2010 Delaware High School Mock Trial Competition

State of Delaware
v.
Izzy Freeman

February 26-27, 2010
New Castle County Courthouse

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CASE BACKGROUND

The defendant, Izzy Freeman, has been charged with murder of his/her business partner, Dee Frost. Dee Frost apparently had a gambling problem, and had been unlucky for some period of time. Thinking that her luck would change, she borrowed money frequently from a local loan shark, Lucky Lou Contralto. However, Dee Frost's luck didn't change and, under pressure for payment from Lucky Lou, Dee started stealing money from the business. However, with skyrocketing interest and continued gambling losses, Dee's debt to the loan shark was still over $200,000, even after Dee had drained the business dry. Contralto had already given Dee several violently physical "messages" that the debt was to be paid - - "or else." In the meantime, Izzy hired an accountant to determine why the business was in the red. When Izzy learned that Dee had been stealing from the business and had driven it into bankruptcy, Izzy allegedly became enraged and threatened to kill Dee. A few days later, Dee was found dead, and through a Buy-Sell Agreement and insurance policy, Izzy would become a half million dollars richer. Was Dee murdered? If so, who is the culprit? The witnesses for each side of the case are as follows:

Prosecution Witnesses:

- Accountant – Les Moore
- Police Detective - Jerry/Jeri Riggs
- Loan Shark – "Lucky Lou" Contralto

Defense Witnesses:

- Defendant - Izzy A. Freeman
- Jailhouse snitch – J. L. Byrd (Jo/Joe L. Byrd)
- Criminologist/private investigator - Pat Ives

The Case Background is not to be used as evidence in the case, but rather is provided for background purposes only. This case is a work of fiction. The names and events described herein are intended to be fictional. Any similarity or resemblance of any character to an actual person or entity should be regarded as only fictional for purposes of this mock trial exercise.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	No. Cr. 08-13-101
	)	
IZZY A. FREEMAN,	)	Crime: Murder
	)	
Defendant.	)	

GRAND JURY INDICTMENT

THE GRAND JURY CHARGES:

The Grand Jury of the county of New Castle upon their oath or affirmation do present that IZZY A. FREEMAN on or about the 20th day of October, 2007 at the county of New Castle in the state of Delaware intentionally did murder DEE FROST, in violation of 11 *Del. C.* § 636.

I hereby certify that the foregoing indictment is a true bill.

APPROVED:

Peter Jones
/s/ Peter Jones
Foreperson

November 12, 2008

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	No. Cr. 09-13-101
	)	
IZZY A. FREEMAN,	)	Crime: Murder
	)	
Defendant.	)	

STIPULATIONS

Note: No witness may contradict or deny knowledge of the facts contained in the stipulations.

1. All exhibits included in these Case Materials are authentic and accurate in all respects; no objection to the authenticity of these exhibits will be entertained. Unless stated otherwise herein, the admissibility of the exhibits on other grounds may be challenged.
2. All witness statements were signed by each witness under oath.
3. The autopsy of Dee Frost concluded that Dee Frost died as a result of hypothermia. Hypothermia causes the body to be pale and waxy, not cyanotic, because the blood will have been withdrawn from the skin by the body's defensive mechanisms to avoid loss of heat.
4. Time of death could not be determined from typical physical examination of the body, i.e. body temperature, because the body was frozen.
5. The autopsy results dated the cigarette burns found on the victim to have occurred two weeks prior to death, and strangulation of neck, non-life-threatening, to have occurred less than one week prior to death.

6. Fingerprint analysis shows that Freeman's fingerprints are on the padlock to the cooler, cooler door, and kitchen knife. Contralto's fingerprints were not detected on the padlock to the cooler, cooler door, or doors to the restaurant.

7. Exhibits 2, 3, 4 and 5 were made at or about the time of the events by a person with knowledge of the events, and are kept in the course of regularly conducted business activity, and it is the regular practice to make such records. Exhibits 2, 3, 4 and 5 do not need to be introduced through the custodian of the records.

8. Exhibit 8 is the original photograph taken by Detective Riggs at the scene of the crime and accurately depicts the victim and the surroundings at the time of Detective Riggs' investigation.

9. Exhibit 10 is a true and accurate copy of the original note of Dee Frost provided by Defendant Freeman shortly after he/she was charged with the murder of Dee Frost. The handwriting contained in Exhibit 10 has been confirmed to be that of Dee Frost, per expert handwriting analysis. The original note was to be analyzed using inkdating techniques. Prior to undergoing the inkdating analysis, a copy of the original note was made. The original note disappeared from the evidence room prior to the inkdating analysis. Therefore, the dating of the handwriting on the note cannot be determined. Exhibit 10 is admissible, without objection.

Statement of Les Moore

My name is Lester/Leslie Moore. I prefer to be called Les. I am a certified public accountant in private practice in Wilmington, Delaware. A true and accurate copy of my curriculum vitae is attached as Exhibit 1. I graduated from the University of Delaware in 1981 with a B.S. in Accounting, cum laude. I was recognized as the top student in accounting and received the coveted Luca Pacioli award. Just in case you didn't know, Luca Pacioli is considered the father of accounting. He was a wandering Franciscan monk, who was also a friend and collaborator of Leonardo da Vinci. He established the first known double entry bookkeeping system with debits on the left and credits on the right, and the balance from the profit and loss accounts to be placed in a capital account. He also required that a trial balance be prepared when the books were closed. Pacioli's system, established in 1494, was remarkably similar to modern bookkeeping. To put it into perspective, Pacioli was creating an accounting system at the time Christopher Columbus was discovering America! Two discoveries that have shaped our lives forever!

After graduating from UD, I was highly recruited by what was then considered the Big 8 CPA firms. I went to work for Arthur Andersen in Chicago as an auditor; that was well before its demise from the Enron and WorldCom debacles. Just in case you missed the headlines back in 2002, Arthur Andersen was convicted for obstruction of justice for shredding documents relating to its audit of Enron, and the firm agreed to surrender its licenses. Although the Unites States Supreme Court unanimously reversed Arthur Andersen's conviction in 2005, the firm had already lost nearly all of its clients. I hate to even mention my prior association with Arthur Andersen. However, when I was at the firm, it had the reputation of supporting the highest standard in the accounting industry. I was quickly recognized as a star at Arthur Andersen. I was promoted quickly and assumed the role of Manager after only 3 years; the usual tract for a Manager position is 4-5 years.

I left Arthur Andersen in 1984 to establish a firm of my own, Account-Ability, ironic given my Arthur Andersen connection. We are a 6 member firm, offering our clients full service accounting expertise. In addition to audit work, I specialize in forensic accounting. The Arthur Andersen headlines prompted my desire to pursue forensic accounting. The Enron and WorldCom problems shed light on corporate scandals and the need for forensic accountants. Forensic accountants are trained to look beyond the numbers and deal with the business reality of the situation. According to research conducted by the Association of Certified Fraud Examiners (ACFE), U.S. organizations lose an estimated 5 percent of annual revenues to fraud. Based on the estimated U.S. Gross Domestic Product for 2006 – $13.037 trillion – this percentage indicates a staggering estimate of losses around $638 billion among organizations, despite increased emphasis on anti-fraud controls and recent legislation to combat fraud. My mission as a fraud examiner is to reduce the incidence of fraud and white-collar crime and to assist the client in detection and deterrence.

Izzy Freeman contacted me on October 1, 2007 to employ my services. On that day, I had made a presentation at the local Chamber of Commerce entitled "Realizing Your Full Potential" and had touched on various business and financial practices that could increase profitability, including stronger internal controls to prevent or deter employee embezzlement. Izzy came up to me after the meeting and asked if I would undertake a financial investigation and make recommendations of increasing profitability for the business. I learned that Izzy

Freeman and Dee Frost were partners in their restaurant, Shallots. At the time, there was no suspicion of fraud or wrongdoing. Izzy explained that he/she wanted to know why the business was in the red, when customers were steady and it seemed that business was good. Izzy and Dee had been in the restaurant business for 3 years. In a study reported in 1999, Ohio State University researchers showed that the highest failure rate in the restaurant industry was during the first year, when about 26 percent of the restaurants failed. About 19 percent failed in the second year and 14 percent in the third year, according to the analysis. So, while it is not unusual for a restaurant to fail in the first three years, it was a bit surprising to hear that Shallots was in the red because I was aware of Shallot's "good buzz" in the community and positive critic review in the Wilmington News Journal.

I toured the restaurant facilities the following day, October 2nd to get a feel for the day-to-day management and to get an overview of the financial records and record keeping of the business. I advised Izzy that in order for me to do a complete financial review, audit and forensic investigation, I would need complete access to all accounting records for a period of two weeks starting October 8th for a flat fee of $6,500. I would work on their premises, so that I could have access to all of the records and they could continue business as usual. That arrangement also gives me the opportunity to make observations of suspicious activity that I might not otherwise know. Izzy agreed to the arrangement. Because I knew that the restaurant was on shaky ground, I demanded to receive my fees in advance. Izzy paid me out of his/her personal funds.

During my brief discussions with Izzy, I could tell that he/she was accounting-challenged. Izzy has great creativity with food preparation, restaurant style, and service, but more or less left Dee Frost to handle the financial matters of the business. I was not present when Izzy informed Dee that I had been engaged to do the forensic investigation, so I cannot state what Dee's reaction was. I didn't notice anything particularly suspicious from Dee when I was performing my forensic accounting work for the two-week period. Well, there were two times when Dee would be back in the office area with me and I had some cancelled checks, bank statements and ledger cards on the desk, and Dee accidentally spilled coffee all over the records. At first, I thought it was an accident. The second time, I thought Dee was either clumsy or perhaps was doing something more sinister in obliterating the records. Also, I did overhear a few conversations that Dee had on the phone – once the first week I was there, and then 2 or 3 times the following week. Dee told the person on the phone "I promised you I would get the money, just give me time," and "There's no need to use threats, you'll get your money" and "Yes, I remember what happened last time when the payment wasn't timely, please don't, that won't be necessary. I'll pay you, I promise." She was upset by the calls, but didn't seem scared. Initially, I thought Dee's conversations were with a vendor. In the restaurant business, if you can't pay your bills, the deliveries stop, and the business will go belly up. In retrospect, I think these telephone conversations were probably between Dee and Lucky Lou Contralto. Lucky Lou was probably threatening Dee, if she didn't pay her gambling debts. I never heard who was on the other side of the conversation or what the caller said, and Dee never spoke about it with me. During the first week I was there, Dee came into the restaurant and had a burn mark on her hand, and another time she had bruising on her neck, like someone had grabbed her neck hard. I didn't ask any questions.

During the two-week period I was at the restaurant, I frequently saw a person in the shadows in the alley across the street from the restaurant's back door. At the time, I just

assumed they worked at the business across the street and were taking a cigarette break. I now recognize the person lurking in the alley to be Lou Contralto. If Contralto were in the same position on the night of October 20th, he/she would have a good view of anything going on outside the restaurant's back door to the kitchen. Despite the darkness in the alley, there was a light right above the back door's entrance to the restaurant.

Restaurants are notorious for losing money due to employee embezzlement. The most common cash fraud scheme is skimming. Skimming is the process by which cash is removed from the company before it enters its accounting system. Retail establishments and particularly restaurants where cash is used frequently are vulnerable to this type of scheme. A related type of scheme is to ring up a sale for less than the actual amount. The fraudster then pockets the difference between the actual sale and the amount on the register tape. Employees may also ring up a sale and then void the same sale, thereby pocketing the cash from the register.

If an employee collects the cash and also makes the bank deposit, they have an excellent opportunity to misappropriate company funds. For example, an employee in the food services industry may receive the daily receipts from the cashier, along with the cash register tapes. The employee would then mutilate the register tapes so they could not be read. With the evidence now destroyed, the employee would pocket a portion of the day's receipts and deposit the balance. If the daily deposit amounts are not compared with the cash register tapes, the fraud can go undetected.

Checks can also be the instrument of fraud. Employees with signature authority can make checks payable to cash or to themselves personally. Someone with check signatory authority can simply write the check to themselves or cash, mark the check as being void in the company's check register and then inflate the amount of another check written to a company supplier for inventory. When the bank statements are received, the employee merely removes those checks and destroys them.

Kiting is the process whereby money is received but not recorded immediately on the books and is then embezzled by an employee. As money continues to come in, the money that is received subsequently is applied to the prior receipts that were not recorded previously. Thus there is a continuing lag of funds from the actual receipts, but it is covered up because the money is deposited later.

In performing my forensic investigation, I reviewed the following financial and business records: general ledger, journal entries, adjusting journal entries, trial balances, checking accounts, cancelled checks, deposit slips, cash register receipts, order tickets, and vendor invoices. I also personally interviewed Izzy Freeman and Dee Frost, as well as a couple of the restaurant employees to understand the flow of money, and internal controls present in the company. Although both Dee and Izzy had authority to sign checks, Dee primarily assumed that role. Izzy managed the kitchen staff, the menus, ordering food supplies, scheduling employees, reservations, and keeping the customers happy. Dee primarily operated the cash register during business hours and managed the financial aspects of the business.

During the first week of my investigation, I started to strongly suspect that Dee Frost had been stealing from the restaurant. I don't believe I mentioned my suspicions to anyone. I seem to recall both Dee and Izzy asking me how the investigation was proceeding, but I typically

would not verbalize any conclusions until my investigation was complete. I am all about precision and accuracy, which is part of my draw to accounting. In my view, it is important to have all your facts and figures together before any conclusions are announced.

After I had completed my two-week forensic investigation, it was evident that Dee had been taking cash from Shallots for some time. I found evidence of each of the typical embezzlement schemes mentioned previously. For example, skimming had occurred. There were several instances where one of the waiters or waitresses had a carbon copy of an order ticket in their book, but the order was not included on the cash register receipt for the day. An example of this is shown on Exhibit 2. The check marks on the cash register receipt is my notation for crosschecking the order tickets to the daily cash register receipt. I cannot say for certain that the skimming is attributable to Dee. Someone else could have been managing the cash register at the time. However, in looking at the events as a whole, there are events that I can directly point to Dee. For example, certain daily cash register tapes did not match to the deposit that was made. These deposit slips were written in Dee's handwriting, and were part of her normal job responsibilities, and not the responsibility of any other employee. Thus, as you will see from Exhibit 3, which has the deposit slip in the amount of $587.93 on Monday, June 11, 2007, even though the cash register tapes show receipts from Friday in the amount of $2299.61 and Saturday for $3089.57. Finally, I encountered checks that were written to cash or to Dee and were shown as void in the check register, but actually cleared the bank. In order to balance the account, another check in the check register and ledger accounts were manipulated to increase the payment to cover the amount of the "voided" check to Dee. Exhibit 4 is an example of this occurrence.

In total, I uncovered 67 instances of embezzlement committed by Dee Frost totaling $273,958 over the past 2 years. It appears that no embezzlement occurred during the first year that the restaurant was in operation. Of the 67 instances of embezzlement, more than half occurred in the 6-month period prior to October, 2007. Unfortunately, the embezzlement has left Shallots with little to nothing. Shallots is operating at a net loss of $164,554 and a negative cash flow. Vendors have refused to supply product to the restaurant until outstanding accounts payable are brought current.

I broke the news to Izzy on Friday, October 19, 2007 about 4:00 p.m. I informed Izzy that my forensic investigation revealed that Shallots was bankrupt due to numerous occasions of embezzlement by his/her partner, Dee Frost, and that the amount embezzled was $273,958. At first, Izzy appeared to be in shock, repeating several times, "How could this happen?" The more I explained to Izzy the specifics of the embezzlement and giving him/her examples of the skimming, check fraud, and deposit manipulation, the more I saw pure rage in Izzy's face. Izzy seemed consumed by his/her rage, and he/she said, "Well, I'll make Dee pay for this. She won't make a fool out of me." Izzy told me that I had done my job and could leave and that he/she would confront Dee alone.

I had left the building when I realized that I had left my favorite mechanical pencil on the desk in the office area. When I went back to retrieve my pencil, I overheard Izzy talking to Dee in strained, but controlled hush tones. I couldn't hear everything that was said clearly because I was standing near the kitchen door to the hallway by the office and the kitchen employees were pulling out pots and pans in preparation for the supper crowd and making loud clanging noises. But, I'm pretty sure, I heard Dee say something about gambling and then Izzy said Dee had to

come up with the money right now and threatened to kill Dee. I don't know the exact wording Izzy used because of the background noise. And then I heard Izzy say quite clearly, "You'll get your just desserts."

While I was reviewing the company records, I also came across a Buy-Sell Agreement for the restaurant. The Buy-Sell Agreement provides that in the event of death of either partner, that the other partner shall be the beneficiary of a $500,000 insurance policy. A true and accurate copy of an excerpt of the Buy-Sell Agreement is attached hereto as Exhibit 5. So, upon Dee's death, Izzy was the recipient of a $500,000 payout from the insurance policy. It is not unusual, however, for partners in a business to have a buy-sell agreement in place, funded by insurance. Actually, it is a smart business practice because you are planning for contingencies of someone's death and what happens to their partnership interest in the business. You don't want the family coming in and trying to manage the business too. You want to be able to buy them out.

I believe I have an excellent reputation among my peers in both audit work and forensic accounting. All of my peer review examinations have yielded outstanding results. I did have one malpractice action filed against me about 5 years ago relating to tax preparation work I had performed, specifically with a car dealership's inventory. My insurance company paid a small nuisance settlement to make it go away, but the settlement papers specifically state that I deny liability. The case was dismissed against me.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my belief and knowledge.

Les Moore .

Statement of Jerry/Jeri Riggs

My name is Jerry/Jeri Riggs. I am a detective with the Wilmington Police Department. I am a twenty-year veteran of law enforcement and hold a Bachelor's degree in Law Enforcement Administration from Western Illinois University. During my career, I have been involved in every type of criminal investigation at the local, state and federal levels. For six years, I served as a member of Delaware Attorney General's Task Force on Organized Crime, working in an undercover capacity. I use the information I learned during my time as an undercover agent to investigate crimes where there is a suspicion that organized crime might be involved. I work closely with the Metro Gang Task Force, the Philadelphia Police Department, the Philadelphia and Wilmington FBI offices. Besides my duties at the Wilmington Police Department, I am on the teaching faculty at the Delaware State Police Academy and the Federal Law Enforcement Training Center in Glyco, Georgia. I have also been a guest lecturer for Assistant United States Attorneys at the Department Of Justice, Office of Legal Education Training Center in New York.

As a lead investigator for the Delaware Attorney General's Task Force on Organized Crime, I have made numerous arrests and have been credited with assisting in the prosecutions of numerous men and women connected with organized crime. I have received numerous awards for my work including the Medal of Valor, Meritorious Service Medal, The Delaware Bar Association's Law Enforcement Official of the Year 2000, and the J. Edgar Hoover award. My efforts have also been the focus of a story in Newsweek, ABC Television News Program 20/20 and The Oprah Winfrey Show.

I really get irritated when people bring up the two times that I was investigated by Internal Affairs (IA) for possible corruption and connections to the mob. I was accused of evidence tampering and rigging the case involving Lucky Lou Contralto and his/her brother Diamond Jim so that they escaped conviction. Nothing could be farther from the truth, and I swore to myself there would be another day when I would bring them down. Bringing up the IA investigations is just an underhanded attempt by defense counsel to discredit me and let a guilty person go free. It was a long time ago and nothing came of the investigations. I was never indicted, never suspended, and never reprimanded. Naturally when you've infiltrated the mob, there is always a blur in the public or outsider's view as to where your loyalties are. But, if you're going to play the part of an undercover agent, you have to be convincing - - or you don't survive. I got pretty good at acting and sometimes, I admit, it was hard to separate the two lives. But, I wanted nothing more than to nail Lucky Lou for the heinous crimes he/she has orchestrated. Yes, I developed connections with Lucky Lou Contralto, but only to use it against him/her and other violent loan sharks.

It's ironic that anyone would accuse me of trying to pin this on Izzy Freeman as a subterfuge to let Lucky Lou go free again. I wanted nothing more than to finally nail Contralto. The reason I was called into this case is because it initially appeared like a mob hit. We had an eyewitness identify Lucky Lou outside Shallots on the evening of October 20th. We knew that Dee Frost owed Lucky Lou over $200,000 in loans and interest from gambling. There was evidence of threats made upon Ms. Frost, and evidence of physical violent "messages," such as cigarette burns, when Dee had not come up with promised payments. And being iced in a cooler is a typical mob hit because it sends a message to others who owe the loan sharks money. Based upon that evidence, I had Contralto arrested for the murder of Dee Frost. My original

investigation report documents my initial findings and conclusions. Exhibit 6 is a true and accurate copy of my investigation report.

But two things gnawed at me. First, I would have expected to find some additional physical violence that had occurred prior to Frost's hypothermia. Typically, loan sharks or their soldiers like to rough up the victim before they pronounce the death sentence. A strong message to other potential deadbeats is paramount. In this case, there were no signs of struggle or physical violence. Ms. Frost's body was void of any recent physical abuse. Second, according to Les Moore's forensic accounting investigation, Dee Frost had been making payments to Contralto, and therefore continued to be a source of income for Contralto. Loan sharks typically don't cut off their source of revenue unless it dries up completely or they feel threatened. I didn't see that to be the case for Dee Frost.

My first and foremost responsibility is to uphold the law. I had to maintain my objectivity throughout my investigation regardless of how much I might have wanted to implicate Contralto. While maintaining my objectivity, I continued the investigation and supplemented my initial investigation report. Exhibit 7 is a true and accurate copy of my supplemental investigation report. Upon completing my investigation, it became clear to me that Izzy Freeman had murdered Dee Frost. Motive was clear. Moore had informed Izzy that Dee Frost had been stealing money from the restaurant. Frost's death was a payback in more ways than one - -not only for vengeance, but also to pay back Izzy $500,000 through the Buy-Sell life insurance policy. Izzy was angry when he/she learned about the theft and the company's bankrupt condition. More than one witness heard Izzy threaten Dee. Plus, Izzy had the opportunity; Contralto had staked out Shallots the night of October 20th and overheard the two arguing outside the kitchen's back door and Freeman brandishing a kitchen knife and forcing Frost back into the kitchen.

Unfortunately, there is no accurate way to establish time of death merely by observing the body since it was frozen. Thus, as a police detective, I'm trained to use other means, such as witnesses, neighbors, unopened mail, or other testimonial or physical evidence. The last person who was with Frost was Freeman. Upon investigating Frost's home, it was apparent that she had not come home since Saturday evening, October 20th. She had not retrieved her mail or picked up any voicemail messages at home or on her cell phone. It is obvious that this was no accident. The padlock to the cooler was locked from the outside and Dee Frost told us what happened through her own words. She identified her assailant's name on the freezer floor with frozen bacon strips. Using the bacon strips stored in the cooler, she spelled out "Killer – I." Exhibit 8 is a true and accurate photograph of the clue left behind by Dee Frost.

Additionally, it became quite evident that this murder was not committed in the heat of passion but rather was premeditated. Shallots had been operating for three years prior to this incident. Freeman purchased a lock for the freezer when Dee Frost was suspected of stealing from the business. Freeman contemplated and planned the whole thing out, forcing Frost into the freezer, locking her in over the weekend, and making it appear that the loan sharks were making a typical mob hit. But, Freeman was careless. Freeman's fingerprints are all over the lock to the cooler, freezer door, and the kitchen knife, and Freeman didn't realize there was a witness lurking in the dark shadows in the alley facing the kitchen's back door. We did not find Contralto's fingerprints anywhere in the restaurant. J.L. Byrd might have tried to reach me to tell me about something with this case, but I never spoke with J.L. Byrd. Sure, I know a

detective generally follows all leads, but in this instance, I knew every minute I spoke with Byrd was a minute wasted of my life that I would never get back. He/she is a notorious con-artist, always looking for another angle to play. It wasn't worth my time. Also, I'm not in control of the evidence room, so this angle that I tampered with the evidence in this case is not only way off based, but is offensive to me as a person sworn to serve justice and to uphold the law.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my belief and knowledge.

Jerry/Jeri Riggs .

Statement of Lou Contralto

My name is Lou Contralto. Most people refer to me as "Lucky Lou." I got no formal education. I got my best learn' off the streets of Philadelphia, where I was born and raised. I dropped out of high school at 16 to go into the family business. I've been in the family business since then, about 20 years. The family business is just your garden variety regular, ordinary business. You offer a service, you get paid for that service. Just like the lawyers in this case. I occasionally loan money to people and those loans are interest bearing -- just like a bank. I don't see the need for promissory notes. People know they owe me when I loan 'em money, and I expect 'em to pay. I don't need a piece of paper to get 'em to pay me. That's not how I do business. If someone didn't pay me, I'd remind them firmly that they're payment's due, and then bada boom, bada bing – they'd find a way to come up with the money. I can be very persuasive. I am not a loan shark -- that would be illegal. I'm not a member of the mob or organized crime. All I know about the mob I learned from James Cagney, Al Pacino, and Marlon Brando in the movies. I know nothin' about how the mob kills people.

I'm testifying in this case because the prosecutor made me an offer I couldn't refuse. By testifying and telling the truth, the prosecutor has agreed to drop the charges against me for loan sharking 'cause of my "business deal" with Dee Frost. This is not my first scrape with the law. The cops have had it in for me for a while - always looking to nail me with something. Now and then they've busted me for some petty crime, just to flex their muscles some. I ain't scared. I never did time in the slammer for more than 90 days. My rap sheet started back when I was a juvie [juvenile]. All of the charges have come from the Wilmington police. I ain't never had any trouble with the Philadelphia police. In 1986, I was convicted of theft of less than $1,500 and just had to do some road crew work. In 1987, I was convicted of assault in the second degree, and got a suspended sentence, and was on probation for a year. In 1994, I was convicted of extortion, and did over a year in the cooler. Then, in 2003, I was charged with bribery, but I was never convicted. That's the case that involved Detective Riggs. Riggs was accused of tampering with evidence, but it was all a big hullabaloo. In 2004, I was charged with terroristic threatening. The state said I threatened this guy I loaned money to. The case got thrown out because the state's key witness disappeared. In September, 2007, I was charged with assault in the second degree, and that charge is still pending. They say I strangled some guy. Can you believe that? I'm not worried about that charge either. Fuhgeddaboutit - these things have a way of going away.

They also tried to pin Frost's murder on me. No way. I may not be squeaky clean, but I ain't a murderer. You can ask anybody. Why would I kill Frost? She was makin' good on what she owed me. Sure, I was keepin' tabs on her. Sometimes folks that owe you some dough think about skippin' town. If Frost left town it would be to look for a big score. She always wanted to get some action. Mostly she just would go to goulash joints lookin' for a live game. A goulash joint is a restaurant or bar that runs a regular card game hidden in a back room. A live game is a game with lots of betting action. She was often playing the rush - she enjoyed a short-run of good luck by winning a very large pot of money in one hand. Before Frost started the business, she would, at times, gamble for six days a week, eight hours a day for several weeks and lose thousands of dollars. Frost recently was a desperate gambler looking for a big score to erase her many personal and business debts. She frequently was tapping out – you know losing her entire gambling bankroll and then have to stop playing. But she wasn't a pigeon, you know, an unsophisticated gambler. I would've stopped her, if I thought she was dead money. Dead

money is an inexperienced player who has virtually no chance at winning. But I believed she still had a few aces up her sleeve. It ain't smart business if I invest in losers, now, is it?

At the time of her untimely death, she owed me over $200,000 due to her gambling losses, but she had made good on nearly $300,000 of gambling losses before then. I never concerned myself much with where Frost got her money. I just figured she had that ace in the whole. Anyway, I wasn't too worried at the time that I'd get paid. But, I haven't lasted this long in this business by trusting people carte blanche. So I started keeping closer tabs on Frost. I wanted to make sure payments were coming. I have no recollection of choking her. I have no recollection of burning a cigarette butt on her wrist. Frost was a smoker. She could've burned herself accidentally. I don't recall threatening her. Sure, I asked her about when she was going to pay me, but that's all I recall of our conversations.

I tailed Frost for the two weeks before she died. On the night of October 20th, I had staked out Shallots across the alley from the back door to the kitchen. Frost was outside in the alley smoking a cigarette. It was after hours and I had thought everyone else had left. To my surprise, Freeman came storming out of the kitchen back door and started arguing with Frost. Freeman was in a fit of rage. I didn't hear the entire conversation because my pager vibrated and distracted me, but I heard almost all of it. Freeman said that Frost had ruined the business, the restaurant was bankrupt, and was going to have to close, yaddi-yadda-yadda, all because of her gambling debts. It was then I realized that the money was coming from Shallots all along. Then I saw Freeman brandish a kitchen knife and point it at Frost forcing her back into the kitchen and toward the cooler. I could see everything pretty clearly. The alley is only 15 feet wide. And there is a security light that beams directly over the back kitchen door to the restaurant. I know it was a knife I saw because it glimmered when the security overhead light shone on it when it was at an angle. It was about 6 inches long. I was in the shadows so I'm sure that Freeman didn't see me. I later positively identified Freeman in a line up at the Wilmington Police Department as the person I saw arguing with Frost that night and forcing her toward the cooler by knife point. I didn't do anything or say anything at the time because, as you can tell from my rap sheet, me and the cops don't always get along so great. I later saw Freeman leave alone. I waited for an hour and then left, but I never saw Frost again. I told the same thing to Riggs a few days after it happened.

I was charged initially with killing Frost. Like I said before, I didn't do it. Riggs was just hoping it was me. I still didn't say anything about what I saw because I didn't know at the time how Frost died or where she was located. So I didn't realize how relevant it might be. Plus, until I had my attorney with me to make a deal on the loan sharking charge, I wasn't about to say anything about me tailin' Frost because she owed me money.

Whatever J.L. Byrd is saying I said to him/her while we were in the pokey together is just a flat out lie, and Byrd's way of getting some deal. Byrd's a con artist. Byrd probably thought that I would be willing to pay some hush money, and then got stuck in his/her lie when the charges against me were dropped. Why would I confide in Byrd? That makes no sense.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my belief and knowledge.

Lou Contralto .

Statement of Izzy A. Freeman

My name is Izzy Freeman. I grew up on a farm in Chester County, Pennsylvania, where life was pretty idyllic. We made a lot of our own foods on the farm, butter, cheese, homemade sausage, homemade ice cream, and I suppose that's what got me interested in the culinary arts. After high school, I made the giant leap and moved to New York to attend the Culinary Institute of America (CIA). Moving to a big city from a rural community was an eye-opener. I was pretty naïve, and I probably still am today. At the CIA, I trained with world-renowned, classically trained chefs. It was the time of my life. After the 38 months in the program, I received my Bachelor's degree. It was my dream to one day open my own restaurant, but I was only 21 and I needed to gain more experience and raise some funds. I moved to Philadelphia to be closer to my family, but yet be in a big city that could offer me a decent wage and experience. I was thrilled when I landed a position at Charlie Trotters, one of Philadelphia's top-rated restaurants. I worked there for 4 years and developed my skills in a variety of areas. I initially started as a pantry chef, making salads, and cold appetizers such as pâté. I also worked as a pastry chef, which is my passion, and poissonier, or fish chef. After those first two years, I was asked to step in as saucier, responsible for sautéing and making all of the sauces for the restaurant. The next year, I became sous chef, which is the second in command. If I took any time off, I used it only to further my skills. I enjoyed entering culinary ice sculpting competitions. I worked long and hard during those years – 6 days a week, usually 10 hour days. But the sacrifices were worth it, if it would help me reach my goal of owning my own restaurant one day.

I met Dee Frost at a conference of the Mid-Atlantic Culinary Association. The conference was about owning your own restaurant. Dee Frost was one of the speakers; she seemed very knowledgeable about the management and finances of owning a restaurant business. She had graduated from Purdue University with a double major in Foodservice Management and Accounting in 2002, magna cum laude. She was extremely bright, energetic, and had an air of sophistication. She came from money and was well connected. You could tell she had already started to make her mark on the culinary world. After the conference, I made a point of meeting her. She was looking to open up a fine dining restaurant in Wilmington and was looking for a co-partner who could focus on the food preparation aspects of the business. I saw this was the perfect opportunity to further my dream of owning a restaurant. What we lacked in experience, we made up for in enthusiasm and passion of fulfilling our dreams. She convinced me that Wilmington was the best place to start a restaurant like we envisioned. She knew what she was doing – if we started somewhere in Philadelphia, we'd be just one of a thousand places and the rent would be high. We would have a niche in Wilmington.

We agreed to a 50-50 split on everything. We each were bringing our respective talents to the table, excuse the pun, and we agreed to each contribute the same working capital. She already had a substantial bankroll of cash to contribute for the start-up. It was like nothing to her to come up with $100,000. I suppose, in a way I resented that, to be perfectly honest. I've never been in a position that cash was so easily on hand for me. I grew up modestly, and had been skimping and saving while working at Trotters. I emptied my savings of $40,000 and had to take out personal loans for the other $60,000 that I was to contribute. So everything I owned in my entire life and for sometime into the future would be invested in our restaurant. I had a lot vested in my restaurant, not only financially, but sweat equity, as well. Of course, I knew it was a risk.

Whenever you start a business, especially a restaurant, there is always the risk of failure. And if it failed, I'd probably have to file bankruptcy for not only the business, but personally too.

Dee took care of all the financial aspects of the business. In hindsight, I should have paid more attention to the financial aspects of the business, but I trusted Dee and we each had our own area of expertise. I handled all aspects of the food preparation and presentation, including menu selection, working with vendors to order food products, and preparing the food or directing the food preparation. While Dee was fully in charge of finances and management, she also had creative ideas for food presentation or preparation, and every now and then she would jot her menu suggestions for the following week on a piece of paper and leave it for me or Georgia Gallo, our sous chef. On the other hand, I have never really understood financial statements or accounting. Dee took care of all of that. When we were starting up the restaurant back in June of 2004, it was her suggestion to put in place a buy-sell agreement funded by insurance. I really didn't understand its purpose, but I signed off on it anyway because she said it was good for both of our protection. She set the amount of the policy and said the income flow from the business would pay for it. Now, I'm thankful that she had the buy-sell in place because it will save the business and me personally. I think of it as her last apology to me for stealing from the business and making things right.

When we opened in June, 2004, Shallots took off right from the start, and soon became the talk of the town. We had rave reviews from food critics in the Wilmington New Journal and Delaware Today, and we even were featured in the Philadelphia Inquirer. The business continued to grow over the next three years. We had a steady flow of customers – some very loyal customers from the beginning and new customers every day. Often it was difficult for our customers to get a reservation for a Friday or Saturday evening unless you called weeks in advance. Dee and I were even contemplating opening a new dining experience near the DuPont Theater in downtown Wilmington in which we would serve desserts exclusively for the after theater crowd – Dee had already worked up the business plan and we had decided to call it "Just Desserts."

I was surprised when Dee told me that we were running in the red because business was going so well. My initial thoughts were that perhaps our prices weren't covering our expenses sufficiently, so when I saw that the Chamber of Commerce was presenting a seminar on October 1, 2007 on the topic "Realizing Your Full Potential" to make your business more profitable, I thought I could sharpen my business acumen. The timing was perfect for me to attend the seminar. Dee had just told me about our financial woes the prior week, and the seminar was on a Monday when the business is closed. We're closed on Sundays and Mondays. I spoke with Les Moore, an accountant, immediately after the presentation, and hired him/her to do an audit of the business to see where we could improve – perhaps negotiate with vendors more, or change our pricing. I also learned during the seminar that in the restaurant and retail business there is a lot of opportunity for employee theft. I wondered if our food inventory was "walking off" with some of the employees in the evenings. So, the following day, I purchased a key and padlock to secure the food inventory in our cooler. Exhibit 9 is a true and accurate copy of the receipt for the purchase of the padlock, which I kept and filed with the invoices and bills of the restaurant. The only ones who had a key were Dee, Georgia and me. Dee told me she thought it was a good idea to use the padlock.

Les Moore came the next day and did an overview of the restaurant and the financials. I agreed to hire Moore for the two-week audit starting October 8th. I paid Moore the money for the audit out of my personal funds, which he/she required to be paid in advance. I think it was around $10,000, but like I said, I'm not good with numbers. The business didn't have the cash flow to pay for the audit, so I advanced the money. When I told Dee about doing the audit, she didn't seem nervous or act suspicious. In retrospect, she always was cool as a cucumber and unflappable, regardless of the situation. I suppose it was a practiced skill from her gambling experiences to have a poker face. Or maybe she thought she had hidden her tracks well enough that we wouldn't find out that she had embezzled so much money from the business.

Business went on as usual those next two weeks during the audit. Dee came in regularly to do her work as she had in the past. Moore continued to do the audit and when I would ask how it was going, he/she said, "It was still a work in progress." Then on Friday, October 19th, I got the shock of my life. Moore informed me that the audit was complete and that Dee had been stealing from the business – nearly $300,000! I was stunned. I just couldn't imagine why she would do that to me - - to us. Sure I was angry, at the time, who wouldn't be? I probably even said some things in haste, but I wasn't angry enough to kill. It didn't even cross my mind! Sure, I said, I was going to make Dee pay for this – but I meant financially. Dee would have to find the money to make it right. She had lots of rich relatives to help come up with the money.

I confronted Dee about the thefts after Moore had left the restaurant. I was angry, but controlled. I asked Dee where the money had gone. She then admitted to me that she was a gambler and was in a temporary slump the past 6 months, and was in serious debt to a loan shark, "Lucky Lou" she called him/her. She never mentioned a last name for Lucky Lou. Dee told me that she owed Lucky Lou over $200,000 and she had already paid him/her over $300,000, most of which came from the restaurant. She had borrowed money from her rich folks to payoff some of her gambling debts, but they told her that it was the last time they were going to bail her out. Frost explained to me that she had become desperate because Lucky Lou had threatened to kill her if she didn't come up with the money. Dee described instances where Lucky Lou would choke her or put a lit cigarette to her wrist. It was a whole new world that I was unfamiliar.

Yeah, I felt betrayed by Dee, but at the same time, I felt scared and sad for her. She was in serious trouble. Her addiction to gambling had taken a promising career in the restaurant business and put her in the gutter with unseemly folks in the underworld. Dee told me that she thought she could string along Lucky Lou a little longer. And in response I said, "no, you need to come up with the money right now, or you could get killed." Maybe my naïveté was still working overtime, but I thought there might be a way to help her and get the business back on track. I told her that I would loan her the money to payoff the debt, and in exchange she had to agree to seek professional help for her gambling addiction. Dee agreed. I said, "In exchange I would get her Just Desserts partnership interest." Honestly, I wasn't thinking everything through at the moment because all of this had taken me off guard. I don't even know how I was going to come up with $200,000 to help Dee out of her jam. I was broke. I had put everything into the business and according to Les Moore, the business was going to have to file for bankruptcy.

I didn't sleep a wink on the night of the 19th. I was trying to brainstorm ways to get money for Dee to get her out of this pickle. I thought maybe Dee's best way to get out of this mess was to turn Lucky Lou over to the prosecutor for loansharking. I went on the internet and

Googled "loansharking" and found out that her contract with Lucky Lou was void under the law. I thought she could go to Lucky Lou and tell him/her that if he/she didn't void the loan according to the law, that she would have no choice but to turn him/her in to the prosecutor's office.

The next day, Saturday, October 20th , after the dinner crowd and the kitchen staff had gone for the evening, I decided to tell Dee my solution to her problems. Dee stepped out the kitchen door to smoke a cigarette, and I followed her. I told her I couldn't think of a way to pay Lucky Lou because she had taken so much money out of the business, it was bankrupt and was going to have to close. I explained the idea of Dee telling Lucky Lou to void the contract or be turned over to the police or prosecutor. Dee didn't think Lucky Lou would be receptive, and we argued over it. Finally, Dee agreed. I didn't see anyone in the alley when we were talking. I never reported this conversation to the police after Dee was murdered because I was afraid if I said anything, Lucky Lou would come after me too.

Lou Contralto is lying about me threatening Dee and "brandishing a knife" - - that's ridiculous! Contralto obviously doesn't want the fingers to be pointing at him/her for Dee's murder. Of course, my fingerprints would show up on the kitchen knife, the padlock and the freezer door. I worked in the kitchen and would touch all of those things numerous times throughout the day. The kitchen knife would have been washed that evening and run through our sanitizer. I don't know if that would have eliminated my fingerprints, but I might have picked up the knife after it was washed to see if it needed to be sharpened. I just don't remember now. If I were going to murder Dee, why would I do it at the restaurant where we work and leave my fingerprints on the knife? I also never hesitated when Detective Riggs asked me to give my fingerprints – does that sound like someone who is guilty?

The last time I saw Dee was about 10:30 p.m. We were locking up to go home for the evening, but Dee was going to stay later to jot down her notes of some ideas she had for next week's menu. I found the note that she had written which had slipped behind one of the kitchen workstations. Exhibit 10 is a copy of the note that Dee left for the menu ideas she had for the following week. I started to lock up the cooler, and Dee told me she would lock it up because she had to check to see if we had the necessary ingredients. She said she would lock up the cooler and the backdoor when she left. As I was leaving out the kitchen back door, I saw a person in the shadows in the alley about 15 feet away. Detective Riggs' diagram attached to his/her police report is an accurate representation of the layout of the restaurant, as well as the street and alley. When Dee was found murdered, I told Detective Riggs about the person I saw, and I went to the police station and looked through a bunch of mug shots. I was able to identify the person I saw as Lou Contralto.

Given Riggs' prior evidence tampering, I know now why the original of Dee's note, Exhibit 10, was lost in the evidence room. The inkdating tests would have shown that Dee's note was written on the night of her death, which would have shown that I'm innocent. I'm certain Contralto is responsible for Dee's murder. I would not, and did not, kill Dee. We had made amends and we were going to figure out a solution together.

I later found out that the insurance policy for the Buy-Sell Agreement is $500,000. Because the business has a negative bottom line now and there had been no updated value of the business, Dee's estate would not share in those proceeds because her interest is currently worthless. However, it is my intention to share a portion of those proceeds with her family. The

insurance money has not been issued yet because there is an exclusion clause under the insurance policy if a beneficiary under the policy intentionally caused her death.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my belief and knowledge.

Izzy A. Freeman .

Statement of J.L. Byrd

My name is Jo/Joe Byrd. I'm also known as "J.L." I have other aliases too, but I haven't used them for over a year. I am 27. I grew up in Newark, New Jersey. It wasn't your "Everybody Loves Raymond" sort of atmosphere around home, so I ran away when I was 17. I've moved around a lot since then – mostly in New Jersey or New York – and used my charmin' personality to make ends meet. I ain't gonna lie to you, I've definitely had my run-ins with the law. In 2000, I was convicted of conversion because I took someone's property as ransom because they owed me money. I also served time for check deception in New Jersey in 2001 and again in 2003. In 2004, I was charged with insurance fraud, but the charges were later dropped. About a year or so ago, I left the New York because it was getting a little hot for me with the law and some people who thought that I had scammed them. I came to Wilmington looking for a new life, and thought I could put all the past behind me and start over. I'm shootin' you straight here – I stole someone's identification information, and immediately got busted for it. I pled guilty, and am currently servin' time in the slammer.

The jail was getting overcrowded, so they were movin' a bunch of the inmates from the Sussex Correctional Institution to the James T. Vaughn Correctional Center. On the day they moved me from SCI to James T. Vaughn, they were movin' Lucky Lou Contralto too. We were in the wagon together. The drive between SCI and James T. Vaughn takes about an hour, so we had lots of time to talk. We had run into each other several times before at some of the casinos in Atlantic City, where I was lookin' for some easy mark, and Lou was shakin' someone down for money they owed. Lou was a shylock. You know, someone who lends money at an extortionate rate of interest. I stayed out of Lou's way, and never turned him/her in, so Lou trusted me. But that was just petty stuff, this was murder – capisci?

We was just chattin' you know , like "what you doin' time for" and yaddi yadda yadda. And Contralto tells me that he/she was arrested for murder, but was gonna get out because he/she had connections inside. Contralto didn't tell me who was on the "inside." I figured it was a bent cop. So, Contralto starts telling me the whole story. Contralto says this person, Dee Frost, was into Contralto for some big money. Frost had one foot in two different worlds, a business world and a gambling world and walked a fine line between the two. I knew Dee Frost, but didn't know she had been whacked. Frost had been in some of the riverboat casinos that I went to.

I had watched Frost play. She was a maniac. In poker, that means a player who plays very loose and aggressive, often raising with just about anything. Contralto said she was a "fish," a poor player, and that he/she should have had Frost swimming with the fishes long ago. Frost was on a "tilt," according to Contralto. "Tilt" is a poker term for a player who has played too long, lost too much money and no longer has any sense of judgment. Contralto said "Once you're on a tilt, you're making bad decisions, you're putting yourself in bad situations."

Contralto said he/she had recently learned, "Frost had bled her business dry, and was worthless." Frost couldn't even make payments for the juice - the interest on the loan. Contralto said he/she overheard Frost say that she was going to threaten Contralto with going to the cops if Contralto didn't walk away from the money Frost owed him/her. Now, don't ask me, but that would be a stupid thing to do. Like some loanshark is going to say, "oh yeah, please don't turn me in, and I won't make you pay me the money you owe me." So, Contralto says to me, with no emotion or nothin', like it was just another day in the park, "So I had Frost iced." And when he/she said "iced" Contralto didn't mean go to the refrigerator to cool down, if you know what I

mean. Contralto said he/she wanted Frost to suffer too, because it was no longer just 'bout money, but Frost thinkin' he/she could turn on him/her. So Contralto said he/she forced Frost into a cooler for a slow death.

Contralto also told me that he/she did a god job of "cleaning." Contralto said he/she covered his/her tracks to make sure it didn't come back on him/her. Contralto described to me how he/she wore gloves so his/her finger prints would not be there.

I tried to call Detective Riggs twice to tell him/her what Contralto told me. But, Riggs never showed up to my cell. Freeman did come to see me when he/she was out on bail. I don't know how he/she heard that I knew anything. Normally, I'm no stoolie, but my soft underbelly got the better of me; I thought I should help an innocent person. Izzy was naïve and vulnerable, and was gonna take the rap for this. I couldn't let that happen when I knew the truth. Freeman said he/she would make it up to me somehow. But, I said, "Fuhgeddaboutit."

You know, I got no reason to lie. Whatta I get out of this? It's not like I'm testifying for the prosecution and gettin' a reduced sentence. And it ain't like, Freeman's got dough to pay for my testimony. There's no reason for me to make this stuff up. Plus, how would I know so many details? And this cockamamie story about me havin' to stick with a story once I started down that road is crazy. I'm in enough trouble as it is – I don't need perjury on my rap too.

I know you gotta wonder why Contralto would blabber all of this to a low life like me. I'm a nobody. I think I was just a tool for Contralto. Contralto probably wanted to get word out on the street that he/she means business so that people would fear him/her, pay their debts and not turn on him/her. When you're in that racket, the best thing ya' got goin' for ya' is the fear factor. Contralto probably wasn't worried about sayin' he/she had killed Frost because with his/her "inside" connections, there was no way he/she was going to see the four walls of a cell.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my belief and knowledge.

Jo/Joe L. Byrd .

Statement of Pat Ives

My name is Pat Ives. I am a Professor of Criminology at SUNY in Albany. I am also a licensed private investigator in the State of New York. A true and accurate copy of the abbreviated version of my curriculum vitae is attached as Exhibit 11. Of course, I have had many more publications, such as journal articles, and chapters written for books, book reviews, and a host of seminar presentations and lectures. But I presume the abbreviated version of my curriculum vitae will demonstrate that I am well-recognized as an expert in the study of organized crime.

Reliable information about organized crime is not always easy to obtain. However, I have devoted my research and teachings to organized crime, including the historical background of organized crime, theories and research, specific crime groups and their operations, and law enforcement strategies to counter organized crime. I am currently a co-director of the International Association for the Study of Organized Crime, a professional association of criminologists, researchers, teachers and students, founded in 1984, which holds meetings in conjunction with American Society of Criminology. IASOC works to promote greater understanding and research about organized crime in all of its manifestations.

A significant portion of my research and studies has been on the type of crimes, and particularly murder, committed by people within organized crime. The underlying crimes in organized crime are the typical selection of preferred mob rackets and methods: loan sharking, bookmaking, extortion, income tax evasion, and income tax fraud. Intimidation, violence, murder and obstruction of justice is used to further their goals. The wise guy life is a sharp and cocky, cash-driven subculture. Sure they can come across as good fellas, and some are not complete strangers to doing some good, but ultimately the colorfully monikered gangsters accomplish their deeds through deception, intimidation, violence, and murder.

Men and women within organized crime have a particular signature when committing crimes, which takes one of two avenues: either (1) committing the crime in such a heinous fashion so as to send a message to other would be wrong-doers against the mob/mafia, or (2) skilled use of hiding the crime or their connection to it. An example of the former is the Italian rope trick. The Mafioso wraps a rope around the victim's neck and a tug of war ensues as the victim is strangled to death. Also as a public warning, the mob, on occasion, tied victims to a tree in the wilderness and slashed the victim to draw blood for wild animals to feed upon.

Organized crime's use of hiding the crimes or their connection to the crime definitely has its own signature. Each mob group has their own preferred style, but often word spreads of another group's style and sometimes there are copycats among the mob. And, compared to a non-career criminal, it is far more sophisticated and skilled. We've probably all heard of "swimming with the fishes" in which the mob would tie the victim to a cement block and throw them in a body of water. Another popular "signature" method of the mob is to hide a corpse in a false bottom of a casket of another person. Other disposal methods included dismemberment, burial, or placing the body in the trunk of a car and having it crushed in a junkyard.

Mafia gangsters also would often kill and dispose of the body into a barrel. The barrel would be dumped in the ocean or shipped by rail to another city. The last known highly publicized barrel murder was reported in 1976 when the body of Johnny Roselli was found in a

55 gallon oil drum in the Florida Everglades. Roselli was a conspirator with U.S. CIA's plot to assassinate Fidel. Another example is Ice Pick Willie Alderman from Minnesota. This method of murder is done to make it look like the person died of natural causes. Surrounded by four killers, an ice pick is forced through the victim' eardrum that goes into the brain. This causes a cerebral hemorrhage and can often be difficult to detect.

One of the more notorious mob men is Richard Kuklinski, who earned the nickname "Iceman" following his experiments with disguising the time of death of his victims by freezing their corpses in an industrial freezer. The condition of the body is sometimes the only means available for the field officer to estimate the time of death. Generally, body temperature is used as an indicator post-mortem interval during the first 12 to 24 hours of death. Kuklinski himself claims that he used a Mister Softee ice cream truck for this purpose. Later on, he said that he got the idea from a hitman named Mister Softee, who drove a Mister Softee truck to appear inconspicuous. Kuklinski's method was uncovered by the authorities when Kuklinski once failed to let one of his victims properly thaw before disposing of the body on a warm summer's night, and the coroner found chunks of ice in the corpse's heart. This methodology gained some popularity among those involved in organized crime in the late 1990's and into the 21st Century. It is still fairly common today to find mob victims frozen in industrial coolers.

I have reviewed all of the statements prepared in this case, Detective Riggs' Investigation Report dated October 26, 2007 and the diagram of Shallots. I have also reviewed the autopsy report, fingerprint analysis, and all photographic evidence of the crime scene and the victim. It is my understanding that due to the gruesome nature of the photographs of the decedent that these photographs are not part of the evidence of this case with the exception of the photograph of the victim's dying message to identify her killer. I did not go to the crime scene, nor have I undertaken any independent physical examinations of the victim or fingerprint analysis.

Based upon my review of the foregoing, and my extensive knowledge and expertise in studying criminal behavior in organized crime, it is my opinion, that Dee Frost was murdered by a person involved in organized crime. Dee Frost was significantly in debt to the mob. She had not made recent payments and had been punished in typical fashion by the mob with cigarette burns and strangulation, signatures of Lou Contralto. Lou Contralto became aware that the restaurant was bankrupt and that there would be no more payoff. Frost became a liability for Contralto, rather than a source of revenue, and even more so if Contralto thought that Frost would turn him/her in to the cops. The methodology used in this crime is also consistent with a mob hit. The use of an industrial freezer to hide the victim's time of death and the "cleaning" of the crime scene is indicative of a sophisticated skill level of crime inherent in organized crime and completely inconsistent with the method and mode of a person committing a crime in the heat of passion.

I am also extremely critical of the police investigation in this matter. I have done a significant amount of research in the study of corruption in law enforcement. One reason the mafia and mobs have survived for years is, in part, because of a few corrupt police officers, who have lost or tampered with evidence, or tipped off the mob. Detective Riggs should never have been assigned to the investigation of this case. Detective Riggs was previously accused of tampering with evidence involving a bribe from Lou Contralto. I am unconvinced that Riggs exerted his/her independence when first arresting Contralto. The charges were later dropped and,

I believe, it could have easily been a ruse to throw us off. The entire investigation was compromised due to Riggs' involvement.

I have been paid $3000 to render an expert opinion in this case. I came into the case with no preconceived notions, and strictly looked at the facts as they were presented. I have spent a total of 4 hours reviewing the statements and evidence, and then I have additional time incurred in providing this statement as well as my testimony in court. I have testified in numerous cases in which organized crime may be a factor. I have testified both for the prosecution and the defense. Normally, my rate is $5,000 to render an expert opinion, but because I went to school with one of the attorneys for the defense, I have discounted my rate as a professional courtesy.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my belief and knowledge.

Pat Ives_____.

LES MOORE, CPA, CFE
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Education:

University of Delaware

B.S. in Accounting – May, 1981
Cum Laude, 3.75
Beta Alpha Psi - Accounting Major Honorary, Treasurer
Beta Gamma Sigma – Business Honorary
Top Accounting Student
Luca Pacioli Award

Certifications:

Certified Public Accountant

June, 1981 to present

Certified Fraud Examiner

June, 2003 to present

Employment:

Account-Ability, CPAs (owner)
900 Market St., Wilmington, Delaware
June, 1984 – present

Full service accounting firm, providing a variety of accounting services to our clients including, bookkeeping, general accounting, audit, tax management and preparation, personal financial planning, and business valuation. Specialization in forensic accounting, conducting forensic investigations, utilizing my accounting, auditing, and investigative skills. Instrumental to numerous investigations detecting accounting fraud.

Arthur Andersen CPA

33 W. Monroe, Chicago, Illinois
May, 1981- May, 1984

Manager. Consumer and Business Products Auditing Division. Audited financial statements of clients and responsible for management of audit team. Promoted rapidly.

Memberships:

Association of Certified Fraud Examiners (ACFE)
American Institute of Certified Public Accountants (AICPA)
Indiana Certified Public Accountants (INCPA)

Continuing Education:

E-Fraud: Preventing and Detecting Technology-Based Crimes (ACFE; July, 2007) *Co-presenter*

Money Laundering: Tracing Illicit Funds (ACFE; July, 2007)
Advance Fraud Examination Techniques (ACFE; July, 2006)

Computers in Fraud (ACFE; July, 2006)

Contract & Procurement Fraud (ACFE; July, 2005)
Auditing for Internal Fraud (ACFE; July, 2005)
Fraud Prevention (ACFE; July, 2004)

Investigating by Computer (ACFE; July, 2004)

Conducting Internal Investigations (ACFE; July, 2003)

Auditing for Internal Fraud (ACFE; July, 2003)

Principles of Fraud Examination (ACFE; July, 2002)

Building Your Fraud Examination Practice (ACFE; July, 2002)

Exhibit 2

Shallots

7/14/07

1 – Tuna tartar $8.95
1 - Bruschetta $4.95

2 -Lettuce Wedge salads - $9.90

1 - Pork Medallions w/ wine reduction – $19.95
1 - Macadamia crusted Chilean sea bass with Roasted red pepper coulis - $21.95

1 – side of Roasted Asparagus with Hollandaise - $5.95

1 -glass house Merlot - $6.95
1 - glass house chardonnay - $5.95

1 – Mini Baked Alaska - $4.95
1 - Flourless Chocolate cake & raspberry coulis - $5.95

Sub-total $95.45
Tax 5.76

07-14-07

- ✓ 96.34
- ✓ 83.24
- ✓ 164.32
- ✓ 54.80
- ✓ 97.66
- ✓ 123.76
- ✓ 114.93
- ✓ 82.54
- ✓ 66.44
- ✓ 79.91
- ✓ 85.56
- ✓ 99.33
- ✓ 58.75
- ✓ 93.99
- ✓ 65.00
- ✓ 74.45
- ✓ 92.34
- ✓ 123.98
- ✓ 78.78
- ✓ 116.43
- ✓ 224.56
- ✓ 95.87
- ✓ 183.24
- ✓ 48.56
- ✓ 64.34
- ✓ 114.56

- ✓ 2583.68

Exhibit 3

Deposit

	Coins:	43.00
Shallots	Cash:	325.00
Acct# 34533245	Checks:	219.93
June 11, 2007	Subtotal:	587.93
	Less Cash Rec'd:	-0-
	Total:	587.93

1st Wilmington Bank, Wilmington, DE

06-08-07

- ✓ 39.65
- ✓ 92.34
- ✓ 99.00
- ✓ 114.32
- ✓ 178.67
- ✓ 154.36
- ✓ 86.45
- ✓ 119.60
- ✓ 45.54
- ✓ 92.34
- ✓ 136.45
- ✓ 78.84
- ✓ 91.70
- ✓ 85.16
- ✓ 123.55
- ✓ 48.56
- ✓ 78.84
- ✓ 93.25
- ✓ 44.21
- ✓ 116.87
- ✓ 46.78
- ✓ 90.91
- ✓ 143.22
- ✓ 99.00

2299.61

06-09-07

- ✓ 36.54
- ✓ 46.78
- ✓ 86.98
- ✓ 99.00
- ✓ 78.84
- ✓ 83.45
- ✓ 92.34
- ✓ 77.44
- ✓ 154.36
- ✓ 178.67
- ✓ 183.77
- ✓ 92.34
- ✓ 144.68
- ✓ 114.32
- ✓ 86.45
- ✓ 48.56
- ✓ 93.25
- ✓ 87.36
- ✓ 136.45
- ✓ 119.60
- ✓ 98.46
- ✓ 85.16
- ✓ 48.56
- ✓ 92.34
- ✓ 178.67
- ✓ 123.98
- ✓ 91.70
- ✓ 67.18
- ✓ 93.25
- ✓ 45.54
- ✓ 123.55

3089.57

Exhibit 4

Shallots	Ck #1099
4356 Kirkwood Hwy.	
Wilmington, DE 19801	Date: 5/25/07
Pay to the Order of Dee Frost:	$3000.00
Three Thousand and 00/1000	Dollars
/s/Dee Frost	
Memo: _____	
147839453 12345678 1099	

Check Register

					11,345.22
05/21/07	1094	Let Us Produce		165.00	11,180.22
05/21/07	1095	Meat Market		465.00	10,715.22
05/22/07	1096	Vineyard Wines		455.85	10,259.37
05/22/07		deposit	825.36		11,084.73
05/23/07		deposit	923.45		12,008.18
05/24/07	1097	LaundryTime		122.35	11,885.83
05/24/07		deposit	654.92		12,540.75
05/25/07	1098	Supplies Unlimited		93.45	12,447.30
05/25/07	1099	VOID			12,447.30
05/29/07	1100	Let Us Produce		128.00	12,319.30

Exhibit 5 1/2

PARTNERSHIP CROSS-PURCHASE WITH BUY-SELL AGREEMENT

This Agreement is made June 15, 2004, by and between Izzy A. Freeman and Dee Frost.

WHEREAS, the above named individuals are partners doing business under the firm name of Shallots, LLP at 4356 Kirkwood Highway, Wilmington, DE, the respective partnership interests of the partners being divided equally; and

WHEREAS, the partners desire to ensure the continuity of harmonious management of the partnership by providing for the purchase of a partnership interest by the other partner in the event a partner dies;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, it is agreed by and between the parties as follows:

FIRST: Upon the death of a partner, the surviving partner shall purchase and the legal representative of the estate of the deceased partner shall sell to such surviving partner, the partnership interest owned by the deceased partner for the price established in accordance with the provisions of the SECOND and FOURTH Article.

SECOND: Unless and until a new value is established as herein provided, the value of the respective partnership interest of the partners for purposes of this agreement is $100,000 each. At the end of each fiscal year, the partners shall agree upon the value of their respective shares. If the partners have not made such determination within two years of the death of a partner, an independent certified public accountant shall determine the value of the deceased partner's interest.

THIRD: In order to assure the availability of funds for the purchase of the partnership interest of a partner by the other partner, the partnership has purchased insurance on the lives of each partner. The partners may purchase additional insurance as deemed necessary.

FOURTH: Upon the death of a partner, the other partner may immediately collect the proceeds of the policy on the life of the deceased partner. If the proceeds of all the policies on the life of the deceased partner are not sufficient to purchase the deceased partner's interest, the surviving partner shall be obligated to pay the remaining balance to the deceased partner's estate. If the proceeds of all the policies on the life of the deceased partner are in excess of the purchase price of the deceased partner's interest, the surviving partner shall be entitled to any excess funds.

Upon payment of the purchase price of the partnership interest of the deceased partner the legal representative of the estate of the deceased partner shall execute and deliver to the surviving partner such instruments as shall be necessary to transfer complete title to the surviving partner.

Exhibit 5 2/2

IN WITNESS WHEREOF, the partners have executed this agreement the day and year first hereinabove written.

Dee Frost . *Izzy A. Freeman* .

Incident Information			
Case # *071023-14*			Officer *J. Riggs*
Date of Investigation *10/23/07*	Time *08:30 am*		
Location of Incident/Street Address 4356 Kirkwood Hwy: Shallots Restaurant	City Wilmington	County New Castle	
Type of Incident/Crime/Description of events Homicide – Body located in locked cooler			
Persons Involved (full and complete name known) Victim – Dee Frost (deceased) DOB: 05/13/82 Female 4'11" 102 lbs			
Vehicle Information N/A	Make/Model/Year/Color/Style/etc. N/A	License # N/A	State N/A

Investigation Report

10/23/07 08:00 - Called to the scene by patrol officer of Wilmington Police Dept. because suspected organized crime hit. Victim's body discovered lying on floor of restaurant's cooler by restaurant cook, Georgia Gallo.

10/23/07 08:30 – Arrived on scene. Controlled and assessed scene. Diagram of restaurant attached. Body does not appear to have been moved or compromised. Victim appears to have died from hypothermia; the body is pale and waxy. There appears to be no recent outward signs of physical trauma to victim or evidence of physical disturbance in cooler. Will wait conclusions of autopsy. Body lying on floor of restaurant cooler next to bacon strips spelling "Killer – I." Victim holding an additional bacon strip in hand next to bottom of last letter – appears to intend to spell letter "L." Victim shows some signs of non-recent physical trauma – ¼" round burn mark on inside of right wrist; bruising on neck consistent with someone grabbing her at neck. No evidence of break-in at restaurant. Nature of death, use of cooler, is consistent with mob hit.

10/23/07 09:20 - Interviewed Gallo and other kitchen staff. Victim is co-owner of restaurant. Witnesses state victim's body had not been moved prior to my arrival. Gallo arrived at restaurant through kitchen back door at 07:15. No sign of disturbance noted by witness. Approximately 15 minutes later, Gallo unlocked door to cooler and discovered body, then called 911. Only Gallo and restaurant owners, Dee Frost and Izzy Freeman have keys to lock for doors to restaurant and cooler. Lock is new to cooler and staff. Some inconsistency in remembering to lock cooler at the end of the day. Gallo and kitchen staff do not know who would want to harm Frost. Witnesses suspected Frost had a gambling problem and owed money to loan sharks. Kitchen staff observed Lucky Lou Contralto lurking in the alley across the street frequently, and most recently on Saturday, October 20th. Victim was seen and heard from last on Saturday evening at Shallots up until closing time.

10/23/07 10:00 – Interviewed Izzy Freeman, co-owner of Shallots. Freeman last saw Frost at 20:30 on October 20th at Shallots. Freeman typically handled menu selection, worked with vendors to order food products, and assisted with some food preparation. Frost occasionally made menu suggestions, but was primarily in charge of bookkeeping and business management. However, according to Freeman on Saturday, she had stayed behind to make notes to chef for following week's menu. No such notes located. Frost was going to look at inventory in cooler and then intended to padlock cooler door. Freeman states cooler door was unlocked when he/she left. Freeman had recently purchased a padlock for cooler, due to concerns of employee theft. Keys for restaurant and cooler padlock were distributed only to Gallo, Frost and Freeman. As Freeman was leaving the restaurant, he/she noticed a person standing in the shadows in the alley across the street. After being shown mug shots at the station, Freeman identified person as Lou Contralto. Freeman stated that he/she had recently hired a forensic accountant, Les Moore, to determine cause for company's financial struggles despite steady business. Moore's investigation revealed Frost had been skimming from business. Freeman questioned Frost about thefts on Friday, October 19th. Frost explained to Freeman that she liked to gamble but had been very unlucky lately, and thus had borrowed money from a loan shark, Contralto. Frost owed Contralto over $200,000. According to Freeman, Frost had been physically accosted with a gun held at her head, cigarette burns, and being choked by Contralto to come up with past due

payments. So, Frost took money from business. According to Freeman, Frost said she had become desperate to payoff the debt because her life had been threatened by Contralto. Freeman offered to give Frost a personal loan to payoff the debt, if Frost sought help for her gambling addiction.

10/23/07 11:30 – Interviewed remaining restaurant staff. Consistent statements as that offered by kitchen staff. No one had seen Frost since Saturday evening, but restaurant is closed on Sunday and Monday. Employees were unaware of skimming by Frost and noticed no suspicious behavior. Several witnesses had observed Contralto in alley across from back of kitchen door.

10/23/07 12:45 – Went to victim's residence. No disturbances to residence. Unopened mail from Saturday, October 20th. Newspapers from Sunday and Monday were lying on front steps undisturbed. Voicemail messages unretrieved on cell phone and home phone from Saturday thru present. No unusual calls or mail. Computer spreadsheet of debt owed to Contralto showed balance of $208,500.

10/23/07 4:30 – Interviewed Les Moore. Confirmed had undertaken forensic accounting investigation at the request of Freeman due to financial struggles in the restaurant business. Moore started engagement on October 8, 2007 and completed the engagement on October 19th. Moore discovered that Frost had been skimming from company. Total sum stolen by Frost was $273,958. Moore stated that Freeman appeared enraged when he/she learned of theft and Freeman said "Frost would pay for this." Moore overheard Freeman confronting Frost later on the 19th and that Frost would get her "just desserts." Moore also overheard parts of a phone conversation between Frost and unknown person making promises for payment and threats being made.

10/26/07 – Autopsy results show death caused by hypothermia. No other physical trauma causing death noted. Time of death cannot be determined through physical examination of the body since it was frozen. Autopsy dates cigarette burns to have occurred 2 weeks prior to death and strangulation of neck, non-life-threatening, to have occurred less than one week prior to death.

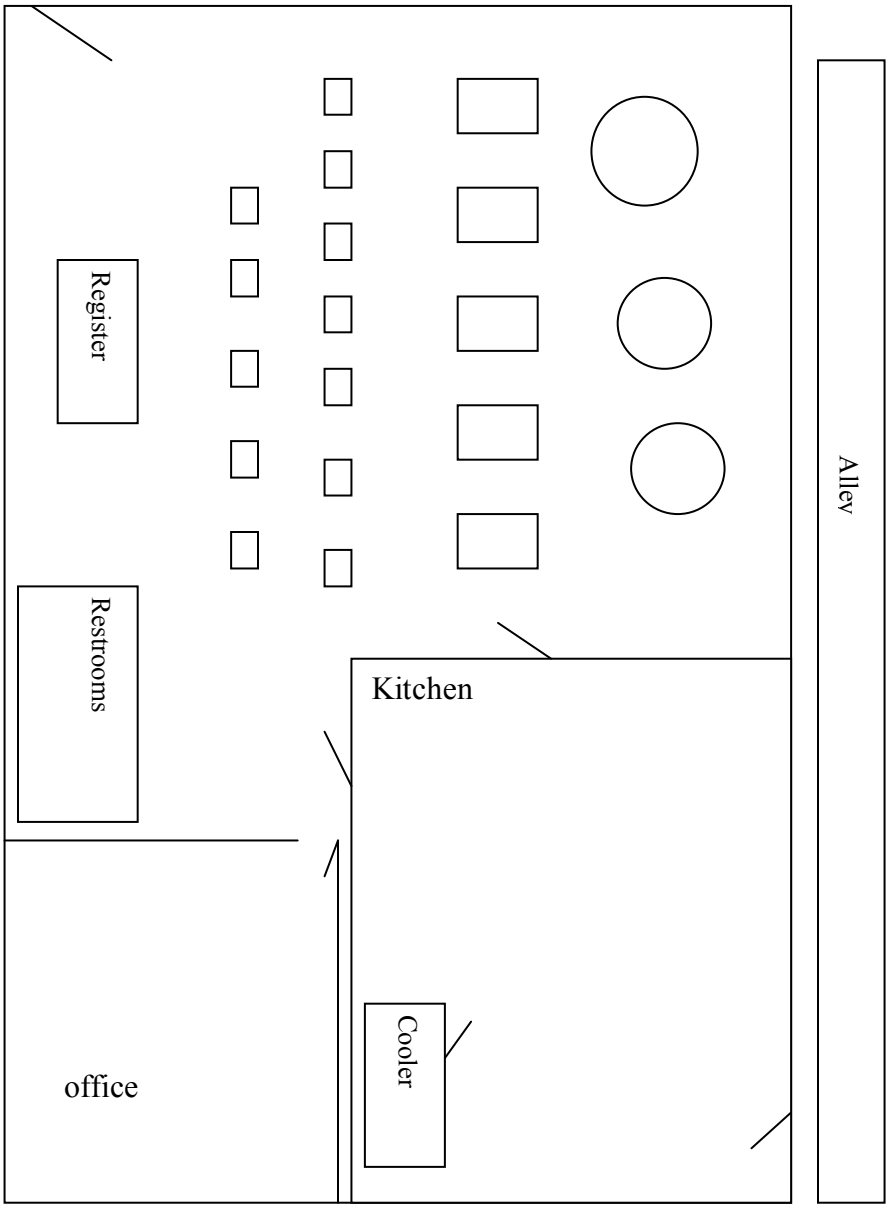
10/26/07 – Contralto's fingerprints are not detected on padlock to cooler, cooler door, or doors to restaurant, per fingerprint analysis.

10/26/07 – 13:30 – Contralto read Miranda rights. Refuses to make statement, and requests to have lawyer present. Contralto arrested.

Signature *(required)* *Detective J. Riggs*	Date 10-26-07

Diagram of Shallots

4356 Kirkwood Highway



Key:

/ denotes door

Not to Scale

Exhibit 7

Supplemental Investigation Report

Case # *071023-14*			Officer *J. Riggs*
Date of Initial Investigation *10/23/07*			
Location of Incident/Street Address 4356 Kirkwood Hwy: Shallots Restaurant	City Wilmington	County New Castle	
Type of Incident/Crime/Description of events Homicide – Body located in locked cooler			
Victim – Dee Frost (deceased)			

Supplemental Investigation Report

10-27-07 11:00 Contralto, in presence of counsel, provides statement. Frost owed Contralto over $200,000 due to gambling losses. Contralto says Frost was making payments but he/she had been tailing Frost to make sure she didn't skip town. Contralto was present night of Oct.20th in alley across street from Shallots back door to kitchen. Contralto observed Freeman arguing with Frost and telling her she ruined her business, and that they were bankrupt and would not be able to continue to operate. Then Contralto saw Freeman brandish a kitchen knife and point it at Frost making her go back into the kitchen toward the cooler. Contralto later saw that Freeman left alone. Contralto waited for a ½ hour then left. Frost never left.

10-27-07 14:30 Freeman brought in for questioning. Confronted with Contralto's statement. Freeman was adamant that it was all lies, and just Contralto's way of escaping murder. Freeman consents to provide fingerprints.

10-29-07 8:00 Returned to Shallots to retrieve kitchen knife. Several paring knives located and only one kitchen knife with an 8 inch blade. Sent to lab for fingerprint analysis.

10-29-07 9:00 Moore questioned further about financial aspects of Shallots. Restaurant is bankrupt. Moore had advised Freeman that would have to close business. Moore also aware that Freeman is the beneficiary of a $500,000 insurance policy for a buy-sell agreement for a deceased partner's interest in the business.

10-30-07 Additional fingerprint analysis results received. Fingerprint analysis shows that Freeman's fingerprints are on padlock to cooler, cooler door, and kitchen knife.

10-30-07 16:00 Contralto released. Freeman arrested.

Signature *(required)* *Detective J. Riggs*	Date 10-30-07

Exhibit 8

Exhibit 9

Liberty Lock & Key
1451 Kirkwood Hwy
Wilmington, DE

10/02/07 12:30 pm

1 – Lg. Padlock/key	$19.49
Subtotal	$19.49
Tax	$ 1.17
Total	$ 20.66
Cash	$ 21.00
Change	$ 0.34

Thank you for letting
us serve you.

Exhibit 10

Chilled Cerviche with Citrus-Infused Creme Fraiche

Jumbo lump crabcakes and marinated portobello mushroom stacks

Beef tenderloin medallions tartar drizzled with poppy seed cream sauce

Sesame and lavender crusted sea scallops with a lemon-ginger and white wine reduction sauce

Dee

PATRICK/PATRICIA IVES, PH.D.

CURRICULUM VITAE

Education:
Indiana University, Bloomington.
M. A. in Sociology, 1970.
Ph.D. in Criminal Justice 1972.

University of Chicago
B.A. in Sociology, *magna cum laude* 1968.

Present Positions:
Professor of Criminology
School of Criminal Justice
University at Albany, SUNY
135 Western Avenue
Albany, NY 12222 USA
Phone: (518) 442 - 5214
Fax: (518) 442 – 5212
1988- present
Department Chair, 2002-2004

Co-Director
International Association for the
Study of Organized Crime
New York, New York
1989-present

Prior Academic Appointments:
Professor
Department of Criminal Justice
University of Delaware, Newark
1984-1988.

Assistant and Associate Professor
Department of Criminal Justice
Indiana University, Bloomington
1972 - 1984

Memberships and Positions:
Consultant, National Criminal Justice Commission, 2004-2006
American Society of Criminology, President 2001-2004
Task Force on Law and Enforcement, President's Commission on Organized Crime 1996-2000

Honors and Awards:

Distinguished Leader in Criminal Justice, Academy of Criminal Justice Sciences

American Society of Criminal Justice, Fellow 1998 – present

Fullbright Research Fellowship 1992- 1993

Graduate School Fellowship, Indiana University 1970-72

Special Dissertation Research Grant, Indiana University Foundation 1972.

Publications:

No Law and Order: Organized Crime *New York: John Wiley, 2005*

Wiseguys Finish First New York: John Wiley, 2003

Kuklinski: The Iceman Cometh New York: Harper & Row, 2000

Organized Crime: A Study in Methodology of Crimes *Simon and Schuster*, 1998

Bent Cops and Tampered Evidence Indiana University Press, 1972.

APPLICABLE LAW RELATING TO CRIMES BY WITNESSES

This applicable law section includes the crimes with which some of the witnesses have had prior experience. The only crimes that the defendant has been charged with are contained in the jury instructions along with any affirmative defenses that are being raised by the defendant.

11 *Del. C.* § 841 Theft class G felony; class A misdemeanor; restitution

(a) A person is guilty of theft when the person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it. Theft includes the acts described in this section, as well as those described in §§ 841A--846 of this title.

(b) A person is guilty of theft if the person, in any capacity, legally receives, takes, exercises control over or obtains property of another which is the subject of theft, and fraudulently converts same to the person's own use.

(c)(1) Except where a victim is 62 years of age or older, or an "infirm adult" as defined in § 3902(1) of Title 31, or a "disabled person" as defined in § 3901(a)(2) of Title 12, theft is a class A misdemeanor unless the value of the property received, retained or disposed of is $1,500 or more, in which case it is a class G felony.

(2) Where a victim is 62 years of age or older, or an "infirm adult" as defined in § 3902(1) of Title 31, or a "disabled person" as defined in § 3901(a)(2) of Title 12, theft is a class G felony unless the value of the property received, retained or disposed of is $1,500 or more, in which case it is a class F felony.

(3) Notwithstanding paragraphs (1) and (2) of this subsection:

a. Where the value of the property received, retained or disposed of is more than $50,000 but less than $100,000, theft is a class E felony;

b. Where the value of the property received, retained or disposed of is $100,000 or more, theft is a class C felony.

(d) Upon conviction, the sentencing judge shall require full restitution to the victim for any monetary losses suffered and shall consider the imposition of community service and/or an appropriate curfew for a minor.

11 *Del. C.* § 824 Burglary in the third degree; class F felony

A person is guilty of burglary in the third degree when the person knowingly enters or remains unlawfully in a building with intent to commit a crime therein.

Burglary in the third degree is a class F felony.

11 *Del. C.* § 846 Extortion; class E felony

A person commits extortion when, with the intent prescribed in § 841 of this title, the person compels or induces another person to deliver property to the person or to a third person by means of instilling in the victim a fear that, if the property is not so delivered, the defendant or another will:

(1) Cause physical injury to anyone; or

(2) Cause damage to property; or

(3) Engage in other conduct constituting a crime; or

(4) Accuse anyone of a crime or cause criminal charges to be instituted against anyone; or

(5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject anyone to hatred, contempt or ridicule; or

(6) Falsely testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) Use or abuse the defendant's position as a public servant by performing some act within or related to the defendant's official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(8) Perform any other act which is calculated to harm another person materially with respect to the person's health, safety, business, calling, career, financial condition, reputation or personal relationships.

Extortion is a class E felony, except where the victim is a person 62 years of age or older, in which case any violation of this section shall be a class D felony.

11 *Del. C.* § 1201 Bribery; Class E Felony

A person is guilty of bribery when:

(1) The person offers, confers or agrees to confer a personal benefit upon a public servant upon an agreement or understanding that the public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced; or

(2) The person offers, confers or agrees to confer a personal benefit upon a public servant or party officer upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office; or

(3) The person offers, confers or agrees to confer a personal benefit upon a public servant for having violated a duty as a public servant.

Bribery is a class E felony.

11 *Del. C.* § 1269 Tampering with physical evidence; Class G felony

A person is guilty of tampering with physical evidence when:

> (1) Intending that it be used or introduced in an official proceeding or a prospective official proceeding the person:
>
> > a. Knowingly makes, devises, alters or prepares false physical evidence; or
> >
> > b. Produces or offers false physical evidence at a proceeding, knowing it to be false; or
>
> (2) Believing that certain physical evidence is about to be produced or used in an official proceeding or a prospective official proceeding, and intending to prevent its production or use, the person suppresses it by any act of concealment, alteration or destruction, or by employing force, intimidation or deception against any person.

Tampering with physical evidence is a class G felony.

11 *Del. C.* § 62; Terroristic threatening.

a) A person is guilty of terroristic threatening when that person commits any of the following:

> (1) The person threatens to commit any crime likely to result in death or in serious injury to person or property;

. . . .

b) Any violation of paragraph (a)(1) of this section shall be a class A misdemeanor except where the victim is a person 62 years of age or older, in which case any violation of paragraph (a)(1) of this section shall be a class G felony.

11 *Del. C.* § 612 Assault in the second degree; class D felony

(a) A person is guilty of assault in the second degree when:

> (1) The person recklessly or intentionally causes serious physical injury to another person; or
>
> (2) The person recklessly or intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or

. . . .

> (d) Assault in the second degree is a class D felony.

JURY INSTRUCTIONS

(THESE ARE NOT TO BE READ IN OPEN COURT BY THE PRESIDING JUDGE)

Members of the Jury:

This is a criminal case commenced by the state against the Defendant Izzy Freeman. The Defendant has been charged with Murder in the First Degree.

BURDEN OF PROOF AND PRESUMPTION OF INNOCENCE

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

MURDER IN THE FIRST DEGREE [INTENTIONAL KILLING]

Under Delaware law, a person is guilty of Murder in the First Degree when [he/she] intentionally causes the death of another person.

In other words, in order to find the defendant guilty of Murder in the First Degree, you must find that each of the following two elements has been established beyond a reasonable doubt:

First, the defendant caused Dee Frost's death; and

Second, the defendant acted intentionally.

In order to prove that the defendant "caused" Dee Frost's death, the State must establish that Dee Frost would not have died but for the defendant's conduct.

"Intentionally" means that it was the defendant's conscious objective or purpose to cause Dee Frost's death.

If, after considering all the evidence, you find that the State has established beyond a reasonable doubt that the defendant acted in such a manner as to satisfy all of the elements that I have just stated, on or about the date and at the place stated in the indictment, you should find the defendant guilty of Murder in the First Degree. If you find that the State has not proved every element of the offense beyond a reasonable doubt, then you must find the defendant not guilty of Murder in the First Degree.

MANSLAUGHTER / EXTREME EMOTIONAL DISTRESS

If you conclude beyond a reasonable doubt that the defendant intentionally caused the death of Dee Frost, you should next consider whether [he/she] did so while under the influence of extreme emotional distress. The fact that the defendant intentionally caused the death of another person while under the influence of extreme emotional distress is a mitigating

circumstance which reduces the crime of murder in the first degree to the crime of manslaughter. The defendant has the burden of proving, by a preponderance of the evidence, that [he/she] acted under the influence of extreme emotional distress. The defendant must also prove, by a preponderance of the evidence, that there is a reasonable explanation or excuse for the existence of the extreme emotional distress. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as [he/she] believed them to be.

The purpose of the law of mitigating circumstance of extreme emotional distress is to permit the defendant to show that the intentional killing was caused by a sort of frenzy of mind and that [he/she] is, therefore, less culpable for the killing. This mitigating circumstance applies to persons who kill, in part, because of unique factors that cause an emotional explosion or as an extreme reaction to overwhelming stress.

You should give the words "extreme emotional distress" their common, everyday meaning.

A person under the influence of extreme emotional distress is someone whose feelings were thrown into extraordinary, unusual or unexpected disorder. Extreme emotional distress is a type of mental or physical feeling of such exceptional stress, excitement or disturbance as to produce a frenzy of mind which makes one deaf to the voice of reason. It is a condition or state of mind that can occur spontaneously or it can develop over a period of time.

In addition to proving that [he/she] acted under the influence of extreme emotional distress, the defendant must also prove, by a preponderance of the evidence, that there is a reasonable explanation or excuse for the existence of the extreme emotional distress. That is, you must consider whether a reasonable person in the defendant's position or situation under the circumstances as [he/she] believed then to be would have suffered from extreme emotional distress.

In order to be a reasonable explanation, the event that triggered the emotional disturbance must be something external from the defendant and cannot be something for which the defendant was responsible, such as involvement in a crime.

If the defendant intentionally, knowingly, recklessly or negligently brought about his own mental disturbance, extreme emotional distress is not applicable. Further, if the defendant's mental state was caused by voluntary alcohol or drug use, extreme emotional distress is not applicable.

MURDER IN THE SECOND DEGREE [RECKLESS INDIFFERENCE]

If you find the Defendant not guilty of Murder in the First Degree, you must decide if the State has proven beyond a reasonable doubt that the Defendant committed Murder in the Second Degree. Under Delaware law, a person is guilty of Murder in the Second Degree when [he/she] recklessly causes the death of another person under circumstances which manifest a cruel, wicked and depraved indifference to human life.

In other words, in order to find the defendant guilty of Murder in the Second Degree, you must find that each of the following three elements has been established beyond a reasonable doubt:

First, the defendant caused victim's death; and

Second, the defendant acted recklessly; and

Third, the defendant's recklessness manifested a cruel, wicked and depraved indifference to human life.

In order to prove that the defendant "caused" Dee Frost's death, the State must establish that Dee Frost's would not have died but for the defendant's conduct.

"Recklessly" means that the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that Dee Frost's death would result from [his/her] conduct. The State must demonstrate that the risk was of such a nature and degree that the defendant's disregard of it was a gross deviation from the standard of conduct that a reasonable person would observe under the same circumstances.

"Cruel" describes the malicious infliction of physical suffering upon a human being. "Depraved" describes an indifference for human life. "Wicked" describes a lack of conscience or morality.

If, after considering all the evidence, you find that the State has established beyond a reasonable doubt that the defendant acted in such a manner as to satisfy all of the elements that I have just stated, on or about the date and at the place stated in the indictment, you should find the defendant guilty of Murder in the Second Degree. If you find that the State has *not* proved every element of the offense beyond a reasonable doubt, then you must find the defendant not guilty of Murder in the Second Degree.

GENERAL INSTRUCTIONS

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

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

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

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

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

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

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 Competition 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 of the Delaware Law Related Education Center (hereinafter "Mock Trial 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 Mock Trial Committee possesses discretion to impose sanctions, including but not limited to disqualification, immediate eviction from the Championship, and forfeiture of all fees and awards (if applicable) for any misconduct occurring while a team is present for the Championship, for rule violations, and for 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 Mock Trial 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.

The Mock Trial Committee may, but does not have to, declare a forfeiture. If a forfeiture is declared, the 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.

Rule 1.4. Student Timekeepers

(a) Each team is responsible for providing one student as an official timekeeper equipped with two stopwatches. In trial, each team is to use a set of "Time Remaining" cards with the following designations to signal time: 20:00, 15:00, 10:00, 5:00, 4:00, 3:00, 2:00, 1:00, 0:40, 0:20, and "STOP". Modification of intervals is not permitted. The mock trial committee will

provide "Time Remaining" cards and timekeeper instruction materials. Timekeepers must use the "Time Remaining" cards provided by the Host Committee and NO others.

(b) Each team's official timekeeper is required to attend the scheduled on-site timekeeper orientation if one is scheduled If a team does not send an official timekeeper to the required orientation meeting, that team will defer to its opponents' official timekeepers in all rounds of the competition.

(c) If a team desires to assign more than one student to the timekeeper role, then all students who will be assigned to the timekeeper role must attend the timekeeper orientation if one is scheduled. The team's official student timekeeper will keep time for both sides during all competition rounds.

B. THE PROBLEM

Rule 2.1. The Problem

The problem will be a 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 the same institution can compete if there otherwise would be an odd number of teams competing. The B team will be picked by random draw.

Rule 3.2. Team Composition

Teams consist of at least 6 and up to 14 official members assigned to attorney, witness and timekeeper roles representing the prosecution/plaintiff and defense/defendant sides. **Six** of the official members will participate in any given round as attorneys and witnesses. (See Rule 3.3 for further explanation referring to team participation.) Additionally, a person will be designated as an official timekeeper. The official timekeeper may be (but need not be) one of the 12 official team members. The official timekeeper must be a student. The team's official student timekeeper will keep time for both sides during all competition rounds. At no time may any team for any reason substitute other persons for official team members. The Team Roster will become official at the time of **on site** registration. A team can change its lineup before any round of the competition so long as the participants come from the official roster.

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. An attorney may not do the opening and the closing in the same trial.

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. Teams shall not knowingly disclose their place of origin to any member of the judging panel or to the presiding judge.

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 will 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 above oath will be conducted by (a) the presiding judge or (b) a bailiff. The oath of all six witnesses will occur simultaneously at the beginning of each mock trial.

Rule 4.5. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)

2. Direct and Redirect (optional) Examination. (25 minutes per side)

3. Cross and Re-cross (optional) Examination. (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

(a) Each team is required to provide one student who will serve as the official timekeeper for that team. This timekeeper must meet the requirements of Rule 1.4. Timekeepers are responsible for fairly and accurately keeping and reporting the time during the trial presentation and during any disputes under Rule 6.2. Timekeepers are not to communicate with their respective teams during the course of the trial presentation, recesses, or during any dispute procedure, except to display the time remaining cards and indicate (as directed by the presiding judge) how much time is remaining during a particular part of the trial.

(b) Time limits are mandatory and will be enforced. Time runs from the beginning of the witness examination, opening statement, or closing argument until its conclusion. Introduction of counsel or witnesses prior to the opening statement shall not be included in the time allotted for opening statements. However, if counsel or witnesses are introduced once the opening statement has commenced, such time shall be included in the time allotted for the opening statement. Time stops only for objections, questioning from the judge, or administering the oath. Time does not stop for introduction of exhibits.

(c) Timekeepers should display the applicable "Time Remaining" cards simultaneously. At the end of each task during the trial presentation (i.e. at the end of each opening, at the end each witness examination, at the end of each cross examination and at the end of each closing argument) if there is more than a 15 second discrepancy between the teams' timekeepers, the timekeepers must notify the presiding judge of the discrepancy. The presiding judge will then rule on the discrepancy, the timekeepers will synchronize their stopwatches accordingly and the

trial will continue. Any discrepancies between timekeepers less than 15 seconds will not be considered. No time disputes will be entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of time disputes are final.

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, including over-runs allowed by the presiding judge.

Rule 4.8. Motions Prohibited and Recesses

A motion for a recess may be used only in the event of an emergency, *i.e.*, health emergency. To the greatest extent possible, team members are to remain in place. Should a recess be called, teams are not to communicate with any observers, coaches, or instructors regarding the trial.

A short recess of 2 minutes at the close of all of the evidence but before closings will be granted. Team members should remain in place and there should be no communication outside the bar.

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. Costuming is defined as hairstyles, clothing, accessories, and make-up which are case-specific.

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

Prior to the final round, team members, alternates, attorney/coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except for those authorized by the Mock Trial Committee, are not allowed to view other teams' performances in the competition, so long as their team remains in the competition. No person shall display anything that identifies their place of origin while in the court room.

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.

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 Statement

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 opening statement/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. “Your honor, may I approach the witness with what has been marked as Exhibit No.__?”

3. Show the exhibit to opposing counsel.

4. Ask the witness a series of questions that are offered for proof of the admissibility of the exhibit. These questions lay the foundation or predicate for admissibility, including questions of the relevance and materiality of the exhibit.

5. Offer the exhibit into evidence. “Your Honor we offer Exhibit No.___ into evidence.”

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

8. Court: “Exhibit No. ___ (is/is not) admitted. If admitted, questions on content may be asked.

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. Team members involved in that trial 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 Mock Trial Committee, with the same format used throughout the competition, as follows:

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

2. One presiding judge and two scoring judges (scoring judges only complete score sheets);

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);

4. 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. At the discretion of the mock trial committee, the rounds may have a larger panel. All presiding and scoring judges receive the mock trial manual, a memorandum outlining the case, orientation materials, and a briefing.

In the event of an emergency (i.e., sudden illness, etc.), if a judging panel member must leave the courtroom, the presiding judge will call for a brief recess, assess whether the judging panel member will be able to return in a reasonably short period of time, and then resume the proceedings upon the panel member's return to the courtroom. If the panel member is unable to return to the courtroom, the dispute resolution committee must be informed. Once the panel composition is adjusted by this committee to best meet the requirements of the rules and the

round should continue. During any recess under this rule, the teams, whenever possible, should remain seated in their appropriate positions within the courtroom until the round resumes.

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 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. If there is a team presentation score on the ballot a number between 1 and 10 needs to be placed in this box. At the end of the trial, each scoring judge shall total the sum of each team's individual points, place this sum I in the **Total Points** box, and enter the team ("P" for prosecution/plaintiff of "D" for defense/defendant) with the higher total number of points in the tie-breaker box. NO TIE IS ALLOWED IN THE **TOTAL POINTS** BOXES.

In the event of a mathematical error in tabulation by the scoring judges which, when corrected, results in a tie in the **Total Points** boxes, the tie-breaker box shall determine award of the ballot.

Rule 5.5. Team Advancement

In all Preliminary Rounds:

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.

In all non-preliminary rounds the team that wins the majority of the ballots advances to the next round.

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 other rounds. The two teams emerging with the strongest record from the four rounds will advance to the final round. The championship round winner will be determined by ballots from the championship round only.

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 top of that bracket will be matched with the top team from the next lower bracket;

5. Teams will not meet the same opponent twice prior to the fourth round;

6. An A and B team from the same institution will not meet prior to the final round. Whenever possible when a team meets both the A and B team from the same institution the alignment of the second trial will be set up so the team plays the opposite side in the second trial.

7. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. The Mock Trial Committee has the right to reseat teams within a bracket 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 alphabetically (deleted) 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. Odd Number of Teams Participating in Championship

In the event of a circumstance resulting in an odd number of competing teams, the following procedure will apply:

a. The team drawing the "bye" (no opponent for a single trial round) in the preliminary rounds will, by default, receive a win and three ballots for that round. For the purpose of power-matching, the team will temporarily be given points equal to the average of its own points earned

in its preceding trials. At the end of the preliminary rounds, the average from all three actual trial rounds participated in by the team will be used for the final points given for that team's bye round.

For example, a team receiving a bye in round three would receive three ballots and an average of its points earned in rounds one and two. At the end of the fourth round, however, the points actually awarded to the team for the bye round will be adjusted to take into consideration the fourth round performance of the team.

b. A team receiving a bye in round one will be awarded a win, three ballots and the average number of points for all round one winners, which total will be adjusted at the end of each round to reflect the actual average earned by that team.

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

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 Mock Trial 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 Mock Trial Committee.

DELAWARE HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP RULES OF EVIDENCE

(Mock Trial Version)

(AMENDED 6/1/2009)

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DELAWARE HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP
RULES OF EVIDENCE
(Mock Trial Version)

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 judge will probably allow the evidence. 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 by these Rules. Evidence which is not relevant is not admissible.

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

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

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

(a) **Character evidence generally**. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) **Character of accused.** In a criminal case, evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404 (a)(2), evidence of the same trait of character of the accused offered by the prosecution;

(2) **Character of alleged victim**. In a criminal case, and subject to the limitations imposed by Rule 412, evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first 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 the character of a person in order to show action in conformity therewith. 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, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

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 eyewitnesses, is relevant to prove that the conduct of the person or organization, on a particular occasion, was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures

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

Rule 408. Compromise and Offers to Compromise

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

(1) furnishing or offering or promising to furnish--or accepting or offering or promising to accept--a valuable consideration in compromising or attempting to compromise the claim; and

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

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

Rule 409. Payment of Medical or Similar Expenses

Evidence of furnishing 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 proceeding regarding either of the foregoing pleas; or
(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which does not result in a plea of guilty or which results in a plea of guilty which is later withdrawn.

However, such a statement is admissible (1) 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 (2) 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 evidence is introduced sufficient to support a finding that 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' character for truthfulness, 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 inquired into 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.

The giving of 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 when examined with respect to matters that relate only to character for truthfulness.

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) **General rule.** For the purpose of attacking the character for truthfulness of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.

(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, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances 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 under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime that was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) **Juvenile adjudication.** Evidence of juvenile adjudication 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 interrogation and presentation effective for ascertaining the truth,
2. avoid needless consumption of time, and
3. protect witnesses from harassment or undue embarrassment.

(b) **Scope of cross examination**. *The scope of the 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 should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

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

Rule 612. Writing Used to Refresh Memory

If a written statement is used to refresh the memory of a witness either while testifying 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 portion which relate to the testimony of the witness.

Rule 613. Prior Statements of Witnesses

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

(b) **Extrinsic Evidence of Prior Inconsistent Statement of Witness**. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

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, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

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 thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on Ultimate Issue

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

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 first testifying to the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination.

ARTICLE VIII. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

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

(b) **Declarant**. A “declarant” is a person who makes a statement.

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

(d) **Statements 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 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 coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

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 purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to 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. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(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 date 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.

(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. If admitted, the statements may be read into evidence but may not be received as exhibits.

(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 final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

Rule 804. Hearsay Exceptions, Declarant Unavailable

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

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

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

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

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

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

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

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

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death 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 likely to have accurate information concerning the matter declared.

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

Rule 805. Hearsay within Hearsay

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

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION – Not Applicable

ARTICLE X. CONTENTS OF WRITING, RECORDINGS AND PHOTOGRAPHS – Not Applicable

ARTICLE XI. OTHER

Rule 1103. Title

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

DELAWARE
MOCK TRIAL
CHAMPIONSHIP

TEAM DISPUTE FORM
Inside the Bar [Rule 6.1]
(please print.)

Date: _____

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

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

Grounds for Dispute:_____

_____

_____

INITIALS OF TEAM SPOKESPERSON:_____

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

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

_____

_____

INITIALS OF OPPOSING TEAM'S SPOKESPERSON:_____

Judge's Notes from Hearing:

_____

_____

DECISION OF JUDGE REGARDING DISPUTE *(circle one):* **Refer to Panel** **Not Refer to Panel**

Comments:_____

_____

This form must be returned to the trial coordinator along with the scoresheets of all the evaluators.

_____
Signature of Presiding Judge

DELAWARE MOCK TRIAL CHAMPIONSHIP

TEAM DISPUTE FORM
Outside the Bar [Rule 6.4]
(Please print.)

Date:_____ Time Submitted:_____

PERSON LODGING DISPUTE:_____

AFFILIATED WITH:_____ *(Enter Team Code)*

Grounds for Dispute:_____

_____

_____

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

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

Reason(s) for Denying Hearing:_____

_____

_____

Notes from Hearing:_____

_____

Decision/Action of Dispute Panel:_____

_____

_____ _____

Signature of Trial Coordinator *Date/time of Decision*

Code of Ethical Conduct

The following Code of Conduct is to be read and signed by all team participants, faculty coaches and attorney advisors. The signed copies are to be presented to the Executive Director of the Delaware Law Related Education Center, along with the team roster prior to the beginning of the Competition.

The purpose of the Delaware High School Mock Trial Competition is to stimulate and encourage a deeper understanding and appreciation of the legal system. The purpose is accomplished by providing students the opportunity to participate actively in the learning process. The education of students is the primary goal of the Mock Trial program, and healthy competition helps to achieve this goal. Other important objectives include: improving proficiency in speaking, listening, reading, and reasoning skill; promoting effective communication and cooperation between the educational and legal communities; providing an opportunity to compete in an academic setting; and promoting cooperation among young people of diverse interests and abilities.

As a means of diligent application of the Delaware Mock Trial Competition Rules, the Delaware Law Related Education Center encourages all participants to follow the Code of Ethical Conduct:

1. Team members promise to compete with the highest standards of deportment, showing respect for their fellow team members, opponents, judges, evaluators, Attorney coaches, teacher coaches and Mock Trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know to be wrong or in violation of the Rules, including the Invention of Facts. Members will not willfully violate the Rules of the competition in spirit or practice.

2. 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.

3. Teacher coaches agree to focus attention on the educational value of the Mock Trial Tournament. They shall discourage the willful violation of the Rules. Teachers will instruct students as to proper procedures and decorum and will assist their students in understanding and abiding by the Competition Rules and this Code of Ethical Conduct.

4. Attorney Coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition Rules and this Code of Conduct. Attorney coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.

5. Attorney coaches and other legal advisors can help the team as constructive and critical teachers by listening, suggesting and demonstrating to a team. An attorney coach or legal advisor should:

    - Discuss the legal issues raised in the case;
    - Answer questions concerning general trial procedure;
    - Explain the reasons for and the sequence of the events and the procedures found in the trial;
    - Listen to the students' approaches to the case; and
    - Discuss general strategies and raise key questions regarding the students' enactment of their roles in the trial.

6. All participants (including observers) are bound by all sections of this Code and agree to abide by its provisions. Teams are responsible for insuring that all observers are aware of the Code.

Signatures:

The Delaware High School Mock Trial Competition

Prosecution/Plaintiff Roster

_____
Team Code

Attorneys	Roles
(1)_____	_____
(2)_____	_____
(3)_____	_____

Witnesses

(1)_____	_____
(2)_____	_____
(3)_____	_____

Alternates

(1)_____

(2)_____

Note: Bring 40 copies of this form to the competition.

The Delaware High School Mock Trial Competition

Defense Roster

_____
Team Code

Attorneys	Roles
(1)_____	_____
(2)_____	_____
(3)_____	_____

Witnesses

(1)_____	_____
(2)_____	_____
(3)_____	_____

Alternates

(1)_____

(2)_____

Note: Bring 40 copies of this form to the competition.

DELAWARE HIGH SCHOOL
MOCK TRIAL COMPETITION
CRITERIA FOR SCORING A TRIAL PRESENTATION

The following criteria should be considered during the course of a team's trial presentation. Consider "5" as average. This list is designed to serve as a guideline. All points accessed in a round are subjective.

Opening Statement

□ Provided a case overview
□ The theme/theory of the case was identified
□ Mentioned the key witnesses
□ Provided a clear and concise description of their team's side of the case
□ Stated the relief requested
□ Discussed the burden of proof
□ Presentation was non argumentative
□ Points may be deducted for use of notes, at the Scoring Judge's discretion

Direct Examinations

□ Properly phrased questions
□ Used proper courtroom procedure
□ Handled objections appropriately and effectively and did not overuse objections
□ Did not ask questions that called for an unfair extrapolation from the witness
□ Demonstrated an understanding of the Rules of Evidence
□ Handled physical evidence appropriately and effectively (Rule 4.20)

Cross Examinations

□ Properly phrased questions
□ Effective questioning
□ Properly impeached witnesses
□ Handled objections appropriately and effectively
□ Did not overuse objections
□ Used various techniques, as necessary, to handle a non-responsive witness
□ Demonstrated an understanding of the Rules of Evidence
□ Handled physical evidence appropriately and effectively (Rule 4.20)

Witness Performance

□ Did not use notes (as is required)
□ Credible portrayal of character
□ Showed understanding of the facts
□ Sounded spontaneous, not memorized
□ Demonstrated appropriate courtroom decorum
□ Avoided unnecessarily long and/or non-responsive answers on cross-examination
□ Use of unfair extrapolations, for which points should be deducted

Closing Statement

□ Theme/theory continued in closing argument
□ Summarized the evidence
□ Emphasized the supporting points of their own case and damaged the opponent's case
□ Concentrated on the important, not the trivial
□ Applied the applicable law
□ Discussed burden of proof
□ Responded to judge's questions with poise
□ Overall, the closing statement was persuasive
□ There should be only a minimal reliance on notes during the closing statement
□ Points should be deducted if closing argument exceeds time limit

Tiebreaker

The team with the higher number of points shall win the ballot. We do not want ties! Place a "P" or "D" in the Tiebreaker Box on the ballot to indicate which side has the higher number of points; the team winning the majority of the ballots shall win the round.

EXPLANATION OF THE PERFORMANCE RATINGS USED ON THE SCORESHEET

Individual participants will be rated on a scale of 1 – 10 speaker points, according to their roles in the trial. The Scoring Judge is scoring **individual performance** in each speaker category. The scoring judge is NOT scoring the legal merits of the case.

Scoring Judges may recognize outstanding individual presentations by selecting one OUTSTANDING ADVOCATE and one OUTSTANDING WITNESS per round. Each Scoring Judge determines individually which student will receive his/her vote; however, the entire judging panel may confer on this matter.

Scoring Judges may individually consider penalties for violation of the Rules of the Competition. Penalties would reduce point awards in the appropriate performance categories below. Penalties will not be indicated separately on the score sheet.

POINTS	**PERFORMANCE**	**CRITERIA FOR EVALUATING STUDENT PERFORMANCE**
1 – 2	Not Effective	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, and ineffective in communication
3 – 4	Fair	Minimally informed and prepared. Performance is passable, but lacks depth in terms of knowledge of task and materials; communications lack clarity and conviction
5 – 6	Good	Good, solid, but less than spectacular performance; can perform outside of written notes, but with less confidence than when using written notes; logic and organization are adequate, but does not convey mastery of same; communications are clear and understandable, but could be stronger in fluency and persuasiveness
7 – 8	Excellent	Fluent, persuasive, clear and understandable; well organized materials and thoughts; exhibits mastery of the case and materials; thinks quickly and spontaneously; does not read from notes
9-10	Outstanding	Exceptional presentation; flawless; superior in qualities listed for performance meriting 7-8 points

The team with the higher number of points shall win the ballot (and shall be entered in the Tiebreaker Box on the ballot); the team winning the majority of the ballots shall win the round.

Scoring Judges are reminded to tally all scores, check totals closely, and sign the score sheet before returning the score sheet to the appropriate committee member.

2008 NATIONAL HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP
SCORE SHEET

P = Prosecution/Plaintiff: _____ (Team Code) D = Defense: _____ (Team Code)

DATE: _____ ROUND: (CIRCLE ONE) 1 2 3 4 Final

Using a scale of 1 to 10, rate the P and D in the categories below.
DO NOT use fractional points nor award zero points. NO TIES ALLOWED in TOTAL POINTS.

Not Effective	Fair	Good	Excellent	Outstanding
1-2	3-4	5-6	7-8	9-10

SCORESHEET/BALLOT		P		D
OPENING STATEMENT				
Prosecution/Plaintiff First Witness:	Direct Examination			
			Cross-Examination	
	Witness Presentation			
Prosecution/Plaintiff Second Witness:	Direct Examination			
			Cross-Examination	
	Witness Presentation			
Prosecution/Plaintiff Third Witness:	Direct Examination			
			Cross-Examination	
	Witness Presentation			
Defense/Defendant First Witness:			Direct Examination	
	Cross-Examination			
			Witness Presentation	
Defense/Defendant Second Witness:			Direct Examination	
	Cross-Examination			
			Witness Presentation	
Defense/Defendant Third Witness:			Direct Examination	
	Cross-Examination			
			Witness Presentation	
CLOSING ARGUMENT				
TOTAL SCORE: Add scores in each column.				

Please deliver ballot to runner before debriefing.

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

TIEBREAKER, if needed:
Plaintiff (P) or Defendant (D)

Judge's Signature