a number of fast
75 food and odd jobs in the community. I wished Fairfield good luck, but didn't hold out a whole lot
76 of hope that Fairfield was telling me the truth or that Fairfield would stay true to his/her word.

77 My worst fears were confirmed on December 10, 2006. I was driving home in my
78 unmarked BCI vehicle on Highway 141 when I noticed Fairfield's 1983 AMC Pacer driving
79 toward me. It was unmistakable, with the silly fire decals plastered to the bottom. I watched the
80 car for a bit and noticed that it was swerving on either side of the centerline on the two-lane road.
81 I then called the Sheriff's Department for backup, turned on my flashing lights, and turned around
82 to apprehend Fairfield. I administered a standard field sobriety test. I asked Fairfield to walk on
83 the white side line on the highway, heel to toe. He/She could not comply for more than two paces
84 without falling. I then administered a preliminary breath test (PBT), which registered .12 BAC,
85 which is in excess of the legal BAC limit for operating a motor vehicle in Felonia. A BAC of .08
86 is the legal limit for operating a motor vehicle in Felonia. I therefore arrested him/her on
87 suspicion of operating a motor vehicle while intoxicated. Pursuant to the lawful arrest, I searched
88 the passenger compartment of the Pacer, and smelled a distinct pine smell. Based on my
89 education, training and experience in narcotics enforcement, I know that oftentimes pine branches
90 are used to mask the scent of marijuana from drug sniffing dogs. I observed what appeared to be
91 a very large ice chest in the back seat, unhinged. After administering proper *Miranda* warnings, I
92 asked Fairfield if I could look in the chest. He/She appeared to be depressed, almost like he/she
93 had given up on life. He/She said "yeah, sure, whatever." I opened the lid and discovered a very
94 large bundle of what I believed to be marijuana wrapped in plastic wrap. A field test of the
95 substance indicated that the large bundle was marijuana, weighing 10.02 kilograms.

96 I took Fairfield into custody. During the ride in my cruiser, he/she asked whether I
97 wanted to know where the "pot was supposed to end up tonight." I said that I did. He/She said
98 that if I dropped the charges against him/her, she/he'd tell me. I told him/her that I could not do
99 that, but that we could talk about a recommendation for leniency back at the station. He/she said
100 we'd have to act fast. After Fairfield was booked, he/she signed a *Miranda* waiver, and he/she
101 told me that some tall guy driving an El Camino dropped the marijuana off in his/her car, and that
102 he/she was supposed to take it to one Norm Hart. After filling out and signing our standard

103 cooperation agreement, I followed Fairfield into town in my cruiser. When he/she attempted to
104 make the handoff, we apprehended Mr. Hart.

105 Fairfield was charged and pleaded guilty in Felonia court to the charge of intent to
106 distribute 2 kilograms to 5 kilograms of marijuana, a Class B felony. Based on Fairfield's
107 assistance on December 10, the prosecutor did not charge Fairfield with distributing 10 or more
108 kilograms of marijuana, a Class A felony, and recommended that the mandatory minimum
109 punishment not apply. I thought that one or two of those concessions, but not both, were
110 appropriate in this case. Nonetheless, Fairfield was sentenced to 12 years' imprisonment.

111 After Fairfield's arrest, I investigated his/her previous claims that he/she had been clean
112 and this job had been a "one time only" event. According to the same informants I had
113 interviewed in the past, Fairfield was still using and selling marijuana in his/her home.

114 Further, on the same night of Fairfield's arrest, Darby Flook, one of Fairfield's cohorts,
115 was also arrested by another agent for possession of marijuana with intent to distribute. This was
116 a small quantity, but more than a normal user would possess. We worked something out with
117 Flook, who provided information about Fairfield in exchange for sentencing considerations. Of
118 course, we told Flook that we couldn't promise anything, and that any deal would be off if he/she
119 gave false or misleading information, and that the BCI could only make recommendations to the
120 prosecutor, who could only make recommendations to the judge. Flook told me that he/she had
121 procured his/her marijuana from a large brick that Fairfield had possessed that night, and that the
122 transaction took place inside Fairfield's house. Flook also told me that he/she repeatedly
123 purchased drugs from Fairfield in the home after Fairfield returned from incarceration in 2003.

124 The marijuana possessed by Flook and the brick discovered in Fairfield's car on
125 December 10, 2006 were tested by the State Crime Lab, and both were found to be marijuana,
126 and both samples appeared to be the same color, shape, smell, and chemical enhancements. The
127 lab agent who provided the testing told me that it was fairly certain that the Flook sample was cut
128 from the Fairfield brick.

129 Based on my education and experience in narcotics enforcement, it is highly unlikely that
130 Fairfield is telling the truth regarding the method of transportation of the ten kilogram brick of
131 marijuana. This brick is worth well over \$100,000 if divided up in to user quantities (based on a
132 street value of \$300 per ounce, which, in my experience, is the going rate in this community). A
133 seasoned drug dealer and mule would not let this amount out of his or her sight, much less leave it
134 in plain view for all to see on the driveway, as the source of the marijuana would look to recover
135 it from the dealer regardless of whether it is lost or stolen. Further, it appears from the other
136 witnesses I have interviewed, Fairfield continued to sell and use marijuana in his/her home, and
137 used the property to store and secret away the marijuana. Based on this information, and in
138 consultation with the County Attorney for Ft. Fate County, the County Attorney decided to bring
139 this civil action for the forfeiture of Fairfield's house.

140 For years, this property has been a drug house. It has disturbed the rural community and
141 Fairfield's neighbors. It has been a blight on our communities. Up until now, we simply did not
142 have the proof to show that the property is forfeitable. But based on all of these recent events, it
143 looks clear to me. I do not have any grudge against Fairfield personally; I do believe that once a
144 drug dealer, always a drug dealer, though. It turned out that this time I was right.

Subscribed and sworn to before me
on this the 10th day of January in the
year 2007.

/s/

Special Agent Kelly Just

Ida Fector

Notary Public

1 Statement of Jo Staid

2 My name is Jo Staid. I am 47 years old and I am a Certified Fraud Examiner as well as a
3 Certified Public Accountant. I live and work in Rigor which is near Nickeldale. I work as a
4 forensic accountant at Staid and Associates. It is a forensic accounting firm which I started. I
5 obtained my Bachelor's Degree in 1980 from the University of Dallas where I double majored in
6 Accounting and Criminal Justice. After college, I worked as a CPA and in 1990 I made the
7 decision to further my education by obtaining a Master's degree in Business Administration at
8 Capital University. After getting my MBA, I fulfilled a life-long dream by becoming a member
9 of the FBI's white collar crime division. I worked as a Special Agent for ten years. I then left the
10 FBI and started Staid and Associates in 2000. I have been asked to consult on numerous cases
11 over the years. As a part of these consultations, I regularly testify in court. In most of these
12 cases, I have been able to successfully determine if money was obtained via illegal means. I take
13 my job seriously. I come from a blue-collar working-class family, which meant that I had to
14 work really hard to get to this point in life. I feel that I do a public service, even though I'm in
15 the private sector now. It's not fair when hardened criminals like Fairfield take advantage of
16 others and gain money through illegal means.

17 Forensic Accounting is a relatively new specialization. Using financial records and other
18 background information, a forensic accountant can tell if an individual has income which he/she
19 isn't reporting to the IRS through a person's tax return. Forensic accounting is basically a
20 combination of detective work and accounting. Sherlock Holmes, the world's most famous
21 detective, is someone who I really admire. I've read all of the stories and I have the video-series
22 on tape.

23 I began my work as a Forensic Accountant in 1993 and have been a member of the
24 Forensic Accountants' Society of North America since 1993. Staid and Associates was
25 established in 2000 and since that time, I have worked to build my business into a well-respected
26 firm. My firm specializes in the detection of financial activity surrounding drug dealing
27 operations. This is very similar to the work that I did during my years of service at the FBI.
28 Those were some of best years of my life...working in the FBI was certainly a dream come true.
29 When I resigned, it was a terrible day and one that I was not proud of. I was accused by my
30 immediate supervisor of doctoring the records of a suspect on a huge case I was working on. You
31 see, we had been following the activities of the suspect for eight years. It's pretty routine in the
32 FBI to be investigating an individual for that long. White-collar criminals are smart and
33 sometimes you have to wait that long for them to make a mistake. Just like Al Capone. While
34 we all know Capone was a large part of the mafia and orchestrated the killings of hundreds of
35 people, but when the FBI finally got him it wasn't for the killings. It was for tax fraud. Well, this
36 case we were working on was pretty similar to the Capone case and I just changed one number
37 and that was it. This one lapse in judgment cannot possibly erase my years of public service!
38 However, I see now that it was really a mistake. I do regret that day... but really, I was getting a
39 lot of pressure from my superiors. You see the department had spent hundreds of thousands of
40 dollars investigating that crook. We needed to bring that crook to justice and I thought I was
41 helping.

42 My work resulted in bringing hundreds of hardened criminals to justice and helped to
43 protect those in our society who can't protect themselves: our children and the elderly. There are
44 five other forensic accountants who work with me at Staid and Associates. Three of them worked
45 with me in the white-collar crime unit of the FBI.

46 I was approached by the State to consult on this case. I am being compensated by the
47 State for my work on this case. I was asked to look for any sign of illegal activity on the part of
48 Red Fairfield. More specifically, I was asked to determine what the likelihood of Mr./Ms.
49 Fairfield's ability to purchase, maintain the residence and current standard of living where he/she
50 lived given Mr./Ms. Fairfield's income. These are very routine questions for forensic accounts
51 and go right to the heart of our profession.

52 I was given the pertinent information about Mr./Ms. Fairfield. That includes: Red
53 Fairfield's tax return, W-2s, 1099 and electronic access to Fairfield's checking account register
54 and savings account register. All of this information is needed to produce a snapshot of
55 Fairfield's life. While it might seem far-fetched, one can gain enormous amounts of information
56 about an individual's lifestyle through financial records. Information like shopping habits, what
57 types of restaurants you like and whether you rent or own your residence can be obtained with
58 your checking account register. It's absolutely fascinating.

59 In order to determine whether or not any illegal activity took place to facilitate the
60 purchase and maintenance of Fairfield's house, I examined and analyzed Fairfield's tax return,
61 W-2s, check register and savings account register. I examined these records which spanned one
62 year before Fairfield's incarceration and one year following Fairfield's incarceration. There were
63 several patterns which I identified. The most significant was the large number of cash deposits
64 into both Fairfield's checking and savings accounts between 2004 and 2006. Judging from the
65 W-2s and Fairfield's tax return, there is no evidence of where these large cash deposits came
66 from and the money was clearly not reported on Fairfield's tax return. These large deposits seem
67 to happen sporadically and there is no traceable source of the money. The balance sheet from
68 Fairfield's account included is an example of the sporadic activity in the account. There is one
69 very large notable cash deposit of \$3,000.00 which was posted to Fairfield's account on
70 December 11, 2006. From what Officer Just has told me, Fairfield claims that his/her Aunt Gale
71 gave him/her the money.

72 I learned from Officer Just that Fairfield's got quite the history and that he/she has been
73 caught up in drugs for quite some time. If I've seen this once, I've seen it a thousand times.
74 Individuals who get caught up in drugs like Fairfield did are just mere steps away from dealing.
75 Considering Fairfield's employment history, there's no possible way that he/she could maintain
76 payments on his/her fixed expenses based on the traceable income. This is an open and shut case:
77 Fairfield sold drugs and had to do so to keep up the mortgage payments. It's terrible that he/she
78 has gotten in so deep. Hopefully, Fairfield will have access to some good rehab and will turn
79 his/her life around.

80
81 Subscribed and sworn to before me
82 on this the 6th day of August in the
83 year 2007.

/s/ _____
Jo Staid

84
85 Ida Fector
86
87 Notary Public

Statement of Red Fairfield

1
2 My name is Red Fairfield. I am forty-two years old. I've lived in or around Nickeldale,
3 Ft. Fate County, Felonia all of my life. I am currently housed in the Ft. Fate Adult Detention
4 Center in Clear Lake, Felonia.

5 I am the owner of the Real Property located at W81925 Oxford Road, Nickeldale, FE,
6 which is actually an acreage in rural Ft. Fate County. The cops have taken everything away from
7 me – my life, my freedom, and my family. Why do they want to take my house away from me,
8 too?

9 I guess I was never a “model member of society.” I went to Nielsen high school in
10 Nickeldale, Felonia, but I wasn't a very good student. I made it through only because my shop
11 teacher talked the principal into letting me graduate.

12 Part of the reason that I wasn't the greatest student is because of my drug habit. I guess I
13 was the typical “problem child.” I snuck beers when I was 10; started smoking weed when I was
14 12. By the time I was in high school, I was waking and baking. I didn't do much in school
15 except drugs. I was the hookup for a bunch of kids in my school, even that do-gooder Kelly Just.
16 Yeah, Just may be a cop now, but Just toked up just like all of us in school. What else was there
17 to do in this town, anyway?

18 Where was I? Oh yeah, school. So I was smoking a lot of dope, not doin much in school,
19 but doin pretty good in shop class. My parents kicked me out of the house when I was 17; I
20 moved in with this guy, and, instead of paying rent, I just helped him deal to the local kids. But I
21 also learned how to work on motors and cars, too. I could rebuild carburetors, do brake work,
22 refurbish riding lawn mowers...whatever. And I was always a lot cheaper than the local
23 mechanic. But that income wasn't enough to pay expenses (like drugs for my friends) and my
24 own drug habit too. So I kept selling drugs. I knew a few really big players in Cannibassa,
25 Mexico, and I kept the county supplied. I tried to grow pot indoors without soil a time or two –
26 what's that called? Hydroponically or somethin'. But I have what they call a “black thumb” –
27 maybe from my machine shop work—and I could never get anything to grow.

28 I was doin' pretty well. In 2000, my Grandparents died, and I took over the mortgage
29 payments and got to move in to my house that's the subject of the lawsuit. I never had to use any
30 drug money to buy the house because of my work refurbishing lawn mowers and fixin' people's
31 cars, although maybe some of the petty cash I had around I used to buy parts, or paint, or new
32 parts to fix the place up. I wasn't like one of those super drug dealers that you see on America's
33 Most Wanted or in the movies, with the \$10,000 suits and private planes, but, I was comfortable,
34 even if I was a lazy good-for-nothin who just got the county high.

35 My life all changed in late 2001. I was running lots of pot from Mexico, and one night
36 the state police busted me at this huge bonfire we were having out in a soybean field a few miles
37 from my home. I had paid fines and gone to N.A. for simple misdemeanor drug possession in the
38 past, but this time the cops, (including that turncoat Kelly Just) were serious. Just had become all
39 serious now after shooting that guy, thinking that he/she was some big-shot cop who was going to
40 go all Elliot Ness and clean up the county. But Just always seemed to be targeting me. They
41 charged me with felony distribution, and my weaselly lawyer told me to plead guilty. Even
42 though I was promised leniency, the judge sentenced me to three years' imprisonment.

43 It was when I was in prison that I realized that I had wasted my life away. Here I was,
44 with rapists and murderers and thugs. I may have been lazy, but I was never a bad person. It was
45 there, after I went through Felonia's intensive drug treatment program (I think it's called
46 MIISTEP or somethin') and after talking to the counselors, I realized that I had to turn my life
47 around.

48 I was let out after about a year and a half, in March 2003. As a term of my supervised
49 release, I was required to see a substance abuse counselor, which I have done. I also have to
50 submit to random drug tests, or “UAs.” I've been clean on every one of them. Of course, when I
51 got out of prison, I was a felon. And it was very difficult for me to find honest, steady work.
52 Since I've gotten out, I worked at the Chicken Ranch and Pizza Tut, two local fast food joints. I
53 do double shifts during the winter to make sure my mortgage is paid and the lights stay on. I've
54 also done seasonal construction work. Pat Little's been living with me since then, too. Pat knew

55 that, after I got out on probation, I wasn't going to let any drugs or trouble inside my front door
56 ever again. I told Pat that a bunch of times, just in case Pat got any crazy ideas.
57 Just wouldn't let me go, though. I remember one time—it must have been in the summer
58 of 2003 because I had only been out for a few weeks--anyway Just saw me in the grocery store
59 and said "You pathetic loser. You've corrupted this place long enough. I can't believe you got
60 out after just two years." I tried to tell Just that I was clean, doing whatever work I could to make
61 ends meet, but he/she wouldn't believe me. He/She said "I'm going to do whatever it takes—
62 whatever—to see that you're put away for a LONG time and that you lose everything you hold
63 dear."

64 Although I don't have a lot of expenses (my mortgage is pretty low; I have my own farm
65 well; I get TV over-the-air; I have a pay-as-you-go cell phone) money started getting tight around
66 the end of 2006. It was winter, the Ranch and Tut didn't have double shifts for me, there weren't
67 any construction jobs, and people weren't coming around for me to do machine work like they
68 used to. And I've always dreamed of opening up my own business, maybe a place where I could
69 sell and repair fishing boats and supplies like tackle, bait, and munchies for out on the lake. I've
70 actually thought about that for a while. Oh what, where was I again? Oh yeah, money problems
71 in 2006. Well, I was short, and I wanted to put some money away, and my contact in Cannibassa
72 had been callin' since I had gotten out, and he wanted me to get back in the business. Well, I told
73 him over and over that I was done, but he kept telling me "you'll be back." And all my friends
74 who were around, like Darby Flook kept sayin' "when are you gonna hook us up again, dude?
75 You're no fun when you're not stoned" and stuff like that. So I needed a couple grand, and my
76 friends were raggin on me, and then one day near the first of December, my connection in
77 Cannibassa calls. He says that he's got a hookup in town now to sell pot, but that his drug mule
78 can't go into town because the cops recognize him, and they're always out patrolling the streets.
79 So if I just take the stash, keep it with me for a few hours, then take it into town, I'll get some
80 cash. It would be a big stash—a 10 kilo brick. But the mule will bring three grand in \$20s for
81 my trouble.

82 After all I had been through, I just really needed the money. And I wasn't gonna use it or
83 nothin'—I'd just be drivin' my car. Three grand for drivin' my car. And it wouldn't be in my
84 house or nothin', just around for a bit. I told him I could do it. So my contact from Cannibassa
85 (never did get his name, Juan or something like that?) told me that the mule would be coming by
86 on the night of December 10, 2006. He'd knock four times on my door and put the stash on my
87 porch disguised in an ice chest. I said "no, no, no, I don't wanna be havin no 10 kilos of pot sittin
88 in my house." I told him that I would leave a key to my car – a 1983 AMC Pacer – under a rock
89 near the lane to my property. He could unlock the car, put the stash in it, and I'd drive it in to
90 town. The guy from Cannibassa said that wasn't safe enough, that anyone could come along and
91 steal it (and it was worth a whole lotta money because it was this new genetically engineered stuff
92 that was supposed to give you a longer, smoother high). I said "those are the terms; take it or
93 leave it. Besides, I live way out in the country. No one comes along except some teenagers to
94 park and make out on the end of the road or someone to visit me." He said okay and told me that I
95 was supposed to drop off the stash at this address in town and give it to a guy they called Norm
96 Hart.

97 Well, December 10th came, and the sun set, and then I saw this big El Camino come
98 speeding down my gravel road at about 9:00 at night. This guy got out; he was real big, tall,
99 bulky, and bald. Anyway, he fumbled around at the end of my driveway, found the key, unlocked
100 the driver's side door, and slid in a huge ice chest in the back seat, and flopped what looked to be
101 like an envelope on top of it. Here it was; I was back in the game. I was actually nervous, so I
102 drank down four or so of Pat Little's Summit beers that were in my fridge. I got to the car,
103 opened my door, and saw the big ice chest. I opened it up and saw the pot in a beautiful,
104 shrinkwrapped brick. It was surrounded by newspapers that had been soaked in pine sol (I guess
105 the pine scent is supposed to fool drug dogs). I opened the envelope – there were only 10 \$20
106 bills! I had been cheated! I was furious, and a little tipsy, but I couldn't leave the stash there in
107 my car on my driveway, so I decided to drive it into town, and when I met this Norm Hart guy,
108 I'd tell him that I wanted the rest of my three grand, or he wouldn't get the stash.

109 It was when I was driving into town on Highway 141 that I saw Kelly Just drive by. Just
110 turned around and stopped me. I figured with the ice chest, he/she wouldn't notice the stash and
111 was just pulling me over to give me a hard time. Just told me to get out of the car, and had me
112 walk a straight line and shined a flashlight in my eyes. Just said that I was drunk. I told Just
113 "there's the discovery of the century." Guess Just didn't like that too much, 'cause I got arrested
114 for DWI. Just started poking around my car, looked at the ice chest. Just asked "mind if I look in
115 there"? I said "yeah, whatever" (that was a stupid move). He/She discovered the stash. That was
116 the end of that.

117 To make a long story short, after I sobered up, I told Just where I was going with the
118 stash, and I said that I would help the cops deliver it if I could get a favor back—like charges
119 dropped for my possession. Just said that the prosecutor and judge does all of that, but a
120 recommendation would be made, so we delivered the stash just like I had planned, except of
121 course for the cops watching us. Norm got arrested and pleaded guilty based on my statement
122 that I offered. He's in here with me now, but doesn't hold a grudge. He knew I had to do what I
123 had to do.

124 As part of my plea deal, I got a reduced sentence (12 years instead of the mandatory
125 minimum 20 for a third time drug offense) and the cops forfeited my car since it was used in the
126 transport of the stash. It was a piece of junk anyway. They never did catch up with the guy in
127 Cannibassa, or the guy with the El Camino. But I'm not surprised, Just has been wanting to take
128 me down and put me away for a long time. Now, Just wants to take everything from me. I told
129 them a million times that the stash was just barely on my property line, and the house or the
130 property didn't have nothin' to do with it. It was never hidden away – it was in plain view in my
131 car the whole time. And my house is worth at least \$163,000. It just doesn't seem fair that I
132 can't pass on the one thing that's worth something in my life. Yeah, I may have done some drugs
133 in there before I went away... may have smoked some pot, and may have even sold some, but
134 that was way more than 5 years ago. Anyone who says otherwise has just fried their brain on
135 drugs. Maybe Pat smoked a little when I was gone to work, even though I told Pat not to, but I
136 never knew anything about that. And everyone in my area smokes dope; why is it fair that I have
137 to lose my house for it?

138 Now I hear that Darby Flook is sayin' that I sold drugs that night. No way, no how. I
139 met Darby earlier in the day for burritos. It already looked like he/she was high. He/She told me
140 that he/she couldn't wait around for me and instead got the drugs from another source. I'm not
141 surprised. When I was selling to Darby (over five years ago) he/she would come and go in
142 batches—I'd be his/her source for a few weeks and then would not see him/her for months on
143 end—I think he/she was playing the market to get the best deal. I hear that Darby is gonna go
144 away for 20 years if Darby doesn't testify against me. Figures. He/She's always been a liar. Lied
145 to me about having money to pay me before.

146 I have not used marijuana or any other illegal drug since I was released from prison in
147 2003. To my knowledge, no one used or sold drugs on my property since I returned from prison.
148 My counselor told me that I was really starting to turn my life around, but now I'm gonna lose
149 everything. I wonder if Just wants to bid on my house if the government forfeits it and sells it at
150 auction. If the government wins, I'm not even going to have a home to go back to when I get out
151 of here.

Subscribed and sworn to before me
on this the 10th day of January in the
year 2007.

/s/ _____
Red Fairfield

Ida Fector
Notary Public

Statement of Pat Little

1
2 My name is Pat Little. I'm a 32-year-old fry cook at a local restaurant. I've never been
3 in major trouble with the law. In fact, I just finished my time in the Army five years ago. I'm a
4 hard worker and I keep my peace in the neighborhood. I take night classes now for accounting
5 and I think I'll make it through soon to get a good job and buy my own place. Until then, I'm just
6 living with Red, paying my share of the rent which he/she pays toward his/her mortgage, and
7 keeping my shirt clean.

8 I've known Red my whole life and I know (s)he wouldn't bring trouble into the house.
9 Doing time really set her/him straight last time. I've been living there since I got out of the Army
10 and (s)he started on probation, and the house has been clean that whole time. We've worked
11 together to really fix up the place, too. It's a labor of love. We re-did the kitchen and repainted
12 all the rooms. Last summer, we sweated on the roof, replacing the old shingles. We even took
13 out all the woodwork and refinished it. It's not just a house, it's a home, and Red's worked really
14 hard to get it where it is now. A lot of the value in that house is her/his sweat equity. And it just
15 makes me so angry that the State thinks it can do this sort of thing. It makes me sad for Red.
16 You'll never meet a more sincere person - Life's just given her/him some hard knocks, but taking
17 away her/his house? That's just wrong. (S)he never did anything to deserve that, and it just isn't
18 right.

19 I suspected that a small deal was going to go down. Red talked about it some, but (s)he
20 promised that if it did, it would never be at the house, and that if (s)he did decide to do this one
21 deal, that it would be the only one. Really, Red never wanted to get back into that scene. (S)he'd
22 stopped hanging out with the old gang that was into it - believe me, after all these years, I'd know
23 them - I know that one of them called the house once, talking about some car trouble they'd had,
24 and Red went out to help them, but that's a far cry from a drug deal. That's just helping a friend.
25 And that's the kind of person Red is. The kind you can count on to help you when you need it.
26 (S)he's one of the good ones, period. Ever since (s)he got out, (s)he's changed so much. Always
27 a heart of gold, but now (s)he's straightened out, kept things clean. I know (s)he needed money,
28 but I didn't think (s)he was desperate. Groceries got paid. Bills got paid. Jobs were steady
29 enough to get by. I've seen worse times than this. Red had it together, if you ask me.

30 No one toked up inside the house. And Red never, ever sold. What can you do, if your
31 friends do drugs? Red wouldn't let them come over. Wouldn't let that stuff in the door. (S)he
32 always said, "No trouble in this house." And (s)he meant it. Red wouldn't even let someone hide
33 out at the house, if they were running. (S)he didn't want any part of that business.

34 I was there on the night of the alleged sale. I'll admit that Red had been worried about
35 money and talking about it earlier that day. I don't remember what that was exactly, that was
36 said... something about some bait shop that he/she wanted to start. But I don't think (s)he was
37 thinking about making a drug deal to make some money. I remember saying out loud not to do
38 anything illegal, but I was really just joking because I knew that Red wasn't looking for trouble.
39 (S)he laughed and said (s)he was going out to get some tacos and (s)he'd be right back. I
40 couldn't go because I needed to study that night, so I asked her/him to bring me a burrito and I
41 threw a \$20 over to her/him. There was nothing about that night to suggest that Red was nervous
42 or planned to do anything out of the ordinary. (S)he got a phone call I remember, but that was it.
43 It was around 8:45 or so.

44 I remember that I went to my bedroom to study while Red worked in the kitchen later
45 that night. There's always something around the house that either needs fixing or cleaning, so I
46 didn't think anything about what was going on. I think (s)he might have been working on some
47 plumbing or something with heavy pans. It seems like I can remember some heavy banging
48 noises for most of the night, but I had the T.V. on while I worked, so I couldn't be sure. That's
49 one of the reasons that Red and I can live under the same roof so well. Both of us work hard, and
50 we can stay out of each other's way. Respectful of each others' space. Red could have been
51 installing a kitchen sink for all I knew. And I wouldn't have been surprised if (s)he had been:
52 Red takes on the big projects with a real determination. Whatever it is that needs to get done,
53 (s)he's going to get it done.

54 I probably stayed up until about midnight studying and didn't hear much more than the
55 occasional bang and shove from the kitchen. I thought at the time that Red was there the whole
56 night, and that nobody came to the house. Even though I didn't go over to the kitchen to check
57 on her/him, I am confident that (s)he was there. The police have asked if Red answered the door
58 or had any guests. There absolutely was not. I would have known. My bedroom is in the front
59 of the house, on the second story and my window is just a few feet from the front door. I can see
60 the road from my room. Granted, it's not too clear, what with all the trees out there, but I could
61 certainly see if someone came to the house. Besides, that front door is louder than loud. Red tried
62 to sand it down a bunch of times to stop the squeaking, but nothing ever worked. It still squeaked
63 when it was open and shut. I only heard it open and close once that night. I was up until around
64 midnight and I would have known if someone came to the house. I did hear a car drive by at
65 some point- not exactly sure when. I did hear the phone ring at about 9:45 and Red didn't answer
66 it. I figure that Red was just into whatever project he/she was working on in the kitchen and
67 wasn't at a point where he/she could stop just to get the phone.

68 I have insomnia, so even after I went to bed, I was pretty wide awake. That night, I had
69 my clock radio on, listening to music as I tried to fall asleep. I toss and turn a lot, and I know I
70 checked the time at 2:30 and again at 4:30 a.m. It's hard to work a full-time job and go to
71 school when you're getting so little sleep. At the time, I thought that Red went to bed that night.
72 I didn't hear her/him, but then I usually don't check on that sort of thing. I know that whatever
73 time (s)he went to bed, there were no visitors that night. I thought that Red was going to get tacos
74 for us. And certainly no drug deals at the house. It's crazy to think that there could have been. I
75 got up early the next morning and the house was exactly as it was the night before. I learned later
76 that day that Red was arrested the night before. I didn't even know that Red had left the house.

77 I was really surprised to learn that Red had been arrested for an alleged drug deal. Talk
78 about something being out of the blue! Red works her/himself to the bone; I honestly can't
79 believe that (s)he would do something like that. To be blunt, I don't think Red even has the time
80 for that sort of thing.

81 I heard that Darby Flook has pointed a finger at Red. Let me tell you something about
82 Darby Flook. (S)he's a no good, bottom-dweller user, and if (s)he can say something to the cops
83 that'll get her/him a slap on the wrist instead of the jail time (s)he deserves, (s)he'll say it. It's
84 one thing to drag yourself down with stupid drugs, but dragging down an innocent person like
85 Red is just unfair. Darby used to be a friend. A good friend to Red. Red's helped Darby out
86 from a lot of tight spots. But now I see where that gets you. I don't know why Darby doesn't see
87 that what goes around comes around. And if you treat your friends like that, you're not going to
88 have any friends anymore. (S)he just needs to clean her/himself up, that's all there is to it. I
89 think that Darby was afraid of getting another conviction her/himself, so (s)he turned the spotlight
90 on someone else. Red. And Red never did anything.

91 The State left some pretty threatening papers on our front door, saying that they're
92 claiming the house through forfeiture. We're responsible neighbors. We work hard and have
93 done nothing wrong. I've never even heard of a civil forfeiture procedure, and even though I
94 wanted to be a homeowner myself someday, now I'm not so sure. At least, not if this is what it
95 gets you. Red's the best sort of homeowner. Works hard, takes care of this property, and (s)he's
96 a good neighbor in a neighborhood that's seen some tough times. If you come down on someone
97 like Red, none of us are safe, and neighborhoods like this poor old area will never pick
98 themselves up and get better. Red's clean. That's it.

Subscribed and sworn to before me
on this the 17th day of January in the
year 2007.

Ida Fector,

Notary Public

/s/ _____
Pat Little

1 **Statement of Kim Rodriguez**

2 My name is Kim Rodriguez and I am 55 years old. I work as a rehabilitation counselor at
3 the New Day Center. New Day specializes in helping individuals overcome their substance abuse
4 problems. I hold a Ph.D. and Bachelor's degree in Psychology and a Master's degree in
5 Counseling from Shrink University. I am certified by the National Board for Certified
6 Counselors. This certification is pretty rare in my field as it requires two years of supervised field
7 experience and the passage of a stringent exam, among other things. I think that there are only
8 two of us in the state of Felonia with the certification. I completed my two years of supervised
9 field experience at the Sunrise Center. The Sunrise Center was a great place to work. I really
10 gained some wonderful experience working under the direction of Patty Sunrise, the center's
11 founder. Dr. Sunrise is a world-renowned rehabilitation counselor. Before founding the Sunrise
12 Center, Dr. Sunrise was a consultant for Mrs. Ford at the Betty Ford Clinic. In addition to the
13 NBCC certification, I am also certified by the Commission on Rehabilitation Counselor
14 Certification. I have worked in this field as a counselor for over 25 years. In those 25 years, I
15 have helped numerous individuals in the form of counseling and am proud to say that most of
16 them turn their lives around for good. Red Fairfield is a prime example. Often my patients are
17 on probation and counseling sessions are a condition of that probation. This is a change for the
18 better in the American system of justice. The requirement of counseling for individuals on
19 probation emphasizes and recognizes the need and importance of rehabilitation for individuals
20 convicted of drug-related crimes. I don't have any studies handy, but from my experience, I'm
21 sure it lowers the rates of recidivism drastically. It's too bad that that didn't happen in Red's
22 case.

23 Red has requested that I testify on his/her behalf in this trial. I also spoke on behalf of
24 Red at his/her parole hearing when Red was up for parole in 2003.

25 I first began counseling Red when she/he was still in prison. I met with Red weekly.
26 From my first meeting with Red I could see that he/she had a rough life. Red's been involved
27 with drugs for years and years- since high school. We all face these challenges as kids. Some of
28 us have support in our lives. Some of us don't. In Red's life, there have been few positive
29 influences. Red's Aunt, Gale Storm, is one of few positive forces in his/her life. Red's parents
30 kicked Red out at age 17. It's my understanding that she helps Red out as much as she can. From
31 my experiences, I've seen patients like Red a lot. Sometimes they can sustain a positive, clean
32 life and sometimes not. When they can't, it's as if the world is against them; that's how Red feels.

33 At the time when Red first began counseling with me, I diagnosed him/her with
34 Substance dependence to cannabis. The diagnosis was made after several sessions with Red and
35 also some testing. It was pretty apparent right away that Red was dependent on cannabis.
36 Symptoms which Red exhibited were: continued and increased usage of cannabis, withdrawal
37 from social activities, substance abuse affected daily activities, depressed moods, lack of interest
38 in daily activities and insomnia. Red exhibits four of the criteria for substance dependence. These
39 criteria are laid forth and relied upon for diagnosis by the *Diagnostic and Statistical Manual of*
40 *Mental Disorders: DSM-IV-TR*. The DSM-IV is the standard by which counselors, psychologists
41 and psychiatrists diagnose their patients. In order for a patient to be diagnosed with substance
42 dependence, three or more of the criteria are manifested in the patient occurring at any time in
43 one 12-month period. Red Fairfield exhibited these four symptoms for three years. After
44 completing the Felonia state MIISTEP program during incarceration Red became committed to
45 abstaining from substance abuse and dependency. At the current time, Red has entered sustained
46 remission. Sustained remission is when an individual has passed through 12 months of Early
47 Remission without any relapse to Dependency.

48 As part of the MIISTEP program, I am required to administer random urinalysis drug
49 tests, sometimes called "UAs", to Red. I will provide Red with a specimen cup, with no prior
50 notice, and require that Red use the bathroom at my office, filling the cup. Since 2003, Red has
51 had no "positive" results in any of the tests. Of course, I'm not a probation officer; I don't search

52 Red before he/she comes in and after he/she leaves the bathroom, so I can't say for sure that Red
53 isn't smuggling in "dummy" urine to fill the specimen cup with, but considering that the UAs are
54 performed randomly, it simply wouldn't make sense for Red to bring a vial full of urine every
55 time we met.

56 After Red had completed his/her sentence, Red and I met monthly. This was a state
57 subsidized meeting, and Red really couldn't afford anything more. When the sessions began it
58 was obvious to me that Red wanted to rehabilitate him/herself. Red recognized the detrimental
59 effect that cannabis dependency and use was having on his/her life. Red has a long history of
60 drug abuse and the sincere effort put forth by him/her to remain clean has certainly paid off. In
61 our counseling sessions Red shared with me that he/she was planning to start a business once Red
62 had access to enough capital. Starting a business was Red's main goal and was, in my opinion
63 one of the main factors for him/her staying clean and away from drugs. Red knew that as part of
64 this new, clean lifestyle that he/she would have to find some new friends who would be
65 supportive and that he/she would have to earn an honest living. Red has a good supportive friend
66 in his/her roommate, Pat Little. Pat is a stable influence for Red. As part of the MIISTEP
67 program, I am required, as Red's counselor, to visit his/her residence. I visited Red's home on
68 just a couple of occasions, the home was always well-kept and it was a good environment for Red
69 to be living in. Red had several of the mechanical projects he/she did for pay around the
70 property. I met Pat during these visits. Having a supportive environment for Red is an integral
71 part of Red's new life free of drugs and crime. I also routinely asked Red about his/her
72 employment status. Red was doing odd jobs, mostly mechanical, for which he/she was paid in
73 cash. Red was particularly worried about money, but was otherwise well-adjusted. I can honestly
74 say that Red is committed to remaining clean and is also committed to doing whatever it takes to
75 achieve his/her goals. In addition, based upon my conversations with Red, the repeated negative
76 urinalysis tests, and my diagnosis that Red is in sustained remission from substance dependence
77 to cannabis, I can say with a reasonable degree of professional certainty that Red has not used nor
78 sold marijuana since his/her release from prison in 2003.

79 When I heard that Red had been imprisoned for sale of marijuana, I was shocked. This
80 behavior is totally inconsistent with the Red I came to know through counseling sessions. Up
81 until the time of his/her arrest and conviction, Red was very much interested in starting his/her
82 own business, and I hope that he/she may realize that dream some day. I guess his/her money
83 worries just got the better of him/her. Since starting his/her counseling at New Day, Red put
84 together a business plan for a bait shop. Red had a new lease on life and was poised to realize
85 his/her dream. I believe that Red had been working on putting the capital together to get the bait
86 shop plan off the ground. From what Red has told me, he/she had borrowed some money from
87 Aunt Gale. Red's got no one else. I hope this prison stint doesn't force him/her into remission.

Subscribed and sworn to before me
on this the 2nd day of September in the
year 2007.

/s/ _____
Kim Rodriguez

Ida Fector

Notary Public

Exhibit 1- Jo Staid's Curriculum Vitae

Jo Staid, CFE & CPA
2627 Dehn Drive
Rigor, Feloni a 55777
(555) 666-5555

Education

Master of Business Administration - Capital University 1993
Concentration: Accounting

Bachelor of Science Degree- University of Dallas, 1980
Majors: Criminal Justice, Accounting

Professional Experience

Forensic Accountant, Founder- Staid & Associates, LLC, 2000-Present

Special Agent- Federal Bureau of Investigation, *White Collar Crime Division*, 1990-2000

Certified Public Accountant- Kaiser & Alvero, LLP, 1980-1990

Professional Certifications/Affiliations

Member:

Forensic Accountants Society of North America, 1993-Present

Certifications:

Certified Fraud Examiner, Licensed by Feloni a State Board of Fraud Investigation

Certified Public Accountant, Licensed by Feloni a State Board of Accountancy

Publications

Discovering Dirty Money: Forensic Accountants in Law Enforcement,
26 Journal of Forensic Accounting 624 (2000)

Tips for the beginning Forensic Accountant, 13 Forensic Accountant
Today 44 (1998)

Kim Rodriguez's Curriculum Vitae- Exhibit 2

Kim Rodriguez, Ph.D.

*7870 Follett Lane
Rigor, Felonia 55777*

Education

Ph.D. Psychology, Shrink University, 1982

Doctoral Dissertation: The Rehabilitation Counselor: An Integral Part of Society

M.A., Shrink University, 1977

Concentration: Counseling

B.S., Shrink University, 1974

Major: Psychology

Professional Experience

Rehabilitation Counselor, New Day Rehabilitation Center, 1997-Present

Rehabilitation Counselor, Sunrise Center, 1982-1997

Professional Certifications

National Board for Certified Counselors, 1984

Commission on Rehabilitation Counselor Certification, 1984

Publications

"How to Counsel the Addict" 27 *Rehabilitation Counselor's Monthly* 60, 2000

The Rehabilitation Counselor: An Integral Part of Society, *Shrink University Press*, 1982

Kim Rodriguez's notes in re: Red Fairfield- Exhibit 3

[These notes were prepared in full by Kim Rodriguez in support of Red Fairfield's hearing before the Felonia State Parole Board in March 2003.]

Red Fairfield

DOB: 6/24/1965

Notes dated: December 28, 2002

Mr./Ms. Fairfield presents with substance dependency to cannabis and major depressive episodes.

The symptoms the patient exhibits are:

Patient has a long history of increased cannabis use. This use began at age 12; alcohol use began at age 10. Patient is unaware of the cannabis tolerance which has been built up as a result of the drug use. Because of this tolerance, patient has continually increased the amount of cannabis per usage. Patient has given up social activities which were once important to him/her. Patient used to be an avid fly-fisher and volunteered as a mentor at the Rigor Boys and Girls Club. Patient volunteered at the Rigor Boys and Girls Club for seven years. Patient taught his/her mentees the joys of fly-fishing and how beautiful nature is. Patient began canceling the mentoring appointments prior to the incarceration in 2001. Patient also became habitually late for work at Ace Bait Shop around this time. Patient became withdrawn from friends. Patient got fired from the Ace Bait Shop and didn't seem to be bothered by this at all. Patient's mood became depressed and he/she had no interest in any daily activities. Patient reports having insomnia.

Patient reports that he/she has used drugs regularly since age 12. The drug use became a severe hindrance to patient in 2000.

In 2001 patient was arrested and began his/her incarceration in the Felonia State Corrections Facility.

[The following notes were prepared in full by Kim Rodriguez on August 6, 2006, in support of Red Fairfield and demonstrate the most recent information about patient's condition from Dr. Rodriguez.]

Patient has entered into sustained remission. Patient tests negative for illegal substances through random urinalysis tests. Patient has never tested positive through those tests. Patient maintains steady income through odd mechanical jobs. I have seen some of these jobs through my visits to patient's home. I have met patient's roommate, Pat Little, who is a stable and supportive person. Patient reports his/her moods are stable and that he/she regularly participates in activities that he/she enjoys.

Patient has discussed, at length, a business plan for a bait shop that he/she would like to open. Patient recognizes the detrimental affect that cannabis dependency and use was having on his/her life. Patient demonstrates a lifestyle consistent with an individual who is serious about recovering from drugs and crime.

Criteria for Substance Dependence- Exhibit 4

Excerpt from *Diagnostic and statistical manual of mental disorders: DSM-IV-TR*,
197, 4th Ed. Copyright 2000, American Psychiatric Association.

Criteria for Substance Dependence

A maladaptive pattern of substance use, leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring at any time in the same 12-month period:

- 1) tolerance, as defined by either of the following:
 - a) a need for markedly increased amounts of the substance to achieve intoxication or desired effect
 - b) markedly diminished effect with continued use of the same amount of the substance
- 2) withdrawal, as manifested by either of the following:
 - a) the characteristic withdrawal syndrome for the substance (refer to Criteria A and B of the criteria sets for Withdrawal from the specific substances)
 - b) the same (or a closely related) substance is taken to relieve or avoid withdrawal symptoms
- 3) the substance is often taken in larger amounts or over a longer period than was intended
- 4) there is a persistent desire or unsuccessful efforts to cut down or control substance use
- 5) a great deal of time is spent in activities necessary to obtain the substance (e.g. visiting multiple doctors or driving long distances), use the substance (e.g. chain smoking) or recover from its effects
- 6) important social, occupational, or recreational activities are given up or reduced because of substance use
- 7) the substance use is continued despite knowledge of having a persistent or recurrent psychological problem that is likely to have been caused or exacerbated by the substance (e.g., current cocaine use despite recognition of cocaine-induced depression, or continued drinking despite recognition that an ulcer was made worse by alcohol consumption)

Exhibit 5: Red Fairfield's Bank Statement
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	From:	Felonia Bank and Trust		
		666 Main Street		
		Nickeldale, FE		
	Account Holder:	Red Fairfield		
		W81925 Oxford Road		
		Nickeldale, FE		
		Monthly Bank Statement		
		Checking Account #888		
Date	Description	Credits	Debits	Account Balance
12/1/2006	CK #444		\$216.23	\$396.35
12/1/2006	Deposit-Cash	\$700.00		\$1,096.35
12/2/2006	ACH- Withdrawal- Jefferson Bank		\$450.00	\$646.35
12/4/2006	CK #445		\$46.56	\$599.79
12/4/2006	Deposit-Cash	\$169.00		\$768.79
12/5/2006	CK #446		\$27.27	\$741.52
12/7/2006	Cash Withdrawal		\$100.00	\$641.52
12/8/2006	CK #447		\$30.89	\$610.63
12/9/2006	Cash Withdrawal		\$100.00	\$510.63
12/11/2006	Deposit-Cash	\$3,000.00		\$3,510.63
12/12/2006	CK #448		\$650.00	\$2,860.63
12/31/2006	Month Ending Balance			\$2,860.63

	From:	Felonia Bank and Trust		
		666 Main Street		
		Nickeldale, FE		
	Account Holder:	Red Fairfield		
		W81925 Oxford Road		
		Nickeldale, FE		
		Monthly Bank Statement		
		Checking Account #888		
Date	Description	Credits	Debits	Account Balance
11/1/2006	CK #439		\$200.00	-\$150.00
11/1/2006	Deposit-Cash	\$700.00		\$550.00
11/2/2006	ACH-Withdrawal- Jefferson Bank		\$450.00	\$100.00
11/3/2006	Cash Withdrawal		\$60.00	\$40.00
11/3/2006	CK #440		\$26.45	\$13.55
11/5/2006	Deposit-Cash	\$1,050.00		\$1,063.55
11/6/2006	CK #441		\$78.87	\$984.68
11/7/2006	CK#442		\$145.75	\$838.93
11/15/2006	Cash Withdrawal		\$100.00	\$738.93
11/18/2006	Deposit-Cash	\$250.00		\$988.93
11/20/2006	Transfer from Acct 700 (Gale Storm)	\$200.00		\$1,188.93
11/22/2006	CK #443		\$300.00	\$888.93
11/25/2006	CK #444		\$276.35	\$612.58
11/30/2006	Month Ending Balance			\$612.58

	From:	Felonia Bank and Trust		
		666 Main Street		
		Nickeldale, FE		
	Account Holder:	Red Fairfield		
		W81925 Oxford Road		
		Nickeldale, FE		
		Monthly Bank Statement		
		Checking Account #888		
Date	Description	Credits	Debits	Account Balance
10/2/2006	ACH-Withdrawal-Jefferson Bank		\$450.00	\$100.00
10/5/2006	Deposit-Cash	\$250.00		\$350.00
10/7/2006	CK #435		\$74.95	\$275.05
10/8/2006	CK #436		\$105.96	\$169.09
10/9/2006	CK #437		\$30.40	\$138.69
10/11/2006	Cash Withdrawal		\$20.00	\$118.69
10/16/2006	Cash Withdrawal		\$20.00	\$98.69
10/20/2006	CK #438		\$28.69	\$70.00
10/25/2006	Cash Withdrawal		\$20.00	\$50.00
10/31/2006	Month Ending Balance			\$50.00

Exhibit 6: Pat Little's Criminal History

**NADDIS CRIMINAL HISTORY
FOR OFFICIAL USE ONLY**

Name: Pat Love Little

DOB: 02/14/1975

Known Aliases: None.

SSN: [REDACTED FELONIA CODE § 113.29; CONTACT FELONIA BCI]

Date of Arrest & Agency	Offense	Disposition
01/01/91 NICKELDALE PD	[JUVENILE— SEALED]	[JUVENILE—SEALED]
5/9/94 NICKELDALE PD	Poss. Sm. Amt. Controlled Substance (Marijuana) 3d; Fel. Stat. § 609.121 (a)	Pl. Guilty. \$150 fine.
7/4/95 FT FATE SFS	Reckless driving (115 MPH in 55 MPH Zone); Fel. Stat. § 543.01(a); Poss. of Alcohol by person under 21; Fel. Stat. § 609.101(a).	Pl: Guilty to Speeding (+30 MPH) and Poss. of Alcohol. 10-day suspended sent., 1 yr MADD Panel (underage alcohol counseling program), no use, \$250 fine.
8/14/2007 FT FATE SFS	Poss. Sm. Amt. Controlled Substance (Marijuana) 3d; Fel. Stat. § 609.121 (a)	Charges pending; ROR bond

Abbreviation Reference:

PD = Police Department

SFS = Sheriff's Department

BCI = Bureau of Criminal Investigation

Pl = Plea

Susp. Sent. = Suspended Sentence

ROR = Released on Recognizance

Offenses in *Italics* constituted charged felonies under Felonia Statutes.

Exhibit 7: Red Fairfield's Criminal History

**NADDIS CRIMINAL HISTORY
FOR OFFICIAL USE ONLY**

Name: Aubrey Casey Fairfield

DOB: 06/10/1965

**Known Aliases: "Red" Fairfield, "Bry" Fairfield, "R.C." Fairfield, "A.C." Fairfield
SSN: [REDACTED FELONIA CODE § 113.29; CONTACT FELONIA BCI]**

Date of Arrest & Agency	Offense	Disposition
10/15/77 NICKELDALE PD	[JUVENILE—SEALED]	[JUVENILE—SEALED]
01/01/89 NICKELDALE PD	[JUVENILE—SEALED]	[JUVENILE—SEALED]
11/25/82 FT FATE SFS	[JUVENILE—SEALED]	[JUVENILE—SEALED]
01/01/83 NICKELDALE PD [adult adjudication. Fel. Stat. § 608.987]	Poss. Sm. Amt. Controlled Substance (Marijuana) 3d; Pub. Intox. Fel. Stat. § 609.121(a), .141	Pl:Guilty. 30 day Susp. Sent. \$200 fine
07/05/84 FT FATE SFS	Poss. Controlled Substance (Marijuana) w/ Intent 5d; Fel. Stat. § 609.122(a)	Pl:Guilty. Poss. Sm. Amt. Marijuana 30-day stayed sent. 2 yr. 1 Yr. Probation. \$500 fine. No use, UA/BT, no same or similar law abiding, chem. dependency eval & follow recommendations.
03/15/87 FELONIA BCI	Check Fraud (<\$500); Fel. Stat. § 623.501(a)	Charges dismissed.
09/24/88 FT FATE SFS	Poss. Controlled Substances (Marijuana) in MV 2d; Fel. Stat. § 608.121(b)	Pl: Guilty. 30 day Susp. Sent. \$1000 fine. 1 Yr. Probation.
11/12/88 RIGOR (MORTIS) PD	Poss. Controlled Substances (Marijuana) 3d; Mortis Stat. § 13-A-12	Pl: Not Guilty. Verdict: Guilty 2 Yrs, \$2000 fine stayed, serve 30 days, pay \$250 fine, no use, CD eval & follow recs, no S/S, law abiding 5 yrs Probation (Mortis – Transferred to FT FATE Supervision)
12/13/88 FT FATE SFS	Probation violation, Fel. Stat. § 609.993	Pl: Admit. 14 day incarceration; 3 Yrs. Probation. Reinstatement probation.
5/9/94 NICKELDALE PD	Poss. Controlled Substance	Pl. Guilty

	<i>(Marijuana) w/ Intent to Distribute 5d; Fel. Stat. § 609.122(a)</i>	3 yrs, \$5000 fine stayed, 30 day incarceration; 6 Mo. Susp. Sent. 3 yrs. Probation \$200 fine, CD eval & follow recs, standard conditions.
2/14/96 FT FATE SFS	<i>Criminal operation- substance; DWI; Fel. Stat. § 545.23(d)</i> <i>Vehicular controlled</i>	Pl: Oper. MV while impaired- 4d Guilty to Reckless Driving Causing Bodily harm, Fel. Stat. §169A.27544.01(a) 90-days stayed, 2 yrs., serve 15 days, credit 15 days. No use UA/BT, CD eval & follow recs, \$500 fine, restit. No same or similar, law abiding. License suspended: 180 days. Restitution ordered.
4/27/96 NICKELDALE PD	Operating motor vehicle w/ licensed suspended or revoked; Fel. Stat. § 551.01(b)	Pl. Guilty 10 day susp. Sent. \$500 fine. No same or similar, law abiding. Community service, probation ordered.
9/12/01 FELONIA BCI	<i>Poss. Controlled Substance (Marijuana) w/ Intent (> 2 kilos) 2nd; Fel. Stat. § 609.122(b)</i>	Pl. Guilty 5 yrs stayed for 10 yrs, CD eval & follow recs, \$1000 fine, no same or similar, law abiding.
12/10/2006 FELONIA BCI	Operating motor vehicle w/ licensed suspended or revoked; Fel. Stat. § 551.01(b); <i>Poss. Controlled Substance (Marijuana) w/ Intent (>5 kilos) 1st; Fel. Stat. § 609.122(c); “Three Strikes” Felony Fel. Stat. § 611.011</i>	Pl. Guilty to Possession; Mandatory Minimum Waived for Substantial Assistance, Fel. Stat. § 611.012; 12 Years’ Incarceration

Abbreviation Reference:

PD = Police Department

SFS = Sheriff’s Department

BCI = Bureau of Criminal Investigation

Pl = Plea

Susp. Sent. = Suspended Sentence

S/S = No same or similar offenses
CD eval = Chemical Dependency evaluation
UA/BT = Urinalysis and blood test
MV = motor vehicle

Offenses in *Italics* constituted charged felonies under Felonia Statutes.

Exhibit 8: Darby Flook's Criminal History

**NADDIS CRIMINAL HISTORY
FOR OFFICIAL USE ONLY**

Name: Darby Sue Flook

DOB: 01/27/1972

Known Aliases: "Darb" Flook, "Flook," "The Flook," "Flooker"

SSN: [REDACTED FELONIA CODE § 113.29; CONTACT FELONIA BCI]

Date of Arrest & Agency	Offense	Disposition
04/28/88 NICKELDALE PD	[JUVENILE—SEALED]	[JUVENILE—SEALED]
07/04/88 NICKELDALE PD	[JUVENILE—SEALED]	[JUVENILE—SEALED]
08/16/89 NICKELDALE PD [adult adjudication. Fel. Stat. § 608.987]	Poss. Sm. Amt. Controlled Substance (Marijuana) 3d; 609.121 (a)	Pl: Guilty. \$150 fine
09/09/91 NICKELDALE PD	Poss. Controlled Substance in motor vehicle (Marijuana) 3d Fel. Stat. § 609.121(a)	Pl: Guilty 30 Day Susp. Sent. 1 Yr. Probation. \$250 fine. No same or similar, law abiding.
05/24/96 CARROLL (COUNTY) SFS	<i>Ct 1: Crim Veh Op- C/S Ct 2: Crim damage Operating Motor Vehicle While Under Influence of Narcotics, Causing Serious Property Damage; Fel. Stat. § 545.23(c)(2)</i>	Pl: Guilty. Ct 1. 2 yrs stayed; serve 30 days, credit 16 days, CD eval & follow recommendations, \$400 fine, law abiding, no same or similar.
9/12/01 FT FATE SFS	<i>Poss. Controlled Substance (Marijuana) w/ Intent (< 2 kilos) 5d; Fel. Stat. § 609.122(b)</i>	Pl. Guilty. 2 yrs, stayed 4 yrs; serve 30 days, CD eval & follow recs, UA/BTs, \$500.00 fine.
08/25/2006 FT FATE SFS	Operating Motor Vehicle While Intoxicated (< .1 BAC); Fel. Stat. § 545.23(a)(1)	Pl: Guilty; 180 Day Susp. Sent. Recommended to DMV License suspended: 1 Yr.; 4 Yr. Probation; no alcohol related traffic offenses, \$500 fine.
12/10/2006 NICKELDALE PD	<i>Poss. Controlled Substance (Marijuana) w/ Intent (> 2 kilos) 2nd; Fel. Stat. § 609.122(c);</i>	Pl. Guilty; Pending Sentencing per cooperation agreement.

	<i>“Three Strikes” Felony Fel. Stat. § 611.011</i>	
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Abbreviation Reference:

PD = Police Department

SFS = Sheriff’s Department

BCI = Bureau of Criminal Investigation

PI = Plea

Susp. Sent. = Suspended Sentence

CD eval = Chemical Dependency evaluation

UA/BT = Urinalysis and blood test

C/S = Controlled substance

Offenses in *Italics* constituted charged felonies under Felonia Statutes.

Exhibit 9: Jefferson Bank, N.A.'s Verified Statement of Interest and Answer to Complaint for Forfeiture in Rem

CASE TYPE: CIVIL FORFEITURE

STATE OF FELONIA

DISTRICT COURT

COUNTY OF FT. FATE

SEVENTH JUDICIAL DISTRICT

State of Felonia

File No.: 06-cv-9847

Plaintiff,
vs.

**Jefferson Bank, N.A.'s Verified
Statement of Interest and Answer to
Complaint for Forfeiture in Rem**

Real Property Located W81925 Oxford Road,
Nickeldale, FE, and all buildings, fixtures,
improvements and appurtenances thereto

Defendant,

Red Fairfield,

Claimant, and

Jefferson Bank, N.A.

Claimant.

Claimant, Jefferson Bank, National Association, by and through its undersigned counsel, as and for its Answer to Plaintiff's Complaint, states and alleges as follows:

1. Jefferson Bank is a Nationally Registered Bank with a branch office in Nickeldale, Felonia.
2. Jefferson Bank admits each and every allegation contained in the Complaint for Forfeiture;
3. Jefferson Bank holds a perfected, recorded purchase money security interest on the Defendant Real Property, as defined in the Complaint for forfeiture, as security for a note in the amount of \$55,000.
4. Claimant Red Fairfield is the mortgagor of the property, after assuming the mortgage in June 2000.

5. Fifteen thousand, two hundred fifty dollars (\$15,250) remains outstanding on the note.
6. From the time the note was assigned, in June 2000, through December 2006, the note was paid pursuant to the note's terms. From December 2001 through April 2003, the note was paid by one Gale Storm.
7. Funds have been directly withdrawn from Claimant Fairfield's personal checking account from December 2007 through the present. It is believed, pursuant to the balance of the note remaining and the balance of the Fairfield checking account, that insufficient funds exist to pay the remainder of the note. Finally, pursuant to the note's terms, Claimant Fairfield's December 2006 conviction and imprisonment is an event of default, which entitles Jefferson Bank to accelerate payment and demand all payments due on the note.

WHEREFORE, Jefferson Bank request that the Court determine that, if the Defendant Real Property is forfeited to the State of Felonia, the State, upon disposition of Defendant Real Property, pay to Jefferson Bank the amount due and owing under the mortgage, that is, \$15,250, plus costs and fees, and any other further relief as the Court may deem just and proper.

DEWEY CHEETUM, P.A.

By: /s/
Hugh L. Dewey (No. #1887847)
617 4th Ave.
Nickeldale, Fel.

Signed on this the 28th day of March in the year 2007.

Exhibit 10: Memorandum Order

CASE TYPE: CIVIL FORFEITURE

STATE OF FELONIA

DISTRICT COURT

COUNTY OF FT. FATE

SEVENTH JUDICIAL DISTRICT

State of Felonia

File No.: 06-cv-9847

Plaintiff,

MEMORANDUM ORDER

vs.

Real Property Located W81925 Oxford Road,
Nickeldale, FE, and all buildings, fixtures,
improvements and appurtenances thereto

Defendant,

Red Fairfield,

Claimant, and

Jefferson Bank, N.A.

Claimant.

NOW BEFORE the Court is the Parties' Joint Motion for Severance Pursuant to Fel. R. Civ. P. 20.02. For the reasons stated in the attached Memorandum, the Parties' Motion is **GRANTED**.

/s/ _____
Judge of the District Court, 7th Judicial District

Dated: June 8, 2007

MEMORANDUM

This is an *in rem* civil forfeiture case in which the State claims that certain real property, currently belonging to one Red Fairfield, a Claimant in this matter, is forfeitable due to its use in facilitating a felony drug offense. Claimant Fairfield has denied the essential claims of the State's Complaint against the Defendant Real Property and has asserted affirmative statutory and constitutional defenses against the forfeiture of the Defendant Real Property. Jefferson Bank, N.A., is a bank that owns a loan with Claimant Fairfield secured by a purchase money security interest in the Defendant Real Property. Claimant Bank has stated that it admits all of the allegations in the Complaint for Forfeiture, and requests merely that if the State forfeit the property, it be paid from the sale of the proceeds of the property for the remaining value of the mortgage first. If the State does not forfeit the property, then it will continue to seek payment from Claimant Fairfield or his/her designated representative (now that Fairfield is incarcerated). Because the Claimant Bank has no real interest in the proceedings as to whether the property is forfeited, and seeks to minimize its expenses and burdens on the court that multiple-party litigation may sometimes bring, the Parties have requested that the case be severed for trial, such that the issue of forfeitability could be tried, and then the issue of apportionment between the State and the Bank, or Claimant and the Bank, could be subsequently addressed.

Felonia Rule of Civil Procedure 20.02 states that "The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice."

This instance, while fairly factually unique in civil litigation, is a prototypical example of an appropriate case for severance. As the Parties have agreed, and as this Court finds, including Claimant Bank on the merits would be inefficient, as the Bank asserts no claim to Claimant Fairfield nor the State, nor does it either contest or accept the forfeitability of Defendant Real Property, accordingly, in the interests of justice, this case will be severed, with Claimant Bank being excused from the trial on the merits of forfeitability. Claimant Bank may resume with appropriate motion practice once forfeitability is determined at trial.

#

/s/ District Court Judge

6/08/07



N↑



Boulder



U.S.
Mail



Pat Little's
bedroom

Front
Door



Exhibit 11

Map of W81925 Oxford Road, Nickeldale, FE

Not to scale

RELEVANT CASE LAW

[This Felonia Court of Appeals case is published at 758 Fel. 2d 334.]

**STATE OF FELONIA
IN COURT OF APPEALS**

A05-1138

Lisa N. Smith, Carroll County Attorney,
Respondent,

vs.

418 Eglon Avenue and \$1,230.00 U. S. Currency,
Defendant,

Santos Ramiro Martinez,
Appellant.

Filed May 2, 2006

Affirmed

Handler, Judge

Carroll County District Court
File No. C9-03-739, C7-02-2334

Lisa N. Smith, Carroll County Attorney, Jenny M. Taplan, Assistant County Attorney, 815 11th Street, Glidden, Felonia 2563 (for respondent)

Craig E. Krummen, 150 South Street, Suite 3260, Ralston, Felonia 1555 (for appellant)

Considered and decided by Dorr, Presiding Judge; Johnsen, Judge; and Handler, Judge.

I. SYLLABUS

Forfeiture of a house valued at \$18,300 and \$1,230 in cash under Fel. Stat. § 609.5311 (2004) as a result of a conviction of second-degree controlled-substance offense is not an unconstitutionally excessive fine under either the gross-disproportionality or nexus tests.

II. OPINION

HANDLER, Judge

Appellant challenges the district court's order that he forfeit his house and any drug-related money found in the house as the result of execution of a search warrant. Appellant argues that the forfeiture is an unconstitutionally excessive fine and that the district court erred in finding that it met

the gross-disproportionality and nexus tests. Because the forfeiture meets both the gross-disproportionality and the nexus tests, we conclude that it is not an unconstitutionally excessive fine. We therefore affirm.

III. FACTS

Between November 2001 and August 2002, law enforcement investigated appellant Santos Martinez for suspected drug-related offenses. During that time, the police made eight controlled buys of cocaine from appellant at his house, obtaining a total of 15.1 grams of cocaine. The police then obtained and executed a search warrant for the premises. As a result of the search, law enforcement recovered an additional 6.6 grams of cocaine and \$1,230 in cash, some portion of which was money from the controlled buys. The total value of the cocaine recovered as a result of the controlled buys and the search warrant was \$1,500 or more.

The state charged appellant with multiple controlled-substance offenses. In addition, the state served appellant with a complaint seeking forfeiture of the \$1,230 and appellant's house. Appellant was tried on a first-degree controlled-substance offense charge, but the trial resulted in a hung jury. Appellant then pleaded guilty to second-degree controlled-substance offense.

The district court conducted a bench trial on the forfeiture complaint and took judicial notice of the facts adduced at the trial for first-degree controlled-substance crime (sale) and from appellant's guilty plea to second-degree controlled-substance crime (possession). The parties also stipulated that appellant's home's tax valuation was \$18,300. The district court ordered the property and money to be forfeited because it found that both the gross-disproportionality and nexus tests had been satisfied. This appeal follows.

ISSUE

Does forfeiture of appellant's house and \$1,230 in cash, as a result of the controlled-substance offenses, constitute an excessive fine in violation of the federal and Felonia constitutions?

ANALYSIS

The applicable forfeiture statute states, in pertinent part: "All property, real and personal, that has been used, . . . or has in any way facilitated, in whole or in part, the . . . exchanging of contraband or a controlled substance . . . is subject to forfeiture." Fel. Stat. § 609.5311, subd. 2 (2004). But the statute places a limitation on the forfeiture of real property. "Real property is subject to forfeiture under this section only if the retail value of the controlled substance or contraband is \$1,000 or more." *Id.*, subd. 3(b) (2004).

The legislature made plain its intent behind the forfeiture statute by enacting a section that states its purpose. Fel. Stat. § 609.531, subd. 1a (2004), states:

Sections 609.531 to 609.5318 must be liberally construed to carry out the following remedial purposes:

- (1) to enforce the law;
- (2) to deter crime;
- (3) to reduce the economic incentive to engage in criminal enterprise;
- (4) to increase the pecuniary loss resulting from the detection of criminal activity; and
- (5) to forfeit property unlawfully used or acquired and divert the property to law enforcement purposes.

Appellant contends that the forfeiture of his house violates the federal and Felonia constitutions' protection against excessive fines. The two constitutional provisions are identical, stating, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend VIII; Fel. Const. art. I § 5. "Resolution of this issue requires interpretation of a constitutional provision[,] . . . a legal question that we review de novo." *State v. Rewitzer*, 617 Fel.2d 407, 412 (Fel. 2000) (citations omitted).

The United States Supreme Court articulated the gross-disproportionality test for use in determining whether a punishment violates the Cruel and Unusual Punishment Clause of the Eighth Amendment. *Solem v. Helm*, 463 U.S. 277, 292, 103 S. Ct. 3001, 3011 (1983). Following *Solem*, the Court adopted the gross-disproportionality test as a means of analyzing cases under the Excessive Fines Clause of the Eighth Amendment. *United States v. Bajakajian*, 524 U.S. 321, 336, 118 S. Ct. 2028, 2037 (1998). This test contains three prongs that the district court must consider: "(i) the gravity of the offense and harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." *Solem*, 463 U.S. at 292, 103 S. Ct. at 3011. But the test "is not whether the forfeiture is directly proportional to the sentence a particular defendant or claimant would receive for the offense committed, but rather whether forfeiture is *grossly* disproportional in the circumstances of the case." *United States v. One Parcel of Prop. Located at 32 Medley Lane*, 372 F. Supp. 2d 248, 266 (D. Conn. 2005).

Felonia courts previously used the instrumentality or nexus test, which asks only whether the property bears a close relationship to the offense. *City of Worthington Police Dep't v. One 1988 Chevrolet Berreta, Maroon in Color, Bearing License # 520 CLF & Bearing VIN # 1GILV1412JE6227125*, 516 Fel.2d 581, 584 (Fel. App. 1994). But after *Bajakajian*, the Felonia Supreme Court adopted the gross-disproportionality test. *Rewitzer*, 617 Fel.2d at 414. While Felonia courts may still use the instrumentality or nexus test to determine whether forfeiture is appropriate, it must be in conjunction with the gross-disproportionality test. *Miller v. One 2001 Pontiac Aztek, # GHS-186, VIN: 3G7DA03E41S500032*, 669 Fel.2d 893, 897 n.2 (Fel. 2003) (stating that to solely

use an instrumentality test is inappropriate, but “an instrumentality or a ‘nexus’ consideration may be combined with the *Solem* test”).

Although the Felonia legislature provided that the forfeiture statute is remedial in nature, “the United States Supreme Court has stated that ‘forfeiture generally and statutory *in rem* forfeiture in particular historically have been understood, at least in part, as punishment.’” *Schug v. Nine Thousand Nine Hundred Sixteen Dollars & Fifty Cents in U.S. Currency*, 669 Fel.2d 379, 382 (Fel. App. 2003) (quoting *Austin v. United States*, 509 U.S. 602, 618, 113 S. Ct. 2801, 2810 (1993)), *review denied* (Fel. Dec. 16, 2003). Moreover, forfeiture laws are “disfavored and will only be enforced when the claim is within both letter and spirit of the law.” *Id.* (quotation omitted). Thus, due to “the punitive and disfavored nature of the forfeiture laws this court is to strictly construe its language and resolve any doubt in favor of the party challenging it.” *Id.* (quotation omitted).

Forfeiture of one’s house under this statute is a case of first impression in Felonia, and we recognize that it has the potential to lead to a harsh result. But “large discretion is necessarily vested in the legislature to impose penalties sufficient to prevent the commission of an offense, and it would have to be an extreme case to warrant the courts in holding that the constitutional limit has been transcended.” *Rewitzer*, 617 Fel.2d at 412 (quotation omitted). The legislature has clearly evinced its intent to use the forfeiture of real property as a method of enforcing the law, deterring crime, and decreasing the economic loss from illegal activity. Fel. Stat.§ 609.531, subd. 1a.

1. Gravity of Offense and Harshness of the Penalty

The supreme court, in applying the *Solem* test, stated, with regard to the first prong, that “drug use and distribution is one of the greatest problems affecting the health and welfare of our population.” *Rewitzer*, 617 Fel.2dat 414. Additionally, “[t]he Felonia Legislature has targeted . . . controlled-substance crime because of [its] social and economic impact and has set severe maximum penalties . . .” *State v. Kujak*, 639 Fel.2d 878, 884 (Fel. App. 2002) (stating that “higher-degree drug crimes are [among] the most serious offenses”), *review denied* (Fel. Mar. 25, 2002).

The offense that appellant was convicted of is a grave one, as it is a high-degree controlled-substance crime. Although appellant was convicted of possession and not sale or distribution, the underlying facts from appellant’s trial and plea, which the district court took judicial notice of, clearly reveal that he was selling cocaine out of his house. Thus, the effect of appellant’s offense on the public renders his offense sufficiently grave.

It was permissible for the district court to consider the underlying facts of appellant’s drug-sale activity although he was not convicted of a sale offense because forfeiture under Fel. Stat.§ 609.5311 need not arise from a conviction. Fel. Stat.§ 609.531, subd. 6a(a) (2004). Only forfeitures under Fel. Stat.§ 609.5312 require an underlying criminal conviction. *Id.* For all other sections of the

forfeiture law, a conviction is not required. And, under Fel. Stat. § 609.531, subd. 6a(a), a prosecutor need only prove forfeiture by clear and convincing evidence.

Federal courts have long been faced with the forfeiture of homes and have routinely upheld forfeiture, despite the harsh result. *See 32 Medley Lane*, 372 F. Supp. 2d at 266-67 (stating that “[t]he Court fully realizes that the forfeiture of the . . . home will have a profound impact on the entire family); *United States v. 829 Calle de Madero*, 100 F.3d 734, 739 (10th Cir. 1996) (stating that when “evaluating the harshness of the sanction, we recognize that this forfeiture will displace the Claimants’ three minor children from their family home”). But “Congress concluded that when real property is used to facilitate the . . . distribution of drugs, forfeiture—even of a family home—is appropriate, and this Court cannot say that in the circumstances of this case, the Constitution forbids that result.” *32 Medley Lane*, 372 F. Supp. 2d at 267.

The same can be said for the Felonia legislature as it, too, has determined that forfeiture is appropriate when real property is used to facilitate the sale or possession of drugs. Fel. Stat. § 609.5311. Therefore, we conclude that forfeiture of appellant’s house is not disproportionately harsh when compared to the severity of his offenses.

2. Comparison to Other Felonia Crimes

In order to determine whether forfeiture in a particular case is comparable to fines imposed for other Felonia crimes, courts look to the sentencing guidelines to determine what other offenses are of similar severity. *Rewitzer*, 617 Fel.2d at 414; *see also Kujak*, 639 Fel.2d at 884-85. Thus, the district court analyzes the severity level of the offense and looks at the penalties for other offenses at that level. *Rewitzer*, 617 Fel.2d at 414-15.

Appellant was charged with a severity-level 9 offense (sale) and charged with and convicted of a severity-level 8 offense (possession). *See* Fel. Sentencing Guidelines V (2004). Other offenses at those levels have maximum fines between \$20,000 and \$50,000. *See* Fel. Stat. § 609.2325 (2004) (defining criminal abuse, a severity-level 8 crime when resulting in great bodily harm, and providing a maximum fine of \$20,000); Fel. Stat. § 609.25 (2004) (defining kidnapping and providing a maximum fine for the most serious forms of kidnapping, severity-level 8 and 9 offenses, of \$50,000). Thus, a total fine—between the house and the money—of \$19,530 is not grossly disproportionate and is actually less than the permissible fine range. And even when

the value of the property forfeited may exceed, even considerably, the fine range provided by the Sentencing Guidelines[, it] does not necessarily mean that the forfeiture is *grossly* disproportional. . . . [N]o mathematical formula will substitute for a careful assessment of all facts and factors and the application of sound judgment to what all must acknowledge is an “inherently imprecise” task.

32 Medley Lane, 372 F. Supp. 2d. at 266 (citation omitted).

While we do not have other home-forfeiture cases in Felonia to use in our analysis, we do have vehicle-forfeiture decisions for guidance. For example, Felonia decisions have held that a forfeiture of a motor vehicle under the driving-while-impaired statute was constitutional despite the fact that the value of the vehicle vastly exceeded the amount of the maximum fine. *See Miller*, 669 Fel.2d at 898 (stating that “[t]he value of appellant’s vehicle was not much different than other vehicles, nor is it grossly different than other fines for crimes of a similar serious nature,” when the forfeited vehicle was worth \$13,000 more than the maximum fine); *City of New Brighton v. 2000 Ford Excursion VIN# 1FMNU43S2YEA74156*, 622 Fel.2d 364, 371 (Fel. App. 2001) (noting that “forfeiture is not excessive merely because the value of [the] car is higher than the maximum fines he might receive for committing similarly classified offenses. Under prior cases, forfeitures have not been deemed excessive simply because the value of the car forfeited was higher than the fines authorized for similarly ranked offenses.”), *review denied* (Fel. App. 17, 2001); *Lukkason v. 1993 Chevrolet Extended Cab Pickup*, 590 Fel.2d 803, 808-09 (Fel. App. 1999) (holding that due to the serious nature of DWI offenses, forfeiture of a vehicle worth more than \$11,000 as a result of a gross-misdemeanor DWI offense was not excessive), *review denied* (Fel. App. 18, 1999).

Additionally, appellant argues that the district court erred because it did not look at fines that were imposed on actual defendants solely within Carroll County. But no court, including the United States Supreme Court, has analyzed this prong by looking at actual imposition of fines, but rather by considering what fines are permissive or allowable. Moreover, this prong is meant to compare the instant crime with other crimes in the same state, not just the same county. *See Solem*, 463 U.S. at 292, 103 S. Ct. at 3011. When the United States Supreme Court applied this prong, it looked at other sentences within the state of South Dakota, not the particular county in which the defendant was convicted. *Id.* at 298, 103 S. Ct. at 3013-14.

3. Comparison to Other Jurisdictions

This prong involves a comparison that is similar to the previous one, in that courts look to other jurisdictions for the penalties of similar offenses in order to determine proportionality. *Rewitzer*, 617 Fel.2d at 415. This includes the Federal Sentencing Guidelines, as well as other states’ sentencing statutes. *Id.*(federal guidelines); *City of New Brighton*, 622 Fel.2d at 371-72 (other states’ statutes).

The district court determined that under the Federal Sentencing Guidelines, appellant’s offense would be categorized as a level-12 offense. The fines imposed for offenses at that level range between \$3,000 and \$30,000. United States Sentencing Commission, *Guidelines Manual* § 5E1.2(c)(3) (2004). Thus, the district court stated that the \$19,530 forfeiture is well within that range and does not suggest disproportionality.

Appellant again challenges the district court's methodology, arguing that it was improper to consider the federal guidelines because they are inapplicable to Felonia and because the district court improperly analyzed the federal guidelines. We disagree. The district court properly considered the federal guidelines under this prong. *Rewitzer*, 617 Fel.2d at 415. Furthermore, the district court's methodology properly involved determining where a second-degree controlled-substance crime was ranked in the federal system and what fines were allowable for an offense with that ranking. We therefore conclude that the district court's methodology was proper.

4. Instrumentality or Nexus

Under the nexus test, a court considers “‘not *how much* the confiscated property is worth, but *whether* the confiscated property has a close enough relationship to the offense.’” *City of Worthington Police Dep't*, 516 Fel.2d at 584 (quoting *Austin*, 509 U.S. at 628, 113 S. Ct. at 2815 (Scalia, J., concurring)). Thus, “‘if the use of the property plays a significant part in committing an offense, then the property may be forfeited, no matter what its value.’” *City of Worthington Police Dep't*, 516 Fel.2d at 584. “[I]n Felonia, an action for forfeiture is a civil *in rem* action. The property seized becomes the defendant, based on the legal fiction that it is the inanimate object itself, not its possessor or owner, that is guilty of wrongdoing.” *Miller*, 669 Fel.2d at 896 (quotation omitted).

But a high standard must be met when the object of the forfeiture action is one that is pervasive and used for many activities, both criminal and non-criminal. *See Riley v. 1987 Station Wagon*, VIN:1JCMT7840HTI07485, 650 Fel.2d 441, 445 (Fel. 2002). *Riley* involved the forfeiture of an automobile, and the supreme court stated that “[t]he use of the automobile in our society is pervasive. A car by itself is not contraband and there is little activity that the use of a car does not ‘facilitate’ to some degree.” *Id.* (citation omitted). The court interpreted the term “facilitate” for forfeiture purposes to “require[] a direct and substantial connection between the [property] being forfeited and the designated offense.” *Id.*

A similar analysis is applicable here because ownership of a house is also common in our society. Appellant's house was the instrument for his drug-sale operation and drug possession. While it is true that a house is not necessary to facilitate the sale or possession of drugs, the question is whether appellant used the house to sell or possess drugs. *City of Worthington Police Dep't*, 516 Fel.2d at 584. As the district court here stated,

all of the alleged drug transactions took place at the house in question. The house was used both to store drugs in [appellant's] possession, and also to gain privacy for his drug transactions. The use of the house made the sales easier to conceal, as they could be kept out of the sight of the public.

Because we conclude that such use meets the “direct and substantial connection” requirement, the district court did not err by concluding that appellant’s house was an instrumentality of his criminal activity.

DECISION

Because forfeiture of appellant’s house and money is not grossly disproportional and because the house was an instrumentality of appellant’s criminal activity, the forfeiture under Fel. Stat. § 609.5311 (2004) does not constitute an unconstitutionally excessive fine.

Affirmed.

Fel. Stat. § 609.122

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE.

A person is guilty of controlled substance crime in the first degree if:

...

(c) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 5 kilograms or more containing marijuana or Tetrahydrocannabinols, or one or more mixtures of a total weight of 5 kilograms or more containing marijuana or Tetrahydrocannabinols in a school zone, a park zone, a public housing zone, or a drug treatment facility.

(d) **Penalty.** A person convicted under subsections (a) through (c) may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$1,000,000, or both.

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE.

A person is guilty of a controlled substance crime in the second degree if:

....

(c) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 2 kilograms or more containing marijuana or Tetrahydrocannabinols, or one or more mixtures of a total weight of 2 kilograms or more containing marijuana or Tetrahydrocannabinols in a school zone, a park zone, a public housing zone, or a drug treatment facility.

(d) **Penalty.** A person convicted under subsections (a) through (c) may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$500,000 or both.

Fel. Stat. § 609.5311, subd. 2:

a. All property, real and personal, that has been used or has in any way facilitated, in whole or in part, the exchanging of contraband or a controlled substance is subject to forfeiture.

b. Real property is subject to forfeiture under this statute only if the retail value of the controlled substance or contraband is \$1,000.00 or more.

Fel. Stat. § 609.531, subd. 1a:

The Civil Forfeiture Statute must be liberally construed to carry out the following remedial purposes:

(1) to enforce the law; (2) to deter crime; (3) to reduce the economic incentive to engage in criminal enterprise; (4) to increase the monetary loss resulting from crime detection; (5) to forfeit property unlawfully used or acquired and divert the property to law enforcement purposes.

Fel. Stat. § 611.01

(a) for the purposes of this section, a “felony” is any crime punishable by death or imprisonment of more than one year, regardless of whether such a sentence was actually imposed.

(b) Any person convicted of a felony as specified in subsection (a) who has been previously convicted of two felonies as defined by the state in which the conviction was entered shall be punished by imprisonment in the state prison for 20 years without the possibility of parole.

(c) Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by subsection (b) as a minimum sentence so as to reflect a defendant’s substantial assistance in the investigation or prosecution of another person who

has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements included in this Chapter.

Fel. Stat. § 723.01

No suit or action to recover any duty under section 5311 of chapter 609, Felonia Statutes, or any pecuniary penalty or forfeiture of property accruing under the civil, criminal, or narcotics laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered, except that ---

- (1) evidence of actions occurring prior to this period of limitations may be admissible into evidence, subject to any other Felonia Rules of Evidence, to demonstrate that other acts rendering the property forfeitable within the limitations period were more or less likely to occur

Fel. Const. art. I § 5:

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

State of Felonia Jury Instructions

Jury Instruction No. 284.9

Felonia Stat. § 609.531 subd. 1a:

Real Property is subject to civil forfeiture under Felonia State Statute 609.5311 if:

- 1) Defendant Real Property has been used or in any way facilitated, in whole or in part, the exchanging of contraband or a controlled substance;

AND

- 2) Retail value of contraband or a controlled substance is \$1,000 or more.

Use or facilitation, defined.

“Use or facilitation” for purposes of Jury Instruction No. 284.9 means that the Defendant Real Property aided, abetted or facilitated in the possession or sale of a controlled substance or of a felony involving possession, sale or transmission of a controlled substance. Mere placement of contraband or controlled substance on Defendant Real Property is not sufficient to prove that the property “used or facilitated” the exchanging of contraband. However, use of the property to conceal, secret, store or hide away the contraband is sufficient.

In addition to establishing a nexus as described above, the State of Felonia must establish that the forfeiture of Defendant Real Property is proportionate to the degree of the controlled substance-related offense.

To prove that Defendant Real Property “used or facilitated” the State need not prove that any individual, claimant or unrelated third-party, committed any felony beyond a reasonable doubt.

If you, the jury, find that the State of Felonia has proved by clear and convincing evidence, the real property was used or facilitated in the exchanging of contraband it is lawfully subject to forfeiture to the State of Felonia, check “yes” on question number one on the Jury Special Verdict Form; otherwise, check “no”.

Jury Instruction No. 1010
Felonia State Constitution art. I §5

If Defendant Real Property is subject to forfeiture under State Stat. 609.5311 to the State of Felonia, said property will not be forfeited if any claimant to said property proves that said forfeiture would constitute an excessive fine or cruel and unusual punishment as defined in art. I § 5 of the Felonia State Constitution. If you, the jury, find that Defendant Real Property is forfeitable under the aforementioned statutes, check “yes” to question number two on the Jury Special Verdict Form; otherwise, check “no”.

In determining whether such forfeiture constitutes an excessive fine or cruel and unusual punishment, the factfinder may consider the proportionality of the forfeiture to the crime, including the statutory minimum and maximum fine that may be imposed against a criminal defendant for the underlying criminal act, the value of the property to be forfeited, the strength of the nexus between the property and the underlying criminal act and any other factors deemed relevant by the factfinder.

Jury Special Verdict Form

1. Was the Defendant Real Property Located at W81925 Oxford Road, Nickeldale, FE, and all buildings, fixtures improvements and appurtenances used or in any way facilitated, in whole or in part, the exchanging of contraband or a controlled substance, pursuant to Felonia Stat. § 609.531 subd. 1a?

_____ Yes _____ No

2. Would the forfeiture of Defendant Real Property constitute an excessive fine or cruel and unusual punishment to Claimant Red Fairfield in violation of article I section 5 of the Felonia State Constitution?

_____ Yes _____ No

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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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.

Rules with the “NHSMTTC” designation appear in these rules only as notification to the team representing Minnesota at the National High School Mock Trial Championship (NHSMTTC) that additional and different rules govern that tournament. (See Rule 1.3 for an example.) This designation does not imply that rules governing the NHSMTTC govern this, the Minnesota Mock Trial Tournament, in any way.

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 (NHSMTTC)

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 19 will not be guaranteed trials in the competition.

On a pilot program basis for the 2007-2008 school year, schools may enter any number of teams in the competition.

For schools with a more students interested in participating than can be accommodated on the number of mock trial teams for which the school is sponsoring, 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.

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, except when a student added to a roster has not competed in any round, on any team as a lawyer and/or a witness in the current season.

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. There shall be three attorneys and three witnesses. Each of the three attorneys will conduct one direct examination and one cross-examination; one of the three attorneys 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. Teams missing a bailiff will not be assigned a point deduction.
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. If at any point during the trial time expires any timekeeper should say "stop" aloud for the court and parties to hear at the point of time expiration.

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 11 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 (NHSMTC 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 be 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 Regional trials only. See Rule 5.5(4) for State Finals' judging panel information.)

Every effort is made to have two volunteer judges 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 trial, the evaluating and presiding will be handled similar to the state finals: one judge will be the presiding judge; the other two will be the evaluating judges. The scoring judges' evaluation will determine the trial winner. In the event of a tie, the team awarded the tie-breaker point on the presiding judge's scoresheet shall be the winner.

Rule 5.3 Score Sheets/Ballots (NHSMTTC)

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.] Teams ranked one thru eight after two rounds of competition will advance into Round 3. If a region consists of an odd number of teams which is fewer than 8 total teams after two rounds of competition, the highest ranked team remaining in that bracket will receive a bye for Round Three and advance into Round Four.

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 Rounds 3, 4 and 5 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). 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. 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. The state tournament format differs from that of the regional competition. All teams at the State Competition will participate in at least three rounds of trials and will present each side of the case at least once.

There will be two scoring judges and a presiding judge at each trial. State Finals Power-matching criteria for the first three rounds are: 1) Win/loss record, 2) total number of ballots won, 3) cumulative point differential. A team can earn up to three ballots/trial. Ballots are cast by each of the three judges. Scoring judges cast their ballots via the point totals on their scoresheets. Presiding judges cast their ballot using the Presiding Judge Performance Rating Sheet. If there is a tie in the number of ballots cast by the scoring judges, the Presiding Judge’s Performance Rating Sheet shall determine the winner of the trial.

Pairings for the first round will be assigned at random. After round one of the competition, teams will be divided into two brackets (1-0 and 0-1). Teams will be ranked within the brackets and power-matched. After round two of the competition, teams will be divided into three brackets (2-0, 0-2 and

1-1). Teams will be ranked within the brackets and power-matched. After three rounds of competition, final championship trial participants will be determined using this criteria: 1) Win/loss record, 2) Total number of ballots won, 3) Number of wins against 2-1 teams, 4) Number of wins against 1-2 teams, 5) Cumulative point differential. (Provided that, if by application of the criteria a team is ranked higher than a team with the same win/loss record that defeated it, the losing team shall be placed immediately below the winning team) The top two ranked teams will compete in the final championship round. Side-assignments will be determined by a coin-flip after the final championship round teams are announced. 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 (2008 Wilmington, DE; 2009 Atlanta, GA).

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 Round

In the event of a bye, the team receiving a bye for any round, for any reason will be awarded a win and a point differential of zero for the round in which the team is given a bye.

F. DISPUTE RESOLUTION

Rule 6.1 Reporting a Rules Violation/Inside the Bar (NHSMTTC 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 Procedures

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 foregoing 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 therefore 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.

Minnesota High School Mock Trial State Champions

- 2007 Buffalo High School, Buffalo**
- 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**