Thank you to the MSBA Case Subcommittee for their countless hours and dedication writing the 2020 Case for the competition: Nicholas Hydukovich (Chair), Landon Ascheman, Tom Atmore, Marcy Harris, Lauren Johnson-Naumann, Todd Kosovich, Will Oosterman, Christian Shafer, and Collin Tierney.

The subcommittee is extremely grateful to Dr. Andrew M. Baker, Chief Hennepin County Medical Examiner, for his assistance in the preparation of these case materials.

The MSBA is committed to creating an inclusive environment in which every person can participate in the Mock Trial program. Please contact us if there are reasonable accommodations that would allow you to participate more fully. Such requests should be directed to Kim Basting, Director of Mock Trial Program at (612) 278-6306.
The Mock Trial Program extends its gratitude for the generous support and assistance of:

MSBA Agricultural & Rural Law Section; MSBA Animal Law Section; MSBA Antitrust Law Section; MSBA Appellate Practice Section; MSBA Children & the Law Section; MSBA Civil Litigation Section; MSBA Communications Law Section; MSBA Construction Law Section; MSBA Consumer Litigation Section; MSBA Corporate Counsel Section; MSBA Criminal Law Section; MSBA ENRE Law Section; MSBA Food & Drug Law Section; MSBA Health Law Section; MSBA Immigration Law Section; MSBA International Business Law Section; MSBA Labor & Employment Law Section; MSBA Public Law Section; MSBA Public Utilities Law Section; MSBA Real Property Law Section; MSBA Solo Small Firm Section; MSBA Tax Law Section; MSBA Tech Law Section; First District Bar Association; Third District Bar Association; Fifth District Bar Association; Sixth District Bar Association; Seventh District Bar Association; Sixteenth District Bar Association; Nineteenth District Bar Association; Academy of Certified Trial Lawyers of Minnesota (ACTLM); Minnesota Continuing Legal Education (MNCLE); Minnesota Judicial Branch; Minnesota State Bar Foundation; Minnesota Tax Court; Thomson Reuters; Fredrikson & Byron Foundation; Individual Donations: Karen Becker; Peter & Jane Cahill; David Drueding & Susan Stabile; Elizabeth Fors; Hilary & Justin Fox; Marcy Harris; David Lillehaug & Winifred Smith; William McGinnis; Kristin M. Olson; Robert & Rebecca Patient; Randy Sparling; Thomas Stanley; Nancy Wiltgen; Mark Winebrenner; Paul Zerby; Numerous Anonymous Donors.

Consider making a tax-deductible donation to the Amicus Society on behalf of the MSBA Mock Trial Program at GiveMN.org

Thank you to over the 700 attorney volunteers that spend countless hours preparing teams and judging the competitions! Without your support, the program would not be a success! Visit the 2019/2020 April Bench & Bar publication on our website to see who they are!

Special thanks to the Mock Trial Advisory Committee

Wynne Reece, Minneapolis, Chair; Landon Ascheman, Minneapolis; Thomas Atmore, Minneapolis; Sherry Bruckner, Alexandria; The Honorable Peter Cahill, Minneapolis; Charles Cochrane, Roseville; The Honorable James Dehn, Cambridge; Dyan Ebert, St. Cloud; Jean Gustafson, Brainerd; Thomas Hanson, St. Paul; Marcy Harris, Eden Prairie; Robert Huber, Bloomington; Christopher Huether, Alexandria; Nicholas Hydukovich, Stillwater; Lauren Johnson-Naumann, Lakeville; Scott Jurchisin, Minneapolis; The Honorable William Koch, Minneapolis; Todd Kosovich, Mankato; Erik Levy, Minneapolis; The Honorable David Lillehaug, St. Paul; William McGinnis, Rochester; Kristin Olson, Minnetonka; Will Oosterman, Minneapolis; Robert Patient, Roseville; Lisa Pearson Wheeler, St. Paul; The Honorable Kathleen Sanberg, Minneapolis; Marc Sebora, Hutchinson; Christian Shafer, Minneapolis; Amanda Sieling, Marshall; Randy Sparling, Minneapolis; Antonio Tejeda, Spicer; Collin Tierney, Minneapolis; Catherine Trevino, East Bethel; The Honorable Mark Vandelist, Lakeville; Nancy Wiltgen, Winona; Robert Yount, Anoka.

Since 1986, the Mock Trial Program has been sponsored by

The Minnesota State Bar Association
600 Nicollet Mall, Suite 380 | Minneapolis, MN 55402
(612) 333-1183 or (800) 882-MSBA
Visit the Mock Trial website at: http://www.mnbar.org/public/mock-trial
To: MSBA Mock Trial Program Participants
From: Wynne Reece, Chair, MSBA Mock Trial Advisory Committee
Re: 2019-20 Mock Trial Program
Date: October 16, 2019

On behalf of the Minnesota State Bar Association and the Mock Trial Advisory Committee, welcome to the 34th season of the MSBA High School Mock Trial Program! We are proud to present to you these case materials and look forward to seeing the arguments you develop.

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

1) To develop a practical understanding of the way in which the American legal system functions.

2) To enhance cooperation and respect among educators, students, legal professionals, and the general community.

3) To help students increase basic life and leadership skills such as critical and creative thinking, effective communication, and analytical reasoning.

4) To heighten appreciation for academic studies and promote positive scholastic achievement.

The Mock Trial website, located at http://www.mnbar.org/public/mock-trial, will be your source for information regarding the case and the tournament throughout the next several months. You will find timekeeper’s sheets, score sheets, case clarifications, and other resources to help you prepare your case.

The success of this program relies heavily on the hundreds of volunteers acting as coaches and judges; be sure to extend your gratitude to these individuals whenever given the chance throughout the season!

Best of luck and have fun!
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Section 1: MSBA Mock Trial Outstanding Professionalism Performance Award

The MSBA Mock Trials are conducted with the same high professional standards expected of all attorneys and judges within the State of Minnesota. The Mock Trial Outstanding Professional Performance Awards were created by the MSBA Professionalism Committee to recognize Mock Trial participants demonstrating high professional standards while competing in Mock Trials. Student attorneys and judges are invited to nominate participants demonstrating high professional standards. Awards are given in three categories: individual, team, and attorney coach.

There are five core values in the legal profession:
1) Respect and Fairness;
2) Public Service;
3) Honesty, Integrity and Trustworthiness;
4) Competent, Prompt, and Diligent Representation; and
5) Quality of Justice.

2019 Mock Trial Outstanding Professionalism Performance Award Recipients
Josh Vogt, *Nova Classical Academy School*
Trinh Nguyen, *Eagan High School*

2019 Volunteer of the Year Award Recipient
Kim Ilg, *Teacher Coach, Rochester Lourdes High School*

We congratulate past recipients and challenge all 2020 participants to follow their example in conducting themselves as professionals and examples for all in the legal profession. Nomination forms are available on the Mock Trial website. In addition, all judges will be provided with forms during the competition. Nominations will be reviewed by the Minnesota State Bar Association.

Selection will be based on civility, courtesy, honesty, integrity and trustworthiness demonstrated during the 2019-2020 Mock Trial Competition. The Professionalism Aspirations and Attorney Core Value messages are resources to review to become familiar with these expectations.

The Minnesota State Bar Association looks forward to presenting the 2020 Mock Trial Outstanding Professionalism Performance Award and Volunteer of the Year Award at the State Tournament in St. Paul on March 6, 2020.
The cliché is true: we are guardians of our profession. The legal profession is one of the remaining self-regulating professions. It is an awesome responsibility and we must fiercely protect its integrity. Take the time now, while you are in a learning environment, to practice respect and fairness.

**Core Value: Respect & Fairness**

The Preamble of the Minnesota Rules of Professional Conduct states that:

A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer’s duty, when necessary, to challenge the rectitude of official action, it is also a lawyer’s duty to uphold legal process.

**Rule 4.4** of the Minnesota Rules of Professional Conduct states:

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

**What does this mean for me?**

Practicing core values forms solid skills:

- **Respect** does not necessarily mean agreement. It means independent regard of another’s perspectives, ideas, and contributions. Disagree without being disagreeable.

- **Fairness** includes sharing resources in school and the community. We all use the same materials so be considerate of others.

- **Listening.** You cannot win an argument without first listening to and understanding your opponents, your colleagues and your future clients.

- **Promote and celebrate diversity.** Determine what diversity means to you. Familiarize yourself with different cultures, religious beliefs, and ideologies through clubs and organizations.

- **Spirited Debate.** Classroom debate should be spirited and zealous while remaining fair and respectful.

- **Professionalism and ethics.** Good lawyers are ethical, disciplined, and value their reputation. Your reputation never leaves you.

- **Civility.** The law community is surprisingly small. Act civilly in all your dealings. Your colleague may become your boss or a judge.

- **Anger.** Reflect before you act. For example, don’t send a hostile e-mail in anger only to regret it later.
Public Service

Society depends upon lawyers to provide services to those who cannot afford them. But public service is more than just providing free legal services. It is about committing ourselves to civic engagement. As members of the legal profession we are obligated to give back to the community and make it stronger.

Core Value: Pro Bono Service

Rule 6.1 of the Minnesota Rules of Professional Conduct states that:

[a] lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to (1) persons of limited means or (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means.

The comment to Rule 6.1 calls pro bono service a “professional responsibility” and an “individual ethical commitment of each lawyer.”

Why wait until after law school to begin serving those around you? Life will always be busy and there will always be competition for your time. By serving others as you build your legal career you begin forming the patterns that you should aspire to throughout your legal career. You are developing your credibility as a lawyer by living out the core values of the legal profession.

What does this mean for me?

Maintaining the value to serve others means that you:

- **Actively participate in the community.** Seek out volunteer opportunities which interest you.
- **Make time for others.** No matter how busy you are, serving others should be high on your priority list.
- **Use your special gifts and abilities** to give back to your community. Lawyers have a privileged role in society. This privilege comes with responsibility to try to improve our communities.
- **Treat others with fairness and respect.** Recognize that we all contribute differently to a common goal. Make your goal the improvement of the common good.
- **Seek to grow professionally** by learning new areas of law and to grow personally by developing diverse relationships.
- **Help others.** Be committed to promoting equal access to the legal system and educate others about the law.
- **Learn what resources are available** in your community to assist others. When you cannot provide assistance yourself, be able to refer people to agencies that can help them.
People will rely on you to have the judgment and expertise to serve their legal needs. As a professional you are expected to know the law, the legal process, and how to interact with your clients.

**Core Value: Honesty, Integrity, & Trustworthiness**

Rule 8.4 of the *Minnesota Rules of Professional Conduct* states in part that:

It is professional misconduct for a lawyer to:
(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;
(g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with a lawyer's professional activities; or
(h) commit a discriminatory act, prohibited by federal, state or local statute or ordinance, that reflects adversely on the lawyer’s fitness as a lawyer.

What does this mean for me?

- **Meet commitments and deadlines.** Allow enough time to get assignments and other commitments completed on time.
- **Live up to the aspirations of the legal profession.** Your behaviors should always measure up to the aspirations of the profession. Professional misconduct jeopardizes our ability to be self-regulating.
- **Make your word your bond.** Every day you are building the reputation that will stay with you throughout your career. Do what you say you are going to do.
- **Protect Confidences.** Recognize the conversations that you should not share with others. A casual social story may be a serious breach of confidence. If you are acting as a student lawyer, realize you have both an ethical and legal obligation to protect your client’s confidences. Remind your peers when you hear disclosures that you think should be confidential.
- **Candidly complete your applications.** You place yourself at serious risk if you fail to be forthright and candid in your applications for employment and to the Bar.
People will rely on you to have the judgment and expertise to serve their legal needs. As a professional you are expected to know the law, the legal process, and how to interact with your clients.

**Core Value: Competence, Promptness, and Diligent Representation**

The Minnesota Rules of Professional Conduct state in part that:

**Rule 1.1 Competence**
A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

**Rule 1.3 Diligence [and Promptness]**
A lawyer shall act with reasonable diligence and promptness in representing a client.

**What does this mean for me?**

Maintaining these values means that you:

- **Be punctual and meet deadlines.** Meet your deadlines whether in class or a clinic. Punctuality is essential whenever you are dealing with the court. Being late is not tolerated in practice and jeopardizes client interests.
- **Work hard.** Invest time and effort in all assignments. Recognize that you are learning skills that will help you represent real people with real problems. Practicing law is a vocation, not an academic exercise.
- **Expand your knowledge.** Look at research projects as opportunities to further your legal knowledge. The greater your knowledge, the better able you will be to give legal advice to clients in a wider array of situations.
- **Recognize limitations.** The law is highly specialized. Do not expect to be knowledgeable in every area of the law. Your client has the right to demand your utmost competence.
- **Utilize CLE courses and lunchtime lecture opportunities.** The bar offers many opportunities for law students to attend CLE courses for free or at a reduced rate.
- **Seek help when you need it.** If you are working as a student attorney, never hesitate to seek advice and help when you are not sure what to do. Never guess. As you begin your career, seek out a mentor and others to help you provide the best representation you can.
Quality of Justice

Core Value: Responsibility for the Quality of Justice

The first sentence of the Preamble to the Minnesota Rules of Professional Conduct states that:

“[a] lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”

The Preamble continues, “A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer’s duty, when necessary, to challenge the rectitude of official action, it is also a lawyer’s duty to uphold legal process.”

“As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence on their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.”

What does this mean for me?

Maintaining this value means that you:

- **Actively participate in the legal community.** Seek out ways to improve the law and the legal system by joining and participating in Bar activities and events. Offer your expertise and contribute the skills you are learning to improve justice issues in your community. Find ways to get involved.

- **Consider the public policy when evaluating case decisions.** Public policy arguments are often an expression of the need for justice to be done. These are ways in which lawyers help steer the law in the direction it should go.

- **Understand the legal process.** The public’s faith in the justice of the legal process depends upon having a voice in the process.

- **Treat others with fairness and respect.** Recognize that we all contribute differently to a common goal. Make your goal the improvement of the common good.
In recent years, the United States has experienced an extraordinarily tragic and costly opioid epidemic. In the late 1990s, doctors began to prescribe opioids as painkillers much more frequently. Pharmaceutical companies claimed the drugs were not addictive. They were wrong.

Opioids are a class of drugs that prevent the body from sensing pain by binding to opioid receptors. Some opioids, such as heroin, are simply illegal throughout the United States. Other opioids, such as fentanyl and oxycodone, can be used legally for medical purposes. Such drugs can be possessed lawfully only if prescribed by a doctor.

Unfortunately, opioids are addictive. Opioids can be used properly for pain management. But if not carefully managed, opioid use can quickly turn to addiction. Addiction to any substance can cause any number of problems for the addict and those close to them. Those problems include turmoil within, and separation from, one’s family; a lower level of performance at one’s school or employment; withdrawal if the addict tries to quit using the drug; and even death from an accidental overdose. According to the U.S. Department of Health and Human Services, an estimated 130 people die every day from opioid overdoses in the United States.

Addiction is not limited to people of any age, race, or socioeconomic status. It can affect anyone, even those who might be prominent in the community and who might appear from the outside to be acting normally.

This case involves an apparent accidental overdose involving an opioid. On July 5, 2018, Brandon Webster, a prominent accountant, was found unresponsive in his home. The responding officer quickly determined that he was deceased.

This scenario is all too common, both in Minnesota and across the country. Minnesota’s third-degree murder statute is commonly used to prosecute those who unlawfully provide drugs to others when death results from use of the drug. Criminal prosecutions under this law are sometimes controversial, such as in the case of a friend or fellow addict who provides drugs to another person for free, with no intent to profit. But the law has been used in recent years more than ever before.

The witnesses for the plaintiff are:

- MEDICAL EXAMINER. Kelly Fagin performed the autopsy on Brandon Webster. Kelly Fagin determined the cause and manner of Brandon Webster’s death.
- POLICE OFFICER. Pat Soderberg was the first responder to the scene of Brandon Webster’s death. Pat Soderberg investigated the circumstances surrounding Brandon Webster’s death.
- FRIEND OF VICTIM. Alex Kirby is a small business owner and was a friend of both Sam Soto and Brandon Webster. Alex Kirby was at the party where Brandon Webster was last seen alive and saw interactions between Sam Soto and Brandon Webster.

The witnesses for the defense are:

- ADDICTION MEDICINE PHYSICIAN. Morgan Holloway is a physician who has reviewed relevant documents in this case. Morgan Holloway disagrees with some of the methods used by Kelly Fagin and believes Dr. Fagin did not test for important forensic evidence.
- ACCOUNTANT. Sam Soto is an accountant who hosts a large party for clients and their families every Fourth of July. Sam Soto is accused of providing Brandon Webster with the drugs that caused his death.
- FRIEND OF VICTIM. Taylor Jennissen is a friend of Brandon Webster who was at Sam Soto’s party on July 4, 2018. Taylor Jennissen observed interactions between Sam Soto and Brandon Webster and noticed pills scattered in Sam Soto’s bathroom.
State of Minnesota, Plaintiff

v.

Sam Soto, Defendant.

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

COUNT I

Charge: Third Degree Murder
Minnesota Statute: § 609.195(b)
Maximum Sentence: 25 years and/or $40,000

STATEMENT OF PROBABLE CAUSE

The Complainant states that the following facts establish probable cause:

I, Pat Soderberg, am a licensed Peace Officer and a patrol officer employed by the Guthmann Police Department. Based on my investigation as to circumstances surrounding the death of Brandon Webster, there is probable cause to believe that Sam Soto proximately caused the death of Brandon Webster by unlawfully giving away, delivering, exchanging, or distributing a controlled substance classified in Schedule I or II to Brandon Webster.

Therefore, Complainant requests that Defendant, subject to bail or conditions of release, be:

(1) arrested or that other lawful steps be taken to obtain Defendant’s appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

COMPLAINANT'S NAME:  
Officer Pat Soderberg

COMPLAINANT'S SIGNATURE:  
/s/ Pat Soderberg

Subscribed and sworn to before the undersigned this 17th day of October 2018.
Being authorized to prosecute the offenses charged, I approve this complaint.

Date: October 17, 2018

PROSECUTING ATTORNEY'S SIGNATURE:

/s/ Whitney Sevilla
Name: Whitney Sevilla
Assistant District Attorney
651-266-1234

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant’s arrest or other lawful steps be taken to obtain Defendant’s appearance in court, or Defendant’s detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense.

Date: October 17, 2018

Judicial Officer:

The Honorable J. Frisch /s/ J. Frisch
Judge of District Court J. Frisch, Judge of District Court
This matter was heard by the Court upon 1) Defendant’s motion *in limine* to prevent the State from offering into evidence photographs taken of the Victim on July 5, 2018, and during the autopsy performed on the Victim by the Medical Examiner; 2) Defendant’s motion *in limine* to preclude certain testimony by the County Medical Examiner; 3) The State’s motion *in limine* seeking admission of *Spriegler* evidence; 4) Defendant’s motion *in limine* seeking admission of “reverse” *Spriegler* evidence; and 5) The State’s motion *in limine* to admit, and the Defendant’s cross motion *in limine* to preclude, the admission into evidence of a Facebook message. This order will address each motion in turn.

**Defendant’s Motion to Exclude Photographs of the Victim**

The Defendant seeks an order precluding photographs of the Victim’s body from being admitted into evidence at trial. Defendant asserts that the photographs should be excluded from evidence under Rule 403 of the Minnesota High School Mock Trial Rules of Evidence. Rule 403, in its entirety, states:

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

Defendant argues that the photographs are of limited probative value and whatever probative value they may have is substantially outweighed by the danger of unfair prejudice. The State argues that the photographs are important to show the manner of death and to corroborate and support of the testimony of witnesses, including the Medical Examiner and the Police Officer who was at the scene. Both sides agree that the photographs have some relevance to the case. The issue is whether they should nonetheless be excluded as unfairly prejudicial.

In order to decide the legal issue presented, the Court must determine the probative value of the photographs and compare that value to the danger of unfair prejudice to the Defendant if the jury sees the photographs. The probative value of a piece of evidence is measured by the extent to which the evidence has a material impact on the one of the fact issues in the case. Evidence is probative when it advances the inquiry in the case. *State v. Carlson*, 268 N.W.2d 553 (Minn. 1978). Unfairly prejudicial evidence under Rule 403, meanwhile, is not merely evidence that is damaging, or even severely damaging, to one side’s case. *State v. Schulz*, 691 N.W.2d 474, 478–79 (Minn. 2005). Since most evidence tends to be prejudicial to one side or the other’s case, the issue becomes one of fairness. Unfairly prejudicial evidence persuades by illegitimate means, giving one party an unfair advantage. *State v. Cermak*, 365 N.W.2d 243, 247 n. 2 (Minn.1985). It is evidence that will inflame the passions and prejudices of the jury. And as Rule 403 sets out, even severely damaging evidence may be admissible if it is highly probative of a material issue of fact and that probity outweighs the unfair prejudice. *State v. Yang*, 644 N.W.2d 808, 817 (Minn.2002).

Normally, photographs are admissible if they accurately portray what a witness could describe in words. *State v. Sanders*, 376 N.W.2d 196, 200 (Minn.1985). In this case, however, the probative value of the Victim photographs is of limited value. The manner of death was an overdose of opioids and the photographs add little value to establishing the manner of death. Moreover, the allegations in this case as to the Defendant’s actions leading to the Victim’s death
do not have a direct connection to anything shown in the photographs. A jury viewing the photographs, however, may find them disturbing and may feel compelled to reach a guilty verdict. There is a real danger of unfair prejudice to the Defendant if the photographs are shown to the jury.

The Court finds that the limited probative value of the photographs is substantially outweighed by the danger of unfair prejudice to the Defendant. Defendant’s motion *in limine* to exclude the photographs is granted. However, the State may present pictures of the crime scene that do not depict the victim if those photographs meet the requirements of Rule 401 and other rules of evidence.

**Defendant’s Motion to Exclude Certain Medical Examiner Testimony**

Defendant asks the Court to order that the County Medical Examiner cannot offer testimony regarding certain information received and relied upon by the Medical Examiner. The Defendant contends that certain of the underlying information received by the Medical Examiner, unlike the autopsy results and observations made directly by the Medical Examiner, is inadmissible hearsay. The Court declines to rule on Defendant’s motion and reserves the issues for trial.

Rule 703 of the Minnesota High School Mock Trial Rules of Evidence, titled “Bases of Opinion Testimony by Experts” provides as follows:

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

As Rule 703 makes clear, if the facts or data at issue are of a type reasonably relied upon by experts in the subject field when forming opinions or making inferences, then such facts or data need not necessarily be admissible in evidence. In other words, if the proper foundation for the testimony is laid, the expert can testify as to the facts or data relied upon in rendering the opinion or in reaching an inference.

In this case, both Kelly Fagin and Morgan Holloway reasonably relied on such information as drug and toxicology analysis and police reports. Any information relied upon by Kelly Fagin and Morgan Holloway is admissible during the testimony of that witness, so long as the witness relied upon the information in reaching their opinion.

**State’s Motion to Admit Spreigl Evidence**

The State seeks to introduce at trial evidence of prior bad acts of the Defendant, specifically testimony from a witness regarding Defendant’s alleged supplying of opioids to others. Defendant opposes the State’s request.

Rule 404(b) of the Minnesota High School Mock Trial Rules of Evidence states:

Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

*Spreigl* evidence is so named, and the State’s motion is required to be heard before trial, because this type of evidence was addressed by the Minnesota Supreme Court in *State v. Spreigl*, 278 Minn. 488 (1965). In that case, the court reversed a guilty verdict and ordered a new trial because the State had not given notice to the defendant of the State’s intent to try to prove the crime charged in part through evidence of other bad acts. The court also set out the requirements of such notice.

Evidence offered pursuant to Rule 404(b) may not be admitted at trial unless:
(1) the prosecutor gives notice of its intent to admit the evidence consistent with the rules of criminal procedure; 
(2) the prosecutor clearly indicates what the evidence will be offered to prove; (3) the other crime, wrong, or act and the participation in it by a relevant person are proven by clear and convincing evidence; (4) the evidence is relevant to the prosecutor’s case; and (5) the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.

See State v. Ness, 707 N.W.2d 676 (Minn. 2006).

In determining whether the proposed evidence is admissible, then, the Court must determine whether the State has met each of the five steps set out in Ness.

First, the State must give notice of its intent to seek the admission of such evidence. Here, the State has given timely notice of its intent to seek the admission of evidence of prior bad acts and so the first step is satisfied.

Second, the State must clearly set out what its intends to prove with the evidence, keeping in mind the exceptions set out in Rule 404(b). Here, the State has said it will use the evidence to show that the Defendant had previously provided opioids to others and that Defendant had knowledge that Victim was addicted to opioids. The second step, then, has been met.

Third, the evidence must be clear and convincing that the Defendant engaged in the prior bad acts. The question is whether it is “highly probable” that the evidence and facts of the prior act are grounded in truth. State v. Ness, 707 N.W.2d 676 (Minn. 2006). Whether evidence is clear and convincing “requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt.” Weber v. Anderson, 269 N.W.2d 892, 895 (Minn. 1978).

Here, Alex Kirby’s Witness Statement as to Defendant’s prior delivery of opioids to others is sufficiently clear and convincing to support the third step. It is not, alone, proof beyond a reasonable doubt, but, as it is uncontradicted, it is more than a preponderance of evidence. The evidence is clear and convincing, and the third step has been satisfied.

Fourth, the evidence must be relevant to the prosecutor’s case. Rule 401 of the Minnesota High School Mock Trial Rules of Evidence defines “relevant evidence” as “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.” A fact of consequence in the determination of this case is whether the Defendant supplied the opioids to the Victim. Evidence that the Defendant did or did not supply opioids to others in the past would tend to make the existence of the consequential fact more or less probable.

In considering the issue of relevance in this context, however, the Court must go farther. The Court should focus on the time, place and modus operandi of the acts in question. The closer in time, place and manner the acts are to each other, the less likely that the evidence will be used for an improper purpose. See State v. Cogshell, 538 N.W.2d 120, 123 (Minn. 1995) (citations omitted). The prior act need not be identical to the charged crime, but it must be markedly similar to that charged crime. State v. Blom, 682 N.W.2d 578, 612 (Minn. 2004).

The Court is satisfied that the proposed evidence is relevant. There is a marked similarity between the bad acts described in Alex Kirby’s statement and the crime with which Defendant has been charged. The time, place and modus operandi of the acts are close to each other and, even if not identical, are sufficiently similar. Moreover, the circumstances in this case suggest that Defendant was aware of Victim’s addiction, kept opioids around his home, and shared his own opioids with others.

Fifth, and finally, the probative value of the proposed evidence cannot be outweighed by its potential for unfair prejudice to the Defendant. The focus here must be on “the potential for unfair prejudice, the capacity of the evidence to persuade by illegitimate means.” State v. Rucker, 752 N.W.2d 538, 550 (Minn. App. 2008) (emphasis in original).

The above discussion suggests that the proposed evidence has substantial probative value on the consequential issue in the case. The question, then, is whether there is a potential for unfair prejudice to the Defendant if the evidence is admitted. The Court concludes that there is not.
Given the similarity between the acts in question, and considering all the circumstances of this case, the Defendant will not be unfairly prejudiced by the admission of the State’s *Spriegl* evidence. The similarity suggests that the evidence is not likely to “persuade by illegitimate means.” The Defendant, moreover, will have an opportunity to challenge that evidence through cross examination and otherwise.

The State’s motion is granted.

**Defendant’s Motion to Admit “Reverse” *Spriegl* Evidence**

The Defendant seeks to admit evidence of the Victim’s prior bad acts, specifically evidence that the Victim obtained drugs from various sources and had used opioids in the past. Defendant argues that the evidence is admissible as “reverse” *Spriegl* evidence should the Court allow the State to introduce its intended *Spriegl* evidence.

As stated in *State v. Bock*, 229 Minn. 449, 458, 39 N.W.2d 887, 892 (1949); see *State v. Willis*, 364 N.W.2d 498, 500 (Minn.Ct.App.1985):

> Where the state has introduced evidence of other crimes to establish identity, the defendant is entitled to rebut the inference that might be drawn therefrom by showing that the crimes have been committed by someone else. [Defendant] should also have the right to show that crimes of a similar nature have been committed by some other person when the acts of such other person are so closely connected in point of time and method of operation as to cast doubt upon the identification of defendant as the person who committed the crime charged against [Defendant].

The Court’s ruling on the State’s motion to admit *Spriegl* evidence, then, foreshadows the Court’s ruling on the Defendant’s motion. The analysis is effectively the same and fairness demands that the Defendant be allowed to rebut the State’s evidence. The only real issue for decision on Defendant’s motion is whether the proposed evidence is “clear and convincing,” as that term is defined above, that the Victim obtained opioids from other sources. The Court concludes that it is. The evidence before the Court indicates that the Victim obtained opioids from various sources at various times and had opioids in the home that were obtained from other sources. Defendant has the right to try to show that the opioids that caused Victim’s death were not obtained from Defendant.

Defendant’s motion is granted.

**Cross Motions Regarding Admission of Facebook Message**

The State has disclosed a message purportedly left on Defendant’s Facebook “wall.” The parties have stipulated to the following facts regarding this message: 1) It was written and posted by Brandon Webster at 2:46 a.m. on July 5, 2018; 2) The message was posted to the public section of Defendant’s Facebook “wall” where it could be seen by anyone viewing Defendant’s Facebook page; and 3) Someone with control of Defendant’s Facebook account deleted the message within three minutes of its posting. The message has been designated as Exhibit 5.

The State has moved to allow admission of the message into evidence and the Defendant has simultaneously moved to preclude the admission of this exhibit as hearsay.

The message appears to thank Defendant for hosting a party, providing a “wonderful night,” and for some sort of “parting gift.” As to the “parting gift”, the message does not identify what it was, but claims that it “works fantastic,” followed by three emojis which the Court is advised are meant to indicate “tears of joy.” The message seems to refer to Defendant as a “chiropractor.” The message then concludes by apologizing for a fight, which is not described, and claims that amends have been made. The Court notes that the message contains numerous typographical errors and was apparently written and posted very late at night, after a party. The Court’s recitation as to what the message “appears” or “seems” to say is reflective of the fact that the message contains many errors. It should also be noted that
there are witness statements indicating that the deceased, Brandon Webster, was at a party at Defendant’s residence that evening before the message was posted.

Defendant objects to the entire message as containing inadmissible hearsay under Rule 802, to which no exception applies. Defendant argues that the State seeks to admit the evidence to prove the truth of the assertions, namely, that Defendant gave Mr. Webster the opioids he ingested that night. The State counters that the message is not being offered for the truth of the matter asserted and, in the alternative, that any statement in the exhibit found to be used for the truth of the matter asserted would fall under the hearsay exception found in Rule 803(3).

Rule 801(c) defines hearsay as “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.” Hearsay is not admissible unless one of the exceptions in Rule 803 or 804 applies. Under Rule 803(3), which is referred to as the “State of Mind” hearsay exception, regardless of whether the declarant is available to testify, a statement is not excluded by the hearsay rule if it is a statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, mental feeling, pain, and bodily health). Rule 803(3) further provides that even if the statement fits the “state of mind” definition, it is nonetheless excludable hearsay if it is a statement of memory or belief to prove the fact remembered or believed unless the memory or belief relates to certain issues regarding the making of a will.

The Court must consider each statement in Exhibit 5 to determine whether it is hearsay and, if so, whether the exception advanced by the State applies. The first, second and third sentences assert that there was an awesome party, that it was a pleasure “hanging out” with Defendant, and that Defendant is a chiropractor. There is no dispute that Mr. Webster was at a party at Defendant’s residence that night and that Mr. Webster and Defendant were together for some period of time at that party. There is also no dispute that Defendant is, in fact, not a chiropractor and no one is trying to prove otherwise. The reference to Defendant being a “chiropractor” could plausibly be read as a joke about Defendant’s ability to relieve Mr. Webster’s back pain. Similarly, no one is trying to prove that the party was “awesome.”

As to the entire message, the State contends that it is offering the statements not to prove the truth of the matters asserted, but instead to prove that Brandon Webster was likely intoxicated at the time the message was written and posted, that he was acting effusive due to the effects of the drugs, and that he was expressing gratitude to Defendant for providing the drugs. The Court agrees with the State as to the first three sentences of the message. Those statements are not being offered to prove the truth of the matters asserted and, therefore, are not hearsay, and, even if hearsay, are admissible under Rule 803(3) as statements indicating Mr. Webster’s state of mind, sensation and physical condition. The Court is not making any findings as to whether or not the facts the State intends to prove are or are not true, but the statements are admissible.

As to the remaining sentences of the message, however, the Court is not able to render a decision on the record before it. If the entire message is offered at trial, further evidence or argument will be required to narrow the issues and allow a ruling. The Court notes that either party may offer a redacted version of Exhibit 5, to be labeled Exhibit 5A, and thereby avoid further need for argument over its admissibility.

The parties’ cross motions are granted in part and denied in part.

Dated: September 21, 2018

/s/ J. Frisch
J. Frisch
Judge of District Court
The State and the Defendant have stipulated and agreed as follows:

1. The drugs ingested by Brandon Webster were tested at and by the Bureau of Criminal Apprehension and the test results are admissible in evidence. Any witness that has provided information in an affidavit about those test results may testify as to those test results.

2. The drugs found at Brandon Webster’s home were generic oxycodone and generic percocet, which is a combination of oxycodone and acetaminophen. Acetaminophen commonly goes by the name of Tylenol.

3. Dr. Quackenbush is out of the country and is unavailable to testify at trial. The parties do not dispute what Dr. Quackenbush said to Officer Soderberg. Officer Soderberg may testify as to Dr. Quackenbush’s statements to the Officer.

4. As to Exhibit 5, the message was written and posted by Brandon Webster at 2:46 a.m. on July 5, 2018. The message was posted to the public section of Defendant’s Facebook “wall” where it could be seen by anyone viewing Defendant’s Facebook page. Someone with control of Defendant’s Facebook account deleted the message within three minutes of it being posted on Defendant’s “wall.”

5. Exhibit 5 and Exhibit 5A are the same document, except that certain information has been redacted from Exhibit 5A. A party may attempt to enter either Exhibit 5 or Exhibit 5A, or both, into evidence.

6. Oxycodone is a Schedule II controlled substance. It is only available by prescription from a licensed medical doctor. This holds true for generic oxycodone as well as other drugs that contain oxycodone, such as percocet.

7. Baggies collected by Pat Soderberg were sent to the Bureau of Criminal Apprehension for fingerprint analysis. The analysis found no usable fingerprints on the baggies. Any witness that has provided information in an affidavit about the fingerprint analysis results may testify to those results.

Dated: October 9, 2018

State of Minnesota

/s/ Jonathan Bringewatt

Defendant

/s/ Ignasi Dorca
CRIMJIG 11.39 Murder in the Third Degree—Controlled Substances—Defined

Under Minnesota law, a person proximately causing the death of another by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a Schedule I or II controlled substance, without intent to cause death, is guilty of murder in the third degree.

CRIMJIG 11.40 Murder in the Third Degree—Controlled Substances—Elements

The elements of murder in the third degree as alleged in this case are:

First, the death of Brandon Webster must be proven.

Second, the defendant proximately caused the death of Brandon Webster by, directly or indirectly, unlawfully giving away, bartering, delivering, exchanging, distributing or administering oxycodone.

“To proximately cause” means to be a substantial causal factor in causing the death. The Defendant is criminally liable for all the consequences of Defendant’s actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the Defendant's acts. The fact that other causes contribute to the death does not relieve the Defendant of criminal liability. However, the Defendant is not criminally liable if a “superseding cause” caused the death. A “superseding cause” is a cause that comes after the Defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.

Third, the Defendant's act took place on July 4, 2018 in Ramsey County.

The State is not required to prove that the Defendant intended to cause the death of another, nor is the State required to prove that the Defendant acted without intent to cause the death of another. The only intent the State is required to prove is that the Defendant intended to give away, deliver, exchange, distribute or administer oxycodone.

If you find that each of the elements has been proven beyond a reasonable doubt, the Defendant is guilty of this charge. If you find that any element has not been proven beyond a reasonable doubt, the Defendant is not guilty of this charge.
Witness Statement of Kelly Fagin

My name is Kelly Fagin. I hold the position of Assistant Medical Examiner for Ramsey County, where I’ve worked for the past eight years. My work is in forensic pathology, the investigation into cause(s) of death. Under Minnesota law, a county medical examiner’s office is assigned to investigate human deaths under specific circumstances. One of those circumstances is whenever a person dies outside of a hospital. We must conduct a preliminary investigation and, if necessary, perform an autopsy—a detailed, intrusive examination of the body. Not every case will result in an autopsy. However, where it is unclear how a death occurred, or if there is evidence that a death was not by natural causes, then we will almost always perform an autopsy, barring an appropriate objection from the family.

Most people are familiar with the basic idea of an autopsy because they are depicted in crime TV shows. We will make incisions into a body to open up its cavities, remove organs, and conduct a comprehensive study of the body for evidence of injuries, health problems and potential causes of death. What the TV shows don’t usually show are all the work we do to analyze the evidence after an autopsy. Taking measurements, testing samples, and evaluating peer-reviewed research are important parts of the procedure. Also important is the documentation we do. We take meticulous records and photographs of everything in a case, and we write detailed reports of our investigation.

Some jurisdictions use coroners; others use medical examiners. There is a significant difference between the two types of jobs. Only medical examiners are required to be medical doctors with board certification in forensic pathology, which takes a long time and a lot of medical training, totaling approximately 13 years of higher education. I started with a Bachelor of Science from the University of California-San Diego. I then completed my Medical Doctorate at the University of North Carolina, in 2006. After that I completed a four-year residency in Pathology at the University of Minnesota, in 2010. Finally, to become board-certified, I returned to North Carolina for a one-year fellowship in Forensic Pathology at Duke University. Since 2011, I have been back in Minnesota, at Ramsey County in my current position.

I have performed more than one thousand autopsies. However, you may be surprised to know that the vast majority of autopsies we conduct are not criminal homicides. Most people die from natural causes, which includes death from medical problems they were experiencing that came about due to genetics, age or illness. Unfortunately, there are also many deaths we investigate that fall in-between, where a death is self-inflicted. Suicides and accidental deaths are issues I have investigated many times.

OPIOID OVERDOSES

You may have heard of the opioid crisis. Since the early 2010s, the United States has experienced mounting numbers of deaths from opioid drug overdoses. Hospitals and medical examiner offices are on the frontline of this crisis; we help handle the consequences of this crisis nearly every day. In the last five years, I have done hundreds of autopsies on people from all walks of life who have died from opioid overdoses. It has become so common now that we can often recognize the signs of an opioid overdose immediately, long before we conduct the autopsy, which more or less confirms what we already strongly suspect.

Opioids are powerful, highly addictive drugs. Their desired effect is pain relief. They do this by binding to the opioid receptors in the central nervous system, thereby blocking pain signals to the brain. An unintended effect is that they also bind with receptors that control your alertness, causing a depressant effect. With too many opioids blocking these receptors, you become sleepy. Third, opioids also cause the unintended effect of shutting down the brain’s control of the respiratory system. With too many opioids, the lungs will stop receiving signals to function, and the person will die from asphyxiation. By this point, the person has already
been rendered unconscious from the depressant effect and is unaware that they are no longer attempting to breathe.

In the early 2000s, pharmaceutical companies began making prescription variants of these drugs available in high numbers. Patients were given large amounts of opioids for pain relief. Many people began overdosing on their prescribed medications. Many others became so addicted that they exhausted legal sources of opioids and turned to drugs on the street or black market. We are still dealing with a massive number of addicts and overdose-related deaths from the opioid crisis. At the time of writing this report in summer of 2019, I have already performed 49 opioid overdose autopsies this year.

PRELIMINARY INVESTIGATION OF BRANDON WEBSTER

My office’s involvement in the death of Brandon Webster began on July 5, 2018, the day Mr. Webster was discovered by police deceased in his home. Within minutes of the body’s discovery, my office was called. This is common in overdose deaths. Sometimes, as in this case, it is so obvious that the person is deceased that we will be called at the same time as EMS.

I was not present at this point, but as you may know from other witness testimony, the police purportedly found Brandon Webster, a middle-aged male, lying down on a living room couch, fully clothed and face-up, with the tell-tale sign of opioid overdose: a cone of white foam that had bubbled out of the mouth and collected on the face. Graphic pictures taken at the scene confirm these facts. EMS pronounced the male deceased upon the arrival of our death investigation team.

According to the pictures and reports of the police, there were open and mostly empty bottles of alcohol located on a coffee table, as well as a plastic sandwich baggie with suspected medication pills inside. Pictures of the house have been included as Exhibits 7 through 10. An investigation could find no sign of a struggle, and no other potential occupants of the home or witnesses of the death could be found.

Because the death did not appear to be natural, our office was required to conduct an autopsy. The body was transported to the Medical Examiner, where it stayed in cold storage until July 6, 2018. That morning, I led the autopsy.

AUTOPSY OF BRANDON WEBSTER

Most of my findings are contained in Exhibit 6, the autopsy report I filed in this case. However, I can summarize the salient points of that report here.

The autopsy began with an examination of the body for exterior characteristics. We looked at the skin, face, and other outside areas for evidence of injuries or health problems. We also evaluated rigor mortis and livor mortis.

Rigor mortis is the rigidity of limbs following a death; the muscles will lock up a few hours after death (the exact time varies, usually dependent on temperature). We noted moderate rigor mortis in the arms, legs and neck. We also noted livor mortis, which is a collecting and congealing of blood inside the body after the heart stops pumping. The blood will pool and congeal where gravity causes it to travel after death, creating large bruising patterns under the skin that are visible just by looking at the body without clothes. There was livor mortis in the posterior of the body, mostly in the legs and on the backside area, meaning either immediately or shortly after the death, the body had come to rest on its back and the blood pooled towards the back, consistent with how the body was found on the couch.
Aside from the cone of foam on the face, we did not note evidence of injuries or other illnesses on the outside of the body. The cone of bubbled foam was key. When an opioid overdose occurs, the lungs stop working, the body dies, and the lungs gather fluid, called pulmonary edema, which eventually overflows into the trachea, the windpipe, and out of the mouth or nose. Here, it passed through the nostrils because the mouth was closed.

The next step we did was an evaluation of the inside of the body. All of the bodily organs, including the brain, were removed, examined, and weighed. We also took fluid samples from organs when it was relevant. The weights of the different organs are noted in my autopsy report, but I do want to bring attention to a few important pieces of data.

The lungs were both wet and heavy--about twice as heavy as usual. A normal healthy right lung weighs about 450 grams and a normal left lung weighs about 400 grams. This was a strong sign of an opioid overdose, because of the fluid buildup that had occurred. We also found a full bladder, which was at capacity at about 250 milliliters. These were both strong evidence of an opioid overdose-caused death.

There were signs of other medical issues in this body. The heart was enlarged and weighed 520 grams, but a normal heart weighs 475 grams. The left ventricle of the heart, a chamber inside, was slightly thickened, at 1.7 cm thick (normal max is 1.5). There were also changes to the kidneys, which combined with the heart condition, indicated hypertension (high blood pressure). A normal kidney is perfectly smooth outside; a hypertension kidney has granular kidney texture like an NFL football, from scarring of the tissues that respond to the high blood pressure.

The body was slightly overweight. There was a history in medical records we obtained showing high blood sugars. According to medical records, Mr. Webster had recently started oral medication to try to control his diabetes. We believed he had early stages of Type II diabetes and was overweight. None of these symptoms, however, were indicative of the cause of death.

**TOXICOLOGY RESULTS**

We acquired and tested blood from the femoral artery in the left leg. The femoral artery is the most reliable location in the body to take samples of blood that could contain opioids. Alcohol tends to be consistent through most blood in a body after death, but opioids will collect unpredictably in certain organs. Arteries serve as more even and reliable sources of blood. The femoral blood tested positive for alcohol, oxycodone, and acetaminophen.

When our preliminary, in-office blood tests are positive for a drug in more than trace amounts, we will send samples of the blood out to a toxicology laboratory to do more detailed testing, which we did. We asked for specific levels to be measured for alcohol and oxycodone. We did not request specific levels of acetaminophen because the preliminary in-office test results only showed trace amounts.

The toxicology lab testing of the blood showed an alcohol concentration of 0.09 grams per decaliter of blood, which is slightly above the level at which it becomes illegal to drive a car in Minnesota, 0.08. This is not a lethal amount of alcohol for the vast majority of humans, and particularly not lethal for people who drink regularly. However, there was also a concentration of oxycodone, 0.4 milligrams per liter of blood. This can be a lethal amount of an opioid in a human, even someone who has built some tolerance through repeated consumption. It is more likely to be lethal when combined with alcohol, which exacerbates the symptoms of opioid overdose.

Additionally, there were trace amounts of acetaminophen, the drug found in Tylenol as well as percocet, which is a brand name prescription drug that combines oxycodone with acetaminophen. However, the levels of acetaminophen only came in at trace amounts from our preliminary tests, so we did not request more precise
numbers from the toxicology laboratory. We also did not note liver damage that would be expected from an acetaminophen overdose.

Where the different drugs came from was a matter of evidence found in the house, the pictures, and Exhibits. There were beer bottles found on the coffee table, about five, and they were mostly empty. This indicated they had been consumed. Notably, there was a baggie with pills on the coffee table as well, and it was open for easy access. These pills tested positive for the chemical oxycodone. Additionally, there was an unlabeled pill bottle found in the upstairs master bathroom, which had pills that tested positive for oxycodone and acetaminophen, meaning they were likely percocet or a different brand of the same type of medication. Given the only trace amounts of acetaminophen, and the lack of percocet found downstairs near the body, it was inconclusive whether Mr. Webster had consumed any of this drug near the time of his death.

There was nothing but light-tan fluid found in the stomach, so it’s impossible to know when exactly the oxycodone found in the blood was consumed, but this is not unusual. In suicide cases, there are often gobs of undigested oxycodone pills found in the stomach, because the user has taken an amount intentionally calculated to cause death. But here, the pills had been digested, indicating a small number had been taken. Only a few pills would be enough to cause the blood levels of oxycodone we found in this case.

**CAUSE AND MANNER OF DEATH DETERMINATION**

We strive to make two determinations for a death, the cause and the manner. The cause is the physical mechanism(s) for how the person died. The manner is a more abstract, quasi-legal determination concerning why a person died. Sometimes a cause or manner of death will be inconclusive given the evidence. Here, we made both determinations to a degree of reasonable medical, scientific certainty.

I concluded the cause of death was consumption of oxycodone, possibly exacerbated by co-consumption of alcohol. The manner of death was concluded to be an accidental overdose. Again, given the lack of pills found in the stomach, it did not seem likely Mr. Webster had intentionally taken enough of the drug to cause death. There was also no suicide note located, and the body was not arranged in a way that indicated he had planned to die.

As far as the trace evidence of acetaminophen, that evidence was inconclusive. It was undetermined how much acetaminophen was in the body; only that it was a very trace amount, unlikely to have been from something that was recently consumed prior to death. Additionally, there was no liver damage associated with an overdose of acetaminophen, so we did not conclude it was a contributor to the death. Even if acetaminophen did contribute to the cause of death with the alcohol, it would not change my conclusion that oxycodone was the primary cause of death.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated October 14, 2019

/s/ Kelly Fagin
Witness Statement of Pat Soderberg

I, Pat Soderberg, have been a licensed Peace Officer in the State of Minnesota since 2013 and have worked for the Guthmann police department since 2013. I am a patrol officer. Our Guthmann police force is somewhat small, so we are expected to work on everything from lost dogs to homicides. I grew up in Guthmann and I guess I always wanted to be a cop in Guthmann.

I completed a two-year AA degree in criminology at the Hibbing Community College then entered Hibbing’s Minnesota Peace Officer Training Program in 2005. During that time, I took law classes, skills courses and driving courses. A dispatcher job opened in Guthmann, so I worked as a Dispatcher for the Ramsey County Sheriff’s Office. I got to know a lot of first responders and paramedics and decided I would rather do that than be a cop. I trained as a First Responder and ultimately completed the paramedic course at Ridgewater College in Willmar in 2008. I am a Certified Emergency Medical Technician.

I returned to Guthmann and supported myself as a part-time dispatcher and on-call EMT. I found myself drawn back toward police work and was hired full time by the Guthmann Police Department in 2013. I maintain my EMT certification and my Peace Officer’s License through regular mandatory classes. My coursework included Basic Crime Scene Processing and Basic Narcotics Investigation. I am a full-time police officer and part-time EMT.

On July 5, 2018, at 11:43 a.m., I was working the day shift and was walking into Legal Grounds Coffee Shop when I was dispatched to investigate a report of an unresponsive 48-year old person with an ambulance already dispatched. Guthmann police respond to all ambulance calls and are often the first person on the scene. I recognized the address as belonging to Brandon Webster. Mr. Webster was a prominent accountant, served on the Chamber of Commerce and was well-known in the community. On the way to the scene I became anxious because “unresponsive” usually translates to “found dead” and Brandon Webster dying would be a big deal in Guthmann.

Upon arrival, I was met at the door by Mr. Webster’s spouse, Skyler. Skyler said Brandon didn’t show up for work and she went home to check on him. Skyler was weepy and kept repeating “I can’t wake him up!” Skyler brought me to the living room. At first glance, the room seemed normal. The room showed no signs of a struggle and there were empty beer bottles around the room. I recognized Brandon lying on the couch, face up and fully clothed on the couch, but with a tell-tale sign of an opioid overdose, a cone of white, fine bubbly foam on the face.

He was wearing jeans and a T-shirt, no shoes, one sock and would have appeared to the untrained eye to have simply fallen asleep. However, on closer look, he not only displayed the foam cone, but was also ashen grey. I put latex gloves for evidence handling, and I reached to touch his neck/face. He was cold to the touch. I also detected the odor of beer near him. I immediately radioed in for assistance from EMS and the Medical Examiner. Then I took a few pictures with my department-issued smart phone.

Guthmann Police and Fire Protocol says First Responders must attempt resuscitation. Even though I knew Mr. Webster was dead, I went through the motions and waited for the ambulance crew. The second the ambulance crew came through the door, I began a survey of the scene.

On the coffee table in front of the body was a plastic sandwich baggie with what appeared to be over a dozen pills. These pills were tested later; the laboratory positively identified them as oxycodone tablets. Something else I noted was that the baggie seemed to have some sort of tape with numbering on it. After the scene was completely photographed and documented, I flipped the baggie over so I could read it. The numbering written in marker on the label said “3689.”
I also counted five beer bottles around the room, all opened and empty. I quickly scanned the surfaces and floor looking for any other signs of illicit narcotics use. There were none.

I visited every room in the house and, for the most part, did not find anything of note. However, I did find more evidence in the deceased’s upstairs master bathroom. On a wooden shelf above the toilet was a closed orange prescription bottle without a label. There were red pills inside that were later tested by the BCA and found to be percocet, a type of oxycodone.

I photographed the prescription bottle, pills and baggie where I found them. I pulled an evidence baggie out of my cargo pants pocket, put on some gloves, and collected each piece of evidence. Later on, I then separately photographed the tablets.

The baggies were later sent to the BCA for fingerprint analysis. I learned that there were no usable prints found on the baggie. That wasn’t a huge surprise. Based on my training and experience, I know that identifiable fingerprints are often not found on surfaces, even if someone touched the surface. But it was worth trying to find fingerprints, even though the results didn’t tell us anything.

In the orange pill bottle found upstairs were red tablets which I later identified as 60 mg percocet. The BCA Lab later confirmed my pill identifications. The prescription was from Hydukovich’s Family Pharmacy in Hudson, Wisconsin. This struck me as odd, so I called the regional drug task force and asked what to make of this. They told me that addicts who doctor shop often go to Wisconsin for prescriptions because the pharmacies are not tied in with the Minnesota opiate prescription data base.

Investigation quickly revealed that there had been a party at Sam Soto’s house the night before the death, and there was some indication that painkillers had been discussed. After clearing the death scene, I went immediately to Sam Soto’s house. S/He/They allowed me into the house and agreed I could search it and his/her/they computer. Sam Soto was informed that s/he/they could refuse my request and I would be happy to get a search warrant. Soto said, “I’m heartbroken to find out about Brandon. I want to do whatever I can to help.” and invited me to “do whatever you need to do.”

The search of the house revealed the following items of note:

1. There was a box of fresh, new sandwich baggies in Sam Soto’s kitchen drawer that were the same shape, size, and type of baggie that were found on the coffee table in front of Brandon Webster’s body.

2. A Google search had been done on “oxy overdose” on the Defendant’s computer within minutes of Skylar calling 911 to report the body of Brandon Webster. The search had been deleted in the last twenty minutes. Defendant told me that Skylar had called, distraught, and that she explained how she found her husband in the house.

3. There was evident activity on Sam Soto’s Facebook page within an hour of the discovery of the body. The postings were in the message section of the page. A subpoena of Facebook records revealed the message contents and its time of deletion. The message appears to be left by Brandon Webster in the early morning hours of July 5, 2018, apparently after receiving a gift from Sam Soto. Coincidentally, Webster is not making much coherent sense in the message, and appears to be manic and likely intoxicated.
4. A strong box was found under the Sam Soto’s bed in the master bedroom. Found inside was a sandwich baggie matching the sandwich baggie found at Webster’s home, with a similar scotch tape label and black marker numerals, this time for the number “52891.” The baggie had a noticeably larger quantity of oxycodone tablets inside than the baggie found at Webster’s house. Also in the strong box were two $100 bills and some personal papers.

Late that day, I met with Brandon Webster’s regular physician, Dr. H. C. Quackenbush in her office near the coffee shop, downtown. She had treated Webster for various medical issues for several years by this point, and told me that he had serious chronic back pain dating back to his military service. He had once been addicted to narcotics in college, so Dr. Quackenbush purposefully kept him at a low oxycodone dosage. When I mentioned finding some 60 mg percocet pills, the Doctor stated that Mr. Webster had a 60 mg percocet prescription for a higher dosage a number of years ago following a car accident, but that was only for about six weeks. The Doctor admitted that some pain patients kept a few old, stronger pills “just in case” they had a bad day. Dr. Quackenbush repeatedly scolded Mr. Webster about drinking alcohol when on pain meds. Mr. Webster always waved the doctor off and said, “I know, I know – it’s a killer combo!” Dr. Quackenbush added, “The drinking didn’t help his diabetes either.”

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: October 14, 2019

/s/ Pat Soderberg
Witness Statement of Alex Kirby

My name is Alex Kirby. I am thirty-five years old and I reside in Guthmann, Minnesota in Ramsey County. I’m a small business owner, I primarily own and manage a local coffee shop, but I also own a bookstore here in Ramsey County, Minnesota. I received a Bachelor of Arts in Business Education, and a minor in Music from Augustana University. The job market wasn’t great when I graduated, but I was able to start working for the original owner of the coffee shop when I graduated, and I managed to impress him with some business initiatives. We worked out an agreement to allow me to take over ownership of the business over several years. I am now the sole owner of the “Legal Grounds” coffee shop. I was also able to convert the basement of the building into a separate business and start operating a bookstore about 7 years ago. At this rate, things are going very well for me financially, and I should have all my student loans paid off in another 12 or 13 years.

The actual day to day work for both the coffee shop and bookstore is fairly similar. Most of what I do is try to keep up on the paperwork. I have to manage the schedules for all the baristas and clerks for the bookstore. I have to make sure to manage inventory for both. The coffee shop constantly needs new coffee and food every day, and we need to make sure we are keeping everything clean and getting rid of the old food. At least the inventory for the bookstore is not as immediate, but I still have to research the popular new topics, and look into the value of the occasional rare older book that comes in. On top of all that, we have to make sure all the books are balanced and everyone is going to get paid at the end of the month. I have an assistant manager for both businesses, but in order to make sure I’m taking home enough to pay the bills and student loans, I’m typically working about 70 hours a week between the two jobs.

About 9 years ago, I was working at the coffee shop, this was before we put in the bookstore, and got involved with some of the local protestors. We were part of a local group for the Rally to Restore Sanity. During one of the protests, officers were going through and ticketing us for trespassing. I thought it would be funny to tell the officer my last name was Soyka. That got me charged with giving a false name to a police officer. Though I felt like it was a badge of honor at the time, I was convicted of a misdemeanor for providing a police officer with a false name and given a weekend of community service. Since then, I’ve stopped with the protests and started getting involved elsewhere.

I’ve been involved with the local Chamber of Commerce for the past 8 years. For the last five years I served the local Chamber of Commerce as a member of the Board of Directors. This is how I got to know Brandon Webster and Sam Soto. They are both a little older than I, and I think they decided to take me under-wing as a mentee. In the first few months of knowing them, they had started regularly taking me out to lunch and talking business. They always had great insight for me, from managing staff, to general business management. Both of them were previous Board members and they nominated me to join the Board. Although they were no longer on the Board, they still came out to a lot of the events.

Shortly after meeting them at the Chamber of Commerce, Brandon and Sam would invite me to parties; they would call them “networking events,” although there wasn’t much networking being done. It was a large group of people, but it was pretty rare to see a new face. The events would generally be attended by local business owners and professionals in the community. The events would normally take place at someone’s house or cabin. Sam would generally host an event at his/her/their house on the 4th of July. Sam’s events would generally start out pretty quiet and tame in the early afternoon; just barbecuing whatever people brought. The events at Sam’s place were always BYOB, and it was unusual for people to get heavily intoxicated, although it did happen. It would probably look like a large diverse family reunion from an outsider’s perspective.

Later in the evening, most of the families would go home and it would be a smaller crowd. People would normally be hanging out in smaller groups of two and three, talking about how bad business is, or how their health is failing with their latest ache or pain, or the latest gossip or drama inside or outside the group. Sam
always had a large number of health-related issues to complain about. Sometimes it was his/her/their cholesterol, or heart disease. Sometimes s/he/they was waiting on a biopsy for yet another mole that might be skin cancer. But generally, there was a lot of pain. Sam seemed to have some pretty severe back pain from when s/he/they served in the military. Sam also had a really good doctor. Well, I guess they might not be a really good doctor, but a doctor that definitely prescribed a lot of pills. Sam wasn’t stingy with the pills either. I never saw him/her/them take any, but I definitely would see Sam share the pills when other friends would complain about aches or pains.

One year at the Fourth of July party, I was talking to another guest and Sam was listening. I mentioned that I had spent the previous day carrying boxes of books up and down the steps for the bookstore, and that morning I could barely get out of bed due to my back. Later that evening, before I headed home, Sam pulled me aside and handed me a little baggie with about a dozen pills in it. S/He/They told me to take one before I went to bed, and one in the morning after I get to work until the pain went away. S/He/They told me not to drive for a few hours after taking them. I’ll admit, I took them, and I did as s/he/they suggested. The pain went away, but that didn’t make it ok. I’ve always regretted taking them. Who knows what could have happened.

Since that event, I’ve seen Sam handing out other baggies to guests at other events. I would normally see him/her/them pull someone aside and hand something to the other person. I never said anything, and I never heard anyone else say anything about it. I mean, Sam never asked for money; it wasn’t like s/he/they was selling drugs. I never heard anyone asking Sam for drugs either - before July 4th, 2018, I mean. S/He/They was just trying to help other people out. But, I wish I had said something now.

I was at the event on July 4th, 2018. I arrived early and brought some whole bean coffee samples we had gotten in earlier in the week. I brought them in baggies because I didn’t have enough of any other type of container. I also brought a case of hard cider. When I arrived, I opened one of the cans of cider and sat down to talk to Sam as they prepared the grill. I finished my first can about the same time that the first round of burgers was ready. So I made some food and grabbed another can of cider and went and talked to a few of the other guests. There were a few families that I would see in the coffee shop a lot, so I sat with them while eating. We were catching up on life and just making small talk while enjoying the nice day.

A couple hours in, I had just opened my third can of hard cider. That was the first time I remember seeing Brandon that day. I remember him having a drink, but I’m not sure what it was. He appeared to have jumped into a conversation and was starting to take over the discussion. It was clear to everyone but Brandon himself that the interjection was unwelcome. People started to disengage in the conversation and drift to other groups. Looking back on the interaction, I’m not sure what was up with him, but at the time I had thought that he was probably drunk.

A few hours later, I think I was on my fourth drink, and Brandon came over and joined in the conversation I was having with a few other guests. A few of the guests had kids looking at college applications and considering retaking the SATs and ACTs. I don’t have any kids, so I wasn’t really listening to the conversation. When Brandon showed up, I got the feeling that he had already jumped into other conversations with the other guests, because the other guests peeled off pretty quick to join other conversations. This left me alone talking to him. He was complaining about his latest ache or pain. I can’t remember specifically what it was. I tried to change the subject a few times, but he was focused on how much he hurt, and how much the doctors cost, and the problems with the healthcare system. Eventually, I told him that my drink was gone and I needed to go get another as a way of escaping the conversation. I liked Brandon, he was a good friend. Looking back on that day, I regret ignoring him and pushing him away. I just thought he was drunk. I didn’t know that was the last time I was going to talk to him.
I did see him later that night talking to Sam. This was after most of the families had left and it was getting pretty quiet. I had my back to them initially, but I could hear Brandon going on very loudly about his pain and suffering. I heard him saying, “I know you have something, you always have something. Is it about the money? I can pay.” At that point I turned around and saw that he was talking to Sam. Sam seemed to be slowly shaking his/her/their head; I wasn’t sure what part of the conversation Sam was responding to. I remember Sam saying something like “Are you sure? Are you sure you think that’s the best idea?” Then Sam broke away to say goodbye to some other guests.

A friend had agreed to give me a ride home, and I left about half an hour after that conversation. I was going to say goodbye to Sam, but noticed that Brandon and Sam were together. It looked like Sam handed something small to Brandon, then he gave Sam a hug, and it looked like they had worked out whatever their issue was. I couldn’t tell exactly what Sam handed to Brandon, but it looked like a baggie. That said, I couldn’t tell if it was a baggie that had some of the coffee grounds I’d brought or if it contained something else. That was the last time I saw Brandon alive. I was too buzzed to drive home legally by that point, so I took a ride share home, and I stopped by early the next morning to pick up my car, but I didn’t see Sam. That was the last time I was at Sam’s place.

A few days later I learned of Brandon’s death from some other guests that stopped into the coffee shop. There was a funeral a few days later. I attended, as did Sam, but we didn’t talk. Nobody really talked at the funeral. There were rumors that Sam had given Brandon some pills that he had taken and overdosed.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated October 14, 2019

/s/ Alex Kirby
My name is Morgan Holloway. I am 50 years old, and I live in Guthmann. I work at Divine Hospital as an addiction medicine physician. The type of work I do has never received as much attention as it has since the opioid epidemic began to get serious media attention.

I attended the University of Illinois at Urbana-Champaign, where I received a Bachelor of Science Degree, summa cum laude, in Biology. I attended medical school at the University of Minnesota; I graduated with honors.

While I was in medical school, I started to realize the importance of treating addiction as an illness rather than a character flaw. I thought about my mother’s behavior as I grew up. She was an alcoholic, and the negative effects of her addiction on my family became even more obvious to me. And during my second year of medical school, just before our final exams for the spring semester, my brother passed away from an overdose of a variety of opiates. My brother was two years younger than me. Even though I continued to see him fairly often, I had no idea he was suffering from addiction. Outwardly, he was just as friendly and outgoing as he’d always been.

After he passed away, I learned his story from friends who had used with him. The guilt they felt - and their seeming inability to get away from their own addictions despite my brother’s death - gave me a new mission in life.

After I graduated from medical school, I did my residency at the UCLA Teaching Hospital for Neuroscience & Human Behavior, where I learned from some of the most renowned addiction specialists in the nation. My residency was an amazing experience. I learned that people who suffer from addiction come from every race, gender, socioeconomic status, and religion. After completing my residency, I became board certified in addiction medicine, and I was hired at Divine Hospital. I’ve worked there ever since. I’ve also done some consulting work at a local residential chemical dependency treatment facility.

Because of the experience I had with my brother’s overdose death, I’ve done a lot of studying - and even some publishing - on determining the cause and manner of death in opioid overdose cases. As this case exemplifies, determining which specific drug actually caused a person’s death is often not nearly as clear as one might think.

About three years ago, a personal-injury attorney who is a good friend of mine asked me to review some documents on behalf of her client. I agreed to look at the documents and found some serious issues with how her client had been treated at a Twin Cities hospital. That experience made me realize that I enjoyed acting as an expert in court cases. It’s really interesting, and of course, there’s a little money to be made. Before this case, I’ve been retained in five other cases. All five were civil cases where I was retained by the plaintiff. This is the first time I’ve been retained in a criminal case.

Sam Soto’s attorneys approached me and asked me to take a look at the case. I’ve reviewed the affidavit of Kelly Fagin, his/her/their autopsy report, and the affidavit of Pat Soderberg. I’m charging my standard rate of $300 an hour for my time. Before coming to trial to testify, I’ve spent 30 hours researching, reviewing documents, writing this affidavit, and preparing for testimony.

One of the many sad realities of opioid addiction is that addicts often take more than one drug and get their drugs from more than one source, whether legitimate or illegitimate. That appears to be the case with Brandon Webster.
According to the documents I reviewed, when Mr. Webster was found deceased, a baggie containing pills was found on the coffee table in front of him. Lab tests confirmed that the pills remaining in the baggie were indeed oxycodone. I’ve reviewed documentation of the testing of the pills, and I have no reason to doubt the results.

Mr. Webster may indeed have ingested one or more of the oxycodone pills from the baggie found on the coffee table. But when you’re trying to determine the cause of death in an apparent overdose, you have to examine all possibilities. Despite how it might look at first glance, it’s far from clear that the oxycodone in the baggie found in front of him actually caused his death. There are complicating factors.

The first complicating factor is the fact that Mr. Webster had been consuming alcohol. The first police officer at the scene smelled alcohol about his person. And the toxicology results showed that his blood-alcohol concentration was 0.09. Blood-alcohol testing is very reliable, so I have little doubt that Mr. Webster’s blood-alcohol concentration was 0.09 at the time of his death.

The amount of alcohol found in his blood typically isn’t enough to cause death, particularly in an adult. But alcohol is a depressant. And many studies have shown that alcohol can have an additive effect when taken with oxycodone. That means that the effects of alcohol and oxycodone, when taken together, can essentially amplify each other. Indeed, drinking even a moderate amount of alcohol and taking one oxycodone pill could cause a condition called respiratory depression. A person suffering from respiratory depression experiences shallow breathing or stops breathing altogether.

It’s entirely possible that if he hadn’t been drinking, the oxycodone in his system would not have been fatal. I can’t say for sure one way or the other whether his alcohol consumption contributed to his death, but it’s a strong possibility.

In my opinion, however, there’s an even more important question about Brandon Webster’s cause of death that was left unsolved by Kelly Fagin. Preliminary testing showed the results of trace amounts of acetaminophen in his system. This might not seem like a big deal. Acetaminophen, by itself, is commonly known by the brand name Tylenol. It’s an over-the-counter painkiller. But the presence of both oxycodone and acetaminophen is very important.

Percocet is the brand name of a painkiller that contains both oxycodone and acetaminophen. The oxycodone pills found near Brandon Webster were not percocet pills - that is, they did not contain acetaminophen in addition to oxycodone. But Pat Soderberg’s affidavit notes that another prescription pill bottle was found in Mr. Webster’s medicine cabinet. That bottle was un-labelled, but the pills inside tested positive for both oxycodone and acetaminophen - that is, percocet. It’s entirely possible Mr. Webster took a substantial amount of that percocet, and that percocet caused his death.

There was a way Kelly Fagin could have determined whether Brandon Webster’s possible percocet use caused his death. Pursuant to standard practice, Kelly Fagin asked his/her/their lab to quantitate the amount of oxycodone in Mr. Webster’s system. Quantitation is the process by which a lab determines the amount of a substance in a person’s system.

But Kelly Fagin did not ask the lab to quantitate the acetaminophen. This was a huge misstep by him/her/them. Knowing how much acetaminophen was present could have provided at least a rough estimate of how much percocet, if any, Brandon Webster consumed before his death.

Kelly Fagin’s affidavit states that they did not order quantitation of the acetaminophen because preliminary testing showed only a “trace amount.” A trace amount is a very small amount, below some
arbitrarily-defined threshold. But preliminary tests are preliminary for a reason. They aren’t nearly as reliable as the more refined testing that’s available in the lab.

Preliminary tests are helpful to rule out the presence of a certain drug. If something isn’t present at all, there’s no point in trying to do additional testing for it. But if a drug is in a person’s system, and there’s any chance that it’s significant to determining cause of death, a medical examiner should order quantitation.

Kelly Fagin didn’t order quantitation of the acetaminophen, so we’ll never know whether percocet could have played a role in Brandon Webster’s death. Now it’s too late. When I inquired from Kelly Fagin’s office about obtaining a sample for additional testing, I was told that there were no samples available.

I agree with Kelly Fagin’s opinion that the manner of death was an accidental overdose. There is no evidence that Brandon Webster died by the intentional act of another, by suicide, or of natural causes. I also agree with Kelly Fagin that the cause of death was consumption of oxycodone, with the consumption of alcohol being a contributing factor.

Unfortunately, Kelly Fagin doesn’t really grapple with the question we can’t answer - which oxycodone caused Mr. Webster’s death. I cannot state to a reasonable degree of medical certainty whether he died as a result of consuming the oxycodone in the baggie near him, the percocet found in his medicine cabinet, or some combination of the two. The evidence simply doesn’t tell us that, and I’m afraid we will never know. I just hope Sam Soto doesn’t suffer as a result.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated October 14, 2019

/s/ Morgan Holloway
My Name is Sam Soto. I am forty-eight years old. I am an accountant at Louis and Tully. I am a Certified Public Accountant and have a Degree from the University of Minnesota. I graduated from the University in 1997. I guess I have always worked with money. I joined the Army right out of high school and somehow ended up working in the finance office of the base. While I was in the Army, I got hurt pretty bad in a car crash. One of my friends was driving under the influence and we both got banged up pretty bad. We both had been drinking all night, but I thought he was safe to drive. I knew I wasn’t in any shape to drive. He ended up going to jail for a while for the accident. I have been on pretty significant pain medication and muscle relaxers for my back since that injury. The doctors say I have a thoracic spine injury and it’s not going to get better.

I was a few years older than most of the other guys at college, since I had spent four years in the Army. I met Brandon Webster when were in college together. Brandon was always good at making friends. Before long, I was hanging out with him and a pretty big group of students on a regular basis. Since Brandon and I were already twenty-two when we started college, his friends usually asked us to buy alcohol for them. I know it was illegal, but I liked being part of his circle of friends and it’s not like I was selling drugs or anything. If I didn’t buy it, someone would use a fake ID or have their older sibling do it. Plus, when I bought the alcohol, I made everyone at the party give me their car keys. I also cut people off if they looked too drunk. We probably had the safest parties at college, because of me. I can’t drink alcohol because of the pain medication I take, so I usually drove people home from parties.

I stayed close with Brandon throughout college. We both took the same business and accounting courses and graduated together. We both studied for the CPA exam together and passed on the first try. Of course, by that time most of Brandon’s friends were over twenty-one and I didn’t have to buy alcohol for them anymore. I still made them give me their car keys when we went partying though.

Brandon and I both got internships at Louis and Tully right out of college. It was nice to start a career with a friend. We worked together for almost twenty years before he died. Unfortunately, he developed a little bit of a drug problem early in his career. He always liked to party, and accounting is a pretty stressful business. Sometimes, he would ask to “borrow” a muscle relaxer or painkiller after a long day at the office. Once or twice, years ago, I let him have a pill or two, but I always made him promise that he wouldn’t drink or drive after he took it. Like I said, accounting is stressful, and Brandon deserved to unwind. I found out later that he was doing more than taking an occasional pill. Maybe six years ago, he completed the Wayfarer rehabilitation program for opioid addiction.

Brandon and I really worked to grow the business together. That meant a lot of social gatherings with clients and potential clients. Along with the usual types of events—concerts, ball games, dinners, that kind of thing—I started hosting an annual Fourth of July party. It started as a social gathering with friends, but after a few years I started inviting clients too. Brandon usually came to the party. It was like old times in college. He and I would make sure there was plenty of food and booze, most of which I was able to put on my expense report for work since it was a networking event. Of course, I couldn’t ask clients to give me their car keys, so I am pretty sure some people drove home when they shouldn’t have. I sort of just stopped keeping track of how much people were drinking. I mean, at some point, we just have to trust adults to be adults, right?

After a few years, my Fourth of July parties became the centerpiece of my marketing efforts and the highlight of my summer. Brandon and I recruited a lot of clients at those parties. Many of our clients came back year after year. They weren’t all business though. At times the Fourth of July party was more of a social event with a little marketing mixed in; it all depended on who made it out to the house on any given night. Some of my fondest memories are from those parties and a lot of those clients have since become good friends.

Over years of talking, I learned that a few of the clients who came to my Fourth of July parties had chronic pain like mine. We compared notes on doctors, treatments, and medications. We talked about our
I hosted my usual party on July 4, 2018. Brandon and his family came to the party. I guess that shows you how times have changed. When I first started hosting this party, no one had any kids and now most of the people who come bring their children for at least part of the day. As usual, some of my guests and I started talking about our chronic pain and the latest and greatest strategies for living with it. Brandon was really weird about that conversation that night. What I mean is, he said that he had been in pain since he pulled his back doing yardwork a few weeks ago. I don’t remember Brandon saying anything about his back hurting before July 4, 2018, but I do remember him complaining about an oxycodone prescription he got in 2016 for a torn ligament. He was in a lot of pain, but was worried that he’d get addicted again. He only complained about that the one time and I don’t think that he had to take the oxycodone for very long that year.

Anyway, on July 4, 2018, Brandon was talking a lot about oxycodone. I heard him ask a few of my guests if they had ever taken oxycodone, if they liked how it affected them, and if they ever had any side effects with it. He knew I took oxycodone for my back. He also had been so careful around that kind of medication since getting out of rehab. I reminded him about all his hard work in getting clean and how much he worried about the oxycodone prescription in 2016. He eventually stopped asking, but told me that he had been under a lot of pressure lately at work and was looking for anything to take the edge off, if just for one night. I think I might have told him to have another drink or something, but I don’t remember that. I remember being worried that he might be falling back into bad habits.

At some point on July 4, Brandon stopped me and asked me if I had any oxycodone. This struck me as really weird. He knew I took oxycodone for my back. He also had been so careful around that kind of medication since getting out of rehab. I reminded him about all his hard work in getting clean and how much he worried about the oxycodone prescription in 2016. He eventually stopped asking, but told me that he had been under a lot of pressure lately at work and was looking for anything to take the edge off, if just for one night. I think I might have told him to have another drink or something, but I don’t remember that. I remember being worried that he might be falling back into bad habits.
The party wrapped up around 11:00 that night. That is pretty common with my Fourth of July parties. We watch the fireworks around 10:00 and people start leaving shortly afterwards. Brandon was one of the last people to leave that night. That is pretty normal too. He liked to make sure he saw all of his clients at some point during the party. His spouse drove them both home. The last time I saw Brandon alive was standing on my front porch as I said goodnight to him and his spouse. I had a scheduled vacation the next two days (Thursday and Friday) and did not go back into the office that week at all.

Brandon’s spouse, Skylar, called me the next day to tell me that he was dead. I was devastated. I knew him for over twenty years. We were close friends almost our entire adult lives. Then, I found out on the news that he had died of a drug overdose of some kind. It made me think about all those comments he made at the July 4 party about oxycodone. So, I Googled oxycodone overdose and some other things related to that. I don’t remember exactly what I looked up, probably some stuff about drug interactions, since I take oxycodone and other medicines and I was worried that I might be in danger too.

I went to his funeral, but I don’t think his family was too happy to see me. I sent flowers and signed the card we passed around the office. I even made the firm hold Brandon’s office open for a month before giving it out to some new junior partner, which was a pretty big deal where we work. Of course, I made sure that his clients were taken care of too. The work has to go on.

I know some people are saying that Brandon might have gotten the oxycodone from me. If he did, they had to have been stolen from me. I didn’t give him any pills on July 4. I never would’ve given him any kind of addictive medication after everything he’s been through. I never would’ve done anything to hurt Brandon. I was thrilled when he completed rehab and completely supportive of his new, healthier, lifestyle.

I honestly have no idea where Brandon got the pills that he overdosed on. Maybe, he was connected with one of the other guests at my party and convinced that person to give him some pills. Maybe, he still had some pills leftover from his 2016 prescription and decided to take those. Maybe, some of his friends from their “party days” had some. I don’t want to believe it, but I suppose Brandon could have taken pills from my bathroom too. He had been in my house several times and knew I had all kinds of pills for my back. Brandon also went into my bathroom a few times on July 4. Like I said, he had several drinks that night. If he really put his mind to it, I suppose he could’ve stolen some pills from me. I just know I didn’t give them any pills.

I can’t verify that though. I actually don’t know how many oxycodone pills I had on July 4. I don’t wait until the end of a prescription to fill the next one, because my back pain is extreme when I don’t have any painkillers. I know that I had all of my baggies filled when the police came to my house, but I also had a bottle of oxycodone with some pills leftover from a previous prescription in it. Brandon easily could have taken—stolen—some of those pills when they were in the bathroom.

In fact, I was worried that, if he stole pills out of my bathroom, other people could have taken some too. After I learned that he died, I went to the hardware store, bought a small lockbox, and moved my pills to that box. I paid cash for the lockbox because credit cards are just a scam and I don’t ever use my bank card because criminals might steal my account information. I keep the key to my new lockbox in my wallet, which is always on me. Like I said, I don’t know if Brandon stole oxycodone from me. If he did, however, I bought that lockbox to make sure that no one else ever does it again.

I feel really bad about Brandon. We were friends for a long time. I didn’t have anything to do with his death. Wherever he got those pills from, it wasn’t me.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: October 14, 2019

/s/ Sam Soto
My name is Taylor Jennissen. I’m 44 years old. I’ve known Brandon for ages. We first met at UCLA, and we’ve been friends ever since. I always looked forward to seeing him when I came home for summer, even though he had a way better tan than I did. Brandon went on business school and got his Master’s degree, while I pursued my passion for the outdoors by moving to Colorado and becoming a ski patrol.

After a while living the life of ski bum, I went back to school and went into accounting, too. I heard Brandon was doing the same thing. I made a boatload of money, but I’m not exaggerating when I say that accounting is the most stressful thing I’ve ever done. Some nights I’d just stay awake worrying about work, even though I knew that not getting sleep would just make me less productive at work. Around tax time I’d be working 16-18 hour days, ordering food to the office, stress eating cookies. My colleagues called me the cookie monster. Come May, I’d have to exercise off 15 pounds. Some of my coworkers decided driving home wasn’t worth it and slept under their desks. Others burned out and went back to doing whatever they did before. Others self-medicated.

On top of that, I had a family at home. It’s hard balancing work and spending time with kids. I feel like I’m constantly disappointing everyone, never able to give anybody the time and attention I think they deserve. It can really take a toll, and some nights I just unwind on the couch with a nice Japanese whisky.

A couple of years ago I met someone special and we moved back to Minnesota to start a family. While I was excited about moving back and being closer to my parents, I was also really excited to spend time with Brandon again. So when we got back, I gave him a call and set up some time to get together; we decided on watching some sports at a bar and then going to a concert. When the day finally came, he was late, which was peculiar. As we sat down, I noticed that he wasn’t really himself, or at least not the Brandon I thought I knew. He slammed back beer after beer at the bar, and it made me uneasy. I got really uneasy when he said, “You ain’t seen nothing yet! Just wait ‘til tonight!”

Despite the fact that Brandon drove to the bar, I decided it was probably better if he left his car so I could drive to the concert. He sobered up in the car a little bit, but once we got there he quickly started mingling, moving from one person to the next. I didn’t really know what was going on, but when he came back it all made sense. He said he’d scored some drugs and really wanted me to do them with him. I reminded him who drove and said it might not be a great idea, but he popped some pills and enjoyed the concert. He was definitely a little out of it, but never to the point where I was concerned.

It wasn’t long after that that he invited me to the last party I’d ever go to with him. It was at his friend Sam Soto’s house. Well, he called it a house. I’d call it more of a mansion. Gorgeous place, lots of patios, on the lake. Infinity pool. Sam was an accountant. I think Sam had some success with finding really big-name clients and was doing very well financially. At this point, Sam was really working for fun.

Brandon started hitting the booze, as usual. He’s very social, and that night he was all over the place, happy as a clam. He was enjoying the shrimp cocktail, and made a joke about some sauce that spilled on his shirt. I wish I had that kind of confidence. While I was talking to another guest, I saw Brandon approach Sam, and he started hitting Sam up for drugs. Sam mentioned s/he/they had some, but tried to talk Brandon out of it; said it wasn’t a good idea, he was already kinda drunk, had sauce on his shirt, and maybe leave it alone. Sam walked away and Brandon continued mingling, maybe asking for drugs, maybe not. He talked to a few more guests and after talking to a guy who seemed to know Sam well, made a bee-line for the bathroom. I figured Brandon was going to clean his shirt, but when he came out he still had that stain. I guess I’m not really sure what he did in there.
Later that evening I went to the same bathroom Brandon visited. I had to wash my hands and looked around for some Tylenol to ease a headache I’d had. I didn’t really find any, but I did see some random pills scattered about on the counter. I wonder if those pills killed my friend, Brandon, almost every day.

That was the last time I saw Brandon. A couple days later I heard he was gone. I miss him and I hope that one day I’ll find out what happened.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: October 14, 2019

/s/ Taylor Jennissen
EXHIBIT 1

Crime Scene Investigation Report

Describe death scene. Did death take place where the body was discovered or was it moved?
Arrived at scene at 12:15. Shown into Dec’s living room. Dec lying on couch, face up, dressed in jeans, T-shirt, sock on left foot. Dec’s face gray; white, foamy spittle around, over Dec mouth and nose. Approaching Dec, smell of alcohol around Dec; Dec cold to touch. Observed 5 beer bottles around the room, baggie containing suspected narcotics pills on coffee table in front of Dec. Baggie, contents collected in evidence. Baggie had numbers written on it. Preliminary search did not reveal illegal street narcotics. After ambulance crew showed up, observed paper under one of the beer bottles – Exit Form for Dec from Wayfarer Recovery, Incident Report from same place; collected as evidence.

Describe secondary search site(s).
Investigated Dec bedroom, bathroom for additional clues, to determine what suspects involved. Bathroom revealed unlabeled prescription bottle; bottle and pills bagged, marked EB #2.

Was there any attempt to alter the scene?
Entry to crime scene provided by Dec spouse Skylar Webster. There did not appear to be any attempts to move the Dec or otherwise alter the crime scene prior to CSI Photogs.

Is the case of death clearly apparent?
Cause of apparent opioid drug overdose or combo of opioid drug overdose exacerbated by alcohol consumption. Baggie containing pills and unlabeled prescription bottles makes this a suspicious death; further investigation required to determine who supplied drugs.

Results of Forensic Testing
αEvidence Bag #1: pills inside of plastic sandwich baggie field-tested positive for oxycodone
αEvidence Bag #2: pills inside unlabeled pill bottle field-tested positive as oxycodone and acetaminophen
αEvidence Bag #3: confirmed beer bottles contained beer
αEvidence Bag #4: paper document from Wayfarer Recovery Residence

/s/ Officer Pat Soderberg
Badge: 91202

Report finalized on August 3, 2018
EXHIBIT 2

Wayfarer Recovery Residence
www.baddrugs.com
(612) 123-4567 office

Exit Form

RESIDENT: Brandon Webster DATE: August 15, 2012

LENGTH OF PARTICIPATION: 6 WEEKS

DATE STARTED: May 14, 2012 DATE COMPLETED: June 25, 2012

PARTICIPATION: None LOW MODERATE HIGH

REASON FOR TRANSITION:

☐ TRANSMITIONED AS PLANNED ☐ AGAINST STAFF ADVICE
☐ STANDARD/RULE VIOLATION ☐ EARLY TRANSITION
☐ INCARCERATION ☐ OTHER:

SUMMARY OF PROGRESS: While Resident Brandon Webster states willingness and desire to get clean and reduce addiction to painkillers, Resident chooses to leave program early, stating need to get back to work. Resident is suspected to have continued opioid and alcohol use, though it has been difficult to assess due to Resident's low participation in activities and group therapy sessions.

We recommend that Resident continues in some type of therapy program, either at Wayfarer or some program that may be closer to Resident's home or place of work. Frankly, this counselor is not convinced of Resident's sincerity to quit or reduce chemical use and expects that Resident will return to Rehab.

RESIDENT STATEMENT ABOUT PARTICIPATION IN RECOVERY RESIDENCE PROGRAM:
I feel this program has really, really helped me and I don't think I will need additional rehab or therapy but I'll find a program that fits my lifestyle once I'm out if you think I really should. But I'm really, really happy with my progress.

ONGOING RECOVERY PLAN: Resident has stated that will seek out an outpatient program once released from the Wayfarer program. This Counselor recommends at least an additional year of outpatient therapeutic treatment.

COLLATERAL RESOURCE CONTACT INFORMATION: Wayfarer Outpatient Placement Services, 612-765-4321.

FORWARDING PHYSICAL AND EMAIL ADDRESS: [Redacted for data privacy reasons]

STAFF SIGNATURE: /s/ James Morrison, Senior Rehab Counselor

RESIDENT SIGNATURE: /s/ Brandon Webster
Critical Incident Form

Staff on Duty James Morrison, Senior Rehab Counselor

Resident(s) Involved Brandon Webster, Brian Jones

Incident Date June 7, 2012 Time: 8:37 p.m.
Location: sitting area outside of Crafts Building

Description of incident
Residents Webster, Jones, and visitor identified as Sam Soto were reported to be drinking outside Crafts Building this evening. Residents, Guest had slight odor of alcohol about them, speech not clearly impeded. Resident BW responded in smart-alecky way and denied alcohol use. Other chemicals involved?

Resident explanation
BW stated that he had a bad summer cold and was taking Extra-Strength Cough Syrup that he purchased in town the day before. Said knew cough syrup was a no-no, but he was really, really sick. Then coughed twice.

Witnesses
Residents CC and JJ, who were in Crafts Building, finishing a project.

Action to be taken
- [ ] Verbal warning
- [ ] Written warning
- [ ] Discharge
- [ ] Other__________________________

Evidence not clear that Webster, Jones and Guest using. Unable to access drug/alcohol testing equipment so unable to confirm at this time. Both residents warned about use and normal procedures when chem use suspected.

By signing this document, you acknowledge that you have read and understood the information contained herein

/s/ Brandon Webster | June 8, 2012 /s/ James Morrison | June 8, 2012
Resident Signature/Date Staff Signature/Date
EXHIBIT 4 (2 pages)

Curriculum Vitae
Morgan Holloway

Medical Physician
Board Certified Addiction Medicine Physician

Business Address:
Divine Hospital
8383 Minnesota Street
Guthmann, MN  55117
651-555-1234

EDUCATION:

Undergraduate - BS: University of Illinois at Urbana/Champaign; Summa Cum Laude
Medical School - MD: University of Minnesota College of Medicine, Cum Laude
Medical Internship: Internal Medicine/Neurology/Psychiatry - UCLA Center for Health Science
Residency: Addiction - UCLA Teaching Hospital for Neuroscience & Human Behavior

LICENSURE: State of Minnesota

BOARD CERTIFICATION: Addiction: American Board of Addiction Medicine

PROFESSIONAL EXPERIENCE:

06/1998-Present
Divine Hospital
SENIOR ATTENDING PHYSICIAN, OUTPATIENT ADDICTION MEDICINE CLINIC
ATTENDING ADDICTION SPECIALIST (with Privileges)

Treatment provider for patients seen at Divine Hospital who are plagued with chemical (alcohol, heroin, meth, cocaine, prescriptions) addictions as well as mood/anxiety disorders, ADHD, OCD, eating disorders, chronic pain, sleep disorders, physical/mental trauma and mind-body changes.

06/2006 – 06/2015
WAYFARER RESIDENTIAL TREATMENT CENTER
MEDICAL CONSULTANT & ADVISOR

Addiction Specialist and Co-Occurring Disorder specialty advisor at the Wayfarer Residential Treatment Center. Duties includes detoxification, acute crisis stabilization, medication management, psychiatric diagnostic classification, addiction treatment, mental health treatment advisor and lecturing on cutting edge treatments in medicine.
PROFESSIONAL ACTIVITIES:

Chemical Health America (National Press Club - DC) - Speaker & Host

National Council on Opioid Addiction - Member

Drug Addiction Is a Real Problem Coalition - Medical Consultant & Advisor

Pfizer Pharmaceuticals - Speakers Bureau (Oxycontin)

American Society of Addiction Medicine – Member

HONORS AND SPECIAL AWARDS:

THOMAS CLARENCE ADDICTION MANUSCRIPT AWARD (2002)
For best manuscript on addiction and public policy

ALPHA ALPHA ALPHA NATIONAL HONORARY (1994)
Academic/Leadership-top 15% Medical School

JOURNAL ARTICLES & RESEARCH:


EXPERT WITNESS CONSULTATION:

Minnesota District Court, 4th Judicial District; Opioid Addiction, Mental Health issues. Assessments; Research, Document Evaluation, Comprehensive Evaluation, Court Expert Witness Testifying, Evaluation of medical and psychological records.

Minnesota District Court, 2nd Judicial District: Mental Health Court. Case evaluations, research, reports, testifying on Psychotic Disorders, Substance Induced Psychosis, Malingering, PTSD, Chemical Dependency.
EXHIBIT 5

Archived Facebook Wall of Sam Soto

Post created by Brandon Webster at July 5, 2018 02:46 a.m.
Post removed by Sam Soto at July 5, 2018 02:49 a.m.

Awesome patty tonight! Sam its always a pleasure hanging with our residence chiropractor. Thanks a million for a wonderful night. And for parting gift! (Which I am happy to report works fantastic 😊😊😊 also sorry for the fight. Amends have surely been made!!
EXHIBIT 5a

Archived Facebook Wall of Sam Soto

Post created by Brandon Webster at July 5, 2018 02:46 a.m.
Post removed by Sam Soto at July 5, 2018 02:49 a.m.

Awesome patty tonight! Sam its always a pleasure hanging with our residence chiropractor. Thanks a million for a wonderful night. 😂😂😂 also sorry for the fight. Amends have surely been made!!
FINAL DIAGNOSES:

48-year-old man with reported history of opioid use found unresponsive in the basement of his residence; pronounced dead at the scene by responding emergency medical services.

I. Mixed alcohol and oxycodone toxicity (see also ‘Toxicology,’ below)
   A. Oronasal foam cone
   B. Pulmonary edema
   C. Cerebral edema
   D. Urinary retention

II. No significant injuries identified

III. No significant natural diseases identified

IV. Toxicology
   A. Blood (femoral) volatiles: ethanol 0.09 g/dL
   B. Urine drug screen: immunoassay positive for acetaminophen and oxycodone; mass spectrometry positive for oxycodone
   C. Blood (femoral) opiate quantitation: oxycodone 0.40 mg/L; other opiates not detected

7/09/2018

Kelly Fagin, M.D.
Assistant Medical Examiner
/s/ Kelly Fagin, MD
EXTERNAL EXAMINATION:
The body is that of a normally developed, adequately nourished appearing, 5 foot 10-inch long, 205-pound male whose appearance is consistent with the reported age of 48 years. Lividity is posterior, dependent, and fixed in place. Rigor mortis is present in the extremities, relenting with moderate pressure. The temperature is that of the refrigeration unit.

The scalp is covered with medium length, brown hair in a normal distribution. The irides are brown, and the pupils are round and equal in diameter. There are no bulbar or palpebral conjunctival petechiae. The external auditory canals are free of blood. The ears are unremarkable. The nares are patent, and the lips are atraumatic. The nose, maxillae, and mandible are palpably stable. The teeth appear native and in good repair. Frothy white fluid emanates from the mouth and nares.

The neck is straight, and the trachea is midline. The chest is symmetric. The abdomen is flat. The genitalia are those of a normal adult male. The testes are descended and free of masses. Pubic hair is present in a normal distribution. The back, buttocks, and anus are unremarkable.

The upper and lower extremities are symmetric and free of clubbing, edema, or absence of digits. The nails of the hands are short and neatly trimmed. The nails of the toes are dirty.

CLOTHING AND PERSONAL EFFECTS:
The following clothing items are examined separate from the body at the start of postmortem examination:
- Size medium black and gray plaid pattern men’s underwear
- Size 36 x 32 black denim jeans
- A blue cloth belt with white trim and a silver color buckle, threaded through the loops of the jeans
- A size large dark gray T-shirt
- A single ankle length black sock

MEDICAL INTERVENTION:
- Nasal trumpet, right nostril
- Pacer/defibrillator patches, right upper and left lateral chest

INTERNAL EXAMINATION:
HEADING: The soft tissues of the scalp are free of injury. The calvarium is intact, as is the dura mater beneath it. Clear cerebrospinal fluid surrounds the 1660 g brain, which has slightly widened and flattened gyri and narrowed sulci. Coronal sections demonstrate sharp demarcation between white and gray matter, without hemorrhage or contusive injury. The ventricles are of normal size. The basal ganglia, brainstem, cerebellum, and arterial systems are free of injury or other abnormalities. There are no skull fractures. The atlanto-occipital joint is stable.

NECK: The anterior strap muscles of the neck are homogeneous and red-brown, without hemorrhage. The thyroid cartilage and hyoid are intact. The larynx is lined by intact white mucosa. The thyroid is symmetric and red-brown, without cystic or nodular change. The tongue is free of bite marks, hemorrhage, or other injuries.

BODY CAVITIES: The ribs, sternum, and vertebral bodies are visibly and palpably intact. No excess fluid is in the pleural, pericardial, or peritoneal cavities. The organs occupy their usual anatomic positions.
RESPIRATORY SYSTEM: The right and left lungs weigh 1040 and 950 g, respectively. The external surfaces are smooth and deep red-purple. The pulmonary parenchyma is diffusely congested and edematous. No mass lesions or areas of consolidation are present. The pulmonary vascular tree is free of thromboemboli. The tracheobronchial tree is filled with foamy edema fluid.

CARDIOVASCULAR SYSTEM: The 405 g heart is contained in an intact pericardial sac. The epicardial surface is smooth, with minimal fat investment. The coronary arteries are present in a normal distribution, with a left-dominant pattern. Cross sections of the vessels show no atherosclerotic stenoses and no occlusions. The myocardium is homogeneous, red-brown, and firm. The valve leaflets are thin and mobile. The walls of the left and right ventricles are 1.0 and 0.5 cm thick, respectively. The endocardium is smooth and glistening. The aorta gives rise to three intact and patent arch vessels. The renal and mesenteric vessels are unremarkable.

LIVER AND BILIARY SYSTEM: The 1495 liver has an intact, smooth capsule and a sharp anterior border. The parenchyma is tan-brown and congested, with the usual lobular architecture. No mass lesions or other abnormalities are seen. The gallbladder contains a minute amount of green-black bile and no stones. The mucosal surface is green and velvety. The extrahepatic biliary tree is patent.

SPLEEN: The 285 g spleen has a smooth, intact, red-purple capsule. The parenchyma is maroon and congested.

PANCREAS: The pancreas is firm and yellow-tan, with the usual lobular architecture. No mass lesions or other abnormalities are seen.

ADRENALS: The right and left adrenal glands are symmetric, with bright yellow cortices and gray medullae. No masses or areas of hemorrhage are identified.

GENITOURINARY SYSTEM: The right and left kidneys weigh 165 and 150 g, respectively. The external surfaces are intact and smooth. The cut surfaces are red-tan and congested, with uniformly thick cortices and sharp corticomedullary junctions. The pelves are unremarkable and the ureters are normal in course and caliber. White bladder mucosa overlies an intact bladder wall. The bladder contains approximately 250 cc of yellow urine. The prostate is normal in size, with lobular, yellow-tan parenchyma. The seminal vesicles are unremarkable. The testes are free of mass lesions, contusions, or other abnormalities.

GASTROINTESTINAL TRACT: The esophagus is intact and lined by smooth, gray-white mucosa. The stomach contains approximately 200 cc of thick, gray-green pasty material with numerous fragments of multicolored food-like particulate matter. The gastric wall is intact. The duodenum, loops of small bowel, and colon are unremarkable. The appendix is present.

ADDITIONAL PROCEDURES:
• Documentary photographs are taken.
• Specimens retained for toxicologic testing: vitreous fluid, femoral blood, liver, urine, and gastric contents.
• Representative tissue biopsies are retained in formalin for block only preparation.
• The dissected organs are returned to the body.

MICROSCOPIC EXAMINATION:
Tissues are submitted for block processing only. No microscopic slides are requested.
EXHIBIT 7

Close-up picture containing oxycodone; found on victim’s coffee table in living room.
EXHIBIT 8

Victim’s bathroom cabinet, where bottle of percocet was found.
EXHIBIT 9

Defendant’s Lockbox with baggie of more oxycodone inside.
Exhibit 10:

Evidence table with all three substance containers depicted.
Any clarification of rules or case materials will be issued in writing to all participating teams no less than two weeks prior to the tournament.

Each team is responsible for the conduct of persons associated with the team throughout the mock trial competition.

I. Rules of the Competition

A. Administration

1.1 Rules
1.2 Code of Conduct
1.3 Emergencies
1.4 Student Timekeeper

B. The Problem

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2.2 Witnesses Bound by Their Materials; Rules Against Unfair Extrapolation
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I. RULES OF THE COMPETITION

A. ADMINISTRATION

Rule 1.1 Rules

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

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

Questions or interpretations of these rules are within the discretion of the Minnesota State Bar Association (MSBA), whose decision is final.

Rule 1.2 Code of Conduct

The rules of competition, as well as proper rules of courthouse and courtroom decorum and security, must be followed. Coaches, judges, spectators and students alike are expected to work with one another on a professional level at all times. The MSBA possesses discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations or breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program.

Rule 1.3 Emergencies (NHSMTC)

Rule 1.4 Student Timekeeper (NHSMTC)

B. THE PROBLEM

Rule 2.1 The Problem

The problem will be a fictional fact pattern which may contain any or all of the following: statement of facts, indictment, stipulations, witness statements/affidavits, jury instructions, exhibits, etc. Stipulations may not be disputed at trial. Witness statements/affidavits and exhibits may not be altered.

The problem shall consist of three witnesses per side, all of whom shall have names and characteristics which would allow them to be played by a student of any gender. All three of the witnesses must be called.

The fact that information is contained in a statement of facts, indictment, witness statement/affidavit, or exhibit does not mean that the information is admissible or has been admitted into evidence. Proffers of evidence through the testimony of witnesses must be made and ruled upon during the course of the trial itself.
Rule 2.2 (and previously Rule 2.3)  Witnesses Bound by Their Materials; Rule Against Unfair Extrapolations

The Prohibition: Witnesses are bound by their Witness Materials and may not invent Material Facts that are not Reasonably Consistent with those materials. Such an invention is called an “Unfair Extrapolation.” Either a witness who unfairly extrapolates, or an attorney who invites a witness to unfairly extrapolate, are subject to having their score reduced at the scoring judges’ discretion.

Definitions:

“Witness Materials” includes the sworn affidavit or statement by the witness, as well as documents, reports or other exhibits prepared by the witness or relied upon by the witness. Normally it does not include affidavits or statements of other witnesses, unless the witness notes in their statement or affidavit that they relied on or considered other witness’ statement or affidavit.

“Material Facts.” If a fact stated in testimony by a witness does not, in the court’s discretion, appear to affect the strength, weakness or general outcome of a party’s case, then there has been no invention of a Material Fact, and no unfair extrapolation has occurred. For example, whether a witness testifies that they are a vegetarian probably does not affect the case unless vegetarianism is an issue in other parts of the fact pattern.

“Reasonably Consistent.” Facts stated in testimony by a witness which, in the court’s discretion, are Reasonably Consistent with the Witness Materials are not a violation of the rule. In assessing whether a witness’s testimony concerning a fact is Reasonably Consistent, the court should compare the testimony offered with the Witness Materials for purposes of consistency. The court should then consider whether the variation of the testimony from the facts stated in the Witness Materials is material or is instead minor or can be reasonably inferred from the Witness Materials.

Permitted Negative Inferences in Cross Examination: While an attorney is not to invite Unfair Extrapolation in their questioning of a witness, not all cross-examination questions that ask for testimony as to facts not clearly contained within the Witness Materials call for Unfair Extrapolation. A cross examining attorney may ask a witness questions about things not contained in the witness materials, if it is reasonable to have expected the witness to have included that information in their Witness Materials. For example, it is reasonable for a cross examining attorney to question a police officer witness as to the officer’s lack of expertise with forensic science by asking “You don’t have any special training in the examination of fingerprints, correct?” if the Witness Materials do not have any mention of a such training.

Procedure: When an attorney assigned to examine or cross examine a witness believes that a witness has made an Unfair Extrapolation, or believes that an attorney has invited a witness to make an Unfair Extrapolation, an objection under Rule 2.2 may be made. The presiding judge may permit the parties to argue application of the Rule to the issue and then make a ruling. To the extent a scoring judge does not agree with a ruling by the presiding judge as to whether an Unfair Extrapolation occurred or was requested to be made, such scoring judge may reflect that in the judge’s scoring of the performance by the witness or attorney involved.

Intent of the Rule: Attorneys are encouraged, whenever feasible, to deal with Unfair Extrapolation by impeaching the offending witness rather than by objecting. It is not the intent of this rule to allow for extraneous or voluminous objection arguments about Unfair Extrapolation. Not every violation is intentional, and not every violation requires stopping the trial with an objection. Repeated, bad-faith objections under the Unfair Extrapolation Rule should not be rewarded. On the other hand, sometimes an objection may be required if an opponent’s unfair extrapolation is tailored take advantage of time limitations or overwhelm the other team with factual inventions that cannot be cured through impeachment alone.
Rule 2.4  Gender of Witnesses

All witnesses are intended to be gender neutral. Personal pronoun changes in witness statements indicating gender of the characters shall be deemed to have been made so as to conform to the gender or gender election of the student playing the witness. Any student may portray the role of any witness in accordance with the gender indicated in their team’s roster and make use of the preferred pronoun announced by the student’s team in their pretrial matters.

Rule 2.5  Voir Dire

Voir dire examination of a witness is not permitted.

C.  TEAMS

Rule 3.1  School and Student Eligibility

The competition is open to students currently enrolled in grades seven through twelve in all Minnesota schools. Program information and registration forms are mailed to appropriate school personnel at the beginning of the school year.

To participate in the competition schools must return a completed entry form and registration fee for each team entered. Registration fees will not be refunded after October 25, 2019. Registration forms and fees received after October 25, 2019 will not be guaranteed trials in the competition.

A school may enter up to four teams in the competition. This limitation does not prevent a school from entering more than four teams in an invitational, scrimmage, or other event.

For schools with more students interested in participating than can be accommodated on the number of mock trial teams for which the school is eligible, there are various options:

a.  Hold tryouts for the mock trial team(s) and have the teacher coach (the attorney coach may also want to participate) select team members.

b.  Hold intraschool rounds to determine which students will represent the school in regional and state competition.

c.  Create “practice teams” comprised of less experienced members and allow only upper class students to be on the school’s “official” teams.

Schools must follow the MSBA procedures for confirming their trial schedules or be disqualified from entering the competition the following year.

Rule 3.2  Team Composition

Each team participating in a round is to consist of seven or eight primary members: three witnesses, three attorneys, and either student participating as a timekeeper and bailiff or a timekeeper and a bailiff. See Rule 4.1(A)4 for point deduction if a team has fewer than seven students to participate (three attorneys, three witnesses, and a timekeeper/bailiff). There is no limit to the total number of students who can be members of the team and a student need not participate in the same role in each round.

Once a student has participated in a scoring role on a team, that student cannot participate on another team in a scoring role for the remainder of the season.
A scoring role is defined as an attorney or witness that receives a score during a round.

Every team must be fully prepared to argue both sides of the case. Only one team from each school may be eligible to compete at the state tournament.

Teams should be advised that the team representing Minnesota at the National High School Mock Trial Championship must be comprised of a sufficient number of 9-12th grade students to comply with NHSMTC Rules and that the team must comply with the requirements of Rule 5.9.

**Rule 3.3 Team Presentation (NHSMTC)**

**Rule 3.4 Team Duties**

Team members are to evenly divide their duties. During pretrial matters the prosecution/plaintiff team shall ask the Presiding Judge to accept the Pretrial Stipulations and grant the motions therein. There shall be three attorneys and three witnesses. Each of the three attorneys will conduct one direct examination and one cross-examination; one of the three attorneys will present the opening statement, another will present the closing argument and rebuttal, and if applicable, either/or the third attorney will handle the pretrial matters. [See Rule 4.5]

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

Each team must call each of the three witnesses. Witnesses must be called only by their own team during their case-in-chief and examined by both sides. Witnesses may not be recalled by either side.

**Rule 3.5 Team Roster**

Copies of a Team Roster must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams shall be identified by the side they are arguing and their school name. Before beginning a trial, the teams must exchange copies of their Team Roster. The roster should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster also should be given to the presiding and scoring judge before each round. A sample roster format is included at the end of the case.

**D. THE TRIAL**

All trials will be governed by the “Simplified Rules of Evidence” contained in these materials. Other more complex rules may not be raised in the trial.

**Rule 4.1 Courtroom Setting (2-5, Minnesota only)**

1. The Plaintiff/Prosecution team shall be seated closest to the jury box. If a team wants to rearrange the courtroom, the teacher coach must ensure that the courtroom is returned to its original arrangement before the team leaves the courtroom at the end of the trial.

2. Coaches must sit so they are behind the student attorneys (i.e., coaches should not be visible to the attorneys during their presentations).
3. All participants are expected to display proper courtroom behavior. The following rules should be observed in the courtroom at all times:
   a. Students should dress appropriately for a courtroom setting. (Suits are not required.) A student playing the part of a witness may wear clothing consistent with that witness’ character, but may not wear a costume. [Refer to Rule 4.11 for rule about costumes.]
   b. Be courteous and respectful to witnesses, other attorneys, and the judge.
   c. Ask permission of the presiding judge to approach the judge or a witness unless otherwise instructed by the presiding judge.
   d. If you receive a ruling against your side on a point or on the case, accept the decision gracefully.

4. All participants and spectators are expected to display proper behavior in the courthouse. The following rules should be observed in the courthouse at all times. Any violation of these rules (e.g., going into other parts of the courthouse) will be grounds for requesting that school to leave the courthouse.
   a. Each team must have an adult chaperone assigned to it while at the courthouse. The chaperone must remain with the team at all times, while the team is waiting for a trial to begin, competing in the courtroom, waiting for another team to finish competing, etc.
   b. All students must stay in the area of the courthouse where the competition is being held. Students will be allowed to use the restrooms which are nearest to the courtroom being used for competition.
   c. Teams should be advised that some courthouses prohibit cell phones on the premises. Courthouses do not have provisions to store them during trials and teams (including students, coaches and spectators) should be prepared to follow courthouse policy.
   d. Students may not have in their possession any food, beverage or gum (except water) while in the courtroom.
   e. Following completion of the trial, the coaches will inspect the area used for the competition, including the restrooms, to ensure that everything is left in the same condition in which it was found. Any furniture in the courtroom that was moved before or during the trial MUST be restored to its original configuration!
   f. If requested to do so by the Court Administrator, the coaches will notify the administrator’s office when their team arrives and when it leaves. The latter will provide an opportunity for the Court Administrator to arrange for an inspection of the area.

5. In order to avoid the appearance of impropriety or bias, coaches should not interact with the judges until after the trial.

 Rule 4.1(A)  Pretrial Matters (Minnesota only)

1. Teams are expected to be present in the courtroom fifteen minutes before the starting time of the trial. To assist in enforcing these rules, presiding judges, upon taking the bench before the start of the trial, will handle the following pre-trial matters:
a. Ask each side if it is ready for trial. Ask if each side has provided each of the judges and
the opposing team with a copy of its team roster (a sample roster is provided in the back
of these rules). The Judge will then ask each team to introduce its members.

b. If video recorders are present, the judge will remind the teams that the tape cannot be
shared with any other team. (See Rule 4.14 for more on videotaping.)

c. The judge will remind all present in the courtroom of the rule prohibiting verbal or
written communication between the team members and the coaches, spectators or
anyone else throughout the trial round, including any recesses. (This is to be especially
stressed in crowded court settings where there is close proximity between audience and
teams.) Communication is allowed once the trial is complete. Judges should announce
that the trial is complete, and communication is permitted.

d. The judge will ask if there are any pretrial matters.

2. The judge will remind all present that the courtroom should be put back in order, all trash removed,
and that no food or drink is allowed anywhere, at any time, by anyone, with the exception of water
for teams pursuant to Rule 4.1(D) and judges.

3. Each team should provide a copy of its roster to the judges and the opposing team which includes
the names of the students, the roles they will play, and for the witnesses, the gender of the witness
being portrayed. When requested to make introductions, each member of a team will rise, state their
name and the role they are playing. When requested to by the judge to present any other pretrial
matters, the plaintiff/prosecution team shall request the judge to accept the Pretrial Stipulations (See
Rule 3.4 and the Pretrial Stipulations at the end of the case materials) and may then bring any
additional matters before the court appropriate as pretrial matters (including any preferred pronoun
with respect to their witnesses). Following that, the defense shall present any of its own pre-trial
matters.

4. The starting time of any trial will not be delayed for longer than ten minutes, except with the
agreement of the teacher coaches for both teams or as determined by the presiding judge. Incomplete
teams may proceed with the trial by having one or more members play up to two roles. Incomplete
teams will be assigned a two (2) point deduction by each judge for each missing attorney, witness or
timekeeper. Teams missing a bailiff will not be assigned a point deduction.

5. Once a trial has been scheduled, the trial will not be rescheduled due to the absence of a team
member or illness, unless approved by the Mock Trial Director. Teams should include alternates to
replace absent members. Cancellation and rescheduling of trials due to inclement weather conditions
will be at the discretion of the Mock Trial Director (with particular attention to the distance teams may
need to travel to reach their scheduled trial). While cancellation by a school of classes or after school
activities will be considered by the Mock Trial Director, such cancellation does not prevent the
assessment of a forfeit against the team not allowed by its school to participate.

The Mock Trial Director shall have broad discretion in the rescheduling of cancelled rounds, including
the reallocation of scheduled opponents and the use, with the consent of the participating teams, of
alternative venues for the trial.

6. All team members must remain in the courtroom during the entire trial. During a formal recess
called by the judge, team members may leave the courtroom but should not communicate with anyone
other than their student team members.
Rule 4.2  Stipulations

Stipulations shall be considered part of the record and already admitted into evidence.

Rule 4.3  Reading Into The Record Not Permitted

Stipulations, the indictment, or the Charge to the Jury will not be read into the record.

Rule 4.4  Swearing of Witnesses

The following oath may be used before questioning begins:

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

Rule 4.5  Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and Redirect (optional) Examination (25 minutes per side)
3. Cross and Re-cross (optional) Examination (18 minutes per side)
4. Preparation for closing argument (2 minutes)
5. Closing Argument and Rebuttal (7 minutes per side)

All time not used by the prosecution/plaintiff attorney will automatically be reserved for rebuttal, up to three minutes. Rebuttal is not required.

6. Team Conference (2 minutes)

The Prosecution/Plaintiff gives the opening statement and the closing argument first.

The Plaintiff’s Opening Statement must be given at the beginning of the trial. The Defense may choose to postpone its Opening Statement until after the conclusion of the Plaintiff’s case-in-chief.

Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

Rule 4.6  Timekeeping

Time limits are mandatory and will be enforced. Each team is required to have its own timekeeper and timekeeping aids. Timekeepers must use these standard time increments on their timecards: 7:00; 6:00; 5:00; 4:00; 3:00; 2:00; 1:00; :45; :30; :15; STOP. (See sample timekeeping aids on the MSBA Mock Trial website.) Unless prohibited by the rules of the venue, electronic devices (including cellphones) may be used for timekeeping.

Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.
Time does not stop for introduction of exhibits. If at any point during the trial time expires any timekeeper should say “stop” aloud for the court and parties to hear at the point of time expiration. Failure of a timekeeper to say “stop” aloud for the court and parties to hear will be considered a waiver of the time violation.

Every effort should be made to respect the time limits. Judges will be asked to use their scores to reflect a team's ability to adhere to the time guidelines. Perceived time violations are an issue which generates much controversy every year during the Mock Trial Competition. Due to the nature of the event and in the interest of keeping the competition good-spirited, teams are urged to adhere to the time limits indicated and to give their opponents the benefit of the doubt if minor infractions occur.

Rule 4.7 Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the presiding judge should request that the student stop his/her presentation. Scoring judges shall determine individually whether or not to discount points in a category because of over-runs in time.

Rule 4.8 Motions Prohibited

Motions which defeat the purpose of the trials (such as those to dismiss or to sequester or motions in limine) will not be allowed.

Rule 4.9 Sequestration

Teams may not invoke the rule of sequestration. All witnesses are to be presumed to have been present during the trial and thus would have been present during testimony of all other witnesses.

Rule 4.10 No Bench Conferences

All matters should be handled in open court, without bench conferences.

Rule 4.11 Supplemental Material/Costuming/Exhibits

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

The only documents which the teams may present to the presiding or scoring judges are the team roster forms and the individual exhibits as they are introduced into evidence. Exhibit notebooks are not to be provided.

Each team may laminate and enlarge one (1) exhibit to a maximum size of 24 by 36 inches. There can be no other enhancement of the exhibits (e.g., color, additional words), but they can be mounted on poster board or foam core in order to allow them to be handled more easily.

No other chalkboards, posters or other visual aids are permitted during the trial, except that during closing arguments a flip chart or other paper (e.g. newsprint) with hand lettering or hand drawing may be used. A flip chart or other paper (e.g. newsprint) with hand lettering or hand drawing may be prepared either prior to or during the trial. Students may write on their own or the other team's demonstrative tools so long as it is not destructive. Once admitted, multiple exhibits may be placed
upon a single poster board or foam core board for display. During closing arguments, an attorney may make use of admitted exhibits in their argument.

**Rule 4.12 Trial Communication**

Instructors, alternates and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any emergency recess which may occur. Signaling of time by the teams’ timekeepers shall not be considered a violation of this rule.

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar. Attorneys and witnesses may communicate with each other during the trial, but may not signal witnesses on the stand. Attorneys may consult with each other at counsel table verbally or through the use of notes. During the permitted conference at the close of the trial regarding rules infractions, all team members (witnesses, attorneys, and bailiff and time keeper) may communicate with each other. No disruptive communication is allowed.

**Rule 4.13 Scouting and Viewing of Trials**

Team members, alternates, attorney/coaches, teacher-sponsors and any other persons directly associated with a mock trial team, except for those authorized by the MSBA, are not allowed to view other teams’ performances, so long as their team remains in the competition.

Everyone attending a trial should be reminded that appropriate courtroom decorum and behavior must be observed and that absolutely no food or drink is permitted in the courtroom.

**Rule 4.14 Electronic Recording**

Electronic recording, whether visual or audio, can be an effective teaching tool, but only a representative of a team competing in the trial may record the trial. A representative may record only upon motion made to the presiding judge, who shall grant the motion if:

1. Courthouse policy does not prohibit electronic recording.
2. There is no objection by the other team or any judge.
3. The recording does not distract the participants or otherwise disrupt the trial.
4. The recording will be used only by the team and will not be shared with any other team (even from the same school) or used for purposes of “scouting.”

**Rule 4.15 Jury Trial**

The case will be tried to a jury; opening statements and closing arguments are to be made to the jury. Teams shall address the scoring judges as the jury.

At the discretion of the judges, the scoring judge(s) (excluding the presiding judge) may sit in the jury box closest to the witness stand. If timekeepers, bailiffs or witnesses are present in the witness box, they should be seated in front of the scoring judge(s).
Rule 4.16 Standing During Trial

Unless excused by the judge, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections.

Rule 4.17 Objections During Opening Statement/Closing Argument

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

If a team believes an objection would have been proper during the opposing team’s opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, “If I had been permitted to object during closing arguments, I would have objected to the opposing team’s statement that ________.” The presiding judge will not rule on this “objection,” but all of the judges will weigh the “objection” individually and use their scores to reflect whether they believe a rules violation has occurred. A brief response by the opposing team will be heard under the presiding judge’s discretion.

Rule 4.18 Objections

The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge should ask the reason for it. Then the judge should allow the attorney who asked the question to explain why the objection should not be accepted (“sustained”) by the judge. The judge will then decide whether a rule of evidence has been violated (“objection sustained”), or whether to allow the question or answer to remain on the trial record (“objection overruled”).

1. Argumentative Question: An attorney shall not ask argumentative questions, i.e. one that asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. The court, however, in its discretion, may allow limited use of argumentative questions on cross-exam.

2. Assuming Facts Not in Evidence: Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a “hypothetical question”).

3. Badgering the Witness: An attorney may not harass or continue to annoy/aggravate a witness.

4. Beyond the Scope: Refer to Rule 611(b); applies only to redirect & re-cross.

5. Character Evidence: Refer to Rule 608.

6. Hearsay: Refer to Mock Trial Rules of Evidence, Article VIII for an explanation of hearsay and the exceptions allowed for purposes of mock trial competition.

7. Irrelevant: Refer to Article IV.

8. Lack of Personal Knowledge: A witness may not testify on any matter of which the witness has no personal knowledge. (See Rule 602, Article VI)

9. Lack of Proper Predicate/Foundation: Attorneys shall lay a proper foundation prior to moving the admission of evidence. The basic idea is that before a witness can testify to anything important, it must be shown that the testimony rests on adequate foundation. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

11. Leading Question: Refer to Rule 611(c).

12. Non-Responsive Answer: A witness’ answer is objectionable if it fails to respond to the question asked.

13. Opinion on Ultimate Issue: Refer to Rule 704.

14. Question Calling for Narrative or General Answer: Questions must be stated so as to call for a specific answer. (Example of improper question: “Tell us what you know about this case.”)

15. Repetition: Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

16. Speculation: A witness’ testimony should be based on the facts and issues of the case being argued. An attorney shall not ask a question which allows the witness to make suppositions based on hypothetical situations.

17. Unfair Extrapolation: Refer to explanation in Rule 2.2.

Note: Certain of the foregoing objections are not based on the Minnesota Mock Trial Competition Rules of Evidence and teams are not precluded from raising additional objections which may be available under such rules.

Rule 4.19 Reserved.

Rule 4.20 Procedure for Introduction of Exhibits

As an example only, the following steps effectively introduce evidence:

1. All evidence will be pre-marked as exhibits.

2. Your Honor, let the record reflect I am showing Exhibit No. ___ to opposing counsel.

3. Ask for permission to approach the witness. Give the exhibit to the witness.

4. “I now hand you what has been marked as Exhibit No.___ for identification.”

5. Ask the witness to identify the exhibit. “Would you identify it please?”

6. Witness answers with identification only.

7. Offer the exhibit into evidence. “Your Honor, we offer Exhibit No.__ into evidence at this time. The authenticity of this exhibit has been stipulated.”

8. Court: “Is there an objection?” (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)

9. Opposing Counsel: “No, your Honor”, or “Yes, your Honor.” If the response is “yes”, the objection will be stated on the record. Court: “Is there any response to the objection?”

10. Court: “Exhibit No. ___ is/is not admitted.”
Witness affidavits may be used to impeach or refresh recollection and when used for those purposes, need not be admitted into evidence.

**Rule 4.21 Standards of Judging and Use of Notes**

The standards for judging are contained in the MSBA Mock Trial Performance Rating Standards. Witnesses are not permitted to use notes while testifying during the trial; any use of notes is subject to an appropriate point deduction. Attorneys may use notes, but, to the extent such as detracts from the overall performance, the scores may so reflect.

**Rule 4.22 Redirect/Re-cross**

Redirect and re-cross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Minnesota High School Mock Trial Rules of Evidence.

**Rule 4.23 Scope of Closing Arguments**

Closing Arguments must be based on the actual evidence and testimony presented during the trial. Rebuttal shall not exceed the scope of the defense closing argument.

**Rule 4.23.1 Team Conference (Minnesota Only)**

At the conclusion of final arguments, the presiding judge will allow time (approximately two minutes) for the three student attorneys, three witnesses, bailiff and timekeeper to confer. The purpose of this team conference is to give the team members the opportunity to select the students from the opposing team they believed performed as the best attorney and the best witness and a chance to discuss among themselves whether they believe any significant rules violations occurred during the trial of which the judges could not be aware.

After the allotted time, the presiding judge will ask the teams to indicate their selection of best attorney and best witness. The presiding judge will then ask if either team wishes to report any significant rules violations. If a team feels point deductions should be assessed against the opposing team, one attorney from the team will have two minutes to explain why point deductions should be assessed. Following this explanation, one attorney from the opposing team will have two minutes to explain why point deductions should not be assessed. Further discussion will be limited to five minutes total, at which time the judges will decide individually about making any point deductions on their score sheets. The amount of such point deductions, if any, is at the discretion of each individual judge. **These decisions (about point deductions) are final!**

Of course the judges may, at their discretion, award point deductions for a rules violation regardless of whether the opposing team brings a rules violation to the attention of the judges.

If the presiding judge fails to ask the teams if they wish to ask for point deductions, and one or both teams wish to do so, it must be brought to the attention of the judge at this time.

**Rule 4.24 The Critique and Decisions**

The judging panel is allowed 10 minutes for debriefing. The timekeeper will monitor the critique following the trial. Presiding judges are to limit critique sessions to a combined total of ten minutes.
Judging shall be based on the quality of the teams’ performances, i.e., the nature/success of the team’s strategy, the students’ level of preparedness, the individual student performances, etc. Judging shall not be based on the merits of the case. The total points awarded to each team by each judge will be added together; the team with the higher point total will be considered the winning team. The team that wins on its performance is considered the winner of the trial for mock trial purposes.

**Rule 4.25 Offers of Proof**

No offers of proof may be requested or tendered.

**E. JUDGING AND TEAM ADVANCEMENT**

**Rule 5.1 Finality of Decisions**

All decisions of the judging panel are FINAL. The only exception is when there is a computational error in the math on a judge’s score sheet. In the event of a mathematical error, the trial will be awarded to the team with the higher number of ACTUAL ballots or points as determined by the corrected math, even if this result is different than the one announced to the teams by the judge(s).

**PLEASE NOTE:** Many trial lawyers say that trial is an art and not a science. Thus, as beauty is in the eye of the beholder, trial performance may also lie in the eye of the beholder. This competition makes every effort possible to establish objective criteria by which student competitors are to be evaluated. However, it is a fact of life that not every attorney will evaluate a competitor the same. It is also true that not every juror will evaluate an attorney and his or her case the same. Thus trial competitions are very similar to real trials and the tournament could not progress without the selection of winners. We have therefore developed a rather detailed scoring process for the judges to use. Once the scoring process is complete, the decision of the judge(s) is final, as long as the team’s scores have been added correctly.

It is also true that judges will often make different rulings on motions and objections during trial. That is true in real life as well. It is an inherent part of the trial system based on judges’ discretion. Therefore, as in real life, the rulings of the trial judge are final, even if you disagree.

This competition is intended to not only teach students about how the legal system functions, but also to provoke thought about the issues involved. We encourage instructors to use this packet as a vehicle for education toward both goals.

**Rule 5.2 Composition of Judging Panels (Minnesota only)**

Every effort is made to have two volunteer judges for sub-regional trials and three judges for the regional finals. One judge will be designated to preside.

In a trial with two judges the presiding judge will also act as a scoring judge and complete a score sheet, and the team with the most total points wins the trial. If the total of the two judges’ scores is a tie, the team with the most points on the presiding judge’s score sheet wins the trial. Should a sub-regional trial have three judges, the presiding judge is encouraged to complete a score sheet for use in breaking a tie, but that score sheet is not to be counted for purposes of establishing the points awarded to the teams.

In a regional final trial with three judges the presiding judge will complete a score sheet. The team that wins at least two of the score sheets wins the regional final trial.

In a trial with only one judge, the winning team’s points will be doubled.
Rule 5.3  Score Sheets/Ballots (NHSMT)

Rule 5.4  Completion of Score Sheets
Score sheets are to be completed individually by each judge without consultation with the other judges. Each scoring judge shall record a number of points (1-10) for each presentation of the trial. At the end of the trial, each judge shall total the sum of each team’s individual point and place this sum in the Column Totals box. The Mock Trial Director has the authority to correct any mathematical errors on score sheets. Mathematical errors not brought to the Director’s attention within 24 hours of the trial are waived.

Rule 5.5  Contest Format/Team Advancement (Minnesota only)
In the Minnesota competition there are three phases: sub-regionals (Rounds 1, 2, 3, & 4), regional championship, and the state tournament.

Team attendance is expected at all trials in each phase of the competition for which the team is eligible.

1. Invitational: Participation in Mock Trial Invitational, camps and other non-MSBA Mock Trial related events is encouraged by the MSBA. The MSBA’s Mock Trial website is available to serve as a place for such events to be publicized, however the MSBA and its Mock Trial program does not specifically endorse such events. The MSBA encourages such events to include teams/individuals from schools across Minnesota and also encourages organizations hosting these events to establish subsidies to enable all teams/individuals who are interested in attending to do so.

2. Sub-regionals: For mock trial purposes, the state will be divided into regions. The exact number of teams assigned to regions will be determined by the number of teams entered in the competition and travel distances to the site of the competitions. Teams from the same school shall be assigned to the same regions. Teams in Greater Minnesota (the “Outstate Teams”) will be assigned to regions, subject to the discretion of the Mock Trial Director to establish a “Super” Outstate Region. Teams in the Minneapolis-St. Paul metropolitan area (the “Metro Teams”) will be assigned to compete at sub-regional competitions held either at the Hennepin County Courthouse (the “HCC Teams”) or the Ramsey County Courthouse (the “RCC Teams” and collectively with the Super Outstate Regional teams and the HCC Teams, the “Super Region Teams”) with teams from the same school to compete at the same courthouse. The MSBA will allocate the number of regional championships for the Metro Teams based on the relative number of HCC Teams and RCC Teams. Outstate Teams assigned to a Super Outstate Region will have two regional championships assigned to that Super Outstate Region.

All teams shall compete in four sub-regional trials (Rounds 1, 2, 3, & 4). The MSBA will make every effort to avoid byes so that each team argues both sides of the case twice in the sub-regionals.

The MSBA shall set the trial schedule and determine which teams compete against each other and the sides of the case assigned. The fact that a team has scrimmaged another team will not preclude the same two teams from facing each other in competition. Teams from the same school may compete against each other.

3. Regional Finals: After completion of the sub-regional competition, teams will be ranked based first upon win-loss record; second on scoresheets won; third based upon the cumulative point differential scores; fourth based upon cumulative points earned. [Note: A team’s point differential score is the total point spread between that team’s score and its opponent’s score in a given trial. For example, if team A scores 95 points in a trial and its opponent, team B, scores 92 points, then team A will have an adjusted score of plus 3 and team B will have an adjusted score of minus 3.]
Non-Super Region Teams ranked first and second after the sub-regionals will compete in a regional championship round.

Super Region Teams will be paired to compete in a regional championship round with the number of HCC Teams and the number of RCC Teams to be selected being twice the number of regional champions allocated under Rule 5.5(2) to HCC Teams or RCC Teams, as applicable, and with the number of Super Outstate Regional teams being the first through fourth after the sub-regionals. Only the top two ranked teams from a single school will be considered for purposes of pairings for regional championships and to the extent two teams from the same school are ranked to compete in a regional championship, they shall be assigned to face each other. Other regional championship pairings will be power matched.

Sides for regional championships will be assigned in advance by a coin flip by an MSBA representative as provided in Rule 5.5(5); however, teams with a 3-1 record will be assigned the side on which they lost in sub-regional rounds unless this would result in the same pairing/sides as a trial in a sub-regional round in which case the teams will switch sides (so, if it was Liberty Blue v. City Green in Round 2, and power-matching would result in the exact same pairing in regional championship, the teams would switch sides).

4. **State Tournament**: Each regional champion is eligible to attend the state competition. If a regional champion decides it does not want to attend the state tournament, the second place team will be eligible to compete. The state tournament format differs from that of the regional competition. All teams at the state tournament will participate in at least three rounds of trials and will present each side of the case at least once. After each round of competition a designee of the Mock Trial Advisory Committee will review the power-matching results and ensure that the trial pairings are correct. The power-matching system is subject to human error. The final results of power-matching cannot be appealed. The Mock Trial Advisory Committee has final authority to interpret these rules.

Every effort will be made to have three volunteer judges for each of the first three rounds of the State Tournament with one of the judges designated to preside. Each of the judges, including the scoring judge, will complete a score sheet. The team that wins two score sheets will be deemed the winning team of the round. If there are only two judges, the scoring judge’s and presiding judge’s scoresheet will be averaged to create a third scoresheet; if that averaged scoresheet results in a tie score, the team receiving the higher score on the averaged scoresheet will be deemed the recipient of the higher score on the averaged scoresheet.

Pairings for the first round will be assigned by a random method at the Coaches Meeting prior to round one. After round one of the competition, teams will be divided into two brackets (1-0 and 0-1). Teams will be ranked within the brackets and power-matched. Teams will switch sides in the second round from that they were assigned in round one if both teams can do so; if not, sides will be determined by coin flip by MSBA representative as soon as possible after pairings are established using the protocol in Rule 5.5(5).

State Finals Power-matching criteria for the second and third rounds are: 1) Win/loss record (the team receiving the most winning scoresheets in a trial shall be deemed the winner of the trial regardless of the number of points earned by each team), 2) total number of scoresheets won, 3) cumulative point differential, 4) cumulative points earned.

After round two of the competition, teams will be divided into three brackets (2-0, 1-1, and 0-2). Teams will be ranked within the brackets and power-matched. If a team has not performed a side of the case in the first two rounds, it will be assigned that side in round three, if both teams can do so; if not, sides will be determined by coin flip by MSBA representative as soon as possible after pairings are established using the protocol in Rule 5.5(5).
After three rounds of competition, final championship trial participants will be the two teams that are 3-0 and will compete in the final championship round. If a team in the final championship round has not performed a side of the case in the first three rounds, it will be assigned that side in the championship round, if both teams can do so; if not, sides will be determined by coin flip in connection with the announcement of the final championship round teams using the protocol in Rule 5.5(5). Subject to the provisions of Rule 5.9 the state champion is then eligible to represent Minnesota at the annual National High School Mock Trial Championship, which is held in a different city each year. (2020 Evansville, IN). Placement of the remaining fourteen teams competing in the state tournament will be based upon the following criteria: 1) Win/loss record, 2) Total number of scoresheets won, 3) Number of wins against 2-1 teams, 4) Number of wins against 1-2 teams, 5) Cumulative point differential. Provided that, if by application of the criteria a team is ranked higher than a team with the same win/loss record that defeated it, the losing team shall be placed immediately below the winning team.

5. Coin Flips: For the purpose of allocation of sides to be determined by a coin flip, the coin will be flipped and if it is heads the school with a name appearing earlier in the alphabet will be the plaintiff/prosecution and if the coin is tails such school will be defense. For example, if River City Blue is facing River City Green, and the coin comes up heads, River City Blue will be assigned plaintiff/prosecution and River City Green will be assigned defense.

Rule 5.6 Power Matching/Seeding (NHSMTC Only; see Rule 5.5(3) for MN version)

Rule 5.7 Selection of Sides For Championship Round (NHSMTC)

Rule 5.8 Effect of Bye Round

A team that prevails by forfeit or receives a bye will be awarded a win and be credited with being deemed recipient of higher score on two scoresheets along with a cumulative point differential and cumulative points that equal the average (mean) cumulative point differential and average (mean) cumulative points of all regional rounds for the prior school year. A team that prevails by forfeit over another team from the same school will receive a cumulative point differential of zero and cumulative points of zero. [Note: for 2019-20, the cumulative point differential is 19 and the cumulative points are 209]

Rule 5.9 Representing Minnesota at the National High School Mock Trial Championship

NHSMTC Rule 3.1 requires teams competing at the National High School Mock Trial Championship to be comprised of students who participated on the current state championship team. If one or more participants on the team representing Minnesota at the National Championship is unable to compete, there may be opportunities* under the NHSMTC Rules for the addition of students to the team.

If the state championship team desires to represent Minnesota at the National Championship, the members of the team and its coaches shall meet with individuals selected by the Mock Trial Director and of the Chair of the Advisory Committee (the “Nationals Advisory Sub-Committee”) within two weeks following the conclusion of the State Tournament to discuss the team’s roster of participants (which must comply with NHSMTC Rule 3.1) and the expectations and obligations associated with representing the Minnesota High School Mock Trial program at the National Championship. Such expectations and obligations involve preparing to compete and gaining familiarity with the rules of competition and evidence used at the National Championship on an expedited basis. Each of the team members and coaches will be expected to sign written acknowledgments of their understanding of the obligations and that they are committed to perform those obligations to the best of their abilities.
If as a result of such meeting, the Nationals Advisory Sub-Committee concludes the state championship team may lack sufficient members who can attend the National Championship and make the necessary commitments, the Sub-Committee may recommend to the Advisory Committee to find the state championship team unable to compete and, in compliance with NHSMTC Rule 3.1, designate an alternate team from the state competition to represent Minnesota.

The Team representing Minnesota shall be prepared by mid-April to conduct at least three scrimmages within the team or with teams from surrounding states with members of the National Advisory Sub-Committee in attendance for the provision of recommendations and suggestions.

F. DISPUTE RESOLUTION

Rule 6.1 Alleging a Rules Violation/Following a Conclusion of a Trial

In accordance with Rule 4.23.1, allegations of a violation of the rules must be brought to the attention of the presiding judge at the conclusion of the trial.

At no time in this process may coaches or other members of the team not participating in the round communicate or consult with the student participating in the round. Only student attorneys may invoke the dispute procedure.

Rule 6.2 Complaint/Grievance Process:

1. If unprofessional conduct, unethical behavior, or rules violation of a serious and substantial nature (collectively, “Serious Misconduct”) occurs outside of a trial, or occurs in a trial but could not reasonably have been identified and decided during trial (including pursuant to Rule 4.23.1), a grievance may be filed with the Mock Trial Director by any team member, teacher, attorney coach, judge, or member of the Mock Trial Advisory Committee. Serious Misconduct does not include decisions within a judge’s discretion, including, but not limited to, rulings on objections or points awarded. Concerns on matters on which a grievance cannot be filed shall be directed to the Mock Trial Director.

2. Grievances must be in writing, specific, and be submitted within 48 hours of the time the grievant knows or reasonably should have known of the Misconduct.

3. Grievances shall be responded to by the Mock Trial Director with involvement of members of the Rules Subcommittee of the Advisory Committee.

4. The response to the grievance may involve: (i) provision of a copy of the grievance to relevant parties, (ii) invitation for submission of written responses; and (iii) such additional investigation as is deemed appropriate.

5. The disposition of the grievance in order of increasing severity includes:

   a. Dismissal of the grievance as unsupported or not involving a violation.

   b. Determination that the grievance has merit, but does not warrant the taking of any action.

   c. With the approval of the Advisory Committee, issue a warning by private conversation with the offending parties.

   d. With the approval of the Advisory Committee, issue a reprimand by letter to the offending parties. In the discretion of the Chair of the Advisory Committee the letter may be sent to
other individuals, schools, or employers.

e. With the approval of the Advisory Committee, issue a suspension precluding individuals or teams from participation in mock trial for a specified time period.

f. With the approval of the Advisory Committee, issue a disqualification precluding individuals or teams from participation in mock trial for no less than one competition season.

6. The grievance process shall not involve any changing of the outcome of any trial or the calling for a retrial. The judges’ decision is final. See Rule 5.1.

7. All parties shall be notified of the Rules Subcommittee’s recommendation to the Advisory Committee. Any party may object to the recommendation in writing.

8. No legal or vested right is created by this process.

Rule 6.2.1 Unsolicited Communication between Coaches and Judges

Unsolicited communication between coaches and judges is strictly prohibited. Judges may file a grievance against a coach that s/he believes has violated this rule. The grievance must be filed within 48 hours of the alleged communication. The grievance process will be governed by the guidelines set forth in Rule 6.2 Complaint/Grievance.

Refer to Rule 4.23.1 for dealing with student team members’ concerns about rules violation.

Rule 6.3 Effect of Violation on Score (NHSMTC)

Rule 6.4 Reporting of Rules Violation/Outside the Bar (NHSMTC)
MINNESOTA MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

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

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

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

The fact that information is contained in a statement of facts, indictment, witness statement/affidavit, or exhibit does not mean that the information is admissible or has been admitted into evidence. Proffers of evidence must be made and ruled upon during the course of the trial itself.

Article I. General Provisions

Rule 101. Scope

These Minnesota High School Mock Trial Rules of Evidence govern the trial proceedings of the Minnesota High School Mock Trial Program.

Rule 102. Purpose and Construction

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

Article II. Judicial Notice

Rule 201. Judicial Notice

1. This rule governs only judicial notice of adjudicative facts.

2. A judicially noticed fact must be one not subject to reasonable dispute in that it is either
   a. Generally known within the territorial jurisdiction of the trial court or
   b. Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

3. A judge or court shall take judicial notice if requested by a party and supplied with the necessary information.
4. Judicial notice may be taken at any stage of the proceeding.

5. In a civil action or proceeding, the judge shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the judge shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

**Article III. Reserved**

**Article IV. Relevancy and its Limits**

**Rule 401. Definition of “Relevant Evidence”**

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

**Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible**

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

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

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

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

(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 607-609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

**Rule 405. Methods of Proving Character**

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

**Rule 406. Habit; Routine Practice**

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, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product’s design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment.

**Rule 408. Compromise and Offers to Compromise**

(a) Prohibited uses. Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior consistent state or contradiction:

1. Furnishing or offering or promising to furnish—or accepting or offering or promising to accept—a valuable consideration in compromising or attempting to compromise the claim; and

2. Conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

(b) Permitted uses. This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness’s bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution.

**Rule 409. Payment of Medical or Similar Expenses**

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

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

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

1. A plea of guilty which was later withdrawn;

2. A plea of nolo contendere;
3. Any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the forgoing pleas; or

4. Any statement made in the course of plea discussions made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

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

Rule 411. Liability Insurance (civil case only)

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of 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 2.2.)

Rule 607. Who may Impeach (i.e., show that a witness should not be believed)
The credibility of a witness may be attacked by any party, including the party calling the witness.
Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

(1) The evidence may refer only to character for truthfulness or untruthfulness, and
(2) Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’ credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness

(1) Concerning the witness’ character for truthfulness or untruthfulness, or
(2) Concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

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

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit. Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(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 which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications. Evidence of juvenile adjudications is generally not admissible but the court may, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.
Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by Court. The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to

1. Make the questioning and presentation effective for ascertaining the truth,
2. Avoid needless use of time, and
3. Protect witnesses from harassment or undue embarrassment.

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

(c) Leading questions. Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness’ testimony). Ordinarily, leading questions are permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.

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

Rule 612. Writing Used to Refresh Memory

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

Rule 613. Prior Statements of Witnesses

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

Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate.
Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

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

(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 702.1 Expert Witness Qualifications

Any witness testifying as an expert must be recognized as an expert by the trier of fact. Proper foundation must be laid in order for the witness to be recognized as an expert.

As an example only, the following steps effectively lay foundation for tendering witnesses as experts:

1. Ask the witness questions to establish foundation for the witness’s education, training and other experience that illustrates his/her qualifications. Example: Dr. Smith, can you please summarize your educational background for the court?

2. If there is a Resume/Curriculum Vitae available documenting the witnesses qualifications, take the proper steps (example in Rule 4.20) to enter the document into evidence.

3. After laying proper foundation, ask the judge to allow the witness to testify as an expert in the appropriate subject area. “Your honor, I ask that you allow this witness to testify as an expert in the area of ____.”

4. Court: “Is there an objection?” (If opposing counsel believes proper foundation has not been laid, the attorney should be prepared to object at this time.)

5. Opposing Counsel: “No, your honor”, or “Yes, your honor.” If the response is “yes”, the objection will be stated on the record. Court: “Is there any response to the objection?”

6. Court: “The court will/will not allow the witness to express an expert opinion in the area of ____.”

Rule 703. Basis of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.
Rule 704. Opinion on Ultimate Issue

(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: an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant: a person who makes a statement.

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

(d) A statement is not hearsay if:

(1) Prior statement by witness. -- The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is

   (a) Inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or
   (b) Consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or
   (c) One of identification of a person made after perceiving the person; or

(2) Admission by a party-opponent. -- The statement is offered against a party and is

   (a) The party’s own statement in either an individual or a representative capacity or
   (b) A statement of which the party has manifested an adoption or belief in its truth, or
   (c) A statement by a person authorized by the party to make a statement concerning the subject, or
   (d) A statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or
   (E) A statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Rule 802. Hearsay Rule

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

Example: Witness A testifies, “Some of the other tenants told me that Jones often failed to keep his apartments in good repair.” This would not be admissible to prove that Jones often failed to keep his apartments in good repair, which was the matter asserted in the out-of-court statement. But, it might
be admissible to prove that A had some warning that Jones did not keep his apartments in good repair, if that were an issue in the case, since it would not then be offered for the truth of the matter asserted.

Comment: Why should the complicated and confusing condition be added that the out-of-court statement is only hearsay when “offered for the truth of the matter asserted?” The answer is clear when we look to the primary reasons for the exclusion of hearsay, which are the absence in hearsay testimony of the normal safeguards of oath, confrontation, and cross-examination which test the credibility and accuracy of the out-of-court speaker.

For example, if Ms. Jones testified in court, “My best friend, Ms. Smith, told me that Bill was driving 80 miles per hour” and that out-of-court statement was offered to prove the truth of the matter asserted (that Bill was driving 80 miles per hour), we would be interested in Smith’s credibility, i.e., her opportunity and capacity to observe, the accuracy of her reporting, and tendency to lie or tell the truth. The lack of an oath, confrontation, and cross-examination would make the admission into evidence of Smith’s assertion about Bill unfair to the opposing party. If the statement was offered, however, to show that Ms. Smith could speak English, then its value would hinge on Ms. Jones’ credibility (who is under oath, present, and subject to cross-examination) rather than Ms. Smith’s, and it would not be hearsay.

Another example: While on the stand, the witness says, “The salesperson told me that the car had never been involved in an accident.” This statement would not be hearsay if offered to prove that the salesman made such a representation to the witness. (The statement is not offered to prove the truth of the matter asserted.) If offered to prove that the car had never been in an accident, it would not be allowed because it would be hearsay.

Objections: “Objection. Counsel’s question is seeking a hearsay response,” or “Objection. The witness’ answer is based on hearsay. I ask that the statement be stricken from the record.”

Response to objection: “Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show...”

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

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

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

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

4. **Statements made for purposes of medical diagnosis or treatment.**

5. **Recorded Recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and
accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness’ memory and to reflect that knowledge correctly.

6. **Records of regularly conducted activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

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

8. **Reputation as to character.** Reputation of a person’s character among associates or in the community.

9. **Judgment of previous conviction.** Evidence of a judgment finding a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

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

(a) **Definition of unavailability.** “Unavailability as a witness” includes situations in which the declarant

1. Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or

2. Persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so; or

3. Testifies to a lack of memory of the subject matter of the declarant’s statement; or

4. Can’t be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

5. Is absent from the hearing and the proponent of a statement has been unable to procure the declarant’s attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), or (4), the declarant’s attendance or testimony) by process or other reasonable means.

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

(b) **Hearsay exceptions.** The following are **not** excluded by the hearsay rule if the declarant is unavailable as a witness:
1. **Former testimony.** Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

2. **Statement under belief of impending death.** In a prosecution for homicide or in a civil proceeding, a statement made by a declarant while believing that his/her death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

3. **Statement against interest.** A statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

4. **Statement of personal or family history.** (A) A statement concerning the declarant’s own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other’s family as to be likely to have accurate information concerning the matter declared.

5. **Forfeiture by wrongdoing.** A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

**Rule 805. Hearsay within Hearsay:** Hearsay included within hearsay is not excluded if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

**ARTICLE IX. Authentication and Identification** - Not applicable.

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

**ARTICLE XI - Other**

Rule 1103. Title

These rules may be known and cited as the Minnesota High School Mock Trial Rules of Evidence.
SAMPLE TEAM ROSTER

Below is a suggested format for a roster sheet to be provided at the pretrial conference to each of the judges at a trial. This sheet is for the judges’ convenience in identifying the team members and the roles they will play. Some teams include a photo of each team member but this is completely optional.

MINNESOTA MOCK TRIAL PROGRAM

SIDE: _______________     LOCATION: ________________________________

DATE: ________________

School/Team: ________________________________

ATTORNEYS

Student ________________________________

Opening, Direct of ___________ name here, Cross of ___________ name here

Student ________________________________

Direct of ________________________, Cross of ________________________

Student ________________________________

Direct of ________________________, Cross of ________________________, Closing

WITNESSES (in order of appearance)     Gender of Witness

Portrayed

Witness #1 Name ___________________ Student’s Name ___________________ ______________________

Witness #2 Name ___________________ Student’s Name ___________________ ______________________

Witness #3 Name ___________________ Student’s Name ___________________ ______________________

Bailiff____________________________ Student’s Name ___________________ ______________________

Timekeeper________________________ Student’s Name ___________________ ______________________
2019-20
Regional Competition
Round ____

Outstanding Attorney
Certificate

________________________________________
Enter Name of Team Member

The Members of the __________________________ team, who competed in the above referenced Round in the Minnesota High School Mock Trial Competition, hereby confer upon the above named competitor recognition as the Outstanding Attorney for the __________________________ team this____ day of ____________, 2020.
The Members of the ____________________________ team, who competed in the above referenced Round in the Minnesota High School Mock Trial Competition, hereby confer upon the above named competitor recognition as the Outstanding Performing Witness for the ____________________________ team this______ day of ________________, 2020.
2020 MSBA Mock Trial Advisory Committee
Volunteer of the Year Award

Each year hundreds of volunteer judges and lawyers across Minnesota devote time to the MSBA High School Mock Trial Program. Volunteers take on the roles of judges, coaches and committee members. This award has been established to recognize volunteers who go above and beyond.

This Award’s recipient has worked tirelessly to fulfill the goals of the program which include:

1) To develop a practical understanding of the way in which the American legal system functions.

2) To enhance cooperation and respect among educators, students, legal professionals and the general community.

3) To help students increase basic life and leadership skills such as critical and creative thinking, effective communication and analytical reasoning.

4) To heighten appreciation for academic studies and promote positive scholastic achievement.

If you know of a Mock Trial Volunteer worthy of this recognition please nominate him/her to show your appreciation for their efforts.

This award will be presented at the High School Mock Trial Awards Banquet on March 6, 2020.

Please describe in 300 words or less how the nominee named above has worked to fulfill the above named goals of the MSBA High School Mock Trial Program.

Nominations should be submitted via e-mail, fax or US Mail to Kim Basting, Mock Trial Director at kbasting@mnbar.org, 612.333.4927 or 600 Nicollet Mall, Suite 380, Minneapolis, MN 55402. Nominations will be accepted until February 7, 2020.
Pretrial Stipulations

Pursuant to Rule 3.4 of the Minnesota Mock Trial Rules, the following pretrial stipulation controls the mock trial competition. Recitation of these items is not scored.

1. Standard of Review. The parties jointly move the Court to judge this mock trial according to the mock trial standards, not the legal merits of the case.

2. Rating Standards. The parties jointly move the Court to use the evaluative criteria provided on the official mock trial score sheet. By these standards, scores below “4” are reserved for unprofessional conduct. A high score of “10” is reserved for superlative presentations.

3. Full Hearing of Evidentiary Objections and Argument. The parties jointly move the Court to allow each side to present all of its witnesses (unless the party’s time has expired) and to make and fully argue all objections. While objections to the foundation and relevance of testimony and exhibits should be made and fully argued, the parties jointly move the Court to apply a reasonably inclusive standard for admissibility.

4. Constructive Critique. The parties jointly advise the Court that, pursuant to Rule 4.24, the judging panel is allowed a combined total of ten minutes after the trial for constructive comments. It is recommended that each judge limit themselves to a maximum of three comments. The timekeeper will monitor the time following the trial.

5. Scoring the Use of Notes. The parties jointly advise the Court that, pursuant to Rule 4.21, the use of notes by attorneys is allowed, but to the extent such use detracts from the overall performance, the scores may reflect.

6. Mathematical Computation and Error Checking. The parties jointly move the Judges to: use a calculator to check the score tabulation; double check each other’s math; and confirm that the Presiding Judge has filled in the tie-breaker box.

7. Unfair Extrapolations. The parties jointly advise the Court to take notice of Rule 2.2, as recently modified, including its definitions of “Witness Materials,” “Material Facts,” and “Reasonably Consistent.”

Presiding Judge: The parties’ stipulation is accepted and the motions therein granted.