

**23rd ANNUAL
COLORADO BAR ASSOCIATION
2008 HIGH SCHOOL
MOCK TRIAL PROGRAM**

State of Colorado

v.

Whitney Dwight



Presented by the
**COLORADO BAR ASSOCIATION's
Mock Trial Subcommittee,
Public Legal Education Committee, and
Public Legal Education Department
1900 Grant Street, Suite 900
Denver, Colorado 80203-4336**



October 28, 2007

Dear Mock Trial Teacher and Attorney Coaches:

On behalf of the Colorado Bar Association's Mock Trial Subcommittee, we invite you to participate in the 2008 Colorado High School Mock Trial Program. The Mock Trial Subcommittee proudly presents this year's case, *State of Colorado v. Whitney Dwight*.

IMPORTANT MESSAGE FOR teacher and attorney coaches: It is your responsibility to review, know, and teach your students the rules of this mock trial program. All teams are responsible for knowing these rules, and coaches are responsible for teaching the rules to their students.

We continue our commitment to ensuring professionalism by all participants and supporters of this program. Teachers: It is your responsibility to keep attorney coaches focused on the purpose of this program – education of these students. Attorney coaches: As a representative of the Colorado Bar Association and the legal profession, we strongly remind you that this program's first and foremost purpose is to provide the students with a positive educational experience that is focused more on learning and less on winning. Teachers and attorneys: The CBA expects professional conduct at all times during participation in this program.

Gallery observers and tournament volunteers are expected to conduct themselves inside and outside of the courtrooms in the utmost professional manner. They should serve as role models of professionalism and representatives of the code of ethics of the legal industry, and demonstrate good sportsmanship for our student participants.

The Code of Ethical Conduct memo is attached. Please share this information and expectation with your students and their parents. Additionally, there is a Code of Ethical and Professional Conduct for both the teachers and attorneys participating in this program. Contentious behavior and poor sportsmanship-like conduct by anyone involved with this program at any related program events will not be tolerated. After serious consideration by the Mock Trial Subcommittee, any team coach who behaves beneath this expectation will subject his or her team to disqualification from current or future mock trial participation.

The CBA Mock Trial Program goals remain the same, and are the impetus for all decisions around this program. The Mock Trial Subcommittee reminds all teachers, attorneys, and students involved that although the mock trial program is competitive by nature, it is designed for educational value. The goals of the Colorado High School Mock Trial Program remain as follows:

- To promote and to further an understanding of and appreciation for American judicial system and court procedures;
- To build and improve basic life skills such as critical thinking, public speaking, reading, reasoning, team collaboration, persuasive argument, and advocacy;
- To increase communication and cooperation between the legal and educational communities;
- To heighten the awareness of current social and legal issues; and
- To provide an educational event that supports communication, cooperation, and respect for students of diverse abilities, backgrounds, and interests.

These goals are consistent with the goals of the National High School Mock Trial Championship, Inc.

We invite returning teachers and attorneys to encourage other peers and schools to participate in this educational program, which encourages greater participation and education of the American Judicial System. We appreciate any support you can offer in promoting this program to other schools, teachers, and attorneys in your immediate and/or surrounding communities.

We also invite you to serve as “mentor” teacher and attorney coaches to new school teams, or to teams that are short-handed or have no attorney coaches. This mentoring pool allows other team coaches to contact you with basic mock trial program questions and/or a request for you to visit their team for mock trial consultation.

We offer our advance appreciation to all the students, teachers, attorney coaches, judges, scoring panelists, parents, and community leaders for supporting and participating in this educational event. Your involvement makes this program successful. More important, your participation helps build successful futures for these young participants. We look forward to working with you this year, and wish all of you the best of luck.

Very truly yours,

Honorable Julie Anderson, Co-Chair, CBA Mock Trial Subcommittee
Honorable David P. Cain, Co-Chair, CBA Mock Trial Subcommittee

Special Acknowledgments

CBA Litigation Section

for its continued and generous support of the costs associated with the implementation and coordination of the CBA High School Mock Trial Program.

The Colorado Bar Foundation

for its continued and generous support of the 2008 Colorado State Champion's travel to the National High School Mock Trial Championship, Inc. in Wilmington, Delaware.

Our thanks to both the Colorado Bar Foundation and the CBA Litigation Section for their generous support of this law-related educational program!

2008 COLORADO MOCK TRIAL CASE PROBLEM

State of Colorado

v.

Whitney Dwight

*The 23rd Annual CBA High School Mock Trial Program
is a sponsored activity of the*

**Colorado Bar Association Public Legal Education Committee
Honorable Julie E. Anderson, Co-Chair
Honorable David P. Cain, Co-Chair**

Organized by the

**Colorado Bar Association Mock Trial Subcommittee
Honorable Julie E. Anderson, Co-Chair
Honorable David P. Cain, Co-Chair**

State Tournament Coordinator

Carolyn P. Gravit
Director, Public Legal Education
Colorado Bar Association

Program Coordinator

Meghan Seck
Program Coordinator, Public Legal Education
Colorado Bar Association

Case Materials

Members of the CBA Mock Trial Subcommittee
Washington State Bar Association

Special thanks to:

Colorado Bar Association Litigation Section

Colorado Bar Foundation

Colorado Bar Association Staff

COLORADO HIGH SCHOOL MOCK TRIAL PROGRAM

Benefits of the mock trial program extend beyond the rewards of competing against one's peers or winning a round. The impact of the program is measured by successfully attaining the following objectives:

- to further the understanding of court procedures and the legal system;
- to improve proficiency in the basic skills of listening, speaking, reading, team collaboration, persuasive argument, and reasoning;
- to promote better communication and cooperation between the educational and legal communities;
- to provide an educational and competitive event in an academic atmosphere;
- to promote cooperation among students of various backgrounds, abilities, and interests;
- to promote ethical and professional sportsmanship.

The education of high school students is the primary goal of the mock trial program. Teacher and attorney coaches are reminded of their responsibilities to keep the competitive spirit at a reasonable and professional level before, during, and after tournaments.

In 2007, more than 100 mock trial teams participated in the CBA Mock Trial Program. Only twenty teams advanced to the State tournament, and only one of these teams was named the State Champion. We remind teachers and attorney coaches that they must prepare their students to be ready to accept the reality that they may experience disappointment. The expectations of the Colorado Bar Association and its Mock Trial Subcommittee are that students and teacher and attorney coaches, as well as gallery observers, accept the outcome in a mature and professional manner. Coaches can help prepare students for a successful outcome by placing the highest value on excellent preparation and performance, rather than on winning or losing. Students need to be prepared to handle the rigors of the tournament with dignity and class. Anger, bad sportsmanship, and frustration demonstrated by students and teacher/attorney coaches are not the objectives of the mock trial program, and will not be tolerated by the organizing committee.

Our goal is to create an event in which students and coaches alike approach their participation as an enjoyable and rewarding learning experience.

2007–08 Mock Trial Dates to Remember

Case Announcement Brochure Released	October 2, 2007
Case Materials Available —Internet/Office Pickup	November 1, 2007
Early Registration (\$125/team) Deadline	December 1, 2007
Late Registration (\$225/team) Deadline	January 3, 2008
Mock Trial Attorney/Teacher Coach Orientation	January 9, 2008
Deadline to Drop a Team	January 31, 2008
Local Tournaments	Between February 8 - 29, 2008
State Tournament – Fort Collins, CO	March 14 -15, 2008
National Championship – Wilmington, Delaware	May 8 - 10, 2008

Team Registration: Schools should register only those teams they plan to take to local tournaments. Please do not register multiple teams if the intent is to drop teams as they approach tournament time. Please see “Team Drop Penalties” below.

The team sponsor is responsible for completing the registration process, *i.e.*, responsible for not only the application but also the registration fee. If your school/district requires an invoice for payment, use the announcement brochure as the invoice for that purpose.

Team Drop Penalties: Dropping teams places a difficult burden on tournament coordinators, especially when doing so results in uneven numbers of teams in tournament fields, as well as volunteer and courtroom issues.

Any schools that drop a registered team prior to the January 31, 2008 deadline will be charged a \$35 administration fee that will be deducted from the registration refund. Any teams that drop after the January 31, 2008 team drop deadline will forfeit their entire registration fee.

2008 Regional Tournaments Dates and Contact Information

1st JD—Jefferson County North (north of Highway 6)

Dates: Feb. 26, 27, 28 and 29 (Backup dates: Feb. 22 and 23), 2008

Coordinator: Tom Walsh, (303) 279-7229

The second set of dates will only be used depending upon the number of teams participating. Regional coordinators will notify the teams of the dates in which they will be competing as soon as registration closes.

1st JD—Jefferson County South (south of Highway 6)

Dates: Feb. 26, 27, 28 and 29 (Backup dates: Feb. 22 and 23), 2008

Coordinators: Magistrate KJ Moore (303) 271-6209; Tom Walsh, (303) 279-7229

The second set of dates will only be used depending upon the number of teams participating. Regional coordinators will notify the teams of the dates in which they will be competing as soon as registration closes.

Adams/Broomfield Counties

Dates: Feb. 22–23, 2008

Coordinator: Michael Goodbee, (303) 659-7720

Arapahoe County

Dates: Feb. 22–23, 2008

Coordinators: Angel McCall, (303) 797-2227; Michael Price, (303) 797-1875

Boulder County

Dates: Feb. 22–23, 2008

Coordinator: Christine Hylbert, (303) 440-4758

Denver City/County

Dates: Feb 22–23, 2008

Contact: Carolyn Gravit, (303) 824-5323; Meghan Seck, (303) 824-5303

Southern Colorado

Dates: Feb. 8, 9 and 12, 2008

Coordinators: Jason Downie, (719) 579-6500; Patricia Kelly, (719) 385-5909

Greeley/Northern Colorado

Dates: Feb. 9–10, 2008

Coordinator: Stacey L. Aurzada, (970) 350-9758

Western Slope

Dates: Feb 8–9, 2008

Coordinator: John Siddeek, (970) 242-4903

Colorado High School Mock Trial State Tournament

Dates: March 14–15, 2008

Location: Fort Collins, Colorado

National High School Mock Trial Tournament

Dates: May 8–10, 2008

Location: Wilmington, Delaware

CBA Mock Trial State Coordinator:

Carolyn P. Gravit, (303) 824-5323 or (800) 332-6736

TABLE OF CONTENTS

TOURNAMENTS, JUDGING, AND RULES

General Information.....	11
Tournament Format.....	12
Rules of the Competition.....	15
Mock Trial Rules of Evidence.....	33

THE PROBLEM

Introduction.....	50
Stipulations.....	51
Complaint and Jury Instructions.....	52

Witnesses for the Prosecution

Dursley Thompson.....	59
Dr. Jordan Cavanaugh.....	62
Bailey Leightenen.....	66

Witnesses for the Defense

Whitney “Wizard” Dwight.....	71
Sky Willow.....	76
B. Shiloh Wadel.....	79
Exhibits.....	84
Case Law.....	92

Tournament Information, Judging, and Program Rules

General Information

The following rules of the Colorado Mock Trial Program will govern conduct of programs at local and state tournaments. However, local tournaments may deviate from these rules. Therefore, it is advisable to check with your regional tournament coordinator prior to local tournaments regarding any unique local changes and/or deviations from these guidelines. For example, the local tournament may or may not power-match, and may or may not include a championship round.

A. Local Discretion: Regional tournament coordinators have the liberty and the responsibility to conduct their tournaments as determined by their local bar association and by the needs of the local courts. The manner in which the tournaments are scheduled, teams are matched, teams are scored, teams advance, and winners are named is as determined by the local Tournament Coordinator. However, deviations from the state procedures should be approved by the Colorado Bar Association (CBA) Mock Trial Subcommittee prior to the commencement of the local tournament.

B. Local Media Coverage: Regional tournament coordinators are encouraged to maximize media coverage of mock trial events. In doing so, the media may attend mock trial rounds to cover the event and take pictures, audio and/or videotape. Media representatives must be briefed to minimize disruptions to the trial round in process.

C. Mock Trial Rules: The Colorado mock trial regional and state programs are governed by the enclosed rules. Any request for clarification of these rules or the case materials shall be submitted to the CBA Mock Trial Subcommittee **in writing no later than January 5, 2008**. Written responses with the posed questions will be provided to all registered teams as soon as practical and prior to the scheduled program (local or state championship tournament) via the CBA website, www.cobar.org, where all teams may be informed of any clarifications or changes. All teams are fully responsible for being apprised of these clarifications or changes when preparing their mock trials. The regional or state tournament coordinator should distribute any such clarification to each registered team.

D. Program Conduct: All teams are responsible for the conduct of persons associated with their teams throughout the mock trial event, including their volunteer attorney coaches, parents, peers and other team supporters. Failure of team associates to observe appropriate conduct may subject the team to disqualification at the sole discretion of the local tournament or state coordinator and/or coordinating committees. Inappropriate behavior may include, but is not limited to, coaching (audible or visual) from the gallery, demonstrative reactions to rulings or results, or disruptions from any individual in the courtroom.

Tournament Format

A. Local Tournaments

1. **Tournament Assignments:** After registration closes, teams will be assigned to local tournaments based on geography and local bar association resources. Some teams may be assigned to different local tournaments to create an even number of teams for the tournament. Each local tournament will advance its fair share of teams to compete in the state tournament. Fair share will be determined by calculating the ratio of the number of teams in the state tournament to the number of teams registered in the state. Each local tournament will advance that same percentage of teams to the state tournament. For example, if there are 72 teams registered statewide and a total of 18 advance to the state tournament, then 25% of a local tournament field will advance. Thus, if a local tournament has 13 teams, that tournament will advance 25% of its field, or 3 teams (25% of 13 = 3.25 or 3 teams), to the state tournament. The state coordinator will notify regional tournament coordinators of their advancement numbers prior to the first scheduled regional tournament.
2. **Minimum Number of Teams:** A regional tournament should have at least six teams registered with the CBA to advance a team to the state tournament. A tournament may be held with fewer than six teams at the discretion of the Committee. The CBA Public Legal Education Committee reserves the right to determine the geographical boundaries for any local tournament, as well as to determine the number of teams local tournaments may advance to the state championship tournament.
3. **Minimum Number of Schools:** A regional tournament must have at least two high schools represented to advance a team to the state tournament. A tournament may be held with only one high school involved; however, such a tournament would not be allowed to advance a team to the state tournament.
4. **Tournament Structure:** Tournament coordinators are encouraged to structure their tournaments to include the following:
 - a. Four rounds of program, with a random first-round draw and subsequent rounds paired using power- matching based on the following criteria used, in descending order: wins/losses; total number of ballots won; point-spread—margin of victory/defeat; and total points earned;
 - b. An optional championship round;
 - c. Keeping the results of individual rounds confidential until completion of the tournament; and
 - d. State tournament procedures regarding composition of scoring panels, judging, and scoring considerations.
5. Tournaments may be scheduled over several weekdays, over a weekend, or during weeknights to take advantage of local resources (*e.g.*, judges, courtrooms, and scoring panelists).
6. Regional tournaments must be scheduled to conclude no later than two weeks prior to the state tournament.
7. Tournament coordinators are encouraged to provide judge and scoring panelist training prior to each round in the tournament. Areas to emphasize include: scoring ranges and definitions, disputes, performance vs. merit-scoring, technical vs. performance-scoring, unfair extrapolations, witnesses bound by statements, and material omissions.
8. Regional tournament coordinators should restrict gallery attendance of the championship round to teams (members and coaches) that will NOT be advancing to the state tournament, and family, friends, and supporters of the competing teams.

9. Tournament coordinators are encouraged to send copies of score sheets to the competitors following the conclusion of their tournaments.
10. Tournament coordinators will notify the CBA Mock Trial Subcommittee of the teams they are advancing to the state tournament, and which team is their number one seed by certification.
11. Certification requires that the tournament coordinators collect an official team roster (submitted at the start of the local tournament) from each team competing in a local tournament. The official team rosters of those teams advancing to the state tournament must be forwarded to the State Coordinator immediately upon completion of the local tournament. This procedure will verify that only the team members listed on the local tournament roster will be allowed to compete in the state tournament.
12. Tournament Coordinators are encouraged to provide students with certificates of participation.
13. Local bar associations may deviate from these guidelines as required by limitations on local facilities and volunteer resources. Deviations from these guidelines should be approved by the CBA Mock Trial Subcommittee prior to the commencement of the local tournament.

B. State Tournament

1. **Maximum Number of Teams:** The number of teams advancing to the state tournament will be determined after the total number of teams competing at the local levels throughout the state has been solidified. If a school/team that has earned the chance to compete at the state tournament chooses not to advance to the state tournament, the host of the local tournament will select the team next in line of succession to advance to the state tournament.
2. **Maximum Number of Teams from One School:** No more than two teams from any one school may advance to the state tournament.
3. **Tournament Structure:** The state tournament shall be conducted as follows:
 - a. Four rounds of competition, with a random first round draw (with the exception that no regional number one seed will be paired against another regional number one seed) and subsequent rounds paired using power matching based on the following criteria used in descending order: wins/losses; total number of ballots won; point spread—margin of victory/defeat; and, total points earned;
 - b. A championship round;
 - c. The results of individual rounds will be kept confidential until completion of the tournament;
 - d. State tournament procedures regarding composition of scoring panels, judging, and scoring considerations; and
 - e. The winner of the championship round will be eligible to represent Colorado at the National High School Mock Trial Tournament in May.
4. **Tournament Dates:** The state tournament will be a two-day tournament, preferably Friday and Saturday, with two trial rounds of competition on Friday afternoon and two rounds of competition and the championship round on Saturday.
5. **Tournament Results:** Copies of score sheets and final team standings will be mailed to the competitors following the conclusion of the competition.
6. **Advancement to Nationals:** If, for any reason, the Colorado champion cannot participate at Nationals, the second place team will be eligible. If neither of these teams can participate, the CBA Mock Trial Subcommittee may select a representative team.

7. **Team Composition at Nationals:** At the national tournament, each state is limited to eight students (six participating as witnesses and attorneys, and two alternates). The Colorado Bar Association, thanks to a grant from the Colorado Bar Foundation and the Colorado Bar Litigation Section, normally will make a financial donation to the team participating in the national championship to help defray travel expenses; however, the team and its school will be primarily responsible to raise funds as needed.

Rules of the Competition

A. Administration

Rule 1.1 Rules

All trials will be governed by the Rules of the Colorado High School Mock Trial Competition, the Colorado High School Rules of Evidence, and the specific courtroom location rules of decorum and security.

Questions or requests for interpretation of these rules shall be submitted to the State Coordinator and the CBA Mock Trial Subcommittee.

Rule 1.2 Code of Ethical Conduct

The Rules of Competition, the attached Code of Ethical Conduct, as well as the rules of the specific courthouse for decorum and security, must be followed by all team participants, coaches, non-participating team members, and observers. The State Tournament Coordinator and the CBA Mock Trial Subcommittee possess discretion to impose sanctions, up to and including forfeiture of a round or disqualification from the tournament, for any disruptive behavior occurring while a team is present for the state tournament including, but not limited to: flagrant rule violations; horseplay; inappropriate comments; inappropriate reactions to judges' rulings, team pairings or team results; other unprofessional conduct; property damage; and/or, breaches of decorum that affect the conduct of a trial or that impugn the reputation or integrity of any team, school, participant, court officer, judge, or the mock trial program.

Excessive littering of, or property damage to, a courtroom will result in an automatic cleaning and/or replacement fee. Cleaning fees generally run a minimum of \$250. Should the assessed team refuse to pay, an assessment of the costs will be added to the following year's competition registration fee.

Food and beverages are not allowed in the courtrooms or in any area of the courthouse not designated as an eating area. Teams bringing food or beverages into the courtrooms or any area not designated for consuming food are subject to sanctions up to and including forfeiture of a round or disqualification from the tournament. Additionally, any offending team may be charged a cleaning fee as described above.

Rule 1.2.1 Team Conduct

Team members are bound by the Rules of Competition, the Code of Ethical Conduct, and the rules of the specific location courthouse. Students also shall strive to model the highest standards of sportsmanship and ethical conduct at all times.

Rule 1.2.2 Coach's Conduct

Attorney and teacher coaches shall uphold the Rules of Competition, the Code of Ethical Conduct and the rules of the specific courthouse. Additionally, coaches shall comply with their own employment professional codes, rules, and ethical standards. Finally, coaches shall instill in their student team members, team parents, and other team gallery observers the highest standards of sportsmanship and ethical behavior.

Rule 1.2.3 Gallery Conduct

Gallery observers shall uphold the Code of Ethical Conduct and the rules of the specific location courthouse.

B. Teams

Rule 2.1 Team Composition

Each team shall consist of a minimum of six students and a maximum of twelve students. Only six students on a team may compete in any given round (three attorneys and three witnesses). Each team member shall be listed on the official team roster submitted at the local tournament level. The team roster will become official at the time of its submission at the local tournament level, and thereafter remain fixed through the state and national tournaments. At no time will a student who is not listed on the local tournament team roster be allowed to compete at the state or national tournaments.

Rule 2.1.1 Student Eligibility

Students must be currently enrolled as full-time students in their schools in order to participate in the state and national tournaments. There is one exception to this rule: students who have graduated from their school early. To be eligible under this exception, the student must have graduated in good standing within one semester of the mock trial competition and have been a full-time student of the current senior class at the beginning of the current school year.

Teams must be comprised of students from the same high school.

Requests for exceptions to this rule must be submitted to the CBA Mock Trial Subcommittee.

Rule 2.1.2 Timekeeper

Each team shall provide a timekeeper. The timekeeper may not be a participating team member or a team teacher coach or team attorney coach.

Rule 2.2 General Team Duties

Teams shall present both sides of the case. For each trial round, teams shall use three students as attorneys and three students as witnesses.

In the event that a team is missing one of its participating team members in a trial round for example, due to illness or failure to appear, the missing participating team member will receive a “0” point score for each performance part he/she misses in that trial round and the opposing team member(s) impacted by the missing person will receive a “10” point score for their role(s). This rule applies even if another participating team member stands-in for the missing member. A non-participating member may fill in for the missing participating member with no penalty. See Rule 8.1.2 for more details.

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

The attorney who examines a particular witness on direct examination is the only team member who may make objections to the opposing attorney’s cross-examination questions. The attorney who cross-examines a witness will be the only team member permitted to make objections during the direct examination of that witness.

Each team shall call all of its witnesses. The order of the witnesses being called to the stand is at the discretion of the team. Witnesses may be called to the stand only by their own team attorney conducting that witness’s direct examination (case-in-chief). Once direct examination is completed, the opposing team may cross-examine the

witness. Re-direct and re-cross will be permitted only at the discretion of the presiding judge. Witnesses may not be recalled by either side.

Rule 2.2.1 Code of Ethical Conduct (Team Roster)

The original Code of Ethical Conduct must be signed by each member of the team, the timekeeper(s), and coach(es), and be submitted at the time of the tournament check-in. **Teams shall use the Code of Ethical Conduct Team Roster attached to these rules.** Copies of the Code of Ethical Conduct should not be provided to the presiding judges or scoring panelists during the rounds of competition.

Rule 2.2.2 Trial Rosters

Copies of the trial roster must be completed and duplicated by each team prior to arrival at the courthouse. Teams must be identified on the roster by the code assigned to them at registration. No team origin identifying comments, symbols, or pictures shall appear on the form. Before the beginning of the trial, the teams must exchange copies of the trial roster. Teams shall use the Trial Roster attached to these rules.

C. The Problem

Rule 3.1 The Problem

The problem will consist of a fact pattern that may contain any or all of the following: statement of facts, indictment, stipulations, witness statements, affidavits, jury instructions, exhibits, case law, etc.

The problem shall consist of three witnesses per side, all of whom shall have names and characteristics that would allow them to be played by either males or females (gender neutral). Each side shall call each of their three witnesses to testify during their case-in-chief.

Rule 3.1.1 Stipulations

Stipulations may not be disputed at trial.

Rule 3.1.2 Witness Statements

Witness statements may not be altered.

D. Trial Logistics

Rule 4.1 Scoring Panel Composition

The scoring panel shall consist of at least three individuals. The composition of the panel and the role of the presiding judge will be set at the discretion of the State Tournament Coordinator. The State Tournament Coordinator is encouraged to integrate educators and community representatives onto scoring panels. However, each panel shall have at least one attorney as a scoring judge. The following are examples of potential scoring panels.

One presiding judge and three attorneys as scoring judges

One presiding judge, two attorneys, and one educator/community representative as scoring judges

One presiding/scoring judge and two attorneys as scoring judges

One presiding/scoring judge, one attorney, and one educator/community representative as scoring judges

Rule 4.2 Videotaping/Photography

Any team has the option to refuse participation in videotaping, tape recording, and still photography by opposing teams. However, videotaping, tape recording, and still photography by the media and the Colorado Bar Association will be allowed.

If either competing team videotapes or tape-records a trial round, the trial tapes are only to be used by the two competing teams. These tapes shall not be given to, traded, exchanged, or sold to another team under any circumstances without the express written consent of the CBA Mock Trial Subcommittee. Violations of this rule may result in sanctions up to and including disqualification.

Rule 4.3 Viewing a Trial

Non-participating team members (team members outside the bar), alternates, coaches, teacher-sponsors, parents, siblings, or any other persons directly associated with a mock trial team are not allowed to view another team's performance, even if the team is from the same school, so long as the individual's team remains in the competition. There are two exceptions to this rule. See Rule 4.3.1 and 4.3.2.

Rule 4.3.1 Exception 1: Teacher or attorney coaches who are the parents of students competing on a team other than the team the teacher or attorney is coaching may watch their his/her child during the fourth round and the championship round of competition.

Rule 4.3.2 Exception 2: Any attorney coach, teacher-sponsor, parent, sibling, or other spectator associated with the school of a mock trial team may observe another team's round if they obtain permission from each team participating in that round. This exception must be disclosed to the presiding judge during preliminary matters.

Rule 4.4 Trial Communication

Coaches, teachers, non-participating team members, and observers shall not talk to, signal, hand notes to, communicate with, or coach their teams during trial. This rule remains enforced during any recess taken. Participating team members (those inside the bar) may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Coaches, teachers, non-participating team members (those outside the bar), and observers must remain outside the bar in the gallery of the courtroom at all times during the trial, even if an emergency recess is taken.

If the CBA Mock Trial Subcommittee does not provide a timekeeper and a team chooses to use its own timekeeper, the team may place the timekeeper inside the bar. Signaling of time by the team's timekeeper shall not be considered a violation of this rule.

Unauthorized communication or signals between the participating team members and their student timekeeper is prohibited. The exception to this rule is when the participating team member requests permission from the court to inquire about their time with their student timekeeper.

Rule 4.5 Courtroom Seating

The Plaintiff/Prosecution shall be seated closest to the jury box. No team shall rearrange the courtroom without prior permission of the presiding judge or courtroom monitor. Each team shall have all three

witnesses and three attorneys seated inside the bar. It is up to the Defense Team whether the Defendant sits at the counsel table during the trial.

Rule 4.6 Jury Trial

The case will be tried to a jury. Presentations are to be made to the presiding judge and scoring panelists. Teams may address the scoring panel as the jury.

Rule 4.7 Precursory Documents

Copies of the trial roster shall be provided to the presiding judge and the scoring panelists at the commencement of the trial. Additionally, the Prosecution/Plaintiff's attorney presenting the opening statement shall provide a copy of the stipulations to the presiding judge and the scoring panelists just prior to beginning the opening statement.

Team members may collect these documents at the end of the trial for use in subsequent rounds.

The stipulations, indictment, or the charge to the jury shall not be read into the record. Stipulations shall be considered part of the trial record and can be discussed accordingly throughout the trial.

The teams shall not provide copies of the Code of Ethical Conduct (Team Roster) to the presiding judge or the scoring panelists.

Rule 4.8 Supplemental Material/Costuming

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

The only documents that teams may present to the presiding judge or scoring panelists are the trial rosters and the individual exhibits provided in the case material. These exhibits may be tendered to the presiding judge and scoring panelists at the discretion of the team. Exhibit notebooks are not permitted.

In the event a team member appears at trial in costume or uses a prop, the team may be disqualified at the presiding judge's discretion. If the presiding judge decides to proceed with the trial, the presiding judge will meet with the scoring panel to discuss the penalty assessed against the team. The minimum penalty imposed for use of costumes or props is two ballots (not points).

Rule 4.9 Courtroom Decorum

All team members will act in a polite and professional manner at all times.

Rule 4.9.1 Attorney Demeanor

Unless excused by the presiding judge, attorneys will stand during opening statements, direct and cross-examinations, objections, and closing arguments.

Rule 4.9.2 Addressing Opposing Counsel

Attorneys should not address opposing counsel directly during the trial.

Rule 4.9.3 Addressing the Presiding Judge

Attorneys shall address the presiding judge as “Your Honor” or “Judge ____.”

Rule 4.9.4 Witness Demeanor

Witnesses are not permitted to read their statements/affidavits verbatim in the trial. Additionally, the witnesses are not permitted to refer to their written statements/affidavits during the trial, except to refresh recollection (direct) or impeach (cross). If asked questions outside the scope of their statements/affidavits, they may respond in accordance with Rule 6.5. Testimony must not be inconsistent with facts set forth in the witness’ statements/affidavits.

E. Presiding Judge Pre-Trial Procedures

At the beginning of the trial, the presiding judge will handle the following pretrial matters:

1. Ask each side if it is ready for trial.
2. Ask each side to provide the judge and scoring panelists with copies of its trial roster with the team’s code. No words, symbols, or other marks that identify the team by its school shall be on the trial roster.
3. Confirm that if video recorders are present and being used, that both teams have approved the taping of the round. (Coaches/gallery are not permitted to tape the trials without permission.)
4. Inform teams, as well as gallery members, that the Colorado Bar Association may be taking photographs of the competition during the round, and that team participation in the state tournament grants automatic permission and the use of these photos by the Colorado Bar Association.
5. Ask anyone in the gallery who is connected with teams not competing in that round (student members and coaches of other schools or of the same school but a different team) to leave the courtroom. There are two exceptions to this rule. See Rule 4.3.
6. Remind the teams that no recesses will be allowed, with the exception of those granted for a health emergency, and especially not between the end of witness examination and the beginning of closing arguments.
7. Ask the scoring panelists if they recognize either team or any of the team members. If any panelist recognizes a team or a team member, the judge will notify the courtroom monitor, the State Tournament Coordinator, or a CBA Mock Trial Subcommittee member, and arrangements may be made to replace the panelist. (Team members and team coaches may raise an objection regarding a particular scoring panelist at this time as a preliminary matter. The objection is deemed waived if it is not made as a preliminary matter.)
8. Remind the teams and coaches that any disputes arising out of this competition must be reported in accordance with the competition rules.
9. Remind the teams that their compliance with time requirements will be considered in scoring individual performances.
10. Confirm that no coach or team member (other than a timekeeper, if a timekeeper is not provided by the competition committee) is seated in the jury box.
11. Ask each side to introduce the participating team members (attorneys and witnesses).

12. Swear in the team members, the gallery, the scoring panelists, and the witnesses.

The presiding judge will ask all members in the courtroom to stand for the swearing in and explain that, in an effort to maintain a level of professionalism and to uphold the Code of Ethical Conduct during and after these mock trial proceedings, all members of the gallery, scoring panels, and teams shall stand for the swearing in to the oath of the Code of Ethical Conduct.

“Team members, please raise your right hands. Team members, do you promise that the presentation you are about to give will faithfully and truthfully conform to the facts and rules of the mock trial competition?”

“Gallery members, including teacher and attorney coaches, family members and friends, please raise your right hands. Do you promise to represent yourselves as positive role models, and to behave in a manner that exemplifies ethical and professional sportsmanship during and after this mock trial round?”

“Scoring Panelists, please raise your right hands. Do you promise to adjudicate the mock trial competition as fairly and objectively as possible in accordance with the facts, procedures and rules of the mock trial competition?”

Once all have been sworn to the Code of Ethical Conduct, the presiding judge will ask all but the witnesses to sit. Then the witnesses shall be sworn in as follows:

“Witnesses, do you promise that the testimony you are about to give will faithfully and truthfully conform to the facts, procedures, and rules of the mock trial competition?”

F. General Trial Information

Rule 5.1 Sequestration

The teams may not invoke the rule of witness sequestration.

Rule 5.2 Bench Conferences

Teams should not request bench conferences. However, if a bench conference is requested and granted by the presiding judge, it shall be held in open court for educational and scoring purposes. Time will stop for bench conferences. The timekeeper shall resume time upon the presiding judge’s order to proceed.

Rule 5.3 Motions

No motions may be made except a motion for an emergency recess.

Rule 5.3.1 Emergencies

A motion for a recess may be used only in the event of a health emergency. Should the recess be granted, to the greatest extent possible, the team members are to remain in place. Teams are not to communicate with anyone outside the bar during the recess.

Rule 5.4 Offers of Proof

No offers of proof may be requested or tendered.

Rule 5.5 *Voir Dire*

Voir dire examination of a lay witness is not permitted. The presiding judge may allow brief *voir dire* of an expert witness regarding the witness's qualifications. Time used for *voir dire* is chargeable time, *i.e.*, counts toward total time limit of the team's direct and cross-examinations.

Rule 5.6 Use of Notes

Attorneys are not restricted from the use of notes while presenting any segment of their case. Additionally, participating attorneys and witnesses may communicate during the trial with each other verbally or through the use of notes.

G. Trial

Rule 6.1 Trial Sequence

The trial sequence is as follows:

1. Plaintiff/Prosecution Opening Statement
2. Defense Opening Statement
3. Plaintiff/Prosecution Case-in-Chief
 - a. Plaintiff/Prosecution direct examination of their first witness.
 - b. Defense cross-examination of the first witness.
 - c. Plaintiff/Prosecution re-direct examination of first witness (optional and only with permission of presiding judge).
 - d. Defense re-cross-examination of the first witness (optional and only if re-direct has occurred). Re-cross will be limited to the scope of re-direct.
 - e. Same process as steps a-d for the second witness.
 - f. Same process as steps a-d for the third witness.
4. Defense Case-in-Chief
 - a. Defense direct examination of its first witness.
 - b. Plaintiff/Prosecution cross-examination of the first witness.
 - c. Defense re-direct examination of first witness (optional and only with permission of presiding judge).
 - d. Plaintiff/Prosecution re-cross-examination of the first witness (optional and only if re-direct has occurred). Re-cross will be limited to the scope of re-direct.
 - e. Same process as steps a-d for the second witness.
 - f. Same process as steps a-d for the third witness.

5. Prosecution/Plaintiff Closing Argument
6. Defense Closing Argument
7. Prosecution/Plaintiff Rebuttal Argument if properly reserved (optional)

If the Prosecution/Plaintiff reserved a portion of its closing time for a rebuttal, the rebuttal argument shall be limited to the scope of the Defense's closing argument.

Attorneys are not required to use the entire time allotted to each part of the trial.

Time remaining in one part of the trial may not be transferred to another part of the trial.

Rule 6.2 Re-Direct and Re-Cross-Examinations

Re-direct and re-cross-examinations are permitted at the discretion of the presiding judges. If re-direct examination is permitted, the scope of the re-cross-examination will be limited to the scope of the re-direct examination.

Rule 6.3 Scope of Closing Arguments

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

Rule 6.4 Time Keeping

Time limits are mandatory and will be strictly enforced. Only non-participating student timekeepers are allowed to keep time for teams.

When a student timekeeper displays the time remaining to a student performer, the student timekeeper also shall display the time remaining to the presiding judge. Both student timekeepers should track time for both sides and show their time cards during the trial round. Both student timekeepers should confer with each other after each trial segment to ascertain time discrepancies. If student timekeepers have a time discrepancy greater than 15 seconds, they should notify the presiding judge. When time runs out for a specific segment of the trial, the student timekeepers must stand and say "STOP" in a voice loud enough to be heard by the performing student, the presiding judge and the scoring panelists. Failure to do so may subject the violating team to disqualification. The following time limits shall be used.

Opening statement	5 minutes per side
Direct examination and optional re-direct	25 minutes per side
Cross examination and optional re-cross	20 minutes per side
Plaintiff/Prosecution closing argument and Optional rebuttal argument	5 minutes
Defense closing argument	5 minutes

Rule 6.4.1 Time Extensions

The presiding judge shall not grant time extensions.

If time for a specific segment of the trial has expired and an attorney continues, the scoring panelists will determine individually the impact on the individual's performance score.

Rule 6.4.2 Timing Objections, Delays or Bench Conferences

Time for objections, extensive questioning by the presiding judge or administering of the oaths will not be counted as part of the allotted time during examination of witnesses, opening statements or closing arguments.

Time does not stop for introduction of exhibits.

Time shall stop for bench conferences. Please see Rule 5.2.

Rule 6.4.3 Time Keeping Aids

Student timekeepers should use time keeping place cards. These cards may not exceed 8 1/2 X 11" in size. Additionally, student timekeepers should use a stopwatch or similar timing device. All timekeepers should have time keeping place cards in the following increments: 20 minutes, 15 minutes, 10 minutes, 5 minutes, 4 minutes, 3 minutes, 2 minutes, 1 minute, 40 seconds, and 20 seconds. Teams may use additional place cards at different increments at their discretion. Please see attachment for additional timekeeping tools for use at each team's discretion.

Rule 6.4.4 Discrepancies in Time Between Team Timekeepers

If timing variations of 15 seconds or more occur at the completion of any segment of the trial, timekeepers are to notify the presiding judge that a time discrepancy has occurred.

The presiding judge will rule on any time discrepancy before the trial continues. Timekeepers will synchronize stopwatches to match the presiding judge's ruling (for example if the Plaintiff/Prosecution stopwatch indicates 2 minutes left on a direct examination and the Defense stopwatch 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 the direct examination. Defense would adjust timing to allow for the 1 minute timing decision.)

Any discrepancies between timekeepers less than 15 seconds will not be considered a violation.

Timekeepers may raise time discrepancies only at the end of each segment of the trial presentation. No time disputes will be entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of timing disputes are final.

Rule 6.5 Witnesses Bound by Statements

Each witness is bound by the facts contained in his/her own statement/affidavit, the Statement of Facts if the witness was present during the event described in the Statement of Facts, and/or any necessary documentation relevant to his/her testimony.

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

Rule 6.5.1 Unfair Extrapolations

Unfair extrapolations are not permitted. Unfair extrapolations are the subject of objections but best addressed through impeachment and/or closing arguments.

Specifically, unfair extrapolations are:

- a. statements made by a witness that are not contained in the witness’s statement/affidavit but touch on a pivotal issue in the case; or
- b. statements made by a witness that are not contained in the Statement of Facts or covered by an event in the Statement of Facts that the witness was present for but touch on a pivotal issue in the case; or
- c. statements made by a witness that are not contained in any necessary documentation relevant to the witness’s testimony but touch on a pivotal issue in the case; or
- d. statements made by a witness that are not a reasonable inference from the witness’s statement, affidavit, Statement of Facts or necessary documentation relevant to the witness’s testimony, but touch on a pivotal issue in the case.

It shall not be considered an unfair extrapolation for a witness to testify that he/she agrees or disagrees with what is contained in another witness’s statement/affidavit.

If a witness is asked a question that calls for an inference, for information that the other side believes to be inadmissible, or for any information not in the witness’s statement, the following response may be used: “I’m sorry, that information is not in the case materials. I cannot respond to your question.” In the alternative, the witness may respond to the question with a creative, reasonable answer, as long as the response is not considered an unfair extrapolation. The creative answers must not be inconsistent with the facts contained in the witness’s statement/affidavit.

Rule 6.5.2 Unfair Extrapolation Objection

No unfair extrapolation objections are permitted. Unfair extrapolations are best addressed through impeachment and/or in closing arguments. See Rule 6.5.1 and Rule 6.6.3.

Rule 6.6 Objections

Attorneys shall state their objections loudly enough to be heard by the presiding judge, scoring panelists, and opposing counsel. Objections should begin by stating, “Objection, your honor.” Once an attorney has the attention of the presiding judge, the attorney should state the basis for the objection.

Rule 6.6.1 List of Objections

The following is a list of objections that may be used. This is not an exhaustive list. Teams are not precluded from raising additional objections that are available under the Colorado High School Mock Trial Rules of Evidence.

- a. Ambiguous or Unintelligible
- b. Argumentative
- c. Asked and Answered
- d. Assuming Facts Not in Evidence
- e. Compound Question
- f. Cumulative

- g. Hearsay
- h. Improper Foundation
- i. Improper Lay Opinion
- j. Lack of Foundation
- k. Lack of Personal Knowledge
- l. Leading
- m. Narrative
- n. Relevant
- o. Speculative

Rule 6.6.2 Opening Statement or Closing Argument Objections

No objections shall be raised during opening statements or during closing arguments. If a team believes that an objection would have been proper during the opposing team’s opening statement or closing argument, the team member presenting the same segment of the trial may, following the opening statement or closing argument, stand to be recognized by the presiding judge and once recognized, state, “If I had been permitted to object during the [opening statement/closing argument] I would have objected to _____.” The presiding judge will not rule on this “objection.” The presiding judge and scoring panelists will weigh the “objection” individually. No rebuttal by the opposing team will be heard.

Rule 6.6.3 Unfair Extrapolation Objection

No unfair extrapolation objections are permitted. Unfair extrapolations are best addressed through impeachment and/or in closing arguments. See Rule 6.5.1 and 6.5.2

Rule 6.7 Exhibits

Exhibits can be admitted into evidence only when a sequence of proper procedural steps has been followed. These steps are part of a litany that should be smoothly and efficiently demonstrated by the attorney for each exhibit admitted. All evidence are pre-marked as exhibits.

Rule 6.7.1 Steps for Exhibit Admission

The following are only offered as examples.

- a. Show the exhibit to opposing counsel or offer them a copy of the exhibit. “Your Honor, let the record reflect that I (am showing/have given) opposing counsel a copy of Exhibit A.”
- b. Obtain permission of the presiding judge to approach the witness. “Your honor, may I approach the witness.”

- c. Show the exhibit to the witness. “Your Honor, let the record reflect I am showing the witness a copy of Exhibit A.”
- d. Lay the proper foundation for the exhibit.
- e. Move for admission of the exhibit into evidence. “Your Honor, at this time I move for the admission of Exhibit A.”
- f. Obtain permission of the presiding judge to publish the exhibit to the jury. “Your Honor, permission to publish Exhibit A to the jury.”
- g. Publish the exhibit.

H. TRIAL CONCLUSION

Rule 7.1 Disputes

Allegations of rule violations that occur within the bar must be filed immediately by a participating team member following the conclusion of that trial round with the presiding judge. Allegations of rule violations that occur outside the bar must be brought to the attention of the State Tournament Coordinator or CBA Mock Trial Subcommittee member by the team’s Teacher or Attorney coach as soon as possible but no later than 48 hours after the tournament, or within 48 hours of the time the team knew or should have known that rules violation occurred. Any disputes received after this time will not be considered.

Rule 7.1.1 Reporting an Inside the Bar Dispute

If any participating team member believes that a substantial rules violation has occurred, a student attorney must indicate to the presiding judge at the conclusion of the trial that the team intends to file a dispute. The student attorney will record the nature of the dispute on the attached dispute form. The student may communicate with participating team members (counsel and/or student witnesses) before lodging the notice of dispute or in preparing the form.

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

Rule 7.1.2 Dispute Resolution Procedure

The presiding judge will review the written dispute form and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record his/her reasons on the form, announce her/his decision to the court, retire to complete his/her score sheet (if applicable), and turn the dispute form into the State Tournament Coordinator. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for its written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare their arguments, the judge will conduct a hearing on the dispute, allotting each team’s spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will enter her/his ruling on the dispute on the dispute form. The presiding judge may take a recess to

consult with the State Tournament Coordinator and/or CBA Mock Trial Subcommittee members.

If the presiding judge determines that a substantial rules violation has occurred, the scoring panelists will consider the dispute before reaching their final decisions. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring panelists on individual performance scores.

Rule 7.1.3 Reporting an Outside-the-Bar Dispute

If any participating team member believes that a substantial rules violation has occurred outside the bar, a teacher or attorney coach must indicate to the State Tournament Coordinator or a CBA Mock Trial Subcommittee member the nature of the dispute on the attached dispute form. The form will be taken to the tournament's communications center, whereupon a dispute resolution panel will (a) notify all pertinent parties of the dispute; (b) allow time for a response, if appropriate; (c) conduct a hearing, if needed; and (d) rule on the charge. The dispute resolution panel may notify the scoring panelists of the affected courtroom of the ruling on the charge in case they want to reflect the findings on individual performance scores, or the dispute resolution panel may assess an appropriate penalty.

The dispute resolution panel will be designated by the State Tournament Coordinator and CBA Mock Trial Subcommittee members.

Rule 7.1.4 Code of Ethical Conduct Violations

Allegations of Code of Ethical Conduct violations must be reported immediately to the State Tournament Coordinator or a CBA Mock Trial Subcommittee member. A student, Teacher coach, or Attorney coach may report an alleged violation of the Code of Ethical Conduct. The State Tournament Coordinator or a dispute resolution panel will (a) notify all pertinent parties of the alleged violation; (b) allow time for a response, if appropriate; (c) conduct a hearing, if needed; and (d) rule on the charge. The dispute resolution panel may assess an appropriate penalty.

The dispute resolution panel will be designated by the State Tournament Coordinator and CBA Mock Trial Subcommittee members.

I. Judging and Team Advancement

Rule 8.1 Scoring Guidelines

The scoring sheets must be completed prior to the beginning of any student performance critique. Scoring panelists should use the attached scoring criteria during the mock trial to determine the performance level of each student as attorney or witness. This scoring criteria outline will be provided to each scoring panelist as a reference during the adjudication of the mock trial.

Rule 8.1.1 Completing the Scoring Sheets

The score sheets are to be completed individually by each scoring panelist.

The scoring panelists will score participants on a scale of 1-10, according to the performance of their roles during the trial. The panelists then will total these individual performance scores and shall place the sum in the "totals box." The team that earned the highest point value on the individual judge's score sheet is the winner of that judge's ballot. The scoring panelists shall

then circle the team's role (Prosecution/Plaintiff or Defense) with the highest total points. The team that receives the majority of the three ballots wins the round.

In the event of a scoring panelist having the same total team performance point scores for both teams, the scoring panelists shall circle the team's role (Prosecution/Plaintiff or Defense) that he/she deems the trial round winner of his/her ballot.

Rule 8.1.2 Team Role Assignments

Teams have options concerning attorney/witness role assignment, order of calling witnesses, and selecting who presents opening and closing arguments, which are explained in the mock trial rules. Scoring panelists are not to pass judgment or impact a point score on how teams make assignments.

In the event that a "team" is missing one of its participating team members in a trial round, for example, due to illness or failure to appear, you shall give the missing participating team a "0" point score for each performance part he/she misses in that trial round and make a notation in the remarks section of the ballot. Additionally, you shall score the opposing team member(s) impacted by the missing person with "10" points for each performance in that trial round impacted and make a notation in the remarks section of the ballot. This rule applies even if another participating team member stand in for the missing member. A non-participating member may fill in for the missing participating member with no penalty.

Example 1, Missing Witness: A team does not have one of its three witnesses during a round.

If a witness role is not conducted, both the witness role and the attorney who would have conducted the direct-examination of the witness will receive "0" point scores. Additionally, the opposing attorney who would have cross-examined the witness will receive a "10" point score.

Example 2, Substituted Witness, Participating Team Member: A team does not have one of its witnesses, and a participating team member steps into a second role.

If a participating team member steps into that role, that role portrayal will be scored with "0" points. The attorney from the opposing team who conducted the cross-examination of the substitute participating team member will be scored "10" points.

Example 3, Substituted Witness, Non-Participating Team member: A team does not have one of its witnesses and a non-participating team member fills the role.

If a non-participating team member steps into a witness role, points for all students impacted will be scored as they are earned. No penalties will be assessed.

Example 4, Missing Attorney: A team does not have one of its attorneys during a round.

If an attorney does not conduct a direct examination of a witness, both that attorney role and the witness he/she was to direct will receive "0" point scores. Additionally, the opposing attorney who would have cross-examined the witness will receive a "10" point score.

If the same attorney does not conduct a cross-examination of a witness, that attorney will receive a "0" point score. The opposing team's witness and the attorney who conducted the direct-examination will both receive "10" point scores.

Example 5, Substituted Attorney, Participating Team Member: A team does not have one of its attorneys during a round, and a participating team member steps into a second role (*i.e.*, doubles).

If a participating team member steps into an attorney role, that team member shall receive a “0” point score for both the direct examination and the cross-examination impacted by the substitution. The opposing team’s witness who is being cross-examined and impacted by the substitution will receive a “10” point score.

Example 6, Substituted Attorney, Non-Participating Team Member: A team does not have one of its attorneys during a round, and a non-participating team member fills the role.

If a non-participating team member fills into an attorney role, points for all students impacted will be scored as they are earned. No penalties will be assessed.

Rule 8.1.3 Merits of the Case

The responsibility of the scoring panelists is to score the student performance for each element of the trial round, **not the merits of the legal case and applicable law**. In other words, the scoring panelists are scoring the **performance** of each of the students as attorneys and witnesses to determine the winning team.

Rule 8.1.4 Mathematical Errors

In the event of a mathematical error in tabulation by a scoring panelist that, when corrected, changes the results of the team with the highest point total, such correction will be made by the State Tournament Coordinator or CBA Mock Trial Subcommittee member.

Rule 8.2 Student Critique

The scoring panel is allowed fifteen minutes total for debriefing. The timekeeper will monitor the critique allowing individual scoring panelists five minutes each. The scoring panelists shall not inform the students of individual performance scores, total team points earned, or ballot decisions. Scoring panelists shall be reminded during their orientation by tournament coordinators of the need to be sensitive to student diversity and age when making their remarks.

Rule 8.3 Team Advancement

Rule 8.3.1 Team Rankings

The teams will be ranked at the end of each round based on the following criteria in the order listed:

- a. Win/loss record
- b. Total number of ballots
- c. Total number of points spread between a team and their opponents
- d. Total number of points accumulated by the team

Rule 8.3.2 Team Matching

The teams are matched randomly in the first round of competition, with the exception that teams emerging from their regional tournament as the number one seeds will not be paired against each other. Additionally, two teams from the same region will not be paired against each other in the first round. Teams will be matched in all subsequent rounds by power matching.

Power matching provides that two brackets will be established: a winners bracket and a losers bracket. Team assignments in rounds two, three, four, and the championship round will be determined by the following criteria in the order listed:

- a. Win/loss record
- b. Total number of ballots
- c. Total number of points spread between a team and their opponents
- d. Total number of points accumulated by the team

The team ranked highest in the bracket will be paired against the team ranked lowest in the bracket. The next highest ranked team will be paired against the next lowest and so on until all teams are paired. Adjustments may be made at the discretion of the State Tournament Coordinator or CBA Mock Trial Subcommittee for the following situations:

- a. An odd number of teams are participating in the tournament
- b. An odd number of teams are in one or both of the brackets
- c. Two teams already have competed against each other in an earlier round
- d. A team is due to present the other side of the case. To the greatest extent possible, teams will equally present both sides of the case. However, bracket integrity in power matching will supersede alternative side presentation.

Rule 8.3.3 Bye Round Assignments

A “bye” becomes necessary when an odd number of teams are present for any given round of the tournament. It is the intent of the CBA Mock Trial Subcommittee to avoid “bye” round assignments where possible. However, in the event of a circumstance resulting in an odd number of competing teams, the following procedure will be followed:

- a. The team drawing the “bye” in the first round will receive a win and three ballots for that round. For the purpose of power matching, the team will receive the average of the points spread and points earned by all round one winning teams.
- b. The team drawing the “bye” in the second through fourth rounds will receive a win and three ballots for that round. For the purpose of power matching, the team will receive the average of its points earned in its preceding trials.

Rule 8.4 Championship Round

At the end of four rounds of competition, the top two teams will be announced to compete in the championship round. The following procedure will be followed to determine which team will represent which side of the case for the championship round:

- a. The team with the letter/numerical code that comes first alphabetically/numerically will be considered the “designated team.”
- b. A coin will be tossed and allowed to drop on the floor unimpeded by the State Tournament Coordinator or designee.
- c. If the coin lands heads up, the designated team will represent the Plaintiff/Prosecution. If the coin lands tails up, the designated team will represent the Defense.

The championship round may have a larger scoring panel than described in Rule 4.1. Teams participating in the state tournament need to plan on having an additional seven copies of all round materials for this round. If the tournament schedule allows, both teams will have approximately thirty minutes from the coin toss to regroup and prepare for the championship round. When possible and resources are available, teams will each be provided a private area to confer prior to the round. Teams will be advised as to their report time to the Championship Round Courtroom.

J. Review of Decisions

Rule 9.1 Finality

All decisions of the State Tournament Coordinator and the Colorado Mock Trial Committee are final and not subject to appeal.

MOCK TRIAL RULES OF EVIDENCE

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

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

Not all judges will interpret the Rules of Evidence (or procedure) the same way, and mock trial attorneys should be prepared to point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate.

The Mock Trial Rules of Competition and these Mock Trial Rules of Evidence govern the competition.

Article I. General Provisions

Rule 101. Scope

These Mock Trial Rules of Evidence govern the trial proceedings of local and state tournaments in Colorado.

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 facts of the case may be ascertained.

Article II. Judicial Notice-Not applicable.

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

Article IV. Relevancy and its Limits

Rule 401. Definition of “Relevant Evidence”

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

Rule 402. Relevant Evidence Generally Admissible

Irrelevant Evidence Inadmissible—Relevant evidence is admissible, except as otherwise provided in these Rules. Irrelevant evidence is not admissible.

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

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

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

- (a) Character Evidence—Evidence of a person’s character or character trait is not admissible to prove action regarding a particular occasion, except:
 - (1) Character of accused—Evidence of a pertinent character trait offered by an accused or by the prosecution to rebut same;
 - (2) Character of victim—Evidence of a pertinent character trait of the victim of the crime offered by an accused or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;
 - (3) Character of witness—Evidence of the character of a witness as provided in Rules 607, 608, and 609.
- (b) Other Crimes, Wrongs, or Acts—Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

- (a) Reputation or Opinion—In all cases where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.
- (b) Specific Instances of Conduct—In cases where character or a character trait is an essential element of a charge, claim, or defense, proof also may 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 that, 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 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:

- (a) a plea of guilty which was later withdrawn;
- (b) a plea of *nolo contendere*;
- (c) any statement made in the course of any proceeding under Rule 11 of the Mock Trial Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
- (d) any statement made in the course of plea discussions with an attorney for the prosecuting authority that do not result in a plea of guilty or that results in a plea of guilty that is later withdrawn.

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

Rule 411. Liability Insurance (civil case only)

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

Article V. Privileges

Rule 501. General Rule

There are certain admissions and communications excluded from evidence on grounds of public policy. Among these are:

- (a) communications between husband and wife;
- (b) communications between attorney and client;
- (c) communications among grand jurors;
- (d) secrets of state; and
- (e) communications between psychiatrist and patient.

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This Rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 3.1.2)

Rule 607. Who may Impeach

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

Rule 608. Evidence of Character and Conduct of Witness

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

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

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

- (a) **General Rule**—For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.
- (b) **Time Limit**—Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten 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.
- (c) **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 that was punishable by death or imprisonment in excess of one year, or
 - (2) The conviction has been the subject of a pardon or other equivalent procedure based on a finding of innocence.
- (d) **Juvenile Adjudications**—Evidence of juvenile adjudications generally is 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.
- (e) **Not Applicable.**

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

- (a) **Control by Court**—The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to:
 - (1) make the questioning and presentation of evidence effective for ascertaining the truth,
 - (2) avoid needless waste of time, and
 - (3) protect witnesses from harassment or undue embarrassment.
- (b) **Scope of Cross-Examination** — The scope of cross-examination shall not be limited to the scope of the direct examination but may inquire into any relevant facts or matters contained in the witness' statement.
- (c) **Leading Questions** — Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross-

examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.

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

Rule 612. Writing Used to Refresh Memory

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

Rule 613. Prior Statements of Witnesses

- (a) Examining Witness Concerning Prior Statement—In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.
- (b) Extrinsic Evidence of Prior Inconsistent Statement of Witness—Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences that 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 on 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 on by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.

Rule 704. Opinion on Ultimate Issue

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

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

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

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this Article:

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

- (a) Present Sense Impression—A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, immediately thereafter.
- (b) Excited Utterance—A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
- (c) Then Existing Mental, Emotional, or Physical Conditions—A statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact or believed unless it relates to the execution, revocation, identification, or terms of declarant’s will.
- (d) Statements For Purposes of Medical Diagnosis or Treatment — Statements made for the purpose of medical diagnosis or treatment.
- (e) Recorded Recollection—A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness’ memory and to reflect that knowledge correctly.

- (f) **Business Records**—Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of the information or the method or circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
- (g) **Learned Treatises** — To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in a 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.
- (h) **Reputation as to Character**—Reputation of a person’s character among associates or in the community.
- (i) **Judgment of Previous Conviction**—Evidence of a judgment finding a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

Rule 804. Hearsay Exceptions; Declarant Unavailable

- (a) **Definition of unavailability.** “Unavailability as a witness” includes situations in which the declarant—
 - (1) is exempted by ruling of the Court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or
 - (2) persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the Court to do so; or
 - (3) testifies to a lack of memory of the subject matter of the declarant’s statement; or
 - (4) 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 subdivision (b)(2), (3), or (4), the declarant’s attendance or testimony) by process or other reasonable means.

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

- (b) **Hearsay exceptions**-The following are not excluded by the hearsay Rule if the declarant is unavailable as a witness:
 - (1) **Former testimony**-Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
 - (2) **Statement under belief of impending death**-In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant’s death is imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

- (3) Statement against interest-A statement that 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 offering to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
- (4) Statement of personal or family history-(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.
- (5) Forfeiture by wrongdoing-A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Rule 805. Hearsay within Hearsay

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

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

ARTICLE XI – Reserved



Memorandum

To: All Mock Trial Team Members, Attorney Coaches, Teachers, and Observers
From: Colorado Bar Association
Date: September 30, 2007
Subject: **CODE OF ETHICAL CONDUCT for all Participants of the Colorado Mock Trial Competition**

The purpose of the Colorado Bar Association (CBA) High School Mock Trial Program is to stimulate and encourage a deeper understanding and appreciation of the American legal system. This purpose is accomplished by providing students the opportunity to participate actively in the learning process. The education of young people is the primary goal of the mock trial program. Healthy competition helps to achieve this goal. Other important objectives include: improving proficiency in speaking, listening, reading, and reasoning skills; promoting effective communication and cooperation between the educational and legal communities; providing an opportunity to compete in an academic setting; and promoting cooperation among young people of diverse interests and abilities. As a means of diligent application of the CBA High School Mock Trial Program Rules of Competition, the CBA Public Legal Education Committee and its Mock Trial Subcommittee has adopted the following Code of Ethical Conduct for all participants and their observers:

- 1 Team members and all student participants in local and state Mock Trial programs promise to compete with the highest standards of deportment, showing respect for their fellow team members and participants, opponents, judges, evaluators, attorney coaches, teacher coaches and mock trial personnel. All teams, coaches and supporters will focus on accepting defeat and success with dignity and restraint. Trials, contests, and activities will be conducted honestly, fairly, and with the utmost civility. Students, coaches and supporters will avoid all tactics they know are wrong or in violation of the Rules, including the use of unfair extrapolations. Teams, coaches and participants will not willfully violate or misrepresent the Rules of the program in spirit or in practice.
- 2 Teacher Coaches agree to focus the attorney coach and student attention on the educational value of the Mock Trial Program. They shall discourage willful violations of the Rules and the unprofessional and contentious behavior of their attorney coaches, students and supporters. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the program's Rules and this Code of Ethical Conduct.
- 3 Attorney Coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play, as well as demonstrate fair play and courteous respect towards their peers at all times during participation in any program-related activities. They will promote conduct and decorum in accordance with the program's Rules and this Code of Ethical Conduct. They will emphasize and focus on the educational value of the experience by requiring that all questions, objections, responses, opening statements, and closing arguments be substantially the work product of the students. Attorney Coaches are reminded that they are in a position of authority and thus serve as positive role models for the students. They shall also conduct themselves a professional manner at all times during any program related meetings.
- 4 All participants (including observers) are bound by all sections of this Code and agree to abide by the provisions. Students, and attorney and teacher coaches, are responsible for insuring that all team observers are aware of and abide by the Code. Students, teacher coaches and attorney coaches will be required to sign a copy of this Code. This signature will serve as evidence of knowledge and agreement to the provisions of this Code. Violations of this Code of Ethical Conduct, either by participants and/or observers, may be grounds for reductions in scores, disqualification from a contest, and/or suspension or expulsion from the Mock Trial Program.
- 5 Presiding judges and evaluators are asked to observe the trials with an objective eye. Interjecting one's own personal style and biases adds no value in the education process. Students have agreed to abide by the Rules and this Code in spirit and in practice; therefore, violations should result in a lowering of the score. All judges and evaluators promise to be prepared and knowledgeable the Rules of the Competition, the problem, and the mock trial procedures. The appearance of impropriety, bias, or favoritism shall be avoided. Presiding judges will conduct trials with objectivity and honesty. Presiding judges and evaluators will also exercise sensitivity and respect to all students of diversity at all times, especially during round after-chats.

Official Team Roster

Signatures of Team Members & Coaches

SCHOOL & TEAM NAME

(Please duplicate for additional teams registered)

We, the undersigned, agree to uphold the Code of Ethical Conduct in each round of the Colorado Mock Trial Program, as well as during any program related activities. Additionally, by signing below, we affirm that we (teachers, attorney coaches, and students) have read the 2008 Mock Trial Program rules, and that we understand and agree to abide by all of the rules during the tournament.

TEAM MEMBERS:

TEACHER COACH(ES):

ATTORNEY COACH(ES):

STUDENT TIMEKEEPERS:

NOTE: Only one Team Roster needs to be submitted to your Regional Coordinator at the beginning of your regional and/or state tournament.

COLORADO HIGH SCHOOL MOCK TRIAL PROGRAM

LOCAL OR STATE TOURNAMENT TRIAL ROSTER

This sheet is to be completed by each team prior to EACH round and copies presented to the presiding judge, opposing counsel, and the panel of scoring judges.

TEAM IDENTIFICATION (CODE ONLY!) _____

Circle one: Round I II III IV Championship Round

In this round, students listed on this roster will represent (Circle one):

PLAINTIFF

DEFENSE

Name of Student Portraying Attorney:

Tasks (circle):

1. _____

Opening / Direct / Cross / Closing

2. _____

Opening / Direct / Cross / Closing

3. _____

Opening / Direct / Cross / Closing

Name of Student Portraying Witness:

Role Portrayed:

(Please indicate gender by circling M or F)

1. _____ (m/f) Plaintiff Witness 1 _____

2. _____ (m/f) Plaintiff Witness 2 _____

3. _____ (m/f) Plaintiff Witness 3 _____

4. _____ (m/f) Defense Witness 1 _____

5. _____ (m/f) Defense Witness 2 _____

6. _____ (m/f) Defense Witness 3 _____

(Duplicate for use in all mock trial rounds!)

TEAM DISPUTE FORM
Inside the Bar
[Rule 7.1.1 & 7.1.2]

(Please print)

Round (*circle one*): 1 2 3 4

TEAM LODGING DISPUTE: _____ (*Enter Team Code Only!*)

Grounds for Dispute: _____

INITIALS OF TEAM SPOKESPERSON: _____

HEARING DECISION OF PRESIDING JUDGE (*circle one*): **Grant** **Deny**

Reason(s) for Denying Hearing or Response of Opposing Team: _____

INITIALS OF OPPOSING TEAM'S SPOKESPERSON: _____

Judge's Notes from Hearing:

DECISION AND RULING OF JUDGE REGARDING DISPUTE: _____

This form must be returned to the trial coordinator along with the score sheets of all the panelists.

Signature of Presiding Judge

TEAM DISPUTE FORM

Outside the Bar

[Rule 7.1.3]

or

Code of Conduct

[Rule 7.1.4]

(Please print)

Round (*circle one*): 1 2 3 4

PERSON LODGING DISPUTE: _____

AFFILIATED WITH: _____ (*Enter Team Code*)

Grounds for Dispute: _____

INITIALS OF TRIAL COORDINATOR: _____ TIME DISPUTE PRESENTED TO COORDINATOR: _____

HEARING DECISION OF DISPUTE PANEL (*circle one*): **Grant** **Deny**

Reason(s) for Denying Hearing: _____

Notes from Hearing: _____

Decision/Action of Dispute Panel: _____

Signature of Trial Coordinator

Date/time of Decision

SCORING

SCORING PANELISTS & PRESIDING JUDGES: In performing the mock trial case, team members will be courteous, professional, observe general courtroom decorum, speak distinctly and clearly, and have general knowledge of the law and trial procedures. Points shall not be rewarded to students or teams that behave in a contentious or unprofessional manner. All team members shall be involved in the performance of the case and meet time limits.

IMPORTANT FOR ADJUDICATION: It is very important that scoring panelists and presiding judges read the fact situation and witness statements carefully.

Given the mock trial format, students will refer to specific points/facts and make references to certain pages in the text; you need to be familiar with the pertinent details. After the team's performance, the scoring panelists will debrief the teams. Constructive criticism for improving the teams' performances, including praise, is greatly appreciated by the students and attorney coaches. All scoring panelists are encouraged to make comments. Positive reinforcement and suggestions to both sides helps ensure a beneficial educational experience for everyone.

CRITERIA FOR EVALUATING STUDENTS' OPENING STATEMENT AND CLOSING ARGUMENT	PERFORMANCE DESCRIPTION
<p>Organization:</p> <ul style="list-style-type: none"> • Progressive, logical and easy to follow • Included an introduction, main points and a conclusion • Had appropriate transitions • Included a clearly stated theory/theme of the case <p>Delivery:</p> <ul style="list-style-type: none"> • Clear, persuasive, articulate and confident delivery • Appropriate style: statement for opening, argumentative for closing • Personalization of the client represented • Captures and holds jurors' attention • Made eye contact with jurors: displayed appropriate gestures • Lawyer's courtroom position was appropriate for delivery style (at podium, or with court's permission, around the room) • Use of notes, if any, (not required) was appropriate for delivery style • Used time effectively <p>Statement of the facts:</p> <ul style="list-style-type: none"> • Presented facts expected to be produced during the trial (open) • Responded to courtroom occurrences during trial, highlighted opponent's weaknesses and weaved jury instructions into closing • Volunteered weaknesses in case when appropriate • Stated facts clearly, using simple, appropriate and direct language • Student did not overstate their position 	<p style="text-align: center;">OUTSTANDING 9-10 (The student exhibited 90 to 100% of the listed criteria.)</p> <p style="text-align: center;">EXCELLENT 7-8 (The student exhibited 80 to 89% of the listed criteria.)</p> <p style="text-align: center;">GOOD 5-6 (The student exhibited 70 to 79% of the listed criteria.)</p> <p style="text-align: center;">FAIR 3-4 (The student exhibited 60 to 69% of the listed criteria.)</p> <p style="text-align: center;">POOR 1-2 (The student exhibited less than 59% of the listed criteria.)</p>

CRITERIA FOR EVALUATING STUDENTS' DIRECT AND CROSS EXAMINATIONS	PERFORMANCE DESCRIPTION
<p>Organization:</p> <ul style="list-style-type: none"> • Progressive, logical with an easy to follow pattern of questioning • Organization was consistent with theory/theme of case, opening statement and other examinations • Used appropriate transitions <p>Delivery:</p> <ul style="list-style-type: none"> • Pace (speed) of examination was appropriate for dramatic effect and emphasis of points • Used appropriate language and simple, clear, understandable questions: non-leading (direct), leading (cross) 	<p style="text-align: center;">OUTSTANDING 9-10 (The student exhibited 90 to 100% of the listed criteria.)</p> <p style="text-align: center;">EXCELLENT 7-8 (The student exhibited 80 to 89% of the listed criteria.)</p>

<ul style="list-style-type: none"> Let the witness be the center of attention (Direct) Lawyer courtroom position was appropriate for delivery style (at podium, or with court's permission, around the room) Use of notes, if any (not required), was appropriate for delivery style Lawyer listened to answers and adapted as needed Use of exhibits, if any, (not required), was appropriately handled Lawyer controlled the witness appropriately and/or called for bench assistance when necessary (Cross) Questions were purposeful, consistent with case theory Behavior was professional and respectful toward witness Uses method of impeachment effectively (cross) <p>Objections:</p> <ul style="list-style-type: none"> Objections/Responses to objections were clear, appropriate and concise Objections/Responses consistent with the case theory Objections/Responses demonstrated knowledge of evidence rules Objections/Responses demonstrated knowledge of the procedural rules 	<p>GOOD 5-6 (The student exhibited 70 to 79% of the listed criteria.)</p> <p>FAIR 3-4 (The student exhibited 60 to 69% of the listed criteria.)</p> <p>POOR 1-2 (The student exhibited less than 59% of the listed criteria.)</p>
<p>CRITERIA FOR EVALUATING STUDENT WITNESS PORTRAYAL</p>	<p>PERFORMANCE DESCRIPTION</p>
<p>Examination:</p> <ul style="list-style-type: none"> Gave responsive, thorough, factually accurate answers, Answered closed- and open-ended questions appropriately within character's role Treated both attorneys similarly, responded fairly to both examinations Did not offer unsolicited information in effort to help teammate Credible, persuasive portrayal of character; engaging; captures and holds jurors' attention; makes eye contact with jurors Poised, articulate and confident in answering questions Maintained credibility and demeanor during examination Answered questions without unnecessary rambling in an attempt to use up the opponent lawyer's allotted time Did not embellish or introduce new facts to the case beyond the witness' affidavit 	<p>OUTSTANDING 9-10 (The student exhibited 90 to 100% of the listed criteria.)</p> <p>EXCELLENT 7-8 (The student exhibited 80 to 89% of the listed criteria.)</p> <p>GOOD 5-6 (The student exhibited 70 to 79% of the listed criteria.)</p> <p>FAIR 3-4 (The student exhibited 60 to 69% of the listed criteria.)</p> <p>POOR 1-2 (The student exhibited less than 59% of the listed criteria.)</p>

INSERT SCORE SHEET

THE PROBLEM

Years ago, following a brutal robbery at the Fort Collins Farmers' Market, a promising young street performer named Jeni Hendrickson died. Recently, the police department's "cold case squad" re-opened the murder investigation of her death and focused on some ragtag magicians, "The Dominoes," who occasionally performed at the market prior to her death. After her death, The Dominoes disbanded and scattered. One of them, Whitney Dwight, now has been charged with Jeni Hendrickson's murder.

When presenting the prosecution side of this case, will the attorneys and witnesses be convincing? Can the prosecution prove murder beyond a reasonable doubt, or will the prosecution's case fall down, just like stacked dominoes do when pushed? When presenting the defense, will those attorneys and witnesses be even more convincing? Can the defense create sufficient doubt?

Which side will spin its own magic to create an effective, persuasive and passionate performance? Will the other side be able to undermine that performance with their own illusions, smoke, mirrors and hard work?

Have fun working some courtroom magic! Enjoy!

STIPULATIONS

1. All exhibits included in the problem are authentic and accurate in all respects, and no objections to the authenticity of the exhibits shall be entertained.
2. The signatures on the witness statements and all other documents are authentic.
3. The Complaint and Information is accurate in all respects; no objections to this document shall be entertained.
4. Chain of custody for evidence is not in dispute.
5. Stipulations cannot be contradicted or challenged.
6. Jeni Hendrickson, the victim, is female.
7. Jeni Hendrickson's death was primarily caused by an acute subdural hematoma, associated with cerebral contusion.
8. The signature on Exhibit 4, the police report, is that of Detective Woodrow Hoyt, who is unavailable for trial.
9. On pre-trial motions the Court has determined Exhibit 4 and 5, the police report and autopsy report, to be self-authenticating as official agency records. Det. Hoyt's unavailability may not be used to challenge the admissibility of either report.
10. The weapon referenced in Exhibit 3 is identified as the magician's wand depicted in Exhibit 6.
11. Exhibits 4 and 5 are to be treated as part of the police investigative report and all contents thereof are stipulated to be admissible without further foundation, i.e. they are to be treated as certified copies of public records.
12. Exhibit 5 fairly and accurately reflects the scene, view or geography it purports to depict.
13. Exhibit 6 contains true and accurate photographs of evidence recovered by the police investigation.
14. Exhibits 3 through 7 are kept in the ordinary course of business or as part of the ordinary conduct of an organization or enterprise where it was part of the ordinary business of that organization, business or enterprise, to compile the data or information. The information was 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, the entry in the record or the compiling of the data was made at or near the time when the event took place, and the recording of the event was made by someone who has personal knowledge of it. Dr. Jordan Cavanaugh is to be considered the custodian of these exhibits.
15. The only case law, statutes and charges that shall be used are the ones provided as a part of the problem package.
16. Exhibit 7 is a coin of the same mint, and has substantially similar markings to the coin referenced in this case. The coin referenced in the case was not recovered.

<p>COUNTY COURT LARIMER COUNTY 201 La Porte Avenue Fort Collins, CO 80521 Tele #: 970-555-6100</p> <hr/> <p>Plaintiff: THE PEOPLE OF THE STATE OF COLORADO,</p> <p>Defendant: WHITNEY DWIGHT</p> <hr/> <p>Maria Martinez District Attorney, Eighth Judicial District By her undersigned Deputy District Attorney 201 La Porte Avenue Suite 200 Fort Collins, Colorado 80521 Phone Number: 970-555-7200 Fax Number: 970-555-7250 Atty. Reg. No.: 19380 Atty. Reg. No. for undersigned Deputy D.A.: is below</p>	<p>▲ Court Use Only ▲</p> <hr/> <p>Case Number: 07</p> <p>Courtroom/ Division: CRIMINAL</p>
<p>COMPLAINT AND INFORMATION</p>	

P.D.CASE NO.:	200039546	BOOKING NO.:	1413346
D.O.B.:	09/22/1983	D.O.A.:	07/30/07
M.P.D. NO.:	637996	ORI. NO.:	COMP0000

TWO COUNTS

1. **MURDER, C.R.S. 218-30-1020 (F-1)**
2. **ROBBERY, C.R.S. 218-40-3010 (F-4)**

BAIL FIXED AT \$ _____ (JUDGE) _____

DATE: _____

WHITNEY DWIGHT
Page 2 of 2

Maria Martinez, District Attorney, in the name of and by the authority of the People of the State of Colorado, further informs the Court:

FIRST COUNT

That on or about the 27th day of May, 2000, at the city of Fort Collins, Larimer County, State of Colorado, **WHITNEY DWIGHT** unlawfully and feloniously caused the death of Jeni Hendrickson in violation of 218-30-1020, C.R.S., against the peace and dignity of the People of the State of Colorado.

SECOND COUNT

That on or about the 27th day of May, 2000, at the city of Fort Collins, Larimer County, State of Colorado, **WHITNEY DWIGHT** unlawfully and feloniously committed the offense of robbery in violation of 218-40-3010, C.R.S., against the peace and dignity of the People of the State of Colorado.

By: _____/s/_____ My Commission expires: 06-04-2009.

Deputy District Attorney: Reg. No.: 26398

Subscribed and sworn to me on August 2, 2007.

_____/s/_____
Notary Public

JURY INSTRUCTIONS

TEAMS SHOULD PROCEED AS IF THESE JURY INSTRUCTIONS WERE AGREED TO BY THE PARTIES AND APPROVED BY THE PRESIDING JUDGE AS THE INSTRUCTIONS THAT WOULD BE READ AT THE APPROPRIATE TIMES BEFORE EVIDENCE IS HEARD AND AT THE CONCLUSION OF THE EVIDENCE.

Introductory Instruction

Before we begin the trial, I would like to tell you about what will be happening here. I want to describe how the trial will be conducted and explain what we will be doing.

The first step in the trial will be the opening statements. Either attorney may make an opening statement if he or she chooses to do so. Opening statements are not evidence. Their purpose is only to help you understand what the evidence will be.

Next the prosecution will offer evidence. Evidence consists of the sworn testimony of the witnesses, the exhibits received in evidence, and stipulated, admitted, or judicially noticed facts.

After the prosecution's evidence, the defendant may present evidence in his or her own behalf, but is not required to do so. I want to remind you that the defendant is presumed to be innocent. The prosecution must prove the guilt of the defendant beyond a reasonable doubt. The defendant does not have to prove his or her innocence or call any witnesses or introduce any evidence.

At the conclusion of the evidence I will tell you the rules of law which you are to use in reaching your verdict. I will read those rules of law to you and you will be allowed to take them with you to the jury room during your deliberations.

After you have heard all the evidence and the instructions, the prosecution and defense may make their closing arguments. Like opening statements, closing arguments are not evidence. The prosecuting attorney will have the opportunity to reply to the closing argument made by the defense.

You will then go into the jury room to deliberate on a verdict. Your purpose as jurors is to decide what the facts are, and your decision must be based solely upon the evidence.

It is my job to decide what rules of law apply to the case. You must follow all of the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or do not understand the reasons for some of the rules, you must follow them. You will then apply these rules to the facts which you have determined from the evidence. In this way you will determine whether the prosecution has proven the guilt of the defendant beyond a reasonable doubt.

Instruction No. _____

Members of the jury, the evidence in this case has been completed. In a moment I will read you the law which you must apply in order to reach your verdict. But first, I want to mention a few things that you need to keep in mind when you are discussing this case in the jury room.

It is my job to decide what rules of law apply to the case. While the lawyers may have commented during the trial on some of these rules., you are to be guided by what I say about them. You must follow all of the rules as I explain them to you. Even if you disagree or don't understand the reasons for some of the rules, you must follow them. No single rule describes all of the law which must be applied. Therefore, the rules must be considered together as a whole.

During the course of the trial you received all of the evidence that you may properly consider to decide the case. Your decision must be made by applying the rules of law which I give you to the evidence presented at trial. Neither sympathy nor prejudice should influence your decision.

If you decide that the prosecution has proved beyond a reasonable doubt that the defendant has committed the crime as charged, it will be my job to decide what the punishment will be. You should not try to guess what the punishment might be. It should not enter into your consideration at any times.

At times during the trial, lawyers made objections to questions asked by other lawyers and to answers by witnesses. Do not draw any conclusions from such objections or from my rulings on the objections. These are only related to the legal questions that I had to determine and should not influence your thinking. When I told you not to consider a particular statement, you were told to put that statement out of your mind, and you may not consider any statement in your deliberations which you were instructed to disregard.

Sometimes in the trial I have asked questions of witnesses. When I asked questions, that did not indicate that I had any opinion about the facts in the case.

Finally, you should consider all the evidence in the light of your observations and experience in life.

Instruction No. _____

The Defendant has been charged with violating the following section of the Colorado State Statute:

218-30-1020 Murder

A person commits the crime of murder in the first degree when acting either alone or with one or more persons he or she commits or attempts to commit robbery and, in the course of or in furtherance of the crime that he or she is committing or attempting to commit, or of the immediate flight therefrom, the death of a person, other than one of the participants, is caused by anyone, commits the crime of murder in the first degree.

The elements of the crime of murder in the first degree are:

1. That the Defendant,
2. in the State of Colorado, at or about the date and place charged,
3. acting alone or with one or more persons,
4. committed or attempted to commit robbery, and
5. in the course of or in furtherance of the robbery or in the immediate flight therefrom,
6. the death of a person, other than one of the participants, is caused by anyone.

To the above charge, the Defendant has entered a plea of not guilty.

Instruction No. _____

The Defendant has been charged with violating the following section of the Colorado State Statute:

218-40-3010 Robbery

A person who knowingly takes anything of value from the person or presence of another by the use of force, threats or intimidation commits the crime of robbery.

The elements of the crime of robbery are:

1. That the Defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. took anything of value from the person or presence of the victim,
5. by the use of force, threats or intimidation.

To the above charge, the Defendant has entered a plea of not guilty.

Instruction No. _____

This instruction applies to the charge of Robbery only.

A crime is committed when the defendant has committed a voluntary act prohibited by law accompanied by a culpable mental state. Voluntary act means an act performed consciously as a result of effort or determination.

Culpable mental state means “knowingly” as explained in this instruction. Proof of the commission of the act alone is not sufficient that the defendant had the required culpable mental state. The culpable mental state is as much an element of the crime as the act itself, and must be proven beyond a reasonable doubt, either by direct or circumstantial evidence.

A person acts “knowingly” with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.

A person acts “knowingly” with respect to a result of his conduct when he is aware that his conduct is practically certain to cause the result.

Instruction No. _____

Every person charged with a crime is presumed innocent. This presumption of innocence remains with the defendant throughout the trial and should be given effect by you unless, after considering all of the evidence, you are then convinced that the defendant is guilty beyond a reasonable doubt.

The burden of proof is upon the prosecution to prove to the satisfaction of the jury beyond a reasonable doubt the existence of all of the elements necessary to constitute the crime charged.

Reasonable doubt means a doubt based upon reason and common sense which arises from a fair and rational consideration of all of the evidence, or the lack of evidence, in the case. It is a doubt which is not a vague, speculative or imaginary doubt, but such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves.

If you find from the evidence that each and every element has been proven beyond a reasonable doubt, you will find the defendant guilty. If you find that the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you will find the defendant not guilty.

Instruction No. _____

You have to decide what testimony to believe. You should carefully consider all of the testimony given and the circumstances under which each witness has testified. Consider each witness' knowledge, motive, state of mind, demeanor, and manner while on the stand. Consider the witness' means of knowledge, ability to observe, and strength of memory. Consider also any relationship each witness may have to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case. You should consider all facts and circumstances shown by the evidence which affects the credibility of the witness' testimony.

You may believe all of the testimony of a witness, or part of it, or none of it.

Instruction No. _____

There are two types of evidence from which you may properly find the truth as to the facts of the case. One is direct evidence. The other is circumstantial evidence, that is, the proof of facts from which other facts may reasonably be inferred. The law makes no distinction between direct and circumstantial evidence.

WITNESSES FOR THE PROSECUTION:

Dursley Thompson
Dr. Jordan Cavanaugh
Bailey Leightenen

WITNESSES FOR THE DEFENSE:

Whitney “Wizard” Dwight
Sky Willow
B. Shiloh Wadel

All witnesses may be male or female

EXHIBITS

<u>Number</u>	<u>Description</u>
Exhibit 1	B. S. Wadel, Ph. D. CV
Exhibit 2	Jordan Cavanaugh, M.D. CV
Exhibit 3	Autopsy Summary Report
Exhibit 4	Detective Woodrow Hoyt, Police Report
Exhibit 5	Diagram of Fort Collins Old Town Larimer County Farmer’s Market, prepared by Detective Hoyt
Exhibit 6	Photograph of Rod/Wand
Exhibit 7	Coin

SWORN STATEMENT OF DURSLEY THOMPSON

1. My name is Dursley Thompson and I have lived in the town of Barford in Warwickshire, England for my entire life. I am married (no kids) and have worked for eleven years in a greengrocer's shop.
2. In May of 2000, my spouse and I came to Colorado for our holiday - what you would call a vacation. We wanted to take in the urban pleasures of Denver, such as the Art Museum, the Capitol Building, and Courthouse. We especially wanted to see the majestic and renowned Rocky Mountains, tour Rocky Mountain National Park, and visit some small microbreweries and fresh-goods markets. Because of my work, I was particularly keen to visit some farmers' markets. We heard that Fort Collins had a wonderful Farmers' Market in Old Town, was home to Anheuser-Busch and just on our way to the National Park.
3. We were at the Market on Saturday, May 27, 2000. We saw rather a lot of odd people there! Fruits and vegetables too. At some point, my spouse had traipsed off while I was standing in the queue at one of the stalls that was hosting a wine-tasting. They really had some amazing choices, and I went back and forth several times trying to decide which one I fancied.
4. After finally deciding I wasn't really thirsty after all, I ambled over to where a street musician was playing the guitar and singing, and I got kind of absorbed in that. She had a little sign saying that she was Jeni Hendrickson and was doing kind of bluesy stuff like "The Devil Made Me Do It" by my favorite Irish artist Rory Gallagher. People were throwing money into her guitar case that lay open before her and it looked like she was doing pretty well. I, myself, got caught up in the spirit - I suppose I was moved by the feeling of being on holiday, by the stimulating hubbub and by the magic of the music - and I tossed in a lucky United States silver dollar I always carry in my pocket. It was an 1889 "Carson City." The "CC" mint engraving is quite unusual. I'd been carrying it around for years, even though it seemed to weigh a kilo.
5. This was apparently the end of her show because she thanked the crowd, scooped the cash from her guitar case, and shoved it into a bulging blue bank bag. She was a powerful singer, but I did notice just then how small and vulnerable she looked. About this time I realized what I'd done with my silver dollar. It would

have been too embarrassing to ask for it back. I liked to think it would bring her luck. I watched as she put her guitar back in its case and held it in one hand with the bank bag in the other as she got ready to leave.

6. The crowd had been chockablock a moment earlier but it quickly thinned out. There were still two people lingering nearby. I hadn't noticed them at all when they were blending into the crowd - they had not been next to each other earlier, or I would have. I say that because now that they were the only ones left, I noticed how they were dressed. One of them wore a white shirt with big black polka dots on it and the other one had on a black shirt with big white polka dots on it. They were a pair, all right; I'll call them "White Shirt" and "Black Shirt".

7. White Shirt was now standing about six feet away from Hendrickson but Black Shirt was right in Hendrickson's path so they got real close as the singer started to walk by. As Jeni Hendrickson passed him, I saw that Black Shirt advanced closer to the girl and was holding something dark and cylindrical to the small of Hendrickson's back while saying something in a low guttural tone. Mind you, Black Shirt's back was toward me now and I couldn't catch the words, but the tone was definitely menacing.

8. Hendrickson seemed to pull away as if she was going to make a run for it. As she did so, Black Shirt swiped a hand at the bank bag and succeeded in knocking it to the ground and jostling Jeni Hendrickson. By now White Shirt had advanced on them and things get a little confused for me. There was something of a donnybrook as bodies went down and went down hard. I know there was more than one human body on the ground but, to be honest with you, I can't say who, because what I still see clearly in my mind's eye is all those fresh vegetables being stomped and wasted that had been knocked off the display. Sorry I'm not more helpful, but it has been ages.

9. I was standing near the corner of the vegetable stall, a little bit out onto the main sidewalk. I guess I was about five meters from where Hendrickson was standing when the contact was made. I know that Black Shirt's back was toward me as they all converged, and that blocked my view of whatever was going on then.

10. Just before the contact and the falling bodies and vegetables, I did hear Black Shirt yell - this time in a shrill voice - "VÁMONOS DOMINOS!!!" (I'm quite sure this is what I heard. We've gone to Ibiza and the

Costa Brava for past holidays y hablo un poquito de español. Actually, I recall I first thought he had said “vaya con dios” which translates as “go with God” or something like that but now that Det. Hoyt has told me a bit about the defendant in the dock, I’m sure it was “Vámonos Dominos.”) In an instant the polka dot crew had vanished. My sense is that they moved off in a southerly direction rather than coming back by me, but I can’t testify as to their specific paths. I know it was toward the alley and Olive Street. What remained was Jeni Hendrickson lying among the vegetables, her neck bent awkwardly as her head was lodged up against a large block of ice. I gently pulled her away from the ice. She seemed to weigh no more than a feather. Exhibit 5 accurately shows where I pulled her to and seems otherwise accurate as well. Somebody used their cell phone to ring the medics and they arrived quickly. I moved the guitar case out of their way. I did not see the bank bag or anything else around the body.

11. The police also arrived and I was interviewed about what I had observed, although they never took a written statement from me. Had they done so, it might help my memory now. In any case, I’m afraid I wasn’t much help in describing the assailants, because my focus seemed to get stuck on their odd shirts. Now, too much time has gone by for me to identify anyone in court or in a lineup.

Subscribed and Sworn to on this 20 Day of September, 2007

Dwight Thompson

Witness Signature

SWORN STATEMENT OF DR. JORDAN CAVANAUGH

1. My name is Jordan Cavanaugh. I am a medical doctor, having graduated from the University of Colorado School of Medicine in 1988, and completed a residency in pathology at Presbyterian St. Luke's Hospital in Denver, Colorado. I then worked for nearly a decade in the pathology department at the Denver County Hospital in Denver, Colorado, and also taught at the medical school of the University of Colorado before taking my current position as Assistant Medical Examiner for Larimer County.
2. The Medical Examiner's Office has the statutory responsibility for determining a legal and medical cause of death in all cases where a person's death in Larimer County was violent, sudden or unexpected. In formulating our opinions, we occasionally visit the scene of a death, we review relevant police reports and all available medical records and, most importantly, we conduct a post-mortem examination (or autopsy) of the deceased.
3. I reviewed the police report Exhibit 4 and diagram prepared by Detective Hoyt Exhibit 5. I also visited the scene of this accident on June 3, 2007. Based upon my review of the scene, I believe that Detective Hoyt's diagram is accurate regarding the description of the areas depicted in the diagram.
4. On June 2, 2000, I performed an autopsy on Jeni Hendrickson who was reported to have died at Poudre Valley Hospital two days earlier. The body was of a female, measuring 59 inches in length and weighing 97.5 pounds. She appeared to have been in good health. Other than the skull fracture noted below, external examination of the body was generally unremarkable. After the reported death, the body had been appropriately refrigerated.
5. Ultimately, I classified this young woman's legal cause of death as "homicidal violence." The direct medical cause of death was an acute subdural hematoma, associated with bilateral frontal and temporal lobe cerebral contusions.
6. A "hematoma" is a localized swelling filled with blood.
7. The term "subdural" means that the bleeding was in between the brain and the dura (the tough membrane that lines the inner surface of the skull).

8. “Acute” means that the bleeding was a recent event, certainly occurring within ten days prior to the death and likely five.
9. Such a hematoma is commonly associated with a traumatic injury. In the case of this deceased, the associated injury appeared to be a blunt impact injury to the occipital region of the skull, likely sustained in a fall.
10. The “occiput” is the back of the skull; “occipital” refers to this region.)
11. I base my conclusions on the presence of a linear nondepressed midline occipital skull fracture. In this case, the linear fracture ran in a superior-inferior (up and down) direction. Such fractures usually result from a broad-based force, such as one sustained in a fall. In contrast, depressed fractures are more likely to occur as a result of a localized impact from a rapidly moving hard object.
12. This injury, I believe, was an accelerated head injury. This means the head was moving when it struck a hard object, rather than the other way around. In such injuries, the more serious cerebral contusions (bruising of the brain) are “contre-coup,” or located along the line of force opposite the site of scalp impact.
13. During the acceleration phase of a fall, the cerebral spinal fluid moves to the side of the impending impact and away from the opposite side. This relatively thick spinal fluid, then, cushions and protects the brain during the impact. However, the lack of fluid on the side opposite the impact (the impact side is the “coup” site; the opposite is the “contre-coup” site) enables the brain to actually make contact with the skull, and this can result in significant damage.
14. Such was the case with this decedent. Her most serious traumatic injury was the contusion and hemorrhage at the front of her brain. Although the CT scan administered at the time of her admission to the hospital did not reveal substantial internal bleeding, it now appears that she continued to hemorrhage in the front of the brain and this is where the fatal hematoma formed.
15. I also noted during this autopsy that the deceased had a laceration and contusion in the temporal region on the right side of her head. There was some bleeding, both external and beneath the scalp, associated with this injury but there was no fracture of any bone. The date of this injury is unclear although it appeared to be a

few days older than the injury to the back of the head and of different origin. I noted no brain contusion or intracranial hemorrhage associated with this skin-surface injury. It is entirely possible that the deceased experienced a concussion at the time of receiving this skin surface injury. A concussion is a sudden trauma-induced transient alteration of the alert state and it may be marked by loss of consciousness, confusion, inability to concentrate and loss of memory. This does not, however, correlate to any level of brain damage identifiable by currently available diagnostic tests and it appears unlikely that there was any brain injury associated with the impact that produced the skin surface head injury.

16. I cannot 100% rule out the possibility that the impact that caused the temporal laceration and contusion might have caused brain injury and caused the death. However, this is a highly unlikely scenario. Personally, based on my education, training and experience, I am entirely satisfied that the direct cause of Ms. Hendrickson's death was the blunt impact injury to the back of her head, sustained during a fall, said to have occurred on or about May 27, 2000.

17. In addition, I had occasion to "staff" this case in my office (review of a pending case with colleagues, a routine practice we use for quality assurance and consistency purposes) and all medical personnel agreed with my analysis.

18. All of the opinions I have expressed reflect conclusions I have reached and hold to a reasonable degree of medical certainty.¹

19. In fulfilling my statutory duties relative to determining and declaring the cause of this death, I performed some other tasks in addition to the autopsy.

20. I asked our lab to do an analysis of the ice block believed to be the agent of the head trauma. The ice block was made of demineralized water. Without the mineral impurities usually found in water that cause stresses and imperfections when frozen, this ice was especially hard. Falling on it from a height of approximately five feet would definitely impart a sufficient force to cause the observed injuries.

21. I also had the lab examine the wooden rod (11" long, 1" in diameter) that was recovered at the scene. Microscopic examination revealed no hair, blood, or other biological material anywhere on it. I do not believe

that this (or any similarly shaped object) could have been the instrumentality causing the linear skull fracture and associated trauma in this case.

Subscribed and Sworn to on this 20 Day of September, 2007

Jordan Cavanaugh

Witness Signature

SWORN STATEMENT OF BAILEY LEIGHTENEN

1. My name is Bailey Leightenen. My friends sometimes call me Bolta. I grew up here in Fort Collins, Colorado. I graduated from Poudre Valley High School and took a couple college classes at Colorado State University. I've been working installing fiber optic cable for a few years now. I've known Wizard Dwight since we were in the first grade together. We used to be friends, but today is the first time we've seen each other in probably five years.
2. The time The Wiz and I were closest was for the six months or so that we both belonged to this magic club called the "Dominoes." This was at the end of 1999 – that magical pre-millennium period – and the first part of 2000.
3. The Dominoes were a small group of us who had a shared interest in performing magic. Whether you're into it as a hobby or a business, the kick in magic comes from doing tricks before a live audience and amazing them. The problem is that until you're pretty darn good, instead of amazement, what you usually prompt is either pity or laughter at your own expense. Developing magic skills takes a lot of practice and who better to practice in front of than some other dues-paying doofuses like yourself? So, that's what the Dominoes did, and we did it a lot.
4. We spent countless hours together practicing, planning our futures, and just plain hanging out. Among other things, I believe familiarity breeds familiarity. No, I was never crazy about The Wiz, or the others for that matter, but what I'm trying to say is we all got a pretty good idea of each other's strengths and weaknesses as magicians and as people.
5. The Wizard, for example, had one outstanding pair of hands. They were fast, they were smooth, and they danced as objects appeared out of nowhere and vanished into that same dark place. On the negative side, I would have to put the Wizard's judgment. Good trick or bad trick, good joke or bad joke, good plan or bad plan, Wiz would pick the wrong answer as often as the right and just didn't seem to care all that much about distinguishing between the two.

6. The one of us with the most potential, it's pretty clear, was a magician named Kex Foster. I say this because Kex had two prime assets – the eyes and the voice of a top magician. In front of an audience, Kex's electric eyes would hold people captive, while his voice ranged from a honey tone that made people want to be believers to a gravelly tone that commanded them. Kex's liability was a defective on-off switch. When there was no hint of a paying customer around, just us supposed friends, Kex would not put those tools back in the toolbox but would turn them on us. For example, Kex never seemed to get stuck straightening up our meeting room at the Y, throwing away our empty snack food bags, washing out our glasses, all that stuff that needs to get done. It's only looking back on it that I see how Kex would get others to do all that dirty work.

7. Not to be too harsh, but the rest of us in the Dominoes were pretty much hangers-on, with not much talent, a little bit of misplaced drive and a need to belong to something. When Wiz and Kex flew the coop, Lonny, Sweet Lou, and I all slinked off in our separate directions. That end came quickly in May of 2000.

8. In the late spring of 2000, we found ourselves facing a little bit of collective debt. We had recently put on a self-promoted show at the Elks' Club which, in our humble opinions, had been a rousing artistic success although something of a commercial disappointment. We were left owing about \$500 for rental of the hall and the printing of the programs. There had been some good publicity for the show, and my own view was that some private club bookings were just around the corner and we'd surely rake in the money to pay off that debt. We just had to be a little patient.

9. Patience was never Kex's strong suit. Kex always had a lot of ideas for us as a group on how to have fun and how to make money. Some of them were legal and some weren't. Although always number two in the pecking order, never on top, I could see Wiz right in there with Kex, polishing up these crazy plans for stage shows and escapades. Anyway, Kex had a plan for making some quick and easy money to pay off our debt. It was not a good plan.

10. Kex's plan, in a nutshell, was for the two of them to rob a street musician down at the Public Market. Apparently this woman was really small in stature but the money she took in was really something. Kex and Wiz estimated that the haul (one day's take for her) would be enough to square all our debts.

11. The plan they discussed was for each of them to stand on different sides of her, about six to eight feet away. From the conversations between the two of them, I could tell they'd gone down there several times to check things out and they had a real good idea of her patterns. So they knew the way she was likely to walk and the best place to stand to intercept her. Whichever way she walked, the one she walked by would surreptitiously stick their wand into her back as if it were a gun and demand the bank bag that she carried her cash in. If she didn't hand over the loot right away in response to the soft approach, the other one of the two of them would suddenly appear and give her a good wand-whack to the base of her skull. Once they had the cash in hand, whichever way they got it, they would run by different paths to Wizard's car which would be parked strategically close by in the parking lot. Because Wiz's car was the only one any of us had, it was assumed it would be used. Kex used to call it the whiz-away vehicle and call Wiz the whiz-away driver. Kex had no car and a suspended driver's license.

12. I heard this plan discussed over and over again so many times between the two of them that I can't recall specifically who said what on each occasion. As usual, Kex had most of the initial ideas but Wiz was always right there agreeing, offering encouragement, and small suggestions for improvements to the plan. I understand that Wiz is now claiming to have been an unwilling participant. I'm sorry, Wiz, but I just don't remember it that way.

13. The truth is, I never paid that much attention but their plan seemed to change shape every time they talked it through. Sometimes they'd talk about having the whole group of us involved, basically surrounding the poor woman. This would provide extra protection, they said, shielding the action from public view and with everyone serving as lookouts. If anyone saw police or security approaching, they'd shout out "vamoose" or something like that, and that would be the coded signal for the gang to skedaddle. On hearing that prearranged cue, everyone would run in separate directions, taking different routes to meet up at Wiz's car in five minutes' time.

14. The problem with all this was that there was no "gang" to heed any call to action. Our group may have had certain shared interests, but violence wasn't one of them. Lonny had this mental trick of taking off

for either some inner space or else outer space (I'm not sure which) whenever this topic came up. Sweet Lou was just too sweet and nobody, not even Kex and Wiz in their most deluded state, would expect Sweet Lou to go along. As for me, I was always firm and emphatic that I was definitely not in the market.

15. Whenever all this talk would get too weird, I would try to talk sense into The Wizard. "Wiz," I would say, "you gotta look out for yourself. That's all's you can do. Take responsibility for your own actions and don't do anything you might regret later unless you've thought it through carefully and decided it was worth that risk." But Wiz wouldn't listen to me. Wiz just wanted to make everyone happy. Whether or not Wiz had internal struggles with all this I really can't say; what I know is that I never heard Wiz say one thing negative about the plan to Kex.

16. Part of the plan was that whoever was in on it would wear shirts that were similar but dissimilar to each other. The idea of that was that any observers would become unsure of themselves about what they'd seen and make lousy witnesses. A lot of magic tricks work off this principle. The participants would also bring their magic wands, but the use to which they would be put was completely contrary to any principles of magic or any principles I believe in.

17. By sheer coincidence, on the day it finally went down, I just happened to be down at the Public Market. I was there because the proprietor of the magic shop off of College Avenue was scheduled to do a demo that afternoon and I was headed that way. The back door to the shop was off the alley that backed up against the Farmer's Market. I knew the fateful day had arrived when I saw Kex wearing a shirt with a domino dot pattern in black on a white background while Wizard was sporting a shirt with the same pattern, but in the opposite colors. I held way back, trying to skirt around the edge of the crowd to get to the magic shop's back door without them seeing me and I think I succeeded. As I got close to the magic shop, I heard a lot of shouting behind me and then I saw Wizard Dwight running through the crowd like an All-American running back. That was the very last time I saw The Wizard.

18. The last time I saw Kex was on Memorial Day of 2000. I was picking my cousin up at the Greyhound bus station when I saw him sipping a latte and showing off with some slight of hand. He was dazzling the

crowd with some old silver dollar. I teased him about being a show-off. I asked where the coin came from and all Kex would say was, "I willed it right into my pocket." Kex kept pointing to the back where it had the letters "CC" right above the word "dollar" and said it stood for "causa causae est causa causati." Using that staged dramatic voice, Kex pronounced it like "COW-ZAH COW-SIGH" and said it had to do with making things happen by hidden and secret means. I guess something about the rhythm of this incantation or whatever it was made it get stuck in my head like some dumb radio jingle or bubblegum song and I'm afraid I've been singing it over and over to myself since then. I hate how that happens. As far as I was concerned, this was just more of Kex's gobbledygook.

19. The years went by and I thought less and less about all of this. But as soon as the police contacted me last fall, I knew I would cooperate fully. There's no way I wanted them to even consider me as anything but a bystander on the day of the robbery. I mean, I was there, but I played no part in it whatsoever. I was wearing my red "A Rose is a Rose" tee shirt, for Pete's sake! Fortunately the police were able to put two and two together this time.

Subscribed and Sworn to on this 20 Day of September, 2007

Bailey Leightonen

Witness Signature

SWORN STATEMENT OF WHITNEY “WIZARD” DWIGHT

1. My given name is Whitney Dwight. “Whitney” is a tedious family name though, and I’ve generally gotten out from under it, as everybody just calls me “Wizard” or, sometimes, The Wiz.” The nickname actually originated back when my table-tennis skills garnered me 15-minutes of fame as a child prodigy; the name just stuck after that, and in later pursuits it has actually served me well. For the past few years I’ve been living in Kismet, New Jersey, not far from Manhattan, working in the financial markets. I’ve had some modest success as a securities day-trader and manager of the funds of a few wealthy clients who must go unnamed. My biggest success has been in developing algorithmic hedge fund growth regression and reinvestment software that, with just a teeny bit of slight of hand, allows my clients to instantly recoup any losses they might suffer due to certain types of market fluctuations.

2. I have found what I was meant to do in life. Although these are not the best of present circumstances, it is good to be back home in Fort Collins for the moment, and I’ll be glad to have this sordid business straightened out. *Que será será.* It would be a real travesty if what I’ve come to view as my destiny should be thwarted by some youthful indiscretion dredged up from a stale evidence locker only to be misinterpreted by time and distance.

3. As fate would have it, like many young people, I had to struggle through many phases in my personal development. About seven years ago, back when I was living in Fort Collins, I was heavily into the magic scene. I belonged to a club called The Dominoes. We spent a lot of time together, and we thought we had a big future as performers. This, I can say now, was clearly a woefully mistaken illusion.

4. Kex Foster was a mighty strong character. He was at the center of our little circle, the nucleus of our little cell. Maybe “cynosure” is the better word, since we all thought we were stars and “cell” has taken on a terrorist association as of late. The truth though was, that we weren’t a troupe, a cell, or anything more than loose associates, but Kex made it possible for us to think we were more. Kex had a unique ability to motivate us, to get us moving with his infectious enthusiastic shout “*Ándale!*” or “*Vámonos!*” I don’t speak Spanish, but I gather those are both friendly ways of saying “Let’s get in gear!” The truth is, I respected Kex and

enjoyed the feeling of belonging he fostered. I really couldn't feature turning my back on Kex, although I certainly had plenty of reasons to seriously doubt our relationship back then.

5. Among Kex's wilder ideas was a plan for an armed robbery. On our trips down to the Muse Magic Shop, Kex always pointed out one lone female singer playing for handouts. Kex claimed to have watched her for an hour once and multiplied out her take over a full day, claiming she easily pulled in a cool \$500 that was ripe for the taking. This number happened to match up nicely with the amount Kex owed to the Elks' Club for a hall rental for a show we'd put on. The rental was actually in Kex's name only but he referred to the debt as "our debt."

6. Kex's plan was for one of us to stick a wand hard into the singer's back while she was carrying her money bag. It wouldn't be a real weapon and no one would say it was a weapon but, according to Kex, "the stooge might get that impression and fork over all her cash on her own— more like a gift than a crime."

7. As the dominant Domino, Kex expected the rest of us to fall in line with this plan, but it didn't work out that way. Kex wanted me to drive to and from the scene, but I didn't want to. I'm not that good of a driver, especially when I'm scared. So I said "No."

8. Maybe it's because of the way my parents raised me- they did everything for me all the time like I wasn't capable of taking care of myself - but I've sometimes had a hard time standing up for myself. My lack of assertiveness was often a problem for me in dealing with Kex.

9. After I started seeing a psychologist, Dr. Wadel, though, my self-confidence really turned around. I remember looking at Kex and humming under my breath, "I'm gonna be a wheel someday, I'm gonna be somebody, I'm gonna be a real gone cat and then I won't need you." Of course, it was easier talking and singing under my breath than out loud, but when Kex asked me to drive for the robbery I was assertive and said "No." Kex asked me again and I said "No" again.

10. I assure you that I did everything in my power to keep this horrible thing from happening. Because I've led a law-abiding life, I never knew much about the police and how they worked. My friend Lonny, on the other hand, was always talking about having an uncle or godfather or something high up in the police

department. Over and over I told Lonny to get that chief, or whatever he was, on the case, so they could nip this thing in the bud. Then, on the day it really happened, I tried my level best to prevent it.

11. On the Saturday before Memorial Day 2000, I was in Old Town near the Larimer County Farmer's Market, but I did not go there with Kex. Actually, I had been avoiding him for a couple days, because I knew that sick plan was getting closer to becoming reality, at least in Kex's mind. I lied and said my Caddy wasn't running and I left it parked behind the Y with the keys in the ignition and then took the bus down Old Town Square and walked to the Market. Kex had wanted me to drive the gang into town that day, but, like I mentioned before, I said "No."

12. I probably shouldn't have gone anywhere near the Market that day, knowing what I knew. I guess I just let my better judgment be overruled by my desire to see the demonstration that was scheduled for the magic shop that afternoon. They had a new type of acrylic thumb-tip coming in that I thought would be just the ticket for this "Disappearing Domino" trick I was working on. I know a magician is not supposed to share secrets, but I'm in an awkward situation so I must. A thumb-tip is a standard magician's prop; it's a hollow, artificial thumb that you can sneak on and off your real thumb. The cavity is the place from which the magician pulls all sorts of objects like currency or long silk banners or else the place where the magician makes them disappear to. If you keep your hands constantly in motion, no one ever spots a thumb-tip. Anyway, I had hopes that this new model thumb-tip, together with some collapsible dominoes, was going to provide the basis for our signature illusion.

13. I found myself at the Market on that fateful afternoon and I admit that, for the occasion, I was wearing my domino shirt with the black background. Magic fans are somewhat cultic, and we like to be recognized as the performers we believe we are; my Domino shirt was part of my identity as a performer, so I had to wear it to the demonstration. When I saw Kex, I was and I wasn't surprised. We were about in front of the flower stall when we ran into each other. Kex immediately started in applying alternate barrages of bluster and cajolery to get me to go along with the robbery plan, but I stuck to my guns and just walked away on my own, heading down toward the magic shop.

14. I wish now I had gotten completely out of the area right then. I had some time before the demonstration was scheduled and so, like most everyone around the Farmer's Market, I dawdled a bit. All of a sudden I was aware that the singer had stopped playing and was starting to leave. She started to walk toward where I was standing and I suddenly had a premonition that Kex might be about to try something. From the corner of my eye, I caught Kex starting to move in her direction. I had a strange feeling Kex was likely to hit her hard in the back of her head or something, instead of following the original plan, and I didn't want to see that happen.

15. I did have my wand with me and I may have been twirling it out of habit (like a movie beat cop with a nightstick), but I most certainly did not hold it up to the singer. Although I can't be certain without the plumage on it, Exhibit 6 appears to be my wand. I did not threaten the singer. I did not demand anything from her. And I did not overtly take anything from her.

16. As the singer got right by me, I softly but firmly told her, in words I can't specifically recall, that she'd better run. But, instead of doing this, she seemed to actually stop. She just stood there, frozen, looking me in the eyes. This alarmed me greatly and I began to flail my arms around as I shouted for her to get moving. Again I don't recall exactly what I said. It is possible that in all my flailing that I hit the bank bag and knocked it from her hand, but I honestly do not recall this. If it fell, I know that I did not pick it up. In fact, somewhere in all this, I lost my wand with the phoenix feather on the end. Oh, well, I guess I wasn't going to need it anymore where I was going. Then, just as Kex was getting close to her, I ran too. I went south on the alley sidewalk past the stalls, then came out on the street and caught a city bus home. I was shaking like a leaf, not because of anything I had done or even anything I had seen done, but just because of what I knew was about to happen when Kex reached her.

17. I decided that would be a good time for me to look up my East-Coast relatives and see about finding a new line of work. It turned out that I arrived in Jersey just a week before my grandfather died, and I ended up getting a small inheritance, which I then used to start my investment fund. It should go without saying that I never got a penny out of this deal with Kex.

Subscribed and Sworn to on this 20 Day of September, 2007

Whitney Dwight

Witness Signature

SWORN STATEMENT OF SKY WILLOW

1. Sky Willow is my name. I live on an agrarian co-operative in rural Larimer County. Our co-op has both an organic produce stall and a flower stall down at the Larimer County Farmers' Market just down the street and south from Old Town Square. My family members and I take turns working there. They're both in the Market, off of Remington and Olive Street in Fort Collins. Since you're behind a counter and underneath an awning, you still feel awfully cooped up. Like all creatures, we all just want to be free. So, for every day you work in the stalls, our rule is that you get to spend three days working Mother Earth.
2. Personally, I don't mind the stalls too much because I'm also an aspiring writer. There, life unfolds itself before me. I see things others don't. My powers of observation are truly cosmic and my imagination is boundless. All creatures are unique. Sometimes I think I have a special gift of intuitive perception.
3. At the Market, I also dig the music and the people who make it. One of my all-time favorites was Jeni Hendrickson, who played acoustic guitar and sang rock, pop, blues, folk, world music - wherever the spirit took her on that particular day. How I envied that free spirit of hers! She played a lot at the space in between where our two stalls and the next vegetable stall were located. I would listen to her from both of our stalls, and her music made me feel in harmony with her and with the universe. She was an amazing performer - her fleet fingers worked their magic on those strings and her silky voice caressed the lyrics. I used to take her a snack of carrots or nasturtiums (depending on which side I was working) and she would wolf them both down with gusto.
4. Her last week on this planet was a cruel one. On Wednesday, she was hit on the head by a zucchini. She laughed it off the next day. What happened was no joke at the time, and it's certainly no joke now.
5. Over at our competitor's stall, the vegetable stall next to ours, to the back, they do this thing to put on a show for the out-of-town tourists. All the workers throw different fruits and vegetables through the air and shout like banshees. I call them the "nature jugglers." I'm not sure why, but the tourists seem to like it. I don't approve of it because I don't think it's respectful to the spirits of the vegetables and fruits. It can also be dangerous to humans.

6. On that Wednesday morning, Jeni had shown up early and was just hanging around tuning her guitar before the crowds built and before she would start playing. The nature jugglers use this quiet morning time to get their displays set up and also to practice their throwing and catching. I happened to be working in the lettuce, endive and arugula area, facing their stall. I saw them laughing uproariously as several of them tossed this humongous zucchini around in a circle, faster and faster. Finally, one throw went wild and sailed over to where Jeni was standing. It conked her really hard on the right side of her head and she crumpled in a heap. It was like a freight train had hit her.

7. I ran over to her and so did some of the nature jugglers. I yelled at them to get away from her. I wiped off the crimson blood that was seeping out of the wound at her temple and applied some ice to the swelling that had started instantly. Jeni was quite groggy, but she insisted that she did not want me to call for emergency assistance. It was a good five minutes before she really knew where she was and what had happened. Finally, I got her up and she leaned heavily on me as I led her over to the peace and tranquility of our flower stall. I fixed her a nice cup of chamomile tea on the hot plate. She nursed the tea while sitting on a lettuce crate and then she went home for the day. I made her take some calendulas for her external wound and some mimulus for her inner peace. Wouldn't you just know it, she came back the very next day. Despite sporting a Band-Aid on her head (one of those red kids' Band-Aids with white stars and crescent moons on it, or maybe it was a white Band-Aid with red stars and crescent moons, I can't be sure), she was joking about it all and raring to get back to work.

8. I spent Friday in the fields, but was working again that next Saturday, this time at the flower stall. I remember late in that afternoon seeing two people loitering in the area in front of our stall. Oodles of people loiter in this area, of course, but what caught my eye about these two is that I would say they had sort of matching shirts that didn't quite match. I'm not positive but it was like one was the negative of the other, you know like with film negatives where the dark parts are light and the light parts dark.

9. The funny thing is, the same was true of their faces. One was sunny and light, all relaxed and happy to be there. But the other face had a cloud over it, all worried and brooding. I remember thinking the look was of

someone plotting a coup d'etat, or anxious that the coup was being plotted elsewhere and the invitation had been lost in the mail or maybe pilfered by a duplicitous letter carrier. I don't know, that's just how it seemed to me.

10. The happy one seemed to be leading the mopey one, pointing here and there with smiles and nods while the mopey one would look around all fidgety. Finally, the mopey one gave a side-to-side shake of the head and stalked off in front of the other toward the alley. Actually, the last point I could see mopey was making the turn around the chili roasting drum.

11. The next thing I knew was in about five or ten minutes when I heard a lot of screaming. I ran to where it was coming from and it was like déjà vu all over again. There was little Jeni lying flat on the ground with medics in crisp blue uniforms racing toward her. This time there would be no home remedy. They gurneyed her over to an ambulance and sped off with siren wailing. I could hear its portentous dirge as it faded in the distance.

12. Never was I to see Jeni Hendrickson again. Never was I to hear her sweet voice again. Her spirit though - her lovely free spirit – ascended into the cosmos where it sings its eternal song, causing me to smile every day.

Subscribed and Sworn to on this 20 Day of September, 2007

Sky Willow

Witness Signature

SWORN STATEMENT OF B. S. WADEL, Ph.D.

1. My name is Dr. Wadel and I maintain a psychotherapy practice here in Ft. Collins. My offices are in the Professional Building on Mason Street. I obtained my doctoral degree in psychology, in 1987, from the City College of New York. From there, I went on to undertake two years of advanced studies at the Institute of Psychoanalysis in Vienna, Austria. Since 1989, I have been accredited and certificated as a Licensed Mental Health Professional under the laws of the State of Colorado. I regularly treat patients with a myriad of psychological and adjustment disorders, although I have developed a particular expertise in the areas of self-esteem and assertiveness training.
2. I define assertiveness as the ability to formulate and communicate one's own thoughts, opinions, and desires in a clear, direct, and non-threatening way. I have always had a particular fascination with those who must have been, as it were, "not in the line" when assertiveness was being handed out.
3. Whitney Dwight first sought my professional assistance in March of 2000. The initial consultation came, I believe, as the result of a referral from a family friend. Whitney presented as a healthy, attractive, well-dressed young person of average to above average intelligence. He possessed more than sufficient vocabulary for self-expression, although he was decidedly lacking in the means necessary to bring this about.
4. I administered a battery of psychological assessment tools including the MMPI and the MCMI. Those initials stand for the "Minnesota Multiphasic Personality Inventory-2" and the "Millon Clinical Multiaxial Inventory-III". Whitney also completed a Rorschach inkblot test and a sentence completion test. The patient was fully cooperative with all of these protocols and the results appeared to reflect the signs of internal validity.
5. The psychological profile that was generated from these tests was someone with weak ego boundaries. The characteristics of weak ego boundaries include that such a person is easily led by others as he or she tends to borrow ego strength from others by adopting aspects of their identity and beliefs. Such a person often attaches undue weight to the opinions of others and finds it exceedingly difficult to publicly disagree with strongly stated opinions.. This was the nature and scope of our professional relationship.

6. Of course these tests in and of themselves do not provide a basis upon which to arrive at a diagnosis, prognosis, and treatment plan. However, when my clinical impression of the patient is consistent with the objective test data, then a pretty clear picture emerges. Such was the case with Whitney Dwight, with whom I spent many hours engaged in therapy.

7. The primary theme of the work I was doing with Whitney was: before one is capable of truly standing firm with other people, one must first convince oneself 100% of the correctness of one's own position as well as a determination to stand by that position. Once a patient has established a firm foundation of inner self-confidence, then the patient is ready and able to move on to the second step, which is projecting that certainty to others.

8. Ultimately, it is the sense of self that orders and regulates human relationships. It has been wisely said, "an unconditional devotion to one's own process of individuation also brings about the best possible social adaptation." (Man and His Symbols, Part 3: "The Process of Individuation") Locating and strengthening one's true inner ethos and moral compass aids the individual in developing a mature and effective personality. This is the goal toward which Whitney and I were striving.

9. Most of the weekly fifty-minute session was spent working on that first step-finding, strengthening, and conditioning the inner-Whitney. At the point at which our sessions suddenly ceased, in early June, we had turned a corner and Whitney was beginning to implement the second step. I'm not saying we had a major breakthrough, but I believe Whitney had demonstrated to me, through our role-playing exercises, the ability to make a firm self-assertion in what I would call a non-nurturant public setting. The implementation was up to Whitney.

10. During our sessions, I learned that some of Whitney's colleagues were planning to embark upon a course of action in which Whitney did not concur. The specifics of this plan were not a concern of mine as such were outside the scope of my therapy. I thought it had to do with some type of an investment deal as I recall mention of making money in the market. It was quite clear, that the subject caused Whitney considerable stress. While the others in Whitney's peer group were determined to follow through on their

plan, the inner Whitney was adamantly opposed to it. Whitney's true intentions were clear; our therapist/patient goal was for Whitney to find the voice with which to give them expression when it counted.

11. One of these colleagues, and the one about whom Whitney most frequently spoke, was an individual named Kex. I never met Kex and am certainly in no position to make any type of diagnosis related solely to Kex. All of my information came to me by way of Whitney. However, I am in a position to have formed a diagnostic impression of the Kex-Whitney relationship. I can state that, at the outset of our treatment, this was a relationship marked to an extreme degree by an odious form of domination and manipulative control that left Whitney all but incapacitated. Due to the tremendous impact Kex and the other kids Whitney hung out with had on Whitney, I spoke at great length with Whitney about his colleagues.

12. The colleagues comprised a magic club called the Dominoes. Whitney stated that the group employed all the tricks of the magic trade. They practiced patter, which is using voice for purposes of bewitching and befuddling. Whitney spoke of misdirection, which is drawing the audience's attention to one location while a crucial manipulation is being performed undetected elsewhere. And the group practiced sleight of hand, which is the use of natural, confident movements that both draw attention and at the same time conceal what the practitioner wants to keep hidden.

13. The leader, I presume one would say, of this group was Kex. Kex was described as pompous, self-important, and full of "hot air," but also charismatic, energetic, and "fun" to be around. Kex organized most of the activities the Dominoes did as a group-definitely pulling the group together as a unit rather than just a ragtag bunch of individuals.

14. Kex was described as the type of person who takes everything right to the edge. While the rest of the group was content with provoking appreciative "oohs" and "aahs" from an audience, Kex was often raising telekinesis, ventriloquism and the philosophy of historical "dark magicians" and psychologically questionable individuals like British magician Aleister Crowley. Crowley was known as the "man who put the 'k' in magick" and also "the wickedest man in the world."

15. Whitney often told me that Kex did not tolerate disagreement with any of his speeches or propositions. With a facial grimace and eyes narrowed to slits, as if shooting a laser beam at the one who disagreed, Kex's displeasure would be obvious, and apparently effective. In the face of Kex's displeasure, Whitney would "get along by going along." Whether it was squelching back-talk or settling who was to clean up the club room at the YMCA, for Kex it was always "my way or the highway." More often than not, most of the group would opt for Kex's way. For Whitney, the road offered by Kex was the road always taken.

16. I heard of Kex's success as a ventriloquist. While neither a psychological practice or involved in my specialty, I know this is a combination of some basic physical skills – using the diaphragm to throw one's voice out from unmoving lips and misdirection. As the eye is more sensitive in locating the direction light is coming from, than the ear is at picking up the direction of a noise, people generally trust their vision more than their ears. This is just human nature and physiology. Apparently, Kex was quite adapt at this skill, and often fooled the group with odd comments that seemed to come from somebody else or from the cat.

17. Whitney's agitation over Kex would often rise to a level where would he exclaimed he had to either go to the police, or tell another colleague, to "put out a all points bulletin on Kex or put a guard on some guitar player or something." Apparently one of the magic group had a family member in law enforcement. I never pressed to learn of the precise nature of this agitation, as such was outside the reason I was treating Whitney.

18. During our therapy sessions, one regular exercise was for Whitney to look me directly in the eyes and say with all the force that he could muster: "NO, KEX, NO! I said NO, and I mean NO!" Early on, Whitney would often falter and, with eyes drooping and darting away and with voice quaking, what would come out would be a pathetically weak, "Nix Kix nix..." Or, worse, "No Chex Mix!." His protestations sounded more like the cooing of a dove than the shriek of a hawk which is what we were after. But, by mid-May of 2000, the word "NO" was being articulated as hard and cold as a block of ice. There was no part of it I could not understand. Equipped with these tools, it was time for Whitney to place them into practice and there was no reason not to expect success. With the projection Whitney demonstrated, I felt the message should surely get through to Kex for whom I have to admit, I was developing an intense dislike.

19. I enjoyed working with Whitney. Together we were looking forward to probably another year of weekly sessions before complete individualization would have been achieved and all self-esteem and assertiveness issues resolved. The Dwight family had a health insurance plan which covered the costs (\$90 per session) throughout this period. I was personally disappointed when Whitney, without notice, missed a session the first week of June, 2000 and did not return thereafter. Perhaps, if things work out, we could still pick up where we left off.

Subscribed and Sworn to on this 20 Day of September, 2007

B. Shiloh Wadel

Witness Signature

EXHIBITS

B. S. Wadel, Ph.D.
4170 College
Fort Collins, CO
970-272-3568

Licensed Psychologist in Colorado since 1989
Specialty: Self- Esteem & Assertiveness Training

Work Experience:

Driving Force:

My patients improve their own self-esteem and project their self-esteem to others. They learn to identify who they are and to stand up for their own values.

Individual therapy for patients

Solo private practice since 1989

Publications:

“Advantages of Individual Therapy over Group Therapy” Psychology Today, June 2006

“Teaching Adults to Say No” British Journal of Psychology, Feb. 2005.

“Practice, Practice, Practice for Assertive Adults” Journal of Experimental Psychology, March 2003.

“Improve Assertiveness in Adults,” The Self Help Psychology Magazine, July 2001

Education:

Post doctoral, 2 years, Institute of Psychoanalysis
Vienna, Austria 1987-1989

Ph.D. in Psychology, City College of New York, 1987

B.A. in Psychology City College of New York, 1983

JORDAN CAVANAUGH, M.D.
Medical Examiner's Office
Fort Collins, CO
970-399-1279

Committed to determining an accurate cause of death and, where murder is involved, convicting the murderer

WORK EXPERIENCE:

ASSISTANT MEDICAL EXAMINER for Larimer County, CO, 1995-Present

- In charge of determining a legal and medical cause of death whenever death is violent, sudden, or unexpected.
- Responsibilities:
 - (1) Review medical records of deceased,
 - (2) Review police reports,
 - (3) Autopsy,
 - (4) Visit the scene of death, if helpful,
 - (5) Reach conclusions,
 - (6) Complete autopsy report, and
 - (7) Inform police and prosecutors of my findings
- Completed more than 200 autopsies
- Extensive experience testifying at murder trials on this job; 87% conviction rate when I testify

TEACHER OF PATHOLOGY, Univ. of Colorado Medical School, 2000-2005

PATHOLOGIST, DENVER COUNTY HOSPITAL, Denver, CO, 1993-2004

- Responsible for all chemical lab testing.
- Incredibly high accuracy and speed for blood tests.

PUBLICATIONS

“The Dead Can Speak”, Journal of the American Medical Assn, April 2007

“Beware of Bad Test Results Using Hemolyzed Blood”, British Medical Journal, June 2004

“Too Much Blood Alcohol”, Colorado Medical Journal, Nov. 2002

EDUCATION:

**Pathology Residency, Presbyterian St. Luke's Hospital,
Denver, CO, 1989-1993**

M.D., University of Colorado School of Medicine, 1988

B.S., Biology, Colorado State University, 1984

Class Honors, Phi Beta Kappa

Summer Intern at Veterinary School, 1983 and 1984

AUTOPSY SUMMARY REPORT

Name: Jeni Hendrickson DOB: 7/10/1979
Address: 8671 Broadway DOD: May 31, 2000
Fort Collins, CO Time of Death: approx. 11 AM

Sex: Female Height: 59" Weight: 97.5 lbs.

Legal Cause of Death: Homicidal Violence

Medical Cause of Death: Acute subdural hematoma, associated with bilateral frontal and temporal lobe cerebral contusions.

Description of Injury: Evidence on examination shows a linear nondepressed midline occipital skull fracture and an accelerated head injury. The fatal injury resulted from a fall in which the back of the deceased’s moving head struck a hard object, such as an ice block. The fall caused serious cerebral contusions along the line of force opposite the site of the impact. Thus, the massive hemorrhage occurred toward the front of the deceased’s brain, rather than at the site of impact. After admission to the hospital, the deceased continued to hemorrhage in the front of the brain, where the fatal hematoma ultimately formed.

Other Injury: The deceased also had a laceration and contusion in the temporal region on the right side of the head. Some bleeding occurred there, both externally and internally from the scalp. No bone fractured at the side of this injury. The date of this injury is not clear. It might have been up to a few days older than the injury to the back of the head that was fatal, but I cannot be certain. I observed no brain contusion and no intracranial hemorrhage associated with this surface skin injury; if that had happened, it would have been easier to establish the timing of this injury. The deceased may have suffered a concussion from this injury.

General Health Condition: The deceased’s general health condition appears to be good prior to the fatal injury. However, no medical records prior to the fatal injury were located for the deceased.

Additional Examination: Nothing remarkable.

Chemical Lab Tests: Nothing remarkable; tox screen and blood alcohol were both negative

Additional Examinations:

Ice Block: Made of demineralized water so extra hard. Falling on it from a height of approximately 5 feet definitely would be of sufficient force to cause the deceased’s observed injuries.

Wooden Rod: The rod was 11 inches long and 1 inch in diameter. Microscopic examination showed no hair, blood, or other biological material anywhere on it; typically I would expect to find something still attached. This rod did not cause the skull fracture and associated trauma that was fatal in this case.

Review of past medical records Only records from treatment of fatal injury at Poudre Valley Hospital were available	Yes <input checked="" type="checkbox"/>	No
Review police report	Yes <input checked="" type="checkbox"/>	No
Autopsy completed	Yes <input checked="" type="checkbox"/>	No
Visit to scene	Yes <input checked="" type="checkbox"/>	No

The opinions and conclusions expressed herein have been reached after careful examination and analysis; they are mine to a reasonable degree of medical certainty.

Jordan Cavanaugh, M.D.

Jordan Cavanaugh, M.D.
Medical Examiner

Date: July 15, 2000

**FORT COLLINS POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY**

General Offense Information

Operational status: OPEN
Reported on May-30-2000 (Tues.)
Occurred on May -27-2000 (Sat.)
Submitted on May-27-2000 (Sat) by 18137 - HOYT, WOODROW
Org unit: PATROL
Municipality: FORT COLLINS
County: LARIMER

Offenses (Completed/Attempted)

Offense: #1 ROBBERY
Location: Fort Collins Larimer County Farmers Market at junction of Remington and Olive Street
Suspect: Unknown
Weapon type: ROD/BATON
Victim: JENI HENDRICKSON
Felony/Misdemeanor: F
Gang involvement: Unknown

Narrative Report:

On the afternoon of Saturday May 27, 2000. I responded to the scene of the incident at the Fort Collins Larimer County Farmers Market. The call came in as a strong-arm robbery. On arrival at the scene, I found the victim lying on her back. She was being treated by paramedics for an apparent head injury. She was conscious, but neither alert nor lucid. I heard her mumbling something like: "The devil cast the dice and yada yada yada." Within a few minutes, she was removed from the scene and transported by ambulance to Poudre Valley Hospital. The victim was later identified as Jeni Hendrickson.

I prepared a diagram Exhibit 5 accurately depicting the scene as I found it that day. The Larimer County Farmer's Market is just one block south of Old Town Square in Fort Collins. It is held in the southeast parking lot at Remington and Olive. Two thirds of the lot is used for the stalls. The remaining lot to the north is used for parking. There are four rows of stalls running north-south. There are two wide public foot traffic areas that provide direct customer access to stalls selling such things as fresh food items, flowers and handicrafts. Along the alley behind the west row of stalls are commercial establishments.

Along the medians and sidewalks, interspersed throughout the Market it is customary (and legal) for street performers to perform for tips. I have placed a small circled "B" on the diagram to mark the spot witnesses identified Ms. Hendricks customarily performed.

The diagram also indicates the location of Ms. Hendrickson at the time of my arrival. She was close to a vegetable stand on the west public foot traffic area. Approximately 18 inches to the northeast of her head was a large block of ice that is used to keep the vegetables fresh. Scattered on the ground nearby were several zucchinis, melons, and tomatoes.

Four feet to the south of the ice block, I located a weapon or device that was of a type previously unknown to me. It is in evidence as Exhibit 6. It is a rod or baton made of hard, dark wood, roughly one inch in diameter and just under a foot in length. Attached to one end of it was a feather.

I interviewed Dursley Thompson who mentioned something about Dominoes.

Witnesses at the scene reported seeing two people in an older model Cadillac Coupe de Ville leaving the Market Parking Garage at a high rate of speed shortly after the incident.

After processing the scene, I turned the case over to the robbery detectives for follow-up.

General Offense Information – Addendum:

Operational status : OPEN
Reported on May-27-2000 (Sat.)
Occurred on May -27-2000 (Sat.)
Submitted on May-28-2007 (Mon.) by 18137 - HOYT, WOODROW
Org unit: COLD CASE
Municipality: FORT COLLINS
County: LARIMER

Offenses (Completed/Attempted)
Offense: #1 FIRST DEGREE MURDER
Location: Fort Collins Larimer County Farmers Market
Suspect: WHITNEY DWIGHT
Weapon type: ROD/BATON
Victim: JENI HENDRICKSON
Felony/Misdemeanor: F
Gang involvement: POSSIBLE GANG INVOLVEMENT/MOTIVATION

Narrative Report - Addendum:

Shortly after completing my initial report, the victim died. The case was handed over to Homicide, but nothing ever went anywhere. When I started in the Cold Case unit, I dug out this file and got to work. Reminded that Dursley Thompson, from whom I had taken an oral statement at the scene, had heard something odd about “dominoes,” I had a hunch that it was something worth following up on. I quickly learned that there had been a small local magic club at the time called “The Dominoes.” I located an old newspaper article with a photograph of the five club members and started tracking them down. I found one of them (Lonny Mesmer) but learned nothing there. At our interview, Mesmer had little or nothing to say and was uncooperative. I could find absolutely no trace of three of them (Kex Foster, Lou Lousang and Whitney Dwight) after May of 2000.

I was able to locate and interview Bailey Leightenen. Leightenen was fully cooperative and gave me a complete statement regarding the incident of May 27, 2000, and the relevant events that had preceded it.

I also ran vehicle registration checks for each of the Dominoes as of May 2000. The car registered to Dwight at the time was consistent with a description of an older model Cadillac Coupe de Ville described as leaving the scene shortly after the incident. This car was then located (with expired 2000 tags and with tall grass

growing all around it) abandoned in a public vacant lot, behind the YMCA building that is two doors down the street from the house that was Dwight's last known address here in Fort Collins. I recovered an empty blue Bank of America bank bag from underneath the front passenger seat. I tried to lift fingerprints from the bag but there was nothing there. I did not dust the car itself for prints since I figured Dwight's prints would be all over it so that would prove nothing.

Conclusion Information

General Information

Agency; FORT COLLINS P.D.

Cleared status: CLEARED BY ARREST

Cleared on Jul-30-2007 (Mon.) by 300366 – HOYT, WOODROW

Org unit: COLD CASE



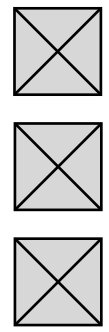
Public Restrooms

KEY

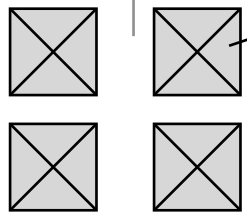
- Tree
- Curb Median
- Vender Stall
- 2.5' Cement Wall
- Sidewalk

parking

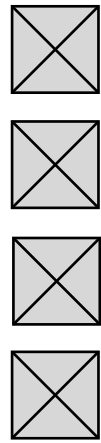
to Old Town Square



Wine Tasting



market stalls



Jeni H. found here

victim typically sang here



alley

Flower Stall



guitar case

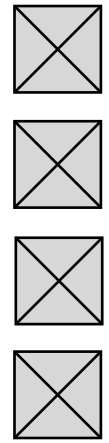


vegetable stall

vegetable juggler's stall

Exhibit 6 recovered here

Chili Vender



public foot traffic

Remington St.

residential homes this side of street

back door of Magic Shop

Bank

To College Ave.

Olive St.

Exhibit 5 (prepared by Det. Hoyt)

Parking Lot

Exhibit 6



Exhibit 7



Applicable Law and Caselaw

218-30-1020 Murder in the first degree.

- (1) A person commits the crime of murder in the first degree if:
 - (b) Acting either alone or with one or more persons he or she commits or attempts to commit robbery and, in the course of or in furtherance of the crime that he or she is committing or attempting to commit, or of the immediate flight therefrom, the death of a person, other than one of the participants, is caused by anyone.
- (3) Murder in the first degree is a class 1 felony.

218-40-3010 Robbery.

- (1) A person who knowingly takes anything of value from the person or presence of another by the use of force, threats or intimidation commits the crime of robbery.
- (2) Robbery is a class 4 felony.