

**24<sup>th</sup> ANNUAL  
COLORADO BAR ASSOCIATION  
2009 HIGH SCHOOL MOCK TRIAL  
PROGRAM**

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**THE STATE OF COLORADO**

**v.**

**HENRI JONES**

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Presented by the  
COLORADO BAR ASSOCIATION'S  
Mock Trial Subcommittee,  
Public Legal Education Committee and Public Legal Education Department  
1900 Grant St. Ste. 900  
Denver, CO 80203



October 28, 2008

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 2009 Colorado High School Mock Trial Program. The Mock Trial Subcommittee proudly presents this year's case, *State of Colorado v. Henri Jones*.

**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 ensure 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.

Read the Code of Ethical Conduct memo that is included in the case materials 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 event 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 in 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 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 David P. Cain, Co-Chair, CBA Mock Trial Subcommittee  
Mary Roudebush, 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 regional tournaments and the 2009 Colorado State Champion's travel to the National High School Tournament.

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



# 2009 COLORADO MOCK TRIAL CASE PROBLEM

State of Colorado

v.

Henri Jones

*The 24th Annual CBA High School Mock Trial Program  
is a sponsored activity of the*

**Colorado Bar Association Public Legal Education Committee  
Honorable David P. Cain, Co-Chair  
Mary Roudebush, Co-Chair**

*Organized by the*  
**Colorado Bar Association Mock Trial Subcommittee**

*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  
Iowa 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 2008, more than 100 mock trial teams participated in the CBA Mock Trial Program. Only twenty-two 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, teacher coaches 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 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.

## 2008–09 Mock Trial Dates to Remember

<b>Case Announcement Brochure Released</b>	October 2, 2008
<b>Case Materials Available</b> —Internet/Office Pickup	November 3, 2008
<b>Early Registration (\$125/team) Deadline</b>	December 1, 2008
<b>Late Registration (\$225/team) Deadline</b>	January 3, 2009
<b>Mock Trial Attorney/Teacher Coach Orientation/CLE *registration required*</b>	November 11, 2008
<b>Deadline to Drop a Team</b>	January 31, 2009
<b>Local Tournaments</b>	Between February 6 - 27, 2009
<b>State Tournament</b> –Jefferson County Courthouse	March 13 - 14 2009
<b>National Championship</b> – Atlanta, Georgia	May 8 - 9, 2009

**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 teacher 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, 2009 deadline will be charged a \$35 administration fee that will be deducted from the registration refund. **Any teams that drop after the January 31, 2009 team drop deadline will forfeit their entire registration fee.**

## **2009 REGIONAL DATES AND CONTACT INFORMATION**

### **1<sup>st</sup> JD – Jefferson County**

**Date:** February 3, 4, 5 & 6, 2009

**Coordinator:** Magistrate KJ Moore (303) 271-6209; Amanda Cruser (303) 986-5769

### **Adams/Broomfield Counties**

**Date:** February 20 & 21, 2009

**Coordinator:** Cynthia Kowert (303) 659-7720

### **Arapahoe County**

**Date:** February 27 & 28, 2009

**Coordinators:** Angel McCall (303) 797-2227; Michael Price (303) 292-2500

### **City of Aurora**

**Date:** February 6 & 7, 2009

**Coordinator:** Julie Anderson (303) 739-6508

### **Boulder County**

**Date:** February 13 & 14, 2009

**Coordinator:** Christine Hylbert (303) 440-4758

### **Denver City/County**

**Date:** February 20 & 21, 2009

**Coordinators:** Elsa Martinez Tenreiro (303) 831-7670

### **Southern Colorado**

**Date:** February 6, 7 & 10, 2009

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

### **Northern Colorado**

**Date:** February 20 & 21, 2009

**Coordinator:** Linda Connors (970) 481-4796

### **Western Slope**

**Date:** February 20 & 21, 2009

**Coordinator:** Debbie Campbell (970) 242-4903

### **Colorado High School Mock Trial State Tournament**

**Date:** March 13 & 14, 2009

**Location:** Jefferson County Courthouse

### **National High School Mock Trial Tournament**

**Date:** May 6-10, 2009

**Location:** Atlanta, Georgia

### **CBA Mock Trial State Coordinator:**

Carolyn P. Gravit (303) 824-5323 or 1-800-332-6736

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## 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, 2009** to CBA Mock Trial Subcommittee, 1900 Grant St., Ste. 900, Denver, CO 80203. 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](http://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 advances 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, as well as 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 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 at 1900 Grant St., Ste. 900, Denver, CO 80203.

### **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 throughout 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 schools 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, a team teacher coach or a 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 the 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, audio recording, and still photography by opposing teams. However, videotaping, audio recording, and still photography by the media and the Colorado Bar Association will be allowed.

If either competing team videotapes or audio tapes a trial round, the trial tapes are only to be used by the two competing teams. These audio 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, and 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 coaches 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 *only verbally or through notes*; however, no

disruptive communication is allowed. No one (including, but not limited to, team members, coaches, teachers, and observers) shall communicate during trial by using any device capable of communicating (including, but not limited to, laptops, computers, pagers, beepers, phones, PDAs, organizers, radios, headsets, tape players, MP3 players, and portable fax machines); during trial any and all devices capable of communicating shall be turned “off” completely so they cannot, and will not, be used in any way during trial. 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 (example: hats, pins, gloves, scarves, etc.), 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. However, this rule does not prohibit the introduction of witness statements if admissible by the Mock Trial Rules of Evidence and is permitted by the Judge.

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 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 admissible, 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 is 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 stands 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 panelists are 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:

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of *nolo contendere*;
- (3) any statement made in the course of any proceeding under Rule 11 of the Mock Trial Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
- (4) any statement made in the course of plea discussions 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:

- (1) communications between husband and wife;
- (2) communications between attorney and client;
- (3) communications among grand jurors;
- (4) secrets of state; and
- (5) communications between psychiatrist and patient.

**Article VI. Witnesses**

**Rule 601. General Rule of Competency**

Every person is competent to be a witness.

**Rule 602. Lack of Personal Knowledge**

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

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

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

### **Article VII. Opinions and Expert Testimony**

#### Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences 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, 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 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:

- (1) Present Sense Impression—A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, immediately thereafter.
- (2) Excited Utterance—A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
- (3) Then Existing Mental, Emotional, or Physical Conditions—A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
- (4) Statements For Purposes of Medical Diagnosis or Treatment — Statements made for the purpose of medical diagnosis or treatment.
- (5) Recorded Recollection—A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.
- (6) 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.
- (18) Learned Treatises — To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in 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.
- (21) Reputation as to Character—Reputation of a person's character among associates or in the community.
- (22) Judgment of Previous Conviction—Evidence of a judgment finding a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

### Rule 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.



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Memorandum

**To:** All Mock Trial Team Members, Attorney Coaches, Teachers, and Observers  
**From:** Colorado Bar Association  
**Date:** September 30, 2008  
**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 of 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 2009 Mock Trial Program rules, and that we understand and agree to abide by all of the rules during the tournament.

**TEAM MEMBERS:**

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**TEACHER COACH(ES):**

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**ATTORNEY COACH(ES):**

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**STUDENT TIMEKEEPERS:**

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**NOTE:** Only one Team Roster will need to be submitted to your Regional Coordinator at the beginning of your regional and/or at the 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. Please bring extra copies to your Regional and/or State tournament.

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

CRITERIA FOR EVALUATING STUDENTS' DIRECT AND CROSS EXAMINATIONS	PERFORMANCE DESCRIPTION
<p><b>Organization:</b></p> <ul style="list-style-type: none"> <li>Progressive, logical with an easy to follow pattern of questioning</li> <li>Organization was consistent with theory/theme of case, opening statement and other examinations</li> <li>Used appropriate transitions</li> </ul> <p><b>Delivery:</b></p> <ul style="list-style-type: none"> <li>Pace (speed) of examination was appropriate for dramatic effect and emphasis of</li> </ul>	<p><b>OUTSTANDING</b> <b>9-10</b> (The student exhibited 90 to 100% of the listed criteria.)</p> <p><b>EXCELLENT</b> <b>7-8</b></p>

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

# CBA STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT SCORESHEET

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

Round:            I            II            III            IV            Championship Round

**Prosecution:** \_\_\_\_\_  
(team code)

**Defense:** \_\_\_\_\_  
(team code)

On a scale of 1 to 10 (Not Effective 1 2 3 4 5 6 7 8 9 10 Outstanding), rate the Prosecution and Defense Attorneys and Witnesses in the categories below based on Scoring Criteria provided.

**DO NOT USE FRACTIONS OR PARTIAL POINTS** -- Score **each** of the listed categories

**PROSECUTION ATTORNEY      DEFENSE ATTORNEY      WITNESS**

	OPENING	<input type="text"/>	OPENING	<input type="text"/>		
Π's 1st Witness	Direct Examination	<input type="text"/>	Cross Examination	<input type="text"/>	Π Witness Performance (Direct and Cross Examination)	<input type="text"/>
Π's 2nd Witness	Direct Examination	<input type="text"/>	Cross Examination	<input type="text"/>	Π Witness Performance (Direct and Cross Examination)	<input type="text"/>
Π's 3rd Witness	Direct Examination	<input type="text"/>	Cross Examination	<input type="text"/>	Π Witness Performance (Direct and Cross Examination)	<input type="text"/>
					<b>Prosecution Witness Subtotal</b>	<input type="text"/>
					Maximum Points - 30	
Δ's 1st Witness	Cross Examination	<input type="text"/>	Direct Examination	<input type="text"/>	Δ Witness Performance (Direct and Cross Examination)	<input type="text"/>
Δ's 2nd Witness	Cross Examination	<input type="text"/>	Direct Examination	<input type="text"/>	Δ Witness Performance (Direct and Cross Examination)	<input type="text"/>
Δ's 3rd Witness	Cross Examination	<input type="text"/>	Direct Examination	<input type="text"/>	Δ Witness Performance (Direct and Cross Examination)	<input type="text"/>
					<b>Defense Witness Subtotal</b>	<input type="text"/>
						(Evaluator's Signature)
						(Print Last Name)
	CLOSING ARGUMENT	<input type="text"/>	CLOSING ARGUMENT	<input type="text"/>	Π Attorney Points (Maximum Points - 80 )	<input type="text"/>
					PLUS	
	<b>Prosecution Attorney Performance Subtotal</b>	<input type="text"/>	<b>Defense Attorney Performance Subtotal</b>	<input type="text"/>	Π Witness Points (Maximum Points—30)	<input type="text"/>
	Maximum Points - 80		Maximum Points - 80		PLUS	
	<b>Professionalism Points:</b>				Π Professionalism Points (0, 1, 2, 3)	<input type="text"/>
	Please award 0-3 points but no more than 3 points total between the two teams. (No fractions/decimal points!)	Π <input type="text"/>	Δ <input type="text"/>		Π TEAM TOTAL POINTS	<input type="text"/>
						Δ TEAM TOTAL POINTS <input type="text"/>

The WINNER of the round based on TOTAL POINTS was: (circle one)

48  
PROSECUTION

DEFENSE

REMINDER: PLEASE BE MINDFUL WHEN WRITING COMMENTS THAT STUDENTS WILL SEE THESE SCORESHEETS. YOUR SENSITIVITY TO DIVERSITY TO STUDENT SOCIO-ECONOMICAL, CULTURAL, RELIGIOUS AND EDUCATIONAL DIVERSITIES IS ENCOURAGED AND APPRECIATED. THANK YOU.

PROSECUTION		DEFENSE	WITNESSES	
	OPENING STATEMENT	OPENING STATEMENT		
II's 1st Witness	Direct Examination	Cross Examination	II Witness Performance (Direct and Cross Examination)	
II's 2nd Witness	Direct Examination	Cross Examination	II Witness Performance (Direct and Cross Examination)	
II's 3rd Witness	Direct Examination	Cross Examination	II Witness Performance (Direct and Cross Examination)	
Δ's 1st Witness	Cross Examination	Direct Examination	Δ Witness Performance (Direct and Cross Examination)	
Δ's 2nd Witness	Cross Examination	Direct Examination	Δ Witness Performance (Direct and Cross Examination)	
Δ's 3rd Witness	Cross Examination	Direct Examination	Δ Witness Performance (Direct and Cross Examination)	
	CLOSING ARGUMENT	CLOSING ARGUMENT		
II	General Team Comments:			
Δ	General Team Comments			

# THE PROBLEM

## CASE SUMMARY

By way of background, here's a little history. A portion of the written orders General Wilkinson gave to U.S. Army Lieutenant Zebulon Montgomery Pike on June 24, 1806, were as follows:

Sir,

You are to proceed without delay to the Cantonment on the Missouri, where you are to embark the late Osage captives and the deputation recently returned from Washington, with their presents and baggage, and are to transport the whole up the Missouri and Osage rivers to the town of the Grand Osage.

The safe delivery of this charge at the point of destination *constitutes the primary object of your expedition*; therefore you are to move with such caution as may prevent surprise from any hostile band, and are to repel with your utmost force any outrage which may be attempted.

Having safely deposited your passengers and their property, you are to turn your attention to the accomplishment of a permanent peace between the Kansas and Osage nations; for which purpose you must effect a meeting between the head chiefs of those nations, and are to employ such arguments, deduced from their own obvious interests, as well as inclinations, desires, and commands of the president of the United States, as may facilitate your purpose and accomplish the end.

A third object of considerable magnitude will then claim your consideration. It is to affect an interview and establish a good understanding with the Yancions, Tetaus, or Camanches.

For this purpose you must interest White Hair, of the Grand Osage, with whom and a suitable deputation you will visit the Panis [Pawnees] republic, where you may find interpreters, and inform yourself of the most feasible plan to bring the Comanches to a conference. Should you succeed in this attempt—and no pains must be spared to effect it—you will endeavor to make peace between that distant powerful nation and the nations which inhabit the country between us and them, particularly the Osage; finally, you will endeavor to induce eight or ten of their distinguished chiefs to make a visit to the seat of government next September, and you may attach to this deputation four or five Panis and the same number of Kansas chiefs.

As your interview with the Comanches *will probably lead you to the head branches of the Arkansas and Red Rivers, you may find yourself approximated to the settlements of New Mexico. There it will be necessary you should move with great circumspection, to keep clear of any hunting or reconnoitering parties from that province, and to prevent alarm or offense; because the affairs of Spain and the United States appear to be on the point of amicable adjustment*, and moreover it is the desire of the president to cultivate the friendship and harmonious intercourse of all the nations of the earth, particularly our near neighbors, the Spaniards.

In the course of your tour, you are to remark particularly upon the geographical structure, the natural history, and population of the country through which you may pass, taking particular care to collect and preserve specimens of everything curious in the mineral or botanical worlds, which can be preserved and are portable. Let your courses be regulated by your compass, and your distances by your watch, to be noted in a field book; and I would advise you, when circumstances permit, *to protract and lay down in a separate book the march of the day at every evening's halt.*

The instruments which I have furnished you will enable you to ascertain the variation of the magnetic needle and the latitude with exactitude; and at every remarkable point I wish you to employ your telescope in observing the eclipses of Jupiter's satellites, having previously regulated and adjusted your watch by your quadrant, taking care to note with great nicety the periods of immersions and emersions of the eclipsed satellites. These observations may enable us, after your return, by application to the appropriate tables, which I cannot now furnish you, to ascertain the longitude.

It is an object of much interest with the executive to ascertain the direction, extent, and navigation of the Arkansas and Red Rivers ....

Wishing you a safe and successful expedition, I am Sir with much respect and esteem your obt. sert.

Clearly the orders were written so that neither President Thomas Jefferson nor the Secretary of War Henry Dearborn could object to their content. However, history is not clear regarding whether Pike was given additional *unwritten* orders by General Wilkinson or whether Pike otherwise somehow understood that General Wilkinson might be pursuing personal objectives, possibly contrary to the interests of President Jefferson and the United States. Allegations swirled that General Wilkinson might be plotting treason with Aaron Burr, possibly even though their own invasion of the Spanish territories to the west—without regard to the interests of the United States. (Aaron Burr subsequently was acquitted of treason charges, but his political career was over.) Alternatively, or possibly in addition, allegations swirled that General Wilkinson might be seeking to extend the lucrative fur trading business or other profit-making ventures into such territories—for his own personal gain. This merely highlights the significance, in historical terms, of the recently discovered, purportedly Pike Journal from Santa Fe. See Exhibit 2 in the Problem.

Lt. Pike left Missouri, near St. Louis, on July 15, 1806, to embark on this expedition with 22 men (including a doctor-diplomat and the son of General Wilkinson) and 51 Osage and Pawnee Indians. The expedition had its perils as it explored the western frontier; hostile encounters were possible; food and provisions were inadequate (hunting game was essential to survival) and clothing and shoes were inadequate for a cold and snowy Rocky Mountain winter.

On Sunday, November 15, 1806, in the afternoon, Lt. Pike saw a mountain that first “appeared like a small blue cloud.” Clearly, Native Americans, and probably Spaniards, would have seen this mountain before Lt. Pike and his men. But the magnificent peak ultimately would bear the name of Lt. Pike—Pike’s Peak.

In time, the Spaniards discovered Lt. Pike and his men and escorted them to Santa Fe, while confiscating Pike’s journals. Pike was able to observe Spanish defenses and journals, while hiding the journals in such places as his men’s rifle barrels, while being escorted back to United States territory.

Undoubtedly, the knowledge gained on the various exploratory expeditions during Thomas Jefferson’s Presidency helped, at least to some extent, as the United States subsequently moved westward.

Now, here’s the modern day problem you face. Two rival university professors are engaged in a feud to discredit each other. One, Bennie Gates, claims to have a long-lost Pike Journal from Santa Fe, just recently discovered in a barn in Kiowa, Colorado, which suggests that Pike was involved in treacherous, possibly treasonous plots while on his expedition. The other, Henri Jones, claims that this newly discovered journal is



a fraud--a fraud that should not damage the stellar reputation of either President Thomas Jefferson or Lt. Pike, as admiringly detailed in her/his recent book.

Then, on August 9, 2008, Bennie Gates is found on the floor of his/her home study, unconscious from a blow to the head (blunt force trauma from some weapon). And this newly discovered journal, stored temporarily in his/her file cabinet there, has vanished. The prime suspect, of course, is rival Henri Jones who is charged with assault, burglary, and theft.

\*\*\*\*\*

IN THE DISTRICT COURT OF COLORADO  
IN AND FOR JEFFERSON COUNTY

\*\*\*\*\*

STATE OF COLORADO,  
Plaintiff,

TRIAL INFORMATION

vs.

CRIMINAL NO. 08CRIM4506

HENRI JONES,  
Defendant

\*\*\*\*\*

COUNT I

COMES NOW Alex Marston, as Prosecuting Attorney, and in the name and by the authority of the State of Colorado accuses Henri Jones of the crime of ASSAULT IN THE FIRST DEGREE committed as follows:

The said Henri Jones on or about the 9<sup>th</sup> day of August, 2008, in the County of Jefferson, State of Colorado, did, with intent to cause serious bodily injury to Bennie Gates, cause serious bodily injury to her/him by means of a deadly weapon.

COUNT II

COMES NOW Alex Marston, as Prosecuting Attorney, and in the name and by the authority of the State of Colorado accuses Henri Jones of the crime of BURGLARY IN THE FIRST DEGREE committed as follows:

The said Henri Jones on or about the 9<sup>th</sup> day of August, 2008, in the County of Jefferson, State of Colorado, did knowingly and unlawfully enter the residence of Bennie Gates with intent to commit therein a crime, other than trespass, against another person or property, and while there, did commit the crime of assault, by inflicting bodily injury, on Bennie Gates or, alternatively, while there, was armed with a deadly weapon.

### COUNT III

COMES NOW Alex Marston, as Prosecuting Attorney, and in the name and by the authority of the State of Colorado accuses Henri Jones of the crime of BURGLARY IN THE SECOND DEGREE committed as follows:

The said Henri Jones on or about the 9<sup>th</sup> day of August, 2008, in the County of Jefferson, State of Colorado, did knowingly break into and unlawfully enter the residence of Bennie Gates with intent to commit therein a crime against another person or property.

### COUNT IV

COMES NOW Alex Marston, as Prosecuting Attorney, and in the name and by the authority of the State of Colorado accuses Henri Jones of the crime of THEFT committed as follows:

The said Henri Jones on or about the 9<sup>th</sup> day of August, 2008, in the County of Jefferson, State of Colorado, did knowingly obtain or exercise control over the Zebulon Pike documents, documents of value belonging to Bennie Gates, without authorization and with the intent to deprive Bennie Gates of the use or benefit of such documents.

A TRUE INFORMATION

\_\_\_\_s/ Alex Marston\_\_\_\_\_  
Prosecuting Attorney  
Golden, Colorado

## STIPULATED FACTS

1. All exhibits included in the problem are authentic and accurate reproductions of the originals in all respects, except possibly for Exhibit 2 (the Pike Journal from Santa Fe) and possibly for Exhibit 7. No objections as to the authenticity of the exhibits shall be entertained, except possibly for Exhibit 2 and Exhibit 7.
2. All witness statements are assumed to be signed and authentic.
3. The Trial 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. Hair and blood samples retrieved from the piece of wood found with the ladder matched those of the victim, Bennie Gates.
6. Fiber samples retrieved from the ladder are consistent with those of the button found at the scene and the sweater retrieved from the Defendant, Henri Jones.
7. The District Court ruled, in an evidentiary hearing held prior to trial, that the Defendant was properly advised of his/her rights via a Miranda warning administered by the interrogating officer, and his/her waiver of those rights was knowingly and voluntarily given. The Defendant will testify at trial and has waived any and all Fifth Amendment Rights.
8. The Defendant filed motions to suppress the evidence collected at the scene and from the Defendant on the basis of unreasonable search and seizure under the Fourth Amendment. The District Court has previously ruled against the Defendant on those motions, and they will not be revisited at trial.
9. Both parties have stipulated that the material in the Case Summary does not constitute evidence, and no reference to the allegations or facts therein may be entered or referenced during the trial.
10. All parties are properly before the District Court. Jurisdiction and venue are proper.
11. Bennie Gates suffered severe head trauma, a concussion and a fractured left wrist as a result of the break-in at his/her house on August 9, 2008. No further medical records are necessary to prove the extent of injuries received.
12. Ravens have the ability to learn to speak. Lenore has been taught to speak.
13. The July 15, 2008, letter Exhibit 7 is in Helvetica Neue font.
14. Exhibit 2 represents the copy of the document loaned by Professor Gates to Professor Jones and used by Professor Oxley for his/her analysis. (The original of this document, of course, was allegedly stolen from Professor Gates' office on the evening of August 9, 2008, and has not been recovered.)
15. Copies of Exhibit 7 were provided to Detective Cudusky by Professor Gates and also by Abby Chase, both of whom received them. This letter purportedly was sent by Professor Jones.
16. The watermark on Exhibit 7 is visible on the original Exhibit 7. It is not visible on the copies.

## **EXHIBITS**

The following exhibits may be used by teams in competition. They may be marked by the individual teams and should be referred to by number, as follows:

**Exhibit 1    Zebulon Pike Journal — Copy from Library of Congress**

**Exhibit 2    Zebulon Pike Journal from Santa Fe**

**Exhibit 3    Fingerprint Analysis Report**

**Exhibit 4    Footprint Analysis Report**

**Exhibit 5    Crime Scene Photo**

**Exhibit 6    Ladder and Lumber Found by Police**

**Exhibit 7    Henri Jones' July 15, 2008 Letter**

**Exhibit 8    Bennie Gates' July 17, 2008 Letter**

## **BENNIE GATES – WITNESS STATEMENT: PROSECUTION**

1. My name is Bennie Gates, and I am a Professor of History at the University of Colorado in Boulder. I have an undergraduate degree in Early American History from the University of Virginia in Charlottesville, and completed my graduate work at Wake Forest University in Winston-Salem, North Carolina. I am a nationally recognized expert in early American History, including the expeditions of Lewis and Clark, and Lt. Zebulon Montgomery Pike. I am a frequent guest on the History Channel, the Biography Channel and A&E Television. I have done numerous interviews with network, cable and local television outlets. Most recently, you may have seen me discussing the important similarities between the stories of ghosts seen at both the Jamestown Settlement and Gettysburg.
2. My success arises because I dig deeper than the average historian, researching and exposing previously unknown stories from American history. This is why I was lucky enough to be the recipient of the long lost journal pages of Lt. Zebulon Montgomery Pike, recently unearthed in the barn of Al and Jean Packer. The Packers had relatives who owned a boarding house near modern-day Santa Fe where Pike purportedly stayed on his expedition. When the boarding house was razed in the 1980s to make room for a commercial outlet store project, all of the personal property was transferred to the barn at the family ranch in Kiowa, Colorado. Apparently, Jean was familiar with my work and she contacted my office after finding the journal in the barn loft. I was delighted to examine the journal and I believe the information contained there in will add a fresh perspective to this chapter of our country's history.
3. Naturally, not everyone is as excited as I am to make this news public. For example, my own colleague, and likely assailant, Henri Jones, was not pleased in the least. If you have not met our Professor Jones by now, when you do, I'm sure you'll find s/he's a pompous piece of work, always trying to impress people, waiving around that Joel and Sharon S. Greer, Chair of Distinguished Teaching title s/he holds, as if it means a thing to anybody other than her/him. I am actually the one who is the most published in the History Department; I am the one the media calls; and I am the one who travels internationally to speak on early American history. While "Ho-Hum" Jones has been "researching and writing" the same tired topic for the past six years, I have written books, published articles and was a historical consultant on two Hollywood films. So, who's the star of the History Department?

4. Ah, Jones and her/his precious “underappreciated” Pike and perfect President Thomas Jefferson...In her/his mind, Pike was not just a dashing, courageous and admirable military hero; he was some kind of 19th century MacGuever! S/he was so desperate to keep the information I discovered under wraps that s/he resorted to beating me unconscious to steal it. Henri wants the world to believe that history is noble and inspired, but it isn't. Pike and the others were people just like the rest of us; they made mistakes. Zebulon Pike is a perfect example of the common man: Thomas Jefferson thought he was a klutz and did not trust him. His dubious association with the Aaron Burr-conspiracy to divide the nation is still unexplored. Quite simply his/her precious Pike was captured by Governor Joaquin del Real Alencaster of New Mexico, conveniently taken “prisoner” in Spanish territory (today Colorado), only to be released unharmed weeks later after receiving the grand tour of Spain's New World military industrial complex! But, Pike was not working for President Jefferson really, nor was he working both sides! No, not possible. Traitor and double-agent General James Wilkinson and Aaron Burr just hid Pike's true involvement when their conspiracy fell apart. I guarantee it.

5. Now I'm not out to ruin anyone's reputation, that's not my intent at all. I'm just showing another side of what could have occurred—the carnal motivations behind historic events. It's likely Pike's ego got ahead of him, being a middle-management soldier, so he decided to join the scheme of his commander General Wilkinson, perhaps unbeknownst at the start as to which strings Aaron Burr was controlling. General Wilkinson, an agent for Spain, the United States, Aaron Burr, and his own economic interests (that's more than a double agent), needed someone to explore the Spanish controlled territories without arousing too much suspicion. Pike, a low-profile charming and gracious gentleman fit the bill. Pike could be out wandering where no man could track him down, and could circulate for several years, gathering intelligence as a traitor, while Jefferson would be distracted with his pet Lewis and Clark project; giving Wilkinson and Burr time to align things right under the President's nose. What a story, huh?! Answers a darn lot of questions, if you ask me. Heck, what about Pike's mysterious death? Decorated soldier, supposedly the first person of European descent to crest a summit in the Rocky Mountains (Native Americans undoubtedly were first), summiting in the dead of a Colorado winter, survived incarceration in Mexico (not a hopeful prospect according to the Kingston Trio), only to be felled storming York by flack from a mysteriously detonating powder magazine. I'm telling you, 19th century black-ops take-down—it's only logical. Heck, Pike never even set foot on Pike's Peak; it was all subterfuge with that guy!

6. But Henri doesn't want to be honest with America about its roots. S/he wants all of it to stay untouched, with pure motives, fine minds and true hearts. Bah! People don't respond to that. They want history to come alive; they want something they can relate to. And that's what I try to give them.

7. Henri and I have completely different beliefs about how history should be researched and shared. I know folks gossip about our "feud." Sure, we are rivals, but it just isn't that extreme, at least not on my part. I don't really care for Jones, but I have no plot to take her/him down, sabotage her/his book deal, steal her/his TA, turn the faculty against her/him, or whatever else s/he claims. Jones just isn't that important to me. In a gesture of goodwill, though, I did invite Jones to some of the department's "Seven Degrees of Separation" socials at my house last fall. There's pretty much an open invitation to the CU faculty and history grad students, though I made Jones a special invitation for the back to school gathering; it was the first one of the new academic year, and I was just trying to get her/him out with real people. That was the beginning of his/her plan to get the journal though, I'm sure.

8. Maybe I went too far at that last party, two nights before s/he attacked me. It was poor judgment on my part. I can see that now. I had been noting similarities between Pike's aimless, untrustworthy wandering and Jones' academic career, in a purely objective way, of course. Everything from their lack of apparent direction to the way both ended up toiling in obscurity in Colorado and how neither could ever seem to get a date. I was on a roll, but Henri didn't take it well. The other faculty members got a kick out of it, though! Jones didn't even try to reciprocate, just called me some name with seven or eight syllables and stomped off. Nothing got physical between us or between Abby, my TA, and Jones that I know of—Jones just trudged off like a beaten dog.

9. You probably want to know about that Saturday night in my office, though. Well, I took a severe blow to the head that night, I blacked out cold, and the fractured wrist may have slightly interfered with my memory, but I know I was working in my office. It was dark outside and somewhat late—probably just before 9 p.m. I remember because I was waiting for the "Aaron Harper Show" on KPBS to begin. I can't remember precisely what I was working on, but it was probably documentation regarding the journal pages. My raven, Lenore, seemed agitated. I vaguely recall the sound of smashing glass, but it's hazy...I didn't actually see the intruder's face, but there can't be much question about who it was. I don't know how it was that I was hit on the back of the head...I suppose, I turned around when I heard the window smash behind me...I must have struggled



with the intruder. I can't imagine how Lenore got out of her cage...I'm sorry I can't be more help. So much of that night is simply lost to me. The officer said that I was babbling incoherently when s/he came to speak with me in the hospital. I don't remember that at all, but I'm sure that's normal immediately after a blow to the head, anyone would agree. I'm sure the pain killers for the fractured wrist were taking effect, too. Can't put a lot of stock in anything said when your patient's delirious, you know.

10. The only things that appeared to be missing from the house afterward were the Pike Journal pages. I typically keep them in a safe in my campus office (since I'm sure the newly discovered one from Santa Fe is worth more than \$50,000), but I brought them home in early August to follow-up on a few things. I have no idea how Jones could have known they were at my home office, though, I do remember Abby telling me that s/he had caught Jones at the last social wandering aimlessly around my house "looking for a bathroom." The other valuables in the office went untouched. Clearly, the assailant wanted only one thing—the Pike Journal pages.

11. I'd heard through the grapevine that Jones had a history of domestic violence with her/his ex, but I had no idea that s/he was desperate enough to attack me. Though I guess I should have suspected things might get out of hand when Jones had asked to borrow my Pike Journal pages to have them analyzed, and I gave her/him "slightly altered" copies to throw her/his "expert" off a bit. Jones was using a former colleague of ours for the analysis—Professor Paris Oxley, best known for her/his historical research conducted through a Ouija Board, tea leaves and a crystal ball. I was walking down our faculty hallway one afternoon, a week or so before I was attacked, and overheard Oxley and Jones talking. Oxley was infuriated. S/he yelled, "Henri, you should get the rascal if it's the last thing you do."

12. One piece of our "feud" I may have left out involved my teaching assistant, Abby Chase. I spent a lot of time with her/him, advising her/him on her/his thesis and discussing the importance of the journal pages and how they would change our lives. There were rumors of an inappropriate relationship between Abby and Professor Jones. I've also heard that the relationship ended because of accusations of academic dishonesty. I don't think the accusations of cheating are true. Abby was outraged by the whirlwind plagiarism scandal that engulfed one of my fellow professors. S/he has been nothing but the perfect TA for me; s/he would do anything I needed done to further my research. If Jones thinks Abby is somehow involved in this though, s/he has an unduly-inflated ego.

13. As far as the murmurings that the journal documents were forged, I wouldn't know the first thing about pulling off such a caper. I suppose one could find something on the Internet on the subject, but how do you Google "forge a long lost historic Zebulon Pike spy communiqué/memoir that will turn the world on its ear?" Abby actually maintains my academic site on the CU faculty Web site. I've never really had the need to learn to do anything of substance online, including searching for such nonsense as fake historical materials. Abby has a key to both my home office and campus office in case I'm running late and s/he needs to get opened up for office hours. I've never seen her/him at my computer though, and I've asked her/him not to use it—I'm very private about things like that. I presume my request was respected.

14. Jones really shouldn't keep things inside so much. I suppose my kidding around at the party, the knowledge that the missing pages would soon be public, the realization that I would once again have overshadowed Jones and her/his silly little book – I suppose it was just too much for Jones. S/he snapped, and I took the brunt of it. Pity, you know.

Subscribed and Sworn to on this 25 Day of August, 2008

*Bennie Gates*

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Witness Signature

## **A. CUDUSKY – WITNESS STATEMENT – PROSECUTION**

1. My name is Detective A. Cudusky. I work in the detective unit of the City of Golden, Jefferson County Police Department. I have been in law enforcement for over 20 years now. I spent four years as a beat officer in the city of Denver. My spouse was not happy with me working in “the city.” S/he felt it was too dangerous, and I have to admit there were times when I was scared – sometimes to the point of not knowing what I was doing. Violent crimes make me nervous like that. Moreover, the city had this ridiculous rule that you have to live in the city to be on the force. I guess I made my feelings on that matter plenty clear during those four years because I was passed up for promotion three times. The bosses claimed it was because of several subpar performance evaluations, but I know it was because I was so vocal about the stupid residency requirement.
2. Anyways, I eventually took a job with the City of Golden, Jefferson County P.D. where I rode patrol cars for about three years, then was a deputy investigating officer for six years and finally was a full detective for about the last seven years. I attended the Colorado Northwestern Community College's Colorado Basic Law Enforcement Academy where I received basic training. Since coming to Golden, I have had over 300 hours of additional training in forensics in the evening programs at Colorado State University and at Auraria Campus. My main emphasis since joining the Golden force has been in crime scene investigation. I have had extensive training in securing and investigating a crime scene, collecting and securing evidence, and also DNA, footprint and fingerprint collection and analysis. I have investigated over 120 cases, although only six of which were burglaries (we don't get many burglaries in Golden), and testified in court as a police crime scene investigator over 75 times. For the last two years, I have been a presenter on crime scene investigation at the annual Quad-State Investigators Association Conference that rotates between Colorado, Utah, Nevada and New Mexico each year.
3. On Saturday, August 9, 2008, at approximately 9:55 p.m., I received a call from the dispatcher about a possible breaking and entering at the home of a CU professor in Golden. Apparently, a student assistant had called 911 to say s/he had arrived at the professor's home and, after having tried the doorbell several times, went around the back of the building to see if a light was on in the study. Apparently, according to the dispatcher, when the student got to the back of the building s/he noticed broken glass on the ground, and it appeared in the dim moonlight that the window to the office had been smashed. Anyways, the student got concerned and did the right thing by calling the police.

4. Upon arrival at the home, later learning that it belonged to Professor Bennie Gates, I was met by Gates' graduate assistant, Abby Chase. S/he seemed really upset; I remember thinking at the time, perhaps too upset for the circumstances. S/he was visibly shaken and kept moving back and forth, often just muttering and rambling about stuff. The only thing I remember her/him specifically saying at that point, not to me but too her/himself, was "It's gone horribly wrong; I know it's nothing good." And, "it had to be done." I remember at the time, I thought s/he meant s/he had to call the police. I tried to calm her/him down by saying, "Yes, certainly, calling the police was the right thing. It did have to be done." Her/his response was a little odd because s/he looked up as though s/he had forgotten I was even there and said, "Calling the police? Oh yeah, that's it."

5. I asked him/her to show me where the window in question was and s/he took me around to the back of the house. The house itself is a two-story bungalow with a flagstone patio running most of the length of the back of the house. The window in question was on the second floor and would have required at least a stepladder to enter it. The window was directly above the patio, a place where I subsequently learned Professor Gates held monthly "Seven Degrees of Separation" get-togethers for other faculty members and their assistants. There was just enough light coming from the office window to see that the window had been totally shattered. Anyways, the two of us walked back and forth across that patio looking for what might have been used to shatter that window and any other possible evidence. Abby seemed like a great kid and was very helpful. Abby pointed out a button s/he found on the ground near the window. S/he didn't pick it up, but did bend down for a closer look before calling me over. It turns out the button matches those on a sweater belonging to Professor Henri Jones. During a later search of Jones's closet, I located the sweater in question and noted that one button was missing. It appeared that the button had been ripped off by force from the garment. I theorize that the button in question must have snagged on the ladder as s/he came down from the window in some haste. Threads found on the recovered ladder further support this. Analysis found that the threads are consistent in type and dye to both the button found at the scene and the sweater recovered from Professor Jones.

6. Next, we proceeded to the front door of the house where I rang the bell and then pounded on the door several times, but there was no answer. Concerned that we might have an injured victim, or worse, inside I decided it was time to announce and break down the door. But, just as I prepared to do that, Abby said, "Wait, I just remembered I have a key. You see, I am Dr. Gates's teaching assistant and I often have to come here to work on projects when s/he is off teaching." That took me by surprise, so I asked why s/he hadn't used the key earlier. S/he said, "I guess I was so worried about Bennie that I forgot I even had it."

7. We entered the house and Abby immediately led me up a small flight of stairs to the office saying, “S/he’s up here. I know s/he is.” When we entered the office there didn’t seem to be any signs of a break-in, much less a struggle. From the doorway you could see the broken window in the back. There was a bird cage open on a stand near the professor’s desk. I noticed a number of papers scattered all over the desk and an open file drawer behind the desk next to a double-wide white book case. That’s when Abby grabbed my arm and said, “Oh No! Dr. Gates.” There on the floor next to the desk was the body of Dr. Gates. S/he had a pretty good size bump on the head and her/his lower left arm appeared jammed below her/him at a funny angle. I rushed over to Dr. Gates and felt her/his pulse – s/he clearly had one, but her/his breathing was shallow. I told Abby to call 911 for an ambulance and then told her/him to wait outside for the ambulance to arrive. Looking through the open file drawer, Abby exclaimed, “Oh, (expletive deleted) the Pike journal pages are missing!”

8. I then put on some gloves to begin to collect evidence. I remember asking out loud, to no one in particular, “What happened here?” To which there was the response, “Ho-Hum! Ho-Hum! Here comes Ho-Hum. Never more Ho-Hum.” I turned to find a coal black raven perched on another bookcase in the corner of the room. She was clearly in an excited state and just kept repeating, “Ho-Hum! Ho-Hum! Here comes Ho-Hum. Never more Ho-Hum. Here comes Ho-Hum. Never more Ho-Hum.”

9. I then heard rustling around in the bushes surrounding the patio below the office window. Thinking the perp may still be around I rushed to window only to find Abby rummaging around in the bushes beneath the window. I yelled from the window that s/he should stop what s/he was doing and leave the investigating to the trained professionals. I asked her/him what s/he was doing and s/he said, “I just wanted to let you know the EMTs are here.” Sure enough as s/he was saying that the EMTs entered the room. They stabilized Dr. Gates and took her/him to Golden General Hospital. I told them to call my number at the Police Department as soon as s/he was stable enough to interview.

10. I then went back to the window to ask Abby to help me corral the raven, which I subsequently learned was called “Lenore.” But when I got there, Abby was nowhere to be found. I figured s/he was so upset that s/he had gone home or perhaps s/he had gotten into the ambulance with Professor Gates. It took me a little while, but I was eventually able to get Lenore back in her cage. I went out to my unit and got my forensics kit. I set up crime scene tape around the patio outside and across the door to the office and then proceeded to dust everywhere for fingerprints. My lab was subsequently able to identify several good prints I took off the phone and the file cabinet. A number of them matched Professor Gates, of course, but two of them from the cabinet matched Abby and one set from the cabinet, a partial print set, may or may not have

belonged to a Professor Henri Jones. No, I'm not entirely certain what part of the cabinet the prints came from. Most likely from the side or from the handle. In my professional opinion and given all of the other evidence, I'm sure that they are Professor Jones' prints. By then, my forensics team had arrived. I filled them in on what I knew and instructed them to search the patio area for evidence. They were able to come up with four fairly fresh footprints on the patio area under the window, but were unable to find any ladder or stepladder in or around the patio or the garage in back. The footprints were obtained by a relatively new technique called "latent footprint" analysis. Latent shoe prints exist in almost all interior crime scenes, but are often ignored by investigators or destroyed by initial responders before prints can be processed.

11. Latent shoe prints are impressions of shoe treads left by an individual on a surface. While these prints cannot be seen by the naked eye, they can be revealed using standard fingerprint powders. Like fingerprints, latent shoe prints can be used to place a suspect at a crime scene. Though each shoe manufacturer produces hundreds of various styles of footwear with the same tread design, these identical prints quickly become unique through the owner's use. Wear will vary depending on individual walking styles and contact with different surfaces. Any scratch, nick or cut will result in points of comparison, making the shoe one-of-a-kind.

12. While not conclusive, it seemed to me as though the window had clearly been broken from the outside, since most of the glass was on the inside of the room. I was a little concerned that all the glass seemed to be piled only around the sill and not much in the room. That is very unusual. I was unable to locate anything that could have been the weapon used to knock out Professor Gates. No, I really didn't have a special expert come in and measure the amount of glass inside and outside the window. It would just take too much time. And I don't subscribe to that fracture angle analysis nonsense anyway. Besides, such a study costs too much, and is only the kind of thing you see on CSI television shows. It was late. I had already had a long day and I still needed to do a lot of other things to conclude my investigation. Besides, I know enough about crime scenes to know a simple breaking and entering when I see it—and I already had a good suspect. There is such a thing as overkill, you know.

13. I instructed my forensics team to canvas the neighborhood and look for witnesses, a weapon and/or the missing ladder. They returned in an hour or so with no witness names, but had a small homemade ladder and a piece of wood made out of the same wood as the ladder with hair fibers on it that subsequently matched Professor Gates' hair. Both items had been found in an overgrown area located immediately behind the garage and on the property of Professor Henri Jones approximately three blocks from the crime scene. I took photos of the office and patio area, as well as of the ladder and suspected weapon, and instructed one of

our patrolmen to stay at the scene and make sure it was secured from any intruders. I tagged both the ladder and the piece of lumber and sent them to our lab at the station along with photos and plaster casts of the three footprints. I took photos of the crime scene both that evening and the following day.

14. I then proceeded to Golden General Hospital to interview Professor Gates. The physician in charge, a Dr. Guzman, indicated that Professor Gates was “in no condition to be interviewed.” She claimed that Gates had just regained consciousness, and her/his injuries were debilitating, but no longer life-threatening. Gates had suffered a serious concussion as a result of a blow to the upper right area of the back of the skull and a fractured left wrist, most likely as a result of a fall. Dr. Guzman indicated that she had given Gates a sedative and that I should come back tomorrow after s/he was rested and lucid. Now, I have worked with these doctors before, and they all have this “God” complex where they always think they know best. But, my experience as an investigator has proven that the longer you wait to get information, the greater the chance of losing out on valuable evidence. So, when the doctor turned the corner to go down the hall I slipped into Gates’ hospital room.

15. When I got up to the side of the bed, s/he looked up at me and said, “Is that you? Did it work? What about the networks? Are we on the right track now?” I told her/him that s/he was talking to an investigator, that I had discovered her/him after the burglary and her/his injury, and that I just wanted to ask a few questions. Gates still seemed a bit groggy, but was getting more alert. Then s/he asked, “What happened? How is Lenore? Was anything taken?” I said that the bird was fine and that it appeared as though the only thing missing was some sort of Zebulon Pike document. S/he sighed and said, “But yes, of course. I figured that’s what the scoundrel was after.” When s/he said this, s/he started slurring her/his words again and seemed to be having a hard time keeping her/his eyes open. So, I let her/him go to sleep and moved on with the investigation.

16. I called Chancellor McDermott of CU, apologized for waking him and explained what had happened. I mentioned that we had successfully obtained some fingerprints and footprints at the scene of the crime. He mentioned that all faculty members and students were fingerprinted for security and safety reasons. I asked him to send copies of all those fingerprints to my office. I also mentioned that I had three footprints from the patio near the office window. He asked, “The Seven Degrees patio?” I said “What do you mean, the Seven Degrees Patio?” And he informed me that on the seventh of each month most of the members of the History Department, along with their current graduate assistants and other invited faculty members, met on Gates’ patio for “Seven Degrees of Separation” – apparently a highbrow academic game that also features drinks and snacks. I then asked if he, Chancellor McDermott, had been present at the most recent party. He

indicated that he had on Thursday, August 7, just two days before the break-in. I asked if he might compile a list of all of the faculty and graduate students who attended the party. I instructed my forensics team to compare the plaster casts of the footprints with those of the various faculty members and assistants.

17. The next morning at the station, the lab techs confirmed that after comparison with University records, several of the fingerprints taken clearly matched those of the victim, Professor Gates, two from the filing cabinet matched those of his/her assistant, Abby Chase, and a third set from the cabinet, although only a partial set, most probably were those of Professor Henri Jones. I have had many hours of training in fingerprint analysis and had to agree with my techs that while we could not be 100 percent certain on the Jones' prints, the facts certainly pointed in that direction.

18. My group had spent Sunday morning getting plaster casts of many of the History Department faculty, assistants and those other faculty members whom the Chancellor had noted as being present. Obviously, in such a short period of time, we were not able to get a complete group. My team compared those to the data collected on the footprints found at the site. After doing so, they were able to determine that all of the footprints were less than 72 hours old, that one of the footprints belonged to Professor Jones, one to Abby Chase, one to the chair of the History Department, Dean Wallbanger, and the fourth one was an identical match to the shoes I wear on duty. I was a little embarrassed that in my haste to solve the crime I may have compromised the scene with my own footprints. After careful analysis, no usable prints were recoverable from either the ladder or alleged weapon. That is not surprising as it is often difficult to lift prints off of absorbent surfaces like paper and unfinished worn wood.

19. Next, I went to the home of Abby Chase to get some additional information. I figured since s/he was the first on the scene, s/he could give me some more insight into possible leads for suspects. Yeah, these kinds of interviews are part of the regular course of investigation in a crime and something upon which a good detective will always rely to establish a strong case. Abby told me that s/he was currently working as a graduate teaching assistant (TA) for Professor Gates. S/he had previously worked in the same capacity for another professor in the History Department, Professor Henri Jones, the defendant in this case. Apparently, s/he and Professor Jones had some kind of falling out and, midway through her/his graduate thesis on Zebulon Pike, Abby had switched mentors and was now working with Professor Gates. No, I didn't pursue any details regarding the alleged "falling out" between Jones and Chase; I didn't see it as relevant.

20. Apparently, Abby and Professor Gates were working together to verify the authenticity of some recently discovered Zebulon Pike journal. Abby kept repeating that s/he knew "the content of those lost pages would be very damaging to Professor Jones." Chase reported that Jones was just about to publish a



historical account of Thomas Jefferson's role in the various exploratory expeditions during his presidency, including the Zebulon Pike Expedition to the headwaters of the Arkansas and Red Rivers and beyond. This book, according to Chase, was the culmination of years and years of research by Jones. At the point in the interview when we were discussing the pending book publication, Chase got extremely agitated. S/he told me, "Our finding (the lost pages) will knock that blowhard Jones off her/his high horse and put her/him in the gutter where s/he belongs. S/he is the one you have to nail; there is no doubt in my mind s/he stole those papers and did a number on Professor Gates." I asked her/him how s/he could be so sure and s/he said, "S/he had the motive (the damaging nature of the lost pages) and the means." I asked what s/he meant by that, you know, the means and all, and Chase said "well the ladder of course." S/he then went on to explain that the ladder that had been found belonged to Jones. When I asked how s/he knew that, s/he said "because I helped her/him build it when I was her/his TA." Apparently, while working as a graduate assistant for Jones, Chase was "coerced" (her/his words, not mine) into building a ladder out of the left-over lumber from a recent addition to Jones's house. "That (expletive deleted) made me use the ladder to clean out her/his gutters. I can't tell you how humiliating that was."

21. I asked Chase how s/he came about to discover the break-in. S/he said s/he had been studying in her/his off-campus house and needed some help from Gates. I asked her/him with whom s/he was studying. S/he indicated that s/he was studying alone, but that two of her/his housemates had gone to the annual Shakespeare Festival in Boulder while the rest of her/his house mates were having a film festival in the living room. S/he said, "If I need an alibi, just check with the PHAT boys." Apparently, this was an allusion to the group of friends engaged in the film viewing. S/he walked over to Gates's, which was only a few blocks away, and after repeatedly knocking on Gates's door resulted in no answer, Chase got worried, noticed the broken window and called 911. Did I follow up on Chase's alibi? Of course I did. While s/he certainly didn't need one, any prudent investigator would follow up. I checked with Paul and Allen, two of the group gathered to watch the movies, and they both remembered that Abby was in her/his room most of the evening studying. Both indicated that they remembered Chase leaving the house sometime between 9 and 9:45 p.m. With Chase's whereabouts confirmed, I was already leaning toward this Professor Henri Jones character as our primary suspect.

22. I then went back to the hospital to speak with Professor Gates. S/he seemed much more coherent at that point. I asked her/him if s/he knew of anyone who would have wished her/him harm. S/he said, "Only one person. Professor Henri Jones!" S/he said they had been rivals in CU's History Department for some time. Apparently, they held opposing theories on this Zebulon Pike thing. S/he said s/he had received a letter

from Jones regarding the lost pages and that in it Jones had threatened her/him if s/he published those papers as the real thing. S/he later gave me a copy of the letter from her/his files and a copy of the reply letter that Gates sent back to Professor Jones. I asked Gates why the letter from Jones had no signature. Gates said “that’s not unusual for Jones, s/he is the classic absent-minded professor. S/he never remembers to sign anything, but s/he always remembers to list her/himself as the Joel and Sharon S. Greer, Chair of Distinguished Teaching; the louse.”

23. After reading the letter from Jones and talking to Gates and Chase, I figured I now had my woman/man. I applied for an arrest and search warrant and then went to the home of Henri Jones, and placed her/him under arrest for assault and burglary. Of course, I’ve read everyone’s witness statements in preparation for trial today. How could I testify effectively if I hadn’t? Yeah, I know Riley Poole; I was in the Police Academy with her/him way back when. S/he didn’t impress me then and doesn’t impress me now. My understanding is that s/he makes a living doing nothing but running down decent, hard working cops. What a joke! Anyone who knows her/him will tell you s/he is useless as an investigator. S/he is nothing more than a rent-a-cop and not a good one at that. Her/his own sister-in-law told me once that s/he had had several nervous breakdowns in the past. In fact, one of the other rent-a-cops that works in her/his agency told me, “I don’t know why I work with Riley; I can never trust her/his work.”

Subscribed and Sworn to on this 25 Day of August, 2008

*A. Cudusky*

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Witness Signature

## **ABBY CHASE – WITNESS STATEMENT – PROSECUTION**

1. My name is Abby Chase, I'm a Graduate Student and Teaching Assistant (TA) of early 19th century American history at the University of Colorado in Boulder. I expect to complete my doctorate in December 2010—assuming that wind bag Henri Jones can't put the kibosh on things from behind bars. Let's get something straight here, right off the bat. I did not know that detective's kid was in high school. I was 23 at the time—I don't remember—and we met on MySpace. S/he IM'd me first! I thought s/he was definitely a college student. I certainly didn't know s/he was the kid of some police detective. Nothing happened and I stopped seeing her/him when I realized her/his age. Seems wrong to be investigating someone you have a bias against though, right? S/he should have acknowledged the conflict of interest right off the bat, don't you think?

2. It's hard to remember how this whole thing with Jones got started. I guess I'll begin in the beginning. After I enrolled at CU, I was TA-ing for Professor Jones, you know, helping her/him with grading, writing tests, teaching classes and her/his research. S/he was working on what was to be ground-breaking material on various expeditions of exploration during Thomas Jefferson's presidency, including the Pike Expedition. I never really thought it was "ground-breaking," more like "ground-boring", but s/he was trying to find her/his niche. It is the only way you survive in academia—publish or perish—even if it is garbage that simply gets published and put on a shelf to collect dust. I should know. My Uncle Harry is in the academic publishing biz, which I have often thought may be the reason Jones originally requested me as her/his assistant.

3. I, on the other hand, was working on something really interesting. I think Jones was jealous of my research and creative work. There's a lot of professional jealousy in academia—particularly at CU—and Jones was always in the middle of it. The water cooler talk throughout the department was that other professors generally feared their applications for tenure would be blocked by Jones if their work was more popular and well-read than hers/his. I don't know how accurate that is, but that's what I heard. It was common knowledge.

4. At one point, I even felt that Jones was making inappropriate advances towards me or perhaps trying to butter-me-up to get to my uncle's publishing house, you know, inviting me over for one-on-one dinners and that sort of thing. I don't think I would describe it as harassment, but eventually things got so uncomfortable between us that I told her/him that, while I respected her/him professionally, I wanted to maintain our relationship on strictly a professional level. S/he flew off the handle. I'd never seen her/him in such a rage. S/he said s/he didn't know what I was talking about regarding "unwelcome advances" and that if

I ever said anything to anyone about it that s/he'd "make me regret it"—and that's a quote. S/he tried to explain it all as part of the academic mentoring process and that I had completely misread the situation. Next thing I know, s/he called me to her/his office and accused me of academic dishonesty—plagiarizing some work in one of my dissertation chapters. S/he couldn't substantiate anything, but when it is your word against that of your professor, what can you do? S/he said s/he'd take me to the Honor Council, fire me as TA, and have me kicked out of school. I ended up confessing to something I didn't do—lifting a sentence from some make-believe researcher's work—so that I could remain in school. Let's be clear about this: I didn't plagiarize anything! Yes, my official record reflects an incident involving academic dishonesty, but, you have to be pragmatic; the world is not all black and white, I did what I did so I could survive.

5. I made a deal with the Dean of Students and became a TA for Professor Bennie Gates. Despite having a blemish on my record, I couldn't be happier about the switch to Gates. And s/he seemed genuinely thrilled to have me working for her/him too. Right from the beginning s/he showed more honest interest in my work than Jones ever did. Gates took me in when no one else was going to give me a fair shake. I'll always remember that. I'd do anything for her/him. We saw eye-to-eye on the need to publish new material that made history come alive for those outside the ivy walls of academia—not that there's any ivy growing at CU. I must admit, I am still a little bitter about the ordeal with Jones.

6. So back in August 2008, on the seventh, as always, Professor Gates had all the department members and their TAs over to the house for her/his game of "Seven Degrees of Separation"—it's a tradition, you see. At these parties we usually toast an American hero and then try our best to link that American icon with other historical figures or with modern celebrities.

7. Everything went swimmingly at the party—lots of laughter at Jones' expense, lots of drinking—a real party for the ages. So, everything was great and then Jones left in a huff. Who knows what it was about this time. No, there was no physical altercation. A bunch of historians get into fisticuffs? Could you imagine? No, s/he just disappeared. I overheard Professor Gersic say he'd heard Jones say something about "getting even with us all," but I could be taking that completely out of context. I do remember, though, earlier in the evening, coming upon Jones wandering around Professor Gates' house on the second floor. I had gone up there to check on Lenore and to give her a cracker, when I spied Jones leaving the study. I asked her/him what s/he was up to, and s/he mumbled something about looking for the restroom and then darted off. I really didn't think much about it at the time, but now that I think about it, Jones could have been casing the joint for the break-in on Saturday.

8. On Saturday, I was studying in my room at the house. Two of my housemates were getting ready to head out to the Shakespeare Festival that is held in Boulder every year; I think they were going to see *Henry the Eighth* and *Love's Labour's Lost*. My other two housemates were going to watch movies at the house. But I needed some help clarifying my thoughts on an important part of my dissertation. They were no help at all as they were all too excited to think about deep thoughts. I called over to Professor Gates's house, but got no answer. Must have been around 9 p.m. or so. Just because s/he doesn't answer the phone doesn't mean s/he's not home; sometimes s/he just doesn't answer. So, I drove over to her/his place and knocked on the door. There was no answer so I knocked some more. I was beginning to get worried. I walked around back and was thinking I'd have to break a window or something to get inside and check on her/him; s/he's not in the best of health, you see. I know it is strange that it never occurred to me to use my key and go in the front door; I guess, I was either so involved in my dissertation issue or that "absent-minded-professor" thing was kicking in at an early age. Anyway, I went around back where I saw broken glass underneath the window to her/his home office. I immediately called 911 and waited for the police. Shortly thereafter, Detective Cudusky arrived. The two of us spent a few minutes, searching around the patio for evidence. I thought it was kind of cool that I was being allowed to help in the investigation; I felt like a real historian searching for clues to the past. I found a button on the ground wedged between a couple bricks and pointed it out to Detective Cudusky. I tried not to touch anything since I didn't have gloves on. I don't typically carry latex gloves with me when I go out. The button was not too far from the window and still had some thread attached—as if it had been pulled off, not like it had come loose on its own. The detective retrieved it and put it into one of those evidence bags. We were walking around all over the place, and then I remembered I had a key so we decided to go in and see if the Professor was okay. I rushed upstairs and my worst fears were true—Professor Gates was on the floor unconscious. Cudusky checked for a pulse and told me s/he was alive, but barely. The room was a mess. I ran over to the filing cabinet and looked for the Pike Journal pages since I knew that would likely be the first thing Gates would ask me about. They were gone! I knew right away who was responsible.

9. I went outside to look around for more evidence, and was walking around in the bushes under the window when Cudusky called down from the office. I told her/him I'd heard the ambulance sirens and that medical help would be there soon.

10. The next day, the Detective came by to ask me some questions. S/he asked me why I was so sure Jones had done it. It was obvious, in my opinion. First, the only things missing were the Pike Journal pages.

Second, Jones was the only one with a motive for stealing them. And finally, Jones owned the ladder that was used to get into the window. What do you want, I thought, a confession?

11. I know that there has been some story that Jones has concocted that s/he has been set up by either Professor Gates or me. I guess old “Ho-Hum” thought we were trying to steal her/his thunder over that book s/he’d been working on for years. The reality seems to be just the opposite. The publicity created by this case –the whole “burglary and assault in a college setting” thing, featuring two high profile professors and some historical intrigue –has actually done wonders for Jones’ book. Uncle Harry told me that Jones was actually on the academic bestsellers list and was one of the top historical non-fiction sellers on Amazon.com. Talk about reaping benefits! That would be motive enough to try to steal those documents!

Subscribed and Sworn to on this 25 Day of August, 2008

*Abby Chase*

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Witness Signature

## HENRI JONES – WITNESS STATEMENT – DEFENSE

1. My name is Henri Jones. I have been a Professor of History at the University of Colorado for the past 17 years and am honored to hold the Joel and Sharon S. Greer, Chair of Distinguished Teaching. Never in my life have I been accused like this—I'm sorry. I can't believe this is even happening. That dirty, cunning...
2. Oh, don't get me wrong. If some ne'er-do-well actually broke into Bennie's office and bopped her/him on the head, then I would feel for the gal/guy, I truly would. I mean, we've never been close and granted there have been times when faculty members (myself included) contemplated slapping her/his silly face, but I surely wouldn't wish assault on anyone, much less carry it out. To set this up and then try to blame it all on me is just manipulative and vindictive and such a waste of time. Do you realize the publishing house almost delayed the release of my book over this? Fortunately, they thought better of it. It's actually doing quite well despite all this legal hoopla. Critics have raved about it and even the readers of popular historical works have latched on to it.
3. Yes, I'll admit, I was rather peeved at Bennie for the fraud s/he was attempting to perpetrate on the American people. Finding missing pages from the Zebulon Pike expedition journals? Indeed! That is just about the most ridiculous thing I have ever heard, even coming from that buffoon Gates and her/his henchman Chase! Gates was just trying to get my goat. S/he knew how hard and long I'd been working on my book. S/he knew what it meant to me, and how I believed in it with all my heart. S/he knew the anguish and struggles I've endured bringing this dream to fruition. My book is everything to me. It is my *magnum opus*, the culmination of years of study and research. It is the definitive work on the Corps of Discovery and delves inside the hopes and dreams of our greatest President—Thomas Jefferson. And to think, all of this could have been lost by these silly allegations by that petty woman/man, Bennie Gates. Despite the tremendous sales of my book and the talk of a possible National Book Award nomination, Gates has put my name and my honor on the line. I must defend both. Of course, Bennie realizes that my book once and for all establishes my credentials as THE scholar on President Thomas Jefferson, including all the expeditions he supported like Zebulon Pike's. Gates will just have to dig elsewhere.
4. Anyway, Bennie Gates has always been jealous of me, my dedication, and the unwavering respect I receive from the academic community. It would be just like her/him to try and sabotage me with phony documents that cast tremendous doubt on my portrayal of President Jefferson. Did Gates tell you what these

purported journal entries imply? It's obscene. Ridiculous. I can hardly say the words. It makes me more angry than I have ever been. Those fools Gates and Chase are alleging that Thomas Jefferson was too ignorant and too out-of-touch to know about General Wilkinson and Aaron Burr's treasonous schemes and illegal profiteering (allegedly with Zebulon Pike's help). President Thomas Jefferson was not stupid, and he did not coddle traitors. After all, Aaron Burr was prosecuted for treason, wasn't he? So, people knew about his schemes. As for General Wilkinson, he had to do some fast talking, incriminating Aaron Burr, to save some hope of a future military career. As for Zebulon Pike, he risked his life on a perilous expedition, just like Lewis and Clark, to obtain valuable information for President Jefferson: Pike, like President Jefferson, was a true patriot. No loyal red-blooded American would ever believe their lies—their pure fiction they try to masquerade as history. Maligning the character of our greatest President, as well as Zebulon Pike's, now that is just... reprehensible.

5. The whole theory doesn't even make sense. Everyone knows Pike was chosen because he was the ideal man for the job. Pike had a distinguished military career; he was no traitor; he was a proud American. He spent many years in the Army, where he was quite successful supervising men. He was in fine physical condition—lean, muscular, a perfect specimen for such a rigorous undertaking. Gates is an idiot – Zebulon Pike was the perfect man for the job! Who did Gates want sent? Wilkinson? Burr? Desk jockies who could not be trusted?

6. It's actually a sophomoric little story. I never actually believed in my heart of hearts that their false allegations—their fictionalized history—could do any lasting damage to the premise of my book. What I found offensive was the nerve s/he had in attacking Thomas Jefferson, defiling the legacy of Zebulon Pike, and the complete and utter disregard he/she exhibited for this country and its citizens by making such absurd accusations. Of course I was angry! Is a person supposed to sit quietly by and just let that kind of rubbish go by? No, of course not! But, would I stoop to assault? No. I asked Professor Paris Oxley, a former colleague of mine here at CU and now an eminent scholar at neighboring Metropolitan State College, to do a preliminary analysis. As I suspected, Bennie had concocted the whole thing! Why would I go to all the trouble of breaking in and stealing those pages from Gates's office when I knew darn well that as soon as the records were examined by a reputable expert, they would be exposed as fakes, frauds, complete fiction—as would Bennie Gates?

7. It's not the first time this has happened, by the way. Gates is rather well known in the academic community for the outrageously inappropriate topics of her/his "historical" articles. Can you believe s/he once drafted an essay claiming Dolly Madison converted one wing of the White House into a brothel to help



fund the war effort? Gates implied that it was one of Dolly's "girls" smoking in bed that actually started the White House fire during the War of 1812. Despicable. S/he eventually must have had a rare flash of conscience, or common sense, at the last moment, thank God, and never did submit that garbage for publication.

8. Gates just loves attention. Ask anyone at the University and they will verify this. S/he wants glory, applause and fame, and doesn't care if s/he comes by it honestly or not. If you want my opinion, Bennie Gates intentionally invites scandal because s/he's hoping to get on Oprah. Or that silly Montel show. Ha! Jerry Springer would be more like it! It's a shame that whoever Gates hired to bust her/him over the head didn't knock some sense into her/him. Probably just trying to create some inexpensive PR buzz for the release of her/his next book or article. And that's just the thing. You see, Bennie Gates does not seem to be driven by historical curiosity and accuracy in her/his research so much as by salacious garbage that you might find at the grocery check-out counter. Gates jumps from topic to topic, barely scratching the surface, but intent only on creating half-truths and passing them off as ground-breaking history. It really puts our profession to shame whenever s/he appears on any of those "popular" television shows or gives lectures at rather questionable conventions. Gates wants to make history popular and profitable by inventing it! S/he doesn't care about the truth since it doesn't always sell.

9. So you see, it is ludicrous to think I had anything to do with this episode at all. I know Gates is ranting about evidence, about fingerprints and footprints and fibers. Of course they would find my footprints on the patio – they'll find any number of faculty footprints there! The crafty fool held one of those famous "Seven Degrees of Separation" parties before orchestrating the "break-in," and I was present for that. I typically don't attend such gatherings – I don't enjoy watching Gates hold court the way s/he does – but Bennie personally invited me to attend this particular get-together. S/he said it was the first of the new academic year and that it was important for the entire History Department to be there in the spirit of collegiality and camaraderie. S/he talked about mending fences, or some such nonsense, maybe even publicly recognizing me for the upcoming release of my book. S/he mentioned something about wanting to explain in more detail what they discovered in the lost journal pages, in hopes of garnering my support. Did they really think they could change my mind? I'm many things, but I'm no traitor.

10. I don't know how they cooked up the fingerprint nonsense – I haven't visited Gates's office in months and I would hope it has been cleaned since then—though you never know. I try to avoid that place at all costs. If there is ever a need for me to speak with Gates, I usually visit her/his department office on campus, not his/her home office. Moreover, while I am not a true television aficionado, I have seen enough

of those dreadful police shows to know to wear gloves if I were to engage in any type of criminal mischief. Fingerprints, indeed! Gates didn't think that one through very well, did s/he?

11. So yes, I was there, but I didn't stay long and I certainly didn't enjoy myself. Gates and that weasel Chase were both fawning over me, taking care to gather up my plates and drink glasses as soon as I finished with them. And then when Bennie started in again on Pike, well I'd surely had enough by that time. Not to mention Gates' poorly concealed attempts to draw parallels between her/his traitorous version of Pike and myself, much to the amusement of the others. I made an ill-advised comment to Abby about the plagiarism incident and this led to a scuffle. S/he pulled at my sweater and a button popped off. I looked about, but couldn't find it, so I simply said my piece and went home. Now the rascal has probably told you that s/he "caught me red handed" in Bennie Gates's house on that Thursday. Let's not get ahead of ourselves. I was merely looking for the restroom and got a little turned around. Obviously, I knew I was in the wrong part of the house when I heard that dirty little raven start in with the chorus of "Ho-Hum! Ho-Hum! Here Comes Ho-Hum! Never more Ho-Hum." What an obnoxious thing to teach that rat with wings to say! Anyway, I returned to the party and shortly after that engaged in the brief confrontation with Ms./Mr. Chase.

12. Where was I that Saturday evening? I can't say I have a clear recollection... Look, I am a stay-at-home sort of person, not given to social engagements outside of the professional realm. I suppose I spent it as I typically do – relaxing at my home with my dog, Quincy. . . Newfoundland's are the finest breed on the planet, you know. I suppose I had a few glasses of chardonnay in front of the fire, worked on a few sketches perhaps, maybe graded some papers. Quite probably I was working on a revision of an article that was to appear upon publication of my book. It was a rather chilly evening for August, I do remember that. I never would have ventured outside in that weather. I often make phone calls from home or browse the Internet. I am sure the police can get access to those records. That would prove that I was home at the time of the assault.

13. Oh right, that assistant of hers/his. Abby Chase. Weird kid. Bit of a hothead, too. Chase was working on her/his dissertation with me for a while, did you know that? Not nearly as patriotic as I had initially believed. Far too willing to entertain preposterous theories, like her/his new mentor, Gates. I could not continue to be associated with such a person nor with her/his work, so I sent Chase packing. Oh! I almost forgot something. When Chase was in my seminar on "The History of The U.S. Executive Branch," I suspected her/him of cheating and lowered her/his grade because of it. S/he went rabid and shortly thereafter became Gates's assistant rather than mine. Isn't that important to know?

14. Well, s/he found her/his perfect cohort in Professor Gates – two of a kind, if you ask me. Did Abby and I have a relationship? What is that meant to imply? Abby was my TA, and our relationship was nothing but professional. Did you think I picked her/him up from MySpace or something like s/he did with that high school student?

15. Abby is an unusual girl/boy personally, as well. I remember one time in particular, I was showing the young woman/man the remodeling I'd done on my home – providing Quincy with his own suite of rooms. Abby and I discussed the evolution of carpentry since the time of Zebulon Pike, and together we decided to attempt to fashion something out of scrap pieces of wood, using only tools that Pike would have had access to. It was an amusing way to pass the time. We succeeded in crafting a rough little ladder – ugly as sin, I remember that. Then Abby got this notion that we had to test it out to see if it was fully functional. Abby placed it near the side of my house and climbed up a few steps, bounced up and down a few times. Just as a joke, I called up, “While you're up there, why don't you scoop those leaves out of the gutter?” I was only kidding, but Abby immediately began throwing handfuls of gutter gunk down onto the lawn. I stopped her/him, of course. Very unseemly to have one of your students acting like your hired hand and messing up your yard to boot. So, that was the end of that. Like I said, strange person.

16. The ladder? Oh, I don't know. I might have told Abby to take it and throw it on the woodpile next to the garage. No, I do not remember seeing it since that day. The back gate is unlocked and anyone could have gotten to it.

Subscribed and Sworn to on this 25 Day of August, 2008

*Henri Jones*

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Witness Signature

## **RILEY POOLE – WITNESS STATEMENT – DEFENSE**

1. My name is Riley Poole. I have worked in law enforcement for over 25 years. I attended the Colorado Northwestern Community College's Colorado Basic Law Enforcement Academy where I graduated 10th in a class of 70. A. Cudusky was in the same academy class as me. I did not know her/him well, although I certainly knew of her/him. It was common knowledge in the academy community that s/he was not the sharpest tool in the shed. My best friend at the academy, Walt Wanatta—now the Chief of Police in Craig, Colorado—told me that Cudusky finished close to the bottom of the class. In his words, Cudusky was “dumber than a bag of hammers and would have finished 70th if s/he hadn’t cheated her/his way through half of the classes.” I’m not sure Cudusky’s elevator goes all the way to the top floor, if you know what I mean.
2. After the academy I moved to Colorado Springs, where I spent four years as a beat cop, six years as a detective and one year as a desk sergeant. As a detective, I specialized in burglary and crime scene investigation. I attended a number of post academy classes in fingerprint, footprint and crime scene analysis that enhanced my already extensive knowledge in those areas from training and experience. During those six years, I investigated over 300 crime scenes and testified as a crime scene investigation expert in over 180 cases. I eventually got stuck on the desk and demoted from detective second grade to sergeant. My partner lost some fingerprint evidence in a high-profile investigation against an Albanian mob kingpin. The stuff really started to come down on the two of us. Somehow, I was the one accused of losing the evidence and, following the unwritten “Blue Code,” I refused to “rat” on a fellow officer. My partner was new to the force, and I knew he would be fired if I told on him and thought the worst I would suffer would be a negative write-up in my file. So, I took the bullet for my partner and, as a result, my career was essentially over. I could have stayed on as a desk sergeant, but my chances for advancement back up to detective were virtually nil. So, I opted to take an early retirement from the force and moved to Grand Junction where I have family and opened my private investigation firm “Not Guilty, Inc.”
3. I now have six other detectives working for me at “Not Guilty, Inc.” As a private investigator for the last 14 years or so, I have done everything from divorce and custody surveillance to corporate crime investigation. But, for the last 10 years or so, my primary income has come from doing investigation and analysis of police evidence for defendants’ lawyers in criminal cases. It is easier work and the pay is much better. In that capacity, I have testified as an expert in police procedure in over 160 cases. I charge \$200 an hour plus expenses for my work generally, and \$400 an hour plus expenses when I testify in court. I work

solely for defendants because prosecutors have their own experts (the police departments from their respective jurisdictions). There simply is no opportunity to do expert work for prosecutors. My rates are commensurate with the going rate for private investigation work in Grand Junction, and a lot lower than lawyers and doctors charge for expert opinions.

4. I was contacted sometime in October 2008 by the attorneys for Henri Jones. They wanted me to review and evaluate the work done by A. Cudusky. They first asked me to do a preliminary investigation to see if the police investigation had any holes in it. They gave me a \$2,000 retainer, and after my initial report, which indicated several serious shortcomings on the part of Detective Cudusky, agreed to hire me for a complete investigation.

5. I don't think they would have hired me if I could not find something wrong with Cudusky's methods. But, that was not hard to do. I have seen all of the evidence and reports in this investigation, interviewed all of the witnesses and/or read their witness statements. I have not been to the crime scene because by the time I was hired everything had been cleaned up. Maybe I should have gone by there anyway to see the layout, but I think that would have been a waste of time, and time is money. I was unable to obtain permission from the Jefferson County Police Department to interview Cudusky directly. But as I said, I was able to and did read Cudusky's witness statement and look at her/his "evidence."

6. It is my opinion that the investigation by A. Cudusky of the Jefferson County Police Department was woefully lacking in a number of significant ways. To begin with, the two letters (one dated July 17, 2008, and purported to be from Bennie Gates and the one dated July 15, 2008, and purported to be from Henri Jones) were not sufficiently investigated by Detective Cudusky. The detective failed to seize and analyze Henri Jones's home computer. Had s/he done so, s/he would have discovered that the font used on the letter allegedly typed by Professor Jones does not have the "Helvetica Neue" font used in that letter. Moreover, upon a careful search of Professor Jones's office (with her/his permission) I found no evidence that any of the stationery or letterhead in her/his recycling bin or paper storage area contained the distinctive watermark of the letter in question. I looked extensively at the copies of correspondence in her/his files, and none of those had the watermark in question either. Moreover, as noted before, her/his home computer did not have the "Helvetica Neue" font, and there was no evidence that it ever did, since the word processing program Professor Jones uses does not support that font. It could have been deleted, but only by someone with a certain degree of proficiency with operating systems. The detective also failed to seize and analyze Bennie Gates's computer. Had s/he done so s/he may have discovered, as I did, that her/his Mozilla web browser's "history" indicated numerous visits to websites focusing on the production of authentic-looking historical

forgeries. You may wonder how I got to her/his computer. A good investigator never reveals her/his methodology.

7. Secondly, Cudusky should have secured the crime scene at the moment s/he arrived, instead of allowing herself/himself and Abby Chase to wander around and contaminate the fingerprint and footprint evidence. This is sloppy procedure as is further evidenced by the fact that although s/he found what s/he claimed to be four “fresh” footprints at the crime scene, s/he only reported on three of those. It is obvious to me Cudusky was embarrassed by the fact that one set of footprints actually belong to her/him.

8. Cudusky assumed that the window allegedly broken at Professor Gates’s office was broken from the outside. But nowhere in her/his investigation does s/he indicate that a glass shard analysis was done to determine the angle of breakage on the edges of the individual shards of glass. Had such an analysis been done, simple physics could determine whether the pieces had broken from an inward or outward force. I asked to inspect the glass for myself, but was told the glass is no longer there; it’s all been cleaned up. Moreover, in her/his own witness statement, Detective Cudusky readily admits that even though s/he was concerned about how all the glass seemed neatly piled close to the window, s/he did not bother to have a glass analysis done. From the pictures of the crime scene I reviewed, it seemed more likely that the glass had been broken from the inside and piled up near the windowsill. In my experience, it looks more like a fake job than a real breaking and entering. Although, since I never really was at the scene, it is impossible to say for sure by just looking at the pictures.

9. As far as the fingerprint evidence discovered in Dr. Gates’s office, Cudusky her/himself admits that the set “may or may not” be a match for Henri Jones. According to the National Academy of Forensic Experts (NAFE), of which I have been a member for almost 14 years now, at least four of the five nodes on anyone must be a good match before a positive ID can be made. In the case of the partial prints alleged by Cudusky to be those of Jones, both the quality and number of clear prints are insufficient to make a positive ID. Moreover, a simple comparison of the prints taken by Detective Cudusky to those done by the Human Relations Department of the University of Colorado at Boulder will show that they did a much better job of getting readable prints than did the Jefferson County Police Department. The Jefferson County PD did such a poor job that they ultimately used the University’s prints as the prints for comparison. Perhaps the Jefferson County Police Department should farm out its fingerprinting and other forensics work to the University’s Human Relations Department.

10. I sound bitter about the Jefferson County Police Department because I have good reason to. They are constantly harassing me in my efforts to do my work. Police Departments in general, and Jefferson County’s

in particular, simply do not like private investigators. We get in the way and more often than not are better educated and more accurate than your average cop. I am a member of MENSA and have an IQ of over 160. Anyway, the Jefferson County PD blocks me at every turn and is one of the most uncooperative departments with whom I have to work. They even hassle me about getting my weapon re-registered every three years. I wish there was a way to clean house in that police department. I can even remember several occasions when Cudusky her/himself made disparaging remarks to me. Once s/he called me an “incompetent bounty hunter” and, on another occasion, referred to me as “nothing but a rent-a-cop.”

11. I’d love to talk about the so-called footprint “evidence.” To begin with, even though Cudusky’s forensics team allegedly came up with four “fresh” footprints at the crime scene, s/he only mentions three in her/his witness statement. And, why is that you might ask? Because the fourth set of prints were those of Cudusky her/himself when s/he compromised the investigation by walking around all over the scene before securing it. Then there is the questionable footprint analysis method used by Cudusky and her/his incompetent police department. Talk about things you only see on CSI—Cudusky used a method s/he calls “latent foot printing”. According to the NAFE, latent footprint analysis has not been developed to the point where it is 100 percent reliable in a court of law. You would be correct to say that NAFE’s rules and regulations are not legally binding on police departments, but in my opinion, no decent investigator will use techniques not authorized or supported by the NAFE. I have had this argument with the people at the Jefferson County PD before and it does not surprise me that they choose to ignore the NAFE. More importantly, nothing in the research that exists on this new latent footprint technique suggests that it is accurate enough to be able to determine that a print is less than 72 hours old. I have no idea where the wizards at the Jefferson County PD came up with that one. But here is the real kicker for me. Since there was a “Seven Degrees Party” on that very patio two nights before the alleged break-in, and Henri Jones, along with others, was invited to that get-together, what possible value would it be to the investigation even if one of the sets of footprints did belong to her/him? Moreover, Cudusky readily admits that s/he came nowhere close to comparing her/his magical latent footprints with the plaster casts of all faculty and staff members. Finally, if you look at the latent print analysis by the Jefferson County PD you can see that, at best, the match for Jones is only 50 percent while it is over 90 percent for the other two prints.

12. A good investigator has to be resourceful, and Cudusky is anything but. There’s not only the letter of the law, but also the intent of the law and Cudusky is too hung up on the letter. For example, out in California, pretexting is a common way for investigators to gather phone, bank and internet records about someone under investigation. All I had to do was call up and pretend –that’s the pretexting part—to be Henri

Jones, and I was given access to everything I needed. Same with Abby Chase. It is clear that Henri Jones was at home the night of August 9, 2008, because s/he lives alone and her/his internet records indicate continuous bandwidth usage all night. Abby, on the other hand, claims to have made a call to Bennie Gates at about 9 p.m. on August 9, 2008, but neither her/his Verizon Wireless/AT&T/Qwest records indicate such a call was ever made. A little ingenuity can go a long way in an investigation!

13. The last concern I have about the investigation stems from Cudusky's failure to pursue Abby Chase's involvement in this case. What was Abby doing in the bushes at the crime scene? Why did Abby forget until the last moment that s/he had a key to Professor Gates's office? Why did Abby rush right up the stairs to where Professor Gates lay? Why did s/he disappear from the scene? Perhaps the answers to these are clear and non-incriminating, but shouldn't a good investigator at least pursue these questions? Cudusky did not. Neither did s/he discover, as I did, that the parcel of land behind the garage of Henri Jones, where the alleged weapon and ladder were found, just happens to be in the same direction that Abby Chase would have to travel to get to and from Professor Bennie Gates's house from her/his own home.

14. I did know Chase before this investigation. S/he was involved with my 17 year-old child for a couple of weeks before I put an end to it. What in the world is a 23 year-old graduate student doing running around with a high school senior? It's not right, and I would not allow it. S/he never did anything wrong to my child that I know of, but s/he needs to be with kids her/his own age—not be a cradle robber.

Subscribed and Sworn to on this 24 Day of October, 2008

*Riley Poole*

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Witness Signature



## **PARIS OXLEY – WITNESS STATEMENT – DEFENSE**

1. My name is Paris “Sherlock” Oxley Ph.D. I am Chair of the History Department at Metropolitan State College of Denver. Henri Jones is my dear friend and mentor; I’ve even named my eldest child—Henri—for him/her.
2. I belong to a new breed of historian. I’m highly educated in early American history, but my specialty is forensic history and forensic anthropology. Forensic science is not limited to bones, blood and decaying bodies. “Forensic” means “pertaining to, connected with, or used in courts of law” so “forensic science” encompasses any scientific discipline applied to a legal issue, including my handwriting analysis.
3. I believe that each individual's handwriting is as unique as his/her fingerprints, DNA and retina scan. When authenticating documents, I not only compare the appearance of the handwritten letters on the page between a known authentic document and the new one I’m trying to authenticate, but I also use my expertise to analyze the writer’s personality and character, as shown by his/her handwriting, to aid in the authentication process. My specialty is authenticating newly discovered early 19th century American documents, as well as checking them for historical accuracy. I prefer this work to the classroom or grading papers. Additionally, I believe my cutting edge work brings my college positive publicity. Isn’t that the whole purpose of publish or perish for professors?
4. In the late 1990s, Spain asked me to authenticate documents attributed to Christopher Columbus. While these documents were historically accurate, Columbus could not have penned them. The obvious control and tension in the script, indicated by the writer's struggle to maintain verticality and angularity in letter forms, revealed the author’s self-control, emotional repression and compulsive personality type. Columbus was certainly NOT such a man. But, it was a masterful forgery. I’ve recently signed a book deal to publish this work.
5. Last year, a descendant of Clement Moore hired me to determine whether Clement Moore really wrote the classic “A Visit from St. Nicholas,” which first appeared anonymously in the Troy (NY) Sentinel on December 23, 1823. The controversy has been whether Moore, a rather dour Professor of Religion, to whom the work is attributed, or Henry Livingston, a revolutionary war veteran, wrote this poem. Livingston authored similar poems; he often used anapest and certain rhymes like belly and jelly—which are in “A Visit from St. Nicholas.” Unfortunately, I was not able to determine authorship of this classic poem.

6. Now I have been hired to authenticate the authorship of all of the works attributed to William Shakespeare. My preliminary findings, not yet published, are that numerous individuals—not just one—did the writing. Those findings, once published, will make for another big seller and more money for me.
7. My personality profiling through handwriting analysis also has helped the FBI solve cases. I am a frequent legal consultant on such matters. I'm familiar with Blackstone's 1984 article "Are Expert Witnesses Whores?" However, I can assure you that my professional conclusions cannot be bought. My good name is of more value to me than any consulting fee. I'm already a wealthy person. I do this work because it's fascinating, and I'm exceptionally gifted at it.
8. When asked, I was most eager to help Henri Jones do some handwriting analysis, including profiling of a newly discovered journal page for her/his book. I graciously agreed to receive a mere 0.25 percent of gross sales from her/his book for my work in exchange for supplying—if warranted—my "seal of approval."
9. S/he e-mailed me copies of two documents for comparison and analysis. Originals are preferable to copies, but sometimes, as this time, only copies are available. There's less chance for error when working with originals, but I'm confident that using copies in this case had no impact on my ultimate conclusions.
10. My work begins with research into documents of unquestioned authorship. In this case, one of the copies was from an original November 1806 journal penned by Zebulon Pike and now housed at the Library of Congress in Washington, D.C. From this Exhibit 1, I constructed the author's profile.
11. In this clearly authentic Library of Congress journal, the writer maintains a vertical slant throughout the text indicating good concentration, confidence and hard work, someone who doesn't shun the drudgery of the mundane. Further, the angularity and regularity in arrangement and pressure indicate a man of courage whose perseverance verges on stubbornness in the face of obstacles or adversity. He is purposeful and disciplined to an extreme. Offsetting upper zone dominance—note the capital "Ts"—is the long, pressured lower zone, sometimes with full loops sometimes blunt ended—note the way in which "y" and "g" extend into and bluntly end in the lower zone. This writer has an authoritative nature and insists upon the imposition of his will on others; the potential for cruelty is evident in the tepee formations in the t-stems and strong t-bars with horizontal pressure. All of this fits to a "T" what is known historically about Zebulon Pike—who persevered despite the obstacles and adversities encountered on his expedition.
12. Next, I did the same type of analysis on the sample from Santa Fe, Exhibit 2, which I received from Henri Jones. Controlling for outside factors, such as stress, that may impact writing from time to time is relatively routine. A person's mood cannot mask his/her inner being as portrayed in his/her handwriting. I am confident that my analysis is never wrong.

13. In the Library of Congress sample, notice the increased vertical distance between the lines of writing when compared with the Santa Fe sample, supposedly recently unearthed in the Packers' barn. Writers have the habit of doing this in all of their writing; it becomes a trademark. While not conclusive evidence of a forgery, it allows me to begin to build a case. Next, notice the different style of cross-outs in the two documents. The real deal, so to speak, exhibits cross-outs that are either horizontal or vertical, but not both at the same time. The unauthenticated sample shows both vertical and horizontal cross-outs superimposed on one another. This is really a rookie error in forgery. Finally, notice the verticality in the upper zone of the lowercase "d" in the Santa Fe sample versus the upper zone leftward slant of the "d" in the Library of Congress sample. My only question is how the forger ever expected to pass this off as the "real McCoy."

14. Further, note that the verb tensing is different in the two documents; the Library of Congress sample is in all past tense while the Santa Fe one is not. Finally, it is highly unlikely that Zebulon Pike would have put on paper any plans to gather intelligence with respect to a possible future invasion of Spanish territory—as included in the Santa Fe sample—even if that may have been historically accurate. Why? Because Pike would have been too concerned about whether such highly sensitive information could fall into the wrong hands. For example, by the time Pike reached Santa Fe, his every move was being watched by the Spaniards, hardly the time to put on paper anything that the Spaniards might find troublesome.

15. My conclusion is that two different people wrote the two documents. Only one, the Library of Congress sample, was Pike's writing. The other is a clever and professional forgery, but nonetheless a forgery, I'm sure. If the Santa Fe journal were authentic, it would be priceless—easily over \$100,000 at auction—but since it's not, the forged document is not worth much more than the paper it's written on.

16. Once I completed my handwriting analysis, I called Professor Jones to deliver the good news personally. I knew s/he would be very pleased that the Santa Fe document is a forgery. Had there been even a grain of truth there, it would have blown her/his thesis out of the water and jeopardized years of research. Could Henri Jones have committed this dastardly burglary? I don't believe so. If the document were authentic, s/he'd have had a motive, but since the document was almost certainly a forgery, there would have been no need to steal it. Why steal a fake? Henri would have had nothing to gain and everything to lose. Besides, Jones is just not the sort of person to ever do anything so violent. It is not in her/his nature. S/he is a gentle spirit.

17. As a former member of the University of Colorado at Boulder History Department, I was invited to the first "Seven Degrees of Separation" party of the academic year held at the home of Bennie Gates. While, in general, I do not much care for Professor Gates, I do enjoy the opportunity to catch up with old friends and

colleagues. Unfortunately, I was witness to the unconscionable treatment of Henri Jones at this party. Gates started in early with some rather rude remarks and insulting comparisons between my dear friend Jones and Zebulon Pike. Given how much Gates was skewing the truth, I could see that Henri was reaching her/his boiling point, so I made my way over to her/him to lend support. I was able to calm her/him down a bit and encouraged her/him to walk it off. S/he headed inside the house. When s/he returned a short while later, s/he seemed to be in a much better mood. I did overhear part of a rather heated exchange between Henri and some graduate student about academic dishonesty. I do not think that there was any physical contact between the two. And shortly thereafter, Henri left the party. I stayed a bit longer to bask in the free food and beverage.

18. My contacts in the publishing business tell me that Henri's book has been a big hit. Of course, I would think that any scholarly work written by her/him would be well received. But according to my sources, this little tiff between Henri Jones and Bennie Gates has generated considerable interest and increased sales. Bravo!

Subscribed and Sworn to on this 24 Day of October, 2008

*Paris Oxley*

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Witness Signature

## COLORADO CRIMINAL STATUTES (as modified for this mock trial)

### Colorado Revised Statute §18-3-202—Assault in the First Degree

- (1) A person commits the crime of assault in the first degree if:
  - (a) With intent to cause serious bodily injury to another person, he or she causes serious bodily injury to any person by means of a deadly weapon; or
  - (b) With intent to disfigure another person seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of his body, he causes such an injury to any person; or
  - (c) Under circumstances manifesting extreme indifference to the value of human life, he knowingly engages in conduct which creates a grave risk of death or serious bodily injury to another person, and thereby causes serious bodily injury to any person.
- (2) Assault in the first degree is a class 3 felony.

### Colorado Revised Statute § 18-4-202—Burglary in the First Degree

- (1) A person commits first degree burglary if the person knowingly enters unlawfully, or remains unlawfully after a lawful or unlawful entry, in a building, residence or occupied structure with intent to commit therein a crime, other than trespass, against another person or property, and if in effecting entry or while there or in immediate flight therefrom, the person or another participant in the crime assaults, causes bodily injury to, or menaces any person, or the person or another participant is armed with explosives or a deadly weapon. Such crime may include, but is not limited to, theft.
- (2) First degree burglary is a class 3 felony.

### Colorado Revised Statute § 18-4-203—Burglary in the Second Degree

- (1) A person commits second degree burglary, if the person knowingly breaks an entrance into, enters unlawfully in, or remains unlawfully after a lawful or unlawful entry in the building, residence, or occupied structure with intent to commit therein a crime against another person or property. Such crime may include, but is not limited to, theft.
- (2) Second degree burglary is a class 4 felony, but is a class 3 felony if it is a burglary of a residence.

### Colorado Revised Statute §18-4-401—Theft

- (1) A person commits theft when he knowingly obtains or exercises control over anything of value of another without authorization, or by threat or deception, and:
  - (a) Intends to deprive the other person of the use or benefit of the thing of value; or
  - (b) Knowingly uses, conceals, or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit; or
  - (c) Uses, conceals, or abandons the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use and benefit; or
  - (d) Demands any consideration to which he is not legally entitled as a condition of restoring the thing of value to the other person.
- (1.5) For the purposes of this section, a thing of value is that of “another” if anyone other than the defendant has a possessory or proprietary interest therein.
- (2) Theft is:
  - (a) A class 2 misdemeanor if the value of the thing involved is less than five hundred dollars or
  - (b) A class 1 misdemeanor if the value of the thing involved is five hundred dollars or more, but less than one thousand dollars or
  - (c) A class 4 felony if the value of the thing involved is one thousand dollars or more but less than twenty thousand dollars or
  - (d) A class 3 felony if the value of the thing involved is twenty thousand dollars or more.
  - (e) Theft from the person of another by means other than the use of force, threat, or intimidation is a class 5 felony without regard to the value of the thing taken.

ADDITIONAL COLORADO CRIMINAL STATUTES  
AND JURY INSTRUCTION  
(as modified for this mock trial)

Colorado Revised Statute § 18-1-901—Definitions

(1) Definitions set forth below apply whenever used in any other section of the Colorado criminal statutes  
....

(3) ...

(c) “Bodily injury” means physical pain, illness, or any impairment of physical or mental condition....

(e) “Deadly weapon” means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury:

(I) A firearm, whether loaded or unloaded;

(II) A knife;

(III) A bludgeon; or

(IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate....

(p) “Serious bodily injury” means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, unconsciousness, or burns of the second or third degree....

Colorado Criminal Jury Instruction – Presumption of Innocence, Burden of Proof, and Reasonable Doubt

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 should find the defendant guilty. If you find from the evidence that the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty.

ADDITIONAL COLORADO CRIMINAL STATUTES  
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## Zebulon Pike Journal

Copy from Library of Congress

Thursday, November 27, 1806

The unbounded prairie was overhung with clouds which appeared like the ocean in a storm, wave piled upon wave and foaming whilst the sky was perfectly clear where we were. The beauty of this land was so exquisite - amazing beyond anything I had ever imagined.

When a small blue cloud first appeared 12 days ago to our west, at first, we assumed that we were seeing more ~~forming~~ foaming clouds. Then, as we drew nearer, the highest, the most magnificent, the most rugged steel blue gray mountain range appeared on the western horizon. The summit of Grand Peak, the highest peak in the range, was sparkly white, like diamonds in the rough, from the eternal snow. While we expected to reach the base and ascend this ~~rugged~~ highest peak within



a few days, it has taken us 12 days to reach the base and start our ascent.

With courage and dedication, we have persevered, regardless of the perils, the hardships, and the weather, toward the summit. After that, we have continued our quest for the headwaters of the Arkansas and Red Rivers. Like Lewis and Clark, we are making history.



## Zebulon Pike Journal from Santa Fe

Tuesday, February 18, 1807

Now that I'm deep into Spanish territory as planned, I'm concerned about whether I will be able to fulfill my true mission. The Spaniards are suspicious and watchful, making my mission all the more perilous. I can't risk having the Spaniards find my journals so I must hide them. (I'm hiding this in a small narrow crack in the wall of a house near Santa Fe - without knowing if anyone will ever find it or read it.)

My men are no longer complaining about the ~~###~~ freezing weather or difficulty finding food. The accommodations, the food, and the women provided by the Spaniards are more than adequate.

I promised General Wilkinson, my commander, that I will gather information from the Spanish controlled territory, including their military numbers, their defenses, their economic conditions, their strengths, their weaknesses, and their popularity among the people living there. Upon my return, God willing, I will give a full accounting of all ~~#####~~ intelligence gathered to General Wilkinson. Then he can decide whether he and Aaron Burr want to invade there for their own military purposes, simply expand economically into the fur trade there, or both, or neither. As my Commander, he decides what use to make of the information and how much, if any, accurate information he will pass on to President Jefferson. The President is so trusting of those under his command; he does not realize the conspiracy plots swarming around him.

General Wilkinson promises me that upon my return, God willing, I will be promoted to at least Captain, possibly higher, and given my own company to command. Additionally, he promised that for my courageous patriotism, I will be given the same rewards, benefits, and honors that are expected to be bestowed upon ~~that~~ Lewis and Clark following their less arduous expedition.





# Police Department Final Fingerprint Analysis Report

Submission Date: 08/09/08 (by: Det. Cudusky)  
Report Date: 08/24/08 (by: C. Turner, Ph.D.)  
Case Number: 08-09095

**Notes:** Prints lifted from white filing cabinet in Professor Bennie Gates’s home office and compared to prints belonging to Professor Henri Jones from Human Resources Dept. at CU.

**Conclusions:** The file prints are in OUTSTANDING shape—textbook quality. The comparison prints are of lesser quality, as they typically are when lifted from a crime scene. I am disappointed in the overall quality of the impressions submitted by Det. Nicoletti as the excessive smudging seems to have come from a secondary source. This would only be the case if someone touched an object after the suspect had touched it. While I was unable to find any lifted sample that would match those for the suspect’s R-M and R-L, I was able to achieve reliable comparisons for the R-T, R-I, and R-R. Computer analysis indicates four (4) comparison nodes within R-T. While six (6) comparison nodes are considered a perfect match, four is considered to be highly reliable. For both R-I and R-R only three (3) comparison nodes were identified. While indicating a likelihood of a match, a three-node match is generally not considered to be reliable on its own. Taking a holistic approach to the analysis—looking at the three “matches” together—allows one to conclude with a reasonable degree of certainty that the suspect did, in fact, at some point in time, touch the cabinet.

1. R-Thumb	2. R-Index	3. R-Middle	4. R-Ring	5. R-Little
		NO MATCH FOUND		NO MATCH FOUND

**Analyst Signature:** C. Turner, Ph.D. – Department Head

<b>APPLICANT</b>		LEAVE BLANK		TYPE OR PRINT ALL INFORMATION IN BLACK				FBI		LEAVE BLANK	
SIGNATURE OF PERSON FINGERPRINTED Jones, Henri		LAST NAME <u>NAM</u>		FIRST NAME		MIDDLE NAME		C		R	
RESIDENCE OF PERSON FINGERPRINTED 1740 Mt. Vernon Rd. Golden, CO 80403		ALIASES <u>ASA</u>		CBI, Denver, CO		DATE OF BIRTH <u>DOB</u> Month Day Year 5/31/1962		PLATE OF BIRTH <u>POS</u>		5/31/1962	
DATE		SIGNATURE OF OFFICIAL TAKING FINGERPRINTS A. Jolie		CITY/TOWN <u>CTZ</u>		SEX <u>MALE</u>		RACE <u>W</u>		HEIGHT <u>5'8</u>	
EMPLOYER AND ADDRESS Univ. of Colorado at Boulder 234 UCB, Boulder, CO 80309		YOUR NO. <u>73 220 648</u>		FBI NO. <u>ED</u>		WEIGHT <u>125</u>		EYES <u>bl</u>		HAIR <u>bl</u>	
REASON FINGERPRINTED		ARMED FORCES NO. <u>MMU</u>		SOCIAL SECURITY NO. <u>SGC</u>		MISCELLANEOUS NO. <u>MMU</u>		CLASS		REF	
1. R. THUMB		2. R. INDEX		3. R. MIDDLE		4. R. RING		5. R. LITTLE			
6. L. THUMB		7. L. INDEX		8. L. MIDDLE		9. L. RING		10. L. LITTLE			
11. FOUR FINGERS TAKEN SIMULTANEOUSLY		12. L. THUMB		13. R. THUMB		14. FOUR FINGERS TAKEN SIMULTANEOUSLY					

University of Colorado HR Data

Professor Jones, Henri (History Department)

City of Golden Police Department  
**Latent Footprint Analysis Report**

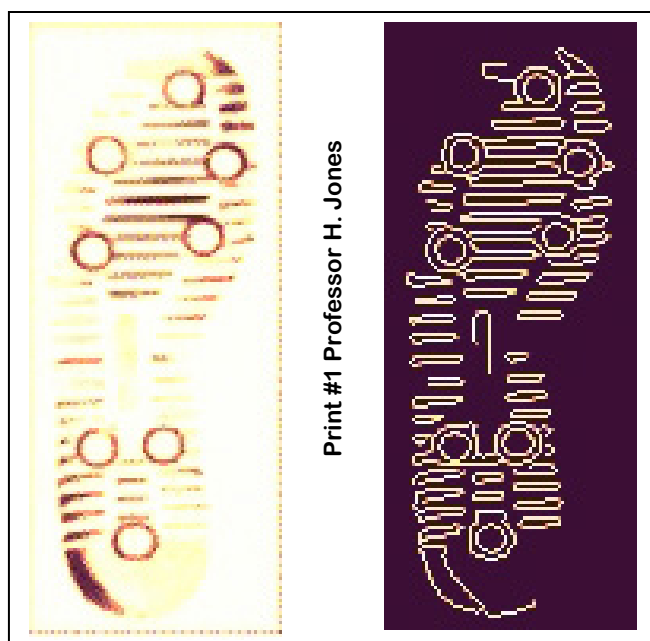
Submission Date: 08/09/08 (by: Det. Cudusky)  
Report Date: 08/24/08 (by: C. Turner, Ph.D.)  
Case Number: 08-09095

**Notes:** All prints were lifted from the brick patio behind Professor Bennie Gates's house under the broken window of her/his home office. These latent prints were compared with plaster castes obtained by Jefferson County Police Department detectives from party-goers at Gates's home.

**Conclusions:** Latent shoe prints are impressions of shoe treads left by an individual on a surface. Standard fingerprint powders applied to the surface revealed prints at the scene not visible to the naked eye. Because of its low absorption rate for moisture deposited from the rubberized soles of shoes, the brick "Seven Degrees" patio outside the victim's office window provided an ideal surface for the recovery of latent shoe prints. Additionally, weather and temperature conditions were highly conducive to the preservation of the latents. Unfortunately, latent shoe prints, such as these, are fragile and can be damaged if further contact is made after the print is placed—such as by first responders or curious rubber-neckers. This seems to be the case here, particularly with the print allegedly left by H. Jones. Analysis #1 reveals a 62% likelihood that the latent print found at the scene is a match with the impression taken from H. Jones's Nike shoes. Further, time regression analysis determined that these prints had been left on the patio less than 72 hours prior to them being lifted on the morning of August 10. More conclusive results could not be obtained because of contamination of the prints from another source. Analysis #2 reveals a 92% likelihood that the latent print found at the scene is a match with the impression taken from CU Dean Harvey Wallbanger's Keds shoes. Analysis #3 reveals a 96% likelihood that the latent print found at the scene is a match with the impression taken from Abby Chase's Reebok shoes. Time regression analysis performed on Wallbanger's alleged prints and Chase's alleged prints, was inconclusive.

**Remarks:** Since the analysis of latent footprints is relatively new in the field of forensic science, I have attached a short column written by a well-known professional in the field explaining the science involved. Don't hesitate to contact me if you have further questions.

**Analyst Signature:** C. Turner, Ph.D. – Department Head

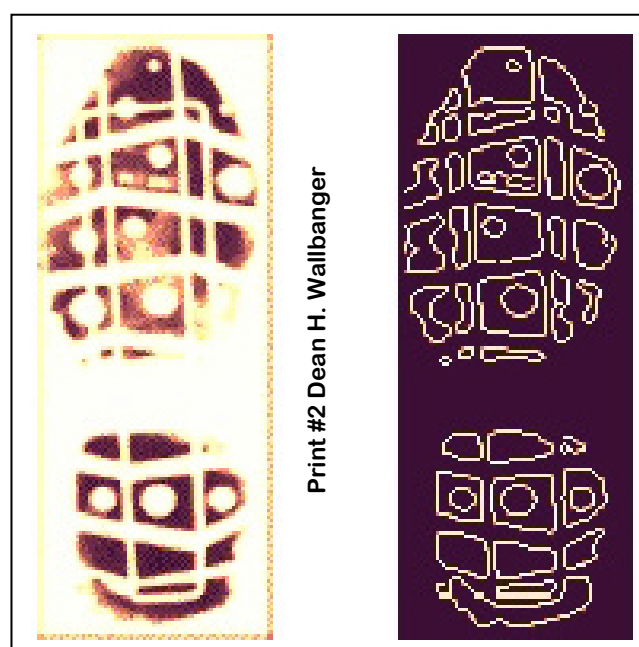


### LATENT FOOTPRINT IMAGERY ANALYSIS #1

Comparison of latent imagery for print on the left to plaster cast of suspect's Nikes resulted in a 62% accuracy match for suspect H. Jones.

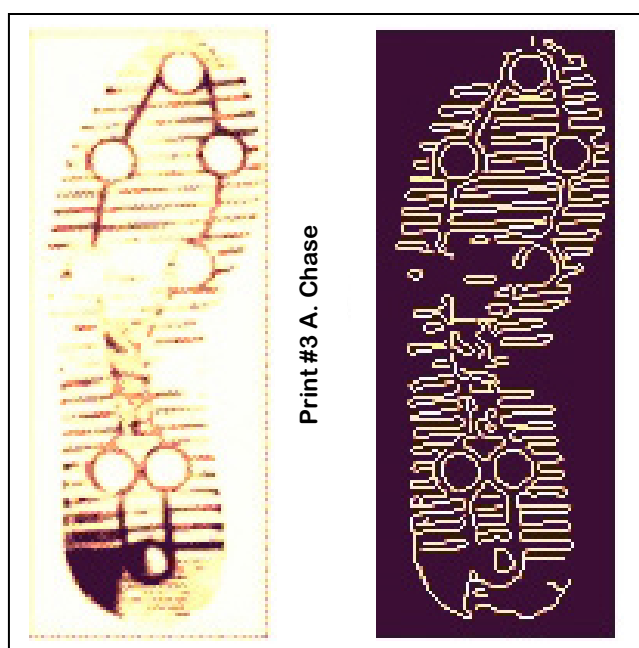
### LATENT FOOTPRINT IMAGERY ANALYSIS #2

Comparison of latent imagery for print on the left to plaster cast of Dean Harvey Wallbanger's Keds resulted in a 92% accuracy match.



### LATENT FOOTPRINT IMAGERY ANALYSIS #3

Comparison of latent imagery for print on the left to plaster cast of witness Abby Chase's Reeboks resulted in a 96% accuracy match.





## FOCUS ON FORENSICS: LATENT SHOEPRINT ANALYSIS

For decades, fingerprints have provided investigators invaluable clues to establish the identity of criminals. Yet, another type of print impression that could be just as valuable has been widely overlooked. Latent shoe prints exist in almost all interior crime scenes, but are often ignored by investigators or destroyed by initial responders before the prints can be processed.

Latent shoe prints are impressions of shoe treads left by an individual on a surface. While these prints cannot be seen by the naked eye, they can be revealed using standard fingerprint powders. Although investigators routinely search for visible shoe prints on interior surfaces and shoe impressions in exterior crime scenes, they often overlook the existence of latent shoe prints.

Like fingerprints, latent shoe prints can be used to place a suspect at a crime scene. Though each shoe manufacturer produces hundreds of various styles of footwear with the same tread design, these identical prints quickly become unique through the owner's use. Wear will vary depending on individual walking styles and contact with different surfaces. Any scratch, nick or cut will result in points of comparison, making the shoe "one of a kind."

Most casual shoes have rubberized soles that, when exposed to light amounts of moisture, react in a way similar to a finger leaving its mark on a surface. Vinyl linoleum, smooth tile, and painted floors provide the best surfaces for recovery of latent shoe prints.

Many of the same factors that are involved in lifting fingerprints are to be considered in recovering latent shoe prints. The surface must be smooth enough to reveal the characteristics of the soles. Temperature and weather conditions must be conducive to preservation of the impressions. And, like fingerprints, latent shoe prints are fragile and can be damaged if further contact is made after the print is placed. They can be easily altered or destroyed by first responders and curious bystanders; therefore, it is important to carefully secure the crime scene if recovery of the prints is to be successful.

Latent shoe prints have not been widely used in crime scene investigations. Although recovery of the prints depends on several unpredictable variables, they may yield valuable information and, therefore, should be considered a viable option for investigators.

**These are not NAFE approved or endorsed.**



# City of Golden Police Department

Case Number: 08-09095

Notes: Professor Bennie Gates's body



# City of Golden Police Department

Case Number: 08-09095

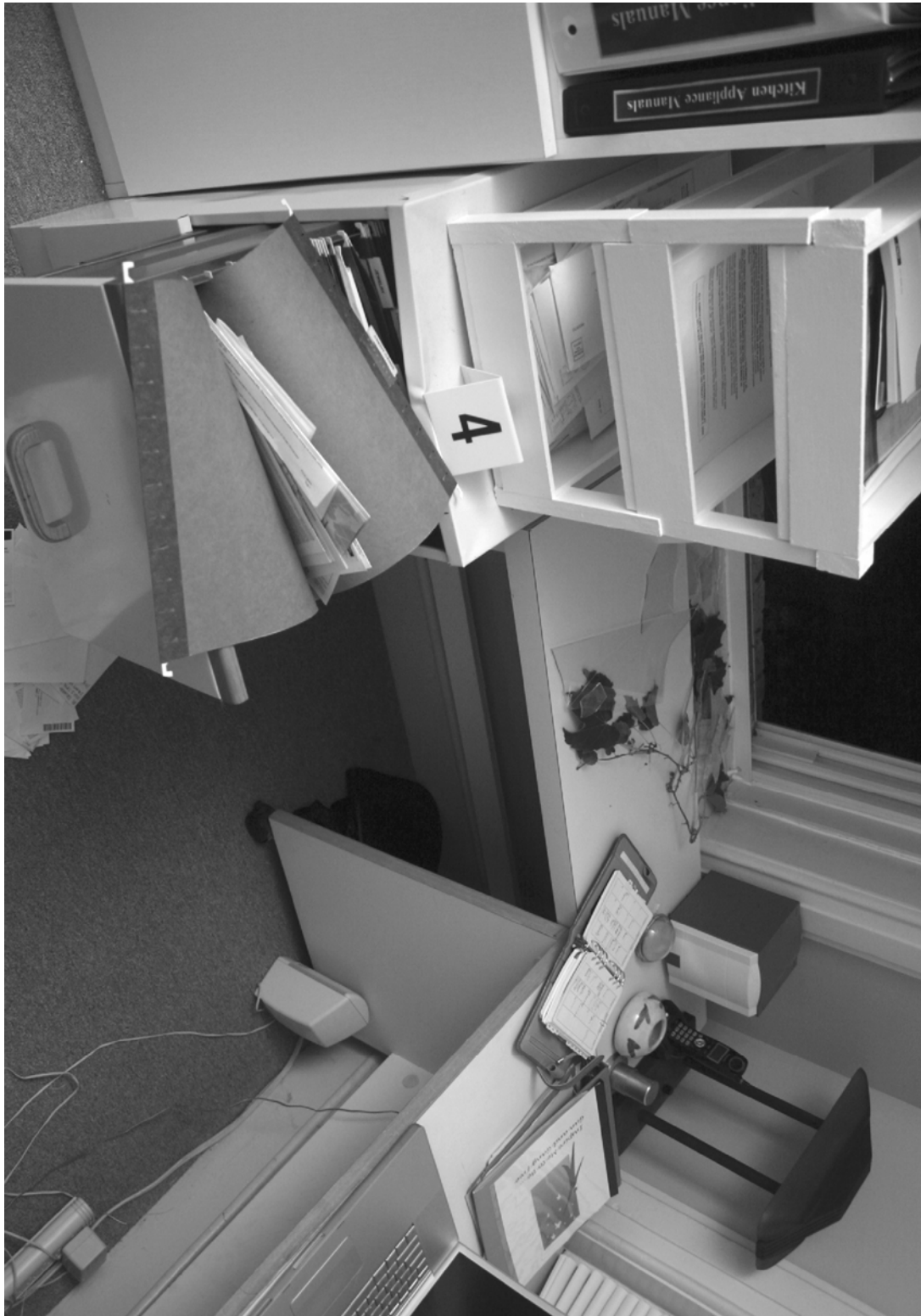
Notes: Professor Bennie Gates's home office (1)



# City of Golden Police Department

Case Number: 08-09095

Notes: Professor Bennie Gates's home office (2)



# City of Golden Police Department

Case Number: 08-09095

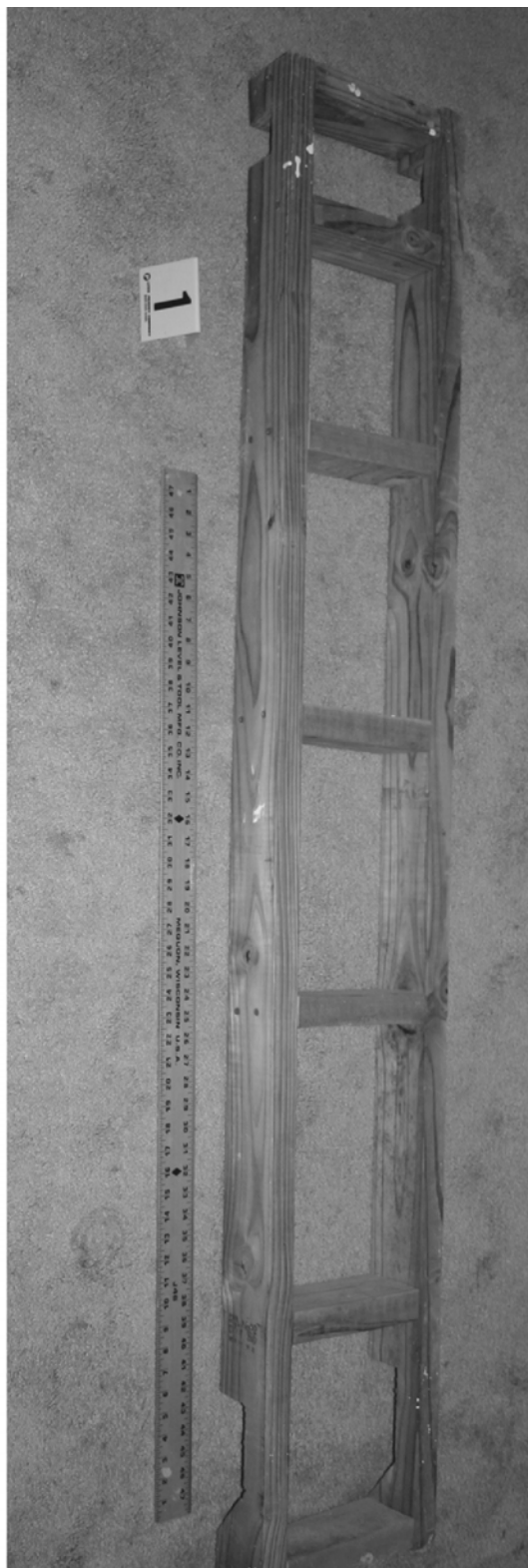
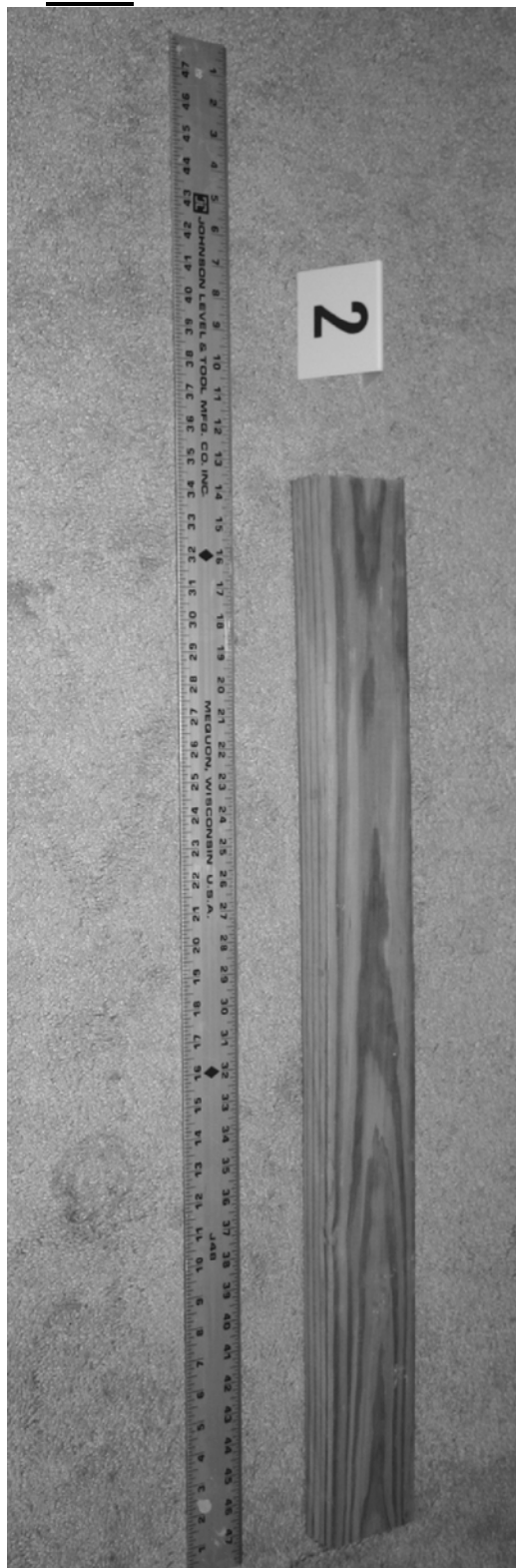
Notes: Professor Bennie Gates's home office (3)



# City of Golden Police Department

Case Number: 08-09095

Notes: Ladder and Lumber





UNIVERSITY OF COLORADO  
At Boulder

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DEPARTMENT OF HISTORY

July 15, 2008

Professor Bennie Gates  
57871 Indiana St.  
Golden, CO 80403

Dear Professor Gates:

It has come to my attention that you claim to be in possession of documents that you and your TA claim are authentic missing journals from Zebulon Pike's expedition. You know very well that said documents are clearly suspect. In fact I have every reason to believe that these are nothing more than fraudulent "documents" orchestrated by you and Mr./Ms. Chase to somehow undermine the pending publication of my new book on President Thomas Jefferson's political strategies and various expeditions of exploration during his Presidency, including Zebulon Pike's expedition.

Please be advised that I have been in contact with my lawyers and publisher and intend to fight this spurious and slanderous little plan of yours. Unless you cease and desist immediately, I will have no alternative but to pursue legal action against you. That ultimately may lead to your being fired. You can also tell that small-minded slimy little Teaching Assistant of yours that it will be a cold day in hell before s/he gets my support on her/his dissertation.

Disgustedly,

Henri Jones  
Joel and Sharon S. Greer Chair of Distinguished Teaching  
History Department  
University of Colorado at Boulder

cc: Abby Chase





UNIVERSITY OF COLORADO  
At Boulder

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DEPARTMENT OF HISTORY

*File Copy*

July 17, 2008

Professor Henri Jones  
234 UCB  
Hellesms, Room 204  
Boulder, CO 80309

Dear Professor Jones:

This will confirm that I am in receipt of your letter of July 15<sup>th</sup>. Henri, I must say that I am taken aback by both the tone of your letter and the extent of your hollow threats against Mr./Ms. Chase and me.

Henri, we have been colleagues for a long time and it pains me that you would take such a hostile position against me with regard to this issue. I know that our finding could have a serious impact on the validity of the thesis of your upcoming book and for that I am truly sorry. However, it would be against the ethics of our profession for me to cover-up or ignore what clearly seems to be an authentic document that adds to our historical knowledge of an important bit of Americana.

I implore you to reconsider your position on this matter. Failure to do so will only bring shame and embarrassment to both you and our department.

Sincerely,

/s/ Bennie Gates  
Bennie Gates, PhD  
History Department  
University of Colorado

cc: Abby Chase