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MEMO

TO: All Mock Trial Participants

FROM: Atty. Lindsey Draper, Chair, Law-related Education (LRE) Committee
Dee Runaas, LRE Coordinator, 608-250-6191

RE: 2008 Mock Trial Tournament

DATE: September 2007

This year we celebrate the mock trial program's 25th anniversary! On behalf of the State Bar of Wisconsin's Law-related Education Committee, we welcome your participation. We are very pleased you decided to join us this year.

Each year the case committee attempts to write a case based on your suggestions that will captivate you during your many hours of preparation. This year's mock trial case examines the tragic consequences that resulted from a brush fire started when a property owner attempted to clear his property. Sparks from the fire allegedly caused a fire to break out in the nearby State Campground resulting in the death of a camper. What may appear as a simple accident is sometimes more complicated when examined closely.

As you prepare the case, please remember the goal of this program is participation, not competition. The mock trial website, located at www.legalexplorer.com, will be your source for information regarding the case and the tournament throughout the next several months.

There are hundreds of volunteers that make this program work. Please take time to thank those people who have helped make the tournament such a success from year to year. Your teacher and attorney coaches, the tournament coordinators, the judges, the case writers, the sponsors, the funders and the court personnel all enable us to provide you with a unique educational opportunity. Sometimes just saying "thank you" is enough.

And of course, we thank you, the students, for your continued enthusiasm, participation and support for this program.

Have fun!

State Bar of Wisconsin

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The State Bar of Wisconsin's Law-related Education Committee would like to thank the following organizations for their endorsement and support of the Wisconsin High School Mock Trial Tournament:

The Wisconsin Law Foundation
State Bar of Wisconsin - Law-related Education Committee
Wisconsin Association of Legal Administrators
Wisconsin Association of School Boards
Wisconsin Council for the Social Studies
Wisconsin Department of Public Instruction
Wisconsin High School Forensic Association
Young Lawyer's Division – State Bar of Wisconsin

A special thanks to our major sponsors – their support is crucial to the success of the program.

Major Sponsors

State Bar of Wisconsin
Wisconsin Law Foundation

The Wisconsin Law Foundation wishes to acknowledge the following donors for their generous support of the mock trial program:

Mock trial gifts through September 2007 include:

Atty. Lindsey Draper
Hon. Dale E. Ihlenfeldt
Atty. Robert M. Jones
Michelson Law Office
Hon. Michael J. Rosborough
Atty. Michael P. Sullivan
Atty. Ann E. Stevning-Roe

THANK YOU!

In Memoriam

This year's program is dedicated to

Rodney O. Kittelsen ("Rod")



Loyal supporter and friend

March 11, 1917 – September 8, 2007

2008 Mock Trial Tournament Dates

Entry deadline without late fee	Nov. 2, 2007
Final entry deadline.....	Nov. 16, 2007
Tournament/Case Questions Deadline.....	Dec. 21, 2007
Participant Teleconference.....	Jan. 9, 2008
Team Drop Deadline.....	Jan. 25, 2008
Regional Tournaments	Feb. 9, 2008
At various locations around the state	
Tie-Breaker Rounds	Feb. 16, 2008
(if necessary)	
State Semi-Finals	Mar. 16, 2008
City-County Building Madison	
Awards Banquet.....	Mar. 16, 2008
Monona Terrace	
State Finals.....	Mar. 17, 2008
Wisconsin Supreme Court Madison	
National Championship	May 8-11, 2008
Wilmington, Delaware	

A special thank you to the following people for their time and assistance in developing the 2008 case materials:

Atty. Ellen Henak
Atty. Sheri Pollock
Mr. Brian Root
Atty. Michael Rosenberg
Atty. Charles Senn
Atty. Kate Tripp

THANK YOU!

TABLE OF CONTENTS

	Page
I. Code of Ethical Conduct	xvii
II. Tournament Format (TAB 1)	1
A. Regional Format	1
B. State Format	3
III. Rules of the Competition (TAB 2)	5
A. Administration	
1. Rules (Rule 1.1)	5
2. Code of Conduct (Rule 1.2).....	5
3. Emergencies (Rule 1.3).....	5
4. Tournament Coordinators (Rule 1.4).....	6
5. Attorney Coaches (Rule 1.5).....	6
6. Drop Deadline (Rule 1.6).....	6
B. The Case	
1. The Case (Rule 2.1)	6
2. Witnesses Bound by Statements (Rule 2.2).....	7
3. Unfair Extrapolation (Rule 2.3).....	7
4. Gender of Witnesses (Rule 2.4).....	7
5. Voir Dire (Rule 2.5).....	7
C. Teams	
1. Team Conduct (Rule 3.1).....	8
2. Team Eligibility (Rule 3.2).....	8
3. Team Sponsor (Rule 3.3)	8
4. Team Composition (Rule 3.4).....	8
5. Team Presentation (Rule 3.5)	8
6. Team Duties (Rule 3.6).....	9
7. Team Roster (Rule 3.7).....	9
D. The Trial	
1. Courtroom Setting (Rule 4.1)	10
2. Stipulations (Rule 4.2)	10
3. Reading Into the Record Not Permitted (Rule 4.3).....	10
4. Swearing of Witnesses (Rule 4.4).....	10
5. Trial Sequence and Time Limits (Rule 4.5).....	10
6. Timekeeping (Rule 4.6)	11
7. Time Extensions (Rule 4.7)	11
8. Motions Prohibited (Rule 4.8)	11
9. Sequestration (Rule 4.9).....	12

10.	Bench Conferences (Rule 4.10)	12
11.	Supplemental Material/Costuming (Rule 4.11)	12
12.	Trial Communication (Rule 4.12)	12
13.	Viewing a Trial (Rule 4.13)	12
14.	Videotaping/Photography (Rule 4.14)	13
15.	Jury Trial (Rule 4.15)	13
16.	Standing During Trial (Rule 4.16)	13
17.	Objections During Opening Statement/Closing Argument (Rule 4.17)	13
18.	Objections (Rule 4.18)	13
19.	Ruling on Objections (Rule 4.19)	15
20.	Expert Witness Testimony (Rule 4.20)	15
21.	Procedure for Introduction of Exhibits (Rule 4.21)	15
22.	Use of Notes (Rule 4.22)	16
23.	Redirect/Re-cross (Rule 4.23)	16
24.	Scope of Closing Arguments (Rule 4.24)	16
25.	The Critique (Rule 4.25)	16
E.	Judging and Team Advancement	
1.	Finality of Decisions (Rule 5.1)	16
2.	Composition of Judging Panels (Rule 5.2)	16
3.	Score Sheets/Ballots (Rule 5.3)	16
4.	Completion of Score Sheets (Rule 5.4)	17
5.	Team Advancement (Rule 5.5)	17
6.	Power Matching/Seeding (Rule 5.6)	17
7.	Selection Of Sides For Championship Round (Rule 5.7)	18
8.	Effect of Bye/Default (Rule 5.8)	18
F.	Dispute Resolution	
1.	Reporting a Rules Violation/Inside the Bar (Rule 6.1)	19
2.	Dispute Resolution Procedure (Rule 6.2)	19
3.	Effect of Violation on Score (Rule 6.3)	19
4.	Reporting a Rules Violation/Outside the Bar (Rule 6.4)	19
5.	Appeals Process (Rule 6.5)	20
IV.	Federal Rules of Evidence (TAB 3)	21
A.	Article I. General Provisions	
1.	Scope (Rule 101)	21
2.	Purpose and Construction (Rule 102)	21
B.	Article II. Judicial Notice (Not applicable)	
C.	Article III. Presumptions in Civil Actions and Proceedings (Not applicable)	
D.	Article IV. Relevancy and its Limits	

1.	Definition of "Relevant Evidence" (Rule 401)	21
2.	Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible (Rule 402)	21
3.	Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time (Rule 403)	21
4.	Character Evidence Not Admissible to Prove Conduct (Rule 404).....	22
5.	Methods of Proving Character (Rule 405).....	22
6.	Habit; Routine Practice (Rule 406).....	22
7.	Inadmissibility of Pleas, Plea Discussions (Rule 410).....	22
E.	Article V. Privileges	
1.	General Rule (Rule 501)	23
F.	Article VI. Witnesses	
1.	General Rule of Competency (Rule 601).....	23
2.	Lack of Personal Knowledge (Rule 602).....	23
3.	Who May Impeach (Rule 607)	23
4.	Evidence of Character and Conduct of Witness (Rule 608).....	23
5.	Impeachment by Evidence of Conviction of Crime (Rule 609)	24
6.	Religious Beliefs or Opinions (Rule 610).....	24
7.	Mode and Order of Interrogation and Presentation (Rule 611)	24
8.	Writing Used to Refresh Memory (Rule 612)	25
9.	Prior Statements of Witnesses (Rule 613)	25
G.	Article VII. Opinions and Expert Testimony	
1.	Opinion Testimony by Lay Witnesses (Rule 701).....	25
2.	Testimony by Experts (Rule 702)	25
3.	Bases of Opinion Testimony by Experts (Rule 703)	25
4.	Opinion on Ultimate Issue (Rule 704)	26
5.	Disclosure of Facts or Data Underlying Expert Opinion (Rule 705).....	26
H.	Article VIII. Hearsay	
1.	Definitions (Rule 801)	26
2.	Hearsay Rule (Rule 802).....	27
3.	Hearsay Exceptions, Availability of Declarant Immaterial (Rule 803)	27
4.	Hearsay Within Hearsay (Rule 805).....	28
I.	Article IX. Authentication and Identification (Not applicable)	
J.	Article X. Contents of Writings, Recordings and Photographs (Not applicable)	
K.	Article XI. Miscellaneous Rules	

1.	Title (Rule 1103).....	28
V.	Trial Procedures (TAB 4).....	29
VI.	Guidelines for Students (TAB 5)	33
	A. Students Acting as Attorneys & Witnesses.....	33
	B. Students Acting as Clerk/Bailiff.....	41
	C. Students Acting as Timekeeper	42
	D. Timekeeper Form.....	43
VII.	Guidelines for Teacher Coaches (TAB 6)	45
	A. Team Roster Form	49
VIII.	Guidelines for Attorney Coaches (TAB 7).....	51
IX.	Guidelines for Judges (TAB 8).....	53
	A. Sample Score Sheets.....	61
	B. Standards for Scoring.....	65
	C. Judge’s Timesheet.....	69
X.	Guidelines for Regional Coordinators (TAB 9)	71
	A. Competition Schedules	77
	B. Power-matching Explanation.....	85
	C. Sample Forms	97
XI.	2008 Mock Trial Case (TAB 10).....	103
	Affidavit of Warden Chris Wilhelm	109
	Affidavit of Andy Roe	115
	Affidavit of Ariel Bosque	117
	Affidavit of Lee Morgan Nash.....	123
	Affidavit of Renny Furglar	129
	Affidavit of Ricky Waschbaer	133

Mission Statement

The mission of the Wisconsin High School Mock Trial Program is to foster understanding and respect for the legal system and the rule of law.

Goals of mock trial

- to promote greater understanding and appreciation for the law, court procedures, and the American judicial system;
- to improve basic life skills, such as critical thinking, communication, and advocacy skills
- to improve communication and cooperation among community members, including students, teachers, government leaders, law professionals and citizens;
- to heighten appreciation for the principle of equal justice for all;
- to promote an awareness of current legal issues;
- to promote the exchange of ideas among students from throughout Wisconsin while providing a fun, rewarding and memorable experience of interaction.
- to foster teamwork, collaboration, and cooperation among young people of diverse interests and abilities.

Philosophy

Participation in the Wisconsin High School Mock Trial program is completely voluntary. The opportunity to actively participate in the learning process through healthy competition provides a unique educational opportunity for young people. The education of young people is a primary goal of the mock trial program. Involvement does, however, require a commitment on the participants' part to respect the goals and philosophy of the program.

For the purposes of the mock trial program, participants are defined as students, observers, teacher-coaches, attorney-coaches, coordinators and volunteer judges.

Participants are expected to demonstrate exemplary conduct both in and out of the courtroom during all mock trial-related functions. All participants must maintain standards of conduct that insure the respect of each participant.

As a means of diligent application of the Wisconsin Mock Trial Tournament's Rules of Competition, the Law-related Education Committee of the State Bar has adopted the following Code of Ethical Conduct for all participants:

Code of Ethical Conduct

§1 All participants and observers will promote and practice the ideals of good sportsmanship and show respect to the opposing team, observers, mock trial administrators, coordinators, judges, and other volunteers. Mock trial participants shall do all of the following:

- (a) Maintain a cordial and respectful demeanor and be guided by a fundamental sense of integrity and fair play in all mock trial activities.
- (b) Be civil in their dealings with one another and with the public and conduct all proceedings with civility and respect for each of the participants and facilities.

- (c) Abstain from making disparaging, demeaning or sarcastic remarks or comments about one another and abstain from any conduct that may be characterized as uncivil, abrasive, abusive, hostile, destructive or obstructive.
- (d) While participating in court, dress in a manner showing proper respect for the court, the proceedings and the law.
- (e) Advise team observers that proper conduct is expected within the courthouse and, where possible, prevent team members and non-team members from creating disorder or disruption.
- (f) Conduct themselves in a manner which demonstrates sensitivity to the necessity of preserving decorum and the integrity of the judicial process by adhering to courtesy, good manners and dignity.

§2 All participants will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know are wrong or in violation of the Rules, including the use of unfair extrapolations. Members will not willfully violate the Rules of the competition in spirit or in practice.

§3 Teacher Coaches agree to focus attention on the educational value of the Mock Trial Tournament. They shall discourage willful violations of the Rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition's Rules and this Code of Ethical Conduct.

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

§5 Presiding judges and evaluators are asked to observe the trials with an objective eye. Interjecting one's own personal style and biases is of no value in the education process. Team members have agreed to abide by the Rules and this Code in spirit and in practice; therefore, violations should result in a lowering of the score. All judges and evaluators promise to be prepared and knowledgeable about this Code of Ethical Conduct, the Rules of the competition, the problem, and the procedures.

§6 All participants are bound by all sections of this Code and agree to abide by the provisions. Teams are responsible for insuring that all observers are aware of the Code. Violations of the Code of Ethical Conduct will be grounds for reductions in team scores and can result in suspension or dismissal from the program by the regional coordinator or state coordinator.

Tournament Format TAB 1

TOURNAMENT FORMAT

I. REGIONAL FORMAT

A. Number of regions

For purposes of this tournament, the state will be divided into 14 - 16 regions, with each region sending one team to the state tournament. After the final entry date of **November 16, 2007**, teams will be notified of their assigned regions.

B. Size of Regions

In an attempt to even out the number of regions in the state and to accommodate the realities of our resources, the minimum number of teams registered in a region will be six teams and the maximum number of teams registered in a region will be fourteen. If there are fewer than six teams registered in one particular region by the final entry date, we will move those teams to the next closest region that can accommodate them. If an adjustment would make a region too large, those teams that are closest to the tournament site in question would stay and the overflow teams would then be moved to another region.

If a region falls under six teams **after** the drop deadline, we will attempt to make an adjustment but realize that this may or may not be possible.

C. Regional tournament overview

The regional tournament is a one-day event with each participating school assigned to one region. Each school is allowed up to two teams.

NOTE: Every attempt will be made to avoid having regions with an odd number of teams participating. [See **Rule 5.8** of the Rules of Competition for a more detailed explanation.]

Each team participates in four trials, alternating side presentation in subsequent rounds whenever possible. Your daily schedule is determined by random draw in the first round of competition. **(Please see the competition schedules in the coordinator section of the handbook.)** A modified version of power-matching will be used depending on the size of the regional tournament. Power-matching is used to pair teams against teams with like records that have not met previously. At the end of the day, the tournament coordinator compiles the win/loss record of each team. The team with the best overall win/loss record is the regional winner.

NOTE: If you are in a region with 10 or more teams, the last three rounds will be power-matched. If you are in a region with 8-9 teams, the last two rounds will be power-matched. If you are in a region with fewer than 8 teams, the final round will be power-matched. **This should help reduce the number of regions that end with tied teams.**

D. Team Presentation

Teams should be prepared for the possibility that they may have to play one side of the case three times. **Note:** Teams should never play a team they have previously gone against. If possible, they should also never go in front of judges they have previously seen.

Remember: If you have more than one team entered in the tournament, it is likely, and in most cases unavoidable, that your teams will end up competing against each other. There will be no attempt to avoid this possibility in any round of competition in the tournament. Random means exactly that – random!

E. Tied Teams

In the event of a tie, the tied teams play-off to determine the regional winner. If the teams have not met each other previously, side presentation is determined by a draw. If the teams have met each other previously, the team that won the earlier round between the tied teams is declared the regional champion.

If more than two teams are tied with the same overall win/loss record, all tied teams [*assuming they have not met previously*] play-off to determine the regional winner. *If some have met previously, see letter D above. If all tied teams have played each other previously, pairings are determined by random draw.* For example: Teams A, B, C and D have tied with 3-1 records. Assuming none of the tied teams have met each other previously, pairings are determined by random draw. The winners of the two rounds then play each other to determine who will represent that region at the state level. These final two teams play the side of the case opposite from that just completed, if possible.

In the event of a tie with an odd number of teams, the team that finished with the most judges' decisions receives a bye. If there is a tie with judges' decisions, then speaker points will determine which team receives a bye. The bye team plays the winner of the first round to determine the regional champion.

The play-offs are held on Saturday, February 16. The regional tournament coordinator determines the time and location. **Any team not able to play-off on that date forfeits.** *In emergency situations only, an alternative date option may be decided on a case-by-case basis.* Both teams must agree to the alternative date and the state mock trial coordinator must approve it.

The regional coordinator chooses **all** judges for the play-off.

The remaining teams at the regional level are ranked according to overall win/loss records, judges' ballots and performance points, in that order.

F. Scoring and score sheets

One teacher and attorney coach from different schools may assist the tournament coordinator in each region with scoring as requested. They may help the coordinator by double-checking scores and assisting with the pairings of the tied teams. They may also assist with power-matching if requested.

Scoring disputes are not appealable. Any disputes in scores must be resolved before you leave the regional competition site.

G. Appeals

Because power-matching and scoring are very closely linked, there is no satisfactory or timely solution to power-matching errors and scoring errors other than a complete redo of that particular tournament which is affected. Therefore, there will be no appeals allowed regarding power-matching or scoring errors. The only appeals heard will be strictly rules violations or violations of the Code of Conduct. [Please see the appeals form in the coordinator section of the handbook.]

Every effort will be made to ensure a successful and rewarding tournament experience for all those who participate. As in past years, every effort will continue to be made to ensure that the program is administered to the highest standard possible.

H. Forfeiture

If a regional championship team withdraws or refuses (forfeits its' right) to participate at the state tournament for any reason, the State Mock Trial Coordinator, with permission from the Mock Trial Advisory Board, has the authority to determine which, if any, team will participate in its place.

II. STATE FORMAT

A. Regional winners compete in the state tournament. The **state tournament** is a two-day event, with semi-final rounds on the first day and the final round on the second.

1. On the first day, each team competes in four trials. The first round is matched by random draw; the remaining rounds are power-matched. Power-matching is the standard system used at the National Mock Trial Championship. Under power-matching, teams are matched according to their win/loss records so they compete against other teams with similar records. This insures that teams in the final round met equally skilled teams in the semi-final rounds.
2. Teams' win/loss records, judges' decisions and cumulative points determine advancement and brackets. For example, the third round is matched according to the results of the first two rounds. The brackets are [2-0], [1-1]

and [0-2]. Judges' decisions and points are used to determine how teams will be matched within each win/loss bracket. If a tie exists at the end of the four rounds, the advancing two teams are the ones that have the highest achievement in the following categories, respectively: (1) win/loss records, (2) judges' decisions, and (3) cumulative points. Point spread against each opponent in each round is used to break ties within the bracket only.

During the tournament, each team presents both sides of the case. To the greatest extent possible, teams alternate side presentation in subsequent rounds. **However, power-matching assures bracket integrity over side presentation.** [Please see power-matching explanation in handbook.]

3. At the end of the day, the state coordinator compiles the win/loss record of each team. The two teams with the best win/loss records advance to the finals. Once the two teams have been announced, the decision is final. *There are NO appeals allowed following the announcement.*
4. The top two teams are judged by Justices from the Wisconsin Supreme Court on the following day. The winner of the final round is declared the state champion.
5. The state champion is eligible to participate in the national competition in Wilmington, Delaware in May. If the first place team cannot participate, the second place team is eligible. Should neither team be able to participate, the State Bar of Wisconsin will determine a participant. Each state may send up to eight students (six participating as witnesses and attorneys, and two alternates) to the national tournament.

Schools are encouraged to fund as much of their own expenses for the national tournament as possible. However, the State Bar of Wisconsin will donate \$1,000 to the state champion to help defray expenses.

Rules of the Competition TAB 2

COMPETITION RULES

The Wisconsin High School Mock Trial Competition is governed by the Rules of the Competition and the Wisconsin High School Mock Trial Rules of Evidence. Any clarification of rules or case materials will be issued in writing to all participating teams no less than two weeks prior to the regional and state tournaments.

I. RULES OF THE COMPETITION

A. ADMINISTRATION

Rule 1.1. Rules

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

Every team is responsible for knowing and following the rules. Teacher and attorney coaches are responsible for their team members. Minor, repeated or flagrant violations may result in reduction of your team's points during any given round or disqualification from the competition. The decision as to appropriate penalty is at the discretion of the site tournament coordinator.

All teams are responsible for the conduct of persons associated with their teams throughout the mock trial event.

Serious disciplinary infractions in any area of the program can result in suspension or dismissal from the program by the State Coordinator. Questions or interpretations of these rules are within the discretion of the State Coordinator, his/her designee, or the Appeals Panel, whose decision is final.

Rule 1.2. Code of Conduct

The Rules of the Competition, as well as proper rules of courthouse and courtroom decorum and security, must be followed. The Mock Trial Coordinator 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

In the event of an emergency that would cause a team to be unable to continue a trial or to participate with less than six members, the team must notify the tournament coordinator as soon as reasonably practical. If the coordinator, in his or her sole discretion, agrees that an emergency exists, he or she shall declare an emergency and will decide whether the team will forfeit or may direct that the team take appropriate measures to continue any trial round with less than six members. A penalty may be assessed.

A forfeiting team will receive a loss and points totaling the average number of the ballots and points equal to the average of its own ballots and points earned in subsequent rounds, if possible. The non-forfeiting team will receive a win and an average number of ballots and points totaling the average number of the ballots and points equal to the average of its own ballots and points earned in subsequent rounds.

The site coordinator will make final determination of emergency, forfeiture, reduction of points, or advancement.

Rule 1.4. Tournament Coordinators

Coordinators have the authority to establish the time and day and location for the mock trial competition. Participants must comply or withdraw from the tournament.

Rule 1.5. Attorney Coaches

Attorney Coaches with a child entered in the tournament can coach his or her child's mock trial team and may also act as a judge (if needed) for any of the trials during the tournament except those trials in which his or her child is competing. Attorney coaches will be asked to judge only in emergency situations.

Rule 1.6. Drop Deadline

Schools that drop a team after the drop deadline of **January 25, 2008** will be placed on probation the following year. Schools on probation will only be permitted to enter one team in the competition. If a school on probation drops a team after the deadline, the Mock Trial Advisory Board has the option of barring that school from competition the following year.

If a team drops out of the competition without notice after 5:00 p.m. the Thursday prior to competition for reasons other than "An Act of God", the school will not be allowed to compete for at least one year.

The Mock Trial Advisory Board reviews all appeals on the status of participation for those schools violating the drop policy.

B. THE CASE

Rule 2.1. The Case

The case is an original fact pattern that 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 case shall consist of three witnesses per side, all of whom shall have names and characteristics that would allow them to be played by either males or females. All three of the witnesses must be called and examined by each side.

Rule 2.2. Witnesses Bound by Statements

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. 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."

A witness is not bound by facts contained in other witness statements.

Rule 2.3. Unfair Extrapolation

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

If a witness is asked information not contained in the witness' statement during direct or re-direct examination, the answer must be consistent with the statement and may not materially affect the witness' testimony or any substantive issue of the case. If a witness is asked information not contained in the witness' statement during cross examination, the answer need not be consistent with the statement and may or may not materially affect the witness' testimony or any substantive issue of the case.

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. In the event the judge rules that an unfair extrapolation has occurred, the same number of points will be deducted by each performance judge with the penalties increasing per each subsequent violation.

The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

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 Team Conduct

All participants are expected to display proper courtroom decorum and sportsmanlike conduct and wear appropriate dress.

The selling of individual team merchandise during regional or state competitions is not permitted.

Rule 3.2. Team Eligibility

Teams competing in the Wisconsin High School Mock Trial Competition must be comprised of students enrolled in grades 9-12 at time of competition. This rule specifically prohibits those students who graduate in December or January, prior to competition, from participating. Students enrolled at a school that does not have a mock trial team may be permitted to participate on a team at a nearby school that does have a mock trial team as long as the school permits it and as long as the student meets all the other criteria for participation. Exceptions on eligibility issues are made on a case-by-case basis.

A team that earns a berth at the state tournament must be comprised of the same students (including alternates) that participated in the regional tournament. This rule specifically prohibits a school from choosing among students from two teams to select participants for the state team.

In emergency situations, one team member substitution will be allowed for participation at the state tournament with the state coordinator's prior permission.

Rule 3.3 Team Sponsor

Each school must have present at all times during State Bar sponsored competitions, its teacher coach or other school administrative staff person designated by the school to be responsible for the team(s).

Rule 3.4. Team Composition

Teams consist of **six** members assigned to roles representing the Petitioner/Plaintiff/Prosecution and defense/defendant sides. Also, teams may have up to six alternate members, whose duties may be assigned at the discretion of the team's coach(es). However, only **six** members may participate in any given round. Each team's timekeeper is considered part of the official team. [See Rule 3.5 and Rule 3.6 for further explanation.]

The Team Roster will become official at the time of **on-site** registration. After on-site registration, teams may not substitute any other persons for official team members.

Rule 3.5. Team Presentation

Teams must present both the Petitioner/Plaintiff/Prosecution and Defense/Defendant sides of the case, using six team members in each trial round. For each trial round, teams shall use three students as attorneys and three students as witnesses. Each team may have up to 12 students (including the timekeeper) with six students being used as alternates. Teams may switch positions from trial to trial but may not switch positions during a single trial.

Rule 3.6. Team Duties

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

In other words, the eight attorney duties for each team will be divided as follows:

1. Opening Statement
2. Direct Examination of Witness #1
3. Direct Examination of Witness #2
4. Direct Examination of Witness #3
5. Cross Examination of Witness #1
6. Cross Examination of Witness #2
7. Cross Examination of Witness #3
8. Closing Argument (including Rebuttal) [See Rule 4.5]

Opening Statements must be given by both sides at the beginning of the trial. The opening statement and closing argument must be given by different attorneys on each team.

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

Each team must call three witnesses. Witnesses must be called only by their own team and examined by both sides. Witnesses may not be recalled by either side.

Rule 3.7. Team Roster Form

Schools participating in the tournament must submit an original team roster to both the State Coordinator and regional coordinator by 3:00 p.m. on the Friday before the regional tournament. The roster form should include all team members, coaches and timekeeper. Each role should be clearly identified along with the team ID and school name. An official copy should also be submitted to the regional coordinator on the day of the regional tournament. **The Team Roster does not become official until it is turned in on the day of the regional tournament.** Your team roster becomes the official team roster for both regional and state competition during on-site registration at the regional tournament. Only those names appearing on the roster submitted at the regional tournament will be eligible for state participation should your team qualify. Please make sure you also identify your timekeeper on your roster. Your team rosters must be accurate when you turn them in on **February 9, 2008.**

Please have enough copies of the Team Roster Form (See form on page 49.) filled out prior to arrival at the courtroom for each round of competition. Teams must provide a completed roster form to the judges prior to each round of competition. Teams must be identified by the team identification number assigned at registration. No information identifying team origin should appear on the form. Before beginning a trial, the teams must exchange copies of the Team Roster Form. The roster form should identify the gender of each witness so references to such parties can be made in the proper gender.

Your team was assigned a team identification number at the beginning of the season. It is imperative that you do not switch your team ID number. This is how we record your team results. If there is any attempt to switch numbers, even if it is between your second team, you can and will be disqualified.

D. THE TRIAL

Rule 4.1. Courtroom Setting

The (Petitioner/Plaintiff/Prosecution) team shall be seated closest to the jury box. No team shall rearrange the courtroom without prior permission of the judge.

Teams should be in their assigned courtrooms no later than ten minutes prior to the starting time of each trial. If a team has not arrived ten minutes after the scheduled starting time, the presiding judge may declare a forfeit. Extenuating circumstances, such as weather conditions, may be taken into consideration by the judge.

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 solemnly swear to tell the truth, the whole truth, and nothing but the truth?"

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate all witnesses are assumed to be sworn, or the above oath will be conducted by (a) the presiding judge, (b) a bailiff provided by one of the teams; or (c) the examining attorney. Witnesses may stand or sit during the oath.

Rule 4.5. Trial Sequence and Time Limits

Each team is given a total of 40 minutes to present its case. It is up to each team to decide how it wants to use its time allotment. The following are guidelines to be used in preparing your arguments.

The trial sequence and suggested (not mandatory) time limits are as follows:

1. Opening Statement (3 minutes per side)
2. Direct and Redirect (optional) Exmn. (20 minutes per side)
3. Cross and Recross (optional) Exmn. (15 minutes per side)
4. Closing Argument (2 minutes per side)

The (Petitioner/Plaintiff/Prosecution) gives the opening statement first. The (Petitioner/Plaintiff/Prosecution) gives the closing argument first and the (Petitioner/Plaintiff/Prosecution) may reserve a portion of its closing time for a rebuttal. The (Petitioner/Plaintiff/Prosecution's) rebuttal is limited to the scope of the Defense's closing argument.

Rule 4.6. Timekeeping

Time limits are mandatory and will be enforced. The judges are instructed to take into account a team's adherence to the total time allotment when making performance evaluations. Thus, it is to each team's advantage to have an accurate timekeeper and to keep its presentation within the 40-minute allotment.

Each team is required to have its own timekeeper. You may use one timekeeper per trial if both sides agree prior to trial. The timekeeper should use a stopwatch [not a watch] to keep time. **This person is considered part of the official team and therefore, cannot be a teacher or attorney coach.**

Timekeeping aids are allowed as long as they are not disruptive in any way.

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.

NOTE: Time **does not stop** for introduction of exhibits or for teams requesting time to regroup.

Rule 4.7. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. However, teams will have points deducted for going over the time limit. Judges are instructed to communicate time violations to the tournament coordinator. The tournament coordinator is responsible for deducting points for teams going over the allotted time. The point deductions (per score sheet) are:

TIME VIOLATION:	POINT DEDUCTION:
less than one minute	one point
one-two minutes	two points
two-three minutes	three points
three-four minutes	four points
four-five minutes	five points
over five minutes	10 points

Rule 4.8. Motions Prohibited

No motions may be made other than motions to strike testimony after a sustained objection and motions to admit documentary evidence (i.e. "I move the admission of Exhibit 1.").

In the event of an emergency, a recess may be called. Should a recess be called, teams are not to communicate with any observers, coaches, or judges.

Rule 4.9. Sequestration

Teams may not invoke the rule of sequestration.

Rule 4.10. Bench Conferences

Bench conferences may be granted at the discretion of the presiding judge, but should be held from the counsel table in the educational interest of handling all matters in open court.

Rule 4.11. Supplemental Material/Costuming

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.

Rule 4.12. Trial Communication

Coaches, 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 time that may occur. Team members may communicate, among themselves, during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

Coaches, alternates, and observers must remain outside the bar in the spectator section of the courtroom and may not communicate with any member of their participating team during competition [which includes any breaks that may occur in the trial]. Only team members participating in this round may sit inside the bar and communicate with each other.

Coaches, team members and observers are prohibited from discussing any other team's performance with coaches from other schools and other teams (including their own) that have not yet competed against the team observed.

You may not discuss your team's performance or any other teams' performance with any of the judges during the competition, which includes breaks and recesses. It is also **not** permissible to contact a judge after the tournament at his/her home or place of business.

Rule 4.13. Viewing a Trial (Revised)

Team members, alternates, attorney/coaches, teacher/coaches, and any other persons directly associated with a mock trial team, except for those authorized by the State Coordinator, are not allowed to view other teams' performances in the competition, as long as their team remains in the competition. Teams are responsible for making sure their team observers understand and comply with this rule.

Whenever possible, teams should try to sit behind their own team members in the courtroom during the trial and NOT behind the other team's participants. Remain seated during the entire trial and do not rove in and out during the trial.

For those coaches with two or more teams in the tournament, please stay with one team during an entire trial. However, you may move between teams between rounds.

In bye round situations, a team receiving a bye is not to observe other teams in competition during that round.

Rule 4.14. Videotaping/Photography

During rounds at the regional and state semi-finals, teams may videotape and/or audiotape their trials if allowed by the presiding judge and if:

- Video cameras are allowed in the courthouse
- The video camera is used from one location in the audience only
- The videotaping/audiotaping does not disrupt the trial in any way
- Tape recorder is placed at counsel table or in the audience

If your school videotapes/audiotapes a trial between your team and another school's team, and both teams are in a play-off round to determine the regional winner, the tape of that round must be turned over to the regional coordinator until the play-off round is complete. The tournament coordinator will return it to your team after the regional champion has been declared.

The State Bar of Wisconsin will record the state finals in the Supreme Court and will provide DVD's to the teams in the state tournament.

Photography by the media/coordinators will be allowed at all levels of competition; however, the taking of photos must not interfere with the trial in process. Photos will be taken from outside the bar. The use of flash will not be permitted. **Note:** When taking photos using a digital camera, please put your camera in the "silent mode" when used during the trial.

Rule 4.15. Jury Trial

The case will be tried to a jury; arguments are to be made to judge and jury. Teams may address the scoring judges as the jury. *(This rule may vary from year to year depending on the case.)* In 2008, the case will be tried to a jury.

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 closing arguments.

Rule 4.18. Objections

Objections should be limited to those contained in the Rules of the Competition and the Wisconsin High School Mock Trial Federal Rules of Evidence.

1. Opinion: Counsel is asking the witness to give an opinion for which she has not been qualified."

2. Speculation: Counsel is asking the witness to speculate in order to answer the question."
3. Evidence outside the scope of mock trial case materials: Counsel is seeking to introduce an exhibit or document (or present legal or other authorities, or present testimony) that creates a material fact outside the record in this case. This is in conflict with the rules of the competition, and is, therefore, improper."
4. Narrative: Questions must be stated so as to call for a specific answer. (Example of improper question: "Tell us what you know about this case.")
5. Asked and answered: 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.
6. Non-Responsive: A witness' answer is objectionable if it fails to respond to the question asked.
7. 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 reasonable supported by evidence (sometimes called a "hypothetical question").
8. Argumentative Questions. Attorneys shall not ask argumentative questions. However, the court may, in its discretion, allow limited use of argumentative questions on cross-examination.
9. Lack of Proper Predicate/Foundation. Attorneys shall lay a proper foundation prior to moving the admission of evidence or asking a witness for an expert or lay opinion. After a motion has been made to admit an exhibit, the exhibit may still be objected to on other grounds.

Offer of Proof: If an objection is sustained to evidence that you consider vital to the case, or evidence that would be important for an appellate court's review, especially in a jury trial, you may wish to make an "offer of proof" to place the evidence on the record outside the jury's hearing.

Teams are not precluded from raising additional objections which are available under the Wisconsin High School Mock Trial Federal Rules of Evidence, however, teams should not go beyond these materials to master the Wisconsin Evidence Statutes. If an opposing team goes beyond these rules, this paragraph should be brought to the attention of the presiding judge. Judges are instructed to deduct points for inappropriate objections.

Winning or losing the ruling on an objection is not what is important, but rather the team's knowledge of the rules. Also important are how the team reacts to the decision of the

presiding judge, the presentation of the objection and the opponent's response (both verbally and strategically) to the objection and to the court's ruling.

Rule 4.19. Ruling on Objections

Judges will be instructed to handle objections in the following manner: the objection will be stated, the opposing team will respond, the objecting team will reply and the judge will rule on the objection. It is to your team's advantage to make substantive objections and not use objections as a team strategy.

Rule 4.20 Expert Witness Testimony (Revised)

Whether a witness is qualified to offer an expert opinion is an issue of proper foundation, which is subject to objection, and credibility, which is determined by the jury or other fact finder.

Therefore, when a witness is being asked to give an expert opinion, the judge shall not declare or recognize the witness an expert. The attorney for the witness must lay proper foundation to ask the expert opinion and the opposing attorney may make any appropriate objections. See Rules of Evidence, Article VII. The judge may rule on the objections.

Rule 4.21. Procedure for Introduction of Exhibits

(Remember, timing does NOT stop during this process.)

As an example, the following steps effectively introduce evidence:

1. All evidence will be pre-marked as exhibits.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No. ___?"
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness.
5. "I now hand you what has been marked as Exhibit No. ___ for identification."
6. Ask the witness to identify the exhibit. "Would you identify it please?"
7. Witness answers with identification only.
8. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. ___ into evidence at this time. The authenticity of this exhibit has been stipulated."
9. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)

10. Opposing Counsel: "No, your Honor," or "Yes, your Honor." If the response is "yes," the objection will be stated on the record. Court: "Is there any response to the objection?"
11. Court: "Exhibit No. ___ is/is not admitted."

Rule 4.22. Use of Notes

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes or case materials while testifying during the trial except for proper evidentiary purposes (i.e. identifying exhibits, refreshing recollection, impeachment etc.). Attorneys may consult with each other and witnesses at counsel table verbally or through the use of notes.

Rule 4.23. Redirect/Recross

Redirect and Recross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Wisconsin High School Mock Trial Federal Rules of Evidence.

Rule 4.24. Scope of Closing Arguments

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

Rule 4.25. The Critique

The judging panel is allowed nine minutes for debriefing. The timekeeper(s) will monitor the critique following the trial. Judges shall not make a ruling on the legal merits of the trial. Judges may not inform the students of score sheet results.

Presiding judges are to limit critique sessions to a combined total of nine minutes. There is **NO** critique after the fourth round.

E. JUDGING AND TEAM ADVANCEMENT

Rule 5.1. Finality of Decisions

All decisions of the judging panel are FINAL.

Rule 5.2. Composition of Judging Panels

The judging panel will consist of three individuals: one presiding judge and two attorney scoring judges (all three of whom complete score sheets).

All presiding and scoring judges receive the mock trial manual, a memorandum outlining the case, orientation materials, and a briefing in a judges' orientation.

The Championship round will consist of Justices from the Wisconsin Supreme Court.

Rule 5.3. Score Sheets/Ballots

The term "ballot" will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term "score sheet" is used in reference to the form on which speaker and team points are recorded. Score sheets are to be completed individually by the

scoring judges. Scoring judges are bound by the rulings of the presiding judge. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives two of the three ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the judging panel may deliberate on any special awards (i.e., Outstanding Attorney/Witness - *if given*) the judging panel should not deliberate on individual scores.

Rule 5.4. Completion of Score Sheets

Each scoring judge shall record a number of points (1-10) for each portion of the trial. At the end of the trial, each scoring judge shall total the sum of each team's individual points, place this sum in the Column Totals box, and enter the team ("P" for Petitioner/Plaintiff/Prosecution or "D" for defense/defendant) with the higher number of points in the Tiebreaker Box. NO TIE IS ALLOWED IN THE COLUMN TOTALS BOXES.

In the event of a mathematical error in tabulation by the scoring judges which, when corrected, results in a tie in the column Totals boxes, the Tiebreaker Box shall determine award of the ballot.

Rule 5.5. Team Advancement

Teams will be ranked based on the following criteria in the order listed:

1. Win/Loss record - equals the number of rounds won or lost by a team;
2. Total number of ballots - equals the number of scoring judges' votes a team earned in preceding rounds;
3. Total number of points accumulated in each round;
4. Point spread against opponents - The point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round and is only used to break a tie. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

Rule 5.6. Power Matching/Seeding - State Tournament

A random method of selection will determine opponents in the first round. A power-match system will determine opponents for all other rounds. The two teams emerging with the strongest record from the four rounds will advance to the final round. The first-place school will be determined by ballots from the championship round only.

A modified version of power-matching will be used at the regional tournaments in regions with fewer than 10 teams.

Power matching will provide that

1. pairings for the first round will be at random;
2. all teams are guaranteed to present each side of the case at least once;
3. brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order: (1) win/loss record; (2) ballots; (3) speaker points; and (4) point spread – only used to break tie. The team

- with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;
4. if there is an odd number of teams in a bracket, the team at the bottom of that bracket will be matched with the top team from the next lower bracket;
 5. teams will not meet the same opponent twice;
 6. to the greatest extent possible, teams will alternate side presentation in subsequent rounds. Bracket integrity in power matching will supersede alternate side presentation. It is possible that your team may end up playing one side of the case three times.

Rule 5.7. Selection of Sides for Championship Round – State Tournament

In determining which team will represent which side in the championship round, the following procedure may be used:

1. The team with the number code that comes first numerically will be considered the "Designated Team."
2. A designee of the state coordinator will toss the coin.
3. If the coin comes up heads, the designated team shall represent the (Petitioner/Plaintiff/Prosecution) in the championship round. If the coin comes up tails, the designated team shall represent the defendant.

Rule 5.8. Effect of Bye/Default

During the tournament every attempt will be made in each region to avoid having an odd number of teams participate. This will take cooperation from coordinators and schools. Therefore, there may be juggling of teams from region to region in order to avoid having an odd number of teams.

Every attempt will be made to make the regions even but it is impossible for us to predict situations that arise when teams drop out. This is where cooperation will be crucial. Third teams may be asked to fill out a region to avoid a bye situation.

Bye rounds are to be avoided if at all possible. In the event that we are unable to even out the regions, forcing the regional to utilize a bye round situation — a "bye" becomes necessary when an odd number of teams are present for the tournament — the team drawing a bye will win that round by default. The bye team, in rounds two through four, will be given a win and the number of ballots and points equal to the average of its own ballots and points earned in its other rounds. [See power-matching explanation in the tournament coordinator section of handbook.]

F. DISPUTE RESOLUTION

Rule 6.1. Reporting a Rules Violation/Inside the Bar

Disputes, which 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 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 only with the other five participating team members before lodging the notice of dispute or in preparing the form.

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

Rule 6.2. Dispute Resolution Procedure/Inside the Bar

The presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce her/his decision to the court, retire to complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's spokesperson three minutes for a presentation. The judge may question the spokespersons. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. The presiding judge may consult with the performance judges prior to ruling on the dispute. That decision will be recorded in writing on the dispute form with no further announcement.

Rule 6.3. Effect of Violation on Score

If the presiding judge determines that a substantial rules violation has occurred, the judge will inform the scoring judges of the dispute and direct the scoring judges to deduct the number of points determined by the presiding judge to be appropriate. The scoring judges will consider the dispute before reaching their final decisions. The dispute may or may not affect the final decision.

Rule 6.4. Reporting of Rules Violation/Outside the Bar

Disputes that occur outside the bar only during a trial round may be brought by teacher or attorney-coaches exclusively. Such disputes must be made promptly to a trial coordinator who will ask the complaining party to complete a dispute form. The tournament coordinator will (a) notify all pertinent parties; (b) allow time for a response, if appropriate, and (c) rule on the

dispute. The tournament coordinator may notify the judging panel of the affected courtroom of the ruling on the dispute or may assess an appropriate penalty.

The tournament coordinator may consult with any person(s) of his or her choosing in ruling on disputes.

Rule 6.5 Appeals Process - Regional Tournaments Only

The tournament coordinator in each region has the authority to handle disputes during the regional tournament. Every effort should be made to resolve disputes on the day of the tournament. However, any dispute that arises during the course of the day or at the end of the day that the tournament coordinator is not able to resolve may or may not be eligible for appeal.

Every attempt must be made to resolve any dispute during the course of the day or at the end of the day. The Appeals Panel will not overturn a decision previously made by the regional coordinator nor will it consider matters that were not first directed to the regional coordinator except in extraordinary circumstances.

Power-matching results and scoring adjustments are not subject to appeal. All scoring adjustments must be made prior to leaving the regional competition. [i.e. errors in tabulating score sheets]

Appeals (other than scoring and power-matching which are non-appealable) must be filed with the state coordinator, either by fax or email, by 10:00 a.m. on Monday morning following the regularly scheduled tournament. *Materials faxed or emailed should not exceed three (3) pages in length.* In addition, the appellant must provide a copy of the materials to each respondent attorney and teacher coach and the regional coordinator. Respondent(s) must reply to the State Coordinator no later than Tuesday at 10:00 a.m. and must provide copies of the response and any other relevant materials to each appellant attorney and teacher coach and the regional coordinator. [See form in coordinator section of the handbook.]

The Appeals Panel (consisting of the State Coordinator and/or at least three members of the Mock Trial Advisory Board) will rule on the appeal by 5:00 p.m. Tuesday and all parties, including the regional coordinator, will be notified.

Federal Rules of Evidence TAB 3

WISCONSIN HIGH SCHOOL MOCK TRIAL FEDERAL RULES OF EVIDENCE

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

Article I. General Provisions

Rule 101. Scope

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

Rule 102. Purpose and Construction

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

Article II. Judicial Notice - Not applicable

Article III. Presumptions in Civil Actions and Proceedings - Not applicable

Article IV. Relevancy and its Limits

Rule 401. Definition of "Relevant Evidence"

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

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

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

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

Although relevant, evidence may be excluded if its probative value is 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

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

- (1) Character of accused -- Evidence of a pertinent character trait offered by an accused or by the prosecution to rebut same;
- (2) 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;
- (3) Character of witness -- Evidence of the character of a witness as provided in Rules 607, 608 and 609.

(b) Other crimes, wrongs, or acts -- Evidence of other crimes, wrongs, or acts is not admissible to prove 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

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

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

Rule 406. Habit; Routine Practice

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

(2) Method of Proof. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

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

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

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of nolo contendere;

- (3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the forgoing pleas; or
- (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty, or which result in a plea of guilty that is later withdrawn.

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

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

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

Rule 608. Evidence of Character and Conduct of Witness

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

(b) Specific instances of conduct. -- Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as

provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination with respect to matters related only to credibility.

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

(a) 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.

(b) Time Limit. -- Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines 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.

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

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

(b) Scope of cross examination. -- *The scope of cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.*

(c) Leading questions. -- Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions 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.

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

Rule 612. Writing Used to Refresh Memory

If a 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 (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.

Rule 704. Opinion on Ultimate Issue

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

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

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

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

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

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

(b) **Declarant.** -- A "declarant" is a person who makes a statement.

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

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

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

(2) **Admission by a party-opponent.** -- The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Rule 802. Hearsay Rule

Hearsay is not admissible, except as provided by these rules.

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

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

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

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

(4) Statements for purposes of medical diagnosis or treatment. -- Statements made for the purpose 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.

(18) Learned treatises. -- To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.

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

(22) Judgment of previous conviction. -- Evidence of a 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 805. Hearsay within Hearsay

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

ARTICLE IX - Authentication and Identification - Not applicable.

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

ARTICLE XI - Miscellaneous Rules

Rule 1103. Title.

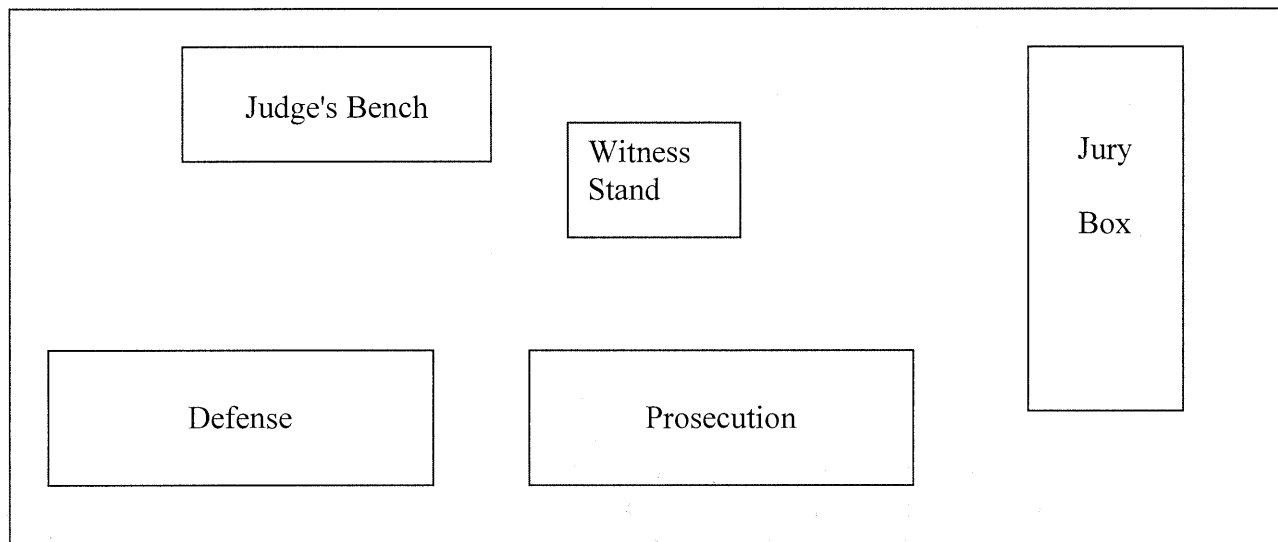
These rules may be known and cited as the *Wisconsin High School Mock Trial Federal Rules of Evidence*.

Trial Procedures TAB 4

TRIAL PROCEDURES

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom, as well as with the events that generally take place during the trial and the order in which they occur. This year's mock trial case will be handled as a trial before a jury. You are to treat the presiding and performance judges as if you were addressing a jury.

I. A TYPICAL COURTROOM LAYOUT



II. PARTICIPANTS

- A. The Judge or Judges
- B. The Attorneys
 - 1. Prosecution and Defense (Criminal Case)
 - 2. Plaintiff/Petitioner and Defendant/Respondent (Civil Case)
- C. The Witnesses for each side
- D. The Clerk/Bailiff
- E. Court Reporter

III. STEPS IN A MOCK TRIAL

A. The Opening of the Court

1. The Bailiff will call the Court to order by announcing: "All rise for the Honorable Judges _____, _____ and _____. The Circuit Court of Clearwater County is now in session. The Honorable Judge _____ presiding." All participants should remain standing until the judges are seated.

The case will be announced, i.e., "The Court will now hear the case of "*State of Wisconsin v. Lee Morgan Nash*," and the judge will ask the attorneys for each side if they are ready.

B. Opening Statements

1. Prosecution/Plaintiff/Petitioner
 - a. Standing at counsel table or lectern, the attorney introduces himself or herself and colleagues to the judge, and summarizes the evidence that will be presented to support the case.
2. Defense/Respondent
 - a. Standing at counsel table or lectern, the attorney introduces himself or herself and colleagues, and summarizes the evidence that will be presented to rebut the case made by the prosecution.

C. Direct Examination by Prosecution/Plaintiff/Petitioner's Attorneys

1. The attorneys call their witnesses and conduct direct examination in order to present testimony and other evidence to prove their case.

D. Cross-Examination by Defense's Attorneys

1. After the attorney for the prosecution has completed questioning a witness, the judge allows the defense's attorney to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of the plaintiff's witnesses.

E. Redirect by Prosecution/Plaintiff/Petitioner's Attorneys

F. Recross by Defense's Attorneys

G. Direct Examination by Defense's Attorneys

1. After both sides have examined all prosecution witnesses, the defense witnesses are called for questioning.

H. Cross-Examination by Prosecution/Plaintiff/Petitioner’s Attorneys

1. Cross-examination of each of the defense witnesses follows the same pattern as cross-examination of the prosecution witnesses.

I. Redirect by Defense Attorneys

J. Recross by Prosecution/Plaintiff/Petitioner’s Attorneys

K. Closing Arguments

1. Prosecution/Plaintiff/Petitioner
 - a. The attorney should stand, address the judge and review the case. The review should indicate how the evidence has satisfied the elements of the charge or claim, point out the law applicable to the case and ask for a favorable verdict.
2. Defense/Respondent
 - a. The defense's attorney should stand, address the judge and also review the case, stressing the evidence and the law favorable to the defense's case and asking for a verdict favorable to the defense.
3. Rebuttal
 - a. Rebuttal closing argument by the prosecution/plaintiff/petitioner’s attorney is permitted (subject to time limitations).

L. Deliberations

1. The presiding judge may confer with the performance judges before reaching a decision as to which team gave the better overall performance.

Guidelines for Students TAB 5

GUIDELINES FOR STUDENTS

STUDENTS ACTING AS ATTORNEYS AND WITNESSES

These guidelines provide information for students as they prepare to be witnesses and attorneys in mock trials. Students are responsible for preparing their own roles and should not use material that has been prepared by their coach or coaches. While assistance in preparing for your role is expected and encouraged, students are responsible for preparing their own material.

A. GENERAL SUGGESTIONS

1. Always be courteous to witnesses, other attorneys, and the judges.
2. Rise when addressing the judge.
3. Direct all remarks to the judge or witness, not to opposing counsel.
4. Don't make objections unless you are relatively sure that the judge will agree with you. Judges don't appreciate attorneys who constantly make objections or attorneys who make objections without being able to explain the reason for them.
5. If the judge rules against you on a point or in the case, accept the defeat gracefully and act cordially toward the judge and the opposing team.

B. ATTORNEYS

1. OPENING STATEMENTS

- a. Objective: To acquaint the judge with the case and to outline what you are going to prove through witness testimony and the admission of evidence.
- b. What Should Be Included
 - (1) A short summary of the facts;
 - (2) Mention of the burden of proof (the amount of evidence needed to prove a fact) and who has the burden in this case;
 - (3) The applicable law;
 - (4) A clear and concise overview of the witnesses and physical evidence that you will present and how each will contribute to proving your case.

- c. Advice in Presenting
 - (1) Appear confident in your case.
 - (2) Use eye contact when speaking to the judge.
 - (3) Use the future tense in describing what you will do (i.e., "The facts will show," or "Our witnesses' testimony will prove").
 - (4) Do not read too much. Look up occasionally at the judge.
- d. Other Suggestions
 - (1) Learn your case thoroughly (facts, laws, burden of proof, etc.).
 - (2) Avoid too much narrative detail about witness testimony. Avoid exaggeration and overstatement of facts that may not be proven.

2. DIRECT EXAMINATION

- a. Objective: To obtain information from favorable witnesses you call in order to prove the facts of your case, to present your witness to the greatest advantage, to establish your witness's credibility and to present enough evidence to warrant a favorable verdict.
- b. What Should Be Included
 - (1) Isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information.
 - (2) Be sure that all items you need to prove your case will be presented through your witnesses.
 - (3) Use clear and simple questions.
 - (4) Never ask a question to which you don't know the answer.
- c. Advice in Presenting
 - (1) Try to keep to the questions that you've practiced with your witnesses and ask a limited number of questions.
 - (2) Be relaxed and clear in the presentation of your questions.

- (3) Listen to the answers.
- (4) If you need a moment to think, don't be afraid to ask for a moment to collect your thoughts, or to discuss a point with your co-counsel.
- (5) Be sure to have all documents marked for identification before you refer to them at trial. Then refer to them as Exhibit 1, or Exhibit A, etc. After you have finished using the exhibit, if it helps your case, ask the judge to admit it as evidence. [See "Rules of Competition," The Trial, Rule 4.21], for procedures regarding introduction of evidence.)

d. Other Suggestions

- (1) Avoid asking leading questions.
- (2) Practice with your witnesses.
- (3) When your facts are in evidence, stop questioning. Say "No further questions" or "Your witness."

3. CROSS-EXAMINATION

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

b. Types of Questions to Ask

- (1) Questions that reflect on the witness's credibility by showing that he or she has given a contrary statement at another time (for example, the witness first testifies to not being at the scene of an accident and later admits to being there). When such an inconsistency arises, ask the witness, "Did you make this statement on June 1st?" Then read it or show a signed statement to the witness and ask, "Is this your statement?" Then ask the witness to read part of it aloud or read it to the witness yourself and ask, "Did you say that?"
- (2) Questions that show that the witness is prejudiced or biased or has a personal interest in the outcome (i.e., the witness testifies that the defendant was her landlord and evicted her).
- (3) Questions that weaken the testimony of the witness by showing that his or her opinion is questionable (i.e., the witness with poor eyesight claims to have observed all the details of a fight that took place 50 feet away in a crowded bar).

- (4) Questions that show that an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or experience (i.e., a high school student or even a dentist testifying that in her opinion the defendant suffers from a chronic mental disease).

c. Advice in Presenting

- (1) Be relaxed and ready to adapt your prepared questions to the actual testimony given during the direct examination.
- (2) Always listen to the witness's answer.
- (3) Avoid giving the witness an opportunity to re-emphasize the points made against your case during direct examination.
- (4) If the witness is in fact "hostile," don't give him or her an opening to explain anything. Keep to the "yes" or "no" answers whenever possible. Try to stop the witness if his or her answer or explanation is to hurt your case, by saying, "You may stop there. Thank you," or "That's enough. Thank you."
- (5) Don't harass or attempt to intimidate the witness.
- (6) Don't quarrel with the witness.

d. Other Suggestions

- (1) Anticipate each witness's testimony and write your questions accordingly, but be ready to adapt your questions at trial depending on the actual testimony.
- (2) In general, ask only leading questions (questions that suggest the answers and normally only require a yes or no answer).
- (3) Be brief. Don't ask so many questions that well-made points are lost.
- (4) Prepare short questions using easily understood language.
- (5) Ask only questions to which you already know the answer.

4. CLOSING ARGUMENTS

- a. Objective: To provide a clear and persuasive summary of the evidence you presented to prove the case, along with the weaknesses of the other side's case, and to argue for your position.
- b. What Should Be Included
 - (1) Thank the judge for his or her time and attention.
 - (2) Isolate the issues and describe briefly how your presentation addressed these issues.
 - (3) Review the witnesses' testimony and physical evidence. Outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses.
 - (4) Argue your case by stating how the law applies to the facts as you have proven them.
 - (5) Remind the judge of the required burden of proof. If you have the burden, you must convince the court you have met it. If you do not, you must convince the court that the other side has failed to meet its burden.
- c. Advice in Presenting
 - (1) Do not read all the way through. Keep eye contact with the judge or at least look up occasionally.
 - (2) Be an advocate--forcefully urge your point of view. Avoid a boring review of the facts.
 - (3) Argue your side, but don't appear to be blind to the other side's arguments. Fairness is important.
 - (4) Be very careful to adapt your statement at the end of the trial to reflect what the witnesses actually said and what the physical evidence showed.

C. WITNESSES

1. GENERAL SUGGESTIONS

- a. If you are going to testify about records or documents, familiarize yourself with them before coming to trial.

- b. When answering questions, speak clearly so that you will be heard.
- c. Listen carefully to the questions. Before you answer, make sure you understand what has been asked. If you do not understand, ask that the question be repeated or clarified.
- d. If the judge interrupts or an attorney objects to your answer, stop answering immediately. Likewise, if an attorney objects to a question, do not begin your answer until the judge tells you to do so.

2. DIRECT EXAMINATION

a. Advice in Preparing

- (1) Learn the case thoroughly, especially your witness statement.
- (2) Review your testimony with your attorney. Know the questions that your attorney will ask, and prepare clear and convincing answers that contain the information the attorney is trying to get you to provide.

b. Advice in Presenting

- (1) Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.
- (2) Don't recite your witness statement verbatim. You should know its content beforehand so that you can paraphrase it or put it in your own words, but be sure that your testimony is never inconsistent with, nor a material departure from, the facts set forth in your affidavit. [See "Competition Rules," Rule 2.2.]

3. CROSS-EXAMINATION

a. Advice in Preparing

- (1) Anticipate what you will be asked on cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, inconsistencies or problems in your testimony and be prepared to explain them as best you can.
- (2) Practice with your attorney, asking him or her to act as opposing counsel.

b. Advice in Presenting

- (1) Be as relaxed and in control as possible - an appearance of confidence and truthfulness is important. Speak loudly and clearly enough to be heard by the judges.
- (2) Don't panic if the attorney or judge asks you a question that you haven't rehearsed. Don't be afraid to buy time by saying something like "Excuse me just a moment while I try to remember."
- (3) Be sure that your testimony is never inconsistent with, nor a material departure from the facts set forth in the witness statement. Minor and inconsequential embellishments are acceptable as long as they can be reasonably inferred from the fact statement. If asked on cross-examination to testify about information that is not a part of the case materials, you may invent an answer that is consistent with the other affidavits and facts in the trial. This is in fact an opportunity to create an answer helpful to your side.

Keep in mind that such an answer can be disruptive when the other side objects, and may even open the door to the judge issuing an adverse special ruling against you. The wiser course may be to respond in character, but with an innocuous answer, such as "I don't remember" or "I don't believe I can answer that question, would you please rephrase it?" If pressed, you may still prefer to step out of character and say "I don't know. That's not included in the case materials."

STUDENTS ACTING AS CLERK/BAILIFF

An alternate from either team should be prepared to act as the clerk/bailiff. If an alternate is not available, a performance judge may be asked to act as the clerk/bailiff.

The clerk/bailiff is responsible for the following:

1. The opening and closing of court and all court recesses.

The clerk/bailiff enters the room and calls out: "All rise for the Honorable Judges _____, _____, and _____. The Circuit Court of Clearwater County is now in session. The Honorable Judge, _____, presiding."

All participants should remain standing until the judges are seated. The judge asks the bailiff to call the day's calendar, at which point the bailiff says, "Your Honor, today's case is *State of Wisconsin v. Lee Morgan Nash*." The judge then asks if the attorneys for each side are ready. [See Trial Procedures.]

2. The swearing in of all witnesses. (For mock trial purposes the oath has been modified.) "Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?"
3. The marking of all exhibits entered into court. (Please see the presiding judge prior to the trial for instructions on this procedure.)

STUDENTS ACTING AS TIMEKEEPER

Each team should be prepared to furnish a timekeeper for each trial. However, you may use one timekeeper per trial if both sides agree prior to trial. Please remember the timekeeper cannot be a teacher or attorney coach. The timekeeper is also considered part of your 12-member team.

If acting as timekeeper for one or both teams, the timekeeper should meet with the team(s) prior to trial to clarify timing procedures and to confirm those elements in the trial that are not timed.

- a. The timekeeper must use a stopwatch to enforce time.
- b. As explained in the competition rules, each team has a total allotment of 40 minutes. Interruptions during the trial, such as objections, rulings on objections, witnesses being sworn in or bench conferences, do not count against each team's 40 minute time limit.
- c. For direct and cross-examination, only the time spent by attorneys asking questions and witnesses answering them should be recorded. Time when witnesses are being sworn in, attorneys are making objections, judges are ruling on objections, etc., should not be recorded.

Do not time:

Objections
Rulings on objections
Swearing of witnesses
Bench Conferences

Time:

Introduction of Exhibits
Requests for time extensions, breaks, etc.
Judge's Debrief after trial

The Timekeeper Form on the next page is a good example of how to keep track of time during the trial. Timekeeper Forms will be given to timekeepers at both the regional and state tournaments.

Guidelines for Teacher Coaches TAB 6

GUIDELINES FOR TEACHER COACHES

A. ROLE OF THE TEACHER COACH

The teacher coach is expected to help the team members decide which students will play which parts in the mock trial and to assist the students in playing those roles. As part of the sizeable responsibility of acting as team coaches, teachers are responsible for the following areas:

1. Rules of the Program. All teachers and teams are expected to adhere to the rules, facts, and materials provided in the 2008 Mock Trial Competition Case Materials. Therefore, please make sure you are familiar with the tournament rules.
2. Role Assignments. Team members should be strongly encouraged to select roles based on their interests and abilities and not on the basis of any gender or cultural stereotypes which might be drawn from the characterizations in the fact pattern.
3. Team Preparation. Attorneys will also help coach each team. Teams should prepare both sides of the case and are strongly urged to arrange and conduct preliminary mock trials with other teams prior to competing in the regional tournament. However, in keeping with the spirit of the mock trial program, students are strongly encouraged to do their own work. It is **not** the role of the teacher coach to prepare material for the student's use.
4. Courtroom use. The mock trial program is privileged to have the use of most county courthouses in the state. We must respect that privilege by taking care of the courtrooms and buildings that we use. Our program can not continue to operate without the cooperation of each and every participant in this program. The mock trial program can not afford to pay for items that get broken either during scrimmages or during competitions. Should these situations arise again, each school will be assessed a penalty fee to help offset the expenses associated with the damages.
5. Education. Education of students is the primary goal of the Mock Trial Competition. Healthy competition helps to achieve this goal, but teachers are reminded of their responsibility to keep the competitive spirit at a reasonable level. The reality of the adversarial system is that one party wins and the other loses, and teachers should be sure to prepare their teams to be ready to accept either outcome in a mature manner. Teachers can help prepare students for either outcome by placing the highest value on excellent preparation and presentation, rather than on winning or losing the trial.
6. Observers. Other classes, parents and friends of the participants are welcome to attend the trials.

7. Arrival Times. Teachers are responsible for getting their teams to the assigned courtroom 10 minutes prior to the starting time of each trial.

B. SUGGESTIONS FOR TEAM PREPARATION

The following tips have been developed from past experience with students, and may be useful:

1. Have all team members read the entire set of materials. When finished, have them brainstorm the points for each side of the case.
2. The best teams generally have their students prepare their own questions, with the teacher and attorney coaches giving the team continual feedback and assistance.
3. As soon as possible, student attorneys should begin formulating questions for use in examination of witnesses, and student witnesses should rehearse their testimony. Student preparation will progress more rapidly by simulating actual conduct of the trial than by merely conducting general classroom discussion of the steps in the trial.
4. After the questions are prepared for witnesses, a team should hold several practice sessions where its attorneys question individual witnesses, and the rest of the team evaluates which questions are good and which might be dropped or added in order to bring out favorable evidence. These sessions will also help prepare the witnesses for the tournament.
5. Opening and closing statements should be written by students with editing assistance from the teacher and attorney coaches. (Teacher and attorney coaches should not write statements for students.) Coaches should not tell students to incorporate language that the students do not understand or feel comfortable with. Students should be reminded that closing statements must remain flexible to respond to the evidence as it comes out in the trial.
6. Each attorney should practice handling interruptions from the judge on matters such as the relevance of questions or the rationale of the arguments during the closing statement.
7. The ability of a team to adapt to different situations is often a key part in a mock trial enactment since each judge, or person acting as a judge, has his or her own way of doing things. Since the proceedings of the trial often depend in no small part on the judge who presides, student attorneys and other team members should be prepared to adapt to judicial rulings and requests, even if they appear contrary to outlined tournament procedures and rules.
8. Courtroom etiquette and decorum should be stressed at practice and observed at trial (i.e., standing when the judge enters or leaves the courtroom, and calling the judge "Your Honor").

9. All participants should speak loudly and clearly. Microphones are not usually available. Practice this by having each student attorney stand at the far end of the room while interrogating the student witness.
10. Credibility of witnesses is very important, and students acting as witnesses should be encouraged to "get into" the roles and attempt to think like the person they are playing. These students should read over their statements (affidavits) many times and have other people ask them questions about the facts until they know them "cold." Witnesses are not permitted to refer to their statements or other materials while testifying during the trial, unless requested by an attorney to refresh recollection, while being impeached or when identifying an exhibit.
11. The students need to understand and become familiar with legal terminology; i.e., plaintiff, defendant, overruled, sustained, etc.
12. Some of the things most difficult for team members to learn are
 - a. Deciding which points are the most important in proving their side of the case and making sure such proof takes place.
 - b. Stating clearly what they intend to prove in an opening statement, and arguing effectively in their closing statement that the facts and evidence presented have proven their case.
 - c. Following the formality of court; i.e., standing up when the judge enters and calling the judge "Your Honor."
 - d. Phrasing questions on direct examination that are not leading. (Carefully review the rules of evidence and watch for this type of questioning in practice sessions.)
 - e. Refraining from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions that often lessen the impact of points previously made. (Stop and recognize what questions are likely to require answers that will make good points for your side. Rely on the use of these questions. Avoid pointless questions.)
 - f. Thinking quickly on their feet when a witness gives an unexpected answer, an attorney asks an unexpected question, or a judge questions an attorney or witness. (Practice sessions will help prepare for this.)
 - g. Introducing exhibits into evidence.

13. In order for students to gain the most valuable tournament experience, it is crucial for teachers to discourage participating attorneys from promoting a "win-at-all-costs" attitude among their team members.

**Wisconsin High School Mock Trial Tournament
Official Team Roster**

Prosecution/Defense
(circle the appropriate side)

Team rosters shall be completed (print neatly or type) and duplicated by each team prior to each round and presented to the Presiding Judge (1), Performance Judges (2) and opposing counsel (1) before the round begins (4 per trial). *Your team must be identified only by your TEAM ID.*

Team I.D.: _____

Round (circle one): **I** **II** **III** **IV**

Names of Student Attorneys	Tasks	Witnesses Examined
1.) _____	Opening/Dir/C-X	Direct: _____ Cross: _____
2.) _____	Closing/Dir/C-X	Direct: _____ Cross: _____
3.) _____	Dir/C-X	Direct: _____ Cross: _____

Names of Student Witnesses	Gender	Role Portrayed
4.) _____	M F	_____
5.) _____	M F	_____
6.) _____	M F	_____

Timekeeper
7.) _____ M F

Team Member(s) Not Participating in this Round:

- | | |
|------------|------------|
| 8.) _____ | 11.) _____ |
| 9.) _____ | 12.) _____ |
| 10.) _____ | |

Note: *Team members not participating must sit behind the bar and may NOT communicate with participating team members during the round.*

Guidelines for Attorney Coaches TAB 7

GUIDELINES FOR ATTORNEY COACHES

- A. Much as you will want to help the students, point them in the right direction, and give them the benefit of your experience, remember that the students will develop a better understanding of the case and learn more from the experience if you do not dominate the preparation phase of the tournament. The preparation phase of the contest is intended to be a cooperative effort between students, teachers, and attorney coaches.
- B. Avoid (even the appearance of) "talking down" to students and/or stifling discussion through the use of complicated "legalese."
- C. The first session with a student team should be devoted to the following tasks:
 - 1. answering questions that students may have concerning general trial practices;
 - 2. explaining the reasons for the sequence of events/procedures used in a trial;
 - 3. listening to the students' approach to the assigned case; and
 - 4. emphasizing the key points, such as the elements to be proved, and the relevance and importance of available legal authority.
- D. Subsequent sessions with students should center on the development of proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here you can best serve as a constructive observer and teacher...listening, suggesting, and demonstrating to the team.
- E. Attorney coaches **must not** prepare opening statements, closing statements, or questions for the students. Students should be encouraged to do as much of their own preparation as possible.

Guidelines for Judges TAB 8

GUIDELINES FOR JUDGES

The educational value of the Mock Trial Tournament is greatly enhanced through the participation of legal practitioners who volunteer their time to serve as judges. These guidelines are intended to assist judges in carrying out the vital role they play in the Mock Trial Tournament.

1. General Considerations

Mock Trial v. Real Trial. Judges should appreciate the important differences between mock trial and actual contested legal proceedings. A Mock Trial team should score well if it presents an engaging and persuasive case using only the fact pattern and the rules contained in this handbook. The objective is not mastery of the legal cannon nor the imitation of trial practice as it is conducted in Wisconsin.

Be Prepared. We all have a lot of demands on our time. However, when you agree to judge mock trial competition on any level, it is assumed that you will take the time to read the materials. Nothing is more disconcerting for mock trial participants than to have spent scores of hours over several weeks arduously preparing their case only to have presiding judges ruling on evidentiary objections in a manner that discloses they are unfamiliar with the materials, or scoring judges making comments on score sheets that show they have not reviewed the materials. The mock trial materials are arranged with tabs. If you don't have time to review everything, be sure to spend your available time on the actual case materials, the mock trial rules of evidence, and the scoring rules.

Remember that the participants are high school students. Mock Trial participants are teenagers, some as young as 14 years old. Mock Trial is not a “lawyer in training program,” it is an extracurricular activity that draws students from a wide variety of backgrounds and aspirations. Assuming that the students you will encounter at Mock Trial will possess the same mental and emotional “toughness” of the prototypical attorney is a serious error. Measure your words carefully!

2. Judging Panel

- a. Every mock trial is evaluated by three judges. Mock trial judging panels should be comprised of lawyers, judges or third year law students. Exceptions may be made in extreme cases.
- b. Two judges, the performance judges (scoring judges), strictly concentrate on and evaluate the performance of the teams. They each award the teams points based on their performances, and they each provide an overall judgment as to which side gave the better performance.
- c. The third judge, the presiding judge, provides an overall judgment as to which side gave the better performance. This judge presides over the trial - ruling on the objections, etc. It is strongly recommended that the attorney who serves as the presiding judge have a solid grasp of the Rules of Evidence.

- d. Each judge must award his or her performance decision to only one of the teams. You should not purposefully tie the teams by awarding them the same number of total points. Within each trial, there can be no ties!
- e. The team receiving the majority of performance decisions from the three judges is declared the winner of the trial.

3. Instructions for Scoring Judges (Performance Judges)

- a. Score Sheets. During each round, performance judges will each fill out and turn in a score sheet to the tournament coordinator. On the score sheet, each team's performance will be rated using a 10-point scale on a series of performance categories. Each judge will also record on the score sheet his or her decision as to which team exhibited the best overall performance. (Please see Sample Score Sheets and "Standards for Scoring.") Please conform your award of points to these standards. It will skew the results of the round and of the entire competition if judges impose their own stricter or more lenient scoring criteria.
- b. Performance Points. When awarding performance points, please **do not** award artificially lower points to a team in "fairness" to a weaker opponent. The points play a very important role in the competition. You may inadvertently affect a team's overall placement by doing so. Your scores should reflect how well each competitor stayed in character as an attorney or a witness, and how closely to an actual jury trial each team treated the proceedings. Do not reward tactical ploys by attorneys or witnesses that might flummox the opposition but that also detract from the verisimilitude of the trial experience.
- c. Overall Presentation. When deciding which team made the better overall team presentation, the judges should consider the performances of all attorneys and all witnesses for both sides. Although one team may have an outstanding attorney or witness, higher points should be given to the team having a well-balanced presentation.
- d. Point Deductions. At the close of the round the presiding judge will instruct you as to whether any points should be deducted for time or rules violations.
- e. Special Considerations. Section 901.03(1)(a) of the Wisconsin Statutes governs evidentiary objections in Wisconsin. It provides for a "timely objection" which states "the specific ground." It does not provide that attorneys may argue their objections and, in fact, most judges discourage argument over evidentiary objections. Mock trial is just the opposite. One of the primary ways teams can distinguish themselves in mock trial is by displaying knowledge of the rules of evidence and the ability to properly apply these rules to the facts of the case. Conversely, the failure to make appropriate objections or the inability to argue them should be reflected in a lower score.

A related, but subtler problem has to do with time limits and timekeeping. Under Rule 4.5, each side is given a total of 40 minutes to present its case. Part of that 40 minutes consists of cross-examination of the opponent's witnesses. Thus, witnesses have a built-in incentive to be loquacious in order to use up the other side's time. If a team goes over on time, a point deduction is mandatory. This inevitably, and quite properly, results in attorneys attempting to control adverse witnesses by demanding that they answer "yes" or "no" or by cutting them off with objections that their answers are "unresponsive." This, in turn, leads to attorneys on the adverse side demanding that the witness be given "the right to explain" his or her answer.

Ordinarily in real-world trials, judges tend to resist attorneys interrupting witnesses and there is more latitude given witnesses to "explain their answers." There are a number of reasons for this including the fact that judges work closely with court reporters who don't want people messing up their record by talking at the same time. Second, and more to the point, in the real world the objection of unresponsiveness is only available to an attorney during direct examination of his or her own witness. Thus, the argument that the witness "has a right to explain his or her answer" has a certain attractiveness to real-world judges. It is clear, though, that in mock trial a witness has no "right to explain his or her own answer" when the explanation may be calculated to consume precious time belonging to the opponent.

Be prepared to see mock trial attorneys occasionally jumping out of character. The best example of this is when an attorney makes an objection that the adverse witness is "inventing facts" or engaging in "unfair extrapolation." This is not an evidentiary objection at all but rather an allegation that the witness has violated the rules by making up a fact favorable to his or her side which is beyond the scope of the mock trial materials. The question the presiding judge must resolve is whether the attorney's position is correct, or whether the proffered testimony is a "reasonable inference" from the materials provided.

4. **Instructions for Presiding Judge**

- a. Score Sheet. During each round, the presiding judge declares on his/her score sheet, which team in his or her opinion, exhibited the best performance and turns in a score sheet to the tournament coordinator. The presiding judge does not award points to the teams. **The legal merit of the case has no bearing on whether a team wins the case.**
- b. Overall Presentation. When deciding which team made the better overall team presentation, the judge should consider the performances of all attorneys and all witnesses for both sides. Although one team may have an outstanding attorney or witness, the team having a well-balanced presentation should be awarded the decision.
- c. Ruling on Objections. All trials are governed by the 2008 Tournament Rules and the Federal Rules of Evidence (mock trial version) which are intended to be as close as possible to standard rules, but which may differ for purposes of simplification or

educational value. Please study the rules, case materials, and score sheets carefully before judging the competition.

Please note that we have a rule on objections that we refer to as ORRR — Object, Respond, Reply and Rule! **See Rule 4.19.** This rule is geared to help keep the trials moving along and is designed to prevent teams from using non-substantive objections as a strategy! Under ORRR allow the objecting attorney to state the grounds for his/her objection, hear the opposing attorney's argument, allow a response, then make your ruling. Do not cut off argument simply because you believe the answer is obvious, doing so denies the participants the opportunity to demonstrate their knowledge, or lack thereof.

When ruling on objections, the presiding judge should provide as legally accurate ruling as possible under the mock trial modified rules of evidence. The presiding judge should refrain from intentionally making a questionable ruling to "see how they handle it." Real judges do not intentionally make incorrect rulings, so you shouldn't either.

- d. "Out of Scope" - "Unfair Extrapolation" Objections. Be prepared to see mock trial attorneys occasionally jumping out of character. The best example of this is when an attorney makes an objection that the adverse witness is "inventing facts" (outside the scope of the materials) or engaging in "unfair extrapolation." This is not an evidentiary objection at all but rather an allegation that the witness has violated the rules by making up a fact favorable to his or her side which is beyond the scope of the mock trial materials.

Because an objection claiming "unfair extrapolation" detracts from the verisimilitude of the proceedings by causing the competitors to step out of character, and because such an objection has the potential to cause actual point deductions, the competitors should reserve its use for extreme situations. It is preferable (not mandatory) for the competitors to use in character methods to impeach the opposition and to establish their position to the court. Judges should not reward a team that uses this objection for tactical effect or uses it because the team members do not appreciate the gravity of leveling this accusation against their opponents.

The question the presiding judge must resolve is whether the attorney's position is correct, or whether the proffered testimony is a "reasonable inference" from the materials provided. How is the judge able to rule on this quickly? Frequently the best practice is to require the attorney who is the proponent of the evidence to point to where this testimony, or the testimony, from which it may be reasonably inferred, appears in the witness's affidavit.

If a witness invents an answer or deviates from the material in such a way that it is very likely to affect the outcome of the trial, the opposition should object immediately and ask for a bench conference. The presiding judge will decide whether to allow the testimony. [See Competition Rules, Rule 2.3.]

Special Ruling: If the presiding judge rules that the testimony is an unreasonable deviation from the witness's affidavit and disallows the testimony, a subtraction of points from the total score will result. Each performance judge should subtract the number of points determined by the presiding judge for each ruled deviation. Subtraction of points will only occur after such a ruling has been made. The presiding judge should also take the ruling into account in his/her final determination of the winner.

- e. Time Management. The presiding judge should attempt to move the trial along; it should last approximately one and one half hours. It is very important to keep the trials moving along on time, so as not to disrupt the starting time of later trials. Consistent use of timesheets to report time violations will encourage teams to better stay within their time limits.

A subtle problem has to do with time limits and timekeeping. Under Rule 4.5, each side is given a total of 40 minutes to present its case. Part of those 40 minutes consists of cross-examination of the opponent's witnesses. Thus, witnesses have a built-in incentive to be loquacious in order to use up the other side's time. If a team goes over on time, a point deduction is mandatory. This inevitably, and quite properly, results in attorneys attempting to control adverse witnesses by demanding that they answer "yes" or "no" or by cutting them off with objections that their answers are "unresponsive." This, in turn, leads to attorneys on the adverse side demanding that the witness be given "the right to explain" his or her answer.

Ordinarily in real-world trials, judges tend to resist attorneys interrupting witnesses and there is more latitude given witnesses to "explain their answers." There are a number of reasons for this including the fact that judges work closely with court reporters who don't want people messing up their record by talking at the same time. Second, and more to the point, in the real world the objection of unresponsiveness is only available to an attorney during direct examination of his or her own witness. Thus, the argument that the witness "has a right to explain his or her answer" has a certain attractiveness to real-world judges. It is clear, though, that in mock trial a witness has no "right to explain his or her own answer" when the explanation may be calculated to consume precious time belonging to the opponent.

- f. Time Keeping. Teams are given a total time allotment of 40 minutes each. Teams may allocate time to each segment of the trial as they see fit. Each team is responsible for providing a timekeeper. Prior to the trial, you should discuss procedures with the person acting as timekeeper.
 - i. Please complete a timesheet for each team at the end of each trial. The timesheets will be handed out with score sheets, and will ask whether or not each team went over their time limit and by how much. The tournament coordinator will then be responsible for deducting points for teams going over their allotted time. **Point deductions will be made per score sheet.**

The following point deductions will be used by the tournament coordinator upon receipt of timesheets:

TIME VIOLATION:	POINT DEDUCTION:
less than one minute over	one point
one - two minutes over	two points
two - three minutes over	three points
three - four minutes over	four points
four - five minutes over	five points
over five minutes over	10 points

When considering time violations, please remember that the following **do not count** in the 40-minute allotment:

- objections
- bench conferences
- swearing in of witnesses

Please consider each team's adherence to their time limit separately.

- ii. You may allow a team to finish their presentation if they go over their time allowance. However, you must report the overtime on that team's timesheet.
- iii. If Team A determines that Team B has overrun a designated time limitation, Team A may bring the discrepancy to the judges' attention by objecting to the opposing attorney's remarks if the allotted time is exceeded. Judges should sustain objections to time violations if valid. The judges may permit Team B to conclude its presentation quickly or may halt Team B's presentation accordingly.

5. After the Trial

- a. After the trial is over, the judges should **first** fill out the score sheets and timesheets. After each trial, the completed and signed score sheets and timesheets should be turned in to the tournament coordinator as soon as possible.
- b. The judges are not to announce the performance decisions to the teams. Those decisions will be provided at the end of the day by the tournament coordinator.
- c. Please do not ask the teams to identify their school(s). Teams have been instructed to use **ONLY** their team number for identification. If you want to know which schools you judged, ask the coordinator at the end of the day.
- d. Teams have been told that they are **NOT** to discuss their performance or any other team's performance with any of the judges during the competition, which includes breaks and recesses. It is also not permissible to contact a judge after the tournament at his/her home or place of business. Please do not help any team violate this rule.

e. If time is available, the rules permit up to nine minutes at the end of a trial for judges comments. Timekeepers have been directed to time the comments and to advise the presiding judge when the nine minute limit has been reached. Comments should be:

- Appropriate in that they are geared to high school students;
- Supportive in that they acknowledge the good work done; reinforce the value of participation in the Mock Trial Tournament; and
- Helpful in that you identify specific ways to improve. Comments regarding presentation technique, and decorum would be particularly helpful.

Resist the urge to help students by explaining how you would have done things differently. Most teams have been preparing for competition for months and their trial strategy has been well analyzed. In addition it would be nearly impossible for participants to act on your advice during the 15 minutes of free time that are available between rounds.

WISCONSIN HIGH SCHOOL MOCK TRIAL COMPETITION SCORE SHEET

P=Prosecution/Plaintiff: _____ D=Defense/Respondent: _____
 (Team I.D. #) (Team I.D. #)

DATE: _____ ROUND: (CIRCLE ONE) **1 2 3 4**

Using a scale of 1 to 10, rate the P and D in the categories below.
 Do NOT use fractional points nor award zero points.

Not Effective 1-2	Fair 3-4	Good 5-6	Excellent 7-8	Outstanding 9-10
----------------------	-------------	-------------	------------------	---------------------

SCORE SHEET		P	D
Prosecution/Plaintiff	Direct Examination		
First Witness:	Witness Presentation		
Prosecution/Plaintiff	Direct Examination		
Second Witness:	Witness Presentation		
Prosecution/Plaintiff	Direct Examination		
Third Witness:	Witness Presentation		
Defense/Defendant	Cross-Examination		
First Witness:	Witness Presentation		
Defense/Defendant	Cross-Examination		
Second Witness:	Witness Presentation		
Defense/Defendant	Cross-Examination		
Third Witness:	Witness Presentation		
CLOSING ARGUMENT			
DEDUCTIONS: Subtract Points for rules violations.		-	-
TOTAL SCORE: Add scores in each column.			

TIEBREAKER: (P or D)

Please deliver ballot to runner before debriefing.

DO NOT SEPARATE COPIES!!!!
 WHITE - Coordinator Copy
 YELLOW - Defense/Defendant Copy
 PINK - Prosecution/Petitioner Copy

 Judge's Signature

NOTE: SCORES FINAL PENDING VERIFICATION.

STANDARDS FOR SCORING

SUGGESTED CRITERIA FOR PERFORMANCE JUDGES

Individual participants will be rated on a scale of 1-10 speaker points, according to their roles in the trial. The Scoring Judge is scoring individual performance in each speaker category and **TEAM PERFORMANCE** in the Team Points and Total Points boxes. The Scoring Judge is not scoring the legal merits of the case. Please do not award fractional points, a range of points, or a score of "0."

Scoring Judges may individually consider penalties for violation of the Rules of the Competition or the Code of Ethical Conduct. Penalties would reduce point awards in the appropriate performance categories below. Penalties will not be indicated separately on the score sheet, but rather, should be reflected in a lower score in the appropriate category.

The team with the higher number of total points on the score sheet shall win the judge's ballot and shall be entered in the "Tiebreaker Box" on the ballot. The team winning the majority of the ballots shall win the round.

Scoring judges are reminded to total all scores, check totals closely, and sign the score sheet before returning the score sheet to the Scoring Room.

POINTS	PERFORMANCE	CRITERIA FOR EVALUATING STUDENT PRESENTATIONS
1-2	Not Effective	Unsure, illogical, uninformed, unprepared, speaks incoherently, definitely ineffective in communication, total reliance upon notes, easily distracted.
3-4	Fair	Minimally informed and prepared. Performance is passable but lacks depth in terms of knowledge of tasks and materials. Communication lacks clarity and conviction. Relies heavily on notes (if attorney); somewhat distracted.
5-6	Good	Average presentation, but less than spectacular performance. Can perform outside the script but less confidently than when using the script. Grasps major aspects of the case, but does not convey mastery of it. Communication is clear and understandable, but could be stronger in fluency and persuasiveness.
7-8	Excellent	Fluent, persuasive, clear and understandable. Organizes materials and thoughts well, and exhibits mastery of the case and materials. Seldom refers to notes (if attorney); responds to occurrences during trial.
9-10	Outstanding	Superior in qualities listed for 7-8 points. Thinks well on feet, is logical, keeps poise under duress. Can sort out essential from the nonessential and use time effectively to accomplish major

objectives. Demonstrates the unique ability to utilize all resources in order to emphasize vital points of the trial. Attorneys are completely off notes.

CRITERIA FOR SCORING A TRIAL PRESENTATION

The following criteria should be considered during the course of a team's trial presentation. Consider "5" as average. See Rules of Competition, Rule 6., for the treatment of rule infractions. This is designed to serve as a guideline. During the competition rounds, Scoring Judges may award and deduct points at their own discretion. All points assessed in a round are subjective.

Opening Statement

- Provided a case overview
- The theme/theory of the case was identified
- Mentioned the key witnesses
- Provided a clear and concise description of their team's side of the case
- Stated the relief requested
- Discussed the burden of proof
- Presentation was non argumentative
- Points may be deducted for use of notes, at the Scoring Judge's discretion

Direct Examination

- Properly phrased questions
- Used proper courtroom procedure
- Handled objections appropriately and effectively and did not overuse objections
- Did not ask questions that called for an unfair extrapolation from the witness
- Demonstrated an understanding of the Modified Federal Rules of Evidence
- Handled physical evidence appropriately and effectively (Rule __)

Cross Examination

- Properly phrased questions
- Effective Questioning
- Properly impeached witnesses (bring out contradictions in testimony)
- Handled objections appropriately and effectively
- Did not overuse objections
- Used various techniques, as necessary, to handle a non-responsive witness
- Demonstrated an understanding of the Modified Federal Rules of Evidence
- Handled physical evidence appropriately and effectively (Rule __)

Witness Performance

- Did not use notes (as required)
- Credible portrayal of character and convincing testimony
- Showed understanding of the facts
- Sounded spontaneous, not memorized
- Demonstrated appropriate courtroom decorum
- Avoided unnecessarily long and/or non-responsive answers on cross-examination
- Use of unfair extrapolations, for which points should be deducted

Closing Statement

- Theme/theory continued in closing argument

- Summarized the evidence
- Emphasized the supporting points of their own case and damaged the opponent's case
- Concentrated on the important facts, not the trivial
- Applied the applicable law
- Discussed Burden of Proof
- Overall, closing statement was persuasive
- Minimal or no reliance on notes during the closing statement
- Exceeds time limit, points should be deducted

Other Factors to Consider in Scoring

- PENALTY DEDUCTION should be used to deduct points from a team's score if any member(s) of their team fail(s) to adhere to appropriate courtroom decorum (i.e., abuse of procedural rules, inappropriate use of objections, improper participation by coach or gallery, creation of material facts, or other rules infractions as observed or reported and verified).
- The team's presentation should have a balance of six strong participants, strong style (did they use notes or not), present closing statements that reflect what actually happened during the trial.

Guidelines for Regional Coordinators
TAB 9

GUIDELINES FOR REGIONAL COORDINATORS

As a tournament coordinator, you have the responsibility for one level of competition, the regional tournament. For 2008, we will divide the state into 14-16 regions, and each region will send its winner to the state tournament in Madison.

Here are steps to follow for setting up and conducting your regional tournament:

A. BEFORE THE TRIALS

1. As early as possible (even before you know how many teams are entered in your region), contact your local courthouse to request permission to use courtrooms for the regional tournament on Saturday, February 9, 2008. Try to get between four and eight rooms so that you will have extra space for scoring, etc. If you need more space than your courthouse can comfortably provide, you may want to hold your tournament in a public facility. You will receive a list with the names and number of teams in your region after the final entry date of November 16, 2007.
2. Well in advance of the competition, contact judges and attorneys to request their participation as mock trial judges. The State Bar of Wisconsin will send you a list of judges and attorneys who have volunteered to participate, but feel free to contact others who are not on the list. Because regional competitions last all day, it is best to recruit one set of judges for the morning and one set for the afternoon.
3. Size of Regions. In an attempt to even out the number of regions in the state and to accommodate the realities of our resources, for 2008, the minimum number of teams registered in a region will be six teams and the maximum number of teams registered in a region will be fourteen. If there are fewer than six teams registered in one particular region by the final entry date, we will move those teams to the next closest region that can accommodate them. If an adjustment would make a region too large, those teams that are closest to the tournament site in question would stay and the overflow teams would then be moved to another region.

If a region falls under six teams **after** the drop deadline, we will attempt to make an adjustment but realize that this may or may not be possible.

4. **NOTE:** During this year's tournament every attempt will be made in each region to avoid having an odd number of teams participate. This will take cooperation from coordinators and schools. Therefore, there may be juggling of teams from region to region in order to avoid having an odd number of teams. [See Regional Format.]

Having to use a bye round makes for a very long day for all participants and also places those teams at a disadvantage if they have to play four rounds without a break. Therefore, we will attempt to make the regions as even as possible. Of course, it is impossible for us to

predict situations that arise when teams drop out. This is where school cooperation will be key.

In the event that we are unable to even out the regions, the regional will be compelled to utilize a bye round situation — a "bye" becomes necessary when an odd number of teams are present for the tournament. [See Rule 5.8]

5. Please make sure that teams do not play each other more than once during regional competition. When you power-match, teams should never have to play a team they have already gone against. If you have any questions in this regard, do not hesitate to contact the state coordinator.
6. Notify the State Bar of Wisconsin with the names and addresses of those judges and attorneys who will be participating so that we can send them the case materials. Those who act as mock trial judges need to be well prepared for the trials. Therefore, it is essential that we have their names **no later than** mid-January.

A few weeks before the tournament, remind your mock trial judges about their assigned times. You may want to write and/or call them. A personal call followed by a letter works best. Please make sure the judges are aware of the exact date, time, and location of the trials. Make sure you give them your contact information so they know who to call if they need to make a change in their schedule.

As you assign judges to courtrooms, please keep in mind that we try to recruit a different panel of judges for the morning and afternoon rounds of competition. This helps to ensure that teams are being judged by different judging panels and keeps the judges from getting tired of the case.

7. Contact the teachers in advance regarding the time and location of the regional competition. Please contact them early enough so they can make bus arrangements and get permission slips signed – usually about two weeks in advance is enough time. Also provide them with directions to the courthouse and information about restaurants nearby. The teachers have been informed that the final date for dropping a team from the regional tournament is **January 25, 2008**. You may want to remind them of that date.
8. The State Bar will send out a statewide press release one week prior to the regional tournament. You may also want to contact your local media to request press coverage.

B. ON THE DAY OF THE TRIALS

1. You will need to bring paper, paper clips, stapler, pens, tape, calculators, score sheets, timesheets, and your tournament handbook. You should also prepare beforehand slips of paper with letters on them and a competition schedule with the different letters assigned to different courtrooms. (Please see "Competition Schedules.") Make the schedule large enough to be easily visible and then post it at the tournament. **Post only the rounds that**

you will not power-match. [If you elect to power-match the last round only, post rounds one, two and three etc...] See schedules on page 77.

2. Try to arrive at least one hour before the trials are scheduled to begin.
3. Before the first round, meet with the teacher coaches to have them draw letters to determine their places in the competition schedule. **Because of the modified power-matching system, no effort will be made to guarantee that schools with two teams do not meet each other in the first round. Random draw means exactly that - random!** Record the letter assigned to each team. Please remember that teams should be identified by their team identification number (and not by their school name). You should also collect team rosters from the teachers at this time.

When you meet with the teachers, please remind them to ask their students to pick up after themselves before they leave. If they would be sure to do this, it will cut down on work for you. Please discourage all participants from eating and drinking in the courtrooms. In order to ensure our future use of courtrooms, it is necessary to leave things in the order we found them. (You may want to ask someone specifically to pick up after the trials are over!)

4. Meet with the judges to distribute the score sheets and timesheets, and to go over any last minute details. Explain that they will fill out timesheets and score sheets after each trial. Explain your procedure for receiving the completed score sheets and timesheets (whether you want a judge to bring the forms to you or whether someone will come around to collect them). Upon receipt of the score sheets and timesheets, it is your responsibility to deduct points (per score sheet) from a team's overall point total, based on the following time violations:

TIME VIOLATION:	POINT DEDUCTION:
less than one minute over	one point
one - two minutes over	two points
two - three minutes over	three points
three - four minutes over	four points
four - five minutes over	five points
over five minutes over	10 points

Please instruct the judges to ask for a team's I.D. number (and not their school name) for identification. You should additionally request that judges not give out any decisions to the teams. At the end of each trial, before meeting to deliberate, the judges are encouraged to comment positively on the teams' performances. The trials are on a very tight time schedule, and it is important that they keep their comments brief. There is a nine minute limit per panel and only if the trials are running on schedule. There should be no comments after the fourth round.

5. If a team drops out the morning of the competition, causing you to have to go to a bye round situation, please make sure all teams are aware of the change. On Monday, February 11, notify the State Bar of the drop and the circumstances surrounding it.

6. Once the first round of trials has begun, post a new schedule replacing the letters with the team numbers.
7. After each round, collect the score sheets and timesheets from the judges. Tabulate the total judges' decisions and points for each team, and keep a record of these, as you will need a total for each team at the end of the day. Record each team's win/loss record. A team receives a win if they receive the majority of the performance decisions from the three judges.

You should have a room set aside to do the scoring. No one else should be admitted into this area except for those persons associated with running the regional tournament and assisting with scoring.

You may want to choose an attorney and a teacher coach from different schools in your region to assist in checking the score sheets or to assist in power-matching. They will be on the honor system and will be instructed not to give any indication of ranking until the regional winner has been determined. You should select them based on past experience.

8. If a protest is filed by a team after a trial, follow the steps outlined in the section on Dispute Resolution in the Tournament Rules. Remember that you are the authority for your regional tournament. If there is absolutely no way to resolve a dispute in your region, please see **Rule 6.5**, Appeals Process.
9. Upon completion of all four trials, record the win/loss records of the teams. The winner is the team with the best win/loss record. The remaining teams at the regional level are ranked according to overall win/loss records, judges' decisions, and then performance points. You may want to have a short ceremony to announce the regional winner.
10. In the event of a tie [those teams tied with same win/loss record]:
 - a. Tied teams play-off on the following Saturday, February 16, to determine the regional winner. If the teams have not met each other previously, side presentation is determined by a draw. If the teams have met each other previously (i.e., 3-1), the team that won the earlier round between the tied teams will be declared the regional champion. (Please see "Tournament Format" for an explanation regarding how to match more than two tied teams.)

Pairings among the tied teams are determined before the teams depart from the regional tournament. The tournament coordinator is responsible for informing the state coordinator of those pairings on Monday, February 11. Please ask the teacher and/or attorney coach who assisted with scoring to help you with the tied pairings if you run into problems.

PLEASE NOTE: The play-offs are scheduled for Saturday, February 16. There are no exceptions. The regional tournament coordinator determines a time and location. Any team not able to play-off on that date forfeits. Results should be called into the state

coordinator on Monday, February 18. **All judges are chosen by the regional coordinator.** The state coordinator is not involved in scheduling the play-off rounds.

11. Before departure, give each team a copy of their score sheets. Please ask an attorney coach or a teacher coach from each school to verify their team's scores and record by signing the official scoring form before departure. All disputes must be dealt with prior to departure and before the scoring form is signed.

Teachers may ask for copies of their original score sheets by contacting the State Bar of Wisconsin and requesting them.

C. AFTER THE TRIALS

1. On Monday, February 11, call to notify the state coordinator of the winner or pairings for the play-off round. Send the original score sheets, timesheets, and team rosters to the State Bar. It is imperative that we receive the materials as quickly as possible. We need **all** team rosters!
2. Please submit a record of your expenses to the State Bar for reimbursement. We will reimburse for postage, telephone, fax, copying, and some supplies. We are not able to reimburse for food items. If you have any questions regarding reimbursement, please contact Dee Runaas at 608-250-6191 for more details.
3. For results of the regional tournaments held across the state, go to our website, www.legalexplorer.com. Click on law-related education, then click on mock trials to find out results.

COMPETITION SCHEDULES

SCHEDULES FOR TOURNAMENTS WITH AN EVEN NUMBER OF TEAMS.

8:00 - 9:30	Round 1	REMEMBER: POST ONLY THE ROUNDS THAT WILL <u>NOT</u> BE POWER-MATCHED!!!!
10:00 - 11:30	Round 2	
12:00 - 12:45	Lunch Break	
1:00 - 2:30	Round 3	
3:00 - 5:00	Round 4	

PAIRINGS FOR SIX TEAMS

Room #	Round 1	Round 2	Round 3	Round 4
250	A v B (p) (d)	C v F (p) (d)	E v D (p) (d)	power (p) (d)
260	C v D (p) (d)	B v E (p) (d)	A v C (p) (d)	power (p) (d)
270	F v E (p) (d)	D v A (p) (d)	F v B (p) (d)	power (p) (d)

(You will need a panel of 9 morning judges and 9 afternoon judges. You should receive 12 presiding judge score sheets and 24 performance judge score sheets.)

PAIRINGS FOR EIGHT TEAMS

Room #	Round 1	Round 2	Round 3	Round 4
250	A v B (p) (d)	F v G (p) (d)	power (p) (d)	power (p) (d)
260	C v D (p) (d)	H v A (p) (d)	power (p) (d)	power (p) (d)
270	E v F (p) (d)	B v C (p) (d)	power (p) (d)	power (p) (d)
280	G v H (p) (d)	D v E (p) (d)	power (p) (d)	power (p) (d)

(You will need a panel of 12 morning judges and 12 afternoon judges. You should receive 16 presiding judge score sheets and 32 performance judge score sheets.)

PAIRINGS FOR TEN TEAMS

Room #	Round 1	Round 2	Round 3	Round 4
250	A v B (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
260	C v D (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
270	E v F (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
280	G v H (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
290	I v J (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)

(You will need a panel of 15 morning judges and 15 afternoon judges. You should receive 20 presiding judge score sheets and 40 performance judge score sheets.)

PAIRINGS FOR TWELVE TEAMS

Room #	Round 1	Round 2	Round 3	Round 4
250	A v B (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
260	C v D (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
270	E v F (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
280	G v H (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
290	I v J (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
300	K v L (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)

(You will need a panel of 18 morning judges and 18 afternoon judges. You should receive 24 presiding judge score sheets and 48 performance judge score sheets.)

PAIRINGS FOR FOURTEEN TEAMS

Room #	Round 1	Round 2	Round 3	Round 4
250	A v B (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
260	C v D (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
270	E v F (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
280	G v H (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
290	I v J (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
300	K v L (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
310	M v N (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)

(You will need a panel of 21 morning judges and 21 afternoon judges. You should receive 28 presiding judge score sheets and 56 performance judge score sheets.)

PAIRINGS FOR SIXTEEN TEAMS

Room #	Round 1	Round 2	Round 3	Round 4
250	A v B (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
260	C v D (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
270	E v F (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)

280	G v H (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
290	I v J (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
300	K v L (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
310	M v N (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
320	O v P (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)

(You will need a panel of 24 morning judges and 24 afternoon judges. You should receive 32 presiding judge score sheets and 64 performance judge score sheets.)

SCHEDULES FOR TOURNAMENTS WITH AN ODD NUMBER OF TEAMS.

8:00 - 9:30	Round 1
10:00 - 11:30	Round 2
12:00 - 12:45	Lunch Break
1:00 - 2:30	Round 3
3:00 - 5:00	Round 4

[These times are approximate due to power-matching. The next round can not start until all the score sheets from the previous round have been turned in, added and power-matched.]

PAIRINGS FOR FIVE TEAMS

Room #	Round 1	Round 2	Round 3	Round 4
250	A v B (p) (d)	E v B (p) (d)	E v A (p) (d)	power (p) (d)
260	C v D (p) (d)	A v C (p) (d)	B v D (p) (d)	power (p) (d)
270	E v Bye	D v Bye	C v Bye	Bye

(You will need a panel of 6 morning judges and 6 afternoon judges. You should receive 8 presiding judge score sheets and 16 performance judge score sheets.)

PAIRINGS FOR SEVEN TEAMS

Room #	Round 1	Round 2	Round 3	Round 4
250	A v B (p) (d)	F v G (p) (d)	C v B (p) (d)	power (p) (d)
260	C v D (p) (d)	B v E (p) (d)	A v F (p) (d)	power (p) (d)
270	E v F (p) (d)	D v A (p) (d)	G v D (p) (d)	power (p) (d)
	G v Bye	C v Bye	E v Bye	Bye

(You will need a panel of 9 morning judges and 9 afternoon judges. You should receive 12 presiding judge score sheets and 24 performance judge score sheets.)

PAIRINGS FOR NINE TEAMS

Room #	Round 1	Round 2	Round 3	Round 4
250	A v B (p) (d)	D v E (p) (d)	power (p) (d)	power (p) (d)
260	C v D (p) (d)	F v G (p) (d)	power (p) (d)	power (p) (d)
270	E v F (p) (d)	H v I (p) (d)	power (p) (d)	power (p) (d)
280	G v H (p) (d)	B v C (p) (d)	power (p) (d)	power (p) (d)
	I v Bye	A v Bye	Bye	Bye

(You will need a panel of 12 morning judges and 12 afternoon judges. You should receive 16 presiding judge score sheets and 32 performance judge score sheets.)

PAIRINGS FOR ELEVEN TEAMS

Room #	Round 1	Round 2	Round 3	Round 4
250	A v B (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
260	C v D (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
270	E v F (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
280	G v H (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
290	I v J (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
	K v Bye	Bye	Bye	Bye

(You will need a panel of 15 morning judges and 15 afternoon judges. You should receive 20 presiding judge score sheets and 40 performance judge score sheets.)

PAIRINGS FOR THIRTEEN TEAMS

Room #	Round 1	Round 2	Round 3	Round 4
250	A v B (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
260	C v D (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
270	E v F (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
280	G v H (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
290	I v J (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
300	K v L (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)

M v Bye

Bye

Bye

Bye

(You will need a panel of 18 morning judges and 18 afternoon judges. You should receive 24 presiding judge score sheets and 48 performance judge score sheets.)

PAIRINGS FOR FIFTEEN TEAMS

Room #	Round 1	Round 2	Round 3	Round 4
250	A v B (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
260	C v D (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
270	E v F (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
280	G v H (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
290	I v J (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
300	K v L (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
310	M v N (p) (d)	power (p) (d)	power (p) (d)	power (p) (d)
	O v Bye	Bye	Bye	Bye

(You will need a panel of 21 morning judges and 21 afternoon judges. You should receive 28 presiding judge score sheets and 56 performance judge score sheets.)

(p) prosecution/petitioner/plaintiff

(d) defense/respondent

2008 Wisconsin Mock Trial Tournament Power-matching Explanation

Power-matching is used at the National Championship. You should be aware that power-matching favors bracket integrity over side presentation. This means that your team should be prepared for the probability of having to play one side of the case more times than the other. However, your team will play each side of the case at least once.

These are the things you need to keep in mind before beginning to power-match:

1. Keep track of pairings for each round so you can tell who has played against each other – teams should NEVER play against the same team more than once.
2. Try to make sure (not always possible) that teams don't have to face the same panel of judges more than once.
3. Make sure teams alternate sides (prosecution/defense) of the case at least once. Side presentation, however, is not as important as bracket integrity. [Bracket integrity, i.e. 2-0, 2-1, 1-1, 0-2 etc...]

This example assumes an even number of teams with a sample size of 16 teams; no Bye Round; and 3 scoring ballots per round. All regions with an even number of teams can use this sample and modify it as appropriate. Those regions with an odd number of teams, please see Rule 5.8 in addition to this explanation.

ROUND 1 PAIRINGS:

PLAINTIFF	DEFENDENT
AA	AB
AC	AD
AE	AF
AG	AH
AI	AJ
AK	AL
AM	AN
AO	AP

(Scoring example for AA v. AB):

<u>BALLOT 1</u>		<u>BALLOT 2</u>		<u>BALLOT 3</u>	
Team AA	Team AB	Team AA	Team AB	Team AA	Team AB
8	7	7	6	9	8
7	8	7	8	8	7
8	7	9	8	8	7
9	7	6	7	7	8
7	8	7	8	8	7

7	7	7	7	7	7
8	9	8	8	6	6
6	7	7	7	8	6
7	6	7	7	9	8
9	7	7	7	7	7
8	7	8	7	8	7
84	80	80	80	85	78

TEAM SCORE (No tie allowed)

7	8	4	8	8	7
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TOTAL SCORE (No tie allowed)

91	88	84	88	93	85
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BALLOT TO: AA BALLOT TO: AB BALLOT TO: AA

In this scoring example, Judges #1 and #3 awarded higher total points (91 and 93), and therefore their ballots, to Team AA. Judge #2 awarded higher total points (88), and therefore his/her ballot, to Team AB. Team AA receives the win for this round with 2 out of 3 ballots and a total score of 91+84+93=268 points. Team AB receives a loss for this round with 1 ballot and a total score of 88+88+85=261 points.

ROUND 1 COMPETITION:

(Assume the following teams marked with an * won the first round):

PLAINTIFF	DEFENDENT
AA *	AB
AC	AD *
AE	AF *
AG *	AH
AI	AJ *
AK *	AL
AM *	AN
AO	AP *

ROUND 1 RESULTS / RANKING:

The first round rankings reflect two brackets: 1-0 (one win; no losses); and 0-1 (no wins; one loss). The 1-0 bracket is listed first, then the 0-1 bracket.

Within the brackets, teams are sorted based on higher number of ballots, then on higher total number of points. Teams AF, AP, AD and AK all received Round 1 wins with three ballots, so they are listed first in order based on highest number of total points. Teams AA, AM, AG and AJ all received Round 1 wins with two ballots, so they are listed next in order based on highest number of total points.

	TEAM	SIDE	WINS	BALLOTS	POINTS
<u>1-0 BRACKET:</u>	AF	D	1	3	324
	AP	D	1	3	297
	AD	D	1	3	296
	AK	P	1	3	278
	AA	P	1	2	268
	AM	P	1	2	257
	AG	P	1	2	248
	AJ	D	1	2	248

NOTE:

Teams AG and AJ were both 1-0 with 2 ballots and 248 points. To break this tie, the point spread over previous opponent(s) was used. The previous opponent for AG was AH; the point spread for AG over AH was $248-241=7$ points. The previous opponent for AJ was AI; the point spread for AJ over AI was $248-245=3$ points. The point difference was greater for AG (7 points) than for AJ (3 points), so the tie in placing is broken in favor of AG.

	TEAM	SIDE	WINS	BALLOTS	POINTS
<u>0-1 BRACKET:</u>	AN	D	0	1	265
	AB	D	0	1	261
	AI	P	0	1	245
	AH	D	0	1	241
	AE	P	0	0	238
	AO	P	0	0	225
	AL	D	0	0	197
	AC	P	0	0	182

ROUND 2 POWER-MATCHING:

POWER-MATCHING within the **1-0** bracket begins with attempting to place the top team (AF) against the bottom team (AJ):

ATTEMPT: AF v. AJ

But both were defendants in Round 1, so move up to the next team from the bottom of this bracket and try:

AF v. AG OK, the teams have not met before and they can now play alternating sides of the case.

ATTEMPT: AP v. AJ

Trying to find a match for AJ again, but both were defendants in Round 1, so move up to the next team from the bottom of this bracket and try:

AP v. AM OK, the teams have not met before and they can now play alternating sides of the case.

ATTEMPT: AD v. AJ

Trying to find a match for AJ again, but both were defendants in Round 1, so move up to the next team from the bottom of this bracket and try:

AD v. AA OK, the teams have not met before and they can now play alternating sides of the case.

ATTEMPT: AK v. AJ

Trying to find a match for AJ again. OK, the teams have not met before and they can now play alternating sides of the case. The result is: AJ v. AK

NOTE:

The 1-0 bracket has now been power-matched AGAINST ITSELF. The matching was ALSO successful, as a secondary consideration, in allowing all of the 1-0 teams to ALTERNATE and play the other side of the case in Round 2.

POWER-MATCHING within the 0-1 bracket begins with attempting to place the top team (AN) against the bottom team (AC):

ATTEMPT: AN v. AC

OK, the teams have not met before and they can now play alternating sides of the case.

ATTEMPT: AB v. AL

Both were defendants in Round 1, so move up to the next team from the bottom of this bracket and try:

AB v. AO OK, the teams have not met before and they can now play alternating sides of the case.

ATTEMPT: AI v. AL

Trying to find a match for AL again. OK, the teams have not met before and they can now play alternating sides of the case. The result is: AL v. AI

ATTEMPT: AH v. AE

OK, the teams have not met before and they can now play alternating sides of the case.

NOTE:

The 0-1 bracket has now been power-matched AGAINST ITSELF. The matching was ALSO successful, as a secondary consideration, in allowing all of the 0-1 teams to ALTERNATE and play the other side of the case in Round 2.

ROUND 2 PAIRINGS:

PLAINTIFF	DEFENDENT
AF	AG
AP	AM
AD	AA
AJ	AK
AN	AC
AB	AO
AL	AI
AH	AE

NOTE: When these pairings are announced they will be listed in random order so no team can interpret its current tournament standing from its placement in the next round pairings. The pairings will be the same, but the match between, for example, AL v. AI may be listed to take place in the courtroom at the top of the announcement sheet.

ROUND 2 COMPETITION:

(Assume the following teams marked with an ** won the second round):

PLAINTIFF	DEFENDENT
AF **	AG
AP	AM **
AD	AA **
AJ	AK **
AN	AC **
AB **	AO
AL **	AI
AH	AE **

ROUND 2 RESULTS / RANKING:

The second round rankings reflect three brackets: 2-0 (two wins; no losses); 1-1 (one win; one loss); and 0-2 (no wins; two losses). The 2-0 bracket is listed first, then the 1-1 bracket, then the 0-2 bracket.

	TEAM	SIDES	WINS	BALLOTS	POINTS
<u>2-0 BRACKET:</u>	AF	DP	2	5	634
	AK	PD	2	5	569
	AM	PD	2	5	555
	AA	PD	2	4	544
<u>1-1 BRACKET:</u>	AD	DP	1	4	558
	AB	DP	1	4	552

AP	DP	1	3	547
AJ	DP	1	3	532
AG	PD	1	3	523
AL	DP	1	2	499
AE	PD	1	2	480
AC	PD	1	2	457

0-1 BRACKET:

AI	PD	0	2	473
AN	DP	0	2	471
AH	DP	0	2	466
AO	PD	0	0	454

ROUND 3 POWER-MATCHING:

POWER-MATCHING within the **2-0** bracket begins with attempting to place the top team (AF) against the bottom team (AA):

ATTEMPT: AF v. AA

OK, the teams have not met before. AF has played Def then Plt; and AA has played Plt then Def. They can alternate sides again and play against each other. The result is: **AA v. AF**

ATTEMPT: **AK v. AM**

OK, the teams have not met before. However, AK has played Plt then Def; and AM has also played Plt then Def.

NOTE:

Both teams were defendants in Round 2, but they are the only remaining teams needing to be paired within the 2-0 bracket. To maintain the 2-0 bracket integrity, one of the teams will need to play the Def again in Round 3. The higher ranking team in this case (AK) will alternate to play the Plt; Team AM will play the Def. The scoring coordinator will attempt to pair Team AM as a Plt in Round 4 so that it will have played both sides of the case twice. Even at this point, both teams have played both sides of the case at least once as they are guaranteed.

POWER-MATCHING within the **1-1** bracket begins with attempting to place the top team (AD) against the bottom team (AC):

ATTEMPT: AD v. AC

No, these teams have met before. They can't be paired against each other again, so try:

AD v. AE

OK, the teams have not met before. AD has played Def then Plt; and AE has played Plt then Def. They can alternate sides again and play against each other. The result is: **AE v. AD**

ATTEMPT: AB v. AC

Trying to find a match for AC again. OK, the teams have not met before and they can now play alternating sides of the case. The result is: **AC v. AB**

ATTEMPT: AP v. AL

These teams have not competed before, but both were Def in Round 2. The 1-1 bracket isn't exhausted as the 2-0 bracket was in the case of pairing AK v. AM, so attempt another pairing within the 1-1 bracket:

AP v. AG

OK, the teams have not met before. AP has played Def then Plt; and AG has played Plt then Def. They can alternate sides again and play against each other. The result is: **AG v. AP**

ATTEMPT: AJ v. AL

These teams have not competed before, but both were Plt in Round 2. The 1-1 bracket is exhausted. To maintain bracket integrity, one of the teams will need to play the Plt again in Round 3. The higher ranking team in this case (AJ) will alternate to play the Def; Team AL will play the Def. The scoring coordinator will attempt to pair Team AL as a Def in Round 4 so that it will have played both sides of the case twice. Even at this point, both teams have played both sides of the case at least once as they are guaranteed. The result is: **AL v. AJ**

POWER-MATCHING within the 0-2 bracket begins with attempting to place the top team (AI) against the bottom team (AO):

ATTEMPT: AI v. AO

These teams have not competed before, but both were Def in Round 2. The 0-2 bracket is not exhausted, so attempt another pairing within the 0-2 bracket:

AI v. AH

OK, the teams have not met before. AI has played Plt then Def; and AH has played Def then Plt. They can alternate sides again and play against each other.

ATTEMPT: AN v. AO

OK, the teams have not met before. AN has played Def then Plt; and AO has played Plt then Def. They can alternate sides again and play against each other. The result is: **AO v. AN**

ROUND 3 PAIRINGS:

NOTE: When these pairings are announced they will be listed in random order so no team can interpret its current tournament standing from its placement in the next round pairings. The pairings will be the same, but the match between, for example, AC v. AB may be listed to take place in the courtroom at the top of the announcement sheet.

ROUND 3 PAIRINGS:

PLAINTIFF	DEFENDENT
AF	AA
AK	AM
AE	AD
AC	AB
AG	AP
AL	AJ
AI	AH
AO	AN

ROUND 3 COMPETITION:

(Assume the following teams marked with an *** won the third round):

PLAINTIFF	DEFENDENT
AF	AA ***
AK	AM ***
AE ***	AD
AC ***	AB
AG	AP ***
AL	AJ ***
AI ***	AH
AO ***	AN

ROUND 3 RESULTS / RANKING:

The third round rankings reflect four brackets: 3-0 (three wins; no losses); 2-1 (two wins; one loss); 1-2 (one win; two losses) and 0-3 (no wins; three losses). The 3-0 bracket is listed first, then the 2-1 bracket, then the 1-2 bracket, then the 0-3 bracket.

	TEAM	SIDES	WINS	BALLOTS	POINTS
<u>3-0 BRACKET:</u>	AM	PDD	3	8	805
	AA	PDD	3	6	774
<u>2-1 BRACKET:</u>	AF	DPP	2	6	844
	AP	DPD	2	6	797
	AK	PDP	2	5	769
	AJ	DPD	2	5	762
	AC	PDP	2	5	707
	AE	PDP	2	4	710
<u>1-2 BRACKET:</u>	AD	DPD	1	5	768
	AB	DPD	1	4	752

	AI	PDP	1	4	703
	AG	PDP	1	3	723
	AL	DPP	1	3	709
	AO	PDP	1	3	704
<u>0-3 BRACKET:</u>	AH	DPD	0	3	676
	AN	DPD	0	2	671

ROUND 4 POWER-MATCHING:

POWER-MATCHING within the **3-0** bracket begins with attempting to place the top team (AM) against the bottom team (AA).

NOTE: Each team has already played the Plt side once and the Def side twice. To maintain the 3-0 bracket integrity, one of the teams will need to play the Def again in Round 4. The higher-ranking team in this case (AM) will alternate to play the Plt; Team AA will play the Def. The result is: **AM v. AA**

POWER-MATCHING within the **2-1** bracket begins with attempting to place the top team (AF) against the bottom team (AE):

ATTEMPT: AF v. AE

No, these teams met in Round 1. They can't be paired against each other again, so try:

AF v. AC

The teams have not met before. AF has played Def once and Plt twice; and AC has also played Def once and Plt twice. The 2-1 bracket isn't exhausted, so try:

AF v. AJ

OK, the teams have not met before. AF can play Def, and AJ can play Plt. Both teams will then have played both sides of the case twice. The result is: **AJ v. AF**

ATTEMPT: AP v. AE

OK, the teams have not met before. AP can play Plt, and AE can play Def. Both teams will then have played both sides of the case twice.

ATTEMPT: AK v. AC

OK, the teams have not met before. AK has played Def once and Plt twice; and AC has also played Def once and Plt twice.

In order to allow both teams to play both sides of the case twice, both would need to play Def in Round 4. They are the only remaining teams needing to be paired within the 2-1 bracket. To maintain the 2-1 bracket integrity, one of the teams will need to play the Plt again in Round 4. The higher ranking team in this case (AK) will alternate to play the Def; Team AC will play the Plt. This matching is an example where bracket integrity takes precedence over alternating sides. The result is: **AJ v. AK**

POWER-MATCHING within the 1-2 bracket begins with attempting to place the top team (AD) against the bottom team (AO):

ATTEMPT: AD v. AO

OK, the teams have not met before. AD can play Plt, and AO can play Def. Both teams will then have played both sides of the case twice. The result is: AO v. AD

ATTEMPT: AB v. AL

OK, the teams have not met before. AB can play Plt, and AL can play Def. Both teams will then have played both sides of the case twice.

ATTEMPT: AI v. AG

OK, the teams have not met before. AI has played Def once and Plt twice; and AG has also played Def once and Plt twice.

In order to allow both teams to play both sides of the case twice, both would need to play Def in Round 4. They are the only remaining teams needing to be paired within the 1-2 bracket. To maintain the 1-2 bracket integrity, one of the teams will need to play the Plt again in Round 4. The higher ranking team in this case (AI) will alternate to play the Def; Team AG will play the Plt. This matching is an example where bracket integrity takes precedence over alternating sides. The result is: AG v. AI

POWER-MATCHING within the 0-3 bracket consists of attempting to place the top team (AH) against the bottom team (AN):

ATTEMPT: AH v. AN

OK, the teams have not met before. However, both teams have played the Def twice and the Plt once.

In order to allow both teams to play both sides of the case twice, both would need to play Plt in Round 4. They are the only remaining teams left to be paired, so one of the teams will need to play the Def again in Round 4. The higher-ranking team in this case (AH) will alternate to play the Plt; Team AN will play the Def. The result is: AH v. AN

ROUND 4 PAIRINGS:

PLAINTIFF	DEFENDENT
AM	AA
AJ	AF
AP	AE
AJ	AK
AO	AD
AB	AL
AG	AI
AH	AN

POWER-MATCHING ODD NUMBERS OF TEAMS

A “bye” becomes necessary when an odd number of teams are present for any given round of the tournament. It is the intent of the Wisconsin High School Mock Trial Tournament to avoid byes where possible. In the event of a circumstance resulting in an odd number of competing teams, the following procedure will apply: [**See Rule 5.8.**]

The team drawing the “bye” (no opponent for a single trial round) in rounds two through four will, by default, receive a win and the average number of ballots and points earned in its preceding trials. For the purpose of power-matching, the team will temporarily be given points and ballots equal to the average of its own points and ballots earned in its preceding trials. At the end of the fourth round, the average from all three actual trial rounds participated in by the team will be used for the final points given for that team's bye round.

For example, a team receiving a bye in round three would receive an average of its ballots from rounds one and two, and an average of its points earned in rounds one and two. At the end of the fourth round, however, the ballots and points actually awarded to the team for the bye round will be adjusted to take into consideration the fourth round performance of the team.

However, a team receiving a bye in round one will be awarded a win, three ballots and the average number of points for all round one winners, which total will be adjusted at the end of each round to reflect the actual average earned by that team.

For power-matching purposes, the bye in each round will be given to the team that is at the bottom of the lowest bracket and has not previously been given a bye.

(SAMPLE FORM FOR COORDINATOR'S USE)

TEACHERS' INSTRUCTIONS

Coordinators should mail information about the regional tournament to teacher coaches at least two - three weeks prior to the competition. Teachers need enough time to arrange for transportation and permission slips. Feel free to modify this sample to fit your needs; you may also want to include a map.

To: Mock Trial Teacher Coaches - [list schools in your region]
Re: Region [number] Information
From: [coordinator name(s)]

Welcome to mock trial! We have [number] schools competing in the [name] regional scheduled for Saturday, February 9, 2008.

Location: Our regional tournament will take place at the [name of building], [address, special entrance, directional and parking instructions]

Times: Teachers will meet at [time] in room [number] to draw letters to determine their places on the competition schedule. Teachers should also hand in their team rosters at this time.

Round One starts at [time]. Teams must be in their assigned courtrooms no later than [time].

Schedule: [Based on the number of teams in your region, provide the schedule of rounds from "Competition Schedules" in the handbook and inform them how many rounds will be power-matched.]

Please report to room [number] following the last round of the day. After final scores have been tabulated, the regional winner will be announced. In the case of a tie, the play-off round(s) will be held on Saturday, February 16 at a place to be determined.

Lunch: Please bring sack lunches. There are vending machines in the courthouse and [specify nearby fast food restaurants].

Coordinators: Your coordinator(s) is/are [name(s) and phone number(s)].

(SAMPLE FORM FOR COORDINATOR'S USE)
JUDGES' INSTRUCTION

Coordinators should mail information about the regional tournament to judges at least two – three weeks prior to the competition. Feel free to modify this sample letter to fit your needs; you may also want to include a map. You should also follow-up with an email or a telephone call!

To: Mock Trial Judges
Re: Regional Tournament Information
From: [coordinator name(s) and telephone numbers]

Thank you for agreeing to participate in mock trial! If you have an emergency conflict and are unable to find a replacement, please notify [name and phone number].

Date: Saturday, February 9, 2008

Location: [name of building]

Enter at: [entrance]

Report to: [room # and time]

Food: [mention when and where food will be available – judges really appreciate having coffee available]

Schedule: See attached sheet. [list courtrooms, mock trial judges and time schedule. Ask presiding judges to bring robes]

Please adhere to the schedule - each team has 40 minutes to argue its side. Do not ask for school names. Instead, please record team I.D. numbers on the score sheets and timesheets.

At the end of each trial you will render a decision based upon which team you feel did a better overall job. The legal merits of the case should have no bearing upon this decision. [Mention your procedure for collection of score sheets and timesheets.]

All decisions will be announced at the end of the day. Please do not give out your decisions to any coaches, teachers or students, but feel free to give verbal comments to the teams if time permits at the conclusion of each trial.

You are free to leave at the conclusion of the last round that you are scheduled to judge; however, please tell the coordinator(s) you are leaving.

FINAL SCORE VERIFICATION SHEET
2008 Mock Trial Regional Tournament

Region: _____

Coordinator: _____

NAME OF SCHOOL & TEAM ID #

(List teams in region)

SCORES ARE CORRECT

(Teacher/Atty. coach sign off)

1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____
13. _____	_____
14. _____	_____
15. _____	_____

APPEALS FORM

Rule 6.5

[Fill out and fax/email to the State Bar of Wisconsin — 608-257-5502 or
www.drnaas@wisbar.org.]

Appellant

Name: _____ School: _____

Email: _____ FAX: _____

Dispute Issue: _____

Respondent

Name: _____ School: _____

Email: _____ FAX: _____

Dispute Issue: _____

Mock Trial Case TAB 10

**2008 Wisconsin High School
Mock Trial Tournament Case Materials**

Celebrating 25 years of Mock Trial

State of Wisconsin vs. Lee Morgan Nash

PROSECUTION WITNESSES

Warden Chris Wilhelm
Andy Roe
Ariel Bosque

DEFENSE WITNESSES

Lee Morgan Nash
Renny Furglar
Ricky Waschbaer

STIPULATIONS FOR TRIAL

1. Larry Lumina's official cause of death is asphyxia due to inhalation of superheated products of combustion.
2. The map of Nash's property and the state campground was drawn by Warden Wilhelm and is NOT to scale.
3. Nash's property is within the city limits of Clearwater but the Clearwater State Campground is not.

DISCLAIMER

The 2008 mock trial case is a hypothetical case. All names used in the mock trial case are fictitious and were created to be gender-neutral. Any similarity to an actual event or to the name of an actual person is strictly coincidental.

**PROPOSED JURY INSTRUCTION ON HOMICIDE BY NEGLIGENT HANDLING OF
FIRE (940.08(1)) — BASED ON WIS JI — CRIM 1175**

Homicide by negligent handling of fire, as defined in §940.08 of the Criminal Code of Wisconsin, is committed by one who causes the death of another human being by the negligent operation of or handling of fire.

Before the defendant may be found guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

First, that the defendant used or handled fire.

Second, that the defendant operated or handled fire in a manner constituting criminal negligence.

Third, that such criminal negligence on the part of the defendant caused the death of Larry Lumina.

The first element requires that the defendant operated or handled fire.

The second element of this offense requires that the defendant operated or handled fire in a manner constituting criminal negligence.

To understand what constitutes criminal negligence, you should first consider what is meant by ordinary negligence.

A person is negligent when he fails to exercise ordinary care. Ordinary care is the degree of care which the great mass of mankind ordinarily exercises under the same or similar circumstances. A person fails to exercise ordinary care when, without intending to do any harm, he does an act or omits a precaution under circumstances in which a person of ordinary intelligence and prudence ought reasonably to foresee that such an act or omission will subject another to an unreasonable risk of harm.

The Criminal Code provides that, "Criminal negligence means ordinary negligence to a high degree, consisting of conduct which the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another.

Criminal negligence differs from ordinary negligence in two respects. First, there must be a risk not only of some harm but of serious harm—that is, of death or great bodily harm. Second, the risk of such harm not only must be unreasonable, it also must be substantial. Therefore, for conduct to constitute criminal negligence, the defendant should have realized that the conduct created a substantial and unreasonable risk of death or great bodily harm to another.

The third element of this offense requires that the defendant's use of fire in a manner amounting to criminal negligence caused the death of Larry Lumina. This requires that the relation of cause and effect must have existed between the death of Larry Lumina and criminal negligence on the part of the defendant. Before the relation of cause and effect can be found to exist, it must appear that criminal negligence by the defendant was a substantial factor in producing the death.

If you are satisfied beyond a reasonable doubt from the evidence in this case that the defendant operated or handled fire in a manner constituting criminal negligence and that such criminal negligence on the part of the defendant caused the death of Larry Lumina, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

State of Wisconsin,

Plaintiff,

vs.

CRIMINAL COMPLAINT

Case No: 07-CR-1216

Lee Morgan Nash, DOB 11-3-84
711 Evergreen Drive
Marengo, Illinois

Defendant.

The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the Defendant committed the following offense(s):

COUNT 1: Homicide by negligent handling of dangerous weapon, explosives or fire 940.08(1)

On or about May 26, 2007, in the County of Clearwater, State of Wisconsin, the defendant did unlawfully and feloniously cause the death of another human being by negligently operating or handling fire, contrary to Wis. Statutes, sec. 940.08 (1), a Class G felony, punishable by up to ten years in prison and or a fine not to exceed \$25,000.

The complainant thereby informs the court that the basis for the above charge(s) is as follows:

On May 26, 2007, weather conditions in the County of Clearwater were windy and dry. The DNR had issued a high risk of fire alert and had suspended the issuance of burning permits. Early in the afternoon of May 26, 2007, Nash began building a fire out of brush that s/he had cleared from his/her property at 217 First Street, Clearwater, Wisconsin, Clearwater County.

Nash continued to feed the fire into the night. Sparks flew from the fire into the air. The windy conditions blew the sparks into the Clearwater State Campground igniting trees and brush. The resulting fire spread to an official, designated campsite occupied by Larry Lumina. Mr. Lumina was inside his tent and unaware of the fire. Larry Lumina was unable to escape his tent before it was engulfed in flames. Mr. Lumina died of asphyxiation due to smoke inhalation.

The complainant is a warden with the Department of Natural Resources and bases the above information from his/her own observations; the statements made by Lee Nash, Andy Roe, and Renny Furglar; and the expert report of Ariel Bosque, who is an expert in fire investigation. The complainant believes these witnesses to be reliable as they are based on personal observations and, in the case of Ariel Bosque, based upon

personal observation and scientific examination. The complainant believes the statements made by Lee Nash to be reliable as they are made contrary to his/her penal interests.

Subscribed and sworn to before me and approved for filing on this 4th day of September, 2007.

Chris Wilhelm

Warden Chris Wilhelm
Complainant

V. Parker Stevens

V. Parker Stevens
Assistant District Attorney

AFFIDAVIT OF WARDEN CHRIS WILHELM

1. I have been a warden for 15 years with the State Department of Natural Resources. I became a warden after attending college for two years in police science. Then I was accepted into the DNR Warden Academy. The Department conducts training at the Wisconsin State Patrol Academy facility but it is the DNR training with its own instructors and courses. I then did field training all over the state for a year before I was officially deputized as a warden. Most of my 15 years have been spent in the Clearwater area. I investigate all kinds of crimes, including battery, burglary, and illegal fire arm use. I also enforce state regulations concerning hunting, fishing and environmental concerns such as pollution and illegal burning.
2. I live in nearby Crystal Creek. I love the outdoors and in my free time I take care of injured animals, fish, hunt and train horses. I prefer to spend my free time as far away from the "weekend" crowd as possible but it is getting really difficult to do so since Clearwater draws so many people from out of state.
3. I always wanted to be a DNR warden – it lets me be outside and do good things for others. However, most people around here think wardens are snitches because we enforce environmental laws and stop people from illegal hunting and fishing but I know I protect the public as well as the environment. Plus, my uncle, Varner Wilhelm, is a notorious DNR violator, so I have a lot of first hand knowledge of the need for competent DNR wardens.
4. In the summer, fires are one of the biggest issues for the DNR. They are caused by careless campers, reckless land clearers, fireworks, illegal ATV use and a whole host of other man made dangers. Contrary to popular belief, the most deadly and damaging fires in Wisconsin are **not** caused by lightning strikes – that may be common out west, but not around here.
5. I never cease to be amazed at how reckless landowners can be when it comes to clearing brush from their land. Just two years ago, the Big Flats fire, started by an Illinois landowner up in Wisconsin for the weekend, destroyed almost 3800 acres of forest and millions of dollars of personal property. He was burning grass inside a fire ring he had made, the fire got out of hand and jumped, causing the damage. The conditions were dry, but not nearly as dry as this year. That's why this most recent fire, started by Lee Nash, is so disturbing. You'd think s/he would have been more careful.
6. On May 26, 2007, there were a lot of campers and landowners in the woods around Clearwater. Most of the day I was assigned to Clearwater Lake to enforce fishing and boating regulations. Water safety is a big concern for the people in Clearwater. While I was on the lake, I could see several smaller smoking camp fires at the State Campground. I radioed my colleagues, Cody Cashton and Aaron Gramlee who were assigned to the campground. I let them

know of the fires, but they looked to be smaller campfires and would not be a problem, despite the dry windy conditions.

7. That night I was planning on camping in the campground. I do that sometimes when I'm assigned to work at Clearwater Lake for the whole weekend. After work, but before I called it a night, I visited some friends who live south of the campgrounds; I noticed a lot of dark smoke coming from a clearing in the woods. From what I know now, it was coming from Nash's property.
8. Later that night, I was called from my off-duty status to respond to a fire at the campground. When I got there, it was obvious that a tent had been ignited by a flame. I learned from the first responders that one occupant of the tent had died of smoke inhalation. The local fire chief was also on sight.
9. The fire chief and I interviewed witnesses at the scene. I also spoke to Gramlee and Cashton about the fires I had seen earlier in the day. After considering all available information and the dark smoke I saw earlier in the evening, the fire chief and I investigated Lee Nash's property. There was evidence of a large fire consisting of logs, brush and other combustibles. There appeared to be quite a bit of pine that was burnt. Pine is especially dangerous in dry conditions because it sends sparks high into the air. The fire must have been large because it was still smoldering when I got there at 7:00 a.m.
10. I talked to Nash. Nash denied making anything more than a campfire. S/He admitted s/he was burning pine branches that s/he had cleared from his/her land. Nash admitted it was a hot fire so that s/he could cook food on it for his/her guests. Nash seemed rather annoyed with me for asking questions. Nash muttered something under his/her breath about being picked on because s/he does not live here anymore – something about the DNR out to get Illinois people.
11. Normally, in this part of the state, state law does not require a burning permit for a campfire. But, if the fire is really a brush fire or a bonfire, then a burning permit is required. The burning permit is required for two reasons – one, to make sure people don't burn when the conditions are bad, like they were on May 26, 2007 and two; to make sure the local fire department will have enough firefighters on hand in case the fire gets out of hand. The DNR was not issuing burning permits on May 26, 2007 because it was too dry and windy.
12. Nash's recklessness amazes me. Just last year I had to ticket Nash for an illegal fire. It seems s/he does not appreciate how deadly fire can be; now poor Mr. Lumina and his family have had to suffer the consequences of Nash's bullheadedness.

Chris Warden
Chris Wilhelm

Signed and sworn to before me this
30th day of May, 2007.

Beth Drake
Notary Public, State of Wisconsin
My commission expires: 9/9/2012

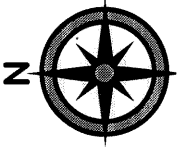


Clearwater City Limits

Nash's Pond

Clearwater State Campground

Clearwater Lake

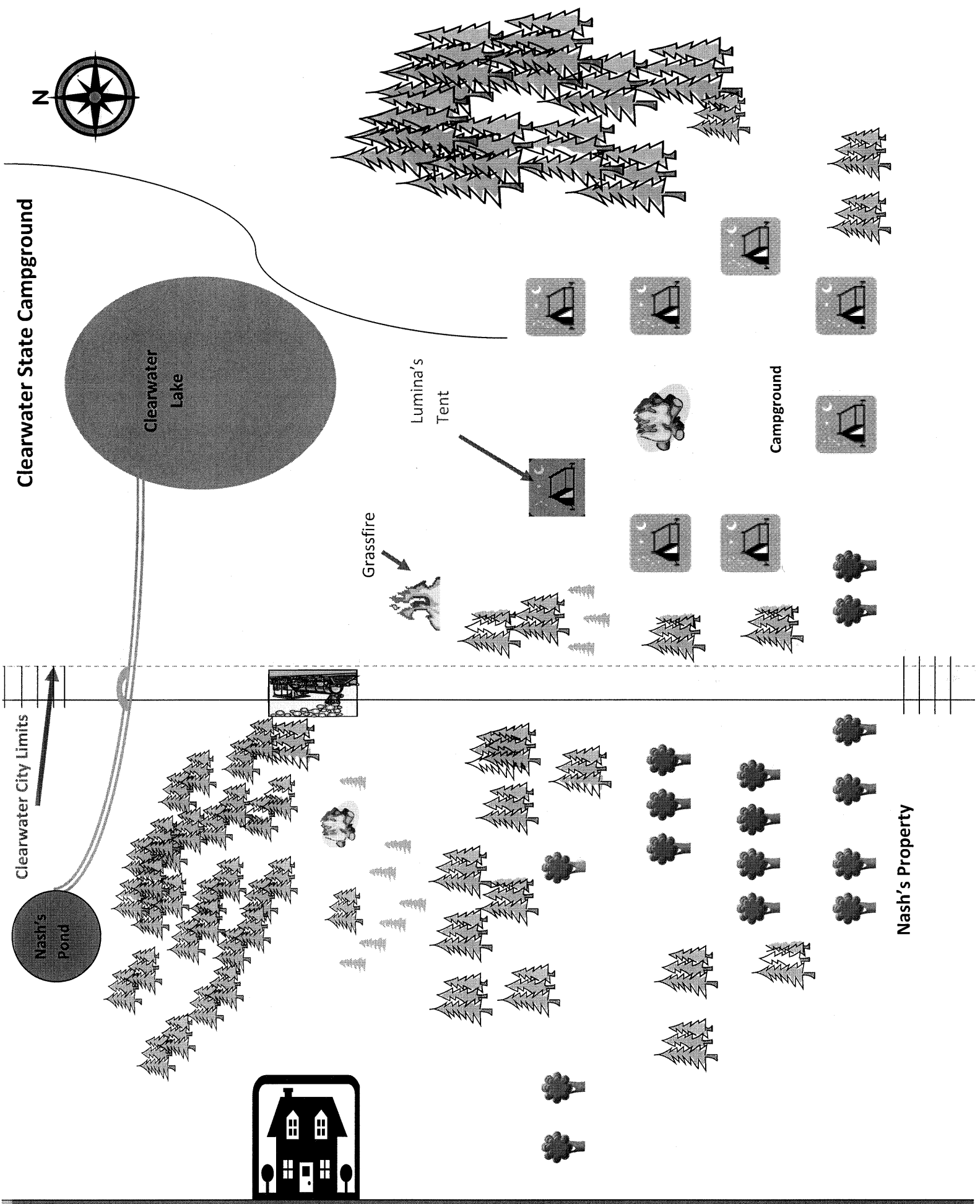


Grassfire

Lumina's Tent

Campground

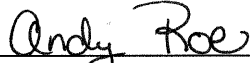
Nash's Property



STATEMENT OF ANDY ROE

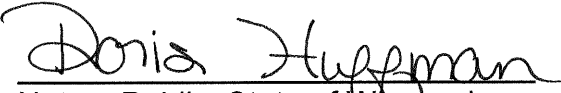
1. My name is Andy Roe and I live in Clearwater, Clearwater County, Wisconsin. In fact, I live just down the road from the land Lee purchased. I've lived in Clearwater for my entire life and I met Lee shortly after s/he bought his/her property.
2. Normally, I'm not much of a fan of folks from Illinois who buy "weekend land" up here because they usually aren't really interested in the locals. They're also usually loud and kind of destructive and obnoxious. They make a lot of noise like they own the place, but Lee seemed like s/he might be a little different. Lee seemed like s/he was interested in being in Clearwater.
3. Lee comes up weekends and other times to work on his/her property and I've seen Lee out there burning brush a couple of times. Lee seems really into it. I rarely see him/her doing much other work on the land – just lots of brush collection and burning.
4. One time, awhile back, I remember the volunteer fire department had to go out to Lee's to tell him/her that s/he needed a permit to be burning all the stuff that s/he was burning. My friend, Tristan, was volunteering for the department at the time and he later told me that Lee seemed like kind of a bonehead when it came to local rules and fire safety and common sense and all that.
5. Anyway, on May 26, Lee invited a bunch of folks over to see all of the work that s/he had done on his/her property. Lee said we'd just all hang out and cook out. I asked Lee if there was a special occasion and s/he said that it was his/her nephew's birthday, but that s/he also wanted to show off all the work s/he'd done. It sounded like a pretty good time, so I decided to go. I even brought along a couple of pints of fresh strawberries.
6. I remember the weather being a little strange that day. I think it was really nice and clear in the morning, but then it became really windy and a little cloudy in the afternoon. When I got to Lee's place, s/he already had a pretty big fire going. I was surprised to see it, given how windy it was. I thought to myself, "I wouldn't feel comfortable tending a fire like that in these conditions," but Lee seemed really confident and not at all worried about it, so I tried to relax.
7. Lee was using the fire to cook some potatoes. Lee then used the super hot coals that s/he generated from the potato fire to make a cake in a Dutch oven. When Lee was cooking, s/he was making jokes and laughing and goofing around with his/her friends and family. Lee didn't really seem to be paying too much attention to how big the fire was getting and how it was sort of jumping outside of the fire pit a bit. The other guests didn't really seem to notice, either. I said to Lee, "Hey, Lee, watch your fire there." Lee then kinda poked some of the coals that had started to escape back into the pit.

8. Once Lee took the cake out of the Dutch oven, everyone oohed and aahed and was really into the cake. I think I said something, though, to the guy sitting next to me, like, "Geesh, that's a really big fire" and the guy agreed. I then said it louder to Lee, but Lee just shrugged it off. I let it go and we all had some of the cake and I didn't pay too much attention to the fire. The cake was pretty tasty.
9. When everyone finished eating, we just sat around the fire talking. Lee kept adding more and more wood to the fire. I thought this was a little odd because the fire was already so big and the wind was really blowing. Lee seemed to think that it was really cool that the fire was sending off sparks that were shooting all over the place, but it just made me nervous. I really can't stand it when people don't respect how powerful fire can be.
10. After sitting around talking for awhile, I decided to head home. The fire was making me nervous, but, truthfully, I was more just bored with the conversation and wanting to get home. On my way home, I heard some fire trucks and assumed the fire department had seen the flames at Lee's and was making Lee put out his/her fire.



Andy Roe

Signed and sworn to before me this
31st day of May, 2007.



Notary Public, State of Wisconsin
My commission expires: 12/16/2011

STATEMENT OF ARIEL BOSQUE

1. I am the owner of Wildfire Consulting Services in Washington, D.C. Wildfire Consulting Services provides expertise in fire management, particularly for forested areas. I am a Type 2 Certified Fire Investigator. There are three levels of fire investigation certification and mine is the middle level. Most of the fires that I have investigated have been forest fires. It was exciting to have this opportunity to investigate a fire which appears to have started in an open field as a grass and brush fire.
2. On May 30, 2007, I was asked to determine the origin of the fire which killed Larry Lumina. Although I live in Washington, D.C. now, I am very familiar with the area around Clearwater, having gone to Clearwater University and having been a paid, on-call firefighter for the Clearwater Fire Department back in the late 1970's.
3. Based upon my investigation, my knowledge, and my experience, my professional opinion is that Lee Nash's campfire began the fire.
4. One of the first people I spoke to was Mr. Lumina's wife, Lucy. She told me that their family had arrived at the Clearwater Campground on May 26, 2007 and set up their tent between Clearwater Lake and a forested area. After they set up camp, she had to look for their little boy, Lucky, who had wandered off, for a while. She found him off to the northwest, wandering near the railroad tracks, in an open field. They thought about having a campfire but decided it was too windy for a campfire. In any event, Larry said he was tired and Lucy was not willing to supervise Lucky around a campfire, given Lucky's love of fire.
5. According to Lucy, they eventually all went to sleep in the tent in sleeping bags and on air mattresses. Lucy woke up sometime in the middle of the night because she heard a low roaring sound and crackling. She woke immediately because it reminded her of the sounds she had heard years ago at college when she had escaped a dormitory fire. She began yelling, got herself and Lucky and Luna out of the tent, and saw Larry unzipping his own sleeping bag as she left the tent. He fumbled with it as though the zipper was stuck but she focused on the children and assumed Larry would follow her right out of the tent. She could feel the heat from the fire and the children were coughing and complaining that it was hard to breathe. As she moved toward Clearwater Lake, she realized Larry was not behind her. Other campers were at the lake but Larry did not show up.
6. I viewed the area where the tent had been. The tent had been in a clearing, a short distance away from a forested area to the west. Virtually nothing was left of the tent. The trees were burned as was the grass around the tent. The burned area extended south of the campground itself and to the southeast of the trees, ending at an open field.

7. More significantly, the burned area extended to the north and west, ending by the railroad tracks on the west. Nash's property is to the northwest of the burned area, just on the other side of the railroad tracks.
8. I then looked at "directional indicators." Directional indicators include cupping, char patterns, and stalk patterns. When a fire burns away a tree trunk, the stump is "cupped" on the side facing the fire. Such stumps have a sharpened point which faces away from the fire. These trees were cupped on the north northwest. Based upon the cupping of the trees at the campsite, the fire approached the campground from the north northwest
9. The char patterns reinforced my view that the fire came from the north northwest. Charring usually is deeper on the side of the tree or other fuel that faced the oncoming fire. This deeper charring occurs because that particular side took more of the heat of the fire.
10. In addition, I examined the open field to the north of the area. I saw a few unburned stalks of grass. Stalks that fall backwards as the fire first burns the grass stem sometimes are unburned. They usually point in the direction the fire came from. These unburned stalks were pointing toward Nash's property. I know that the direction of the fallen stalks can be influenced by the wind and I considered whether the wind could have blown them that direction. I also considered whether other people coming through the area after the fire could have caused that pattern. I would not have relied on the stalk patterns alone but they supported my other findings.
11. By the time of my investigation, the fire was out. I therefore was able to follow the various directional indicators, including the brush, grass, and trees. As a fire dies out, there is less damage and charring. By moving in to the areas which were more damaged, I knew that I was getting closer to the fire's origins. When I reached an area just east of the railroad tracks and just east of Nash's property, my directional indicators became contradictory. Some indicators suggested that the fire was moving west, some east, and some south. At a fire's origin, contradictory directional indicators are often present because the fire is undeveloped and does not yet have a direction it is moving.
12. In addition, in that same general area, there was a portion of burn in which the grass was burned but some brush remained. Finding fire damage close to the ground only is also common at the fire's origin.
13. I then began searching around that area and asking around for possible sources of the fire. I learned of Nash's campfire that s/he made on May 26, 2007. That campfire was in the correct direction to have been the cause of the fire. I remembered Nash from my time in Clearwater because s/he had been a neighbor of my parents. Nash has never had much sense and s/he's been reckless as long as I've known him/her. I remember when Nash ended up in the emergency room because the orange juice was frozen and Lee decided to use a carving knife to get it out of the can. Sliced his/her thumb right open. Worse, there was the time that Nash climbed that rickety ladder with a chainsaw to cut

down a branch that anyone else would have used a pruning saw on. Nash didn't even make sure that ladder was on even ground. Lee was very lucky s/he did not kill himself/herself.

14. In any event, I looked at the Nash campfire site and Nash's property. The distance from the campfire to the origin of the fire was small enough that, on a windy day, blowing particles and ash could have blown east to the open field. By Nash's own admission, his/her fire was sending out "lots of little sparks" and leaves. Sparks and other burning material can travel long distances.
15. Everyone in the area except Nash knew that starting a fire on May 26, 2007 was dangerous. There had been no rain for far too long. The temperature had been in the 90's earlier in the week. It had cooled down from there but it was still quite hot. All of Clearwater knew that there was a lot of danger of fire. Heck, I heard that the Clearwater firefighters had been working hard for days putting out various fires. The local newspaper ran a story with a great picture of Captain Roscoe. Captain Roscoe was begging people to be very careful and comply with the burning ban in effect. Worse, the winds were particularly brisk on Saturday and the strength of the winds just kept increasing. It was not even good kite weather because it was too windy to control a kite. But Nash, reckless Nash, thought it was a good time to build a fire. Worse, by his/her own admission, Nash broke one of the important safety rules of fires: don't leave a fire until it's "out cold".
16. I ruled out other possible ways the fire could have started. People in the houses to the west of the railroad tracks mentioned to me that the Hiller kid and some of his friends were on the railroad tracks on Saturday afternoon. I spoke to Dirk Hiller and his friends as well as the people who saw them playing. They said they spent much of the afternoon looking for glass insulators. They denied having cigarettes, lighter, or flares and no one saw them with any of those things.
17. I also ruled out the grass fire to the east. My investigation told me that the area of origin was in the open field north of the tree stand and campground. Just to be thorough, I spoke to the Clearwater firefighters about that fire. Would you believe that Captain Roscoe is still there? He is such a great guy. I loved working with him back in my firefighting days.
18. No matter what Nash says, that grass fire was not the cause of the fire that killed Larry Lumina. First, the fire came from a different direction based on the directional indicators. Second, that fire was out by Saturday evening. These current Clearwater firefighters are really good at their jobs, just as we were in the old days. They would not say a fire was out if it were not completely out. Although the wind can lift burning particles as it did from Nash's fire, the wind was coming from the west on the night of May 26, 2007 and the early morning of May 27, 2007. The wind that night would have blown particles from the grass fire away from the campground.

19. Based on all available reports, evidence and interviews, it is my expert opinion that Nash's negligence in maintaining proper control of his/her fire resulted in the unfortunate death of Mr. Lumina.

Dr. Ariel Bosque
Ariel Bosque

Signed and sworn to before me this
26th day of June, 2007.

Bob Noel

Notary Public, State of Wisconsin
My commission expires: 10/30/2009

CURRICULUM VITAE OF ARIEL BOSQUE

Education

Michigan State University — Department of Forestry
Ph.D. in silviculture, 1994

Purdue University — Department of Forestry and Natural Resources
M. S. in forest biology, 1988
Research assistant to Professor Hugh Fuego investigating the improvement of genetic resistance of butternut trees

I.A.A.I. Certified Fire Investigator; 1983

Clearwater University — Department of Forestry
B.S. in forestry (with high honors), 1980

Experience

Wildfire Consulting Services
Washington, D.C.
Owner and President, 2000-present

USDA Forest Service, Uwharrie National Forest
Troy, North Carolina
Assistant Fire Management Officer, 1995-2000

USDA Forest Service, Pacific Northwest Research Station
Portland, Oregon
Forester, 1988-1991

USDA Forest Service, Sequoia National Forest
Porterville, CA
Crew Superintendent, 1983-86

Society to Protect Our Trees
Samoa, California
Executive Director, 1981-83

Clearwater Fire Department
Clearwater, Wisconsin
Paid, on-call, firefighter, 1978-80

Honors and Awards

2002 Certified Forester, Society of American Foresters
2003 Best Presentation, Society of American Foresters Annual Meeting, "Investigating Forest Fires in the Rain"

AFFIDAVIT OF LEE NASH

1. My name is Lee Nash, and my home residence is 711 Evergreen Drive, Marengo, Illinois. I have lived there for the past 7 years after graduating from the nanotechnology program at Clearwater Tech.
2. I would have liked to find a job closer to Clearwater, where I grew up, and what I consider home, but those nano jobs don't exactly grow on trees. So I had to go where I had a job offer, but I hate it down there!
3. I was lucky enough to be able to purchase a small parcel of land on the edge of Clearwater a few years ago; at least I make enough to afford that. It is only about five acres, but I don't need anymore than that. My dream is to one day be able to retire back in Clearwater.
4. When I bought my land, it was sort of an overgrown jungle. I come back to work on it every chance I get. I have been clearing the land slowly, trying to preserve natural plant species, and not to destroy the rural character of the parcel. I hate it in the city where they bulldoze all the trees, then plant houses. After that they try to landscape! They destroyed all the natural beauty.
5. I have many large trees which should provide protection from the elements all year round. I have some pines to provide shelter to the critters as well as several natural berry trees for the wildlife.
6. Clearing the brush is refreshing for me, I use a brush hook to chop down the little stuff, then pile it for at least a little while to let it dry out before I burn it. Hard work is a good way to release the stress that builds up living in the city.
7. The county forester told me it was a good idea to clear and burn the brush so the nutrients are returned to the soil. He said burning was the best way to dispose of brush; otherwise it would be a fire hazard. It was also good because it prevents the spread of some tree diseases carried by insects.
8. A couple of years ago when I didn't know the local rules, I was burning a small pile of branches when the local fire department showed up. Scared the heck out of me! Turns out I was supposed to get a burning permit from the local fire warden, and I hadn't. I learned that sometimes when weather conditions favor the rapid spread of a fire, the town imposes burning bans. The fine was \$198.00, but I guess that was a cheap lesson.
9. I don't think there were any burning bans on during the month of May. I know from looking at the DNR website that I can always have a campfire.
10. Well anyway, it was a great Saturday morning to be in Clearwater. I had my friends coming over for an evening cookout, and I was going to show them I

knew how to really cook outdoors! I had learned in scouts how to bake using a cast iron Dutch oven, so I was going to bake a cake for my nephew's birthday. It really isn't that hard, you dig a hole first, then fill it with coals from the fire. Then you place the Dutch oven directly on top of the coals, and cover the whole thing up with more coals. Then wait a few hours.

11. As the day progressed, the weather went downhill. It got windy, and a few clouds were starting to build in the west, the side benefit was that it helped keep the mosquitoes down and us more comfortable as we worked.
12. I had finished clearing for the day, and started piling up the branches. I thought I would start a little fire just to have one going. It always seems to keep down the mosquitoes when you have a fire. I planned on using that fire to create the coals for my Dutch oven cooking. Then I was going to roast potatoes in the fire and grill over it at the same time.
13. The wind also helped keep the fire going. I noticed that a little grass had burnt around the fire, but didn't think much of it, that usually happens.
14. The cake turned out great; I had even bought frosting for it. Everybody thought that was really cool to be able to bake over a campfire.
15. As the evening progressed, more branches were added to the fire, because the fire was so pretty. Pine branches seem to take a while to dry out, but then when the needles finally catch, they sound a little like firecrackers and send out lots of little sparks. The sparks would drift off into the sky leaving a trail. It was kinda pretty, like Mother Nature's fireworks.
16. We did notice that the fire off to the east seemed to keep on burning as well. We heard the fire department tanker trucks going by pretty frequently. My friends said they saw the fire department dealing with a grass fire that got out of hand.
17. I suppose I would have been more alarmed and concerned if I heard better. I damaged my hearing when I was young by not wearing hearing protection when I was shooting and working with machinery. It usually isn't a problem, because I lip read well; but I don't bother to try and listen to the radio anymore. It all sounds like mush.
18. I was top gun at the goggle-eye trap club when I was at Clearwater High. I shot on Chuttie's Pretty Good Grocery's team, we got first place three years in a row! I still have the trophies on my wall. But my hearing paid the price for not wearing ear protection consistently!
19. The authorities say I started a fire that killed someone. NO WAY! My fire never left my property; there is green grass all around the perimeter of my land! I think

some careless driver threw out a cigarette, or kids started that fire. I made sure my fire was down to coals and contained before I went to sleep. My neighbors said they saw some kids playing on the railroad tracks yesterday afternoon. They could have started it with some old flares or something. Besides, everyone knows railroad trains always seem to start the grass fires around here.

Lee Nash
Lee Nash

Signed and sworn to before me this
30th day of May, 2007.

Peter F. Jones
Notary Public, State of Wisconsin
My commission expires: 06/10/2014

Fire Kills One and Injures others

May 28, 2007

CLEARWATER -- The California fires south of Lake Tahoe have garnered the nation's attention, but here in Wisconsin the unusually hot and prolonged dry weather has caused tragedy in Wisconsin as well. Over the past weekend, one camper was asphyxiated at Country Fest near Cadott by the exhaust from a neighboring camper, and closer to home, Larry Lumina died when the tent he was sleeping in was set alight by the nearby Clearwater grass fire which fire departments from Clearwater, Pickle Creek, North Branch and Pike Lake are still struggling to get under control.

Injured but able to escape with minor injuries, his wife, Lucy Lumina and their two small children, Lucky and Luna. All three were treated at Clearwater General, and then transported to University Hospitals where all are reported to be in stable and good condition at the time of this report.

According to Department of Natural Resources Game Warden, Chris Wilhelm, the department believes the fire was caused when a neighboring property owner was burning brush to clear their property. According to Warden Wilhelm, the property owner allowed sparks to escape which in turn caused the park fire.

The matter is still under investigation, but Warden Wilhelm said Assistant District Attorney V. Parker Stevens is reviewing all of the reports and will make a decision by the end of the week. The combination of high temperatures along with brisk winds and dry conditions has increased the fire danger across much of Wisconsin and the nation.

AFFIDAVIT OF RENNY FURGLAR

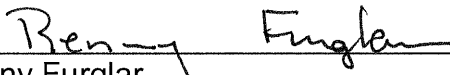
1. My name is Renny Furglar. I live with my uncle, Ernie Furglar, in an apartment above Furglar's Hardware Store, 120 Oneida Street, in downtown Clearwater. The store is owned by my Uncle Ernie, and I have worked there since I was a kid.
2. I love working in the store! For one thing, Uncle Ernie is one of those people other people just like to be around. He is kind of a local legend around Clearwater, and not just because he is a hardware guru. He is funny and charming, and he is especially good with little kids. I am trying to learn the business from Uncle Ernie, and some day I am going to buy him out. That's the plan, anyway.
3. On Saturday, May 26th, I was working in the store when a friend of mine, Roman Nash, dropped in to invite me to a cookout that night. Romey said his uncle/aunt, Lee Nash, was having some friends out to his/her place for a cookout; nothing fancy, just some meat and potatoes cooked over an open fire. Well, it wasn't quite that simple. It was Romey's birthday, so Lee was going to bake a cake on the coals, too.
4. Romey wasn't all that anxious to go, and neither was I. Lee can be a bit of a pain sometimes. Ever since s/he moved to Chicago seven years ago, Lee has been on a "back to nature" kick, acting like a modern day Paul/Paulette Bunyon. Lee goes on and on to anyone who will listen about how unnatural life in the city is. Lee comes back to Clearwater all the time, and plays lumberjack on his/her small piece of land. Lee even wears one of those ridiculous red and black plaid shirts, complete with suspenders and blue jeans tucked into high leather boots. Lee looks like a cartoon character, but everyone knows Lee's heart is in the right place, so nobody gives him/her a hard time about it. Lee cooks over an open fire a lot, too, and has gotten real good at it. So even though we knew we'd have to listen to Lee talk about our impending environmental doom, we decided to go. The food would make it all worthwhile.
5. After the store closed at 5:00 p.m., I picked Romey up and headed out to Lee's. As we passed Varner Wilhelm's place, we heard what sounded like fireworks or gunshots. No surprise there – Varner Wilhelm is always shooting at something. We also noticed smoke drifting in from the east and we were a bit concerned because it was getting fairly windy. The railroad tracks are off in that direction, and sometimes railroad clearing crews pile up the brush they clear from the tracks and burn it. They usually watch their fires, but not always. Sometimes the piles smolder for days unattended.
6. Sometimes the crews pile the brush up and kids come along and start them on fire just for something to do. You know what they say about Clearwater – no matter how hot it gets during the day there's still nothing to do at night. I know for

a fact one kid in particular, Dirk Hiller, has started brush piles on fire before. He is one troubled kid! Around Clearwater his nickname is "Fireball". I heard that he was arrested for starting fires in store dumpsters last fall, but the cops couldn't prove it and they had to let him go.

7. Dirk was in Furglar's Hardware on Wednesday or Thursday before the fire trying to buy some Orion Emergency Flares, but I wouldn't sell them to him. Uncle Ernie has very strict policies about selling anything like that to kids. Furglar's Hardware even stopped selling spray paint to anyone under 18 after a graffiti epidemic several years ago. Even if there wasn't a store policy against it, I would never sell anything dangerous to a kid like Dirk Hiller.
8. Anyway, the day after Dirk was in the store his uncle/aunt, Andy Roe came in and bought six Orion flares and some black powder. Black powder is a low explosive used by war re-enactors. It comes in two grades, one for muskets and one for canons. When I asked which one s/he wanted, Andy didn't seem to know the difference. Andy gave me some lame story about using it to scare birds out of his/her strawberry patch. We keep very good records on who buys that stuff – it's the law! Federal law requires the customer to show identification and sign for black powder. After Andy left I looked in the book; that was the first time s/he had bought black powder at Furglar's.
9. When Romey and I got to Lee's, I told some of the other people there about the smoke. Some of them had seen it, too, and a few said they had seen a grass fire, or something. Andy was there, and s/he seemed unusually interested, or I should say upset, about the fire in the east. Andy seemed inappropriately nervous and agitated. I can't exactly put my finger on it, but something else was going on with Andy. Like I said before, Dirk Hiller is Andy's nephew, and I know how disturbing that kid can be, so maybe it was something on the home front – Dirk is living with Andy for the summer.
10. I guess the topic got dropped after Lee accidentally fell into his/her own pond. Lee was demonstrating the "proper" technique for using a brush hook when s/he lost his/her balance and toppled backwards into the pond. I guess Lee didn't hear us yelling to watch out. Lee is always doing things like that. Anyway, Lee was a good sport about it and it was pretty funny, so we all had a good laugh and just forgot about the fire in the east.
11. We did have a fire of our own. It was a small fire, the one Lee used to cook the food. After the food had been cooked, we kept the fire going. There's nothing like a campfire to bring people together. We put some of the pine branches that Lee had cleared on the fire, and they went up with a crackle. Some of the sparks drifted off into the sky, but I am sure they all faded to black before hitting the ground. At one point, Lee even told Romey to check on the sparks as they drifted off toward the railroad tracks. I don't remember seeing Romey do it, but


we were being very careful, especially since we could hear the fire department's tankers going by. We assumed they were dealing with the fire off to the east.

12. The party was unexpectedly fun. For one thing, after Lee fell into the pond s/he seemed to get off his/her high horse about the environment and just concentrate on having a good time with good people. Everyone was relaxed and had some funny story or joke to tell. It was a blast! Well, not everyone. Andy continued to be edgy. At one point, Andy snapped at Lee to "watch that damn fire of yours!" It was entirely uncalled for and out of place. The fire was fine. If I had to guess, I would say Andy doesn't like Lee very much. Also, having Dirk living in your house would make anyone nervous about fire, I suppose. Still, there was no excuse for snapping like that at Lee, and it was really embarrassing.
13. Romey and I left Lee's place between 10 and 11p.m. Before we left, I offered to douse the fire, but Lee said s/he was going to stay up awhile and watch it burn down on it's own. We headed back into town. I dropped Romey off at his place, and went back to my apartment above Furglar's Hardware.
14. I read the article in the newspaper about the dead camper, and how the DNR warden thinks the fire that killed him was started by sparks from a neighbor burning brush. All I can say is that if that is true, it wasn't Lee Nash! It had to be some other neighbor. Andy is a neighbor of Lee's – maybe it came from his/her place! You will never convince me that Lee's small campfire had anything to do with this tragedy. It wasn't that big of a fire, and we kept a pretty good eye on it. Like I said before, Lee is sort of a tree-hugger these days, and s/he made sure someone was attending the fire at all times. Sure, the wind carried away some hot sparks, but they were dead before they hit the ground. It would have been a physical impossibility for those sparks to start a fire!



Renny Furglar

Signed and sworn to before me this
1st day of June, 2007.



Notary Public, State of Wisconsin
My commission expires: 12/24/2009

INTERNATIONAL JOURNAL OF ADVANCED RESEARCH

AFFIDAVIT OF RICKY WASCHBAER

1. I am the president of Forensic Consultants, Inc. We are forensic consultants in just about every area of products liability, property damage, and personal injury. As indicated on my attached CV, I have a bachelor's and master's in electrical engineering, an M.B.A., and also a C.S.P. I have over 40 years of experience investigating the cause and origin of fires. I am a member of the NFPA and sit on the committee that drafted NFPA 921 and the older NFPA 907M. I have written 12 texts on determining the cause and origin of fires, 75 articles, and given over 100 seminars. I have acted as a consultant to the Departments of Natural Resources and other state agencies investigating fires in 30 states, including Wisconsin, Minnesota, Iowa, Michigan, Illinois, California, Texas, Nevada, Arizona, Oregon, and Washington. I am also a consultant for the National Wildlife Federation's Education Committee.

2. In this case, I was retained by the attorneys for Lee Nash about a week after the fire when it began to appear that people were blaming Nash for the fire that took the life of Larry Lumina. My standard consulting fee is \$450 an hour and \$750 an hour for testifying, with a minimum of one day for testifying. My associates are billed at varying lesser amounts depending on their qualifications. We have billed Nash's attorneys so far \$34,397.

3. I was retained and asked to address two questions: (1) Did the campfire on Lee Nash's property spread to the east and cause the forest fire that led to the death of Larry Lumina; and (2) was Lee Nash criminally negligent in starting and maintaining the fire on his property. In my expert opinion, to a reasonable degree of scientific certainty, the answer to both questions is a resounding "NO."

4. The conclusion by the prosecution that Lee Nash's fire started the forest fire that killed Larry Lumina is pure speculation and founded on an incorrect interpretation of the fire scene.

5. Wildfire investigations are particularly difficult and it is easy to miscalculate the area of origin, let alone the actual cause. As opposed to a building fire where ventilation is easily identifiable, in a wild fire there are three different types of winds: meteorological, diurnal, and fire winds. With no building to contain the fire and block the winds, wildfires shift directions and speed up from the wind.

6. Prosecution's expert Ariel Bosque, generally correctly describes the spread of the fire, but leaps to an unsupported conclusion that the cause was a stray ember lifting into the air and crossing yards of land to land fortuitously on a patch of dry enough grass to start it on fire.

7. First, the so-called embers that witnesses spoke about were crackles from branches lifting off into the air. These almost certainly died out before ever reaching the ground. While secondary fires can be caused by wind-borne embers or firebrands, these are generally hot embers from an already existing forest fire that get blown by the

wind and start spot fires in new locations a distance away from the original fire. These are not the small sparkles that float up into the air from an ordinary campfire with a much lower heat intensity. Anyone who has made or watched a campfire (or had a fire in an outdoor fire place in their backyard) has seen these small sparkles and knows that they drift up and then go out. They lack the staying power or the heat intensity to start spot fires.

8. Second, a simple look at the map of the scene will show anyone that the prosecution's story is full of hot air. As with any hot and windy summer day in this part of the country, the winds were coming out of the southwest as opposed to the cool Canadian winds from the northwest or north. Directly to the east of Nash's property are the railroad tracks and Clearwater Lake. If indeed a stray ember blew out of Nash's campfire, it would have needed to clear the rear of his/her property and then it would have needed to clear the railroad tracks. If it was still hot enough when it landed across the street it most likely would have landed in the northwest quadrant of the park, or in the lake. On the other hand, the open field where the prosecution claims the fire started is far to the southeast of Nash's property. It is highly improbable for the Nash fire to have generated a hot ember that drifted that direction. Anything is possible, but that is an unlikely scenario.

9. A key factor in wilderness fires is the location of the heel versus the head of the fire. The heel is near the origin of the fire, away from the spreading portion and burns slowly against the wind or downhill. The fire head on the other hand is where the fire is spreading fast and furious. The head is generally on the opposite side of the heel. The head of the fire was in the camp grounds where the Luminas had pitched their tent. The fire was so intense there that it is fortunate that Larry Lumina was the only casualty.

10. Although the heel appears to be to the north-northwest of the campground, the type and characteristic of the fuel sources is a huge factor in the spread of the fire. The drier and smaller surfaced fuels (also called fine fuels), here the prairie grasses, burn much more readily than the living sap-filled pine trees to the west and south of the campground. Thus the origin is to the north-northeast and the fire then spread quickly through the prairie—away from the lake and its moister vegetation straight to the camp grounds, at the same time becoming hotter and hotter in order to start to burn and char the trees on the edge. The winds created by the fire moving in the southwest direction then meet the southwest meteorological winds creating a swirling effect and burning in multiple directions. Thus, the fire does spread in a general southeast direction away from the Nash property and leaves evidence such as cupping indicating so, but this is due to the fuel source, not because the fire came from the Nash property. Don't forget, to have come from Nash's camp fire as alleged by the prosecution the embers had to clear his property and the railroad tracks. The origin is one thing, the cause is another. Here, I believe that the actual cause is undetermined---we only know the approximate origin.

11. For some reason unknown to me, the authorities did not seem to investigate the possibility that kids were playing around the railroad tracks and started the fire just

off to the east of the tracks. Maybe they would rather blame an outsider than a local juvenile delinquent. I heard that the local teenagers like to hang out under the small trestle smoking pot and drinking beer. Some kids were seen there earlier in the day. A stray cigarette or match is a likely cause of the fire and fits the fire patterns. All it would take is one match in that dry grass and “poof.” Unfortunately, after the heat of this fire, one match is not going to be found. I did, however, notice beer cans under the trestle.

12. The prosecution also discounts the possibility of lightning. It is a scientifically accepted fact that dry lightning causes a majority of the forest fires in this country. It is true that is more common in the West where 70% of the wildfires according to one study are caused by lightning, but lightning caused fires also are common in this area. The difference is that the West tends to be dryer than the upper Midwest, but under the right conditions it happens quite frequently in this area, too. I reviewed the meteorological data for that day and there were storm conditions passing through the area, but I could not find any specific evidence of lightning strikes in the general area.

13. In terms of Nash’s care in making and maintaining the fire, there was nothing wrong or improper in his/her behavior. First, the WDNR has no jurisdiction over Nash’s property since s/he is within Clearwater City limits. Under the Clearwater ordinances it is a bit vague about what is required, but it is clear that if you are only building a fire for cooking or a campfire you do not need any special permit. Therefore, Nash did not need any permit for his/her cooking fire. It is different if a resident is conducting a large scale brush burning—which is why Nash got that fine a couple of years ago. This does not mean that a resident can recklessly start any fire, but in this case it is my opinion that Nash was not reckless.

14. Nash built a fire in a cleared area surrounded by green grass, exactly how one should build a fire. Although I would have liked to have seen a pile of dirt or sand to throw on it to control the fire, it was perfectly proper. There seems to be differing stories, but according to Nash, s/he kept an eye on the fire and made sure it was almost out before s/he went to bed as s/he should have—although dousing with water would have been better. Not totally extinguishing it, however, has no connection to the fire over in the park that killed Lumina. Instead, the potential danger is only that someone might walk into a still hot fire and burn themselves.

15. In sum, it is my expert opinion that Nash neither caused the fire that killed Lumina nor was Nash negligent in starting and maintaining his/her fire. The actual cause of the fire remains undetermined.

Ricky Waschbaer
Ricky Waschbaer

Signed and sworn to before me this
25th day of July, 2007.

Lindsey Draper
Notary Public, State of Wisconsin
My commission expires: 02/08/2009

CURRICULUM VITAE OF RICKEY WASCHBAER

Education and Professional Associations:

Southern Gallifrey University, B.E.E.E, 1948
Southern Gallifrey University, M.E.E.E., 1950
George's Correspondence University, M.B.A., 1984

Registered Professional Engineer: Wisconsin, Minnesota, Iowa, California, Texas, Arizona

Certified Safety Professional, C.S.P., Dee's Safety School, 1979

Certified Fire and Explosion Investigator (CFEI Reg. No. 0000-0000)

Professional Associations:

ASTM International
National Fire Protection Association
National Association of Fire Investigators
International Association of Fire Investigators
National Wildlife Association

Professional Experience:

Forensic Consultants, Inc., President, 1995 to present
Forensic Consultants, Inc., Vice-President, 1979 to 1995
Forensic Consultants, Inc., Fire Investigator, 1967 to 1979
Time and Space Company, technician, 1963 to 1967
Widgets, Inc., electrical engineer, 1950 to 1963

Recent Publications:

"The use of sonic implements in detecting the presence of gaseous signatures from toxic fires," Burn Magazine, Summer 2006.

"Diurnal versus fire winds: which are truly determinative of fire spread," Hot Winds Magazine, Spring 2005.

"Is anyone out there? Do aliens really exist: an examination of electrical evidence," UFOs, Aliens, and Other Unexplained Phenomena Quarterly, Fall 2004.

Committees:

NFPA 921 drafting committee
NFPA 907M drafting committee
NFPA steering committee
ASTM Electrical Engineering standards subcommittee
National Wildlife Forest Preservation Commission
Greater Orlando Chamber of Commerce