2003 DELAWARE HIGH SCHOOL MOCK TRIAL COMPETITION

Presented by the

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Adapted for use by the Delaware Law Related Education Center from a case written by Professor Robert Wilcox, School of Law, University of South Carolina. Special thanks to the South Carolina Mock Trial Program and the New Mexico Center for Civic Values.

2003 DELAWARE OFFICIAL MOCK TRIAL PACKET

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DELAWARE MOCK TRIAL COMPETITION

Rationale of the Delaware Mock Trial Competition

The Mock Trial activity has proven to be an effective and popular part of a comprehensive, law-focused program designed to provide students with an operational understanding of the law, legal issues, and the judicial process. Part of the appeal of a mock trial is the fun involved in preparing for and participating in a trial. Mock trials are exciting, but more importantly, they provide invaluable learning experiences.

Participation in and analysis of mock trials provides the students with an insider's perspective from which to learn about courtroom procedures. Mock trials help students gain a basic understanding of the legal mechanism through which society chooses to resolve many of its disputes. And while obtaining this knowledge, students develop useful questioning, critical thinking, and oral advocacy skills, as well as significant insight into the area of law in question.

The mock trial activity also provides an opportunity to incorporate field experiences and community resource persons into the educational process. Visits to local courts will make the activity a more meaningful learning experience. Inviting judges, attorneys, teachers, and other members of the community to take part in the mock trial will help bridge the gap between the simulated activity and reality, and also will provided an opportunity for the resource people to share their knowledge and experience with the students. Finally, the mock trial will give students practical knowledge about courts and trials which can be invaluable should they ever be jurors or witnesses in a real trial or principals in a legal action.

(Taken in part from *Update on Law-Related Education,* Winter, 1978. *Update* is an American Bar Association publication.)

Goals of the Delaware Mock Trial Competition

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

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

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

Education of high school students is the primary goal of the mock trial program. Healthy competition helps to achieve this goal. However, teachers are reminded of their responsibilities to keep the competitive spirit at a reasonable level. The reality of the adversary system is that one part wins

and the other loses, and teachers should be sure to prepare their students to be ready to accept either outcome in a mature manner. Teachers can help prepare students for either outcome by placing the highest value on excellent preparation and presentation, rather than winning or losing the case.

Students need to be prepared for the agony of defeat as well as how to win with class. Hurt feelings, anger, and frustration are not the objectives of mock trial. We hope students view the event as a *fun* and exciting learning experience. An admonition to all students, sponsors, and coaches: "Lighten up and have a good time," regardless of the competition outcome!

2003 DELAWARE HIGH SCHOOL MOCK TRIAL COMPETITION

PROBLEM

SANDY HILLS vs. MIDWAY SCHOOL BOARD
AND DALE GREENE, PRINCIPAL MIDWAY HIGH SCHOOL

STATEMENT OF THE CASE

Midway High School is a public high school in the city of Midway with approximately 1,200 students in grades 9 through 12. There are normally four performing musical groups at Midway High: Marching Band, Concert Band, Chorale, and Dance Band.

The marching band has approximately 130 members, with approximately 30-35 members from each class. Marching band performs as a single entity during the fall semester. In the spring semester, many members of the marching band perform as a smaller pep band. Other members join the concert band for the spring semester. Concert band is a symphonic wind ensemble, with approximately 45 members in the fall and about 70 members in the spring. The third group is Chorale, which is a choral group of approximately 45 singers.

Participants in Marching Band, including spring pep band, Concert Band and Chorale each receive two pass/fail course credits per semester. They practice each day from 2:00 to 3:00 p.m., during a class period known as music lab. During that time period, other students may participate for pass/fail credit in art, drama or journalism labs or use the period as a study hall. School is dismissed at 3:00 p.m. each day. Marching Band also typically practices after school four days a week in the fall semester.

Prior to its abolition in October 2002, the fourth performing group was the Dance Band. Created in1993, the Dance Band consisted of seven students selected by audition from among members of the Marching Band, Concert Band and Chorale. The Dance Band played contemporary music and performed twice a year at school sponsored dances. The Dance Band rehearsed after school every Monday and Wednesday in a school music room with its director, Terry Roberts. Roberts is a music teacher at Midway High School and received no additional compensation for work with the Dance Band. The music room also was available for the use of the Dance Band on Tuesday and Thursday from 4:00 to 5:30 p.m., although Terry Roberts did not generally attend those sessions. All of the acoustical equipment, such as amplifiers, mixers and microphones, used by the Dance Band belonged to Midway High School. Most of the instruments used by the individual members were also school property, although members occasionally have owned or rented their own instruments. In 2002, two of the seven members owned their own instruments.

The Homecoming Dance is sponsored each November by the school in conjunction with other homecoming activities. The dance has been held every year since 1949, except for a brief period in the late 1960s when it was canceled for lack of interest. Prior to1969, the Concert Band played at the dance. Thereafter until 1993, in years when the dance was held, a band was hired by the school to play. Since the school expanded in 1988, the dance has been held at the Midway Conference and Convention Center every year except 1999. In 1999, the dance was held on the Midway High School campus in the gymnasium. Due to poor acoustics in the gym, however, it was moved back to the Conference and Convention Center the next year.

The Spring Dance began in 1994 and the Dance Band has played each year since. The dance also has been held at the Conference and Convention Center every year except 2000, when it was held on campus in the gymnasium. Since 1995, the Dance Band also has been invited to perform each October at CityFest, an October street festival sponsored by the City of Midway in the area adjacent to and including City Center Park, a public square in downtown Midway. The street festival offers food, crafts and music. Prior to 2002, there was no admission fee for CityFest. In 2002, however, an admission fee of $3 was charged, with proceeds used to defray the costs of the festival. Any remaining funds are contributed to charities within the city.

The 2002 Dance Band was selected by audition during the first week of school in August 2002. Three students were selected from marching band, two from concert band and two from Chorale.

Between August and October 2002, they rehearsed a program for their performance at CityFest. Without the knowledge of Roberts, the Dance Band also learned a song by the Graceland Trio entitled "Is It No Wonder?" Rehearsal of that song occurred only at times when Roberts was not present in the music room.

On October 5, 2002, the Dance Band performed as one of eight bands scheduled at CityFest. Band members played their full program plus "Is It No Wonder?" Although approximately 5,000 people attended CityFest on October 5, only about 300 people gathered at the stage where the Dance Band was playing. The crowd near the stage consisted primarily of teenagers and some young adults. Adjacent to the stage was a food booth operated by the Midway Band Boosters, at which approximately 12 parents of Midway High students were selling sodas and pizza. The Dance Band performed for about 45 minutes. They played "Is It No Wonder?" about 30 minutes into the program.

Typically, the Dance Band introduced a song or set of songs with a few short comments about the song. Several songs were dedicated at CityFest to general groups of people such as "to all our girlfriends and boyfriends" or "to those special people in our lives." Others were dedicated to specific people such as a teacher at the school. One band member, Sandy Hills, a senior at Midway High School (anticipated graduation in June 1992), introduced "Is It No Wonder?" with a short statement dedicating the song to protestors at the WIPP site. Hills stated that the site was dangerous to the people who live around it and who work there, and to the people who live along the routes to the site.

Dale Greene is principal of Midway High School. On October 8, 2002, after meeting with the Dance Band and its director, Terry Roberts, Greene abolished the Dance Band at least for the remainder of the 2002-03 school year. On October 9, Greene personally informed the president of the student council that if the Spring and Fall dances were to be held, new music arrangements would have to be made.

On October 25, Sandy Hills and his or her parents attended a meeting of the Midway School Board. During a portion of the meeting reserved for public comments, Hills requested that the school board investigate the matter and order the Dance Band reinstated. Greene was asked to respond. Greene informed the board that the band played songs without any faculty approval and that the actions taken were caused by concern both for any potential copyright law violations and for the proper fulfillment of the academic mission of the school. The Board Chairman, Richard Lyttle, responded that, under the circumstances, the Board would leave the matter to the discretion of the principal as it was within the principal's administrative authority.

On October 29, Sandy Hills found taped to his or her school locker a letter from Dale Greene, notifying Hills that a Band Booster scholarship for which Hills had been nominated had been awarded to another nominee. Although an earlier letter had indicated that Hills would be interviewed by a selection committee, no such interview ever occurred. Other nominees were interviewed by the Committee, which consisted of the principal and the president and vice president of the Midway Band Boosters Association. The Midway Band Boosters Association is a nonprofit corporation organized for the sole purpose of providing support for the music programs at Midway High School. It has a board of directors composed of three parents of Midway High School students, the principal and a member of the music faculty at the school. Its membership is primarily parents and former band members. Hills has continued to be a member of the Concert Band, despite the events surrounding the Dance Band.

On November 1, 2002, Hills filed this action against the school board and Dale Greene, as principal of Midway High School, alleging infringement of a First Amendment right of free speech. Hills seeks a declaration that the abolition of the Dance Band and the subsequent decision by Greene not to consider Hills as a nominee for the Band Booster Scholarship were in response to Hills' assertion of a protected speech right and that such actions violated Hills' state and federal constitutional rights of free speech. Hills further seeks an injunction ordering the reestablishment of the Dance Band and an award

of damages to compensate for injuries suffered as a result of the alleged violations, including loss of the scholarship.

FOURTEENTH JUDICIAL DISTRICT COURT
COUNTY OF MIDWAY
STATE OF DELAWARE

SANDY HILLS	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. CV-91-527
	)	
MIDWAY SCHOOL BOARD and	)	
DALE GREENE, Principal, Midway	)	
High School	)	
	)	
Defendants.	)	

STATEMENT OF STIPULATED FACTS

I. It is stipulated for purposes of this Mock Trial, that the following facts have been properly introduced into evidence and may be relied upon by both parties in the presentation of their cases.

A. Robin Sherwood is a qualified expert in the field of adolescent psychology.

B. The transcript of a television appearance by Dr. Sherwood on the Griff Donafrey show in 1998 is an accurate transcription of that event.

C. All exhibits included in these case materials are authentic and are accurate in all respects; no objections to the authenticity of the exhibits will be entertained.

D. The signatures on the excerpts from witness depositions are authentic.

II. Participants may rely on the information given in the Statement of the Case as true and correct.

EXCERPTS FROM THE DEPOSITION OF THE PLAINTIFF

SANDY HILLS

1. I am a senior at Midway High School and am 18 years of age.

2. I am a member of the Midway High School Concert Band, which performs two classical music concerts a year. I am also a keyboard player and vocalist for the Midway High School Dance Band. I have been a member of the Dance Band since my junior year. All of the amplifiers, mixers and microphones we use for Dance Band belong to the school. Five of us use instruments that belong to the school; the other two members have their own instruments.

3. As a junior, I was named Musical Performer of the Year at Midway High School.

4. It was originally my idea to use "Is It No Wonder?" by The Graceland Trio at the CityFest concert this year as our "surprise song" for our music teacher, but all of us were excited about doing it. I know the song mentions death and saying good-bye and refers to drugs and sex, but I don't see how it can be said to glorify drugs, sex or suicide. In context, the song says that we need to change the world so that there is a reason to live. Drug abuse and casual sex are products of our parents' attitudes now that we need to change. The song never refers to physical death. It refers to emotional or moral death.

5. I introduced the song at CityFest and dedicated it to the protestors working to shut down the WIPP site. That's because those of us in the Dance Band see it as a song calling for moral courage and a willingness to support what is right. You have to have a reason to live, and I wanted to make the point that those protestors have a reason; they are trying to make this a better world and we owe them our support.

6. On Monday, October 8, the principal came to band rehearsal with our music teacher. Dr. Greene said he or she thought the members of the Dance Band used poor judgment in playing "Is It No Wonder?" Dr. Greene wanted us to promise that we would not play any more songs unless they were approved in advance. Four of us didn't want to go along with that so Dr. Greene said that the Dance Band no longer existed and that we could not use the practice room or the school's equipment. I am still allowed to be in Concert Band.

7. Three of us, including Kim Martinez, went by Dr. Greene's office the next day. Dr. Greene told me that he or she was really tired of my attitude and would not put up with it any more. I remember that Dr. Greene said I had "screwed up once too often."

8. My parents and I went to the school board meeting in October, and I was allowed to ask the Board to reinstate the Dance Band. Dr. Greene told them that he or she had disbanded us to protect against copyright problems and because he or she did not think we were playing appropriate music for a school group. The Board said that they were sorry, but that this was a matter for Dr. Greene to handle and they had no problem with the actions taken.

9. The next thing I heard from Dr. Greene was that I had not been selected for the booster scholarship. This really surprised me because Dr. Greene's earlier letter had indicated that I would be interviewed before a decision was made, and I had never been called for an interview. The only thing that had happened since the earlier letter was the concert, and I think Dr. Greene just decided not to give me the scholarship because of that.

10. I am particularly upset by the principal's actions for two reasons. First, I believe strongly in the message of "Is It No Wonder?" and Dr. Greene's actions are typical of the problem that the song addresses. I am really angry about some of the things going on in the world today, especially the reliance on nuclear power and nuclear weapons. If we could really debate the subject openly, I think that people would see how bad things really are. I have worked with my parents on some protests at the WIPP site, and I know what the problems are. I really meant what I said when I dedicated "Is It No Wonder?" to the people who are struggling against efforts by the government and big business to hide the truth. Second, I want to go to the best music school, and I am worried about how this incident will appear on my record. I am going to have to explain to every school why the band was abolished. As competitive as music schools are, I am afraid it may be enough to keep me from getting accepted. Just as importantly, I probably will not be able to go to music school at all if I do not get some financial help. The booster scholarship would have been a really big help.

11. I have encountered Dr. Greene before. As a sophomore, I was put on probation for a year for an incident in civics class. There was a guest lecturer talking about a protest the year before against a nuclear power plant. He talked about how our governmental system had resolved the issue. I tried to ask some questions and challenged his portrayal of events. I probably was a bit rude, but I was so mad because I knew my parents' side of what had happened, and he was not giving any of that. Dr. Greene and my teacher said I was disruptive and told me how much I had embarrassed them and the school. I don't think Dr. Greene has liked me much since then. For example, I never get a break if I am a few minutes late to school. I was disciplined occasionally during my junior year for cutting class or being late. Once this year I was punished for being late even though my parents' car broke down on the way to school. I complained then to Dr. Greene, but he or she did nothing. I realize that what I did in civics class was probably a stupid thing for me to do. What's funny is that I thought expressing myself in music would be a better way to make my point, but it seems to have gotten me into trouble, too.

END OF EXCERPTS FROM DEPOSITION

I have read the above statement and it is true and correct to the best of my knowledge.

SIGNED _____
Sandy Hills

EXCERPTS FROM THE DEPOSITION OF PLAINTIFF'S WITNESS

TERRY ROBERTS

1. I am a full-time member of the faculty at Midway High School. I am a music instructor and director of the Midway Concert Band and the Dance Band.

2. I am 41 years old and have taught ten years at Midway. I obtained my Bachelor of Arts degree in Music from Oberlin Conservatory in Ohio in 1981 and a masters in Music Education from the University of South Carolina in 1987.

3. The Dance Band was formed in Fall 1993 at my urging, and I have been its director since its inception. The purpose of the Dance Band is to play contemporary music and to show students that classical and modern training can be compatible. I first suggested the concept to the principal when I arrived in 1992, and it was not until the next year that Dale Greene agreed. Dr. Greene has, however, been generally supportive of the Dance Band during its existence.

4. In most years, the Dance Band performs at the school's Spring Dance in April and the homecoming Dance in November. It also has been invited since 1995 to play at CityFest, sponsored by the City of Midway each October. Those three performances were the only performances scheduled in the 2002-03 school year.

5. Dance Band members are selected by me from among members of the school's Marching and Concert Bands and the Chorale after auditions. It is generally a prized honor to be selected, and this year there were 42 students who auditioned for the seven positions.

6. In addition to rehearsal, Dance Band includes some instruction on the theory and history of rock and roll music and on putting together a program with proper balance. A part of that instruction is an introduction to copyright law and royalties and some pointers on how to obtain any needed permission to perform a work.

7. The band's repertoire includes songs that I select, plus some songs that the members suggest. I buy all the music and am responsible for ensuring that copyrights are not violated. I also attempt to select music that is of sufficient quality for educational purposes. Every year, however, the Dance Band has picked up one or more songs and learned them without my knowledge. It has almost become a tradition, it seems, to try to learn a complete song well without letting me know. It has never been a problem until this year.

8. I have seen a lot of members change dramatically as a result of their participation in Dance Band. Talented people who for some reason had no interest in school have become good all-around students because they have found a way to relate school to their world. That kind of change has never been more apparent than with Sandy Hills. In a year and a half Sandy has come from being a drop-out candidate to being a

responsible student leader. Sandy will challenge you as a teacher, but only because he or she is always questioning things.

9. I attended the CityFest concert at City Center Park on October 5. When I heard "Is It No Wonder?" I was surprised they had picked a folk song again. But I understood why when I saw the student reaction. The way the students stood close and sang along reminded me of the folk concerts back at Oberlin in the late sixties. The song seemed to move the students and unite them.

10. I had no concern about the contents of the song at the time of the concert. I did check on Monday, October 8, and determined that the performance fell within an exception to the licensing requirements of the copyright laws.

11. Dale Greene called me at home late Sunday, October 7, and asked for an explanation of why he or she was receiving complaints about our band's playing music that encouraged sex, drugs and even suicide. I was not sure of what song or songs the principal was referring to until he or she read the lyrics, which were the refrain to "Is It No Wonder?" I told Dr. Greene that I had not known in advance of the band's intention to play the song, but that I saw no problem with the lyrics. Dr. Greene indicated that the words sounded pretty bad and that parents of students were complaining, as was a community group called CARE.

12. Dr. Greene also asked if I knew about the dedication of the song to the nuclear protestors. Dr. Greene said that several callers had complained that we seemed to be teaching our students that nuclear power was bad. I told him that the students had in fact dedicated "Is It No Wonder?" to the protestors at the WIPP site and that I would be willing to speak with them about avoiding those kind of controversial dedications in the future. Dr. Greene agreed that I should do so, adding words to the effect that nuclear protestors are "not the most popular people around these parts" and we don't need "that kind of trouble."

13. Dr. Greene then asked who was in the Dance Band. When I mentioned Sandy Hills, Dr. Greene said something like, "That figures." Dr. Greene expressed an inclination to dissolve the Dance Band for this year. I told Dr. Greene I thought we needed to discuss the matter further. The principal set up a meeting with me and the Dance Band during rehearsal after school on Monday. Dr. Greene and I were to meet first, but when I went by the principal's office several times on Monday morning, Dr. Greene was not available.

14. Dr. Greene did most of the talking at the meeting with the Dance Band. I did little talking and left it up to the students to decide what to do. I sympathized with their position, which was that they had acted responsibly and should not be punished, but I did not feel in that situation that I could challenge my boss in front of the students. After the meeting, I asked Dr. Greene to reconsider, but was told that the matter was closed.

15. I have never understood that the Dance Band was breaking any rule by performing songs without my prior approval. In fact, a letter from Dr. Greene in 1993 approving the Dance Band made me fully responsible for the music and performances of the band. I thought it was my decision whether music was appropriate.

16. I would have approved this song if it had been suggested to me by the band. Even if it is interpreted as referring to suicide, it does not glorify that horrible act. Suicide is giving up. This song is a rally call to fight back and change a system where values have been lost. It expresses anguish that society produces responses such as drug use and suicide by its youth. It is a song of hope that change for the better can come.

17. Several weeks after Dr. Greene's decision to terminate the Dance Band for 2002-03, I learned from Marion Sims, president of the Band Boosters, that they had selected Jody Browder as recipient of the Band Boosters Achievement Scholarship. I asked why they had not selected Sandy Hills and was told that they had not even interviewed Sandy. It seems that, on the advice of Dr. Greene, they determined that since Dance Band no longer existed, there could be no nominee from that group. Although Sandy is still a member of the Concert Band, Lee Koniak had already been nominated from the Concert Band, and no more than one person can be nominated to represent each organization. As a result, the selection committee just eliminated Sandy as a nominee. That is a shame, because no one has ever been more deserving of that award, and I know for a fact that Sandy needs all the financial help possible to go on to music school.

18. When I brought up the subject to Dr. Greene, the principal confirmed what Marion Sims had told me. Dr. Greene added that he or she had not been inclined to "stretch the rules" to keep Sandy's name in nomination since he or she did not think Sandy met the criteria for the award anyway. I asked what he or she meant by that and Dr. Greene told me that one of the criteria is leadership and that Sandy had certainly not shown any maturity or leadership "over that CityFest thing." When I started to object, the principal told me not to get "worked up over Sandy Hills."

    It is my understanding that since the scholarship criteria were revised in 1988, the music faculty has always nominated one person from each of the four musical groups. That certainly has been the case since I came to Midway High in 1992. Four other times since I have come, we have also unanimously recommended one of the four nominees. On each of the other four occasions that person received the scholarship. Sandy is the first unanimous recommendation to be turned down.

END OF EXCERPTS FROM DEPOSITION

I have read the above statement and it is true and correct to the best of my knowledge.

SIGNED _____
Terry Roberts

EXCERPTS FROM THE DEPOSITION OF PLAINTIFF'S WITNESS

KIM MARTINEZ

1. I am a senior at Midway High School and am 18 years of age.

2. I am a drummer for the Midway High School Dance Band. I have been a member of the Dance Band since my junior year. I also am a member of the Midway High School Marching Band.

3. The Dance Band has seven members and is selected from among members of the school Concert and Marching Bands and members of the Chorale. Although we receive pass/fail grades for being in Concert and Marching Bands and the Chorale, we receive no extra credit for being in the Dance Band.

4. The Dance Band practices at Midway High School twice a week under the direction of Terry Roberts. The practice room also is available to us at other times when it is not being used by other groups. We usually practice at least one other time each week without any teachers being present.

5. Two of the seven members of the band have their own instruments. The rest of us use instruments provided by the school. All of our amplifiers, mixers and microphones belong to the school.

6. The Dance Band plays mostly contemporary dance music, along with some other songs that we select. Last year we played a little jazz and folk music, as well as rock and roll. We work with Terry Roberts to put together most of our repertoire. However, it is a tradition for the Band to learn at least one song each year without Roberts knowing. Last year the song was a 1960s protest that Judy Collins used to sing called "Carry It On." This year, at the suggestion of Sandy Hills who is pretty much the leader of the Dance Band, we selected "Is it No Wonder?" by The Graceland Trio. Both of those songs are a little different from what we usually play, but "Is It No Wonder?" is a real popular contemporary song, and we felt it sends an important message that needs to be spread. We never expected it to cause any problem, especially since no one complained last year about "Carry It On." I think the only comments last year about that song were by Terry Roberts, who was impressed that we knew an old song like that from the sixties.

7. One of the first things that Roberts teaches to the Dance Band is how to put together a balanced musical program and to acquire all necessary permissions for public performance. We felt that "Is it No Wonder?" fit into our program, and we did not believe there would be any copyright problem because no one makes a profit off of the CityFest.

8. When we played "Is It No Wonder?" at the concert on October 5 at CityFest, the kids really gathered around and sang along. They cheered louder after that song than any

other time. No one said anything negative to us, and we played the rest of the concert on a real emotional high. I think it was the best concert we have ever played.

9. The first that I heard there was a problem was Monday, October 8, when the principal showed up with our teacher at band rehearsal. Dr. Greene expressed concern with our judgment in playing "Is It No Wonder?" Dr. Greene understood the song had not been approved by Roberts, and Dr. Greene wanted our assurance that we would not play any more songs unless approved in advance. Three people were willing to go along with the principal, but four of us were not. Dr. Greene then announced that the Dance Band no longer existed and that we could not use school premises or equipment or play at any school functions. Everyone in the room seemed very tense at that point.

10. Three of us, including Sandy Hills, went by Dr. Greene's office the next day. I remember that Dr. Greene said that he or she was especially tired of Sandy's "attitude" and "insolence" and would not tolerate it any longer. I remember specifically that Dr. Greene said, "I've had my eye on you, Hills, and this time you've screwed up once too often."

11. I am still really upset that we no longer have a Dance Band, but at least one good thing that came out of all this was the discussion we had in English class on Tuesday, October 9, after all this had happened. We all got a chance to talk about some of the issues in the song, like suicide, and also about the nuclear waste problem. It was great to talk about real things in class, and I think we all learned a lot.

END OF EXCERPTS FROM DEPOSITION

I have read the above statement and it is true and correct to the best of my knowledge.

SIGNED _____
Kim Martinez

EXCERPTS FROM THE DEPOSITION OF THE DEFENDANT

DALE GREENE

1. I have been employed as principal of Midway High School since 1989. I was vice-principal of Midway High School from 1987-1989 and principal of Midway Junior High from 1983-1987. I have taught in the Midway public school system since 1975. Prior to that time, I served 14 years as an officer in the United States Army. I am 64 years old.

2. I obtained my Bachelor of Science degree in mathematics from the University of Texas and a masters in Education and Ph.D. in Education from Cornell University.

3. Part of my duties as principal involve reviewing and approving the curriculum materials for the school year. This would include any music played by the bands.

4. I have supported the Dance Band at Midway High since its inception. I believe that, with proper faculty supervision, it can perform an important role at the school. Through the Dance Band, some students discover that education can include experiences that are relevant and interesting to them.

5. I was not at the CityFest concert on October 5. That evening we celebrated my grandchild's third birthday. I arrived home around 10 p.m. and received almost immediately the first of several calls that evening from parents complaining that the Dance Band was playing songs which promote sex, drugs and even suicide. Several other callers complained that we seemed to be advocating a position in our schools against nuclear energy. They referred to a song dedication for one of the songs that the Dance Band had played. The song had been dedicated to protestors at the WIPP site. It is my understanding that the student had said that the site was dangerous to the people who lived around it, calling the facility "a dump where they plan to store enough nuclear waste to kill us all" and a place that "will kill the people who work there and the people who live along the routes to the site." Sandy dedicated the song to "a small group of people fighting hard to protect us." I told each of the parents that I would check on the matter Monday and let them know of any action I took.

6. I heard nothing more until Sunday afternoon, when I received three more calls from parents and one call from a member of an organization known as the Council Against Repulsive Expression. Each caller told me that a petition was being circulated demanding that I order the Dance Band to drop a song called "Is It No Wonder?" I was told that the lyrics suggested the use of drugs, sex and suicide to escape from reality. One parent told me that the lyrics were, "Is it no wonder we're getting high, making love and saying good-bye."

7. I called Terry Roberts that evening to discuss the calls. I was not aware until that conversation that the Dance Band ever performed music without Terry's prior approval. I told Terry that any unapproved performance was inappropriate given the educational mission of the school and the risk of copyright liability. I also told Terry that if he or she

could not supervise the Dance Band, we would have to find another teacher who could or abolish the band. I was inclined to do the latter if it came to that.

8. Terry Roberts and I agreed to meet with the Dance Band at its scheduled rehearsal after school on Monday, October 8. I did not meet with Terry that morning, because I really did not believe this would be such a big matter. I went to that meeting with every expectation that we could resolve the matter as a lesson in responsibility for band members, with their agreement not to perform music again without the instructor's prior consent.

9. When I spoke with the Dance Band, however, Sandy Hills became very hostile and seemed to convince a group of friends that I was challenging their authority and rights as performers to select their own music. I reminded Sandy that I was the one with the ultimate responsibility for the group and that I was also the one with the authority to make decisions regarding the band.

10. As I recall, several members of the Band tried to be reasonable, but the majority refused to agree to perform only songs approved in advance by Terry Roberts. I then felt that, in light of potential copyright exposure and the need to reassure the public that music played would be appropriate to the educational function of the school, I had no choice but to abolish the band for 2002-03.

11. I saw all the lyrics to the song for the first time after the meeting on October 8. Terry Roberts left a copy at my office. My reaction was that the community's concerns were well-founded. It is my opinion as a teacher for 27 years that there is a substantial risk of that song's being interpreted by young minds as glorifying drugs, sex or suicide as appropriate responses to the problems we face. We must remember that the audience for these performances regularly includes youths 15 years old and younger.

12. I do not recall the specifics of any subsequent conversation with Sandy Hills after the October 8 meeting. I do remember, however, that several groups of students came by to complain and that Hills was in one of the groups. Sandy Hills has been a constant problem at Midway High School. Hills needs to learn to live by the rules the world sets. Hills cannot always make the world live by his or her rules. I put Hills on probation for disrupting a civics class in April 2001, when he or she interrupted a guest lecturer who was discussing how the government had handled a protest against the construction of a nuclear power generating facility. It seems that Hills' parents are anti-nuclear activists and had participated in that protest. Hills tried to argue rudely with the guest over the public's power to stop nuclear energy production. Hills also has been late or absent from class several times since that probation ended. Each time Hills has been punished, he or she has complained that we are not being fair. This time with the Dance Band was no different.

13. With regard to the Band Booster Scholarship, I did conclude that since Dance Band no longer exists, there could be no nominee from that organization. The rules of the award do not allow two nominees from the Concert Band. Therefore, since there already was a nominee from the concert band, I concluded that there was no way we could consider Sandy Hills further as a nominee for that award. At that point, in order to consider Hills a representative of the Concert Band, we would have eliminated Lee Koniak, who already

had been told of her nomination. That seemed less fair to me than the course we followed. I am sorry for Sandy's disappointment, but frankly I believe that we had no choice. Besides, as I told Terry Roberts, I think the events surrounding the Dance Band's dissolution bring into question his or her qualifications for the award. When I discussed the matter briefly with the officers of the booster association, they did not object to my conclusions.

14. Sandy Hills seems to believe that I am picking on him or her because I do not agree with his or her political views. That is not the case. While I personally do not share the views of Sandy Hills, I believe that educators must encourage free debate of opposing views. However, no student can be allowed to disrupt the educational purpose of the school even for the purpose of trying to "make a statement." There is a proper time and place for everything, and Sandy Hills has not learned that lesson.

END OF EXCERPTS FROM DEPOSITION

I have read the above statement and it is true and correct to the best of my knowledge.

SIGNED _____
Dale Greene

EXCERPTS FROM THE DEPOSITION OF DEFENDANTS' WITNESS

ROBIN SHERWOOD

1. I am a clinical psychologist with 23 years of active practice in the treatment and evaluation of adolescent disorders. I received a bachelor of science in psychology from Duke University, a masters of science in psychology from the University of Georgia, and a Ph.D. from the University of Rochester. I am now 49 years old.

2. I maintain a practice in Midway known as Midway Psychology Consultants, and I am the author of more than 100 published articles on the psychology of adolescence and adolescent behavior and development. I also am an adjunct professor in the College of Social Sciences at Mid-State University and am a fellow in the American College of Clinical Psychologists

3. I am president of a local organization, Council Against Repulsive Expression ("CARE"), which is actively involved in community efforts to educate the public regarding the damaging effects of materials readily available to our adolescents and younger children. We identify books, movies, and music that we believe carry an inappropriate message for formative minds, and we urge voluntary boycotts of those items. Our group has never advocated government restrictions upon non-obscene material.

4. I conduct approximately 1,000 counseling sessions with adolescents each year and estimate that approximately 30 percent of my patients are either present or former users of some form of illegal drug, including alcohol. Approximately 45 percent of my patients have participated in or felt pressure to participate in sexual activities. Approximately 10 percent show at least some signs of depression or anxiety normally associated with potential suicidal tendencies.

5. In 1999, I conducted a study of 347 adolescents between the ages of 12 and 15. The study was designed to determine the environment in which recreational drug use by that age group is most likely to occur. Of those surveyed, 180, or 52 percent, indicated they had participated in some form of drug use, including the consumption of alcohol. Of that group, 168, or 93 percent, indicated that music was an important part of the environment in which those activities occurred, and 110, or 61 percent, could name specific songs or performers which they associated with their drug use activities.

6. Adolescents and less mature adults frequently respond differently to social stimuli than do more mature adults. It is my experience that music is an important and influential form of expression for most adolescents, but that music is the principal formative element shaping the values of approximately 10 percent of all adolescents between the ages of 12 and 15.

7. The song "Is It No Wonder?" was brought to my attention by several concerned parents of adolescent children in Midway during August and September 2002. It is my conclusion, based upon my review of that song and upon my experience with children under the age of 18, that exposure to the lyrics of the song could cause an inappropriate

and perhaps tragic response from a child under the age of 18.

8. References in the song to escaping from this world, to death, to getting high, to making love and saying good-bye are likely to be interpreted as acceptable responses to problems faced in the adolescent's world by a young person with preexisting tendencies to engage in drug use, premarital sex or even suicide.

9. Upon my recommendation, on September 20, 2002, CARE placed "Is It No Wonder?" on its list of unacceptable songs with a recommendation that parents not permit their children to purchase the song or that they at least discuss the song with their children.

10. I concur with the conclusion of Dr. Greene that "Is It No Wonder?" is inappropriate to the educational environment.

END OF EXCERPTS FROM DEPOSITION

I have read the above statement and it is true and correct to the best of my knowledge.

SIGNED _____
Robin Sherwood

EXCERPTS FROM THE DEPOSITION OF DEFENDANTS' WITNESS

TRACY GARCIA

1. I am a full-time member of the faculty at Midway High School, teaching English to 11th and 12th grade students.

2. I am 26 years old and have taught three years at Midway. I obtained my bachelor's degree in Education from the University of Delaware.

3. I attended the CityFest concert at City Center Park on October 5. I was shocked when I heard Sandy Hills begin to talk with the audience about the WIPP protests. I have known Sandy for the past two years, and although I realized that he or she felt very strongly about nuclear development issues, I was distressed that he or she was using the Dance Band to promote those political views.

4. In the introduction to the song, I heard Sandy Hills say that the WIPP site was dangerous to people who live around it and who work there, and to the people who live along the routes to the site, and that the protestors were trying to protect all of us.

5. I had not heard the song "Is It No Wonder?" prior to its performance by the Dance Band on October 5. I feel that its message glorifying pre-marital sex, drug usage and suicide was completely inappropriate for the audience of teenagers who heard it at CityFest. It frightened me to witness this large group of children singing along with and cheering such sentiments.

6. By Tuesday, October 9, I had become aware of the controversy surrounding the CityFest concert and the disciplinary action with regard to the Dance Band by Dr. Greene. Hence, I was not surprised when the issue arose in my fourth hour senior English class. Sandy Hills is not in that class, but another member of the Dance Band, Kim Martinez, is. I do not recall which student initially raised the matter; all the students were talking about the controversy prior to the beginning of class, and one of them asked something like, "Why does the principal have any right to punish the Dance Band just for saying what they believe in?"

7. Because there were obviously so many students agitated about this issue, I reluctantly decided it was necessary to suspend my lesson plans for the day to give them an opportunity to air their feelings and to provide some guidance to counteract the destructive messages of the performance. I am not sure that ultimately anything productive came out of the discussion, since emotions were running so high on every side. Kim Martinez and his or her friends, in particular, seemed intent on stirring everyone up against Dr. Greene.

8. I do not believe that school is the appropriate place for teaching about controversial political or moral issues. That is something that is the responsibility of the parents, and should go on in the home. Because of the controversy surrounding the CityFest concert

and its aftermath, however, I unfortunately felt that in this instance, it was unavoidable.

9. From my experience with Sandy Hills in class, and by his or her reputation in the school, I believe that he or she means well but lacks the maturity to be able to keep his or her political views out of the classroom. As a result, Sandy's opinions have often been disruptive to other students and faculty, and this time he or she really went too far. Although I happen to disagree with Sandy's views about nuclear development, as a faculty member I do not wish for any student to espouse any political cause while representing Midway. The school has a responsibility to remain absolutely neutral in these matters.

END OF EXCERPTS FROM DEPOSITION

I have read the above statement and it is true and correct to the best of my knowledge.

SIGNED _____
Tracy Garcia

Exhibit No. 1

"IS IT NO WONDER?"

By The Graceland Trio
c. 2001

THEY LOOK AT HATRED, BUT SAY NOT ME;
THEY LOOK AT WAR BUT DO NOT SEE;
THEY LOOK AT SORROW AND DO NOT CRY;
THEY LOOK AWAY AND DO NOT TRY.

REFRAIN: IS IT NO WONDER WE'RE GETTIN' HIGH,
MAKIN' LOVE AND SAYIN' GOOD-BYE.

WHERE'S YOUR HUMANITY WE ASK,
WHY DO YOU WEAR THIS AWFUL MASK?
OUR QUESTIONS SIMPLY BRING A SIGH,
OUR PARENTS LIVE ON WITH THEIR LIE.

REFRAIN.

WE MUST ESCAPE THIS WORLD WE FIND
TO A BETTER PLACE FOR ALL MANKIND.
BROTHER MUST HOLD BROTHER HIGH,
FOR WITHOUT LOVE WE ALL MUST DIE.

REFRAIN.

REFRAIN.

REPEAT THIRD STANZA.

REFRAIN.

Exhibit No. 2

MIDWAY HIGH SCHOOL

MEMORANDUM

TO: Terry Roberts

FROM: Dale Greene

RE: New Band Proposal

DATE: September 20, 1993

I have considered your proposal for creation of an additional performing band and hereby authorize you to proceed with creation of a "Dance Band." It is understood that the new band will not require acquisition of new instruments or major equipment by the school or by the district, since all members will already be performing with an existing organization. I have allocated $800 of discretionary academic funds to be used by the group this year for acquisition of music and other expenses. Funds in future years must be raised independently by fund raising efforts of the music organizations.

It also is understood that participation in the Dance Band will be considered solely an extracurricular activity and no additional academic credit will be given. You will be responsible for selecting members in compliance with District non discrimination guidelines. You also will be responsible for ensuring that all necessary copyright and other performance rights are properly obtained. The performance schedule should not unduly divert participants from their academic responsibilities.

Terry, this is your project and your responsibility. I trust it to your good judgment and look forward to a successful venture. It evidences once again this school's strong commitment to a multi-faceted performing arts program that meets the needs and interests of all our students.

Exhibit No. 3

M I D W A Y S C H O O L S
District Headquarters

February 10, 1988

TO: **All School Principals**
Music Faculty

FROM: **District Superintendent**

RE: **Copyright Guidelines**

Questions have been raised regarding recent changes in federal copyright laws and their impact upon performances within District schools of musical compositions. District policy requires that all copyright laws be complied with at all times. To assist in your compliance efforts, the following general information is provided. Specific questions, however, should be directed to District legal counsel through District Headquarters.

The 1976 Copyright Act removed language that previously had limited copyright protection only to performance of musical works for profit. All copyrighted music is now protected and may be copied or performed only with the agreement of the copyright owner, unless a specific exception within the Act applies.

One such exception permits the copying of certain limited amounts of music for educational uses. However, this exception does not permit the copying of music for any performance, unless copying is required in an emergency situation and replacement music is later purchased.

An important exception provides that performance of a nondramatic musical work is not a copyright infringement if the performance: (1) occurs within face to face teaching activities at a non-profit educational institution; or, (2) occurs before a live audience without profit motive, without any payment for the performance to performers, promoters or organizers and without any admission charge. If admission is charged, the exception applies only if proceeds are used for charitable purposes and the copyright owner does not object.

Remember that it is the responsibility of administrators at each school to ensure that all copyright laws are complied with. This statement is intended only as an outline of recent changes for your guidance. Previous guidelines are hereby amended to the extent that they differ from this statement.

Exhibit No. 4

C O U N C I L A G A I N S T
R E P U L S I V E
E X P R E S S I O N

October 8, 2002

Dr. Dale Greene
Principal
Midway High School

Dear Dr. Greene:

It has come to the attention of the Council Against Repulsive Expression (CARE) that the Midway High band performed a song entitled "Is It No Wonder?" at CityFest on last Friday evening, October 5. Several members of this organization have contacted you by telephone expressing their deeply felt concern over this matter. Their impression is that you are not familiar with the destructive lyrics contained in that song.

The message of the song appeals to youths who are unable to understand the customs of their parents' society. At the very outset, therefore, the song appeals to a segment of our youth which is seeking acceptance and guidance and is most susceptible to influence by such stimuli as music. The song then urges an escape from "this world we find," which may well be interpreted by a child or adolescent as meaning death. Indeed, the song concludes that "without love we all must die." I would suggest even that the reference to "brother must hold brother high" may be interpreted, by a child contemplating suicide, as a glorifying reference to a casket being held up at a funeral.

The refrain only reinforces these impressions in the child's mind. "Is it no wonder," the song asks, that we use drugs, make love and say good-bye (apparently a reference to death).

Is it no wonder, we ask you, that so many tragedies occur today when this is the message conveyed in our public schools. We trust you will respond appropriately to our concern.

Sincerely,

Dr. Robin Sherwood
President

Exhibit No.5

Transcript of interview of Dr. Robin Sherwood by Griff Donafrey on the "Griff Donafrey Show," broadcast on the Continental Television Network, June 18, 1998.

G.D.: Welcome to the show, Dr. Sherwood. Now you are an adolescent psychologist, is that right?

R.S.: Yes, Griff, that's right.

G.D.: I understand that you work closely with adolescents and that you have developed some rather interesting views on how we as adults should treat kids today.

R.S.: Yes, Griff. I do counsel hundreds of adolescent aged youths each year, and, over and over again, I have found that many of their problems seem to stem from being forced to accept the rules we have established as adults, without having any chance to express their own creativity when it seems to conflict with one of those rules.

G.D.: What you're saying is that we just tell our kids that the rules are for their good, but we don't let them experience the need for those rules. Are we being too protective of our kids?

R.S.: I think we have to consider that we may be. It's one thing to keep a child from running out in front of a car. Eventually the child will be able to comprehend the need for that rule without actually experiencing the pain of being hit. But it's quite something else to require a child to save 50 percent of his allowance. Unless we let the child learn from experience why saving is wise, it's something the child will never fully understand. Similarly, we tell our kids they can't visit a friend of the opposite sex in a bedroom. They think that's a stupid rule that indicates distrust. If we let them go a little, we would find that most of the time they would discover the social awkwardness of that situation and stop the practice on their own.

G.D.: But don't we take a risk then that they won't learn the lesson until it's too late?

R.S.: Perhaps; but too often we simply make something more attractive by making it off limits.

G.D.: Doctor, in your book, "Let the Children Grow," you say, and I quote, "We try too often as parents to force our children to act as adults. The fact is that children are not adults. They have a different level of experience, a different emotional make-up, and a different response to social stimuli. If we deny them the experiences of childhood, the innocent exploration of the world without preconceived ideas, we deny them the chance to develop fully as individuals. We force them instead to become our clones and punish them when they fail to act as we would have them act." Do you suggest we

should allow our children to drink or smoke or cut school, if that's their wish?

R.S.: Obviously we need to try to tell our children why we believe that those things are wrong, but we cannot force them to live by our rules. If we do, we may cut them off when they do not conform. It's that child who is cut off that is most likely to get into crime or some other tragic path.

G.D.: Doctor Robin Sherwood, that is a very interesting study and it is an engrossing book, "Let the Children Grow;" I recommend it to you in the audience. I wish we had more time today, but thanks for coming by. Ladies and Gentlemen, Dr. Robin Sherwood.

I certify that this is a true, accurate and complete transcript of the appearance by Dr. Robin Sherwood on the Griff Donafrey Show, June 18, 1998, as transcribed from the original videotape of the show.

_____

Archivist, Donafrey Productions, Inc.

Exhibit No. 6

MIDWAY MARCHING BAND BOOSTERS
MIDWAY HIGH SCHOOL

Statement of Selection Criteria
Band Boosters Achievement Scholarship

A $250 scholarship shall be awarded each year to a senior-class member of the Midway High School Marching Band who best satisfies the criteria set forth below and who plans to pursue further formal education or musical training after high school. The recipient shall be selected by a Committee composed of the Principal of Midway High School and the President and Vice President of the Midway Marching Band Boosters from among not more than four nominees proposed by the Marching Band Director. In selecting the recipient, the Committee shall consider the following factors:

1. Demonstrated superior talent as a performer, conductor or composer;

2. Demonstrated leadership as a member of the Midway High School Marching Band; and,

3. Satisfactory academic standing in all courses.

The Committee may also consider a nominee's good character and reputation and whether a nominee has indicated a desire to pursue additional musical training.

Approved by the Midway Marching Band Boosters, June 15, 1979.

Exhibit No. 7

MIDWAY BAND BOOSTERS
MIDWAY HIGH SCHOOL

Revised July 23, 1988

Selection Criteria
Band Boosters Achievement Scholarship

A $500 scholarship shall be awarded each year to a senior-class member of a performing musical group at Midway High School who best satisfies the criteria set forth below and who plans to pursue further formal education or musical training after high school. The recipient shall be selected by a Committee composed of the Principal of Midway High School and the President and Vice President of the Midway Band Boosters Association from among nominees proposed by members of the music faculty. Not more than one student shall be nominated from each performing group. In selecting the recipient, the committee shall consider the following factors:

1. Demonstrated superior talent as a performer, conductor or composer;

2. Demonstrated leadership as a member of one or more performing musical groups at Midway High School; and,

3. Satisfactory academic standing in all courses.

The Committee may also consider a nominee's good character and reputation and whether a nominee has indicated a desire to pursue additional musical training.

Exhibit No. 8

MIDWAY BAND BOOSTERS
MIDWAY HIGH SCHOOL

Revised August 18, 1996

Selection Criteria
Band Boosters Achievement Scholarship

A $1,000 scholarship shall be awarded each year to a senior-class member of a performing musical group at Midway High School who best satisfies the criteria set forth below and who plans to pursue further formal education or musical training after high school. The recipient shall be selected by a Committee composed of the Principal of Midway High School and the President and Vice President of the Midway Band Boosters Association from among nominees proposed by members of the music faculty. Not more than one student shall be nominated from each performing group. In selecting the recipient, the committee shall consider the following factors:

1. **Demonstrated superior talent as a performer, conductor or composer;**

2. **Demonstrated leadership as a member of one or more performing musical groups at Midway High School; and,**

3. **Satisfactory academic standing in all courses.**

The Committee may also consider a nominee's good character and reputation and whether a nominee has indicated a desire to pursue additional musical training.

Exhibit No. 9

MIDWAY HIGH SCHOOL

September 14, 2002

Dr. Dale Greene, Principal
Midway High School

Dear Dr. Greene:

The music faculty has met for the purpose of selecting nominees for the 1991 Band Booster Achievement Scholarship. As in past years, we have selected one nominee from each of the performing groups:

Marching Band:	Jody Browder
Concert Band:	Lee Koniak
Chorale:	Billie Wade
Dance Band:	Sandy Hills

While all of these nominees are qualified, it is our strong and unanimous recommendation to the selection committee this year that the award be given to Sandy Hills. Sandy has brought a unique musical talent to Midway High School and no one is more deserving of recognition for his or her musical achievements.

Respectfully submitted on behalf of the music faculty,

Terry Roberts

Exhibit No. 10

M I D W A Y H I G H S C H O O L

September 19, 2002

Sandy Hills
208 Berkeley Drive
Midway

Dear Sandy:

It is my pleasure to inform you that you have been nominated by the music faculty as a finalist for the $1,000 2002 Achievement Scholarship awarded by the Band Boosters Association. The recipient will be selected from among the four finalists after a selection committee interviews each nominee and reviews each nominee's record. The mere fact that you have been nominated is an achievement of which you may be justifiably proud, and I extend my congratulations.

Sincerely,

Dr. Dale Greene
Principal

Exhibit No. 11

M I D W A Y H I G H S C H O O L

October 29, 2002

Sandy Hills
208 Berkeley Drive
Midway

Dear Sandy:

The 2002 Band Boosters Association Achievement Scholarship has been awarded to Jody Browder, senior drum major of the marching band. I am sorry that you were not selected, but all four finalists have outstanding records. As I told you earlier, you should still be proud of your accomplishments which resulted in your nomination for this prestigious scholarship.

Sincerely,

Dr. Dale Greene
Principal

Exhibit No. 12

M I D W A Y S C H O O L S
District Headquarters

TO: **Departments of English**

FROM: **District Superintendent**

RE: **Approved Reading List for English III, 1991-92**

DATE: **May 10, 2002**

Crane, Stephen	**The Red Badge of Courage**
Dreiser, Theodore	**Sister Carrie**
Faulkner, William	**As I Lay Dying** **The Bear** **Sanctuary**
Fitzgerald, F. Scott	**The Great Gatsby**
Hawthorne, Nathaniel	**The Scarlet Letter** **Collected Short Stories**
Hemingway, Ernest	**The Sun Also Rises** **The Old Man and the Sea**
James, Henry	**Daisy Miller** **The Turn of the Screw**
Lee, Harper	**To Kill a Mockingbird**

Melville, Herman	**Typee** **Billy Budd**
Poe, Edgar Allan	**Collected Short Stories**
Steinbeck, John	**The Grapes of Wrath** **The Red Pony**
Thoreau, Henry David	**Walden** **Journals**
Twain, Mark	**Huckleberry Finn** **The Mysterious Stranger**
Updike, John	**Rabbit, Run**
Warren, Robert Penn	**All the King's Men**
Wilder, Thornton	**The Skin of Our Teeth** **The Bridge of San Luis Rey**
Wharton, Edith	**The Age of Innocence**

LEGAL AUTHORITIES

from the
Constitution of the United States

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and petition the Government for a redress of grievances. (Ratified, 1791)

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law. (Ratified, 1868.)

from the
Constitution of the State of Delaware

SECTION 16

Although disobedience to laws by a part of the people, upon suggestions of impolicy or injustice in them, tends by immediate effect and the influence of example not only to endanger the public welfare and safety, but also in governments of a republican form contravenes the social principles of such governments, founded on common consent for common good; yet the citizens have a right in or an orderly manner to meet together, and to apply to persons intrusted with the powers of government, for redress of grievances or other proper purposes, by petition, remonstrance or address.

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From Case Law

The following are excerpts from case law concerning the legal issues raised in this mock trial case. This is only a portion of the opinion in each cited case. The **entire** case (including majority, concurring and dissenting opinions) may be read in preparation for the mock trial and cited in the course of the trial.

Tinker vs. Des Moines Community School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969)

[The United States Supreme Court reversed the trial court's dismissal of a complaint brought by junior and high school students to obtain an injunction against a school regulation prohibiting students from wearing black armbands to protest the Vietnam War.]

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years. . .

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. . . Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities. . .

Undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. . . In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained. . .

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. . .

Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided

as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom. . .

Bethel School District No. 403 vs. Fraser, 478 U.S. 675, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986)

[The United States Supreme Court reversed the judgment of the trial court that suspension of a high school student for use of sexually explicit language in a speech at a voluntary school assembly nominating a fellow student for elective student office violated the student's First Amendment rights.]

Freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against society's countervailing interest in teaching students boundaries of socially appropriate behavior. . .

It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the work of the school, and the determination of what manner of speech is inappropriate properly rests with the school board. . .

The role and purpose of the American public school system was well described by two historians, saying "public education must prepare pupils for citizenship in the Republic. . . It must inculcate the habits and manners of civility as values in themselves conducing to happiness and as indispensable to the practice of self-government in the community and the nation." C. Beard & M. Beard, New Basic History of the United States, 228 (1968). In **Ambach vs. Norwick**, 99 S.Ct. 1589 (1979), we echoed the essence of this statement of the objectives of public education as the "inculcation of fundamental values necessary to the maintenance of a democratic political system."

These fundamental values of "habits and manners of civility" essential to a democratic society must, of course, include tolerance of divergent political and religious views, even when the views expressed may be unpopular. But these "fundamental values" must also take into account consideration of the sensibilities of others, and, in the case of a school, the sensibilities of fellow students. The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior. Even the most heated political discourse in a democratic society requires consideration for the political sensibilities of the other participants and audiences. . .

The First Amendment guarantees wide freedom in matters of adult public discourse. . . It does not follow, however, that simply because the use of an offensive form of expression may

not be prohibited to adults making what the speaker considers a political point, that the same latitude must be permitted to children in a public school. In **New Jersey vs. T.LO.**, 105 S.Ct. 733 (1985), we reaffirmed that the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings. . .

Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the "work of the schools." . . . The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.

Hazelwood School District vs. Kuhlmeier, 484 U.S. 260, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988)

[The United States Supreme Court upheld the judgment of the trial court that a high school principal's decision to delete certain articles from the school newspaper produced by the journalism class concerning pregnancy and divorce, which the principal felt were inappropriate, did not violate the First Amendment rights of student staff members of the newspaper.]

We deal first with the question whether [the school newspaper] may appropriately be characterized as a forum for public expression. The public schools do not possess all of the attributes of streets, parks, and other traditional public forums that "time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." Hence school facilities may be deemed to be public forums only if school authorities have "by policy or by practice" opened those facilities "for indiscriminate use by the general public," or by some segment of the public, such as student organizations. If the facilities have instead been reserved for other intended purposes, "communicative or otherwise," then no public forum has been created, and school officials may impose reasonable restrictions on the speech of students, teachers, and other members of the school community. . .

One might reasonably infer from the full text of [the School Board Policy and Curriculum Guide] that school officials retained ultimate control over what constituted "responsible journalism" in a school-sponsored newspaper. . . School officials did not evince either "by policy or by practice" any intent to open the pages of [the newspaper] to "indiscriminate use" by its student reporters and editors, or by the student body generally. Instead, they "reserve[d] the forum for its intended purpos[e]" as a supervised learning experience for journalism students. Accordingly, school officials were entitled to regulate the contents of [the newspaper] in any reasonable manner. It is this standard, rather than our decision in Tinker, that governs this case.

The question whether the First Amendment requires a school to tolerate particular student speech -the question that we addressed in Tinker - is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school. These activities may fairly be characterized as

part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members sand designed to impart particular knowledge or skills to student participants and audiences.

Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school. . .

We hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.

JURY INSTRUCTIONS

Now that you have heard the evidence and the arguments of counsel, it is my duty to instruct you about the law governing this case. Although you as jurors are the sole judges of the facts, you must follow the law stated in my instructions and apply the law to the facts as you find them from the evidence. You must not single out one instruction alone as stating the law, but must consider the instructions as a whole.

Nor are you to be concerned with the wisdom of any legal rule that I give you. Regardless of any opinion you may have about what the law ought to be, it would be a violation of your sworn duty to base a verdict on any view of the law other than what I give you in these instructions. It would also be a violation of your sworn duty, as judges of the facts, to base a verdict on anything but the evidence in the case.

Justice through trial by jury always depends on the willingness of each juror to do two things: first, to seek the truth about the facts from the same evidence presented to all the jurors; and, second, to arrive at a verdict by applying the same rules of law as explained by the judge.

You should consider only the evidence in the case. Evidence includes the witnesses? sworn testimony and the items admitted into evidence. You are allowed to draw reasonable conclusions from the testimony and exhibits, if you think those conclusions are justified in light of common experience. In other words, use your common sense to reach conclusions based on evidence.

You have been chosen and sworn as jurors in this case to decide issues of fact. You must perform these duties without bias for or against any of the parties. The law does not allow you to be influenced by sympathy, prejudice, or public opinion. All the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law, and reach a just verdict, regardless of the consequences.

In a civil case such as this one, the burden of proof is by preponderance of the evidence. The plaintiff has the burden of proving the elements of his/her claim. Proof by a preponderance of the evidence means proof that something is more likely than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence on any particular point is evenly balanced, the party having the burden of proof has not proven that point by a preponderance of the evidence, and you must find against the party on that point.

In deciding whether any fact has been proved by a preponderance of the evidence, you may, unless I tell you otherwise, consider the testimony of all witnesses regardless of who called them, and all exhibits received into evidence regardless of who produced them.

Generally speaking, there are two types of evidence from which a jury may properly find the facts. One is direct evidence - - such as the testimony of any eyewitness. The other is indirect or circumstantial evidence - - circumstances pointing to certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts from all the evidence in the case: Both direct and circumstantial.

If you find that a witness made an earlier sworn statement that conflicts with the witness's trial testimony, you may consider that contradiction in deciding how much of the trial testimony, if any, to believe. You may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact or a small detail; whether the witness had an explanation for the inconsistency; and whether that explanation made sense to you.

Your duty is to decide, based on all the evidence and your own good judgment, whether the earlier statement was inconsistent; and if so, how much weight to give to the inconsistent statement in deciding whether to believe the earlier statement or the witness's trial testimony.

A witness may be discredited by evidence contradicting what that witness said, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

It's up to you to determine whether a witness has been discredited, and if so, to give the testimony of that witness whatever weight that you think it deserves.

You are the sole judges of each witness's credibility. That includes the parties. You should consider each witness's means of knowledge; strength or memory; opportunity to observe; how reasonable or unreasonable the testimony is; whether it is consistent or inconsistent; whether it has been contradicted; the witness's biases, prejudices, or interest; the witness's manner or demeanor on the witness stand; and all circumstances that, according to the evidence, could affect the credibility of the testimony.

If you find the testimony to be contradictory, you must try to reconcile it, if reasonably possible, so as to make a harmonious story of it all. But if you can't do this, then it is your duty and privilege to believe the testimony that, in your judgment, is most believable and disregard any testimony that, in your judgment, is not believable.

Expert testimony is testimony from a person who has a special skill or knowledge in some science, profession, or business. This skill or knowledge is not common to the average person but has been acquired by the expert through special study or experience.

In this case, Sandy Hills, a student at Midway High School, is suing the Midway School Board and Dale Green, as the Principal of Midway High School. He or she claims that the Midway School Board and Dale Green impermissibly infringed on her constitutional right of freedom of speech by retaliating against her for having performed with the Dance Band at City Fest the song "Is It No Wonder?," originally written by the Graceland Trio.

Sandy Hills seeks a declaration that the abolition of the Dance Band and the subsequent

decision by Dale Green not to consider Sandy Hills as a nominee for the Band Booster Scholarship were in response to Sandy Hills' assertion of a protected speech right and that such actions violated Sandy Hills state and federal constitutional rights of free speech. Sandy Hills further seeks an injunction ordering the reestablishment of the Dance Band and an award of damages to compensate her for injuries suffered as a result of the alleged violations, including the loss of the scholarship.

To state of cause of action under her claims, the law requires Plaintiff, Sandy Hills, to prove (1) that Dale Green and/or the Midway School Board's actions against the Dance Band and/or Sandy Hills were motivated by the Dance Band's playing of "Is It No Wonder?" and/or Sandy Hills' speech at City Fest, and either (2) that the Dance Band was a school sponsored activity and that Dale Green and the Midway School Board infringed on Sandy Hills' First Amendment right to free speech by unreasonably exercising editorial control over the style and content of the Dance Band's performance and Sandy Hills' dedication by ordering the dissolution of Dance Band and by failing to consider Sandy Hills for the Band Booster Scholarship, or (3) that the Dance Band was *not* a school sponsored activity and that Dale Green and the Midway School Board infringed on Sandy Hills' First Amendment right to free speech by taking actions against her and the Dance Band for engaging in activities that did not and could not have materially and substantially interfered with the requirements of appropriate discipline in the operation of a school.

In making your decision as to whether the Dance Band's activities were school sponsored, you must take into account that the law has found educators to have authority over all school sponsored publications, theatrical productions and other expressive activities that students, parents and members of the public might reasonably perceive to bear the imprimatur of the school. Under the law, activities may fairly be characterized as part of the school

curriculum, whether or not they occur in a traditional class room, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences.

If you find that the Dance Band is a school sponsored activity under this standard, Sandy Hills must prove that Dale Green and the Midway School Board's actions, in exercising editorial control over the style and content of the performance of the Dance Band at City Fest, were not reasonably related to the legitimate pedagogical (teaching) concerns of Midway High School and the School Board. In deciding whether their actions were reasonably related to legitimate pedagogical concerns, you may consider whether Dale Green and the Midway School Board were entitled to exercise legitimate control over Dance Band's activities at City Fest. Specifically, you may consider whether they were entitled to try to assure that the participants learned whatever lesson that activity was designed to teach, listeners were not exposed to material that might be considered inappropriate for their level of maturity, and the views of the individual speakers were not erroneously attributed to the School.

I have read a number of instructions to you. The fact that some particular point may be covered in the instructions more than some other point should not be regarded as meaning that I intended to emphasize that point. You should consider these instructions as a whole, and you should not choose any one or more instructions and disregard the others. You must follow all the instructions that I have given you.

Nothing I have said since the trial began should be taken as an opinion about the outcome of the case. You should understand that no favoritism or partisan meaning was intended in any ruling I made during the trial or by these instructions. Further, you must not view these instructions as an opinion about the facts. You are the judges of the facts, not me.

How you conduct your deliberations is up to you. But I would like to suggest that you

discuss the issues fully, with each of you having a fair opportunity to express your views, before committing to a particular position. You have a duty to consult with one another with an open mind and to deliberate with a view to reaching a verdict. Each of you should decide the case for yourself, but only after impartially considering the evidence with your fellow jurors. You should not surrender your own opinion or defer to the opinions of your fellow jurors for the mere purpose of returning a verdict, but you should not hesitate to reexamine your own view and change your opinion if you are persuaded by another view.

Your verdict must be unanimous.

VERDICT SHEET

1. Do you find that Defendants impermissibly infringed on Sandy Hills' State and/or Federal Constitutional Right of Free Speech in dissolving "Dance Band" after its performance of "Is It No Wonder" at City Fest?

Yes _____ No _____

3. Do you find that Defendants impermissibly infringed on Sandy Hills' State and/or Federal Constitutional Right of Free Speech in not considering her for a Booster Scholarship after the dissolution of Dance Band?

Yes _____ No _____

If you answered Question 3 yes, proceed to Question 4.

4. Do you find that Defendants are liable to the plaintiff Sandy Hills for compensatory damages for not considering her for a Booster Scholarship after the dissolution of Dance Band?

Yes _____ No _____

If so, in what amount? _____

DELAWARE HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP RULES

The Delaware High School Mock Trial Championship is governed by the Rules of the Competition, The Rules of Procedure and the Rules Governing Teaching and Legal Advising. Any clarification of rules or case materials will be issued in writing to all participating teams.

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

I. Rules of the Competition

A. Administration

B. The Problem

C. Teams

I. RULES OF THE COMPETITION

A. ADMINISTRATION

Rule 1.1. Rules

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

Questions or interpretations of these rules are within the discretion of the Mock Trial Committee ("Committee"), 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. The Committee 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

During a trial, the presiding judge shall have discretion to declare an emergency and adjourn the trial for a short period of time to address the emergency.

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

A forfeiting team will receive a loss and points totaling the average number of the ballots and points received by the losing teams in that round. The non-forfeiting team will receive a win and an average number of ballots and points received by the winning teams in that round.

Final determination of emergency, forfeiture, reduction of points, or advancement, will be made by the Committee.

B. THE PROBLEM

Rule 2.1. The Problem

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

The problem shall consist of three witnesses per side, all of whom shall have names and characteristics which would allow them to be played by either males or females. All three of the witnesses must be called.

Rule 2.2. Witnesses Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 2.3, "unfair extrapolation."

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

Rule 2.3. Unfair Extrapolation

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

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

Attorneys for the opposing team may refer to Rule 2.3 in a special objection, such as "unfair extrapolation" or "This information is beyond the scope of the statement of facts."

Possible rulings by a judge include:

a) No extrapolation has occurred;
b) An unfair extrapolation has occurred;
c) The extrapolation was fair; or
d) Ruling is taken under advisement.

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

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings.

Rule 2.4. Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender.

Rule 2.5. Voir Dire

Voir dire examination of a witness is not permitted.

C. TEAMS

Rule 3.1. Team Eligibility

No institution may field more than one team, except that a B team from a school may compete if there otherwise would be an odd number of teams competing. The B team will be selected by a random draw. The B team is not eligible to advance to the semi-final and final rounds of the competition.

Rule 3.2. Team Composition

Teams consist of **twelve** members assigned to roles representing the prosecution/plaintiff and defense/defendant sides. Only **six** members may participate in any given round. (See Rule 3.3 for further explanation referring to team participation).

Student timekeepers may be provided by the teams; however, these persons are not considered "official timekeepers" in the tournament.

At no time may any team for any reason substitute any other persons for official team members. The Team Roster will become official at the time of **on site** registration.

Rule 3.3. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members in each trial round. For each trial round, teams shall use three students as attorneys and three students as witnesses.

Rule 3.4. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct examination and one cross-examination; in addition, one will present the opening statements and another will present the closing arguments. In other words, the eight attorney duties for each team will be divided as follows:

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

Opening Statements must be given by both sides at the beginning of the trial.

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

Each team must call 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 Form

Copies of the Team Roster Form must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified by the code assigned at registration. No information identifying team origin should appear on the form. Before beginning a trial, the teams must exchange copies of the Team Roster Form. The Form 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 Form should also be made available to the judging panel and presiding judge before each round.

D. THE TRIAL

Rule 4.1. Courtroom Setting

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

Rule 4.2. Stipulations

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

Rule 4.3. Reading Into The Record Not Permitted

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

Rule 4.4. Swearing of Witnesses

The following oath may be used before questioning begins:

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

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate all witnesses are assumed to be sworn, or the above oath will be conducted by (a) the presiding judge, (b) a bailiff, provided by the host state; or (c) the examining attorney. The host state will indicate which method will be used during all rounds of the current year's tournament. Witnesses may stand or sit during the oath.

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 Recross (optional) Examination (20 minutes per side)
4. Closing Argument (5 minutes per side)

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

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

Rule 4.6. Timekeeping

Time limits are mandatory and will be enforced. Each team is permitted to have its own timekeeper and timekeeping aids; however, an official timekeeper will be assigned to each trial where available.

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.

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 scoring judges may determine

individually whether or not to discount points in a category because of over-runs in time.

Rule 4.8. Motions Prohibited

No motions may be made.

Rule 4.9. Sequestration

Teams may not invoke the rule of sequestration.

Rule 4.10. Bench Conferences

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

Rule 4.11. Supplemental Material/Costuming

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials.

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

Rule 4.12. Trial Communication

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

Coaches, teachers, alternates and observers must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar and communicate with each other.

Rule 4.13. Viewing a Trial

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

Rule 4.14. Videotaping/Photography

Any team has the option to refuse participation in videotaping, tape recording, and still photography by opposing teams.

Media coverage will be allowed.

Media representatives authorized by the host committee or the Committee will wear identification badges.

Rule 4.15. Jury Trial

The case will be tried to a jury; arguments are to be made to judge and jury. Teams may address the scoring judges as the jury.

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."

Presiding and scoring judges will weigh the "objection" individually. No rebuttal by opposing team will be heard.

Rule 4.18. Objections

1. **Argumentative Questions:** An attorney shall not ask argumentative questions.

2. **Lack of Proper Predicate/Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

3. **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").

4. **Questions 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.")

5. **Non-Responsive Answer:** A witness' answer is objectionable if it fails to respond to the question asked.

6. **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.

Teams are not precluded from raising additional objections which are available under the *Delaware High School Mock Trial Rules of Evidence.*

Rule 4.19. Reserved.

Rule 4.20. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence:

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

2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No.__?"

3. Show the exhibit to opposing counsel.

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

5. "I now hand you what has been marked as Exhibit No.___ for identification."

6. Ask the witness to identify the exhibit. "Would you identify it please?"

7. Witness answers with identification only.

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

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

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

11. Court: "Exhibit No. __ is/is not admitted."

Rule 4.21. Use of Notes

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes.

Rule 4.22. Redirect/Recross

Redirect and Recross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Delaware 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.

Rule 4.24. The Critique

The judging panel is allowed 10 minutes for debriefing. Presiding judges are to limit critique sessions to a combined total of ten minutes.

Judges shall not make a ruling on the legal merits of the trial. Judges may not inform the students of score sheet results.

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.

Rule 5.2. Composition of Judging Panels

The judging panel will consist of at least three individuals. The composition of the judging panel and the role of the presiding judge will be at the discretion of the host director, with the same format used throughout the competition, as follows:

1. One presiding judge and two scoring judges (all three of whom complete score sheets); or

2. One presiding judge and three scoring judges (scoring judges only complete score sheets); or,

3. One presiding judge and two scoring judges (scoring judges only complete score sheets and presiding judge completes a form which selects only the winner and does not assign point totals for either team).

The scoring judges may be persons with substantial mock trial coaching or scoring experience or attorneys. Each scoring panel shall include at least one attorney. The presiding judge shall be an attorney and/or a judge.

The semifinal and/or final may have a larger panel.

Rule 5.3. Score Sheets/Ballots

The term "ballot" will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term "score sheet" is used in reference to the form on which speaker and team points are recorded. Score sheets are to be completed individually by the scoring judges. Scoring judges are not bound by the rulings of the presiding judge. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the judging panel may deliberate on any special awards (i.e., Outstanding Attorney/Witness) the judging panel should not deliberate on individual scores.

Rule 5.4. Completion of Score Sheets

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

In the event of a mathematical error in tabulation by the scoring judges which, when

corrected, results in a tie in the column Totals boxes, the Tiebreaker Box shall determine award of the ballot.

Rule 5.5. Team Advancement

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

1. Win/Loss Record - equals the number of rounds won or lost by a team;

2. Total Number of Ballots - equals the number of scoring judges' votes a team earned in preceding rounds;

3. Total Number of Points Accumulated in Each Round;

4. Point Spread Against Opponents - The point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

Rule 5.6. Power Matching/Seeding

A random method of selection will determine opponents in the first round. A power-match system will determine opponents for all preliminary rounds. The four teams emerging with the strongest record from the preliminary rounds will advance to the semifinals.

Power matching will provide that:

1. Pairings for the first round will be at random;

2. All teams are guaranteed to present each side of the case at least once;

3. Brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order: (1) win/loss record; (2) ballots; (3) speaker points; then (4) point spread. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;

4. If there is an odd number of teams in a bracket, the team at the bottom of that bracket will be matched with the top team from the next lower bracket;

5. Teams will not meet the same opponent twice;

6. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. Bracket integrity in power matching will supersede alternate side presentation.

In the semifinal rounds there will be brackets of teams determined by win/loss record. Teams will not meet the same opponent twice prior to the semifinal round. In the preliminary rounds the Committee has the right to reseat teams within a bracket in order to ensure that teams have an opportunity to present each side of the case.

Rule 5.7. Selection Of Sides For Championship Round.

In determining which team will represent which side in the Championship Round, the following procedure shall be used:

1. The team with the letter/numerical code which comes first will be considered the "Designated Team."

2. The coin will be tossed by a designee of the host state coordinator.

3. If the coin comes up heads, the Designated Team shall represent the plaintiff/prosecution in the Championship Round. If the coin comes up tails, the Designated Team shall represent the defendant.

Rule 5.8. Effect of Bye/Default

A "bye" becomes necessary when an odd number of teams are present for the tournament. For the purpose of advancement and seeding, when a team draws a bye or wins by default, the winning team for that round will be given a win and the number of ballots and points equal to the average of all winning teams' ballots and points of that same round. The host director may, if time and space allow, arrange for a "bye round" to allow teams drawing a bye to compete against one another in order to earn a true score.

The host state has the discretion on how to handle a bye in all rounds of the tournament, including having the discretion to have a second host state team participate in the Championship.

F. DISPUTE RESOLUTION

Rule 6.1. Reporting a Rules Violation/Inside the Bar

Disputes which occur within the bar must be filed immediately following the conclusion of that trial round. Disputes must be brought to the attention of the presiding judge at the conclusion of the trial.

If any team believes that a substantial rules violation has occurred, one of its student attorneys must indicate that the team intends to file a dispute. The scoring panel will be excused from the courtroom, and the presiding judge will provide the student attorney with a dispute form, on which the student will record in writing the nature of the dispute. The student may communicate with counsel and/or student witnesses before lodging the notice of dispute or in preparing the form.

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

Rule 6.2. Dispute Resolution Procedure/Inside the Bar

The presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce her/his decision to the Court, retire to complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to

designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 6.3. Effect of Violation on Score

If the presiding judge determines that a substantial rules violation has occurred, the judge will inform the scoring judges of the dispute and provide a summary of each team's argument. The scoring judges will consider the dispute before reaching their final decisions. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring judges.

Rule 6.4. Reporting of Rules Violation/Outside the Bar

Disputes which occur outside the bar only during a trial round may be brought by teacher or attorney-coaches exclusively. Such disputes must be made promptly to a trial coordinator or a member of the Committee, who will ask the complaining party to complete a dispute form. The form will be taken to the tournament's communication's center, whereupon a dispute resolution panel will (a) notify all pertinent parties; (b) allow time for a response, if appropriate; (c) conduct a hearing; and (d) rule on the charge. The dispute resolution panel may notify the judging panel of the affected courtroom of the ruling on the charge or may assess an appropriate penalty.

The dispute resolution panel will be designated by the Committee.

II. DELAWARE HIGH SCHOOL MOCK TRIAL RULES OF EVIDENCE

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

Article I. General Provisions

Rule 101. Scope

These Delaware High School Mock Trial Rules of Evidence govern the trial proceedings of the Delaware High School Mock Trial Championship.

Rule 102. Purpose and Construction

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

Article II. Judicial Notice

Not Applicable

Article III. Presumptions in Civil Actions and Proceedings

Not applicable

Article IV. Relevancy and its Limits

Rule 401. Definition of "Relevant Evidence"

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

Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible

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

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

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

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

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

(1) Character of accused. -- Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;

(2) Character of victim. -- Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;

(3) Character of witness. -- Evidence of the character of a witness as provided in Rules 607, 608 and 609.

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

Rule 405. Methods of Proving Character

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

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

Rule 406. Habit; Routine Practice

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

Rule 407. Subsequent Remedial Measures

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

Rule 408. Compromise and Offers to Compromise

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

Rule 409. Payment of Medical or Similar Expenses

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

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

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

(1) a plea of guilty which was later withdrawn;

(2) a plea of nolo contendere;

(3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the forgoing pleas;

(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 (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and

the statement ought, in fairness, be considered with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

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

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

Article V. Privileges

Rule 501. General Rule

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

(1) communications between husband and wife;

(2) communications between attorney and client;

(3) communications among grand jurors;

(4) secrets of state; and

(5) communications between psychiatrist and patient.

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless *the witness has personal knowledge of the matter.* Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 2.2.)

Rule 607. Who may Impeach

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

Rule 608. Evidence of Character and Conduct of Witness

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

truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) Specific instances of conduct. -- Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

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

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

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

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

(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 under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Not applicable.

Rule 610. Religious Beliefs or Opinions

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

enhanced.

Rule 611. Mode and Order of Interrogation and Presentation

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

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

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

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

Rule 612. Writing Used to Refresh Memory

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

Rule 613. Prior Statements of Witnesses

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

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

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

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

Rule 702. Testimony by Experts

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

Rule 703. Bases of Opinion Testimony by Experts

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

Rule 704. Opinion on Ultimate Issue

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

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

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

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

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

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

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

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

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

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

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

Rule 802. Hearsay Rule

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

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

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

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

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

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

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

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in

this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(8) Public Records or Reports. -- Records, reports, statements or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly reported activities, or matters observed pursuant to duty imposed by law.

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

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

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

Rule 804. Hearsay Exceptions; Declarant Unavailable

Definition of unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

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

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

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against

whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death 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.

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

Rule 805. Hearsay within Hearsay

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

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

ARTICLE XI - Other

Rule 1103. Title

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

III. RULES GOVERNING TEACHING AND LEGAL ADVISING

The student presentations shall be the work product of the students themselves. It is important that the opening and closing arguments, direct and cross examinations, testimony and all other presentations be the students' work, rather than the narration of words prepared by an adult.

Legal advisors can help the team as constructive observers and critical teachers, by listening, suggesting and demonstrating to the team. A legal advisor should:

Discuss the legal issues raised in the case;

Answer questions concerning general trial practices;

Explain the reasons for and the sequence of the events and procedures found in a trial;

Listen to the students' approach to the case; and

(!) Discuss general strategies and raise key questions regarding the students' enactment of their roles in the trial.