

2008 Idaho High School Mock Trial Competition

# Mock Trial Handbook

*Case Materials*

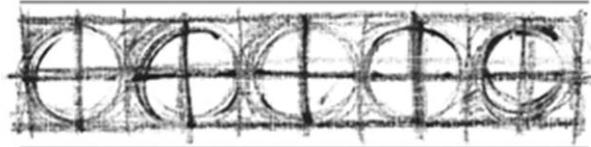
*Rules of Competition & Procedures*

*Timekeeping Procedures*

*Mock Trial Forms*

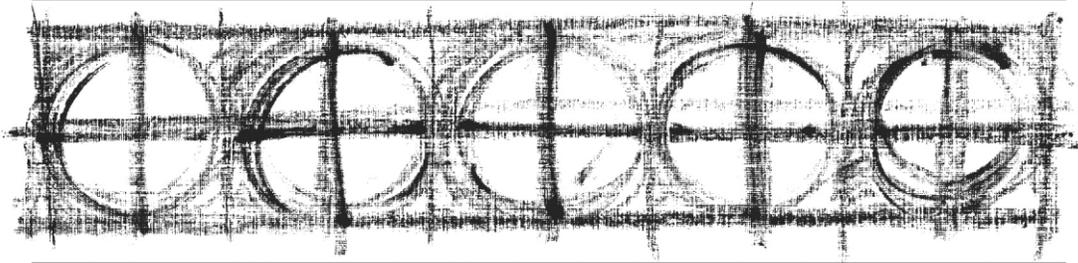
*Idaho Mock Trial Rules of Evidence*

IDAHO LAW FOUNDATION



*Helping the profession serve the public*

# IDAHO LAW FOUNDATION



*Helping the profession serve the public*

November 2007

Dear 2008 Mock Trial Participants,

Welcome to the *2008 Idaho High School Mock Trial* season! We are excited that you have decided to participate in this wonderful program.

The *2008 Mock Trial Handbook* is designed to provide all the support materials you will need to participate in the competition. In the next few months you should plan to become thoroughly familiar with all the contents of this manual. As you learn the case and develop your strategies for trial, you should also learn the *Rules of Competition & Procedures*, and the *Idaho Mock Trial Rules of Evidence*. This year, your team will also be responsible for providing a Timekeeper, so it's especially important that you take the time to understand the information outlined in the section called *Timekeeping Procedures*.

The 2008 mock trial case has been adapted for use by permission of the Delaware Law Related Education Center. Thanks to the Law Related Education Committee, especially Mike Fica, for help in adapting these materials.

As you participate in this year's mock trial season, remember the nearly 200 volunteers who make this competition possible each year. Your Teacher Sponsor and Attorney Coach will likely spend countless hours helping to prepare you for competition. You will also meet judges and coordinators who gladly give of their free time to help make this a great experience for you. Remember to take the time to thank all these volunteers for their time.

We are happy to have you as part of the 2008 Idaho mock trial family. Please feel free to contact Carey Shoufler at (208) 334-4500 or [cshoufler@isb.idaho.gov](mailto:cshoufler@isb.idaho.gov) with any questions or concerns at any time throughout the season. Best of luck to you and your team as you continue to prepare for 2008 mock trial season.

Sincerely,

Carey Shoufler  
Law Related Education Director  
Idaho Law Foundation

Jodi Nafzger  
Chair  
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*Executive Director*

## INTRODUCTION

### **What is Mock Trial?**

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The Idaho High School Mock Trial Program, sponsored by the Idaho Law Foundation's Law Related Education Program, teaches students in grades 9-12 about the law and the legal system by participating in a simulated trial. The program provides an opportunity for students to learn about the law and the legal system from practicing attorneys; for teachers to work closely with attorneys to reinforce legal concepts in their classrooms; and for attorneys to share their expertise about the law and their legal skills.

### **How does Mock Trial work?**

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Mock trial teams consist of 6 to 9 students, a teacher-sponsor, and an attorney-coach. Each participating high school can sponsor up to 2 teams. A team will use its members to play different roles in the Plaintiff/Prosecution and Defense rounds, but the same students must participate in both Plaintiff/Prosecution and Defense.

Each team will compete in one of four regional competitions held throughout the state. In regional competitions, each team competes in three rounds. Teams will present both Plaintiff/Prosecution and Defense cases. Twelve winning teams from the regional competitions will move on to compete in the state competition in Boise. At the state competition, all teams participate in two rounds. Four teams move on to compete in the semi-final rounds and two teams compete in the championship round which takes place at the Idaho Supreme Court.

### **What are the important dates to remember?**

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Mark these dates on your calendar:

- **Monday, October 22, 2007:** 2008 Mock Trial Materials Released
- **Friday, November 30, 2007:** Early Registration Deadline
- **Friday, January 11, 2008:** Regular Registration Deadline
- **Friday, January 25, 2008:** Signed *Code of Conduct Forms* and *Daily Sheets* Due
- **Friday or Saturday, February 1 or 2, 2008:** Regional Competition in Pocatello
- **Saturday, February 2, 2008:** Regional Competition in Boise
- **Friday, February 8, 2008:** Regional Competition in Coeur d'Alene
- **Friday or Saturday, February 8 or 9, 2008:** Regional Competition in Twin Falls
- **Thursday and Friday, March 13 and 14, 2008:** State Competition in Boise

## **What support does the Idaho Law Foundation offer?**

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The Idaho Law Foundation will not exclude teams from participation based on an inability to pay. To help support participation in Mock Trial, the Idaho Law Foundation's Law Related Education Program offers the following support:

- Assisting teams in recruiting an attorney-coach;
- Providing training and orientation sessions for teams;
- Offering meals and snacks at both regional and state competitions;
- Helping teams offset transportation and lodging costs for regional competitions through a matching grant program;
- Supporting teams who qualify for the state competition by covering all of the cost of lodging and much of the cost of transportation; and
- A stipend of \$1,200 for the team who wins the state competition to help pay for travel to the national competition.

## **What's new this year?**

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This year, the Law Related Education Program updated the *Rules of Competition & Procedures* to clarify how the competition is scored. For both the regional and state competitions, team advancement will be based on the following criteria in the order listed: 1) Win/Loss Record; 2) Total Number of Ballots; and 3) Total Number of Points Accumulated. Each of these criteria is explained fully in the *Rules of Competition & Procedures*.

This year, each team is responsible for training at least one team member to serve as the team's official Timekeeper. The Timekeeper from the Plaintiff/Prosecution side and a Timekeeper from the Defense side will work together as a neutral timekeeping team to ensure that accurate and fair timekeeping has been kept for both teams. Timekeeping rules and procedures are outlined in the *Rules of Competition & Procedures*.

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# **Case Materials**

THE STATE OF IDAHO V. KINSLEY WILLIAMS

IN THE SIXTH DISTRICT COURT OF THE STATE OF IDAHO  
IN AND FOR BANNOCK COUNTY

State of Idaho                    )  
  )  
                                  Prosecution )  
  )  
                                  v.                ) No.07-424  
  )  
Kinsley Williams                )  
  )  
                                  Defendant    )

**Prosecution witnesses**

Jamie Anderson, alleged victim of cyberstalking  
Casey Wallner, Jamie Anderson's roommate  
Andy Hopp, Idaho State Police investigator assigned to the case

**Defense witnesses**

Kinsley Williams, alleged cyberstalker  
Loren Albert, University professor of computer sciences  
Pat Clifford, University Webmaster

**STIPULATIONS**

1. There is no First Amendment issue in this case.
2. There is no entrapment issue in this case.
3. There is no jurisdictional issue in this case.
4. Chat room discussion transcripts are stipulated as an authentic representation of what was on the computer at the time they were seized by authorities.
5. All students named in this mock trial problem have signed the waiver for Chat room use.
6. The campus online discussion option is one where messages and comments may be entered in real time and are then posted and left, and can be read at any time.

**State of Idaho**  
**v.**  
**Kinsley Williams**

Kinsley Williams is charged with two counts of cyberstalking. The person Kinsley allegedly stalked via an on-line, campus-sponsored study chat room is Jamie Anderson. Williams and Anderson are sophomores at Idaho State University, Bannock County, Idaho. Both students reside in East Hall, a co-ed dormitory on campus.

**TIMELINE:**

**Monday, May 7:** Chat room entry: "Jam's in the window. Exercise all you want, my friend; you won't be able to run fast enough." Originated from computer in the University library.

**Thursday, May 10:** Chat room entry: "Jamming has been seen wearing school colors all week. Think blood won't show on those dark colors?" Originated from computer in Bedford Hall

**Also on Thursday, May 10:** Student Union Incident - no classes, Union relatively empty.

**Friday, May 11:** Chat room entry: "Anticipation is what it's all about, and building fear. You never know when you'll be forced to face your greatest fear...suffocation, torture, painful prolonged death." Originated from computer in East Hall

**Also on Friday, May 11:** After a 20-minute break, "Time is running out, my Jammin friend. Maybe we can meet in the alley?" Originated from computer in East Hall.

**Saturday, May 12:** "I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression. Ever wonder about pain and suffering?" And, after a five-minute break, "Jamming, can you come out of your 2nd floor roost and play?"

**Also on Saturday, May 12:** "the clock is ticking. Time is on my side. Time is running out my friend."

**Also on Saturday, May 12:** Chat room entry read at campus computer room with police witnesses, "Jam will rot just like Jelly if buried long enough."

**Also on Saturday, May 12:** Anderson receives e-mail message with no subject line from a campus computer, "SV may lose control at any time...longs to test your control. How long will you last, my jammin friend? If you're afraid, you better stay locked up in your 2nd floor roost and not go out to play. You could be sorry. You could be dead."

**The timeline is meant to be used as a convenience and should NOT be relied upon over the actual affidavits and the chat room discussions at the end of the problem. The timeline may not be entered into evidence and should not be referred to at all during trials. If conflicts are found between the timeline and the affidavits/chat room discussions, the affidavits/chat room discussions control.**

**IN THE SIXTH DISTRICT COURT OF THE STATE OF IDAHO  
IN AND FOR BANNOCK COUNTY**

State of Idaho	)	
	)	
Prosecution	)	
	)	
v.	)	No.07-424
	)	
Kinsley Williams	)	
	)	
Defendant	)	

**INFORMATION**

**Cyberstalking - Transmission of Threat**

Prosecuting Attorney Jack Haycock, representing the People of the State of Idaho, complainant, now appears before the District Court and states that Kinsley Williams, defendant, has, on or about April 30, 2007 through May 15, 2007, in Bannock County, State of Idaho, committed the offense of Cyberstalking in that he/she, without legal justification, knowingly committed the offense of Cyberstalking when he/she knowingly on at least two separate occasions, harassed Jamie Anderson through the use of electronic communication, and knowingly transmitted threats to that person of immediate or future bodily harm.

**Cyberstalking - Reasonable Apprehension**

Should trier of fact find inconclusive on the charges of Cyberstalking - Transmission of Threat, Prosecuting Attorney Jack Haycock, representing the People of the State of Idaho, complainant, would ask that Kinsley Williams, defendant, be found guilty of Cyberstalking - Reasonable Apprehension, as on or about April 30, 2007 through May 15, 2007, in Bannock County Idaho, Kinsley Williams did perform acts that placed Jamie Anderson in reasonable apprehension of immediate or future bodily harm.

Signature:   
Jack Haycock, Prosecuting Attorney, Bannock County

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

  
Summons issued by Judge David Koch

JURY DEMAND

IN THE SIXTH DISTRICT COURT OF THE STATE OF IDAHO  
IN AND FOR BANNOCK COUNTY

State of Idaho	)	
	)	
Prosecution	)	
	)	
v.	)	No.07-424
	)	
Kinsley Williams	)	
	)	
Defendant	)	

I, the undersigned, do hereby demand a jury trial in the above matter.

Dated: May 17, 2007

Signed: Kinsley Williams  
Kinsley Williams, Defendant

**Prosecution Witness Affidavit of Jamie Anderson**  
**Alleged Victim of Cyberstalking**

---

1. My name is Jamie Anderson and I'm currently a sophomore at Idaho State University. I live on campus in East Hall, one of the co-ed dorms on campus. This is my second year living at East Hall. I requested assignment to this residence hall again because I knew so many of the student residents, the place started to feel like home.
2. I logged onto the campus chat room the College sponsors as part of my class registration. The chat room gives students a chance to discuss courses, homework assignments, and things like that. I posted a message asking for the reading assignments for my literature course. I didn't want to fall behind.
3. Prior to signing on for the first time, I had to read and sign the usual release that says that the campus authorities monitor user activity by use of the "red button" scheme to protect students from unsavory activities. I was in the campus advisor's office to sign up for the service. A couple of other students were in there with me at the time. We all joked about the release; I don't think any of us took that seriously at the time. I didn't think of signing the releases as really being a deterrent if someone wanted to hack or bend the rules.
4. I hadn't used the chat room all that much until the middle of March. I know it was on a Friday. The campus pretty much clears out on Fridays, so I gave it a shot and asked if anyone had the assignment for my English 301 class. I got an almost instant response to my request for the homework assignment from another student in class. It seemed funny that we'd been told not to reveal our actual names, address, telephone numbers, or other personal information. I thought at the time that the small campus was full of friendly folks all concentrating on their educations and having a good time at college.
5. After that first positive experience, I visited the chat room often. There would often be movie reviews or discussions on books being read, bestsellers and assignments, and information on good places to eat. And, there was also the routine info on class assignments in case someone was out sick. I'm not very computer savvy, but I could use the chat room and my campus e-mail account with no problems.
6. I was in a class with Kinsley Williams during our freshman year. It was an abnormal psychology class and the professor was using quite a bit of literature as a way to help us understand various psychological problems and profiles. It was a fun class, but I remember that Kinsley was frustrated because none of the literary situations created really challenging psychological profiles. Kinsley asked to do some extra-credit reading and did a report on Jack the Ripper. It was a painful report to listen to, and I guess I was a bit more sensitive than some. Kinsley's report almost made me ill. It was very graphic. Kinsley seemed to enjoy the class's discomfort with some of the descriptions and photographic materials that were circulated during the report. I asked the professor if I could be excused in the middle of the report; I was that upset. I was given permission to leave, but had to explain to the professor in the hallway why I was so upset. The professor understood and I left and called home and discussed the report with my parents. I felt better after speaking with them.

7. I think it was about two months after I'd signed up to use the chat room, and about a week after the student union incident where I'd avoided Kinsley Williams that I noticed some references to my nickname, which is Jam. Some kids in the dorm call me "the Jam" because my dorm room is so messy that the door sometimes jams up against something ... and my real name is Jamie, so it sort of fits. My chat room and e-mail user names are both the same, Jammin@ISU and Jammin@ISU.edu. In hindsight, I should have been much more careful in choosing user names and e-mail addresses. Better to be as anonymous as possible on the Internet. My password is, or was, JRCHAT. These have changed now.
8. Anyhow, one day I logged onto the chat room and remembered that someone had posted two messages on a previous date that had sort of freaked me out. "Jam's in the window. Exercise all you want, my friend; you won't be able to run fast enough." My first thought on reading that was that I'd been goofing around the night before doing some jumping jacks and running in place in the dorm room. My room is on the second level so I rarely bother to close the drapes, as no one can really see in the room. I sort of calmed myself down by telling myself that I wasn't a jogger, so it must not have really been meant for me. But, I did show the message to my roommate Casey. Casey sort of shrugged it off at first, but then read the second message further down the discussion thread. Then we both got concerned.
9. There were some other messages on the board that same day, and the discussion was about a campus hazing that had taken place at a high school a few weeks ago. Some kids had been pretty badly beat up and suffered some extreme indignities, to say the least. There are no house sororities or fraternities allowed at ISU, so there's never been a problem with that kind of social rite of passage, so to speak.
10. We both saw the statement; "Jamming has been seen wearing school colors all week. Think blood won't show on those dark colors?" and Casey and I both thought that this line in particular was directed at me, because I had been wearing school colors all week. I have a part time job at the University Bookstore and we were promoting t-shirts, sweatshirts, and other College logo clothes and items and all of the student employees had been given an assortment of stuff from the Bookstore to wear as a sales promotion.
11. Casey and I were both convinced that someone using the chat room knew that I was Jammin@ISU and was trying to prank me somehow. I first thought someone was just trying to get my attention, but some of the other lines started to really get to me and I started having trouble sleeping and would constantly look over my shoulder wherever I went. Casey and I started going places together or not going out at all. This made going to class for a week or so a little difficult, but we worked it out between us so that neither of us would be alone walking on campus.
12. Even though we were careful, we kept visiting the chat room. We felt like sleuths looking for some additional evidence, to determine for sure if someone was earmarking me for trouble, or threats or something. We were drawn to it, even though it was freaking us out. It really never occurred to either of us that we should press the panic button that the College offers as a safeguard. I can't say why. We sure got to the point that we were close to panic.

13. On May 11, 2007, a Friday, there was a flurry of chatter about a course on campus that was talking about terrorism and the law. It's a government and current events course, in the political science field. There was plenty of discussion on freedom of speech and September 11, and individual rights. Nothing too frightening, it was a good discussion actually.
14. But then we saw another reference to "Jam." "Anticipation is what it's all about, and building fear. You never know when you'll be forced to face your greatest fear ... suffocation, torture, painful prolonged death." And then there was "You can keep your friends around you, but the clock is ticking. Time is on my side." And it started up again with, "Time is running out, my Jammin friend. Maybe we can meet in the alley?" Casey and I saw it at the same time and Casey said that maybe we should notify someone on campus about the series of postings that were mentioning me. I said I'd think about it. I guess I was trying to talk myself out of being afraid. But the next day, on the 12th, a Saturday, when campus was really empty, there were two more postings.
15. One was responding to the comment I mentioned above, about suffocation and torture, saying that the language was inappropriate. I don't know who had posted that response, but I was glad someone else on campus was feeling uncomfortable about the discussion.
16. The person who'd been posting the threats responded to that by saying, "I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression."
17. About ten minutes later my computer indicated I'd received an incoming e-mail with the subject line blank. I usually just delete these without opening them -- fear of virus problems -- but I opened it. The message was from user@ISULib, which meant it was from one of the campus library computers where you can either sign on with your student I.D. or as a general student, using the user@ISULib and then the password "student." It's anonymous, so far as I can tell. Anyhow, the message said, "SV may lose control at any time ... longs to test your control. How long will you last, my jammin friend? If you're afraid, you better stay locked up in your 2nd floor roost and not go out to play. You could be sorry. You could be dead." Someone had figured out that all you had to do to Jammin@ISU was add a dot and then "edu" to turn it into my e-mail address.
18. And then we totally freaked. Casey and I turned off the computer and locked the dorm room on our way out and went right to the campus police station to report on what we'd been seeing. Campus police called the Idaho State Police Detectives and they all met with Casey and me and with other campus officials who got involved. That's when I learned how high-tech the campus computer system was. Every chat room discussion had been captured, fully, and was stored on disks in the security offices. They had access to every chat room discussion thread and all they had to do was search for "Jam" and "Jammin" or other variations, and they found some vague references I hadn't even seen.

19. The police and other College personnel asked if I had any idea who might be targeting me, and I said I thought of one person but really didn't want to say because I wasn't at all sure. I was relieved when their investigations lead them to Kinsley Williams. I just don't know why Kinsley chose me as a target for the stalking, which is what it really was. Stalking.
20. Once the police became involved, there were only two more references to me in chat room discussions, neither was as threatening as the first, but they still crossed the line and are included in the complaint against Kinsley Williams.
21. One appeared on Sunday, May 13, 2007, and referred to Jam and Jammin, and included mention of my English homework. It was then I remembered that I'd asked for the homework assignment for English 301. It must have been pretty easy for Kinsley Williams to figure out that Jammin@ISU was Jamie in English 301.
22. The message that appeared on May 10 was probably what convinced me that Kinsley was, in fact, the person behind all the threatening chat room messages. I'd seen Kinsley in the student union and had made a point of turning and walking in a different direction. I'm absolutely positive Kinsley and the friends that were there with Kinsley all saw me avoid them, and I have to say I wasn't all that subtle about it. Casey was with me and I actually grabbed his/her arm and dragged him/her down a side hallway. I also know that they saw us make that move, because we stopped and looked back and saw Kinsley laughing and pointing at us. That's when Kinsley said, and we both heard it perfectly, "There goes Jammin@ISU, The Jam, runnin' scared" and when Kinsley said "The Jam," he/she made that little quotation mark sign with his/her hands and laughed a pretty scary laugh.
23. Another proof, sort of, that it was Kinsley Williams who was posting all those messages in the chat room is that they stopped right after Kinsley was arrested. During the whole investigation we were told to keep on using the chat room and not discuss the investigation with anyone.

**Prosecution Witness Statement of Casey Wallner  
Jamie Anderson's Roommate**

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1. My name is Casey Wallner and I'm Jamie Anderson's roommate at Idaho State University. Our dormitory room is on the second floor of East Hall. Kinsley Williams also lives at East. All of us are sophomores at ISU, and we all knew each other, in passing, last year. That is, Jamie and I knew each other well as we're from the same high school, but we knew Kinsley Williams only in passing.
2. I remember that Jamie and I signed up for the chat room together, on registration day, just in case. I don't think either of us really planned on using it all that much, but then Jamie got sick and needed a homework assignment from someone and it worked so well that we both started jumping in and commenting now and again. It's a useful tool. We enjoyed it for a few weeks and then things got strange.
3. We went to the student union to get some coffee and meet friends on Thursday, the 10th. When we arrived, we saw Williams sitting at a table in the middle of the union with a bunch of friends. Jamie grabbed me and pulled me back out of view, but we heard Williams and the other people at the table laughing and saying things about Jamie, like making fun of the nickname, "The Jam." Not their business. I guess it wasn't all that frightening, being as it was such a public place, but we were in such a tense state that we reacted like we were really freaked out by running into Williams and those other pals of his/hers. We left the way we came rather than walking through the union and setting ourselves up as targets for more of their verbal teasing. I know Jamie didn't sleep well that night. I didn't either.
4. I keep a pretty accurate calendar of where I'm supposed to be and when, because when I get too busy I sometimes forget stuff. The calendar came in handy when we reported the chat room threats to the authorities because we, Jamie and I, were able to confirm 100% that the discussions took place on the dates they did. My calendar jived with the printouts that the computer guru's were able to retrieve.
5. I even urged Jamie to print some of the chat room screens so we'd have something to refer to if questions arose about what we'd been reading there. It was some pretty ugly stuff.
6. I remember that Jamie got real freaked out after seeing "Jam" and "Jammin" appear in some of those ugly messages. I know if I'd seen my name attached to those threats, I'd have gone through the same or worse emotions that Jamie suffered. Jamie pretty much stopped opening the curtains in the morning, answering the phone or taking walks. And Jamie's behavior was catching, especially since I'd read the messages as well. All that talk of torture can really dig in and sort of fester in your mind. Jamie and I decided that we'd hang pretty close together and make sure that Jamie wasn't alone. Ever. And we were doing that when the additional messages came on the message board.
7. I don't know why we didn't just sign off and stop using the chat room. I guess we sort of felt that we wanted to know what the person out there was thinking and that we'd be able to tell if there was a real threat coming Jamie's way. Better to know than try to guess, you know?

8. Anyhow, after about the third mention of "Jam" I started asking Jamie if we shouldn't alert the campus authorities or dial that 9999 campus phone number to let someone know how freaked we were getting. I felt sorry for Jamie. There was a real confused feeling in him/her. I guess it's hard to get someone in trouble. I don't think I'd have minded so much getting someone who was picking on me so awfully in trouble. They deserve whatever comes their way. Eye for an eye, they say.
9. I was pretty insistent after Jamie stopped eating. Wouldn't go to the dorm cafeteria or any of the local campus town restaurants. I was asking other friends to bring us fast food almost daily. I was afraid to explain why, so I just said we were working on a class project and couldn't get away from the computer that long.
10. I think Jamie lost about 10 lbs. And night after night, I'd wake up to see Jamie just sitting there, or peering through the closed curtains, or listening at the doorway. It was awful to watch and I tried to offer some comfort and assurances. After all, there is a dorm alarm system, the doors are usually kept locked and we have to use keys to get onto the resident floors, and we had the phone right there. But it didn't help.
11. I can't remember ever discussing with Jamie the possibility of clicking on the panic button on the chat room web page. I think we may have considered it, but decided that the College must be monitoring the page, because they said in their registration materials that the pages were not considered private. I guess that maybe in the backs of our minds we thought that someone would be watching and know that something was wrong. No one ever contacted us to check to see if we were alarmed or concerned or anything like that though.
12. I guess we could have put a stop to the whole business if we'd used that panic button early on. Maybe then we would have gotten some sleep, Jamie wouldn't have been so freaked out, and Kinsley Williams would have avoided getting into all this legal trouble.
13. When we did finally decide to report the problem, we went to the campus officials together with the printouts we'd kept. They were able to match their computer times and messages to ours so they could see we hadn't faked anything.
14. Then they really started watching the chat room. They told us to keep logging on and using the computer in our room to use the chat room. We did. It felt sort of good knowing that someone else was watching and that there was a good chance that someone was going to get caught red-handed sending those ugly messages. We were still pretty apprehensive though and kept up our policy of never being alone, closing curtains, and keeping our doors locked up tight.
15. It didn't take long after we reported the problem to the campus officials that the computer guys told us that they thought the chat room messages had been sent from a computer inside East Hall, Jamie really freaked and started talking about quitting school, dropping out for a year or two, going home to get a job and let things settle down. Terrible to let someone get away with threatening someone like that and causing such life changing fears to take over.

16. Finally, they made an arrest, Kinsley Williams, and the chat room messages referring to Jamie stopped immediately. Guess that sort of proves that Kinsley must have been the one doing all that nasty stuff. What a jerk.
17. And now we've heard that Kinsley Williams may be using the defense that someone else is probably using his/her passwords and codes. That's funny. Williams' been using that chat room and must have seen the tags on the ends of his/her comments. Why would a student who is so interested in law-enforcement and all that stuff not want to investigate and find out who was adding text? Makes no sense. I'd have been furious if someone started altering my comments, especially if they were turning something allegedly innocent into something dangerously threatening. That's nonsense. Kinsley's supposed to have such a keen mind, why wasn't it used when the additional lines were seen? I would have thought it would be the kind of challenge Williams would love!

**Prosecution Witness Statement of Andy Hopp**  
**Idaho State Police Detective Assigned to the Case**

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1. My name is Andy Hopp, I am an ISP Detective assigned to one of the office's "elite cyber crimes squad," which means I've received special training in computers and on-line security issues. Officers are allowed to choose which "elite squad" they are interested in and then the force offers extensive training. The fact that we get to choose means that each officer on the force is given special training in his or her area of interest. Goes a long way to boost morale. I also have a degree in computer science from Idaho State University. I graduated with honors 10 years ago and went right to the police academy. I served 4 years in the Navy as a computer technician on board the U. S. S. Reliant. This is my second year on the force. I was on duty when Jamie Anderson and Casey Wallner arrived at the College security offices. I took the call from the College and went over there to help with the preliminary interviews and investigations.
2. When I arrived, both of the students were highly agitated and nervous. My first thought was that if we don't get them calmed down, we're not going to get good information from the interviews. So, I set out to calm them down by offering them sodas, sitting with them for a while, introducing myself and generally making them comfortable with the surroundings and the people they'd be speaking with. Even after they relaxed, Jamie kept exhibiting nervous tendencies like hand wringing, twisting and turning in the chair; standing and pacing the floor -- things like that are very telling during the interview process. I'd say that whatever had happened to these two kids, they were taking very seriously and they were scared.
3. They mentioned that almost all of the communications had taken place through computer on-line chat rooms but that there had been one face-to-face confrontation that had also upset them both. Evidently Kinsley Williams saw Jamie and Casey in the student union and had targeted them there with some teasing remarks that had made quite a threatening impression on them both.
4. It's routine for Idaho State University campus police and the Idaho State Police to cooperate fully when something happens on campus or a student has a complaint. We have a long history of cooperation and support for each other's offices and authority. I was called in to take statements, so if a civil or criminal investigation ensued, there would be a proper chain of evidence.
5. The campus police had already called the computer technical staff to retrieve the chat room conversations that had taken place in the past two or three weeks. We were going to limit the search for the threatening language by asking the students what times they had entered and exited the chat room. Knowing how efficient the computer staff at Idaho State University can be, I knew we'd have the information very quickly.
6. Casey Wallner had the presence of mind to bring in a calendar that indicated quite a few of the incidents they were questioning. Nice kid. Thoughtful and I'd be willing to bet Casey is a good student. Organized.
7. It's routine in this kind of case to encourage continued chat room use to see if we can draw out the person or persons who are making threats. When we encouraged Jamie

to continue utilizing the on-line chat room until they could follow the leads they had to try to identify the sender of the threatening messages, Jamie's fear showed in full force. You could see his/her face go pale and his/her hands tremble. Casey Wallner looked a bit taken aback as well. I suppose they had thought that simply reporting the problem would make it go away. That's not how investigations work though. We sometimes need help to find out the computer that was used, and the pass code of the user.

8. I am aware that Idaho State University has in place monitoring software that automatically alerts security staff when certain words or phrases are used in the chat-rooms on campus. It's called the "shark program." I knew we'd need to interview the computer technology staff to see when the discussions took place, which computers were used, etc. This could be a lengthy process.
9. This past winter, I investigated some child exploitation cases on the Internet. The common denominator was that all three cases originated in chat rooms. I try to encourage parents and teens, and even younger children who are allowed Internet use, to always take great care in protecting their confidentiality. In one of the cases I mentioned, I asked the teenager involved if she knew how to research the name and information on the person she'd been chatting with. She felt she didn't need to because she'd been chatting with this person and had asked so many questions. She felt confident she knew the person. What she hadn't thought of was that the person might be lying. I asked her if she had given out any personal information and she said she hadn't. But then I asked if she'd ever mentioned her high school name. She said yes. I asked if she'd indicated her gender, and she admitted she had. I asked if she'd ever mentioned what year she was in school. She said she had. I then asked one more question, had she ever mentioned any of her extracurricular activities. Again, she said yes. All these, to her, seemed innocent enough. However, when all are taken as a whole, they provide an incredible amount of information for a stalker or other criminally minded individual.
10. The information she offered could have helped to narrow the search for a target. Think about it. She told this person what high school she went to. That narrows the field, in this case, to less than 800. From the entire world, to 800. Then she said she was a female. That cut the number in half, to approximately 400. She mentioned she was a senior, narrowing the field to about 100, and she also indicated she was a cheerleader, thus narrowing the global field to eight. And, take this into account as well. The high school she attended has a website that displays photographs of team sports and, you guessed right, the cheerleaders. So, if this girl had also mentioned that she was blond, or had long hair, the field would narrow even more. So, even though this girl hadn't given out her name, address, telephone number, e-mail or web information, anyone with enough will, could have located her pretty easily with the information she had provided.
11. After checking the captured computer information available from the College's computer systems analyst and computer tech people, we were able to determine which computers on campus had been used to enter the chat room each time one of the suspect comments was made. All but one time, the computer used was the one located in the East Hall common room on the first floor of that dormitory. That computer sits

in a small, rather out of the way room, down a hallway; and you can close the door for complete privacy. It's the perfect place to undertake questionable computer behavior, and think that you couldn't be traced because of the number of students with access.

12. ISU has in place a "filter" system called "the shark program" that has the capability to capture questionable language and alert monitors to potential problems. However, we've learned through experience that no software program is foolproof. First, it has to be switched on. You have to learn how to maneuver through the data history files to see what's been going on.
13. By checking user files, sign on dates and times, we were able to discern that the user name and pass code, which students must register when they sign the initial release forms to utilize the chat room, belonged to Kinsley Williams. The username was "Shokwave", which is one of Kinsley Williams' usernames. Shokwave's password is "CragO5." The other registered student username Williams uses is "SirVive2004" with the password "Kincrag." Both usernames appear on the printouts of the chat room discussions in question. Both were using the East Hall computer. The one message that did not use that particular computer was the first message with a reference to "Jam." That one appeared on May 7th and said "Jam's in the window. Exercise all you want, my friend; you won't be able to run fast enough." That message was posted from a computer in the Idaho State University Library, 2nd floor student lounge. The username was "SirVive2004" with the appropriate password "Kincrag."
14. As a routine user of the campus e-mail and website, I can testify that often e-mails are sent but don't arrive until seconds, minutes, or even hours later. And, relying on any campus clock when indicating where you might have been at what time, can be taking a chance. Everyone on campus knows the campus clocks are unreliable and more often than not they're way off. Must be because of power brownouts or something. They just can't seem to keep the things running right.
15. Williams seems to think that his/her username and password from last year, which were "SirVive2004" and "Kincrag" were found on a textbook he/she sold and are being used by someone trying to get Williams into trouble. We have yet to locate that particular textbook, which Williams says was sold back to the University Bookstore. Nor do they have any record of Williams selling that particular textbook back to them. We checked at the Library to see if this particular textbook had found its way onto the bookshelves and might have been available or accessible for student use, but they don't have that particular textbook in their inventory. They have five duplicate versions, but none have the writing on the cover that Kinsley Williams says should be there.

## **Defense Witness Statement of Kinsley Williams Alleged Cyberstalker**

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1. My name is Kinsley Williams and I'm a sophomore at Idaho State University. I live in East Hall, the same dorm where Jamie Anderson and Casey Wallner live. I admit without reservation that I use the on-line chat room offered by the College, but I deny any intent to threaten any specific person in the various postings I submitted.
2. I guess I can see how someone might be unsettled by talk about sleep deprivation and human laboratory experiments to study pain and suffering, and hate crimes, but my major is psychology with a minor in law enforcement. I have an honest curiosity about these things that is shared by many in my classes.
3. I decided on this major because I want to become a psychologist to help post-traumatic stress disorder patients recover from their traumas. I watch quite a bit of television when I'm not doing my homework and the history channel, and the news channels often have special programs on virtually every crime that has ever been committed and they often run stories told by the survivors. I'm incredibly interested in these first-hand accounts of how victims survive, their thought processes, their physical strengths, etc. I mean, if we all knew what it took to survive a terrible situation, they'd be able to train us all to withstand just about any terror we could ever expect to face. I think my research is going to be very useful someday.
4. I guess that's because I'm such a serious student, I am often perceived to be a loner or outsider. I know I'm a bit of an over-achiever and often accept extra credit assignments, especially if they allow me to undertake some individual options in my research. One of my extra credit reports in a psychology in literature class evidently freaked out some of the less motivated students. I don't really understand why. I wasn't exposing any deep dark historical or psychological secret. The schools all teach crime and punishment, and television programs run the same kinds of pictures I showed. One student got up and walked out, obviously shaken. Now that same student is lodging a complaint against me.
5. The chat room has been a great resource for me and I vigorously deny improper use. I've often ridiculed the general chat room population, but I've never targeted any individual. The statement that said, "Anticipation is what it's all about, and building fear. You never know when you'll be forced to face your greatest fear ... suffocation, torture, painful prolonged death," was from me. I had been discussing torture camps with some other students and was responding to a question that someone had asked as we all headed home. It's true. Anticipating something dreadful is often worse than the actual happening, when it finally occurs. Like going to the dentist. You think how awful it's going to be, but then you do it and it's not all that bad. Fear gets to you and makes you freak. Discussing controversial views should not be illegal, even if someone misinterprets the statements that are made!
6. I remember writing something like "I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression." Someone had said that I was nuts in one of my classes. I prefer the word "mad." It's so much more poetic, somehow. Loads of highly productive and famous people have been thought to be mad, but they still gain fame and fortune for their thought processes. I admit that

being a bit different makes one appear to be a bit mad, thus the statement. Being different, to me, is a good thing. It isolates me from people I don't really care about and I'm allowed to focus on my thoughts, goals, class work, research, etc.

7. I am, while a loner, a very aggressive student. I like to challenge my professors by tossing them questions they don't expect and making comments that others might think outside the norm. I like to make them think as much as they like to make me think. I guess I may be a different kind of student from what they normally see, but I've had quite a few professors compliment me and tell me they enjoy the challenge of having me in their classes.
8. I flat out deny having anything to do with the two statements that are included in the complaint that say; "Jam's in the window. Exercise all you want, my friend; you won't be able to run fast enough." And "Jamming has been seen wearing school colors all week. Think blood won't show on those dark colors?" Who cares when Jamie was exercising or what color his/her clothes were? And that bit about the blood. I am absolutely convinced that some nut case with some computer expertise has been out there using my passwords.
9. I'll also admit to typing in the statement that "The clock is ticking. Time is on my side. Time is running out, my friend." How anyone could see that as a threat, I don't know. I was talking about a statistical probability that all of us in the chat room at the time would be victims of crime. I think everyone understood what the context was. It's when you pull the dialogue apart and start looking for ugliness that it appears to be threatening. That's not my fault.
10. And, when that second transmission, the one on the 11th that everyone thinks is so awful, appeared, I wasn't near a computer. I had logged off and was actually on my way to an interview with computer lab personnel about a report I was going to do about on-line research. So now they're probably going to say that I have the technical ability to pause a computer e-mail entry or had someone else press the enter key? Good luck.
11. I think that someone in the chat room knew that Jamie and I weren't seeing eye to eye and started tacking on comments to my chat room commentary. I even think I know how it was done and I've asked Pat Clifford if I'm right. I think if you ask Pat, you'll find that anyone could have logged into the chat room using my personal information and tagged words onto my comments after I'd signed off. This is especially true if I happened to be using one of the College computers, like at the library, the student union or in the common room at East Hall, and I have used those computers, but not frequently. I can't remember the last time I used the library computer. Must have been a few semesters ago.
12. There's a strong possibility that someone's pranking both Jamie Anderson and me. I know that I had written my personal pass code from last year for the chat room on the cover of my forensics textbook from last year and I am pretty sure I sold that book or donated it to the library without erasing the information. I haven't closed that account, I just added a new one this year, so someone could be making all of this look like it's coming from me, when it isn't. That should be illegal, if it isn't! Some may

think that it's a convenient way for me to have pranked someone, using an old account, but it's just plain easier to let the old accounts ride, rather than completing paperwork. It's not a crime to be lazy, is it?

13. I've been asked what computer usernames I've got on file in my name. This year I registered the username "Shokwave" with a password "CragO5." Last year, I had registered under the username "SirVive2004" with the password "Kincrag." I'm absolutely positive that the Shokwave/CragO5 information was written on my forensics book from last year. I'm also absolutely positive that whoever has that book is the person you're looking for. Again, I'm willing to admit to making some of the statements, or participating in some of the discussions, but my intent was not to harass anyone. I thought all along I was in an educational conversation, a learning experience, you know?
14. People are also making a big deal about me making fun of Jamie in the student union. Since when has laughing at someone been a crime? All I did was make fun of the nickname "The Jam." I was sitting at a table in the union with some friends and Jamie came around the corner and lurched back so suddenly, dragging someone with him/her out of view. Then they peeked around the corner, like kids playing hide-and-seek! Jamie was making a fool of himself/herself by dragging that friend behind some wall and acting so afraid. It was pretty childish.
15. By the way, someone tells me that Jamie received an e-mail from the University library computer that they think came from me. I wish they'd fingerprint all those computers over there. I haven't used the library computers for months.

## **Defense Witness Statement of Loren Albert College Professor of Computer Sciences**

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1. My name is Loren Albert and I am an Idaho State University Professor. I teach computer science: computer ethics, and advanced technology and research. I've been serving in my capacity as head of the computer technology division for four years.
2. I encourage my students to use the on-line chat room and discussion opportunities as a safe and efficient way to expand their studies. It is important for students to realize early on that our student chat rooms are not meant for entertainment, they are meant as learning and communication tools. They should be used for open dialogue. Students are encouraged to utilize the chat rooms, and to adhere to the rules and guidelines set forth by the University and my individual professors. For example, I tell my students to be particularly aware of message length, continuity of discussion, and articulate responses that can keep the discussion flowing. Short is always better. Brief phrases are easier to respond to and keep the discussion going without lengthy delays that can create confusion.
3. Some students arrive on campus experienced with computer chat rooms. Others experience a bit of timidity when they first use the tool, but with some encouragement, these students learn how the medium works and are able to use it efficiently within a matter of weeks.
4. What students sometimes don't understand is that there can be a number of "conversations" going on simultaneously and they need to process the discussions to weed out what is relevant to their particular discussion.
5. Having a problem like this arise on the Idaho State University Campus is disturbing and I've been in meeting after meeting with College Deans, the University President, faculty and staff to try to determine whether or not the chat room facilities should be shut down. There seems to be the overwhelming response from the student body that they want the chat rooms to continue, but with additional monitoring by campus officials.
6. It was one of my responsibilities to supervise the on-line chat rooms and I take that responsibility very seriously. It was my decision to include the "red button" feature that students can click if they feel discussions are getting out of line or crossing into a territory that makes them uncomfortable. The red button has never been used during this academic year. Quite often students take it upon themselves to admonish other students that ask inappropriate questions or use unacceptable language. I'm very proud of the Idaho State University students. They are, for the most part, using a tool in a very adult manner.
7. Unfortunately, on the week that the alleged cyberstalking took place on the Idaho State University chat room I was on and off campus taking care of family wedding plans and was not checking on the chat room conversations, as I usually do at least three to four times a day. I log on routinely and read discussion threads to see how students are using the chat room and if there are problems with the equipment, etc.

8. This particular allegation is the first time in the history of the chat room that such a threat has been observed. It is my personal opinion that the language does not rise to the level of a criminal complaint; however, as a University official, I need to be aware of all investigations and allegations so I've reviewed all the chat room discussions in question.
9. I am concerned that there may be some unauthorized use of a student's password. Based on our records, one of the alleged offensive statements occurred on Saturday, May 12th. Between the entries, "The clock is ticking, Time is on my side. Time is running out my friend," and the line "Time is running out, my Jammin friend. Maybe we can meet in the alley," There's a 20 minute break or lapse in the discussion. That is plenty of time for Kinsley Williams to have logged off and left the building and someone else, an unauthorized user, to enter, log on and use Kinsley's password to continue the conversation and issue the threatening second phrase. Kinsley Williams was actually interviewing someone on campus in the computer lab at the time that second phrase appeared so Kinsley may not have been the person responsible for making the entry. I can confirm that because I walked by the computer lab about five or ten minutes to 4:00 and saw Kinsley.
10. Unauthorized use, if indeed that is what happened in this situation, is a serious infraction of the campus rules. A year ago, the University experienced an on-line prank when a student, I'll call John, left a computer workstation without logging off and protecting his e-mail account. The next student who sat down at the station realized that he had the opportunity to prank the student named John and sent out a rather innocent message to the chat room that indicated that John was madly in love with Marsha. This embarrassed both John and Marsha, who had never really spoken to each other. I was able, in class, to call attention to the breach and discussed the misconduct, which violated University policy and the academic integrity of the chat room. The resulting gossip from the incident was innocent and no one was hurt. And the prankster issued a verbal and written apology to the parties he'd pranked. This offered a valuable learning experience to everyone involved in the chat room. We haven't had that type of prank since.

**Defense Witness Statement of Pat Clifford  
Idaho State University Webmaster and Cyber Angel**

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1. My name is Pat Clifford and I work at Idaho State University in the computer technology lab.
2. It was my responsibility to design the University's chat room option for the students. In doing so, I made sure that every one of the University's computers, in the library, dormitories, student union, computer labs, and in the offices, could link directly to the chat room with appropriate user names and passwords. That would ensure that the students would have access, and the faculty and staff would be able to have access as well. We drafted a form for the students to sign so they'd be aware of some of the "panic" or "red button" options in case they felt there were problems. They also signed a form that indicated they had read the rules for using the chat room. Those rules prohibit abuse of the system, hacking, and unauthorized use--like using someone's password without their knowledge, and other standard, common sense rules.
3. I think the chat room has a lot of potential, but I don't think it's being used as the University had first envisioned. At the outset, teachers would go to use the chat room to expand on classroom discussions and pose challenging questions to the students for additional debate. That never happened. The chat room, as it is used now, is 99.9% student driven. The only time a faculty member visits is to check in if they are assigned as a monitor for a day or so. Those monitor duties rotate so no one has to continually be responsible for reading all the chatter that goes on.
4. Usually the discussions are about assignments, what's due when, why do they give us so much to read, do you have something I need or want, etc. There has certainly been nothing very in-depth, controversial, or inspiring. I've monitored the chat room off and on since inception and can tell you that there has been no earth-breaking news out there.
5. I have read the transcripts of the conversations in question and I fail to see why any of the language created this uproar. I found none of it to be particularly threatening. But, I'm not an 18-year-old student away from home. I suppose if I were out there without a good support system, and if I got it into my head that someone was mad at me or didn't like me, some of the wording could be construed as vaguely threatening. But it does not cross the line into a cyberstalking matter. There's just no basis for it.
6. It's incredibly common for students to forget their passwords and use someone else's for a few seconds to get an assignment...and that's after all the nagging we do to tell them to keep that kind of information strictly confidential. Students also, quite commonly, write their usernames, passwords, e-mail addresses, and other information on the covers of books or notebooks. I've even found this kind of information written on mirrors in the restrooms.
7. Maybe there's a false sense of security because the students all know that the faculty and advisors and campus security have access to the chat room and we monitor the discussions on a regular basis.

8. There's been a bit of a fuss between the campus security office and the computer technology folks regarding security-screening devices that are supposed to filter discussions to look for particular words or phrases. It's my feeling that the technology we have isn't nearly sophisticated enough to do that. Even words we find offensive can be used in sentences, especially in intellectual discussions or debates, so that they lose their offensive nature and become part of a very positive discussion.
9. For instance, pick a phrase like "kill you," which initially sounds terrible, unless it's used in a phrase like, "those shoes will kill you if you wear them too long," or something like that. I think "murder you" has been filtered once, and that was a student warning another that if he got caught doing something "Your parents are going to murder you." We let that kind of thing slip by. We've never had a filtered phrase appear in a sentence that would infer a direct threat, like "I'm going to kill you." Same thing with murder you, torture you, etc. Maybe it's because the students realize the phrases they aren't supposed to use can raise an alarm with one of the security personnel assigned to monitor the chat rooms.
10. I've met Kinsley Williams. Kinsley was interviewing me about Internet use in combating terrorism...and that interview was scheduled for 4:00 on the 11<sup>th</sup>, but Kinsley showed about fifteen or twenty minutes early, at about the same time as one of the alleged communications in the complaint. Kinsley seemed to be exceptionally bright, although somewhat distracted.
11. Some folks seem to think that Kinsley has a bit of an odd streak. I'm not at all sure that's true. I just saw a very intelligent and motivated student who wanted to seek out answers. In any event, I do not believe he/she is capable of stalking anyone. I should know, as I have been combating cyber crime such as this through my involvement with the Cyber Angels, a watchdog group of volunteers who work closely with the law enforcement agencies to address and monitor on-line abuse and cyber crime. I am on a special team that is responsible for answering e-mails from people that are being stalked on-line. Victims are given information regarding how to protect themselves and how to turn the predator in. From my personal experience, Kinsley does not fit the profile.

## **EXHIBIT 1: On-line Chat Room Home Page**

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Welcome to Idaho State University's On-Line Student Chat room. Click to select chat topic:  
You will need your Student Chat room User Name and Password to participate!

### ***Student Directories***

- Freshman
- Sophomores
- Juniors
- Seniors

### ***Faculty Notes (Find course descriptions and syllabus information)***

- Library Study Circles (Join a topic/discussion thread)
- English & Literature
- History & Archeology
- Forensics & Law
- Mathematics & Sciences
- Music & Theater
- Athletics & Health

### ***General On-line Discussion Group (campus life, assignments, general discussions)***

#### ***Chat room Rules***

- No swearing, racist, or sexually explicit language.
  - Respect the opinions of others.
  - Provide accurate information when discussing class assignments.
  - Be aware of the panic and discipline systems used in this chat room.
- 1) **Panic.** There is a red button at the bottom of the chat room page. If you are alarmed or concerned regarding on-line discussions, feel free to click on the red button, which will alert College personnel to the problem.
  - 2) **Discipline.** Idaho State University reserves the right to monitor the chat room message boards 24/7. College monitors are authorized to act on behalf of the University if they feel action should be taken to close the chat room to protect the integrity of the site and ensure the safety of our users.

(A-Z Index) (About ISU) (Academics) (Admissions) (Alumni & Friends) (Arts) (Athletics)  
(Calendar)(Contact ISU) (Current Student Directory) (Faculty &Staff Directory) (Life @ ISU)  
(Library) (Online Research) (Technology) (Visitors) (Legal Notices & Disclaimers)  
(Web Privacy Waiver) (Questions/Contact Us)

Privacy Waiver: Information contained in this communication is neither privileged nor confidential. You have signed a waiver of privacy, which is on file in the office of the Dean of Students. This page and the sub-pages may be monitored by the campus office of information technology and security personnel. Campus authorities will address any misuse, and serious infractions of chat-room rules may lead to loss of campus privileges, expulsion, or criminal prosecution. Infractions should be reported to campus security or to the Dean of Students by dialing 9999 on any campus telephone.

## **EXHIBIT 2: Idaho State University Student On-line Chat Room Usage Policy**

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All students utilizing the On-line Chat room must read and sign this release form. Students who are found to have violated this Usage Policy will be barred from further use of the On-line Chat room and may face civil or criminal penalties, depending upon the violation.

Students violate Idaho state University's On-line Chat room Usage Policy when they engage in any of the following prohibited activities. This is not an exclusive list; other activities not listed may be prohibited, at the discretion of Idaho State University.

- Hacking and related activities are strictly prohibited. Hacking includes, but is not limited to, illegally or without appropriate University authorization accessing computers, accounts or networks, penetrating or attempting to penetrate University computer security measures, port scans, stealth scans, and other activities designed to assist in hacking.
- Obscene, defamatory, abusive, or threatening language or content is strictly prohibited. Use of the Idaho State University On-line Chat room to post or transmit, or otherwise make available obscene, defamatory harassing, abusive or threatening language is prohibited.
- Pornography is strictly prohibited. Use of the Idaho State University On-line Chat room to post or transmit, or otherwise make available any pornographic, obscene, or other inappropriate materials is strictly prohibited.
- Any activity meant to cause disruption or interference with the Idaho State University On-line Chat room is prohibited. Actions meant to harm, disrupt, or threaten to disrupt services, business operations, reputation, goodwill, student and/or student relations, or the ability of Idaho State University students to effectively and safely utilize the Idaho State University On-line Chat room are prohibited.

If Idaho State University finds any violation of this Usage Policy, Idaho State University may take any appropriate action to stop or correct such violation, including, but not limited to, shutting down the On-Line Chat room and/or removing information. In addition, Idaho State University reserves the right to monitor and retain electronic copies of all communications posted through its On-line Chat room for security purposes and for purposes of quality assurance.

Violations received by Idaho State University regarding the use or misuse of the On-line Chat room may be forwarded to campus or other appropriate law enforcement authorities for investigation and resolution.

Student users of the Idaho State University On-line Chat room are encouraged to maintain strict levels of secrecy and confidentiality to guard their personal information. If a breach of personal on-line security has been noted or is suspected, students are advised to immediately change their passwords and/or e-mail addresses. Serious breaches of security may be reported to campus administration, campus security, the Idaho State University Student Union, Computer Services Division, and/or the Dean of Students.

Student Signature: \_\_\_\_\_

Date: \_\_\_\_\_

***I have read and understand the Idaho State University Student On-line Chat room Usage Policy.***

### **EXHIBIT 3: Internet Chat Room Dialogue Excerpts**

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**Monday, 7 May 2007**

**Canonball:** enters the chat room 4:45 p.m.

Hi folks, anyone got the assignment done from History of Western Civ from last week? I thought it was pp 205 to 400, but Chancy5 said we had to go all the way to 414. Anyone?

**Chancy5:** 4:52 p.m. I'm pretty sure it's to 414 but I could have written it wrong.

**Butters:** 4:55 p.m. It must be 414, that's what I wrote 2.

**Allthumbs:** enters chat room at 4:55 p.m.

**Cannonball:** 4:55 p.m. More work for me. I'd rather be outside.

**Micahforce:** enters chat room at 4:55 p.m. page 414 is right. I have that too and just spoke with Prof. G.

**Jammin@ISU:** enters chat room at 4:56 p.m. Hi everyone. Concur with page 414. BTW- Anyone in here seen the student play at the Union? Hamlet?

**Cannonball:** Nope. Shakespeare ain't my bag.

**SirVive2004:** enters Chat room at 4:58 p.m.

**Yankeegirl:** enters chat room at 4:58 p.m.

**Butters:** 4:59 p.m. I heard it was good, but haven't seen.

**HughesQ:** enters chat room at 5:01 p.m.

**Cannonball:** 5:02 p.m. I'd rather be outside than in on a day like today.

**Micahforce:** 5:10 p.m. Just walked by the lake. Joggers are out in force. Go track team ISU.

**Phoebes:** 5:11 p.m. So why, if we'd all like to be outside are we in on our computers?

**Jammin@ISU:** 5:11 p.m. I'm going out now. Get some p.m. sunshine and exercise.

**SirVive2004:** 5:11 p.m. Jam's in the window. Exercise all you want, my friend; you won't be able to run fast enough.

**Micahforce:** 5:12 p.m. Jam, you run with the track team?

**Yankeegirl:** 5:12 p.m. If you do, run fast and win!

**Cannonball:** 5:13 p.m. Jam, if you're on the team, fly!

**Jammin@ISU:** 5:13 Not on the team.

**Jammin@ISU:** exits chat room 5:13 p.m.

**SirVive2004:** 5:14 p.m. Not on the team, but practices nonetheless. In the window.

**Canonball:** 5:15 p.m. SirVive2004, you're creeping me out.

**SirVive2004:** exits Chat room at 5:25 p.m.

**Allthumbs:** That survivor person was making some inappropriate comments, don't you think?

**Cannonball:** Sure do, but do. Vive's out now. No worries.

## **EXHIBIT 4: Internet Chat Room Dialogue Excerpts**

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**Thursday, 10 May 2007**

**Jammin@ISU:** enters chat room 3:18 p.m.

**Fleetstreet:** enters chat room 3:18 p.m.

**Yankeegirl:** enters chat room 3:19 p.m. Anyone know if the campus is doing a flag day celebration again this year?

**Strikers:** enters chat room 3:19 p.m.

**Coreforce:** enters chat room at 3:19 p.m.

**Allthumbs:** enters chat room at 3:19 p.m.

**Zulu:** enters chat room at 3:20 p.m. Don't know but last year's celebration was a gas. Check the union bulletin board?

**Yankeegirl:** did that. Nothing there.

**Rogerwilco:** enters chat room 3:22 p.m.

**Jammin@ISU:** Last year's was cool. The color guard was awesome.

**Shokwave:** enters chat room 3:23 p.m. Speaking of color, Jamming's been seen wearing school colors all week. Think blood won't show on those dark colors?

**Yankeegirl:** What's that all about?

**Fleetstreet:** Yeah, what's up?

**Yankeegirl:** Talk like that can prompt a panic button alert, you goof.

**Shokwave:** No harm intended, no harm done. Drop it

**Jammin@ISU:** exits chat room 3:25 p.m.

**Allthumbs:** Hey Shokwave, you know someone using SirVive2004? You two should get together sometime.

**Shokwave:** Aware of SirVive2004. Not interested.

## **EXHIBIT 5: Internet Chat Room Dialogue Excerpts**

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**Friday, 11 May 2007**

**Shokwave:** enters chat room at 2:30 p.m.

**Strikers:** enters chat room at 2:45 p.m.

**Jammin@ISU:** enters chat room at 2:45 p.m.

**TravellerX:** enters chat room at 2:45 p.m.

**Yankeegirl:** enters chat room at 2:46 p.m. Classes out for the weekend. Sigh.

**Strikers:** Yeah, relief from drudgery, eh?

**TravellerX:** Anyone on from the history and forensics class? Some pretty strange stuff in that class.

**Strikers:** like what?

**Allthumbs:** enters chat room 2:47 p.m.

**TravellerX:** like lots of talk about killing. Really freaky.

**Strikers:** that's what's going on in class? Talk like that?

**Shokwave:** Some criminals used fear as a control; fear is stronger than chains and fences.

**TravellerX:** Upset quite a few students in the class. Some had relatives who had been victimized. It was a sad class.

**Yankeegirl:** My neighbor's mother survived an attack. She absolutely never talks about it.

**Strikers:** understandable not to talk about pain and suffering when it's been so close.

**Yankeegirl:** Guess so. Not sure I'd have survived.

**Shokwave:** Wonder if anyone our age would handle the situation well. Would be interesting to try to recreate the atmosphere.

**Yankeegirl:** You kidding?

**TravellerX:** That's crossing the line. Who would want to do that?

**Strikers:** Someone not quite right in the head.

**Shokwave:** Don't call me crazy.

**Strikers:** I didn't. But the thought of studying pain and suffering? Come on.

**Shokwave:** It would be amazing to study pain and suffering. Doctors must do it all the time. Long-term effects of suffering could produce some interesting data. Volunteers? Hey, Jam you still here?

**Jammin@ISU:** just listening

**Allthumbs:** Don't respond to that kind of comment.

**Shokwave:** Listen good and respond or don't. Anticipation is what it's all about, and building fear. You never know when you'll be forced to face your greatest fear ... suffocation, torture, painful prolonged death.

**Jammin@ISU:** signs off at 3:15 p.m.

**Strikers:** You're a freak

**Shokwave:** Thanks for the compliment. Jam is full of fear. Would make a great experiment.

**TravellerX:** You're so lame.

**Allthumbs:** Shokwave, you're about crossing the line there with all that torture talk.

**Shokwave:** Don't be such babies. It's talk.

\* \* \* no significant discussion for approximately 20 minutes

**Jammin@ISU:** signs back on at 3:35 p.m.

**Shokwave:** Jammin is back. Time is running out my Jammin friend. Maybe we can meet in the alley?

**Jammin@ISU:** signs off at 3:37 p.m. (this is the "second transmission" referred to by Williams)

## **EXHIBIT 6: Internet Chat Room Dialogue Excerpts**

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**Saturday, May 12, 2007**

**Allthumbs:** enters chat room 9:30 a.m. Anyone up yet?

**Coreforce:** enters chat room at 9:32 a.m. Just joined in. No chatter?

**Allthumbs:** nothing this a.m. Weekend. Sleeping late maybe

**Talon:** enters chat room at 9:33 a.m. There's been talk on campus that someone in the chat room is freaking people out. Anyone on line a witness?

**Allthumbs:** You may mean someone named Shokwave. Been picking on participants and trying to scare people.

**Talon:** Why would someone do that?

**Shokwave:** enters chat room 9:34 a.m.

**Coreforce:** Who knows? Shokwave, you nuts or what?

**Shokwave:** I was just talking about a forensics and history class. I can't help if people take things out of context.

**Allthumbs:** You were crossing a line. You obviously ID'd Jammin and have been trying to freak ...you crazy?

**Shokwave:** I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression. Ever wonder about pain and suffering?

**Jammin@ISU:** enters chat room at 9:37 a.m.

**Shokwave:** And, after a five-minute break, "Jamming, can you come out of your 2nd floor roost and play?"

**Jammin@ISU:** exits chat room at 9:43 a.m.

\* \* \* (indicates lapse in time and refers to later in the day)

**HMSPinfore:** enters chat room at 7:30 p.m.

**LaLa:** enters chat room at 7:30 p.m.

**Shokwave:** enters chat room at 7:31 p.m.

**Shokwave:** Anyone review the chat room conversations from earlier in the afternoon re: torture, etc.?

**LaLa:** not me

**HMSPinfore:** me neither.

**Thor56:** enters chat room at 7:32 p.m.

**Yankeegirl:** enters chat room at 7:32 p.m. Not that again.

**CATGIRL:** enters Chat room at 7:32 p.m. Free speech. What was going on?

**Shokwave:** discussion on pain and torture and what can be learned from fear.

**Thor56:** I'd just as soon not know.

**LaLa:** Me neither.

**Shokwave:** Why not? Statistics tell us that we're just about all going to be victims at some point in our lives.

**LaLa:** So what? You can't let fear guide your whole life.

**CATGIRL:** No kidding. What a waste of time.

**Jammin@ISU:** enters chat room at 7:45 p.m. Not this again.

**Shokwave:** You chickened out before.

**Jammin@ISU:** Had better things to do.

**Shokwave:** Really? Like what.

**Jammin@ISU:** Inappropriate question.

**Shokwave:** Not really, but never mind. Back to the discussion. Everyone's going to be a victim. Even all of us. I've actually been one already so statistically I may be out of the picture.

**LaLa:** What happened to you?

**Shokwave:** to quote someone above, inappropriate question.

**LaLa:** sorry

**Shokwave:** Just remember, the clock is ticking. Time is on my side. Time is running out my friend.

**LaLa:** What's that supposed to mean?

**CATGIRL:** Yeah, what are you talking about?

**Shokwave:** Just that statistically, all of you are going to have to endure. Gotta meeting.

**Shokwave:** exits chat room 7:50 p.m.

No relevant discussion for approximately 20 minutes

**SirVive2004:** enters Chat room 8:15 p.m. Anyone still want to talk about pain and suffering? Time is running out, my Jammin friend. Maybe we can meet?

**Jammin@ISU:** exits chat room at 8: 16 p.m.

**Shokwave:** Message posted at 9:30 p.m. Jam will rot just like Jelly if buried long enough. (Chat room entry read at campus computer room with police witnesses).

## **EXHIBIT 7: Casey Wallner - Daily Diary Excerpts 2007**

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May 5: Home

May 6: Home

May 7: Jamie got creepy message at chat room

May 8:

May 9:

May 10: Another creeper for Jamie; Jerks at the student union

May 11: Jamie's freaked out and so am I; more chat room chatter; calling security.

May 12: Witnesses to chat room; finally some sleep

May 13: Calm Sunday; no chat room blather

May 14: Heard from campus police; questioning Williams

May 15: WILLIAMS ARRESTED!

**Sec. 12-7.5. Cyberstalking.**

- (a) A person commits cyberstalking when he or she, knowingly and without lawful justification, on at least 2 separate occasions, harasses another person through the use of electronic communication and:
- (1) at any time transmits a threat of immediate or future bodily harm, sexual assault, confinement, or restraint and the threat is directed towards that person or a family member of that person, or
  - (2) places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint.

- (b) As used in this Section:

**Harass** means to engage in a knowing and willful course of conduct directed at a specific person that alarms, torments, or terrorizes that person.

**Electronic communication** means any transfer of signs, signals, writings, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system. "Electronic communication" includes transmissions by a computer through the Internet to another computer.

- (c) Sentence. Cyberstalking is a Class 4 felony. A second or subsequent conviction for cyberstalking is a Class 3 felony.

**IN THE SIXTH DISTRICT COURT OF THE STATE OF IDAHO  
IN AND FOR BANNOCK COUNTY**

State of Idaho	)	
	)	
Prosecution	)	
	)	
v.	)	No.07-424
	)	
Kinsley Williams	)	
	)	
Defendant	)	

**JURY INSTRUCTIONS**

Members of the Jury:

This is a criminal case commenced by the state against the Defendant Kinsley Williams. The Defendant has been charged with the offense of Cyberstalking.

The Defendant has pleaded "not guilty" and is presumed to be innocent. The State has the burden of proving the guilt of the Defendant beyond a reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense - the kind of doubt that would make a reasonable person hesitate to act in the graver and more important affairs of life.

The defendant is presumed to be innocent of the charges. This presumption remains with him/her throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that he is guilty. The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his/her innocence.

A person commits the offense of Cyberstalking when he/she knowingly on at least two separate occasions, harasses another person through the use of electronic communication, and at any time knowingly transmits a threat to that person of immediate or future bodily harm, or places that person in reasonable apprehension of immediate or future bodily harm.

To sustain the charge of Cyberstalking (transmission of threat), the State must prove the following propositions:

First Proposition: That the defendant on at least two separate occasions knowingly harassed Jamie Anderson through the use of electronic communication, and;

Second Proposition: That the defendant at any time knowingly transmitted a threat to Jamie Anderson of immediate or future bodily harm.

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

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

To sustain the charge of Cyberstalking (reasonable apprehension), the State must prove the following propositions:

First Proposition: That the defendant on at least two separate occasions knowingly harassed Jamie Anderson through the use of electronic communication, and;

Second Proposition: That the defendant knowingly placed Jamie Anderson in reasonable apprehension of immediate or future bodily harm.

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

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

- The term "Harass" means to engage in a knowing and willful course of conduct directed at a specific person that alarms, torments, or terrorizes that person.
- The term "Electronic Communication" means any transfer of signs, signals, writings, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system. "Electronic Communication" includes transmission by a computer through the Internet to another computer.
- The term "Transmits a Threat" means a written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements or conduct.

You alone are the judges of the credibility of the witnesses and the weight to be given to the testimony of each of them. In determining the credit to be given any witness, you should take into account her/his truthfulness or untruthfulness, her/his ability and opportunity to observe, her/his memory, her/his manner while testifying, any interest, bias or prejudice she may have and the reasonableness of her/his testimony considered in the light of all the evidence in the case.

You should consider each opinion received in evidence in this case and give it such weight as you think it deserves. If you should conclude that the reasons given in support of the opinion are not sound or that for any other reason an opinion is not correct, you may disregard that opinion entirely.

The law governing this case is contained in these instructions, and it is your duty to follow the law. You must consider these instructions as a whole. You must not pick out one instruction or parts of an instruction and disregard others.

You are the sole judges of the facts in this case. It is your duty to determine the facts from the evidence produced here in court. Your verdict should not be based on speculation, guess, or conjecture. Neither sympathy nor prejudice should influence your verdict. You are to apply the law as stated in these instructions to the facts as you find them, and in this way decide the case. You must not concern yourself with the consequences of your verdict.

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agrees. Your verdict must be unanimous. It is your duty to consult with one another and try to reach an agreement. However, you are not required to give up your individual judgment. Each of you must decide the case for yourself, but you must do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own view and change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the purpose of reaching a verdict. You are the judges of the facts in this case. Your sole interest is to ascertain the truth from the evidence in the case.

You will now retire to the jury room and select one of you to act as foreperson. That person will preside over your deliberations and will speak for the Jury here in court. Forms of verdict have been prepared for your convenience. You will take these forms to the jury room; when you have reached unanimous agreement as to your verdict, the foreperson will sign the forms that express your verdict. You will then return all forms of verdict, these instructions and any exhibits to the courtroom.

# **Rules of Competition & Procedures**

## RULES OF COMPETITION & PROCEDURES

### **Rule 1: Administration**

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#### ***Rule 1.1: Purpose of the Competition***

Though designed as a competition, the primary purpose of the Idaho High School Mock Trial Competition is to educate students about the law and the legal system. Students, teachers, and coaches are urged to place greater emphasis on the experience of learning rather than winning.

It is important to remember that our judicial system, just as this competition, is run by people and, therefore, subject to individual interpretations. Unexpected obstacles in the course of a trial are the rule, rather than the exception. Being prepared to deal with the unexpected obstacles that will inevitably arise is an important part of being prepared for the competition.

#### ***Rule 1.2: Rules***

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

Questions or interpretations of these rules are within the discretion of the **Dispute Resolution Panel**, whose decision is final.

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

#### ***Rule 1.3: Code of Conduct and Rules of Ethics***

The rules of competition, as well as proper rules of courthouse and courtroom decorum and security, must be followed. The Law Related Education Program and its representatives possess discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violation, and/or breach of decorum occurring before, during, and/or after the competition, 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.

Just as real attorneys are held to codes of ethical conduct, mock trial participants are also expected to demonstrate ethical behavior. This includes but is not limited to:

- a) making false statements to the judge or not correcting false information that has been presented; offering evidence the participant knows to be false;
- b) counseling or assisting a witness to testify untruthfully;
- c) knowingly disobeying an obligation under the rules of the competition;
- d) asserting personal knowledge of facts in issue except when testifying as a witness;

- e) stating a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused;
- f) seeking to influence a judge by means prohibited by the competition rules;
- g) engaging in conduct that disrupts the competition;
- h) making a statement that the participant knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge; or
- i) in trial, knowingly alluding to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence.

All participants (including teachers sponsors and Attorney Coaches) will sign a code of conduct agreement prior to their participation in the competition.

***Rule 1.4: Master Scorekeeper/Procedures Official***

An attorney, judge, or Idaho Law Foundation staff person will be designated at each regional and the state mock trial competition to be the Master Scorekeeper/Procedures Official. This person will:

- ~ act as a member of the Dispute Resolution Panel;
- ~ be available to consult with Presiding Judges on questions of rules upon request;
- ~ be responsible, in coordination with the Regional Coordinator, for all score keeping computations; and
- ~ be responsible for monitoring and enforcing all mock trial procedures in accordance with the *Mock Trial Handbook*.

***Rule 15: Emergencies***

Within reasonable consideration of weather, road conditions, etc., the starting time of any trial will not be delayed for longer than ten minutes. Incomplete teams will have to begin without their other members, or with alternates. At least one attorney and any witness are needed to begin the trial. After ten minutes, teams without a sufficient number of participants to start the trial will forfeit the match.

**Rule 2: The Problem**

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***Rule 2.1: Witnesses Bound by Statements***

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

Each witness is bound by his/her individual witness statement. These witness statements, or affidavits, should be viewed as signed statements made to the police or attorneys by the witnesses as identified. Witnesses can be impeached if they contradict the material contained in their witness statements.

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

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

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

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

#### ***Rule 2.2: Fair/Unfair Extrapolations***

**Fair extrapolations, which are consistent with facts contained in the witness statements and do not materially affect the witness' testimony are permitted.**

It is important for the witnesses to exercise caution in such extrapolations in order to avoid (a) initiation of a dispute over a rules violation which could be brought to the attention of the judges and (b) impeachment of the witness' credibility by the use of his or her prior written statement which was, presumably, all the witness could recall, under oath, at a time much closer to the events in controversy. Just as in our judicial system, lawyers must deal with the facts that exist.

Attorneys for the opposing team may refer to *Rule 2.2* in a special objection, such as "unfair extrapolation" or "This information is beyond the scope of the problem."

Possible rulings by a judge include:

- a) no extrapolation has occurred;
- b) an unfair extrapolation has occurred;
- c) the extrapolation was fair; or
- d) ruling is taken under advisement.

#### ***Rule 2.3: Contradiction of Prior Statement***

If an attorney believes that a witness has contradicted a prior statement (or affidavit), that testimony may be impeached during cross-examination of the witness through correct use of the statement.

The witness statements or affidavits may be introduced into evidence during the trial as a prior inconsistent or prior consistent statement pursuant to the applicable rules of evidence.

***Rule 2.4: Gender of Witnesses***

*Unless otherwise stated*, 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 3: Teams**

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***Rule 3.1: Team Eligibility***

Any public or private school in Idaho may sponsor up to two teams. Students in grades 9-12 may participate.

Each team in the competition must have its own sponsoring teacher. However, this does not preclude one teacher from training both teams so long as both teachers are present during competitions.

Each school must submit a complete official registration form and pay the entry fee for each team before being considered a competition participant.

***Rule 3.2: Team Composition***

A team will consist of a maximum of nine and a minimum of six students, a Teacher Sponsor and an Attorney Coach. **For schools that have more than one team, each team must have separate core members.**

There must be two or three attorneys, 3 witnesses, and a Timekeeper. Teams may also optionally have two alternates. Each team will indicate which members of the team will be actively participating in each round by listing student names on their *Daily Sheet*. Only students who are attorneys, witnesses, or Timekeepers will be considered active participants in each round. Alternates will be considered inactive participants and will be treated as spectators for the purposes of mock trial rules and procedures.

Alternates may substitute for other students during a competition in an emergency. The Competition Coordinator or LRE Director must be informed prior to the beginning of the round if an alternate takes the place of an active participant.

Teams competing at semi-finals and finals must compete with the same team members in the same roles as from the regional competition.

***Rule 3.3: Team Presentation and Participation***

Teams must prepare both a Plaintiff/Prosecution and Defense case and should be ready to present both sides. During each of the competitions, teams will have an opportunity to present both Plaintiff/Prosecution and Defense at least one time. Competition staff will determine which team represents which side in the championship round.

Team members are to evenly divide their speaking duties. Each of the attorneys will have at least two speaking parts.

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

A team may use its members to play different roles in the Plaintiff/Prosecution and the Defense rounds. For example, an attorney for the Plaintiff/Prosecution may become a witness for the Defense; a Timekeeper may become an attorney; or an alternate may become a witness or attorney. It is **not** permissible to have two entirely different teams - one for Plaintiff/Prosecution and one for Defense.

#### ***Rule 3.4: Team Duties***

- ~ Each team must ensure that the LRE Director has received a completed and accurate registration form and appropriate payment for each team registered.
- ~ Each team must submit a participant list to the LRE Director two weeks before the regional and state competitions.
- ~ Each team must submit a completed *Daily Sheet* when checking in at both the regional and state competitions for each team registered. For regional competitions each team must also bring six copies of their *Daily Sheet*. At the beginning of each of the three rounds, a team must provide one copy of its *Daily Sheet* to the Judging Panel and one copy to the opposing team. For the state competition each team must also bring four copies of their *Daily Sheet*. At the beginning of each of the two quarter-final rounds, a team must provide one copy of its *Daily Sheet* to the Judging Panel and one copy to the opposing team.
- ~ Both teams must provide the physical evidence as listed under evidence in the case materials. No other physical evidence will be allowed.
- ~ Each team must fill out competition-provided nametags for all team members—including alternates and teacher and Attorney Coaches.
- ~ Each team is required to provide one student who will serve as the official Timekeeper for that team. See *Timekeeping Procedures* for more information concerning Timekeeper duties.
- ~ Each team is responsible for educating their spectators (including parents and friends) about the rules of the competition, including rules regarding spectator contact during the round.

### **Rule 4: The Trial**

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#### ***Rule 4.1: Pairings***

Competition staff will make every attempt to ensure that the same teams do not meet one another for more than one round, or that teams from the same school do not meet each other during a competition. However, various factors such as

uneven numbers of teams or a small number of teams participating may necessitate that some teams meet more than once or meet a team from their school. **Pairing decisions are at the sole discretion of the competition staff and may not be disputed.**

***Rule 4.2: Uneven Numbers of Teams at a Competition***

In the event there is an uneven number of teams competing in a competition, competition staff have the following alternatives: 1) Recruit a practice team to fill in. The practice team will not have the opportunity to advance to the next level of competition. 2) Give a bye to one randomly-selected team during each round of competition. If a team is given a bye, they will be assigned a score equivalent to an average of all the scores of the teams who competed during the round in which the team is given a bye.

***Rule 4.3: Courtroom Setting***

The Plaintiff/Prosecution shall be seated at the table closest to the jury box. The Defense team will sit at the table on the opposite side of the room. Where possible, all participating (active) members of the team will sit in front of the bar (the wall) that divides the spectators from the active participants. If there is not adequate space/seating in front of the bar, the first row of the spectator section will be reserved for witnesses. No inactive participants (alternates) may sit with the witnesses during the competition. No team shall rearrange the courtroom without prior permission from the competition staff.

***Rule 4.4: Trial Sequence***

The following trial sequence will be followed:

1. Plaintiff/Prosecution's Timekeeper calls the court to order.
2. Judges enter and the Presiding Judge asks everyone to be seated.
3. Presiding Judge announces the case, swears in all witnesses, and makes any introductory remarks.
4. Plaintiff/Prosecution's Opening Statement
5. Defense's Opening Statement
6. Plaintiff/Prosecution's Direct Examination
7. Defense's Cross Examination
8. Plaintiff/Prosecution's Redirect Examination (optional)
9. Defense's Recross Examination (optional)
10. Defense's Direct Examination
11. Plaintiff/Prosecution's Cross Examination
12. Defense's Redirect Examination (optional)
13. Plaintiff/Prosecution's Recross Examination (optional)
14. Plaintiff/Prosecution's Closing Argument

15. Defense's Closing Argument
16. Plaintiff/Prosecution's Rebuttal (optional)

***Rule 4.5: Witness Participation***

All witnesses (three for each side) must take the stand. Neither team may call witnesses from the other side.

***Rule 4.6: Time Limits***

Each team will be allowed a total of 50 (fifty) minutes for their case. Time in each category may be divided among team attorneys and witnesses as they choose, but overall time limits **must** be observed. Timing will halt during objections and judges' responses to objections. The following time categories are recommended but not mandatory:

1. Opening Statement (5 minutes per side)
2. Direct Examination (5 per witness **or** 15 minutes total)
3. Redirect Examination (optional) (2 minutes per witness or 6 minutes total)
4. Cross Examination (4 minutes per witness **or** 12 minutes total)
5. Recross Examination (optional) (2 minutes per witness or 6 minutes total)
6. Closing Arguments (5 minutes per side)
7. Plaintiff/Prosecution's Rebuttal (optional) (1 minute)

Overtime penalties will be assessed **ONLY** for each full minute a team exceeds its fifty minute allotment. The Presiding Judge may, in an emergency, grant time extensions in the interest of fairness, however, this will be a rare occurrence and shall not be expected or requested.

***Rule 4.7: Supplemental Material/Costuming***

No witness costumes or props are allowed. This includes changing clothes between rounds to appear more professional or casual than in a previous round.

***Rule 4.8: Trial Communication***

For educational purposes and student feedback, at least one Teacher Sponsor, Attorney Coach, or other adult (designated by the school to be responsible for the students) must remain in the seating area in the courtroom throughout the trial. **There must be no spectator contact with student team members, including student Timekeepers during the trial, including during interim recesses when the judges are out of the courtroom.** Teacher Sponsors, Attorney Coaches and other spectators may not talk to, signal, and/or otherwise communicate with or coach the participating students. Communication may occur after closing arguments when the judges have left the courtroom to deliberate.

***Rule 4.9: Viewing a Trial***

Teachers, coaches, and members of competing teams not yet eliminated from the competition may not observe trials in which they are not participating.

***Rule 4.10: Videotaping/Photography***

Unless participation is agreed to by both teams in a courtroom, tape recording, videotaping, and still photography are prohibited during a trial except by competition staff and/or the media. Any team has the option to refuse participation in videotaping, tape recording, and/or still photography by opposing teams.

Media representatives authorized by the Idaho Law Foundation will wear identification badges.

The final round of the state competition may be videotaped by competition staff or its media representatives for educational purposes. Teams may take photos of their students in the courtroom before and/or after the trial has occurred.

***Rule 4.11: Jury Trial***

The case will be tried to a panel of three judges: a Presiding Judge and two judges who represent the Jury. Arguments should be made to all the judges. Teams may address the Presiding Judge as "Your Honor," and the other two judges as "Ladies and Gentlemen of the Jury."

***Rule 4.12: Standing During Trial***

Unless excused by the judge, attorneys will stand while giving opening statements and closing arguments, while conducting direct and cross examinations and while making or responding to objections.

***Rule 4.13: Objections during Opening Statement/Closing Argument***

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

If a team believes an objection would have been proper during the opposing team's opening or closing statement, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, "If I had been permitted to object, I would have objected to the opposing team's statement that \_\_\_\_\_." The Presiding Judge will not rule on this objection.

Judges shall weigh the objection individually. No rebuttal by opposing team will be heard.

***Rule 4.14: Argumentative Questions***

An attorney shall not ask argumentative questions. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.

***Rule 4.15: Lack of Proper Predicate/Foundation***

Attorneys shall lay proper foundation prior to moving for the admission of evidence. After a motion has been made, the exhibits may still be objected to on other grounds.

***Rule 4.16: Procedure for Introduction of Exhibits***

Attorneys may introduce physical exhibits, provided the objects correspond to the description given in the evidence section of the case materials. Exhibits must be introduced into evidence if attorneys wish the court to consider the items themselves as evidence, not just the testimony about the exhibits. At the end of the witness examination, attorneys may ask to move the item into evidence in this manner:

1. Present the item(s) to an attorney for the opposing side prior to trial. If that attorney objects to use of the item, the judge will rule whether it fits the official description.
2. Request permission from the judge when you wish to introduce the item during trial. For example, say: "Your Honor, I ask that this item be marked for identification as Exhibit #XX."
3. Show the item to the witness on the stand. Ask the witness if s/he recognizes the item. If the witness does, ask the witness to explain it or answer questions about it. Make sure you show the item to the witness, don't just point.
4. Request permission from the judge when you wish to admit the item during trial. For example, say: "Your Honor, I ask that Exhibit #XX be admitted into evidence."
5. At this point opposing counsel may make any objections they have.
6. The judge will then rule on whether the item may be admitted into evidence
7. When finished using the item, you may return it to the attorney table or request permission to leave it at the witness stand.

***Rule 4.17: Use of Notes***

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

***Rule 4.18: Demonstrative Exhibits***

Demonstrative exhibits, including posters, charts of summary, or other material not specifically provided for in the case materials are not allowed.

***Rule 4.19: Redirect/Recross Examination***

Redirect and recross examination will be allowed.

### ***Rule 4.20: Scope of Closing Arguments***

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

### ***Rule 4.21: The Debrief***

Presiding Judges will announce the ruling on the legal merits of the trial. This decision is to inform students about what would happen in a real court of law **BUT** does not determine advancement in the competition.

The judges will also share positive comments and constructive criticism about the teams' presentations.

Presiding Judges shall limit the debriefing sessions to a total of 10 minutes to be shared among all members of the Judging Panel.

## **Rule 5: Judging and Team Advancement**

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### ***Rule 5.1: Finality of Decisions***

All decisions of the Judging Panel are FINAL.

### ***Rule 5.2: Composition of Judging Panels***

A three-person panel will judge and score each round: a Presiding Judge and two other judges. In most cases, two of the judges will be Idaho judges and/or attorneys while the third will be a community representative. The Presiding Judge will sit at the judge's bench and the other two panel judges will sit in the jury box.

All members of the Judging Panels will receive the *Mock Trial Handbook* prior to the trial and are expected to read the case and rules.

In case of a shortage of judges, competition staff will make every effort to find a replacement. If this is not possible, panels of two judges may be used. If two judges are used, the competition scorekeeper shall average the scores of the two judges present to compute a third *Score Sheet*. If the third *Score Sheet* is tied, the decision of the Presiding Judge will determine the winner of the third ballot.

### ***Rule 5.3: Ballots/Score Sheets***

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 not bound by the rulings of any other scoring judge. While the Judging Panel may deliberate collectively on any special awards (i.e., Outstanding Attorney or Witness) the Judging Panel will not deliberate collectively on individual scores.

The team that earns the highest points on an individual judge's *Score Sheet* is the winner of that ballot. The team that receives the majority of the three ballots wins the round.

#### ***Rule 5.4: Completion of Score Sheets***

Each scoring judge shall record a number of points (1-10) for each individual presentation of the trial. At the end of the trial, each judge shall total the sum of each team's individual points and place this sum in the Column Totals box.

**NO TIE IS ALLOWED IN THE COLUMN TOTALS BOXES.**

#### ***Rule 5.5: Scoring Deductions***

There will be a deduction of up to ten points from a team's total score if students, the Teacher Sponsor, or the Attorney Coach is found in violation of a rule by a Presiding Judge or competition staff.

#### ***Rule 5.6: Team Advancement***

At each regional competition, all teams participate in three rounds, except in the event of an uneven number of teams (see Rule 4.2). At the state competition, all teams participate in two quarter-final rounds. Four teams will advance to the semi-final round, and two teams will advance to the championship round.

The number of other teams that advance to the state competition from each regional will be based on a proportional representation of the number of teams that compete in each region compared to the numbers of teams competing overall. A total of twelve teams will advance to the state competition.

Team advancement will be based on the following criteria in the order listed:

1. **Win/Loss Record:** In each round the team that wins the round is the team that receives the most ballots. In order to win a round, a team must receive two or three ballots from the scoring judges.
2. **Total Number of Ballots:** In each round, a team can win a ballot by earning a higher score from a scoring judge. In each round, a team can earn from zero to three ballots.
3. **Total Number of Points Accumulated:** In each round, the maximum possible points each team can earn is 360 points, calculated by adding together the points given to the team by each of the three scoring judges.

#### ***Rule 5.7: No Tied Scores***

If, after using the criteria outlined in Rule 5.6, there is still a tied score between teams at the end of three rounds for a regional competition or after the two quarter-final rounds of the state competition, the advancing team(s) will be determined using the following criteria in the order listed:

- ~ Did the tied teams meet each other in competition? If so, the team that won the ballot in that round will be declared the winner.
- ~ If tied teams did not meet each other during the competition, did they meet a common opponent? For example, let's call the tied teams Team A and Team B. If both teams met Teams C and Team A received more ballots than Team C, while Team B received fewer ballots than Team C, then Team A will be declared the winner over Team B.

- ~ If tied teams did not meet a common opponent or if they both won or both lost to the common opponent, the winning team is the one that receives the highest combined score in the *Score Sheet* category, **Overall Team Courtroom Decorum**. This combined score will be calculated by adding the **Overall Team Courtroom Decorum** scores from all three judges in all three rounds at a regional competition or all three judges in both rounds at the quarter-final of the state competition.
- ~ If the score is still tied after calculating the **Overall Team Courtroom Decorum** scores, then the winning team is the one that receives the highest combined score in the *Score Sheet* category, **Opening Statements**. This combined score will be calculated by adding the **Opening Statements** scores from all three judges in all three rounds at a regional competition or all three judges at both rounds at the quarter-final of the state competition.
- ~ If the score is still tied after calculating the **Overall Opening Statements** scores, then the winning team is the one that receives the highest combined score in the *Score Sheet* category, **Closing Arguments**. This combined score will be calculated by adding the **Closing Arguments** scores from all three judges in all three rounds at a regional competition or all three judges at both rounds at the quarter-final of the state competition.

***Rule 5.8: Outstanding Witness and Attorney***

Judging Panels may recognize outstanding individual presentations by selecting one outstanding witness and/or one outstanding attorney per round. The decision must be representative of the majority of the panel members and recorded on the forms provided. The judges should not announce these decisions, as students will be recognized at the end of the competition during the awards ceremony.

**Rule 6: Dispute Resolution**

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***Rule 6.1: Dispute Resolution Panel***

The dispute resolution panel will be made up of the Competition Coordinator, the Master Scorekeeper and a Presiding Judge or other Competition Staff. The dispute resolution panel shall be the appeals board for any disputes.

***Rule 6.2: Reporting a Rules Violation Inside the Bar***

If, during the trial, any team has reason to believe that a violation of the *Rules of Competition & Procedures* has occurred, the alleged violation shall be presented immediately to the Presiding Judge through one of the team attorneys by objection. This will be presented in accordance with the *Idaho Mock Trial Rules of Evidence* procedure for objections. The Presiding Judge may rule on the matter or take the matter under advisement, and the trial shall continue. The decision of the Presiding Judge is final. While judges will not announce it, they may at their discretion deduct up to ten points from their *Score Sheets* for a rules violation.

Any alleged violation which is known, or through the exercise of reasonable diligence should have been discovered during the trial and which is not brought to the attention of the Presiding Judge, is promptly waived.

***Rule 6.3: Reporting a Rules Violation Outside the Bar***

Disputes which occur outside the bar during a trial round may be brought by Teacher Sponsors or Attorney Coaches exclusively. Such disputes must be made immediately following a round to a Competition Coordinator or the dispute will not be considered.

The Competition Coordinator will ask the complaining party to complete a *Dispute Resolution Form*. The form must be completed and returned back to the Competition Coordinator.

After the completed form is received, the Competition Coordinator will:

- (a) decide whether or not the dispute needs to be referred to the Dispute Resolution Panel;
- (b) notify all pertinent parties;
- (c) allow time for a response, if appropriate;
- (d) evaluate the dispute; and
- (e) rule on the complaint.

At their discretion, the Competition Coordinator and/or Dispute Resolution Panel may notify the Judging Panel of the affected courtroom of the ruling on the charge or may assess an appropriate point deduction for the violation.

**ALL DISPUTE RESOLUTION DECISIONS OF THE COMPETITION COORDINATOR AND/OR THE DISPUTE RESOLUTION PANEL ARE FINAL AND NOT SUBJECT TO FURTHER DISPUTE.**

# **Timekeeping Procedures**

## TIMEKEEPING PROCEDURES

### **Timekeeper Responsibilities**

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Each team is responsible for training at least one team member to serve as the team's official Timekeeper. The Timekeeper from the Plaintiff/Prosecution side and a Timekeeper from the Defense side will work together as a neutral timekeeping team to ensure that accurate and fair timekeeping has been kept for both teams.

Teams and their official Timekeeper(s) are responsible for being proficient in the *Timekeeping Procedures*. The team's Timekeeper must be familiar with the trial sequence chart and have practiced completing the *Timekeeping Sheet* before the competition begins.

The person serving as the Timekeeper needs to be noted on the team's *Daily Sheet*.

### **Timekeeping Tools**

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Teams are responsible for ensuring the following tools are with them at the competition.

#### ***Stopwatches***

Each team must bring two stopwatches with them to the competition. Regardless of what side your team is presenting, both Timekeepers must keep time for both sides. One stopwatch will be for keeping time for the Plaintiff/ Prosecution and one for keeping time for the Defense.

**NOTE:** The Idaho Law Foundation's Law Related Education Program can provide stopwatches for teams to borrow during the mock trial season. Contact Carey Shoufler at (208) 334-4500 or [cshoufler@isb.idaho.gov](mailto:cshoufler@isb.idaho.gov) for more information.

#### ***Time Remaining Cards***

Each Timekeeper needs to use the *Time Remaining Cards* as indicated on the *Time Card Use Table* shown on page 54. Prior to the competition, the team is required to cut out the *Time Remaining Cards* included on pages 56 to 61. It's recommended that you print the cards on cardstock as it makes it easier to hold them up.

All teams must use the *Time Remaining Cards* provided in this book and no other. Time intervals may not be altered in any way.

#### ***Timekeeping Sheet***

Both Timekeepers are to sign their own *Timekeeping Sheet* and return both *Timekeeping Sheets* to the Presiding Judge at the end of the round.

### **Timekeeping Procedures**

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#### ***Before the Trial***

1. Include the name of the official Timekeeper on the team's *Daily Sheet*.
2. Gather timekeeping materials. Materials include:
  - ✓ 2 stopwatches
  - ✓ 1 *Timekeeping Sheet* per round

- ✓ 1 *Time Card Use Table*
  - ✓ 1 set of *Time Cards*
  - ✓ 2 pencils
3. Enter the courtroom and sit at the end of the jury box closest to the audience (or other appropriate place if no jury box is available).
  4. Enter the round number and team names in the space provided on the top portion of the *Timekeeping Sheet*.
  5. Arrange your stopwatches, time cards, and *Time Card Use Table*.
  6. The Plaintiff/Prosecution Timekeeper will call the court to as both Timekeepers rise when the Presiding Judge and Jury enter the courtroom. Both Timekeepers will be seated when the judge grants permission for all to be seated.

### ***During the Trial***

1. Use one stopwatch for each side; Plaintiff/Prosecution on your left and Defense on your right.
2. **DO NOT** reset the stopwatch to zero at any time.
3. Start timing only when the opening/closing argument or questioning actually begins. Do not start when an attorney calls the next witness or when a witness is sworn in.
4. Stop timing during objections, responses to objections, and questioning by the Presiding Judge.
5. Display time cards to the attorneys and witnesses at the intervals set out in *Time Card Use Table*. Display the STOP card to the Presiding Judge, the scoring judges, and the teams.
6. At the end of each segment of the trial, each Timekeeper should record the cumulative time used on the *Timekeeping Sheet*. For example, if the opening statement ends after 5 minutes and 45 seconds, write 5:00:45 in the Opening Statement box of the *Timekeeping Sheet*.
7. At the end of each segment of the trial, check to make sure both Timekeepers' stopwatches for that segment are within 15 seconds of each other. If the stopwatches show a discrepancy of 15 seconds or more, follow the procedures outlined in the *Timekeeping Discrepancies* section below.
8. At the end of the trial, let the judge know whether or not there has been a timing violation by either side. Remember that overtime penalties will be assessed **ONLY** for each full minute a team exceeds its fifty minute allotment.

### ***After the Trial***

1. Add up the time used for each side and sign the *Timekeeping Sheet*.
2. Give the *Timekeeping Sheet* to the Presiding Judge.
3. Politely remind the judges that both Timekeepers will be timing the debrief and that a maximum of 10 minutes is allotted to that portion of the round.
4. Reset your stopwatch to zero to start time for the debriefing.

### ***After the Recess***

1. Start timing the debrief after the verdict has been announced.
2. Begin signaling the judges when 7 minutes have passed that they have 3 minutes left to complete their debrief. Signal the judges following the *Time Card Use Table* from the 3 minute mark.

### **Timekeeping Discrepancies**

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At the end of each segment of the trial (i.e., at the end of both openings, at the end of each direct examination, at the end of each cross examination, and at the end of both closing arguments), if there is a timing discrepancy of 15 seconds or more between the Plaintiff/Prosecution and Defense teams' Timekeepers, the following rules will apply.

- ~ Any timing discrepancies between Timekeepers of less than 15 seconds **WILL NOT** be considered a timing discrepancy.
- ~ If a timing discrepancy of 15 seconds or more has occurred, Timekeepers are to notify the Presiding Judge that a timing discrepancy has occurred.
- ~ Timekeepers may raise timing discrepancies **ONLY** at the end of each phase of the trial presentation as outlined above.
- ~ The Presiding Judge will rule on any timing discrepancy before the trial continues. Timekeepers will synchronize stop watches to match the Presiding Judge's ruling. For example if Plaintiff/Prosecution stop watch indicates 2 minutes left for Plaintiff/Prosecution's case and the Defense stop watch indicates time is expired, the Presiding Judge might decide to split the difference in the timing variation and give Plaintiff/Prosecution 1 minute to conclude. Defense would adjust timing to allow for the 1 minute timing decision.
- ~ No time disputes will be entertained after the trial concludes.
- ~ The decisions of the Presiding Judge regarding the resolution of timing disputes are final.

## **Time Card Use Table**

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The Plaintiff/Prosecution and the Defense sides are each allotted 50 minutes to try their side of the case. The time card table listed below provides timing stipulations for each side.

<b>When the stopwatch says:</b>	<b>Hold up the time card that says:</b>
<b>5:00</b>	<b>45:00</b>
<b>10:00</b>	<b>40:00</b>
<b>15:00</b>	<b>35:00</b>
<b>20:00</b>	<b>30:00</b>
<b>25:00</b>	<b>25:00</b>
<b>30:00</b>	<b>20:00</b>
<b>35:00</b>	<b>15:00</b>
<b>40:00</b>	<b>10:00</b>
<b>45:00</b>	<b>5:00</b>
<b>46:00</b>	<b>4:00</b>
<b>47:00</b>	<b>3:00</b>
<b>48:00</b>	<b>2:00</b>
<b>49:00</b>	<b>1:00</b>
<b>49:20</b>	<b>:40</b>
<b>49:40</b>	<b>:20</b>
<b>50:00</b>	<b>STOP</b>

# Timekeeping Sheet

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Round #: \_\_\_\_\_ Prosecution: \_\_\_\_\_ Defense: \_\_\_\_\_

	Prosecution Time	Defense Time
Opening Statements		
Prosecution Witnesses Direct and Cross Examination (list cumulative ending times only)		
First Witness		
Second Witness		
Third Witness		
Defense Witnesses Direct and Cross Examination (list cumulative ending times only)		
First Witness		
Second Witness		
Third Witness		
Closing Arguments		
Total Time Used		
Whole Minutes over 50 Minutes		

Timekeeper's Name (Please Print): \_\_\_\_\_

Timekeeper's Signature: \_\_\_\_\_

## Time Card Template

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Time intervals **MAY NOT** be modified.

**45:00**

**40:00**

**35:00**

**30:00**

**25:00**

**20:00**

**15:00**

**10:00**

**5:00**

**4:00**

**3:00**

**2:00**

**1:00**

**0:40**

**0:20**

**0:10**

**STOP**

# **Mock Trial Forms**

## MOCK TRIAL FORMS

On the following pages, you will find samples of the form described below. The forms are included in the order they are described.

### **Participation Form**

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Your team must fill out the *Participation Form* and return it to Carey Shoufler at [cshoufler@isb.idaho.gov](mailto:cshoufler@isb.idaho.gov) on or before **Friday, January 25, 2008**. This form is used to create the certificates given to all mock trial participants, so it's important that each team member writes his/her name legibly. If the form is not filled out legibly, then mock trial competition staff is left with no option but to guess at the spelling of illegibly printed names and the team member or members with illegibly spelled names will be stuck with certificate(s) without the name(s) spelled correctly.

Please note that you must fill out a *Participation Form* for each team registered for the competition. That means that if your school has two teams participating in the competition you will fill out two separate forms and return both of them to the LRE Director.

### **Code of Ethical Conduct Form**

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Each team must fill out a *Code of Conduct Form* and bring it with them on the day of their regional competition. The form must be signed by the Teacher Sponsor, the Attorney Coach, and all members of a team including alternates.

While you only need to bring the signed form with you to your regional competition, for teams advancing from their regional to the state competition, the form will be kept on file with competition staff. You are expected to follow the same conduct guidelines whether participating in a regional or the state competition.

Please note that you must fill out a *Code of Ethical Conduct Form* for each team registered for the competition. That means that if your school has two teams participating in the competition you will fill out two separate forms and bring both signed forms with you to your regional competition.

### **Daily Sheet**

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Each team must fill out a *Daily Sheet* and bring the specified number of copies with them to both regional and state competitions. As indicated in **Rule 3.2** of the *Rules of Competition & Procedures*, teams advancing to state must compete with the same team members playing the same roles as in their regional competition.

Please note that you must fill out a *Daily Sheet* for each team registered for the competition. That means that if your school has two teams participating in the competition you will fill out two separate forms and bring both with you to your regional, and if applicable, state competitions.

## Score Sheet

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The *Score Sheet* included in this section replicates the form used by the three scoring judges for each round. Each piece of a trial is rated from 1 to 10, with 1 being the lowest and 10 the highest. The maximum possible score a team can earn is 120.

Note on the sample *Score Sheet* that the Green team would have more points in this round without a deduction for a rules violation or a timing infraction. This should help remind you that it's important to know the rules and keep track of your time in every round. A deduction of points can really make a difference in your overall competition standings. Without the deduction, the judge, Jane Smith, would have given the Green team the win, a ballot, and a higher number of points than the Red team.

## Scoring Rubric

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In addition the *Score Sheet*, each judge receives a copy of the *Scoring Rubric*. This rubric serves as a guideline for judges as they score each piece of a trial. While competition staff strives to be as fair and impartial as possible, you must remember that each judge may see things differently. One judge's Excellent may be another judge's Outstanding. One judge's Excellent may also be another judge's Good.

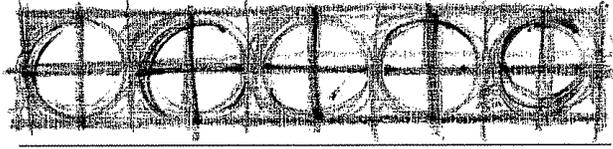
It's impossible to remove 100% of the subjectivity from this process. This is precisely the reason the scoring system counts the criteria of wins and ballots above points.

## Dispute Resolution Form

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Pursuant to **Rule 6.3** of the *Rules of Competition & Procedures*, if one team believes a team they face in a round has violated a competition rule, the team's Teacher Sponsor or Attorney Coach must fill out a *Dispute Resolution Form* in order for the dispute to be considered. Please take time to carefully read and follow **Rule 6.3**. All pieces of this rule must be followed or competition staff **will not** consider the dispute.

# IDAHO LAW FOUNDATION



*Helping the profession serve the public*

## 2008 Idaho High School Mock Trial Participant Form

Please fill out the form below and e-mail or fax to Carey Shoufler (cshoufler@isb.idaho.gov) on or before **Friday, January 25, 2008**.

**Please note:** if your school has more than one team, you need to fill out a separate form for each team.

**Name of School:** \_\_\_\_\_

**PLEASE TYPE OR PRINT LEGIBLY.**

Participant	Name to Appear on Certificate
Student #1	
Student #2	
Student #3	
Student #4	
Student #5	
Student #6	
Student #7	
Student #8	
Student #9	
Teacher Sponsor	
Attorney Coach	

**2008 Idaho Mock Trial  
Code of Ethical Conduct Form**

As a member of the \_\_\_\_\_ (school name) mock trial team, I pledge the following:

**For students:**

- I will respect my fellow team members, opponents, judges, evaluators, attorney coaches, teacher coaches and mock trial personnel;
- I will avoid willfully violating any of the rules (in spirit or in practice) that govern the Mock Trial Competition.

**For teachers and attorney coaches:**

- I will focus on the educational value of Mock Trial Competition;
- I have instructed our students about proper courtroom procedure and decorum;
- I have taught our team the rules of the competition and have strongly encouraged them to abide by the Rules of Competition and Procedure;
- I will zealously encourage fair play;
- I will serve as a positive role model for our students by displaying the highest level of professionalism and ethical behavior during the competition.

Please sign below:

\_\_\_\_\_  
Teacher Sponsor

\_\_\_\_\_  
Attorney Coach

Student team members:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DAILY SHEET: 2008 IDAHO HIGH SCHOOL MOCK TRIAL COMPETITION**

Please fill out this form for each team from your school. If your school has two teams entered in the competition, you will need to fill out two *Daily Sheets*. Once you have completed the *Daily Sheet*, please make the following copies:

- ~ **For the Regional Competition:** 7 copies (1 for competition staff and 2 for each of your three trials)
- ~ **For the State Competition:** 5 copies (1 for competition staff and 2 for each of your two trials)

**NOTE:** If participating in the State Competition, the *Daily Sheet* you submit must be identical to the *Daily Sheet* you submitted for your Regional Competition. Your team is required to have the same team members playing the same roles for both Regional and State Competitions.

Team Color: \_\_\_\_\_

(To be filled in by competition staff on the day of the competition)

**PLEASE TYPE OR PRINT LEGIBLY.**

Teacher Sponsor: \_\_\_\_\_

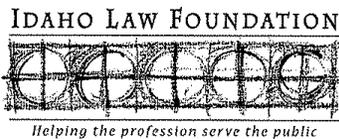
Attorney Coach: \_\_\_\_\_

**PROSECUTION**

**DEFENSE**

Attorney #1: _____	Attorney #1: _____
Attorney #2: _____	Attorney #2: _____
Attorney #3: _____	Attorney #3: _____
Jamie Anderson: _____	Kinsley Williams: _____
Casey Wallner: _____	Loren Albert: _____
Andy Hopp: _____	Pat Clifford: _____
Timekeeper: _____	Timekeeper: _____
Alternate #1: _____	Alternate #1: _____
Alternate #2: _____	Alternate #2: _____

**NOTE:** Attorney #3 and the two Alternates are optional team roles. In order to compete, a team must fill the six mandatory roles, but does not have to fill the three optional roles.



## IDAHO HIGH SCHOOL MOCK TRIAL COMPETITION SCORE SHEET

P = Petitioner/Plaintiff: RED  
(Team Color)

D= Defense/Respondent: GREEN  
(Team Color)

COURT ROOM: 502

ROUND: (CIRCLE ONE) 1 2 3

Using a scale of 1 to 10, rate the Plaintiff and Defense 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
<b>SCORE SHEET</b>				<b>PLAINTIFF</b>		
<b>OPENING STATEMENTS</b>				8	9	
<b>Prosecution/ Plaintiff</b>	Direct Examination			9		
	<b>First Witness:</b> <u>JAI ME ANDERSON</u>			Cross-Examination		8
				9		
<b>Prosecution/ Plaintiff</b>	Direct Examination			9		
	<b>Second Witness:</b> <u>CASEY WALLNER</u>			Cross-Examination		10
				10		
<b>Prosecution/ Plaintiff</b>	Direct Examination			9		
	<b>Third Witness:</b> <u>ANDY HOPP</u>			Cross-Examination		9
				10		
<b>Defense/Defendant</b>	<u>LOREN ALBERG</u>			Direct Examination		8
	<b>First Witness</b>			8		
				Witness Presentation		9
<b>Defense/Defendant</b>	<b>Second Witness</b>			Direct Examination		8
	Cross Examination <u>PAT CLIFFORD</u>			7		
				Witness Presentation		10
<b>Defense/Defendant</b>	<b>Third Witness</b>			Direct Examination		8
	Cross Examination <u>KINSLEY WILLIAMS</u>			8		
				Witness Presentation		10
<b>CLOSING ARGUMENTS</b>				9	7	
<b>OVERALL TEAM COURTROOM DECORUM</b>				7	8	
<b>SUB-TOTAL: add scores in each column</b>				103	104	
<b>DEDUCTION FOR RULES/TIMING VIOLATIONS</b>				0	2	
<b>TOTAL SCORE: Sub-total less deductions</b>				103	102	

**NO TIED SCORES ARE ALLOWED.**

Please deliver scoresheet to competition staff before debriefing!

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

3/13/08

Date

JANE SMITH

Judge's Name (Printed)

### SCORING RUBRIC FOR MOCK TRIAL

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

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

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

**DISPUTE RESOLUTION FORM: OUTSIDE THE BAR (RULE 6.3)**

**Top part to be filled out by person filing the dispute and returned to the Competition Coordinator.**

Date: \_\_\_\_\_ Location: \_\_\_\_\_

Name: \_\_\_\_\_ School: \_\_\_\_\_

Opposing Team Color: \_\_\_\_\_

Briefly explain the reason why you are filing the dispute.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Information below to be filled out by Competition Coordinator.**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Check all that apply.

- Spoke with person filing the dispute.
- Spoke with opposing team.
- Settled dispute.
- Referred dispute to Dispute Resolution Panel.

Dispute Resolution Panel Members

\_\_\_\_\_  
\_\_\_\_\_

Briefly explain the resolution to the dispute.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Competition Coordinator: \_\_\_\_\_

# **Idaho Mock Trial Rules of Evidence**

**Article I: General Provisions**

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***Rule 101: Scope***

These rules govern proceedings in the Idaho High School Mock Trial Competition.

***Rule 102: Purpose and Construction***

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

***Rule 105: Limited Admissibility***

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

***Rule 106: Remainder of or Related Writings or Recorded Statements***

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

**Article II: Judicial Notice**

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***Rule 201: Judicial Notice of Adjudicative Facts***

1. **Scope of rule:** This rule governs only judicial notice of adjudicative facts.
2. **Kinds of facts:** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
3. **When discretionary:** A court may take judicial notice, whether requested or not.
4. **When mandatory:** A court shall take judicial notice if requested by a party and supplied with the necessary information.
5. **Opportunity to be heard:** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
6. **Time of taking notice:** Judicial notice may be taken at any stage of the proceeding.
7. **Instructing Jury:** In a civil action or proceeding, the court shall instruct the Jury to accept as conclusive any fact judicially noticed. In a criminal case,

the court shall instruct the Jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

### **Article III: Presumptions in Civil Actions and Proceedings (not applicable in criminal cases)**

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#### ***Rule 301: Presumptions in General in Civil Actions and Proceedings***

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

### **Article IV: Relevancy and its Limits**

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#### ***Rule 401: Definition of Relevant Evidence***

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

#### ***Rule 402: Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible***

Relevant evidence is admissible, except as otherwise provided by . . . these rules. Evidence which is not relevant is not admissible.

#### ***Rule 403: Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time***

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, if it confuses the issues, if it is misleading, or if it causes undue delay, wastes time, or is a needless presentation of cumulative evidence.

#### ***Rule 404: Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes***

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.
4. **Other crimes, wrongs, or acts:** Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes,

such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

***Rule 405: Methods of Proving Character***

1. **Reputation or opinion:** In all cases where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross examination, questions may be asked regarding relevant, specific conduct.
2. **Specific instances of conduct:** In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

***Rule 406: Habit; Routine Practice***

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

***Rule 407: Subsequent Remedial Measures***

When measures are taken after an event which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

***Rule 408: Compromise and Offers to Compromise (civil case rule)***

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

***Rule 409: Payment of Medical and Similar Expenses (civil case rule)***

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

***Rule 410: Inadmissibility of Pleas, Plea Discussions, and Related Statements***

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

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

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

***Rule 411: Liability Insurance (civil case only)***

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

**Article V: Privileges**

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***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**

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***Rule 601: General Rule of Competency***

Every person is competent to be a witness.

***Rule 602: Lack of Personal Knowledge***

A witness may not testify to a matter unless the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses.

***Rule 603: Oath or Affirmation***

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

***Rule 604: Interpreters***

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

***Rule 607: Who May Impeach***

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

***Rule 608: Evidence of Character and Conduct of Witness***

1. **Opinion and reputation evidence of character:** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.
2. **Specific instances of conduct:** Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross examined has testified.

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

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

1. **General Rule:** For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted if elicited from the witness or established by public

record during cross examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

2. **Time Limit:** Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.
3. **Effect of pardon, annulment, or certificate of rehabilitation:** Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.
4. **Juvenile adjudications:** Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.
5. **Pendency of appeal:** The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

***Rule 610: Religious Beliefs or Opinions***

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

***Rule 611: Mode and Order of Interrogation and Presentation***

1. **Control by Court:** The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to (1) make the questioning and presentation effective for ascertaining the truth, (2) to avoid needless use of time, and (3) protect witnesses from harassment or undue embarrassment.
2. **Scope of cross examination:** The scope of cross examination shall not be limited to the scope of the direct examination, but may inquire into any

relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.

3. **Leading questions:** Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.
4. **Redirect/Recross Examination:** 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 examination, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

***Rule 612: Writing Used to Refresh Memory***

If a witness uses a writing to refresh memory for the purpose of testifying, either

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

***Rule 613: Prior Statements of Witnesses***

In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

**Article VII: Opinions and Expert Testimony**

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***Rule 701: Opinion Testimony by Lay Witness***

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

***Rule 702: Testimony by Experts***

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

***Rule 703: Bases of Opinion Testimony by Experts***

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

***Rule 704: Opinion on Ultimate Issue***

1. Opinion or inference testimony otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.
2. In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

***Rule 705: Disclosure of Facts or Data Underlying Expert Opinion***

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

**Article VIII: Hearsay**

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***Rule 801: Definitions***

The following definitions apply under this article:

1. **Statement:** A statement is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
2. **Declarant:** A declarant is a person who makes a statement.
3. **Hearsay:** Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
4. **Statements which are not hearsay:** A statement is not hearsay if:
  - a. Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or
  - b. Admission by a party opponent. The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the

existence of the relationship, or (E) a statement by a co conspirator of a party during the course in furtherance of the conspiracy.

***Rule 802: Hearsay Rule***

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

***Rule 803: Hearsay Exceptions, Availability of Declarant Immaterial***

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

1. Present sense impression statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
2. Excited utterance statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
3. Then existing mental, emotional, or physical conditions statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
4. Statements for purposes of medical diagnosis or treatment made for the purpose of medical diagnosis or treatment.
5. Recorded Recollection memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.
6. Records of regularly conducted activity These records include any memo, record, report, or other compilation of data in any form, which meets the following requirements:
  - a. It must be kept in the ordinary course of business or as part of the ordinary conduct of an organization or enterprise;
  - b. It must be part of the ordinary business of that organization, business, or enterprise to compile the data or information;
  - c. The information must be made for the purpose of recording the occurrence of an event, act, condition, opinion, or diagnosis that takes place in the ordinary course of the business or enterprise;
  - d. The entry in the record or the compiling of the data must be made at or near the time when the event took place;
  - e. The recording of the event must be made by someone who has personal knowledge of it. In order for a document or other form of data to be admissible under this rule, a foundation must be laid as to all of the

foregoing requirements by the custodian of the records or other witness found by the Court to be qualified.

7. Learned treatises To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.
8. Reputation as to character Reputation of a person's character among associates or in the community.
9. Judgment of previous conviction Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

***Rule 804: Hearsay Exceptions; Declarant Unavailable***

1. **Definition of unavailability:** Unavailability of a witness includes situations in which the declarant (1) is exempted by a ruling of the court of the ground of privilege from testifying concerning the subject matter of the declarant's statement; or (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or (3) testifies to a lack of memory of the subject matter of the declarant's statement; or (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivisions (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means. A declarant is not unavailable as a witness if exemption, refusal, claim or lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.
2. **Hearsay exceptions:** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
  - a. Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

- b. Statement under belief of impending death. In a prosecution of a homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the impending death.
- c. Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
- d. Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter states; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.
- e. Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party is a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant. For the purposes of the mock trial competition, required notice will be deemed to have been given. The failure to give notice as required by these rules will not be recognized as an appropriate objection.

***Rule 805: Hearsay within Hearsay***

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

***Rule 806: Attacking and Supporting Credibility of Declarant***

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

**ARTICLE X: Contents of Writing, Recordings, and Photographs**

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***Rule 1002. Requirement of Original***

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

**ARTICLE XI: Miscellaneous Rules**

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***Rule 1103: Title***

These rules may be known and cited as the *Idaho Mock Trial Rules of Evidence*.