high school
MOCK TRIAL
Minnesota State Bar Association

2010-2011
CASE MATERIALS & COMPETITION RULES

State of Minnesota vs. Robin Caldwell

We are pleased to bring you these original case materials, written by The Honorable Peter Cahill and Ms. Trina Alvero Iijima, in celebration of the 25th Anniversary of the MSBA High School Mock Trial Program

The Mock Trial Program extends its gratitude for the generous support and assistance of:

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Special thanks to the Mock Trial Advisory Committee!

Committee members: The Honorable Peter Cahill, Chair, Plymouth; The Honorable Jim Dehn, Cambridge; Trina Alvero, Minneapolis; Madge Thorsen, Golden Valley; Andrew Steil, St. Cloud; Amanda Sieling, Cottonwood; Tracy Harris, Elk River; Tara Ferguson Lopez, St. Cloud; Mark Griffin, White Bear Lake; Dyan Ebert, St. Cloud; Kristin Olson, St. Paul.

To: **MSBA Mock Trial Program Participants**

From: **The Honorable Peter Cahill, Chair, MSBA Mock Trial Advisory Committee**
Emily R. Reilly, Mock Trial Manager

Re: **2010-2011 Mock Trial Program**

Date: **September 27, 2010**

On behalf of the Minnesota State Bar Association and the Mock Trial Advisory Committee, welcome to the 25th season of the MSBA High School Mock Trial Program! We are proud to present to you these original case materials and look forward to seeing the arguments you develop.

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

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

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

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

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

The mock trial website, located at http://www2.mnbar.org/mocktrial/, will be your source for information regarding the case and the tournament throughout the next several months. You will find timekeeper's sheets, score sheets, case clarifications and other resources to help you prepare your case.

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

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Section 1: MSBA Mock Trial Outstanding Professionalism Performance Award

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

2010 Mock Trial Outstanding Professionalism Performance Award Recipients:

Individual: Elizabeth Klein, Rockford HS
Team: Park Center High School, Brooklyn Park

We congratulate those recipients and challenge all 2011 participants to follow their example in conducting themselves as professionals and examples for all in the legal profession. Nomination forms are available on the Mock Trial website. In addition, all judges will be provided with forms during the competition. Nominations will be reviewed by the Professionalism Committee. Selection will be based on civility, courtesy, honesty, integrity and trustworthiness demonstrated during the 2010-2011 Mock Trial Competition. The Professionalism Aspirations and Attorney Core Value messages are resources to review to become familiar with these expectations.

The MSBA Professionalism Committee looks forward to presenting the 2011 Mock Trial Outstanding Professionalism Performance Award at the 2011 State Tournament in Duluth on March 9h, 2011.

Respect & Fairness

A message from the MSBA Student & Professionalism Committees

This is the second in a series of five messages regarding the core values in the legal profession that cover: 1) Respect & Fairness; 2) Service; 3) Honesty, Integrity, and Trustworthiness; 4) Competent, Prompt, and Diligent Representation; and 5) Quality of Justice. This piece addresses Respect & Fairness.

The cliché is true: we are guardians of our profession. The legal profession is one of the remaining self-regulating professions. It is an awesome responsibility and we must fiercely protect its integrity. Take the time now, while you are in a learning environment, to practice respect and fairness.

Core Value: Respect & Fairness

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

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

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

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

Examples In Action

In a settlement conference, an Attorney cursed at opposing party and then refused to respond to her complaint. After an investigation the court stated: "Lawyers must be encouraged to represent their clients vigorously and we are hesitant in any way to interfere . . .; yet there is a line that should not be crossed and respondent has crossed it." Attorney's comment served no legitimate purpose and was made only to burden or embarrass the other person. - *In re Getty*, 401 N.W.2d 688, 671 (Minn. 1987), www.courts.state.mn.us/lprb/fc051799.html

What does this mean for me?

Practicing core values forms solid skills:

- **Respect** does not necessarily mean agreement. It means independent regard of another's perspectives, ideas, and contributions. Disagree without being disagreeable.
- **Fairness** includes sharing resources in school and the community. We all use the same materials so be considerate of others.
- **Listening.** You can not win an argument without first listening to and understanding your opponents, your colleagues and your future clients.
- **Promote and celebrate diversity.** Determine what diversity means to you. Familiarize yourself with different cultures, religious beliefs, and ideologies through clubs and organizations.
- **Spirited Debate.** Classroom debate should be spirited and zealous while remaining fair and respectful.
- **Professionalism and ethics.** Good lawyers are ethical, disciplined, and value their reputation. Your reputation never leaves you.
- **Civility.** The law community is surprisingly small. Act civilly in all your dealings. Your colleague may become your boss or a judge.
- **Anger.** Reflect before you act. For example, don't send a hostile e-mail in anger only to regret it later.

MSBA

Public Service

A message from the MSBA Professionalism Committee

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

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

Core Value: Pro Bono Service

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

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

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

Examples In Action

Some simple ways to serve others include volunteering in a local soup kitchen, reading books to children, volunteering with a restorative justice program, and volunteering with the Minnesota Justice Foundation (MJF).

"How wonderful it is that nobody need wait a single moment before starting to improve the world."

Anne Frank

What does this mean for me?

Maintaining the value to serve others means that you:

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

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

Honesty, Integrity, & Trustworthiness

A message from the MSBA Professionalism Committee

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

Attorneys are officers of the court appointed to assist the court in the administration of justice. Property, liberty, and sometimes the lives of our clients are committed into our hands. This commitment demands a high degree of intelligence, knowledge of the law, respect for its function in society, sound and faithful judgment and, above all else, integrity of character in conduct.

Core Values: Honesty, Integrity, & Trustworthiness

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

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

"Prefer a loss to a dishonest gain; the one brings pain at the moment, the other for all time." *Chilon*

What does this mean for me?

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

I. Resources

For additional resources on honesty, integrity, and trustworthiness in the legal profession, refer to:

- Association of Professional Responsibility Lawyers, http://www.aprl.net
- Legalethics.com, http://www.legalethics.com
- ABA Center for Professional Responsibility, http://www.abanet.org/cpr/home.html
- The Trusted Advisor by David H. Maister, Charles H. Green, Robert M. Galford

Competent, Prompt, and Diligent Representation

A message from the MSBA Professionalism Committee

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

People will rely on you to have the judgment and expertise to serve their legal needs. As a professional you are expected to know the law, the legal process, and how to interact with your clients.

Core Value: Competence, Promptness and Diligence

The **Minnesota Rules of Professional Conduct** state in part that:

Rule 1.1 Competence

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

Rule 1.3 Diligence [and Promptness]

> A lawyer shall act with reasonable diligence and promptness in representing a client.

Resources

Minnesota State Bar Association
612-333-1183
www.mnbar.org

Minnesota Continuing Legal Education
612-227-8266
www.minncle.org

Hennepin County Bar Association
612-752-6601
www.hcba.org

Ramsey County Bar Association
651-222-0846
www.ramseybar.org

MSBA

What does this mean for me?

Maintaining these values means that you:

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

Quality of Justice

A message from the MSBA Professionalism Committee

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

Core Value: Responsibility for the Quality of Justice

The first sentence of the Preamble to the **Minnesota Rules of Professional Conduct** states that: "[a] lawyer is a representative of clients, an officer of the legal system and a public citizen *having special responsibility for the quality of justice.*"

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

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

What does this mean for me?

Maintaining this value means that you:

- **Actively participate in the legal community.** Seek out ways to improve the law and the legal system by joining and participating in Bar activities and events. Offer your expertise and contribute the skills you are learning to improve justice issues in your community. Find ways to get involved.
- **Consider the public policy when evaluating case decisions.** Public policy arguments are often an expression of the need for justice to be done. These are ways in which lawyers help steer the law in the direction it should go.
- **Understand the legal process.** The public's faith in the justice of the legal process depends upon having a voice in the process.
- **Treat others with fairness and respect**. Recognize that we all contribute differently to a common goal. Make your goal the improvement of the common good.

Examples In Action

A *non-lawyer* by the name of Clarence Earl Gideon working pro se petitioned the Supreme Court to ensure that a person charged with a crime, for which his freedom could be taken away, was entitled to the assistance of an attorney. Today, law students across the United States assist inmates on death row with appeals through organizations such as the Innocence Project. Law Students participating in national and local bar associations are partnering to improve the law and strengthen legal education. This series of letters on professionalism was developed for you by law students.

Case Summary

This case is an adaptation of State of Minnesota v. Roger Sipe Caldwell, 1977. *Will to Murder: The True Story Behind the Crimes & Trial Surrounding the Glensheen Killings* (Gail Feichtinger, John DeSanto & Gary Waller) was used by the authors as reference material. We extend our gratitude to them for granting permission. Names and facts have been changed to make the problem more suitable for high school mock trial. We dedicate this case to the memory of Elisabeth Mannering Congdon & Velma Pietila.

State of Minnesota v. Robin Caldwell

On June 27, 1977, Elisabeth Congdon was brutally murdered by suffocation in her home, Glensheen, located at 3300 London Road, Duluth. Duluth Police allege that Congdon's murderer broke into Glensheen sometime between 12:30 AM and 4:00 AM, attempted to murder Nurse Shelby Martinez by bludgeoning Martinez with a brass candlestick and murdered Elisabeth Congdon by smothering her with a satin pillow.

When officers arrived, they found Nurse Shelby Martinez lying unconscious on a window seat on the stairs leading to the second floor of the residence. Police found Elisabeth Congdon in her bed on the second floor. The medical examiner declared Congdon dead and cited suffocation by a satin pillow found in Congdon's bed as the cause. Martinez was transported to St Luke's hospital in Duluth where s/he awoke from a coma a couple of days later. Martinez states that s/he may have fallen asleep in the nurse's room located across the hall from Ms. Congdon's room on the second floor.

Quinn Justice Waller, detective for Duluth Police, led the murder investigation. After interviewing various staff and family members of Ms. Congdon, Duluth Police concluded that Robin Caldwell and his/her spouse had severe financial trouble. No one else in the extended family had such motive to murder Elisabeth Congdon. While searching the defendant's hotel room, police found a letter written by Mar Caldwell, the defendant's spouse. Caldwell was to receive $2.5 million which s/he would receive upon victim's death. The letter was dated June 24, 1977, three days before the victim's murder. Caldwell does not have a verified alibi for the time of the murder which the Medical Examiner states took place between 12:30 AM and 4:00 AM the early morning of June 27, 1977.

The state has charged Caldwell with (1) First Degree Murder (Pre-Meditated), (2) Second Degree Murder (intentional killing in the course of a felony, to wit: burglary in the first degree), and (3) First Degree Burglary.

The prosecution witnesses are: (1) Quinn Justice Waller, Duluth Detective, Lead Investigation; (2) Chris Sorum, Special Agent and Forensic Scientist at the Minnesota Bureau of Criminal Apprehension; (3) Nurse Shelby Martinez, Long-time former employee of Elisabeth Congdon. Defense witnesses are: (1) Robin Caldwell, defendant; (2) Casey Jackson, Duluth Native; (3) Bobby/Bobbie Baxter, Founder and CEO of Consultants in Scene Investigation (CSI).

IN THE SUPERIOR COURT OF THE STATE OF MINNESOTA
IN AND FOR THE COUNTY OF ST. LOUIS
THE HONORABLE JOHN LITMAN PRESIDING JUDGE

STATE OF MINNESOTA
v.

Robin Caldwell

Case No. 10-533-1977

Date Filed: July 8, 1977

Violations: (1) First Degree Murder (Pre-Meditated) §609.19, (2) Second Degree Murder (intentional killing in the course of a felony, to wit: burglary in the first degree) §609.195, and (3) First Degree Burglary §609.58.

INDICTMENT

COUNT ONE
MURDER, FIRST DEGREE PRE-MEDITATED

THE GRAND JURY CHARGES THAT:

At all times relevant this indictment unless otherwise stated:

1. Defendant ROBIN CALDWELL, was a citizen of the United States who resided in Golden, Colorado, District of Colorado, on or about June 27, 1977.
2. On or about June 27, 1977 Defendant traveled to Duluth, Minnesota.
3. On or about June 27, 1977 Defendant committed pre-meditated First Degree Murder and caused the death of Elisabeth Congdon by suffocating the victim with a satin pillow.

COUNT TWO
MURDER, SECOND DEGREE (INTENTIONAL KILLING IN THE COURSE OF A FELONY, BURGLARY IN THE FIRST DEGREE)

1. Defendant ROBIN CALDWELL, was a citizen of the United States who resided in Golden, Colorado, District of Colorado, on or about June 27, 1977.
2. On or about June 27, 1977 Defendant traveled to Duluth, Minnesota.
3. On or about June 27, 1977 Defendant committed Second Degree Murder in the course of a felony burglary and caused the death of Elisabeth Congdon by suffocating the victim with a satin pillow.

COUNT THREE
FIRST DEGREE BURGLARY

1. Defendant ROBIN CALDWELL, was a citizen of the United States who resided in Golden, Colorado, District of Colorado, on or about June 27, 1977.
2. On or about June 27, 1977 Defendant traveled to Duluth, Minnesota.
3. On or about June 27, 1977 Defendant committed First Degree Burglary at 3300 London Road, Duluth, Minnesota by forced entry into the residence without permission and assaulted a person therein.

A TRUE BILL:

_____

GRAND JURY FOREPERSON

_____
JOHN DESANTO
ST LOUIS COUNTY ATTORNEY

IN THE SUPERIOR COURT OF THE STATE OF MINNESOTA
IN AND FOR THE COUNTY OF ST. LOUIS
THE HONORABLE JOHN LITMAN PRESIDING JUDGE

IN CHAMBERS ( )

IN OPEN COURT (X)
JANICE SMITH, CLERK
By: B. Butler, Deputy

STATE OF MINNESOTA
v.
ROBIN CALDWELL

DATE: February 23, 1978
TIME: 9:30 A.M.

NO. S-0300-CR2007-09572

FINAL PRETRIAL MANAGEMENT CONFERENCE

This is the date and time set for the Final Pretrial Management Conference.

Court Reporter Sarah Williams is present.

APPEARANCES

State's Attorney: John DeSanto

Defendant's Attorney: Cornelius Thomson

Defendant: Present

PRETRIAL ORDER

The Court confers with counsel regarding pretrial issues.

IT IS ORDERED as follows:

1. The State will call the following witnesses:

   Quinn Justice Waller

   Chris Sorum

   Shelby Martinez

2. The Defendant will call the following witnesses:

Robin Caldwell

Casey Jackson

Bobby/Bobbie Baxter

3. The exhibits that may be used at trial are premarked as follows:

Exhibit 1	Curriculum Vitae of Chris Sorum
Exhibit 2	Curriculum Vitae of Bobbie/Bobby Baxter
Exhibit 3	Photograph of Satin Pillow
Exhibit 4	Photograph of Brass Candlestick
Exhibit 5	Appraisal of Byzantine Coin
Exhibit 6	Autopsy report of Elizabeth Congdon
Exhibit 7	Diagram of Congdon Mansion Floor Plan
Exhibit 8	Fingerprints
Exhibit 9	Baggage Claim Ticket

4. Authenticity (but not foundation) is stipulated for all exhibits.

5. All parties stipulate that the postmark on the envelope found that contained the Byzantine Coin is authentic.

6. All parties stipulate that Exhibit 6 is a fair and accurate representation of the autopsy report. The report's accuracy has not been stipulated to.

7. All witness affidavits are presumed to have been signed before trial. Each witness has reviewed his/her affidavit for accuracy, and no changes were made. Each exhibit or affidavit that bears a signature block is presumed to have been signed on the date indicated on the exhibit or affidavit.

8. The attached jury instructions are approved.

9. All objections to the sufficiency of, or any defects in, the Indictment have been waived and/or overruled.

10. The Defendant voluntarily has decided to testify at trial, and as such, has waived all rights against self-incrimination. No such objections will be entertained at trial.

11. The Defendant voluntarily gave his/her statement after being properly advised of his/her Miranda rights, and as such, has waived his/her Miranda rights. No such objections will be entertained at trial.

12.The Defendant is being tried for the three counts as laid out in the indictment. Any arguments regarding the injuries sustained by Shelby Martinez will not be entertained at trial.

13. All parties are limited to the facts presented in these materials; outside sources may be consulted for educational purposes, but may not be referenced at trial in any way.

NOTICE TO DEFENDANT:

Failure to comply with the above orders may result in revocation of the defendant's release from custody and/or the imposition of other sanctions.

The defendant may be tried in his/her absence if he/she fails to appear for trial.

IT IS FURTHER ORDERED all prior bond and custody orders remain in effect.

Affidavit of Quinn Justice Waller

I am Duluth Police Sergeant Quinn Waller and I'm the lead detective in the Congdon murder. I grew up right here in Duluth, in Piedmont Heights. My father was on the police force for twenty-five years. My family just generally has been in law enforcement; my brother, aunt, and a cousin were police officers as well. You could say that we Wallers take justice seriously. I say with complete seriousness that Justice is my middle name.

I attended the University of Duluth and graduated with a degree in sociology, with a focus on criminology. It was the 1960s, though, so I did my civic duty and signed up for the National Guard in 1964. I expected to serve in Vietnam, and planned to serve my country to the best of my abilities, but I was never called. I will always mourn those who lost their lives when I should have been there to lay down mine for the cause.

The Duluth Police Department hired me in 1966, and I was a street cop for three years. I then became a crime scene technician and by the time of the murders, I was a detective sergeant specializing in criminal investigation. I knew I'd lost my chance to serve in the war, so policing became my life. That's how I could give back. Duluth's been an incredible force in shaping my character. This city is the capital of the Iron Range and though it's not as big as the Twin Cities, it's got a bigger heart. I feel a debt to this community and its people, and throwing my life into protecting its good citizens is the least I could do. Some people might say I'm a little overzealous in carrying out my duties, but I can't imagine anything more worthy than committing to community service. We should all keep careful stewardship of our hometowns. Without community, we have nothing.

That's why Elisabeth Congdon's murder just rocks me to the core. The Congdons have done so much for Duluth. You really can't understand it unless you've lived here all your life like I have. Not only have they given so generously to support the city, they represent the rich heritage of Duluth that we all cherish so dearly. Families like the Congdon family are the very fabric of the citizenry I'm sworn to defend.

Most of my work involves dealing with burglaries – teenagers, mostly. I've led investigations on dozens of violent deaths, but I had only investigated one possible homicide prior to Elisabeth Congdon's. That turned out to be an accidental shooting by an inexperienced deer hunter. Even still, I am confident that my training with the Investigative Bureau was more than sufficient for this investigation. I have studied forensics intensively and I am quite strict about following proper protocol. As soon as I heard who this crime involved, I paid scrupulous attention to detail.

I received the phone call just after 7:30 am on the morning of June 27. At first, I thought Sergeant Yamura was joking. A murder and a critical injury at the Congdon estate? There were thoughts at the time that it might have been a double murder – we weren't sure if Nurse Martinez was going to make it. It seemed unbelievable. One of our officers made it to the scene a half-hour before. The staff was still in a dazed confusion. The gardener outside wasn't even aware that there was a problem.

When I walked into Glensheen at 8:00 am, reporters and spectators crowded the gates of the property. Sunlight was streaming in, but the place had a dark and quiet air. We had found the nurse, injured on the landing and called the paramedics. At the hospital I saw that Martinez was brutally beaten and facial features were nearly unrecognizable. I supervised the officers at the on-site

investigation, sketching the crime scene, cataloguing the evidence. We left a suspected attack weapon, a bloody candlestick, on the landing to be fingerprinted later. There was blood splattered on the walls of the staircase and on the ceiling, cast by the candlestick in its swing.

Ms. Congdon was found, smothered with a pillow in her bed. There was blood everywhere. On the pillow, the bedspread, her nightgown. Clearly, the blood was from Martinez. Martinez must have come in and tried to help Ms. Congdon before the killer beat her/him. I could still see the indentations in the pillow, where the killer had grasped the corner and held it against her face. There were bruises on her arm. She was already helpless, half paralyzed and barely able to even feed herself with more than one hand, but still the killer felt it necessary to violently hold the poor old woman down. The room was burglarized, but not in the haphazard, randomly-searching manner of a typical break-in. Drawers were only slightly opened. Jewelry boxes were empty, but the debris appeared staged. I believe that the intruder clearly knew which room to stage the attack in, and exactly where to find the jewelry. It was clear that not only was the murder pre-mediated, but the subsequent theft was efficiently planned.

Our canine unit quickly identified a scent trail to the basement. There was a possible entry point there, where we found a broken window in an enclosed porch. The gates of the property were unlocked – the staff only locked them during the smelting season, to keep out intruders. We inventoried Elisabeth Congdon's medication log and found no entries between 11 pm and 2:30 am, which was a period she typically would have received sedatives.

The coroner, Dr. Azreal arrived by 8:45 am. I left the body at that time to interview the staff. Ms. Clarice Dunkirk, the secretary, was first to be interviewed. I learned that she served also as Ms. Congdon's personal conservator. Dunkirk managed the daily schedules, oversaw the staff, and screened Ms. Congdon's phone calls to direct unwanted traffic elsewhere. She kept a tight ship and was quite distraught over the night's events. Azreal gave her some smelling salts at one point, because she kept fainting from the shock.

By 10 am, I received a call that Martinez's car, which had been reported as missing, was found at the Minneapolis-St. Paul airport. Based on the possibility, then, that the suspect had made his/her getaway by plane, we began checking airline schedules for early morning flights out of the Twin Cities. I knew that the Congdon family felt Caldwell was to blame, so I began checking for Colorado flights immediately. Though Caldwell claims his/her flight came into Minneapolis that morning, I found evidence to the contrary.

No one else in the family had financial problems. Caldwell was the only one. We interviewed him/her on June 28. I recall that s/he was unintelligible during that conversation, cagey and defensive. I recall that Caldwell had an injury on his/her hand and a laceration on his/her head. When I asked Caldwell about those two injuries and how s/he got them, Caldwell said that s/he guessed it must have happened while s/he was drunk a couple of nights before and wasn't sure just what happened. I did not note anything else about his/her appearance such as a limp, tattoos, etc at that interview. S/he was vague about his/her whereabouts, saying only that s/he'd been out for a drink. Frankly, it wasn't even clear that s/he meant that s/he had had that drink in Colorado. We assumed Caldwell was claiming that s/he had spent the night out on the town in Duluth. When we pressed for witnesses to this night out, that's when we learned Caldwell was claiming to have been on his/her own in Denver, and arriving in Minnesota the next day. I think it's clear that Caldwell had been in Minnesota the entire time, had missed a flight to safety in Colorado on the morning of the 27th, and made up this ludicrous story about flying to Minnesota. Caldwell has

given no good reason for another trip to Minnesota. No reason other than to kill Elisabeth Congdon and inherit a ton of money.

We searched Caldwell's hotel room and found a letter, written by Mar Caldwell, giving a significant sum of money to Caldwell upon Elisabeth Congdon's death. I don't know if the evidence can get any clearer than that. Talk about motive! It's written right there. We didn't need anything more. More than one hundred Congdon family members would inherit from Elisabeth Congdon's death, but the lion's share of that wealth would go to her closest cousin's child, Mar. And both by marriage and this letter we found, Caldwell would be rich. Caldwell's been a loser for his/her entire life. I've seen so many screw-ups like him/her in my years on the force. Homicide sounds like some kind of monstrous thing – and the brutality of this one, truly is monstrous – but planning a homicide and carrying it out is exactly the sort of mentally defective thing that someone like Caldwell would do. Caldwell's desperate, running out of options, and just found out that s/he's married to money. It's a perfectly rational crime, and that's what makes it so cold-blooded.

It's true that we didn't keep a detailed photo log in June 1977. But the investigation process was long, thorough, and closely attended. We had some difficulties with film development, but every damaged photo was immediately reshot. We have compiled a photo log since then, and that log was carefully reviewed this April. I believe our evidence is sound, and the investigation meets with standard police protocol. We did not disturb the crime scene, and left it exactly as we found it. The room to room search was meticulous. The idea that the Duluth police made any errors in maintaining the integrity of the crime scene is patently false. We collected everything, in the proper order, at the proper time, in the correct manner.

The FBI joined our investigation, as is standard procedure when there is a theft of over $50,000. We calculated the loss from the jewelry and coin collection early on, since we knew these additional resources would come in handy at the onset of the investigation. I have a long history with the folks on the force, especially the investigative units, and we know how to join forces to cover a criminal investigation. We left no stone unturned. Hundreds of pieces of evidence were collected. We absolutely searched everything Caldwell owned.

We have a letter. This letter places Robin Caldwell in Duluth on the night of the murder. We have records of purchases at the Minneapolis airport by Caldwell, evidence that not only did Caldwell go to the airport with Martinez's vehicle, but also that Caldwell intended to leave Minnesota and thereby create an alibi. Caldwell failed to do this. The homicide was successful, but the escape was not so carefully planned.

A person of Caldwell's fitness level would have had more than enough strength to inflict the injuries Martinez sustained, in my experience as a police detective. Similarly, someone of Caldwell's fitness level could easily hold down a defenseless, 83-year-old woman and suffocate her to death. It's a brutal, premeditated murder, and in my years on the police force, I have never seen anything so utterly cold. There was clearly a struggle, and clearly a sustained intent to kill.

Robin Caldwell killed Elisabeth Congdon. Caldwell's hands held that pillow in the darkness of the night, and Caldwell slowly drew the breath of life from her. She had done nothing wrong to him/her, nothing other than to open her home to him/her as a family member. She had no reason to suspect that there was any danger, not in our fair city of Duluth and certainly not in the home she had known for seventy-two years. This city will grieve its loss and remember that dark night forever.

Affadavit of Chris Sorum

My name is Chris Sorum and I am a special agent and forensic scientist at the Minnesota Bureau of Criminal Apprehension (BCA). Forensic science is the methodical gathering and scientific analysis of evidence with the purpose of presenting it in a legal setting, often in a trial or other hearing in court. Sometimes forensic scientists are referred to as "criminalists" when that person's application of scientific analysis is primarily used in the investigation of crimes scenes, most often cases where trace evidence is left. Trace evidence usually refers to small quantities of material or objects that can be left at a scene, such as hair, fiber, fingerprints or gunshot residue. Because of my job duties at the BCA, I prefer the title "criminalist."

I first became interested in forensic science at a young age when I watched shows like Perry Mason and The Defenders on television. I was always amazed that on TV, Perry Mason, the defense lawyer, always got someone other than his client to jump up in the audience and confess to the crime. Even as a young boy, I knew that wasn't real. I come from a long line of police officers and I know that the cops on the scene usually have a good instinct for who did the crime. My job now is to help law enforcement "get their man" by using science. After graduation from Duluth East High School, I attended the University of Minnesota –Duluth where I majored in biology. There are no degree programs in forensic science in Minnesota, so I took biology since that is the field of science most often used in the analysis of crime scenes. I had to work my way through school, so I wasn't exactly at the top of the class and it did take me five years, but I managed to graduate with a Bachelor of Science Degree in biology in 1968. Immediately after graduation, I was lucky enough to be hired by the BCA as a forensic scientist and I have been working there ever since. As my curriculum vitae notes, I continued on with my education and have a wide breadth of experience in the field of forensic science. The publications and seminar presentations in my curriculum vitae are primarily in blood serology and handwriting analysis, my two areas of greatest expertise. I have done some reading in the area of blood spatter analysis, but I hold no formal certifications in that area. I am also familiar with the basic concepts of tool mark analysis (comparison of specific tools to pry marks or other abnormal marks at a scene) and ballistics (the examination and comparison of bullets and firearms). Most of my time is spent in the lab, but I also process major crime scenes when local police departments request assistance.

On June 27, 1977, I was called from my office in St. Paul to help the Duluth Police Department in the collection and analysis of evidence found at the scene of a homicide. I was not surprised by the call because it was all over the news what had happened. Elisabeth Congdon, heiress to the Congdon fortune, was killed in her bed at the Congdon mansion on London Road. Anyone who grew up in Duluth knew the Congdon name because the Congdons were great philanthropists and contributed to many civic endeavors in Duluth. I was excited to return to my hometown to work on what would probably be the most famous case in Duluth history. I was also a little nervous because this would be my first homicide scene as lead forensic investigator, but I was confident that my years of experience and fifty or so scene investigations had prepared me well for the job that awaited me in my hometown. I left immediately and arrived in Duluth around noon on the 27th.

The Congdon estate, known as Glensheen, has a number of buildings on several acres along the shore of Lake Superior on the north end of the city of Duluth. I arrived at the Congdon mansion and saw a large throng of newspaper and television reporters outside the house. I was surprised that the weather was so cool (mid 60's) for June, but remembered that we were in Duluth and the breeze from the lake had a cooling effect. I went past the crime scene tape that had been strung around the house and a large portion of the grounds. Inside the mansion, I found a large number of police officers milling about, some with no apparent assignment. I guess everyone on the force wanted to be a part of Duluth's "crime of the century." My bigger concern was contamination of the crime scene because trace evidence such as hair and fiber is

easy to miss or can be left unintentionally by police officers as they work on a scene without taking proper precautions such as wearing rubber gloves. None of the officers I saw were wearing gloves or protective clothing.

After my arrival, I first spoke with Detective Waller the lead investigator on the scene, who informed me that the cousin's spouse of the victim, Robin Caldwell, was the primary suspect in the case. It appeared that poor Ms. Congdon had been suffocated with her own pillow and that her night nurse, Shelby Martinez, had been bludgeoned into unconsciousness with a brass candlestick and was still in a coma at St. Luke's Hospital in Duluth. (It is my understanding Shelby has since regained consciousness and has given a statement about that night. The doctors predict a full recovery).

After being briefed by the detective, I put on latex gloves and sterile surgical slippers and a sterile surgical head covering. I then examined the landing on the stairs between the first and second floors. From the pool of blood on the stair landing, and the candlestick lying close by, it was clear that the attack on nurse Martinez happened primarily on the landing. There was also a blood spatter pattern on the wall between the landing and the second floor to suggest that the attack began on the stairs above the landing and that there was a significant struggle. Other indications of a violent struggle included a bent and broken flashlight, flashlight batteries, hairpins, and earrings, all of which were either on the stairs above the landing or on the landing itself. Drops of blood were found on the wall between the second floor and the landing, but the majority of blood spatter was around the wall on the landing. In addition, there was a large pool of blood on the landing. Since I was told that the nurse was found in that pool of blood, I saw no need to test any of the blood in the pool or on the wall leading to the second floor. Sometimes, blood from the perpetrator can be found in such a situation because of the struggle, but I thought the probability of finding anything was very insignificant because of the large blood loss suffered by the nurse. I did, however, bag and seal the candlestick in an evidence container for later analysis. I also noticed a bloody shoeprint on the hardwood floor of the landing, but it was too blurred and incomplete to be of any value.

I then proceeded to the bedroom where Ms. Congdon had been killed. My attention was directed to the pillow on the bed. I turned it over and found a small track of blood that appeared to be wiped on the pillow case, consistent with the blood coming from the wound that was found on Miss Congdon's nose in the autopsy. That wound was a friction abrasion. I bagged and sealed the pillow case for later analysis. I also found several hairs near the head of the bed, close to where Ms. Congdon's body was found. I bagged and sealed the hairs for later analysis.

The bedroom itself was in disarray with drawers pulled out and things thrown about as if the killer had ransacked the room after the murder. I dusted the entire room for fingerprints (hard surfaces only, fingerprint dust does not adhere to fabric or other soft surfaces). I found no prints of evidentiary value. In other words, there were no fingerprints with enough detail to connect them to one person. I only found smudges and partial prints without significant points of identification. I know people think that fingerprints will always be found at a crime scene. That is simply not true. Fingerprints are found in only 20% of the cases that are investigated. Sometimes it is too cold for prints to be left (the suspect's fingers do not have sufficient oil and other secretions to leave the ridge and furrow detail that we look for). Sometimes it is too hot at the scene and prints that are deposited "melt" quickly into an undifferentiated pool. Sometimes prints are left, but smudged by the person by the movement of his or her hand. And of course, sometimes the suspect wears gloves, a common occurrence in a premeditated murder like the murder of Ms. Congdon. I did find one very clear palm print at the scene, on the sink of the bathroom next to Ms. Congdon's bedroom. From the pink rings in the bowl, I could tell the killer had washed up there before leaving. Unfortunately, my subsequent analysis of that palm print showed that it belonged to Detective Waller who apparently leaned on the sink while examining other evidence. Also in the bathroom were a number of cigarette butts left in the toilet bowl. I was about to collect them for analysis until one of

the uniformed cops told me that they all had been using the toilet bowl as their ashtray while guarding the scene.

I returned to St. Paul and inventoried the evidence I had collected. I was also informed that the nurse's car, a Ford Granada, had been found at the Minneapolis airport and was awaiting analysis. The nurse's keys and a parking ramp entry ticket stamped "Jun27, 1977 7:45 a.m." were found abandoned in the car. Samples that were taken by other BCA forensic scientists were forwarded to me with complete documentation of chain of custody. Probably the most significant piece of evidence I later received was an envelope of Radisson Hotel Duluth stationery. In unique handwriting, it was addressed to Robin Caldwell at the Holland House Hotel in Golden, Colorado and post marked "Duluth MN 558" and "PM 27 Jun 1977." This envelope was apparently intercepted by Holland House hotel staff and forwarded to law enforcement because the hotel staff was advised that Caldwell, one of their registered guests, was the primary suspect.

I began my analysis of the relevant items on July 3, 1977. I discovered that the brass candlestick contained a partial fingerprint with sufficient detail for a limited comparison. I was able to find a few points of identification (i.e., areas of unique patterns of whorls, ridge endings, ridge forks, ridge islands, etc.), but none sufficiently unique to be able to match it to anyone in particular. It did have sufficient detail to exclude Caldwell. That only means, however, that someone other than Caldwell touched the candlestick at some time before the analysis. It does not mean Caldwell did not touch the candlestick.

I also tested blood that was found on the candlestick. In analyzing blood, forensic scientists look at the general blood type (A, B, AB, or O). Recently, we have started looking at blood enzymes because for example, the PGM (Phosphoglycerate mutase)enzyme can show one of three different genotypes (which we label PGM-1, PGM-2, and PGM 2-1) in different people. That helps us exclude even more people as suspects. What most people also don't know is that 80% of the population also secretes these blood type and enzyme markers in their other bodily fluids (saliva, sweat, etc.). Robin Caldwell, however, is a "non-secretor." This means that Caldwell will show all the usual blood markers (blood type, enzymes, etc.) in blood samples, but those same markers will not show up in other bodily fluids. The analysis of the brass candlestick showed a blood type "O" and "PGM-1" enzyme, the same as Caldwell's blood. Given the match of both the blood type and the blood enzyme, it is my opinion that it is Caldwell's blood on the candlestick. Nurse Martinez and Ms. Congdon also had blood type "O" but their PGM type is unknown.

I also tested the pillow case blood. I was only able to determine the general blood type which was type "O," the same as Ms. Congdon's blood type. I conducted no other testing of the pillow case. I also tested the hairs found on Ms. Congdon's bed. Very little can be determined from hair examination except similarities in hair diameter, color and general surface appearance. Unlike fingerprints, hair samples do not have unique characteristics that will allow hairs to be matched to a specific person, but persons can be excluded by some of the characteristics. In this case, the hairs in Ms. Congdon's bed came from neither Caldwell nor Ms. Congdon. It is not known how long the hair had been there or under what circumstances it had been deposited. To form this and other opinions in this case I reviewed all of the information and evidence I had access to; however, my focus in this case is on drawing forensic conclusions.

The only significant evidence from the car was a circular spot of fresh blood found on the driver's floor mat, directly under the right edge of the steering wheel. This blood matched Robin Caldwell's blood because it was blood type "O" and blood enzyme "PGM-1." Fingerprints were found in the car only on the driver's window, but those prints matched the spouse of Shelby Martinez.

The final piece of evidence I analyzed was the Radisson hotel envelope. This was later in the investigation, probably in September. I opened the envelope and found it contained a very rare and unique

Byzantine coin matching the description of an item reported missing from the Congdon mansion. I know nothing about ancient coins, so I packaged it up and sent it back to Detective Waller. I turned my attention to the envelope. The post office had already verified the authenticity of the postmark, so my focus was first on the handwriting. I compared the handwriting on the envelope to known samples of handwriting taken from Caldwell at the police station as part of the investigation. I concluded that the writing on the envelope was Caldwell's writing. It matched the same flourishes and grandiose, sweeping upward strokes of her/his signature and exhibit similar shapes for various letters. The capital "R" in both the envelopes and the known samples of Robin Caldwell's signature are especially unique and similar. What might appear to be hesitation marks or increased pressure points of a forgery can also be explained by stress. As Professors Meshbesher and Thomson noted in their treatise, *Forgery Detection*, a person under stress and full of adrenalin will not write as they normally would. I have no doubt that Robin Caldwell addressed the Radisson Hotel envelope before it was mailed. My opinion was verified by a fingerprint I found near the flap of the envelope using a ninhydrin test. In a ninhydrin test, the chemical is sprayed on the paper and shows prints when it dries. Ninhydrin is very effective in testing paper, but it is also used with marginal results on clothing.) The print on the envelope was somewhat muddied, but I was able to find eleven points of identification, more than enough under BCA and FBI standards, to declare a match. That match was to Robin Caldwell's right thumb. I did not subject the envelope to further testing.

Affidavit of Shelby Martinez

My name is Shelby Martinez and I live in Duluth, Minnesota with my spouse. I worked as Elisabeth Congdon's nurse for seven good years. I retired from being Ms. Elisabeth's nurse in May of 1977. I became a registered nurse in 1933. I was educated at the College of St. Catherine in St. Paul, which is where I grew up. My spouse was offered a job in Duluth at the Woolworth's department store and so we moved to Duluth in 1950. Before starting to work for Ms. Elisabeth I worked at the hospital in Duluth, actually at St. Luke's where I woke up from the coma that the killer put me in. I regularly worked the day shift, starting at 7 AM and working until 3 PM. I had never worked the overnight shift before. I had so many plans for my retirement. As an avid tennis player, I looked forward to playing more often. I always enjoyed sports and actually I ran track during nursing school. It was necessary as a nurse to be fit and have the ability to lift patients from gurney to bed. After Ms. Elisabeth got ill, I did have to lift her from time to time. My time working for Ms. Elisabeth was so enjoyable and over time we developed a friendship. When head nurse Janet Kowalski called me to see if I could cover the overnight shift, I was happy to have the chance to see Ms. Elisabeth.

On June 26, 1977 I arrived at Glensheen just before 11 PM. According to the log, the afternoon nurse left at 11:05 PM. All of the staff at Glensheen, including the cooks, bookkeeper, maids and nurses kept very detailed records of what happened day in and day out. Elisabeth had various health problems and needed around the clock attention, the logs proved helpful to all of the staff. Everyone was able to easily see if Ms. Elisabeth had gotten her insulin for the day, who had visited and what type of activities she had done for each day. Most of the staff cared for Ms. Elisabeth dearly and everyone felt like family. Most of the staff got along very nicely and we had such good times. I guess if there was any one person that caused conflict it was Ms. Elisabeth's personal secretary. I like Clarice just fine, she never crossed me…however I know that others didn't feel the same way. She had many arguments with Janet Kowalski regarding the care of Ms. Elisabeth. Clarice had been appointed as Ms. Elisabeth's caretaker and she was due to inherit some of the estate upon Ms. Elisabeth's death. This caused Clarice to be over-protective of Ms. Elisabeth.

All of the staff also acted as sort of a security system for Glensheen. I remember when I first started working there; I thought it very strange that an estate of that size and a family of such wealth didn't have more of a security system in place. I guess everyone thought that all of the staff was enough to keep Ms. Elisabeth safe. Now we all know that it wasn't enough.

I'm sorry; I got a little off-track there. Since my injury the night Ms. Elisabeth died, my mind just doesn't work quite right sometimes. Focusing can be very difficult. So, that evening I arrived just before 11 PM with my dog, Wolf. After the day nurse left, Wolf and I settled into the nurse's room which was across the hall from Ms. Elisabeth's room on the second floor. The nurse's room was right by the stairs that went to the attic and next to a bathroom. I had never worked the overnight shift before, but other nurses that had worked this shift told me it was always pleasant…the only trouble was trying to stay awake all night. According to the log very little usually happened during that overnight shift. Ms. Elisabeth was usually in bed by 9:30 PM and slept through the night, but she needed to be woken shortly after 11 PM to be given her medication. The night nurse was supposed to be in the nurse's room the whole night in case Ms. Elisabeth needed something.

When Nurse Kowalski called me to see if I could work the overnight shift, she briefly went over the routine of the evening. This routine included locking the windows and doors in the house. It is

very hard for me to recall now if I did the routine exactly as Nurse Kowalski described it. I guess the log reads that I did the routine though.

After I settled into the nurse's room, I remember reading my book and having a peanut butter and jelly sandwich. I watched TV for most of the evening and I fell asleep. It was very difficult to stay awake since I never worked the overnight shift before. I guess after I fell asleep was when the killer got into the house. I remember waking up in the middle of the night to Wolf barking very ferociously. This was strange because Wolf barely ever made a noise. So, Wolf woke me up and I went out in the hallway to see what was happening. The last thing I remember is seeing some gray-shadowy figure coming toward me…I couldn't make out the person's face very well, but I remember thinking that s/he looked very familiar, you know, like I had seen them before. If I had to guess, I'd say it was Robin Caldwell. Then everything went dark. I guess that was when the killer hit me over the head with the candlestick the police found next to me. The Detective told me while I was in the hospital that I had lost a lot of blood and that I was lucky to be alive. I was hit so hard with the candle stick that I have some permanent damage done to my face and memory. The nurses had to cut some of my hair and shave my head down to the scalp to do some sutures. My hair just grew back. He/She also told me about Ms. Elisabeth. I can't believe she is gone. I just don't know who might want to hurt her, she was so generous with all that she had and was such a good person. I wish I hadn't fallen asleep. Maybe if I'd been awake I could have heard the killer sooner and called the police. And poor Wolf, he must have gotten out of the house at some point because he was missing for a while. The caretaker, Skeeter Ferris found him at the cemetery. I was so happy to see Wolf when I got home from the hospital.

Detective Waller happened to be there in the hospital the day I woke up. Detective Waller told me about Ms. Elisabeth's death. I remember the satin pillow; it was always on her bed. I recall the candlestick that was used to beat me. The maid was always polishing that and I always admired it. S/He also told me that my car had been stolen from the mansion and found at the airport in the Twin Cities. I don't know what someone would want with that old rusty Dodge car. It barely got me to work that night.

I only met Robin Caldwell once formally, but I did see him/her a couple of times and there were photos of Robin & Mar in the house. Mar's mother was very close to Elisabeth. I recall once seeing Robin headed up the attic stairs. I guess Mar & Robin were getting some type of memorabilia from there to take with them. While I didn't know Robin very well, I did hear Clarice try to divert calls from Mar & Robin for Ms. Elisabeth from her. There seemed to always be an argument when Mar called and Clarice was trying to protect Ms. Elisabeth. Unfortunately, when you're as generous as Ms. Elisabeth was, there are always people clamoring for your money and attention.

Affidavit of Robin Caldwell

When I married into the Congdon family, I married for love. I have no words for what has happened; the last few years have had more drama than I've seen in my entire life. When Mar and I married, I knew his/her family was from Minnesota, but I had no idea the Congdons were one of the state's wealthiest families. I didn't learn about that until much later and I don't know if I'll ever know the truth about how much Mar owes. So much debt.

I'll start from the beginning, as best as I know. I grew up in a small town outside of Pittsburgh called Latrobe, Pennsylvania. It's a good place to be from: beautiful little place tucked in the mountains, home to Fred "Mr. Rogers" Rogers, and it's where professional football and the banana split were born. About as small-town Americana as you can get. I was something of an athletic all-star in high school. I was on the track team and played soccer; I got good grades and participated in the chemistry club. I tried to go to college – I actually studied to be a Lutheran minister, but ended up marrying young. I worked a lot of different jobs, trying to stay afloat. I've been a machinist, grocery store clerk, construction worker – I've even done orthodontic sales. We tried to make it, moving to where the jobs were: Ohio, California, eventually Colorado, where it ended. That marriage lasted twenty years and three kids, but the bottle got in the way of that.

I guess that's how Mar and I struck it off. It was the winter of 1975. I was recovering from my problem with alcohol and doing well at it. S/he was also recently divorced and trying to make it as a single parent with a teenage son. Like me, Mar had three kids, but two had already left the nest. We'd both lost our families and there was a lot of growing that we were both doing out of that pain. So we needed each other, and I thought it was real love. We were married three months after meeting each other, on March 20, 1976. I was forty-two years old and I felt like I'd been given a new lease on life. Mar was inspiring – we had such energy for life together. We had big dreams together. Colorado, with its mountains and plains, suddenly became a place where I could shed my past, put on a sturdy pair of boots, and walk under a sky that was all ours. I didn't get along great with the new stepkids, but I was hopeful for the marriage anyway.

Things went south so fast. I lost my job. I fell behind on child support. Mar wrote $7,000 in bad checks and wouldn't listen to me that we couldn't go on like this. I'm not a confrontational person. In fact, people who know me would say I'm awful soft-spoken. I'm not even that independent, I'm ashamed to say. Mar really took the lead in our marriage. It was his/her idea to buy a $290,000 ranch outside of Denver that fall. We were burglarized almost as soon as we moved in and lost $80,000 worth of belongings. Thankfully, insurance covered it, but before I knew it, we'd bought in on another 300 acres next to the ranch. We bought horses – expensive, show horses, the best Arabian blood money could buy. We bought cars and furniture. We planned on spending our first anniversary in a penthouse that cost $400 a day. We fell behind and always had foreclosure on our heels. We had credit card problems. Checks went bad. Banks threatened us with litigation. I was scared out of my mind that we'd lose everything. I might have had a few drinks to weather the storm, but I held it together.

It was a crazy time. I was unemployed and getting only about $97 a month from the state. Mar had some money from an annuity – s/he never told me exactly how much it was, but it couldn't have been much, maybe $150. I knew there was a trust fund, but that was all I knew about that. I knew so little about whole Congdon family finances, I just felt like it was my responsibility to take care of us. That's what I cared about. Taking care of us. I loved our life, our horses, our ranch. It meant the world to me. I've never been an ambitious person, and I've never asked for much out of

life, but this meant so much to me. I really felt like I was somebody. That after all this wandering in life, that I'd found a place to fit in. Someone to love, and somewhere to fit in. And I meant to keep that life, no matter what it took.

So when I flew to Duluth in April 1977, I had no idea what I was getting into. I was supposed to ask for $750,000 to help us take care of our debts. It was supposed to be a loan, and I understood that Mar was just borrowing against an inheritance. That's how I met Elisabeth Congdon, Mar's Mother's cousin. We didn't speak to each other, and I don't recall much of the visit, to be honest. She had some sort of problem with the right side of her face and she was nearly deaf. One of the staff told me that she could answer yes/no questions, but she had trouble with full sentences. I knew nothing else about her at the time. She was always closely watched by the staff. There was a head nurse. I met a maid. They were all really – well, protective, I suppose, but they watched Elisabeth like hawks. I'd say at least a few of them watched her a little too closely. They'd block Mar's calls to her, which shocked me. Mar's mother was one of Elisabeth's closest cousins and friends. They were evasive when I asked the simplest questions. I remember being just in awe of the number of rooms at Glensheen and I asked that bossy secretary which room belonged to Elisabeth. She wouldn't tell me! Can you believe that? So I never even knew which room she slept in, let alone finding it in the dark. I attended a family business meeting in the library, once or twice. I had a few drinks and played a billiards game or two to pass some time on an occasion. We had a few dinners at Glensheen; tea, once, in a rear porch. The place astounded me, but I never really knew my way around the place. I only went upstairs once. Mar wanted to get some childhood keepsakes, so I went with Mar up to the attic to get the stuff. Never really knew that house; I was hardly there. We stayed at the Radisson hotel in downtown Duluth in May.

We still had problems in Colorado, and I had to attend to those. I was doing everything I could to keep us ahead of the creditors. The family trustees wouldn't give me the money we asked for. I wasn't surprised by that and had already put together a back-up plan to start selling things we didn't absolutely need. I'd sold some of the things I'd really loved, including some turquoise pieces that were really one-of-a-kind. Mar gave me some coins s/he said her son had collected; I don't remember what they looked like, but we pawned them. We let the bank repossess our cars. So that might be why Mar decided to write me into her will in June. I really pulled for our marriage. Things were looking dark for us, but we believed in each other and we were going to make sure that if anything happened to one of us, the other would be okay. We were willing to do what it took, even if it meant playing all our cards when it was needed.

So it wasn't until the police called us at the hotel that I even knew anything was wrong. Even then, I really didn't understand much of what was going on. I have to confess that I was going through one of those times when I really struggled with my addiction. I'd lost my temper a bit, the night of June 26, and I went out for a while. I told Mar I'd gone for a Coke, but I had a few to drink. I'd had a lot, actually, and I can't say that I remembered much. My fist was swollen from that night because I'd punched a wall in anger. I guess I must have fallen too, because I had this limp for just a day or so. Don't know what happened but it must have been brutal. I had quite the bruise and cut on my hand. Mar tried to cover for me, telling the police that I'd gotten kicked by a horse, but my temper that got the best of me and the wall got the better of my hand. And what the heck happened to my head? I guess it was quite a night. I haven't had a problem with alcohol in months; it's just that money was looking so tough at the time. We flew to Minnesota from Denver the next morning, and I had a few more on the plane. We arrived in Minneapolis and attended to some business there. I'm not saying that I was too drunk to remember exactly where I was the night of June 26, I'm just saying that there was a lot of traveling, a lot of trying to make ends meet in two

different places, and a lot of balls up in the air. We have baggage claim tickets, showing our flights. I was still kind of out of it when the police questioned us. So if our stories are a little contradictory, you'll have to excuse us, we had a lot going on.

The police interviewed us in the morning on June 28, in Duluth. They asked a lot of questions. I've said a hundred times that I did not murder Elisabeth Congdon. I did not. I was out on my own, drowning some sorrows. Not a great alibi, I know. But I'm innocent, and the truth just doesn't always design itself to be a great "alibi." It just is what it is. I'm saying I wasn't in Duluth, the night of June 27. I don't recognize the handwriting on the envelope they keep talking about. I didn't hit anyone with a candlestick or smother anyone with a pillow. I would never dream up such a plan. I never even knew there was that much money at the time. There were so many other family members. I hadn't even heard of Elisabeth Congdon until just a few months earlier, let alone planning to murder her.

We attended Elisabeth's funeral on June 30th. It was rough. A lot of people came, and even though I don't know them well, I could see guilt on a face or two. People know things, and they're not sharing what they know. People were watching us, and not just the police. The police weren't all that quiet about their surveillance, but the people in town were somehow worse to deal with. I could feel the eyes on me that day. To be honest, I think the secretary did it. Who else kept track of that old lady's money and her whereabouts? For all I know, she had some inheritance coming to her, too. Heck, they all did. There was a cousin. He had money, but probably wanted more. Both of them watched us closely at the funeral. A little too closely, I thought.

Sure, all of them took polygraph tests. I didn't, because I know how those things work, and with all that's going on, I knew that nothing good would come of a polygraph test. I've been under such stress lately. The police had already questioned us, hard. I heard that they were going to Colorado to check into our business affairs back there, and that had me on edge. We've been hounded by the system for so long; I just couldn't believe it was coming to this.

I miss the mountains. I don't know if I could ever live in the mountains of Colorado again – I sacrificed too much for those mountains. But I've seen a lot of time, waiting around jail cells lately, and it's not where I ever planned to be. Maybe I could go back to the mountains of Pennsylvania someday. Do things right, this time around. Not get into so much debt. That was the only thing that made us bad together, Mar and me. Couldn't keep hold of the purse strings. I'm a simple person at heart, and I'm not a big schemer. I'm just not the sort of person who could plan a murder. It's crazy to think so.

Someone is framing me. I didn't know about the money, so I don't have a motive. Our stepson, Rich, came out to see us in Minnesota in July. I hadn't seen any of my stepkids in a long time, but that wasn't unusual. They're old enough to take care of themselves. That's why they don't remember seeing me for most of June. We don't have a lot of close friends – funny, how friends leave as soon as the money does. So no, I don't have anyone other than Mar who can vouch for my whereabouts on June 27. But I've also been unemployed for a long time. I wish I could say that I was clocked in on a midnight shift somewhere, but I wasn't. I can say, though, that I did not kill Elisabeth Congdon. People say I "look" like someone who was on the grounds and could have been the killer. I have no idea what they might have seen, but I can tell you that they didn't see me. I was not near Glensheen the night on June 27 and I could not have been the killer. Am I sorry she's dead? Of course I am, just as you would be if your own cousin-in-law were dead. But I hardly knew her – I'd only briefly met her. Now that she's gone, I can only say I wish I never had.

Affidavit of Casey Jackson

My name is Casey Jackson and I am from Dueloot, Minnesota and I am 42 years old. I have lived in Dueloot my whole entire life and I love this town. Some people might call me a townie. I can't help it. My parents have lived here their whole lives, my grandparents and all but one of my siblings lives here. I work as a vacuum salesperson. I get to travel around the area to other towns for my job. I will say that while I have been to lots of other small towns, nothing compares to Dueloot. While I travel to other towns in Minnesota, I rarely leave the state, aside from an occasional trip to Superior, anyway. As a kid I worked at the Lakeview Camp in Spectacular National Forest. That was quite the place. I still can't believe the lodge burned down. That kid, Tyler Blunt, sure got away with a terrible crime.

My roots in Dueloot run deep, deeper than the Congdon roots. Even though they haven't been in Dueloot for more than two generations, they made a long and everlasting impact on the community with their generosity. My grandfather knew Chester Congdon, Elisabeth's father and he always said that Mr. Congdon was an honorable man.

In the very early hours of June 27, I happened to be driving south along the shore heading home to Dueloot. I had been in Two Harbors until late that evening visiting an old friend of mine, Lindsay. Lindsay and I went to high school together and really is likely the only close friend I have who doesn't live in Dueloot. We had been playing darts and having beers quite late at a tavern. I lost track of the time and all of a sudden it was 12 midnight. I had a sales appointment first thing in the morning and I had to get home. I drove past the Congdon Estate at about 12:30 AM. I know, it was awfully late, but I had that appointment in the morning and I needed to get home. That appointment was a great sales opportunity to pitch the vacuum line to the owner of the Radisson Hotel. I was so lucky just to have gotten an appointment. Anyway, as I drove past the Congdon Estate, I saw someone running down the driveway. It was very strange to see someone running at that time of night, especially on the outskirts of town.

The person I saw running looked very athletic, like they were very fit…you know like the people who run Grandpa's Marathon every summer. I'd say the person running was in their mid 30s to 40s. They were wearing a red track suit and sneakers. I wondered what the person was doing, but continued on my way home. I missed that sales appointment the next morning. I just can't believe I slept through my alarm clock. I really missed a great sales opportunity…oversleeping really cost me. When I finally woke up, I heard about the murder of Elisabeth Congdon on the radio. Immediately I thought about that person running and called the Dueloot Police. I left a message concerning what I saw. I remember the receptionist asked me some pretty specific questions such as if the person were male/female, wearing glasses, visible tattoos, carrying anything and some other stuff. The driveway wasn't lit well enough to see that closely. I do know however, that the person I saw that night looked nothing like Robin. The person I saw was running- no one with a limp like Robin could run like that.

I first met Robin at a local watering hole a while back. Robin & Mar had come to Dueloot to visit Mar's family. Robin was at the bar all alone. I sat down next to him/her and we talked for a while. We took turns buying rounds for a while and then Robin totally stiffed me on the bill. I couldn't believe it, but I gave Robin the benefit of the doubt and figured that s/he just forgot. I would run into him/her around town periodically. The last time I saw Robin at the bar, he/she totally ignored me. I walked past Robin on the way to the restroom and said hello, Robin just stared at the drink on the bar….just stared. Who does Robin think s/he is? I mean, I know that

Robin's in the Congdon family, but that doesn't give Robin the right to ignore people. Later that night Robin started yelling about something or other. Not at anyone in particular, it was like Robin was yelling at his/her drink. I can't recall what the fuss was all about, but I do remember thinking that Robin sure had some serious anger about something.

The police never called me back. I guess they weren't interested in what I had to say. Come to think of it, they rarely call me back when I call in with a lead such as this. I consider myself an observant person and I see it as my civic duty to report suspicious activity to the police, part of turning over a new leaf after the DWI. Yes, I've had a prior DWI, but I'm off probation now. Other than that, my driving record is spotless; after all, it has to be for my job. That time on probation was a great learning opportunity for me. The chemical assessment I had to have done recommended I not consume alcohol. Being ordered by the judge to not consume any alcohol while on probation really helped me get a handle on things. Now I really have a good handle on my drinking and everything's under control.

Elisabeth Congdon getting murdered was a tragedy. As far as who may have wanted to hurt her? Hard to say. I do know that her personal secretary had recently been named as her caretaker. As her caretaker, she stood to inherit some money upon Elisabeth Congdon's death. I heard that at the "Side Track Tap" (a local establishment) a couple months ago. I think Clarice's cousin told me that. Clarice's cousin also said that a couple of other members of the staff were always picking fights with Clarice. Arguments about food, medication and who could or couldn't visit Elisabeth Congdon. Apparently, Clarice would keep Elisabeth's family from visiting her. Seems wrong to me. Once I remember hearing about the police being called to Clarice's house regarding a fight between herself and her husband. I guess things got physical and Clarice threw a chair through the front window of the house. But, it seemed that Clarice and her husband worked things out because I saw them out for dinner in downtown Dueloot. See Clarice was blue collar and had deep Dueloot roots like me—our friends run in the same circles. Dueloot is like most small towns: there are no secrets.

Affidavit of Bobby/Bobbie Baxter

My name is Bobby\Bobbie Baxter. I am the founder and CEO of Consultants in Scene Investigation (CSI), a private consulting firm in the area of forensic science. I have been retained by the family of Robin Caldwell to review the collection and analysis of the trace evidence related to the death of Elisabeth Congdon.

My career began in traditional law enforcement. Immediately after my high school graduation in 1938, I was hired as a police officer by the Fond du Lac Police Department. Fond du Lac was, and still is, a small, sleepy city on the southern end of Lake Winnebago in east central Wisconsin. Most of my time on patrol was spent chasing down kids smoking cigarettes, writing traffic tickets and otherwise spending time on very minor matters. I quickly became bored with Fond du Lac and sought more of a challenge in a larger town. I started working as a patrol officer in Wisconsin for the Milwaukee Police Department (MPD) in 1943. My job consisted of working in uniform in a marked squad car, patrolling in my precinct and answering radio calls from our police dispatcher. Because of the size of the city, there was a significant amount of serious crime and the MPD had a large detective bureau that investigated various crimes. After eight years on patrol, I was promoted to detective and worked in property crime, robbery, the forgery\fraud unit, and finally, the homicide unit. Only the best detectives were selected for homicide and I am proud to say I worked homicide for ten years before my retirement in 1972. While working with the MPD, I processed thousands of crime scenes for evidence, including at least one hundred homicides.

For almost my entire career in law enforcement, there was no state or local crime lab to do scientific analysis. Sure, the majority of a detective's job is to conduct interviews of witnesses and suspects, but evidence collection and analysis is also very important Part of being a detective was learning on the job from more senior detectives about crime scene processing, evidence collection and crime solving tools like fingerprinting and handwriting analysis. One reason I advanced quickly in the detective divisions was that I had a real knack for the use of scientific tools in law enforcement. The captain of the forgery\fraud unit almost cried when I told him I was leaving to work in homicide. He said no one else was better at spotting a forged document. As time went on, I also began learning through self-study about some of the emerging forensic science techniques, like hair and fiber analysis and blood serology. I was fortunate to be sent to the FBI for courses on almost all the forensic sciences, and by the time I left the MPD in 1972, I had been certified by the FBI as a forensic examiner in fingerprinting, blood serology, ballistics, tool mark analysis, and handwriting analysis. In fact, my expertise in handwriting analysis is so advanced that I was "board certified" by the American Academy of Document Examiners (AADE) as a Forensic Document Examiner and Expert. Despite my lack of a college degree, I continue to serve as a teaching fellow in the AADE.

I guess I can't really say I "retired" from the MPD. Actually, I was fired for falsifying a fingerprint report. It was a case where a convicted rapist who had just been released from prison broke into a house and brutally raped the woman inside. We had a confession, but Judge Floerke threw out the confession because the suspect wasn't read his *Miranda* rights. The rest of the case was weak, and knowing the guy was guilty, I reexamined the prints taken from the scene and said that I had found a fingerprint match on the victim's bedside table. There was a claim that I just dummied up a copy of the guy's booking fingerprints and claimed it came from the scene. Internal affairs gave me the choice of being fired or leaving on my own. I chose to leave.

Immediately after leaving the MPD, I opened up my consulting business. Now, the defense lawyers who used to cross-examine me hire me to review the police investigations done in their client's cases. I still work primarily in Wisconsin, but my talents have been recognized around the country and I have worked on cases in eight different states.

In July, 1977, I was contacted by the attorney for Robin Caldwell to examine the police investigation in the Elisabeth Congdon murder case. I already knew about the case because it was front page headlines, even in Milwaukee and Chicago. After the Caldwell family and defense team agreed to my usual fee ($200 per hour for review and investigation, $1500 per half-day of court time), I traveled to Duluth to review the case. I have to admit, if the defense team wins this case, it will certainly burnish my reputation as a consultant.

The first thing I noticed in reviewing the Congdon police file was the absolute lack of crime scene security. As any young detective knows, the three most important things in crime scene processing are preservation, preservation, preservation. The first thing that must be done at any major crime scene is to tape off the scene and not allow access except to those who have a need to examine the scene. A log should be kept of anyone going in or out. Logs should also be kept by a designated person documenting where evidence is found and in what order and at what time pictures are taken. Except for taping the scene, none of this was done at the Congdon scene. Apparently, practically the whole Duluth Police Department traipsed through the crime scene, none with protective clothing, and no one was documenting when people were there and why. Photographs were taken, but no photo log was kept to describe the type of camera used, the type or speed of the film (high speed film above ISO 800 is too granular to capture important detail). The best example of the absolute disregard of good crime scene procedures was that the cops on duty used one of the toilets as an ashtray! Another example of poor scene preservation was the mystery palm print on the bathroom sink. Turns out the palm print was made by the lead detective when he leaned over the sink to look at other items. Ridiculous! With this absolute disregard of crime scene protocol, none of the evidence from the scene can be used to figure out who perpetrated this homicide.

Even if we examine the different pieces of evidence found at the scene, they do not support the State's theory that Robin Caldwell committed this murder. (I did not visit the scene of the crime, but I have reviewed the other affidavits in this case, police reports, lab reports, and photos from the scene. I did not test any items from the scene although the Duluth Police Department did make them available).

First, a great deal of blood was found near the unconscious body of night nurse Shelby Martinez. The nurse did suffer a large loss of blood, so the police are correct that most of the blood, including the spatter on the wall, was from the nurse. But I conclude that given the amount of spatter on the wall, there was a violent struggle and that the perpetrator certainly would have been injured in some way during the struggle and left some blood at the scene. Accordingly, the police should have taken hundreds of swabs of samples for the areas of blood on and near the stairs landing to see if blood other than the nurse's blood could be identified.

Second, the blood on the candlestick does not really narrow the universe of potential suspects. Agent Sorum's summary of blood types (A, B, AB, O) and the PGM blood enzyme is generally accurate, but the lack of depth to the agent's knowledge shows in the agent's misuse of the word genotype in describing the PHENOTYPES of PGM as PGM-1, PGM-2, PGM 2-1. Even an old, flatfoot detective like me knows the difference between a genotype and phenotype. This obvious lack of knowledge leads Agent Sorum to an unjustified conclusion about the blood on the candlestick. Although the blood may have been "O" and "PGM-1", 40% of the population have blood type "O" and 10% of the population have a PGM phenotype of "PGM-1." Since the PGM phenotype and the ABO class of blood are independent of each other, it is safe to assume that 4% of the population have both blood type "O" and "PGM-1" (this is the so-called Product Rule where the percentage of independent factors are multiplied). That might sound like very few people, but with 3.8 million people in Minnesota (1970 census), over 250,000 people will exhibit those blood serology traits.

It is interesting that Agent Sorum is quick to conclude that the blood on the candlestick is from Robin Caldwell when a fingerprint on the candlestick, presumably that of the murderer could NOT be from Caldwell. In fact, in my expert opinion, that fingerprint exonerates Caldwell. Find the person who left that partial print and you will find your murderer. In forming my opinions for this case, I did review all information given to me; however, my focus in this case is on drawing forensic conclusions.

I do agree with Agent Sorum's conclusion that the blood on the pillow case was from Elisabeth Congdon. It is the correct blood type and the swath of blood is consistent with a friction burn wound that was found on Elisabeth Congdon's nose during the autopsy. What is puzzling however, is why Agent Sorum, after dusting the entire bedroom for fingerprints did not dust the pillow case for fingerprints. If anything had been touched by the killer, surely it was the pillow case that was used to suffocate Miss Congdon.

As Agent Sorum noted, several hairs were found near Miss Congdon's body. Although Miss Congdon was old and frail, she clearly struggled against the killer's pressure. It is very likely that this would cause some hair to fall from the killer's head. It is a myth that hair will only be found at the scene if it is grabbed or pulled from the perpetrator's head. Even without a struggle, the typical person sheds 100 or more hairs per day just in natural activity. Certainly, a killer engaged in a struggle, will lose hair, even if not pulled, plucked or grabbed by the victim. In analyzing the gross characteristics of the hair found near Miss Congdon's body, Agent Sorum concluded that those hairs were not from Elisabeth Condgon and not from Robin Caldwell. Like the fingerprint on the candlestick, this trace evidence exonerates Caldwell because while likely from the killer, the hair could not have come from Robin Caldwell.

The final piece of evidence I examined was the envelope postmarked Duluth on the day the body of Miss Congdon was found. The envelope was addressed to Robin Caldwell at a hotel in Colorado. I am sure there were a lot of people who knew Robin was staying there, so that in and of itself is not significant. While Agent Sorum believes that the handwriting on the envelope is that of Robin Caldwell, I strongly disagree. It is a forgery; a good forgery, but a forgery nonetheless. Someone was clearly imitating Robin Caldwell's handwriting, but the small details are what give it away. I examined the pressure points in the original envelope (indentations in the paper from additional pressure) and micro-blotting that could be caused by hesitation (thus leaving slightly more ink in one area as a person pauses instead of continuing with a full stroke). The amount of pressure on the paper appears to be greater than normal. This is very common in forgeries because the writer is generally taking longer and subconsciously pressing harder to get the signature to look right instead of just writing as they normally would. The shapes of the letters are insignificant because anyone with a known sample of Robin Caldwell could match the flourishes and letter shapes. In my expert opinion, the handwriting on the Radisson Hotel Duluth envelope was NOT written by Robin Caldwell.

The envelope does contain a fingerprint, but in my opinion it is too muddied to be of any value. The BCA used a ninhydrin test to pick up the fingerprints. Ninhydrin is the appropriate testing medium to use for paper, but you must remember that Ninhydrin reacts to all amino acids. Thus, what might appear to be ridges on the fingerprint sample might actually just be excess amino acid in the furrows from someone who is sweating a great deal. While it is true that the more well-defined ridges are definitely ridge detail, the muddiness makes it impossible to note more than a few points of identification. Unfortunately, Agent Sorum is looking into a pool of mud and seeing what s\he want to see. No self-respecting fingerprint expert would call this a latent print with evidentiary value. For all we know, it could be the clerk at the hotel who left that print.

In summary, neither this envelope nor any other physical evidence in this case implicates Robin Caldwell. If anything, this all looks like an elaborate frame by someone else who will profit from the death of Ms. Congdon.

Minnesota Statutes & Jury Instructions

Minnesota Statutes section 609.19 - Crimes and Criminals; Murder in the First Degree. (1977)

Whoever does either of the following is guilty of murder in the first degree and shall be sentenced to imprisonment for life:

(1) Causes the death of a human being with premeditation and with intent to effect the death of such person or of another; [remainder of statute inapplicable]

Minnesota Statutes section 609.195 - Crimes and Criminals; Murder in the Second Degree. (1977)

Whoever does either of the following is guilty of murder in the first degree and shall be sentenced to imprisonment for not more than 40 years:

(1) Causes the death of a human being with intent to effect the death of that person, but without premeditation, or

(2) Causes the death of a human being without intent to effect the death of any person, while committing or attempting to commit a felony offense other than criminal sexual conduct in the first or second degree with force or violence.

Minnesota Statutes section 609.58 - Crimes and Criminals; Burglary. (1977)

Subdivision 1. [FELONY OFFENSE: BURGLARY IN THE FIRST DEGREE] Whoever enters a building without consent and with intent to commit a crime commits burglary in the first degree and may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than $20,000, or both, if:

(a) the building is a dwelling or residence and another person not an accomplice is present in it;

(b) the burglar possesses a dangerous weapon or explosive when entering or at any time while in the building; or

(c) the burglar assaults a person within the building.

Duties of Judge and Jury

It is your duty to decide the questions of fact in this case. It is my duty to give you the rules of law you must apply in arriving at your verdict. Now that you have heard the evidence and arguments of counsel, I will instruct you in the law applicable to this case. You will be given a copy of these instructions to refer to when you retire to the jury room. Nevertheless, you should listen carefully and attentively as I read them to you now.

You must follow and apply the rules of law as I give them to you, even if you believe the law is or should be different. Deciding questions of fact is your exclusive responsibility. In doing so, you must consider all the evidence you have heard and seen in this trial, and you must disregard anything you may have heard or seen elsewhere about this case.

I have not by these instructions, nor by any ruling or expression during the trial, intended

to indicate my opinion regarding the facts or the outcome of this case. If I have said or done anything that would seem to indicate such an opinion, you are to disregard it.

Instructions to Be Considered as a Whole

You must consider these instructions as a whole and regard each instruction in the light of all the others. The order in which the instructions are given is of no significance. You are free to consider the issues in any order you wish.

Presumption of Innocence

The defendant is presumed innocent of the charge made. This presumption remains with the defendant unless and until the defendant has been proven guilty beyond a reasonable doubt. That the defendant has been brought before the court by the ordinary processes of the law and is on trial should not be considered by you as in any way suggesting guilt. The burden of proving guilt is on the State. The defendant does not have to prove innocence.

Proof Beyond a Reasonable Doubt

Proof beyond a reasonable doubt is such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt based upon reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt.

Charges

Each count set forth against the defendant charges a separate and distinct offense. You must consider the evidence applicable to each alleged offense as though it were the only accusation before you for consideration, and you must state your findings as to each count in a separate verdict, uninfluenced by the fact that your verdict as to any other count or counts is in favor of, or against, the defendant. The defendant may be found "guilty" or "not guilty" of any or all of the offenses claimed, depending upon the evidence and the weight you give to it under the court's instructions.

The defendant is charged in Count One with First Degree Murder.

The defendant is charged in Count Two with Second Degree Murder.

The defendant is charged in Count Three with First Degree Burglary.

First Degree Murder Definition and Elements

Any person who commits the offense of first degree murder is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements

(1) that the defendant unlawfully killed the alleged victim;

and

(2) that the defendant acted intentionally. A person acts intentionally when it is the person's

conscious objective or desire to cause the death of the alleged victim;
and

(3) that the killing was premeditated.

A premeditated act is one done after the exercise of reflection and judgment. Premeditation means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill preexist in the mind of the accused for any definite period of time. It is sufficient that it preceded the act, however short the interval, as long as it was the result of reflection and judgment. The mental state of the accused at the time [he] [she] allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation. If the design to kill was formed with deliberation and premeditation, it is immaterial that the accused may have been in a state of passion or excitement when the design was carried into effect. Furthermore, premeditation can be found if the decision to kill is first formed during the heat of passion, but the accused commits the act after the passion has subsided.

If you find from the proof beyond a reasonable doubt that the defendant is guilty of murder in the first degree, you will so report and your verdict in that event shall be "We, the Jury, find the defendant guilty of murder in the first degree".

You will not consider punishment for this offense at this time.

Second Degree Murder Definition and Elements

Any person who commits second degree murder is guilty of a crime.

Second Degree Murder (Subsection One Definition)

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements

(1) that the defendant unlawfully killed the alleged victim;

and

(2) that the defendant acted intentionally. A person acts intentionally when it is the person's conscious objective or desire to cause the death of the alleged victim;

Second Degree Murder (Subsection Two Definition)(Alternate Theory)

In the alternative, for you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:

(1) that the defendant unlawfully killed the alleged victim;

and

(2) that the killing was committed in the perpetration of or the attempt to perpetrate the alleged felony; that is, that the killing was closely connected to the alleged felony and was not a separate, distinct and independent event;

and

(3) that the defendant intended to commit the alleged felony;

The intent to commit the underlying felony must exist prior to or concurrent with the commission of the act causing the death of the victim. Proof that such intent to commit the underlying felony existed before, or concurrent with, the act of killing is a question of fact to be decided by the jury after consideration of all the facts and circumstances.
"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.

If you find from the proof beyond a reasonable doubt that the defendant is guilty of murder in the second degree, you will so report and your verdict in that event shall be "We, the Jury, find the defendant guilty of murder in the second degree".

You will not consider punishment for this offense at this time.

Burglary in the First Degree Definition and Elements

Any person who commits the offense of burglary is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:

(1) that the defendant entered a dwelling or residence;

and

(2) that the defendant did not have consent to enter;

and

(3) that the defendant intended to commit a crime;

and

(4) that another person not an accomplice was present in the residence;

and

(5) either that the defendant

a. possessed a dangerous weapon or explosive when entering or at any time while in the building; or
b. assaulted a person within the building.

Direct and Circumstantial Evidence

A fact may be proven by either direct or circumstantial evidence, or by both. The law does not prefer one form of evidence over the other.

A fact is proven by direct evidence when, for example, it is proven by witnesses who testify

to what they saw, heard, or experienced, or by physical evidence of the fact itself. A fact is proven by circumstantial evidence when its existence can be reasonably inferred from other facts proven in the case.

Evaluation of Testimony—Believability of Witnesses

You are the sole judges of whether a witness is to be believed and of the weight to be given a witness's testimony. There are no hard and fast rules to guide you in this respect. In determining believability and weight of testimony, you may take into consideration the witness's:

Interest or lack of interest in the outcome of the case,

Relationship to the parties,

Ability and opportunity to know, remember, and relate the facts,

Manner,

Age and experience,

Frankness and sincerity, or lack thereof,

Reasonableness or unreasonableness of their testimony in the light of all the other evidence in the case,

Any impeachment of the witness's testimony,

And any other factors that bear on believability and weight.

You should rely in the last analysis upon your own experience, good judgment, and common sense.

Expert Testimony

A witness who has special training, education, or experience in a particular science, occupation, or calling, is allowed to express an opinion as to certain facts. In determining the believability and weight to be given such opinion evidence, you may consider:

The education, training, experience, knowledge, and ability of the witness,

The reasons given for the opinion,

The sources of the information,

Factors already given you for evaluating the testimony of any witness.

Such opinion evidence is entitled to neither more nor less consideration by you than any other evidence.

Impeachment

In deciding the believability and weight to be given the testimony of a witness, you may

consider:

Evidence that the witness has been convicted of a crime. You may consider whether the kind of crime committed indicates the likelihood the witness is telling or not telling the truth.

Evidence of (a statement by) (or) (conduct of) the witness on some prior occasion that is inconsistent with present testimony. Evidence of any prior inconsistent (statement) (conduct) should be considered only to test the believability and weight of the witness's testimony. [In the case of the defendant, however, evidence of any statement (he) (she) may have made may be considered by you for all purposes.]

Identification Testimony—Cautionary Instruction

Testimony has been introduced tending to identify the defendant as the person observed at the time of the alleged offense. You should carefully evaluate this testimony. In doing so, you should consider such factors as the opportunity of the witness to see the person at the time of the alleged offense, the length of time the person was in the witness's view, the circumstances of that view, including light conditions and the distance involved, the stress the witness was under at the time, and the lapse of time between the alleged offense and the identification. If the witness has seen and identified the person before trial and after the alleged offense, you should also consider the circumstances of that earlier identification, and you should consider whether in this trial the witness's memory is affected by that earlier identification.

Definition of Words

During these instructions I have defined certain words and phrases. If so, you are to use those definitions in your deliberations. If I have not defined a word or phrase, you should apply the common, ordinary meaning of that word or phrase.

Rulings on Objections to Evidence

During this trial I have ruled on objections to certain testimony (and exhibits). You must not concern yourself with the reasons for the rulings, since they are controlled by rules of evidence.

By admitting into evidence testimony (and exhibits) as to which objection was made, I did not intend to indicate the weight to be given such testimony and evidence. You are not to speculate as to possible answers to questions I did not require to be answered. You are to disregard all evidence I have ordered stricken or have told you to disregard.

Notes Taken by Jurors

You have been allowed to take notes during the trial. You may take those notes with you to the jury room. You should not consider these notes binding or conclusive, whether they are your notes or those of another juror. The notes should be used as an aid to your memory and not as a substitute for it. It is your recollection of the evidence that should control. You should disregard anything contrary to your recollection that may appear from your own notes or those of another juror. You should not give greater weight to a particular piece of evidence solely because it is referred to in a note taken by a juror.

Duties of Jurors: Selection of Fore Person; Unanimous Verdict; Deliberation; Return of

Verdict; Advising of Additional Issues

When you return to the jury room to discuss this case you must select a jury member to be foreperson. That person will lead your deliberations.

In order for you to return a verdict, whether guilty or not guilty, each juror must agree with that verdict. Your verdict must be unanimous.

You should discuss the case with one another, and deliberate with a view toward reaching agreement, if you can do so without violating your individual judgment. You should decide the case for yourself, but only after you have discussed the case with your fellow jurors and have carefully considered their views. You should not hesitate to reexamine your views and change your opinion if you become convinced they are erroneous, but you should not surrender your honest opinion simply because other jurors disagree or merely to reach a verdict.

A single verdict form for each count has been prepared for your use. When you have finished your deliberations and have reached a verdict as to a specific count, the foreperson should mark the appropriate choice on the form with an "x" and then date and sign the verdict form. All the verdict forms should be returned to the court when you return to the courtroom with your verdict.

When you agree on a verdict, notify the sheriff's deputy.

You will return to the courtroom where your verdict will be received and read out loud in your presence.

During your deliberations, you must not be influenced by passion, prejudice, sympathy, bias or public opinion. Your like or dislike of any witness, attorney or party should not have an effect on the outcome of this case. The State of Minnesota and the defendant have a right to demand, and do demand, that you will consider and weigh the evidence, apply the law, and reach a just verdict, regardless of what the consequences might be. You must be absolutely fair. Remember that it is fair to find the defendant guilty if the evidence and the law require it. On the other hand, it is fair to find the defendant not guilty if you are not convinced of his guilt beyond a reasonable doubt.

Now, ladies and gentlemen of the jury, this case is in your hands as judges of the facts. I am certain that you realize that this case is important and serious, and therefore, deserves your careful consideration.

Exhibit #1

Curriculum Vitae
Of
Chris Sorum

Education

University of Minnesota – Duluth
Duluth, Minnesota 1963 - 1968
Bachelor of Science Degree in Biology 1968

Northwestern University
Evanston, Illinois 1968 – 1972 (Weekend Forensic Master's Program)
Master of Science Degree in Forensic Science 1972

Professional Training and Certifications

Federal Bureau of Investigation
Certifications in: Basic Fingerprinting, Advanced Fingerprinting Techniques, Hair Analysis and Comparison, Fiber Composition and Differentiation, Basic Document Examination, Differentiation of Handwriting Styles, Blood and Fluid Basics, Blood Serology, Blood Enzyme Electrophoresis,
Training in: Basic Firearm Marks and Ballistics.

Bureau of Criminal Apprehension
Tool Mark Analysis, Basic Crime Scene Processing, Advanced Crime Scene Processing, Blood Spatter Analysis, Glass Fracture Analysis.

Other training at national conferences: 130 hours continuing education hours

Work Experience

Minnesota Bureau of Criminal Apprehension
Forensic Scientist and Criminalist 1968-Present

Professional Associations

American Academy of Forensic Science (Board Certifications in Fingerprinting, Handwriting Analysis, Hair and Fiber Analysis, Blood Serology), American Academy of Document Examiners, National Criminalists Association, International Society of Fingerprint Experts.

Professional Articles

The Necessity of Performing Ninhydrin Testing Last: Destruction of Blood Enzyme Evidence in Saliva by Fingerprinting Techniques. Journal of Forensic Science, January 1977
Polymorphism in Es, PGM and ABO in Caucasian Populations. Forensic Science Quarterly, October 1976

Pressure points in Forged Documents. AADE Journal, February 1975

Necessity of Originals in Document Examination. AADE Journal, December 1974

Damaging Effects of Ultraviolet Light on Unrefrigerated Blood Samples. Criminal Science, June 1974

Eight is Enough: How Many Points of Identification Should Be Enough to Declare a Match. Op-Ed in Criminal Science, September 1973

Numerous presentations at local and national seminars.

Exhibit #2

Curriculum Vitae of B. Baxter
Consultant
309 North Water Street
Milwaukee, Wisconsin

Professional Training and Certifications

Wisconsin Police Academy

Basic police skills training. Licensed as Wisconsin peace officer.

Federal Bureau of Investigation

Certifications in: Fingerprinting Theory and Techniques, Hair and Fiber Analysis, Basic Document Examination, Differentiation of Handwriting Styles, Blood and Fluid Basics, Blood Serology, Basic Firearm Marks and Ballistics, Advanced Firearm and Ammunition Examination, Tool Mark and Scratch Analysis, Blood Spatter Analysis, Crime Scene Preservation and Processing.

Milwaukee Police Department

On-the-Job training in all aspects of crime scene processing and evidence analysis.

Other training at national conferences: 625 hours continuing education hours in crime scene investigation and forensic sciences.

Work Experience

Fond du Lac Police Department

Fond du Lac, Wisconsin: 1938-1943
Patrol Officer

Milwaukee Police Department

Milwaukee, Wisconsin 1943-1972
Patrol Officer 1943-1951
Detective Sergeant 1951-1972

Investigated thousands of crimes as a member of the property crimes unit, robbery unit, forgery\fraud unit, and homicide unit. Processed crimes scenes for physical evidence in cases leading to over one thousand convictions, including approximately one hundred homicides.

Consultants in Scene Investigation

Consultant and Chief Executive Officer 1972-Present

Review of crime scene investigations performed by law enforcement agencies.
Testimony as crime scene processing expert.
Trainer for Wisconsin State Crime Lab, Indiana State Police, Chicago Police Department, Missouri Highway Patrol, Kentucky State Bureau of Investigation.

American Academy of Document Examiners

Teaching Fellow 1968-Present

Professional Associations

American Academy of Forensic Science, American Academy of Document Examiners (Board Certification as Forensic Document Examiner and Expert), National Association of Police Investigators, International Academy of Homicide Investigators, Emerald Society.

Exhibit #3
Satin Pillow

Exhibit #4
Brass Candlestick

Exhibit #5
Byzantine Coin Appraisal

Imperial Coin from the Byzantine Empire

Appraisal ID: 11796
Appraised On: Sep 19, 1954
Market Value: $ 795.00
Replacement Value: $ 895.00

Date on coin: Struck 946-947

Mint mark: *n/a (Constantinople mint)*

Size: medium

Description: Constantine VII/Romanus II Gold Solidus Byzantine coin. Facing bust of Christ Pantokrator / Crowned facing busts of Constantine VII and Romanus II, holding patriarchal cross between them; pellet at base of cross.

Composition: Gold

Wear: Excellent condition

Eye appeal: *not specified*

Damage: *not specified*

Holder:

Toning: *not specified*

Numismatic type: Gold Solidus Coin

Errors: Upper border of coin looks to protrude a very small bit past where it was supposed to. The protrusion has the same thickness as the rest of the coin. Superb coin, highly collectible.

Byzantine Gold Solidus Coin

APPRAISER COMMENTS:
Strike: Much better than average, slight weakness on reverse face. Almost mint state. Rarity: Rare (10 to 20 known) - 12 known, 4 impounded in museum collections (11/30). Weight in grams: Weight in Grams: 4.49g.

[Photograph Enlarged]

Exhibit #6
Autopsy Report of Elisabeth Congdon

Office of the St. Louis County Coroner
Thomas Azreal, M.D.
316 Mooby Lane
Duluth, MN 55801

AUTOPSY REPORT

Coroner File No.: 77-1806
Name of Deceased: Elisabeth Mannering Congdon
Date of Death: Found June 27, 1977
Date of Postmortem examination: June 28, 1977

Body was removed from morgue of St. Luke Hospital to the autopsy room for postmortem examination by the undersigned. Also present at autopsy was Detective Quinn Waller of the Duluth Police Department.

EXTERNAL EXAMINATION

Body was in the supine position, covered in a surgical sheet, original clothing having been removed and kept for evidence by the Duluth Police Department. Sheet was removed and initial measurements taken. Body was 172 cm in length and 68.3 Kg in weight, normally nourished female, consistent with reported age of 83 years. Body exhibited fixed lividity in dependent portions of the body, consistent with the body's reported position at death, supine, lying in a bed.

External findings normal except for external injuries noted as follows.

Hands: small contusions on the left middle and left index fingers, right ring and right middle fingers. Small abrasions on dorsal aspect of both hands.

Eyes: Eyelids were pulled back revealing extensive bilateral petechial hemorrhaging in the sclera indicative of asphyxiation.

Neck and Head: Neck was examined for ligature marks or other ecchymosis for evidence of strangulation, but no injuries were found on the neck. Superficial abrasion approximately 1 cm in diameter consistent with friction injury was found on the tip of the nose. Small amount of dried blood found on the margin of the wound. Small amount of dried blood found in both nares.

INTERNAL EXAMINATION

Body was opened for internal examination with standard Y-incision. Internal organs were found to be of normal appearance, weight and location except as noted below.

Heart was slightly enlarged with approximately 70% blockage of coronary arteries by atherosclerotic plaque. No signs of thrombosis or emboli found.

Brain was examined and found to exhibit normal brain aging except for small amounts of plaque and lesions indicative of prior intra-axial hemorrhage and early stages of dementia.

Lungs were normal except for diffuse areas of petechial hemorrhaging bilaterally.

Trachea was normal with foamy mucosa found throughout its length. No blood found in the muscles of the neck and the hyoid bone was intact.

MICROSCOPIC ANALYSIS AND TOXICOLOGY

Samples of tissues were taken and examined microscopically. Blood and vitreous humor samples were taken. Nothing significant was discovered in subsequent examination of samples.

CONCLUSION

CAUSE OF DEATH: Hypoxia secondary to asphyxia caused by suffocation.

MANNER OF DEATH: Homicide

/s/ Thomas Azreal
Thomas Azreal, M.D.
St. Louis County, Minnesota Coroner

Dated: July 18, 1977

I certify that this is an accurate copy of the original autopsy report on file in the public records of the State of Minnesota Department of Health.

/s/ Dale Rockford
Dale Rockford
Custodian of Records

Dated: September 1, 1977

Glensheen • Second Floor

3300 London Road • Duluth, Minnesota

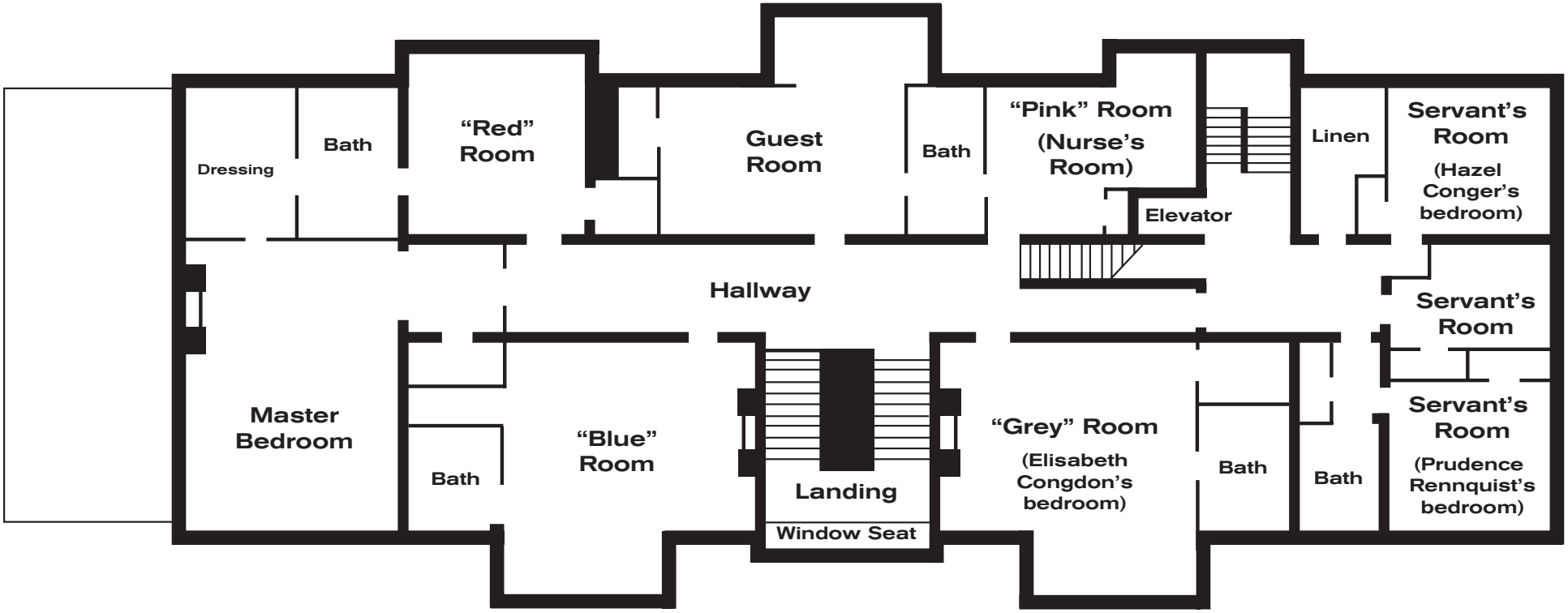

Exhibit #8 Fingerprints

Exhibit #9
Baggage Claim Ticket

27-Jun-1977

BAGGAGE CHECK

Minn-Air Flight 467

FROM

Minneapolis/St. Paul
Humphrey Terminal

to

Denver
Stapleton Terminal

066-7-9832493-293864-HDSF

BAGGAGE CLAIM G

PNR: QA1 **DL 6 000-4**

NEW !

ALL JET SERVICE

MINNESOTA HIGH SCHOOL MOCK TRIAL
COMPETITION RULES

Any clarification of rules or case materials will be issued in writing to all participating teams no less than two weeks prior to the tournament.

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

I. Rules of the Competition

A. Administration

B. The Problem

C. Teams

D. The Trial

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I. RULES OF THE COMPETITION

A. ADMINISTRATION

Rule 1.1. Rules

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

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

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

Rule 1.2. Code of Conduct

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

Rule 1.3. Emergencies (NHSMTC)

B. THE PROBLEM

Rule 2.1. The Problem

The problem will be a fictional fact pattern which may contain any or all of the following: statement of facts, indictment, stipulations, witness statements/affidavits, jury 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.

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

Rule 2.2. Witnesses Bound by Statements

While students are encouraged to research the topic for their own general benefit or as part of a class project, the information, data, or citations generated from outside research may not be introduced at trial, and may result in point deductions. Thus, students may cite only the cases and laws given in the

official case materials, and may introduce as evidence only those documents provided as exhibits in the trial script.

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. Some extrapolations of facts not in the record are allowed since some additional information may be necessary to make the case realistic. As an example of a fair extrapolation, background information such as date or place of birth would be a minor construction and allowed to amplify or humanize the case. Unfair extrapolation that would not be allowed includes information pivotal to the particular facts at issue. Only those facts which are neutral to both sides are fair extrapolations. If you have a question as to whether a particular added fact would be allowable background information, or if you believe it might be an unfair extrapolation, do not add the questionable fact. As a general rule of thumb, the more the "supplemental" information helps your case, the more cautious you should be in adding it to the witness' testimony. *When in doubt, leave it out!*

It is virtually impossible to provide witnesses with detailed answers to every conceivable question that lawyers can ask. The witness statements are not intended as a complete life history and, for the most part, information not in the statements will be irrelevant and should be subject to objection. If an attorney's question solicits unknown information, the witness may supply an answer of his/her choice, so long as it does not materially affect the witness' testimony. Try to avoid a rigid, mechanical approach to the trial (the witness statements are not scripts), but stay within the bounds of honest competition. Remember that your *presentation* is graded –not the merits of the case. Just as in our judicial system, lawyers must deal with the facts which exist. Attempts to bolster the witness' testimony with added facts may be met with disapproval from the judges.

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."

If, in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony (i.e., would not be considered "unfair extrapolation" under Rule 2.3).

A witness is not bound by facts contained in other witness statements. Witnesses must be prepared to deal with any inconsistencies between their own statement and the case materials. Witness statements are subject to all of the human inaccuracies that people make in similar situations. These include distortion and even dishonesty.

Rule 2.3. Unfair Extrapolation

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

Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation.

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. If the question would elicit an unfair extrapolation the witness may answer, “There is no information in my witness statement to answer this question.”

When an attorney objects to an extrapolation, a witness responds to an extrapolation, or a witness responds to a question with an answer of “no information in my statement,” the judge should rule immediately in open court to clarify the course of future proceedings. The burden of proof with respect to the objection is on the objector. The purpose of the rulings is to avoid an irrelevant digression from the statement of facts either through attorney questions or witness responses. Participants should understand that any ruling by a judge from the bench is not to be taken as an indication of scoring merit or of the eventual outcome of the trial. Student attorneys should be aware of these alternatives and feel free to use them as they might benefit the strategy of the team. Do not become overly obsessed with handling extrapolations. *Bring your concerns to the judges’ attention and move on* with the rest of the trial.

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.

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

The decision of the presiding judge regarding extrapolations or evidentiary matters is final. Judges should use their scores to reflect whether they believe that unfair extrapolation has occurred, but scoring judges may not do so if the presiding judge has ruled in open court that no such extrapolation has occurred.

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. School and Student Eligibility

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

To participate in the competition schools must return a completed entry form and registration fee for each team entered. Registration fees will not be refunded after November 1. In addition to the registration fee, a $50.00 late drop deposit is required to register for the season. The late drop deposit will be refunded to teams that remain in the tournament after the team drop-out deadline. Teams may

opt to apply the current year's late drop deposit refund to next year's late drop deposit. Any team that drops out of the tournament after the drop-out deadline forfeits their late drop deposit. Registration forms received after October 17 will not be guaranteed trials in the competition.

Schools may enter any number of teams in the competition.

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

- Hold tryouts for the mock trial team(s) and have the teacher coach (the attorney coach may also want to participate) select team members.
- Hold intraschool rounds to determine which students will represent the school in regional and state competition.
- Create "practice teams" comprised of less experienced members and allow only upper class students to be on the school's "official" teams.

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

Rule 3.2. Team Composition

Each team must consist of at least **eight** primary members: three witnesses, three attorneys, a timekeeper and one alternate. In any given round of competition, seven students must participate. There is no limit to the total number of students who can be members of the team.

At least two students on the team must participate in a scoring role in every round for which the team qualifies. Once a student has participated in a scoring role on a team, that student cannot participate on another team for the remainder of the rounds for which the team qualifies. A student need not participate in the same scoring role in each round.

A scoring role is defined as an attorney or witness that receives a score during a round.

Every team must be fully prepared to argue both sides of the case. Schools cannot have a separate "prosecution team" and "defense team". Only one team from each school may be eligible to compete at the state tournament.

Each team may include as many as three 7th and 8th grade students per round. These students may participate in scoring or non-scoring roles. Any school that utilizes seventh and eighth grade participants cannot field more than two teams. Teams should be advised that the team representing Minnesota at the National High School Mock Trial Championship must be comprised of 9-12 grade students and that its team roster cannot be altered after the Minnesota State Championship or during the National competition.

Refer to Section D: The Trial for more details on the student attorney roles.

Refer to Rule 4.5 for more details on the timekeeper's role.

Rule 3.3 Team Presentation (NHSMTC)

Rule 3.4 Team Duties

Team members are to evenly divide their duties. During pre-trial matters, teams shall read the Pre-Trial Conference script (p. 103) aloud to the court. The prosecution/plaintiff team shall read one thru five and the defense shall read six through ten. These requests may be read by any team member, including non-scoring and scoring team members. There shall be three attorneys and three witnesses. Each of the three attorneys will conduct one direct examination and one cross-examination; one of the three attorneys will present the opening statement and another will present the closing argument and rebuttal. [See Rule 4.5]

The attorney who will examine 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 will cross-examine a witness is the only one permitted to make objections during the direct examination of that witness.

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

Rule 3.5 Team Roster

Copies of a Team Roster must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified *only* by the side they are arguing (e.g. prosecution or defense). No information identifying team origin (name, location, etc.) should appear on the roster. Before beginning a trial, the teams must exchange copies of their Team Roster. The roster should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster also should be given to the judging panel and presiding judge before each round. A sample roster format is included at the end of the case packet.

D. THE TRIAL

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

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

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

2. Coaches must sit so they are behind the student attorneys (i.e., coaches should not be visible to the attorneys during their presentations).

3. All participants are expected to display proper courtroom behavior. The following rules should be observed in the courtroom at all times:

> A. Students should dress appropriately for a courtroom setting. (Suits are not required.) A student playing the part of a witness may wear clothing consistent with that witness' character, but may not wear a costume. [Refer to Rule 4.11 for rule about costumes.]
>
> B. Be courteous and respectful to witnesses, other attorneys, and the judge.
>
> C. Ask permission of the judge to approach the witness.

D. If you receive a ruling against your side on a point or on the case, accept the decision gracefully.

4. All participants are expected to display proper behavior in the courthouse. The following rules should be observed in the courthouse at all times. Any violation of these rules (e.g., going into other parts of the courthouse) will be grounds for requesting that school to leave the courthouse.

A. Each team must have an adult chaperone assigned to it while at the courthouse. The chaperone must remain with the team at all times, while the team is waiting for a trial to begin, competing in the courtroom, waiting for another team to finish competing, etc.

B. All students must stay in the area of the courthouse where the competition is being held. Students will be allowed to use the restrooms which are nearest to the courtroom being used for competition.

C. Teams should be advised that some courthouses prohibit cell phones on the premises. Courthouses do not have provisions to store them during trials and teams (including students, coaches and spectators) should be prepared to follow courthouse policy.

D. Students may not have in their possession any food, beverage or gum while in the courtroom.

E. Following completion of the trial, the coaches will inspect the area used for the competition, including the restrooms, to ensure that everything is left in the same condition in which it was found. ***Any furniture in the courtroom that was moved before or during the trial MUST be restored to its original configuration!***

F. If requested to do so by the Court Administrator, the coaches will notify the administrator's office when their team arrives and when it leaves. The latter will provide an opportunity for the Court Administrator to arrange for an inspection of the area.

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

Rule 4.1(A) Pretrial Matters (Minnesota only)

1. Teams are expected to be present in the courtroom fifteen minutes before the starting time of the trial. To assist in enforcing these rules, presiding judges, upon taking the bench before the start of the trial, will handle the following pre-trial matters:

A. Ask each side if it is ready for trial. Ask each team to read aloud their portion of the Pre-Trial Matters script (p. 103) put forth on a trial basis by the Mock Trial Advisory Committee. Ask each side to provide the judges with copies of its team roster (a sample roster it provided in the back of these rules). Ask each member of a team to rise and identify himself/herself by name and role.

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

C. The judge will remind all present in the courtroom of the rule prohibiting verbal or written communication between the team members and the coaches, spectators or anyone

else throughout the trial round, including any recesses. (This is to be especially stressed in crowded court settings where there is close proximity between audience and teams.) Communication is allowed once the trial is complete. Judges should announce that the trial is complete and communication is permitted.

2. The judge will remind all present that the courtroom should be put back in order, all trash removed, and that no food or drink is allowed anywhere, at any time, by anyone.

3. Team members will meet the judges for introductions and to assure that the rules of evidence and procedure are uniformly interpreted. Each team should submit to the judges a roster of the students' names and the roles they will play. The Mock Trial Program will receive team rosters from all judges. The parties should also ask the judges when the exhibits (if any) should be marked for identification.

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

5. Once a trial has been scheduled, the trial will not be rescheduled due to the absence of a team member or illness, unless approved by the Mock Trial Manager. Teams should include alternates to replace absent members. Trials may be rescheduled due to inclement weather conditions at the discretion of the Mock Trial Manager.

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

Rule 4.2 Stipulations

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

Rule 4.3 Reading Into The Record Not Permitted

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

Rule 4.4 Swearing of Witnesses

The following oath may be used before questioning begins:

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

Rule 4.5 Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

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

The prosecution/plaintiff attorney may reserve up to 3 minutes of his/her time for rebuttal. The attorney must advise the court at the beginning of his/her argument what portion (if any) of the allotted 3 minutes s/he wishes to set aside for rebuttal.

6. Team Conference (2 minutes)

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

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

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

Rule 4.6 Timekeeping

Time limits are mandatory and will be enforced. Each team is required to have its own timekeeper and timekeeping aids. Timekeepers must use these standard time increments on their timecards: 7:00; 6:00; 5:00; 4:00; 3:00; 2:00; 1:00; :45; :30; :15; STOP. (See sample timekeeping aids on the mock trial website.)

Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

Time does not stop for introduction of exhibits. If at any point during the trial time expires any timekeeper should say "stop" aloud for the court and parties to hear at the point of time expiration. Failure of a timekeeper to say "stop" aloud for the court and parties to hear will be considered a waiver of the time violation.

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

Rule 4.7 Time Extensions and Scoring

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

Rule 4.8 Motions Prohibited

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

Rule 4.9 Sequestration

Teams may not invoke the rule of sequestration.

Rule 4.10 No Bench Conferences

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

Rule 4.11 Supplemental Material/Costuming/Exhibits

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. 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 makeup which are case specific.

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

In order to allow teams to use Exhibit 7 and 8 during the trial, teams may laminate and enlarge these exhibits to a maximum size of 24 by 36 inches. There can be no other enhancement of the exhibits (e.g., color, additional words), but they can be mounted on poster board or foam core in order to allow them to be handled more easily.

No other chalkboards, posters or other visual aids are permitted during the trial, except that during closing arguments a flip chart or other paper (e.g. newsprint) with hand lettering or hand drawing may be used. A flip chart or other paper (e.g. newsprint) with hand lettering or hand drawing may be prepared either prior to or during the trial. Students may write on their own or the other team's demonstrative tools so long as it is not destructive.

Rule 4.12 Trial Communication

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

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar. Attorneys and witnesses may communicate with each other during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes. During the permitted conference at the close of the trial regarding rules infractions, all team members (witnesses, attorneys, bailiff and time keeper) may communicate with each other. No disruptive communication is allowed.

Rule 4.13 Viewing a Trial

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

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

Rule 4.14 Videotaping/Photography

Videotaping can be an effective teaching tool and is permitted in each round of competition provided that:

1. Courthouse policy permits videotaping.

2. A team only tapes a trial in which it is competing.

3. The taping must not disrupt the trial. Photographers should position themselves carefully to avoid distracting the participants during the course of the trial.

4. The tape will be used only by the competing team and will not be shared with any other team (even from the same school) or used for the purposes of "scouting."

5. There are no objections to videotaping from either team or any judge(s).

Rule 4.15 Jury Trial (NHSMTC only)

Rule 4.16 Standing During Trial

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

Rule 4.17 Objections During Opening Statement/Closing Argument

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

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

Rule 4.18 Objections

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

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

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

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

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

5. Character Evidence: Refer to Rule 608.

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

7. Irrelevant: Refer to Article IV.

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

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

10. Lack of Qualification of the Witness as an Expert: See Rule 702.

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

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

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

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

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

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

17. Unfair Extrapolation: Refer to explanation in Rule 2.3.

Note: Teams are not precluded from raising additional objections which may be available under the Minnesota Mock Trial Competition Rules of Evidence.

Rule 4.19 Reserved.

Rule 4.20 Procedure for Introduction of Exhibits

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

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

2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked

as Exhibit No.__?" (Because judges may not have seen the evidence, this rule departs from real life trial procedure.)

3. Show the exhibit to opposing counsel.

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

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

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

7. Witness answers with identification only.

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

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

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

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

Witness affidavits may be used to impeach or refresh recollection and when used for those purposes, need not be admitted into evidence.

Rule 4.21 Use of Notes and Standards for Judging

The standards for judging are contained in the MSBA Mock Trial Performance Rating Standards. Reliance on notes by attorneys during opening, closing or examinations is subject to a point deduction. Witnesses are not permitted to use notes while testifying during the trial.

Rule 4.22 Redirect/Re-cross

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

Rule 4.23 Scope of Closing Arguments

Closing Arguments must be based on the actual evidence and testimony presented during the trial.

Rule 4.231 Team Conference (Minnesota Only)

The following rule is designed to deal with the extraordinary circumstance where a team believes that a significant rules violation occurred during the trial which the judges may not have observed. This rule is not designed to increase the contentiousness of the trial process or to encourage teams to try to find rules violations. At the conclusion of final arguments, the presiding judge will allow two minutes for the three student attorneys, three witnesses, bailiff and timekeeper to confer. The purpose of this team conference is to give these team members a chance to discuss among themselves whether

they believe any significant rules violations occurred during the trial of which the judges could not be aware or have observed themselves.

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

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

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

Rule 4.24 The Critique

The judging panel is allowed 10 minutes for debriefing. The timekeeper will monitor the critique following the trial. Presiding judges are to limit critique sessions to a combined total of fifteen minutes.

The presiding judge will render two decisions at the end of the trial:

1. The merits of the legal case and the applicable law (i.e., a decision about guilt or innocence in a criminal trial, or in favor of the plaintiff or respondent in a civil trial). **This decision is not used to determine the team's win/loss record or standing in the competition** (i.e. you can win the case on the merits but still lose the trial for mock trial purposes, or you can lose on the merits and still be the trial winner for mock trial purposes).

2. The quality of the teams' performances, i.e., the nature/success of the team's strategy, the students' level of preparedness, the individual student performances, etc.. The total points awarded to each team by each judge will be added together; the team with the higher point total will be considered the winning team. **The team that wins on its performance is considered the winner of the trial for mock trial purposes.**

Rule 4.25 Offers of Proof.

No offers of proof may be requested or tendered.

E. JUDGING AND TEAM ADVANCEMENT

Rule 5.1 Finality of Decisions

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

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

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

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

Rule 5.2 Composition of Judging Panels (Minnesota only)

Every effort is made to have two volunteer judges evaluating each trial at the regional level. One is the presiding judge, whose role is to both conduct the trial and to evaluate the teams' performances. The other judge's responsibility is solely that of an evaluator. Both judges have been instructed to rate the performance of all witnesses and attorneys on the team. In the event only one lawyer is able to judge a trial, the one score will be doubled for purposes of calculating the point differential score. If there are three judges during a regional tournament trial, the evaluating and presiding will be handled in the same fashion as the state finals: one judge will be the presiding judge, the other two will be the evaluating judges. The scoring judges' evaluations will determine the trial winner. In the event of a tie, the presiding judge's ballot will determine the winner.

There will be three judges for each trial in the state finals. One judge will be the presiding judge, the other two will be the scoring judges. The scoring judges' evaluations will determine the trial winner. In the event of a tie, the presiding judge's ballot will determine the winner.

Rule 5.3 Score Sheets/Ballots (NHSMTC)

Rule 5.4 Completion of Score Sheets

Score sheets are to be completed individually by each judge without consultation with the other judges. Each scoring judge shall record a number of points (1-10) for each presentation of the trial. At the end of the trial, each judge shall total the sum of each team's individual point and place this sum in the Column Totals box. The Mock Trial Manager has the authority to correct any mathematical errors on score sheets. The coach of the winning team from each trial shall e-mail the scores from the trial to the Mock Trial Manager as soon as possible.

Rule 5.5 Contest Format/Team Advancement (Minnesota only)

In the Minnesota competition there are three phases: sub-regionals (Rounds 1, 2 & 3), regional playoffs (Rounds 4 & 5), and the state finals.

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

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

2. Sub-regionals: For mock trial purposes, the state will be divided into regions. The exact number of regions will be determined by the number of teams entered in the competition.

All teams shall compete in three trials (Rounds 1, 2 and 3), the MSBA makes every effort to ensure each team argues both sides of the case.

The MSBA shall set the trial schedule and determine which teams compete against each other. The fact that a team has scrimmaged another team will not preclude the same two teams from facing each other in competition. Teams from the same school may compete against each other at the option of the Mock Trial Manager, although every effort will be made to guarantee "immunity" for teams from the same school in Rounds 1, 2 and 3.

3. Regionals: After all teams in a region have argued three times, teams will be ranked based first upon win-loss record; second based upon the cumulative point differential scores; third based upon cumulative points earned. [***Note:*** A team's point differential score is the total point spread between that team's score and its opponent's score in a given trial. For example, if team A scores 95 points in a trial and its opponent, team B, scores 92 points, then team A will have an adjusted score of plus 3 and team B will have an adjusted score of minus 3.] Teams ranked one thru four after three rounds of competition will advance into Round 4.

a. Regional finalists will compete in a single elimination playoff format to determine the region winner (Rounds 4 and 5). Pairings for these Rounds will be done according to a *power-match system*, with the highest-ranked team matched with the lowest-ranked team, the next highest with the next lowest, and so on until all of the teams are paired. Power matching may be superseded by travel considerations in regions where the sites for Rounds 4 & 5 would require significant additional travel for a team. Teams from the same school will not be immune from meeting one another if their ranking within the region results in their being paired.

b. Sides for Rounds 4 and 5 will be assigned in advance. Teams with a 2-1 record will be assigned the side on which they *lost* in Rounds 1, 2 or 3; if this would result in the same pairing/sides as a trial in Round 1, 2 or 3, the teams will switch sides (so, if it was Liberty Blue v. City Green in Round 2, and power-matching would result in the exact same pairing in Round 4, the teams would switch sides). To the greatest extent possible, teams will switch sides in subsequent rounds if both teams can do so; otherwise, the team that is first alphabetically will present the defense side of the case.

4. State Finals: Each regional champion is eligible to attend the state competition. If the first place team from a region decides it does not want to attend the state tournament, the second place team will be eligible to compete. The state tournament format differs from that of the regional competition. All teams at the State Competition will participate in at least three rounds of trials and will present each side of the case at least once. There will be two scoring judges and a presiding judge at each trial. State Finals Power-matching criteria for the first three rounds are: 1) Win/loss record (the team receiving the most ballots in a trial shall be deemed the winner of the trial regardless of the number of

points earned by each team), 2) total number of ballots won, 3) cumulative point differential, 4) cumulative points earned. Pairings for the first round will be assigned at random. After round one of the competition, teams will be divided into two brackets (1-0 and 0-1). Teams will be ranked within the brackets and power-matched. After round two of the competition, teams will be divided into three brackets (2-0, 0-2 and 1-1). Teams will be ranked within the brackets and power-matched. After three rounds of competition, final championship trial participants will be determined using this criteria: 1) Win/loss record, 2) Total number of ballots won, 3) Number of wins against 2-1 teams, 4) Number of wins against 1-2 teams, 5) Cumulative point differential. (Provided that, if by application of the criteria a team is ranked higher than a team with the same win/loss record that defeated it, the losing team shall be placed immediately below the winning team) The top two ranked teams will compete in the final championship round. Side-assignments will be determined by a coin-flip after the final championship round teams are announced. The state champion is then eligible to represent Minnesota at the annual National High School Mock Trial Championship, which is held in a different city each year (2011 Phoenix, AZ; 2012 Albuquerque, NM).

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

Rule 5.7 Selection Of Sides For Championship Round (NHSMTC)

Rule 5.8 Effect of Bye Round

In the event of a bye, the team receiving a bye for any round, for any reason will be awarded a win and a point differential of zero for the round in which the team is given a bye.

F. DISPUTE RESOLUTION

Rule 6.1 Reporting a Rules Violation/Inside the Bar (NHSMTC Only)

Disputes which (a) involve students competing in a competition round and (b) 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 Procedures

During trial: If a team has serious reason to believe that a significant rules violation has occurred during the course of a trial, and that the violation involved an act that may be corrected during the course of the trial, a member of that team shall make an objection and communicate the complaint to the presiding judge. To the extent possible, the presiding judge will attempt to resolve the dispute during the course of the trial without disrupting the trial, and may consider the validity or invalidity of the complaint in his/her determination of which team gave the better performance during the trial.

After trial: After the trial has been completed, if a teacher coach or attorney coach has serious reason to believe that a significant rules violation has occurred of which their team members could

not have been aware, the coach shall communicate the complaint to the presiding judge while the judges are still in the courtroom. In this case the presiding judge will give the teams two minutes to discuss the alleged violation among themselves.

Each team will then designate one team member to present its case to the judges. Each team must limit its statement to two minutes.

The judges will be allowed to consider the dispute before completing their scoresheets. The dispute may or may not affect the scoring. The matter will be left to the discretion of the judges.
The judges' decision will be final.

Rule 6.21 Complaint/Grievance Process:

If any team believes that blatantly unprofessional misconduct, unethical behavior, or a serious and substantial rules violation has occurred outside of a trial a teacher, attorney coach or judge may advise the Mock Trial Manager that they intend to file a complaint. This complaint must be with regard to matters that could not be resolved in the course of the trial and could not be resolved through Rule 6.2 or Rule 4.231. The resolution of the Complaint/Grievance Process **will not affect** the outcome of any trial. See Rule 5.1. Complaints/Grievances in regard to a judge's rulings, points awarded, or who won the trial will not be entertained.

The complaint/grievance process will be governed by this rule and will follow these guidelines:

1) Within 48 hours of the incident, the written complaint must be received by the Mock Trial Manager. The complaint may be sent electronically and must contain specific information about the violation.
2) All complaints will be referred to the Mock Trial Advisory Committee.
3) After a complaint is received by the Mock Trial Manager, the Mock Trial Advisory Committee will convene as soon as practicable. A quorum of the Committee is required for any decision. The Committee will alert the party(ies) against which the complaint was lodged and share the nature of the grievance. The Committee may invite further comment in writing or in person from those involved, in its discretion. The Committee will take action based on a majority vote and all parties shall be notified of the decision. All decisions of the Committee shall be final. See Rule 1.1.
4) The Committee may decide to issue any one of the following in order of increasing severity:
    a) Warning: A private conversation discussing the alleged violation with the offending party or parties.
    b) Reprimand: A written letter to the offending party or parties advising them of the Rules violation. This letter may be sent to the individual and/or school and/or employer.
    c) Suspension: Suspension of an offending individual(s) or team(s) from participation in mock trial for a time period to be specified by the Committee.
    d) Disqualifications: Disqualification of an offending individual(s) or team(s) for a time period specified by the Committee, but no less than one competition season.
    e) The Committee will report violations where appropriate to governing ethical bodies such as the Lawyers Professional Responsibility Board.

Refer to Rule 4.231 for dealing with student team members' concerns about rules violation.

Rule 6.3 Effect of Violation on Score (NHSMTC)

Rule 6.4 Reporting of Rules Violation/Outside the Bar (NHSMTC)

MINNESOTA MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

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

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

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

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

Article I. General Provisions

Rule 101. Scope

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

Rule 102. Purpose and Construction

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

Article II. Judicial Notice

Rule 201. Judicial Notice

1. This rule governs only judicial notice of adjudicative facts.
2. A judicially noticed fact must be one not subject to reasonable dispute in that it is either
    a. generally known within the territorial jurisdiction of the trial court or
    b. capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
3. A judge or court shall take judicial notice if requested by a party and supplied with the necessary information.
4. Judicial notice may be taken at any stage of the proceeding.

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

Article III. Reserved

Article IV. Relevancy and its Limits

Rule 401. Definition of "Relevant Evidence"

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

Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible

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

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

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

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

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

> (1). Character of accused -- Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
> (2). Character of victim -- Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;
> (3). Character of witness -- Evidence of the character of a witness as provided in Rules 607-609.

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

Rule 405. Methods of Proving Character

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

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

Rule 406. Habit; Routine Practice

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

Rule 407 Subsequent Remedial Measures

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

Rule 408 Compromise and Offers to Compromise

(a) Prohibited uses. Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior consistent state or contradiction:
    (1) furnishing or offering or promising to furnish—or accepting or offering or promising to accept—a valuable consideration in compromising or attempting to compromise the claim; and
    (2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

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

Rule 409 Payment of Medical or Similar Expenses

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

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

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

1. a plea of guilty which was later withdrawn;
2. a plea of nolo contendere;

3. any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the forgoing pleas; or
4. any statement made in the course of plea discussions made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

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

Rule 411 Liability Insurance (civil case only)

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

Article V. Privileges

Rule 501. General Rule

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

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

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

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

Rule 607. Who may Impeach (i.e., show that a witness should not be believed)

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

Rule 608. Evidence of Character and Conduct of Witness

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

(1) the evidence may refer only to character for truthfulness or untruthfulness, and

(2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

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

(1) concerning the witness' character for truthfulness or untruthfulness, or

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

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

Rule 609. Impeachment by Evidence of Conviction of Crime

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

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

(c) Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

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

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

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

1. make the *questioning* and presentation effective for ascertaining the truth,
2. avoid needless *use* of time, and
3. protect witnesses from harassment or undue embarrassment.

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

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

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

Rule 612. Writing Used to Refresh Memory

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

Rule 613. Prior Statements of Witnesses

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

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

<u>Article VII</u>. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

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

Rule 702. Testimony by Experts

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

Rule 703. Basis of Opinion Testimony by Experts

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

Rule 704. Opinion on Ultimate Issue

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

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

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

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

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

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

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

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

(d) A statement is *not* hearsay if:

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

(A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or

(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or

(C) one of identification of a person made after perceiving the person; or

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

(A) the party's own statement in either an individual or a representative capacity or

(B) a statement of which the party has manifested an adoption or belief in its truth, or

(C) a statement by a person authorized by the party to make a statement concerning the subject, or

(D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or
(E) a statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Rule 802. Hearsay Rule

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

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

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

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

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

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

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

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

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

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

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

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

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

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

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

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

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

Rule 804. Hearsay Exceptions; Declarant Unavailable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IX. Authentication and Identification - Not applicable.

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

ARTICLE XI - Other

Rule 1103. Title

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

SAMPLE TEAM ROSTER

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

MINNESOTA MOCK TRIAL PROGRAM

SIDE: Prosecution LOCATION: Rock Cty Courthouse

DATE: _____

ATTORNEYS

	Name	Gender
Student	_____	(M / F)

Opening, Direct of insert witness' name here, Cross of insert witness' name here

Student _____ (M / F)

Direct of _____, Cross of _____

Student _____ (M / F)

Direct of _____, Cross of _____, Closing

WITNESSES (in order of appearance)

		Gender
Witness #1 name	Student's name	(M / F)
Witness #2 name	Student's name	(M / F)
Witness #3 name	Student's name	(M / F)

Bailiff ..... Student's Name

Timekeeper..... Student's Name

Pre-Trial Conference

Pursuant to Rule 3.4 of the Minnesota Mock Trial Rules, the following pre-trial motions and advisories must be read aloud before commencement of the mock trial competition. Recitation of these items is not scored. Nothing in this recitation shall be interpreted to substantively change or negate the mock trial rules of competition and evidence.

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

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

3. ***Full Hearing of Evidentiary Objections and Argument.*** The parties jointly move the Court to allow both sides to fully argue objections. Under mock trial procedures, objections are generally heard unless repetitive or the case is running over time limits.

4. ***Testimony Deemed Admissible Even if Irrelevant.*** The parties jointly advise the Court that mock trial testimony is customarily deemed admissible regardless of legal relevance. At the discretion of the court full testimony from each witness is generally heard, time permitting.

5. ***Tie-Breaker Point Award in All Cases.*** The parties jointly move the Court to place a point in the tie-breaker box on his or her official score sheet. This applies to the presiding judge only.

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

7. ***Scoring the Use of Notes.*** The parties jointly advise the Court that, pursuant to Rule 4.21, a point deduction for use of notes by attorneys should be considered in overall score and not as an additional point deduction.

8. ***Mathematical Computation and Error Checking.*** The parties jointly move the Court to use a calculator to check the score tabulation. Judges should double check each other's math.

9. ***Unfair Extrapolations.*** The parties jointly advise the Court to take notice of Rule 2.3 Unfair Extrapolations, located at page 75 of the Mock Trial Case Materials. According to this rule, 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. A fair extrapolation is one that is neutral.

10. ***Roster Sheet.*** *The parties may submit their roster sheets if these have not been presented already and may raise any other pre-trial matters at this time.* Let's have fun!

Minnesota High School
Mock Trial State Champions

2010 Breck School, Minneapolis
2009 Lakeville North High School, Lakeville
2008 Lakeville North High School, Lakeville
2007 Buffalo High School, Buffalo
2006 South, Minneapolis
2005 South, Minneapolis
2004 Meadow Creek Christian, Andover
2003 South, Minneapolis
2002 South, Minneapolis
2001 Meadow Creek Christian, Andover
2000 Meadow Creek Christian, Andover
1999 South, Minneapolis
1998 Fergus Falls
1997 St. Thomas Academy, Mendota Heights
1996 Eden Prairie
1995 Dassel-Cokato
1994 Christ's Household of Faith, St. Paul
1993 Kennedy, Bloomington
1992 South, Minneapolis
1991 Visitation, Mendota Heights
1990 South, Minneapolis
1989 Chisago Lakes
1988 Waseca
1987 Waseca