

**JUDGE LYLE STROM HIGH SCHOOL  
MOCK TRIAL PROJECT  
2016 CASE**

**State of Nebraska  
vs.  
Blake M. Brando**

**CR 711-1804**

Sponsored by the  
Nebraska State Bar Foundation  
and its State Center for Law-Related Education

[www.nebarfnd.org/mock-trial](http://www.nebarfnd.org/mock-trial)

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**NEBRASKA STATE BAR FOUNDATION  
P.O. Box 95103  
Lincoln, NE 68509-5103  
402-475-1042**

**MEMO**

**TO: ALL MOCK TRIAL PARTICIPANTS**

**FROM: Doris J. Huffman, EXECUTIVE DIRECTOR**

**RE: 2016 Judge Lyle Strom High School Mock Trial Project**

**DATE: August 18, 2016**

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On behalf of the Nebraska State Bar Foundation, I welcome your participation in the 2016 Mock Trial competition! This year's criminal case decides whether Blake M. Brando did deliberately shoot and kill Louise Choanike while she was performing during the dress rehearsal of *Burr*.

**Students** – You will experience what it is like to prepare for and present a case before a judge. Working with your team and coaches, you will learn to evaluate information, respond quickly, and sharpen your public speaking skills.

The greatest benefit is the opportunity to learn how the legal system works. After the competition, you will have gained knowledge that will be helpful to you as an adult. By studying and understanding courtroom procedure, you should become more comfortable with federal and state laws as part of the legal system. Your interaction with some of Nebraska's finest attorneys and judges will give you a glimpse of the different interpretations of trial procedure and different approaches of individual members of the judiciary.

**Teacher Coaches, Attorney Coaches and Judges** – I strongly encourage you to focus on the goal of participation by students rather than stressing competition while preparing your case. Your contributions of time and talent are making many experiential educational opportunities available to over 1,000 Nebraska students. Your participation is an essential element to the success of this program. You can be proud of the positive impact you have made on the lives of these students. Thank you!

***Gentle reminder*** - *Scouting by a team's teachers, attorneys, or parents or by affiliates of any other team is not permitted. This includes talking to other schools about a specific team's strategy. The lead teacher coach and lead attorney coach are required to sign the Code of Ethical Conduct Form and return it to me.*

**New Score Sheet** – Please note that the score sheet has been revised to include an opportunity for each team to earn an additional 10 points through the "Team Decorum & Professionalism" score. A maximum of 120 points is the highest score any team may get.

If you have any questions, please contact me.

**Good luck and have fun!**

## ACKNOWLEDGEMENTS

The Judge Lyle Strom High School Mock Trial Project is administered and funded by the **Nebraska State Bar Foundation** and supported by hundreds of volunteer lawyers each year.

The Nebraska State Bar Foundation is a nonprofit corporation that was established in 1963. Its mission is *to serve the citizens of Nebraska and the legal profession through the administration and funding of innovative and creative programs directed toward the improvement of justice and the fulfillment of the American vision of equal justice for all.*

Annually, the NEBRASKA STATE BAR FOUNDATION and the NEBRASKA COUNCIL OF SCHOOL ATTORNEYS help provide financial assistance for the winning Nebraska Mock Trial team to attend the National High School Mock Trial Championship.

**A sincere thank you is extended to the Nebraska Council of School Attorneys. Since 1992, this statewide organization has given \$1,000 annually to the winning State Champion. The Council's continued support is a testament of the positive impact Mock Trial has on young Nebraskans.**

A most sincere thank you is extended to The Honorable Lyle Strom for his continued leadership and invaluable input with the Mock Trial Project. The Foundation welcomes The Honorable John Gerrard and The Honorable Riko Bishop to the Mock Trial Project leadership and looks forward to working with them.

A special thank you is also extended to the members of the Mock Trial Case Writing Committee:

**John L. Jelkin, Lincoln (co-chair)**  
**Kristi Egger-Brown, Lincoln**  
**Michael D. Gooch, Omaha**  
**Hon. Riko Bishop, Lincoln**

**Stephanie R. Hupp, Lincoln (co-chair)**  
**Lory Ann Pasold, Lincoln**  
**Tina M. Marroquin, Seward**

In addition, the Foundation would like to acknowledge and thank the following individual, who provided invaluable assistance to the Case Writing Committee:

**Deputy Sheriff Craig Schnieder**  
Special Services Division, Court Security  
Lancaster County Sheriff's Office

### **The following organizations endorse the Nebraska High School Mock Trial Project:**

Defense Counsel Association of Nebraska  
Nebraska Association of School Boards  
Nebraska Association of Trial Attorneys  
Nebraska Council of School Attorneys  
Nebraska County Attorneys Association

Nebraska County Judges Association  
Nebraska Criminal Defense Attorneys Association  
Nebraska District Judges Association  
Nebraska State Bar Association  
Nebraska State Council for the Social Studies

### **MOCK TRIAL OATH**

Do you promise that the testimony you are about to give will truthfully conform to the facts and rules of the Mock Trial Competition?

### **CODE OF ETHICAL CONDUCT**

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

**As a means of diligent application of the Mock Trial Competition Rules, the Nebraska State Bar Foundation encourages all participants to follow the Code of Ethical Conduct:**

- a. Team members promise to compete with the highest standards of deportment, showing respect for their fellow team members, opponents, judges, evaluators, attorney coaches, teacher coaches and Mock Trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know are wrong or in violation of the Rules, including the use of Invention of Facts. Members will not willfully violate the Rules of the competition in spirit or in practice.
- b. Teacher Coaches agree to focus attention on the educational value of the Mock Trial Competition. They shall discourage willful violations of the Rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition Rules and this Code of Ethical Conduct.
- c. Attorney Coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition Rules and this Code of Ethical Conduct. Attorney coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.
- d. All participants (including observers) are bound by all sections of this Code and agree to abide by the provisions. Teams are responsible for ensuring that all observers are aware of the Code.
- e. Scouting by a team, its teachers, attorneys, or parents or by affiliates of any other team is not permitted. No information about any previous trials may be shared with any other team/school at either the regional or state competition.

**NEBRASKA MOCK TRIAL GOALS**

- To increase student comprehension of the historical, ethical and philosophical bases of the American system of justice.
- To clarify operation of the law, court procedures and the legal system.
- To help students develop basic life and leadership skills, such as listening, speaking, writing, reading and analyzing.
- To build bridges of mutual cooperation, respect and support between the community (teachers, students, parents and schools) and the legal profession.
- To heighten appreciation for academic studies and promote positive scholastic achievements.
- To bring law to life for students through active participation in the project.
- To encourage participation and growth toward understanding the meaning of good citizenship in our democracy through the system of law. All students who participate are winners.

**2016-2017 MOCK TRIAL COMPETITION TIMELINE AND DATES**

Entry deadline .....	September 9, 2016
Dates and Times Preference Form due to Regional Coordinator .....	September 23, 2016
Local and regional competition .....	October 1 -
(7-week period in 12 regions) .....	November 22, 2016
Regional winners announced.....	November 22, 2016
State Championships .....	December 6 - 7, 2016
Lancaster County Courthouse	
Lincoln, Nebraska	
Mock Trial Banquet.....	December 6, 2016
Embassy Suites Lincoln	
Lincoln, Nebraska	
National Championship.....	May 11-13, 2017
Hartford, Connecticut	

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

State of Nebraska

CR 711-1804

Prosecution

)

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vs.

)

Blake M. Brando

)

Information

Defendant.

)

)

Joe Justice, Wagon Wheel County Attorney by authority of the State of Nebraska, comes here in person into Court at this, the 2016 term, thereof, and for the State of Nebraska, and gives the Court to understand and be informed that Blake M. Brando on or about October 27, 2015, in the County of Wagon Wheel and State of Nebraska, the defendant did purposely and with deliberate and premeditated malice, shoot and kill Louise Choanike, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the State of Nebraska.

JOE JUSTICE

WAGON WHEEL COUNTY ATTORNEY



Joe Justice

Wagon Wheel County Attorney

Joe Justice, Wagon Wheel County Attorney, says the facts stated in the foregoing information are true as s/he verily believes.



Joe Justice

Wagon Wheel County Attorney

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

State of Nebraska

CR 711-1804

Prosecution

)

)

vs.

)

Blake M. Brando

)

Honorable Tina Jelkin

Defendant.

)

Presiding Judge

)

**WITNESSES, EXHIBITS, AND STIPULATIONS**

**Witnesses for Prosecution**

- 1: Dylan Perkins
- 2: Quinn Dolan
- 3: Scout Ting

**Witnesses for the Defense**

- 1: Blake M. Brando
- 2: Inigo Montoya Morton
- 3: Sawyer Neil

**Exhibits**

- 1: 3x5 Police note cards
- 2: Autopsy Report of Louise Choanike
- 3: Dueling Pistols
- 4: Theatre Floor plan with Key
- 5: Prop Table
- 6: Emails between Scout Ting and Blake Brando
- 7: Text Messages between Blake Brando and Sawyer Neil
- 8: Text messages between Louise Choanike and Sawyer Neil

**Stipulations**

Both sides stipulate to the following:

1. All exhibits included in the case are authentic and accurate in all respects. No objections to the authenticity of the exhibits will be entertained.
2. No objections for any reason shall be entertained to the admissibility of the Autopsy Report. Either party may introduce and offer the Autopsy Report through the testimony of an appropriate witness. The Autopsy Report will be admitted into evidence without objection.



## **JURY INSTRUCTIONS**

### **INSTRUCTION NO. 1**

#### **A. ELEMENTS**

The defendant has been charged with first degree murder. The elements which the State must prove beyond a reasonable doubt in order to convict the defendant of murder in the first degree are:

- (1) That the defendant killed Louise Choanike; and
- (2) That the defendant did so intentionally; and
- (3) That the defendant did so with deliberate and premeditated malice; and
- (4) That the defendant did so on or about October 27, 2015, in Wagon Wheel County, Nebraska.

#### **B. EFFECT OF FINDINGS**

If you decide that the State proved each element beyond a reasonable doubt then you must find the defendant guilty. Otherwise, you must find the defendant not guilty.

### **INSTRUCTION NO. 2**

“Intentionally” means willfully or purposely and not accidentally or involuntarily.

“Deliberate” means not suddenly or rashly but (doing an act) after first considering the probable consequences.

“Premeditated” means forming the intent to (act) before acting. The time needed for premeditation may be so short as to be instantaneous provided that the intent to (act) is formed before the act and not simultaneously with the act.

“Malice” means doing a wrongful act without just cause or excuse.

### **INSTRUCTION NO. 3**

A reasonable doubt is one based upon reason and common sense after careful and impartial consideration of all the evidence. Proof beyond a reasonable doubt is proof so convincing that you would rely and act upon it without hesitation in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

### **INSTRUCTION NO. 4**

There are two kinds of evidence, direct and circumstantial.

Direct evidence is either physical evidence of a fact or testimony by someone who has first-hand knowledge by means of his or her senses. Circumstantial evidence is evidence of a fact from which some other fact can be logically inferred.

A fact may be proved by direct evidence alone, by circumstantial evidence alone, or by a combination of the two.

**IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA**

**State of Nebraska**

**Prosecution**

**vs.**

**Blake M. Brando**

**Defendant.**

**CR 711-1804**

**Honorable Tina Jelkin  
Presiding Judge**

**NEBRASKA STATUTES**

**28-303. Murder in the first degree; penalty**

1) A person commits murder in the first degree if he or she kills another person (a) purposely and with deliberate and premeditated malice, (b) in the perpetration of or attempt to perpetrate any sexual assault in the first degree, arson, robbery, kidnapping, hijacking of any public or private means of transportation, or burglary, or (c) by administering poison or causing the same to be done.

(2) Murder in the first degree is a Class IA felony.

(Pursuant to Neb. Rev. Stat. § 28-105, the penalty for a Class IA felony is life imprisonment)

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

State of Nebraska

Plaintiff

vs.

Blake M. Brando

Defendant.

CR 711-1804

Honorable Tina Jelkin

Presiding Judge

**Witness Statement of Dylan E. Perkins \***

1 My name is Dylan Perkins. I am a Deputy Sheriff with the Wagon Wheel County Sheriff's office. I  
2 also assist the Goldenrod Police Department when needed, as Goldenrod is located in Wagon  
3 Wheel County. I have served 3 years in various law enforcement roles. On Tuesday, October  
4 27th, 2015 at 2022 hours, I was dispatched to 2601 Hudson Ave, the Crane River Theatre, in  
5 Goldenrod, Nebraska. The dispatcher reported that two people had been shot at that location.

6 I immediately maneuvered my law enforcement vehicle to that location at a high rate of speed.  
7 When I arrived, emergency services personnel were already performing their duties. It turns out  
8 that there was only one victim, Ms. Louise Choanike. They tried to revive the victim, unsuccessfully. I  
9 could immediately tell it was too late anyway. The paramedic reported that even before they  
10 arrived, Sharon Ann Lane, the theatre nurse had tried to stop the bleeding and performed CPR in  
11 a very professional manner. She handed the victim over to the first responders immediately and  
12 then provided them with a concise description of the condition of Ms. Choanike.

13 I examined the victim and observed a single GSW, which stands for 'Gun Shot Wound,' to the  
14 chest and a massive amount of blood. Based on my training and experience, I determined that the  
15 victim was deceased and that the cause of her death was a single GSW to the chest. There was  
16 no blood coming from the wound which means that the heart was no longer pumping blood, which  
17 meant it was too late to save her.

18 Thereafter, I immediately surveyed the scene to determine who might be the responsible party.  
19 There was a large group of people milling around. As I began my investigation, I ordered that all  
20 cast and crew, along with any random spectators were to sit in the first three rows of the middle  
21 section of the theatre. I directed that cast sit in the front row, crew in the second and the  
22 remainder of those present were behind the crew. The paramedics ignored my instructions and  
23 continued to hover around the deceased.

24 First, I administered a Miranda warning to the entire group to save time. I have memorized this  
25 warning and did not need to use my "Miranda" card. I said, 'you all have a right to remain silent,  
26 what you say might be taken down and used against you if you are charged criminally for this  
27 murder.' I said, 'if you ask for an attorney, it may cause suspicion to fall upon you but you have a  
28 right to hire a lawyer. You can get a free lawyer only if you cannot afford to hire one yourself  
29 but only if you expressly demand one. Getting a lawyer will not delay this investigation but you

30 can remain silent if you want to.' Finally, I told them that they 'could start answering questions or  
31 consult with their attorney.' I also explained that as the investigator in charge, I was responsible  
32 for ensuring the safety of all involved and that I expected their complete cooperation.

33 I then addressed a question to the assembled witnesses. I asked, "Who did this?" Everyone  
34 present pointed to the Defendant. S/He jumped up and said, "I did not know the gun was  
35 loaded." During the ensuing shouting, I ordered the Defendant to sit down and remain where s/he  
36 was. Before order was restored, I also heard someone say that the Defendant and the deceased  
37 did not like each other and another voice say that the Defendant was not supposed to pull the  
38 trigger.

39 I asked the assembly "Who is in charge?" Everyone present pointed to me. I asked, "who is in  
40 charge of this play?" Everyone pointed to the stage manager, who stood up and said, "That's me  
41 - Quinn Dolan, I am also the prop manager for this production. I directed the prop manager to  
42 hand out 3x5 cards and pencils to everyone in the theatre. Then I ordered each person to print,  
43 legibly, their name, address, date of birth, and role, title, or status as to the play on the card. I  
44 also directed them to include a short statement concerning what they knew about the shooting.  
45 And then I ordered the stage manager to collect those cards and to give them to me, which s/he  
46 eventually did. I have reviewed Exhibit #1 and they are accurate and truthful copies of the  
47 original 3x5 cards which I placed into evidence.

48 At 2031 hours, I separated the Defendant far from the maddening crowd. In the meantime,  
49 additional officers arrived on the scene. I handed all of the cards to a patrol officer and told her  
50 to verify the identity of each person except for the Defendant and to have them wait until I could  
51 interview them individually. I also directed a male officer to pat down all of the assembled males  
52 and the female officer to pat down all of the assembled females for officer safety.

53 Thereafter, I called homicide in to dispatch and ordered a crime scene unit to respond. I also  
54 ordered a medical examiner (ME) to come to the theatre. When the ME arrived, the deceased  
55 was officially declared dead and the paramedics removed her to the rescue squad for  
56 transportation to the morgue. Later, I reviewed the autopsy report, a true and exact copy of  
57 which is included as Exhibit #2.

58 During this time, I spoke further with Quinn Dolan, the prop manager. S/He told me that s/he is in  
59 charge of the props, including the two black powder dueling pistols being used in the production.  
60 S/he pointed to both pistols on the floor. Exhibit #3 is a true and accurate photograph of the  
61 pistols as I first saw them. Both had been recently fired. At this point, I had no idea which pistol  
62 had had the deadly ball in it and which pistol was discharged by the deceased. The prop  
63 manager reported that s/he is responsible for maintaining and loading the pistols but that s/he  
64 did not place a ball into either pistol. S/He had loaded both with black powder and a cotton  
65 wad only. Because the pistols are a matching set, s/he could not definitively say which pistol was  
66 taken by which actor or which pistol fired the kill shot. Quinn Dolan reported that the decedent  
67 and the accused co-wrote the play and several other plays too. They argued constantly and  
68 loudly about the long term use for the play. S/He said that the defendant wanted to preserve

69 his/her precious words and ideas as a work of art whereas the deceased wanted to sell the play  
70 to a California TV producer for a lot of money.

71 I interviewed Inigo Montoya Morton; what a funny name, especially for an actor wannabe. Still,  
72 s/he said s/he was an actor. S/He claimed to have seen it all, but really only rushed on stage  
73 after the shooting. S/He claimed to have heard the deceased say something but it did not seem  
74 too important at the time. It might have been "Not.....the....way...." and "Not my life." I did not  
75 think that those words meant what s/he thought they meant. It is inconceivable that I might have  
76 missed something important.

77 The crime scene people arrived and began collecting evidence. I turned the pistols over to them to  
78 be logged into evidence. They took photographs of the pistols. They also took some photographs  
79 of the prop table. I have examined those photographs and they are true and accurate depictions  
80 of the actual pistols I seized and of the prop table. Once the pat down was completed and the  
81 various potential witnesses' identification was confirmed, I kept the 3x5 cards in my possession in  
82 order to use them in my further investigation.

83 I interviewed Blake M. Brando, the Defendant. S/He told me that s/he is a co-author of the play.  
84 S/He claimed that s/he was just filling in during the dress rehearsal because Sawyer Neil, the  
85 actor who is actually performing this part quit or was fired or something. S/He reported that the  
86 deceased is the co-author of the play. S/He admitted that there had been a 'discussion' between  
87 the two about whether to sell the play along with production rights so it could possibly be made  
88 into a TV show or a movie or something. S/He wanted to 'preserve artistic integrity' and merely  
89 license its use to community play houses and high school drama programs but the deceased  
90 wanted the money. It was obvious that this argument provided a motive for him/her to kill the  
91 deceased.

92 I arrested the Defendant. It was not necessary to administer Miranda rights as I had given them to  
93 all of the assembled cast and crew earlier. When I reminded him/her, s/he said s/he  
94 remembered that and we proceeded to a more detailed interview. S/He told me that s/he and  
95 the deceased had argued about the long term and remunerative use of their play just two days  
96 before the dress rehearsal.

97 S/He also indicated that the original ideas in the play were hers/his and that the deceased really  
98 did not do that much to deserve being listed as 'co-author.' Defendant admitted that the  
99 deceased has previously published stuff and her reputation made a difference in getting  
100 production money and venues. Defendant also said that the argument itself was really nothing  
101 important and that s/he harbored no ill will. And s/he insisted that s/he did not know s/he would  
102 be asked to perform in the dress rehearsal. S/He insisted the prop manager handed her/him one  
103 of the pistols, which meant that s/he could not have known that it was actually loaded. S/He  
104 added that the prop manager did not like the deceased. Perhaps, the Defendant suggested, this  
105 was just a case of best friends parting ways. The Defendant also provided the name and  
106 telephone contact information for Scout Ting, the "vulture who wanted to sink his/her claws" into  
107 the Defendant's play to "siphon off the profits and to debase this great work." Turns out Scout

108 Ting was actually present for the dress rehearsal. I interviewed her/him but s/he really did not  
109 see anything except the shooting.

110 Next, I interviewed Sawyer Neil, the actor, who was originally supposed to take the part played  
111 by the defendant. S/He said s/he had a small argument with the decedent about rehearsing. The  
112 day of dress rehearsal, s/he received a text from the decedent telling him/her to not come that  
113 night, but s/he went anyway to try and meet Scout Ting.

114 S/He said s/he already knew her/his lines, knew the cues, and was familiar with the  
115 choreography. It was "just practice." S/He also said that s/he does not really care for the play,  
116 the authors, or the other actors. This bit was just a little something to keep in shape for when the  
117 call comes to do some real acting, in New York or Hollywood. Anyway, s/he said that the  
118 defendant got mad and terminated her/him. S/he was really angry and went for a walk. S/He  
119 claimed not to have seen anyone during his/her walk. However, when s/he returned to get  
120 his/her car, s/he saw fire trucks, an ambulance, and several police cars, so s/he came back into  
121 the theatre. When I ordered everyone to sit down, s/he did so. S/he said s/he "was angry, of  
122 course, and justly so, but s/he had nothing to do with the stabbing." When I confronted him/her,  
123 s/he said, s/he pretty much assumed it was the dueling pistols since the play did not have any  
124 large knives in it but s/he did not want to appear too knowledgeable so s/he said stabbing  
125 instead of shooting. S/He pointed out that s/he "is not an idiot."


126 Although I am not a firearms expert, the pistols appear to be a matching set and it might be  
127 difficult to tell which is which just by looking. The crime scene people took a swab and told me  
128 that there was "blow back residue" on both the Defendant and the deceased and a bunch of  
129 other people. This indicates that both the decedent and the defendant had recently discharged a  
130 firearm and the cloud of smoke from the burning of the black powder landed on some other  
131 people. And the deceased had a gunshot wound in her chest confirming that someone else had  
132 fired a gun. There were powder burns on the deceased around the wound.

133 Defendant was then taken into custody and transported to the jail for booking.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

  
\_\_\_\_\_

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2016-2017 Nebraska State High School Mock Trial Competition.

  
\_\_\_\_\_

Stephanie Egger Nelson, Notary Public

My Commission Expires: December 31, 2016

*\* This character is by no means intended to demean the professional integrity of law enforcement officers nor in any way misrepresent the important work they do. The liberties taken with this character are intended only for some levity consistent with the other characters created, and also to create a basis for legal arguments in the area of Miranda rights. See State v. Nave, 284 Neb. 477, 821 N.W.2d 723 (2012) (rights under Miranda are absolute, but the language used to apprise suspects of those rights is not).*

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

State of Nebraska

CR 711-1804

Plaintiff

)

)

vs.

)

Blake M. Brando

)

Honorable Tina Jelkin

Defendant.

)

Presiding Judge

)

Witness Statement of Quinn E. Dolan

1 My name is Quinn Dolan. I am the head of media services for the Goldenrod Public School  
2 District. I have a bachelor's degree in elementary education from the University of Cottonwood  
3 and a Masters in Library Sciences from Sterling Morton University. After graduation, I moved,  
4 took a job as a Media Specialist at the Goldenrod Middle School and eventually was selected as  
5 the head of Media Services for the District.

6 I am also a volunteer for the Crane River Theatre. Theater is my first love, but don't tell my cat,  
7 Neeko, that! I have always wanted to be on stage, but anxiety and stage fright made a career  
8 on Broadway impossible. In high school I discovered I could be involved behind-the-scenes. My  
9 creative juices flow when I'm helping design and build sets and manage the stage. Most of my  
10 knowledge about play production comes from hands-on experience. When I first started  
11 volunteering at the Crane River, my duties involved holding things, getting things, and standing out  
12 of the way. Over time I was given more and more responsibilities. Eventually I was promoted to  
13 Stage Manager, the lead volunteer position.

14 I have been the stage manager in many plays and musicals - *Into the Woods*, *Next to Normal*, *Les*  
15 *Miserables*, *A Chorus Line*, *Ragtime*, *You Can't Take it with You*, *Second Samuel*, *Rent*, *Catch Me If*  
16 *You Can*—to name a few. You can see from the number of musicals I've worked on that if the  
17 actors aren't singing and dancing, I'm not as interested.

18 And then the musical *Burr* came along. There was such a buzz in town about it. I even agreed to  
19 work as the prop manager/assistant stage manager rather than my normal position as head  
20 stage manager for this show. The director was such a control freak; she also wanted to be the  
21 head stage manager. But I should have known better than to work on a Choanike/Brando show.  
22 Or was it Brando/Choanike? They always argued about who got first billing. Even though I was  
23 just the prop manager/assistant stage manager, I really handled most of the duties of the stage  
24 manager. A director had to stay back stage during the show, so I ran the lighting and sound  
25 during the practices and show.

26 Henry Rollins, rocker/actor/spoken-word genius once said:

27 Listen to the stage manager and get on stage when they tell you to. No one has  
28 time for your rock star [baloney]. None of the techs backstage care if you're

29 David Bowie or the milkman. When you act like a jerk, they are completely  
30 unimpressed with the infantile display that you might think comes with your dubious  
31 status. They were there hours before you building the stage, and they will be there  
32 hours after you leave tearing it down. They should get your salary, and you should  
33 get theirs.

34 I should have posted that sign back-stage during *Burr*.

35 My goal is for the audience to suspend belief and forget they are watching a play or musical. I  
36 want them to believe. That's why I use only the most realistic looking props for our shows. I have  
37 found that ACME Prop Supply Company is great. Everything they supply is very realistic. ACME  
38 lends props from their huge supply for a small fee. Community theaters even get a price-break.  
39 I ordered the deluxe ACME dueling pistol set for *Burr*.

40 We used the ACME dueling pistols for most of the rehearsals until I finally got sick of hearing  
41 Brando mutter under his/her breath, "These things look so fake. Even a Kindergartener would  
42 know they aren't real. I have a lot on the line with this play. We MUST impress Scout Ting."

43 I was complaining to Deputy Schnieder, the High School's Resource Officer, about Brando's  
44 attitude one day and he suggested I just use the real things. What was he talking about?!?!? Real  
45 pistols???? I thought he was supposed to serve and protect, not come up with cockamamie ideas  
46 like that. He said, "Let me explain." You see, Deputy Schnieder was a bit of a Civil War buff.  
47 Everyone at school knew that. In fact, the kids went to him rather than me if they needed help  
48 finding an answer to a question in their homework about the Civil War.

49 Schneed, as the kids called him, actually had a replica set of dueling pistols. He built them from a  
50 kit he got online. (The real antique ones are worth \$\$\$\$\$\$.) He told me how many people who  
51 have gun powder pistols like that will load them with paper wads instead of lead shot and fire  
52 them off on the Fourth of July. They make loud sounds when they are fired, but are completely  
53 safe because you are shooting "blanks" -- just a ball of paper. He said he would lend them to  
54 the Theatre for the production. But being the safety minded guy he is, he told me we would all  
55 have to meet him at the range for a safety lesson.

56 When I told Choanike and Brando about Schneed's pistols, they both said we should do it.  
57 Choanike, Brando, some of the other actors, and I met Schneed at the range and he showed us  
58 how to use the pistols-- gunpowder and all. Schneed explained that his dueling pistols worked  
59 with a flint lock mechanism. He carefully showed us how to handle the gunpowder and how to  
60 stuff the paper wads down the barrels. We practiced shooting them off several times. It was  
61 actually pretty fun. After he felt comfortable that we knew what we were doing, he even let us  
62 fire off the guns loaded with lead shot. It was interesting that there was really no way to tell by  
63 just looking at it whether the pistol was loaded with a paper wad or a lead shot. The only way  
64 to know for sure was to be the one who loaded it...or shot it. When we were done, we loaded  
65 up the pistols to take them straight to the Theatre. The last thing Schneed said to us was, "Always  
66 be safe. Even though you are using paper wads in the pistols, you should never aim them directly  
67 at each other on the stage. When the firearm is in your hands, you are the one and only person



68 who is responsible for what happens with that weapon.” I don’t think Brando was listening  
69 because I saw him/her on his/her phone texting someone “very important” I’m sure.

70 When we got back to the Theatre, I noticed that we had accidentally taken the box of Schneed’s  
71 extra lead shot along with the gunpowder. Brando helped me carry it all in and was actually the  
72 one to notice the shot. No big deal, I just put the box of shot under the prop table back-stage so  
73 that I would remember to return it to him after the play was over.

74 On the day of the dress rehearsal, you could cut the tension with a knife. Choanike and Brando  
75 were both on edge because Scout Ting was going to make an appearance. Actually Choanike  
76 was pretty excited, but Brando seemed peeved about Ting being there. I overheard Brando  
77 mutter “all she wants is the money. What happened to her integrity?” I have no idea what s/he  
78 was talking about.

79 The last thing I did before I went to my spot at the back of the house was to make sure the props  
80 were in their places on the prop table. The pistols were in their spots. Everything looked to be in  
81 order. I didn’t bother handling the pistols because I had loaded them with the paper wads  
82 earlier in the day. I wanted to make sure that job was taken care of. Brando was still trying to  
83 bark orders at me (see Rollins’ quote above), so I tried my best to ignore him/her. I’m pretty sure  
84 I saw him/her bend down by the prop table fiddling with something as I walked away.

85 On my way to the booth as I turned on my head set, I could hear two people arguing. I’m pretty  
86 sure it was Choanike and Brando. Who else did I ever hear arguing? I tried to tune them out, so  
87 don’t remember what they said, but I know it wasn’t pretty.

88 Once I sat down in the booth, dress rehearsal began. I was the conductor: “Check your props.”  
89 “Mic check.” “Clear the stage, please.” I was impressed. Things were actually going pretty well.  
90 “Theater is open!” “10 minutes to places.” I heard the actors respond, “Thank You, 10...”  
91 “Places!” This was going so well. Even Brando was following my lead.

92 As the play went on, I tried to see how Scout Ting was reacting. S/he seemed to enjoy the play.

93 “Stand-by light cue 5...” and the lights focused on my cue to Hamilton and Burr. It was the pivotal  
94 scene in the play. Choanike and Brando turned and each took 10 paces. Then, BANG! Choanike  
95 dropped to the stage floor in a pool of blood. Chaos ensued. Someone yelled, “Call 911.”

96 I tore off my head-set and ran to the stage, but it was too late. Choanike was dead. How could  
97 this have happened? I should have known better than to use those pistols. Yes, I have seen  
98 Exhibit #4 - the diagram of the theatre and it is accurate to where I was located when she was  
99 shot.

100 When Officer Perkins showed up, s/he immediately took charge. We were all in such shock.  
101 Perkins handed me a bunch of 3x5 cards to pass out to everyone. S/he wanted anyone that was  
102 present when Choanike died to write down what they saw/heard/knew about what happened. I  
103 was so busy passing out the cards, that I only had time to write my name and phone number down  
104 before Perkins wanted them all back. I tried to tell her/him that I wasn’t done, but s/he just

105 barked, "We need those statements. NOW!" I turned in my unfinished card and that was the last  
106 I heard from the police department. No one ever asked me about what happened until I was  
107 asked to give this statement. I am telling the truth about what I remember.

108 I have reviewed Exhibit #5. I recognize it to be a picture of the prop table from the *Burr*  
109 production. It appears to be an accurate picture of the prop table we were using for the show.  
110 Of course, the pistols aren't in the picture; they were on stage when Choanike died.

111 Oh, and you will note that our "lucky charm" Jerome the Gnome on the prop table. Guess ole  
112 Jerome wasn't that lucky for us...or rather poor Louise.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

 \_\_\_\_\_

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2016-2017 Nebraska State High School Mock Trial Competition.

 \_\_\_\_\_

Stephanie Egger Nelson, Notary Public

My Commission Expires: December 31, 2016

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

State of Nebraska

CR 711-1804

Plaintiff

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vs.

)

Blake M. Brando

)

Honorable Tina Jelkin

Defendant.

)

Presiding Judge

)

**Witness Statement of Scout Ting**

1 My name is Scout Ting. I am a producer and the founder of CrystalVision, Inc., a Hollywood  
2 based Production Company. I'm certain you have heard of me as I have produced television hit  
3 series such as, "Land-locked", "Garrison" and most recently, "Legally Pink". My mantle even  
4 boasts a Golden Globe award for best producer of a television series. I am always on the  
5 lookout for new ideas that I can bring to life on prime time television.

6 I live at 3619 Foothills Drive, which is close to Beverly Hills. My spouse is Alex and s/he is a  
7 former Silicon Valley innovator and is now retired after hitting it big. We have one child, Ava,  
8 who is an aspiring actress. She is attending the American Academy of Dramatic Arts. I'm  
9 confident she'll be a superstar. We have Fritz, a German Shepard, which is a silver grey male  
10 that is the 8<sup>th</sup> Generation Linebred Descendent of Rin Tin Tin IV. What a magnificent guard dog!  
11 Oh, yes, I belong to the Beachbody Boot Camp and work out with my private trainer four times a  
12 week. On the weekends, we enjoy dining at the Yacht Club – an exclusive member only  
13 establishment.

14 I had heard thru social media that a play called *Burr* was being produced by two obscure  
15 playwrights in Nebraska of all places! It was a very low-budget production to be performed in a  
16 community theater. The producers were teasing their followers with lines from the play...and I  
17 got hooked! I knew it would make a great television series. So, I did what I've always done and  
18 made contacted the playwrights.

19 I made arrangements with Louise Choanike to meet her and her co-writer at a small coffee shop  
20 in Goldenrod, Nebraska. Needless to say this was a long trip for me to fly all the way from Los  
21 Angeles into the middle of the Midwest just to have coffee; however, Louise seemed enthusiastic  
22 about the prospect of making it big, so I felt it was worth the time and hassle.

23 As soon as I sat down I could tell that I was mistaken. Louise's partner, Blake Brando, was less  
24 excited to see me. The first words out of his/her mouth were, "My manuscripts are not about to  
25 be made a mockery in a Wednesday night sitcom!" It was always the same with these artsy  
26 types. They would rather dabble around making peanuts in a playhouse than making it big on  
27 the big screen. I don't understand it and neither did Louise. Louise was the reasonable one. I  
28 could offer them a contract for over \$1 Million for the play and all of the royalties and notoriety  
29 that follows. Our conversation only lasted about 10 minutes. Blake said s/he had heard enough

30 and wasn't interested in fame and fortune because it would, "be like selling my soul." Blake  
31 stormed out of the coffee shop.

32 I told Louise that the offer would remain open as I was certain a series inspired by *Burr* would be  
33 a big success. She told me she would work on Blake and get him/her to agree.

34 Louise and I stayed in touch throughout 2014. Every time we spoke she would tell me that she  
35 was still trying to reason with Blake, but s/he wasn't ready to sign a contract yet. I knew that  
36 they had an upcoming production of the play at a community playhouse in October. A few weeks  
37 before the performance I told Louise that the opportunity was going to pass them by. I just  
38 couldn't wait forever to start my next successful series. Louise told me that I would for sure get my  
39 contract because they really needed the money to stay afloat. She said that Blake may hate her  
40 for "selling out", but she wasn't going to pass up the opportunity of a lifetime.

41 Then, out of nowhere on June 1, 2015, I received an email from Blake. Exhibit #6 is a true and  
42 accurate copy of the emails we exchanged. It was clear s/he had a change of heart. Although  
43 s/he had some stipulations about how the production would go and where the money would go to  
44 (you know these bleeding heart types always wanting to donate money to charities) it seemed as  
45 though s/he was ready to do business.

46 Now it seemed as though both authors were really considering this deal. At the authors' invitation,  
47 I booked a flight back out to Nebraska to see the live performance on opening night. Although  
48 Goldenrod, Nebraska isn't my dream vacation in late October, I thought it would foster good will  
49 and trust with Blake to make the extra effort to see her/him actually perform. I told Blake I  
50 would meet with just her/him after the show to go over the terms of the contract, since s/he told  
51 me to deal directly with her/him.

52 Unfortunately, at the last minute, I had something come up at work just a few days before I was  
53 scheduled to leave for Nebraska. I knew I would need to be back in L.A. to handle this and there  
54 was no way I could attend the opening night performance. The day before the dress rehearsal, I  
55 contacted both Blake and Louise to let them know I would not make it for opening night and that I  
56 had moved my trip up so that I could at least watch the dress rehearsal.

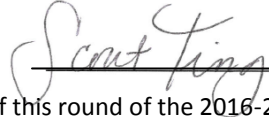
57 It's not a direct flight, or a direct cab ride for that matter, to get from L.A. to Goldenrod, so I  
58 barely made it in time for the performance. I actually missed the opening scene, but was still  
59 able to get my favorite seat, 5<sup>th</sup> row center; it always has the best view in the house! Yes, exhibit  
60 #4 accurately shows where I was in the theatre. I was surprised to see Blake on stage, but just  
61 assumed one of the actors was unavailable. Then when it got to the duel, the actors' took 10  
62 steps away from each other, turned, and POW!!! At first, we all thought it was just part of the  
63 performance. But then, it was total chaos.

64 I probably shouldn't say this, but what a great story line to kick off this new series!


WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

  
\_\_\_\_\_

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2016-2017 Nebraska State High School Mock Trial Competition.

  
\_\_\_\_\_

Stephanie Egger Nelson, Notary Public

My Commission Expires: December 31, 2016

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

State of Nebraska

CR 711-1804

Plaintiff

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vs.

)

Blake M. Brando

)

Honorable Tina Jelkin

Defendant.

)

Presiding Judge

)

**Witness Statement of Blake M. Brando**

1 Never in the history of the world has there ever been such a miscarriage of justice. Here I stand  
2 in the dock, accused of a crime most heinous, when, in fact, I am the true victim.

3 My name is Blake M. Brando. I am a renowned playwright and am famous for my work. I am  
4 sure that you have heard of some of my plays: *The Raven's Claw*, *A Farmhand's Revenge*, *Burr*,  
5 *Lost in the Loess Hills*, *The Unloaded Gun* and *Blazing ATV's*, and, of course the popular gnome  
6 trilogy – *Game of Gnomes*, *A Few Good Gnomes*, and *Little Gnome on the Prairie*.

7 I grew up in the small town of Coal Chute, Nebraska. My father was a banker and my mother  
8 was the librarian. I spent much of my childhood in the library reading every book that I could get  
9 my hands on. After graduating from Cottonwood County Public Schools, I attended Ibsen State  
10 Teachers College. There I majored in English and became active in the Theatre. Now, I live at  
11 1906 Beckett Boulevard in Goldenrod. Of course, you know that this street is named after the  
12 famous Irish playwright, Samuel Beckett.

13 I married later in life and my spouse, Robin, is a chemist at the Agri-Seed plant in Goldenrod.  
14 S/he is just a genius developing new and effective products to help Nebraska farmers. We have  
15 a Goldendoodle named Sam and she is a great companion! Plus, Sam is a highly intelligent dog  
16 and loves to play. We are DINK's and spend a lot of our time at the lake with Sam, since she is  
17 such a social dog and likes to swim. We also are both voracious readers.....of different subject  
18 matters. While I read many, many plays, I also read numerous books on how to train a  
19 Goldendoodle. The most informative and helpful book was *Goldendoodle: The Ultimate Dog*  
20 *Guide*.

21 I also met my now deceased co-author Louise Choanike at the Theatre. Together, we created  
22 many great plays. I was the creative genius and Louise was the detail person. Louise was always  
23 worried about making money. I wrote plays, because something in my soul made me do it. I  
24 needed to create. I needed to place my ideas on paper and see them played out on the stage.

25 My struggles really began in 2014 when Scout Ting, approached us and wanted to adapt one of  
26 our plays for a television series. I was against it from the start, but Louise saw dollar signs. We  
27 fought over that issue many times. Vicious, nasty fights. I did not want to prostitute my genius to  
28 a bunch of hacks. Louise wanted the money.

29 I thought that our issues were resolved until that fateful week in October, 2015. We were  
30 working on a production of our play, *Burr*. *Burr* was a play about Aaron Burr, who killed  
31 Alexander Hamilton in a famous duel. The production was being presented in Goldenrod. The  
32 old Goldenrod High School had been closed for a number of years, so Arthur Miller, one of my  
33 former instructors from Ibsen bought, remodeled and totally transformed the abandoned High  
34 School Gymnasium into a beautiful and professional community playhouse. Mr. Miller aptly  
35 named it the Crane River Theatre, due to the beautiful crane migration that happens around town  
36 every year.

37 Because of his connections with the College, Mr. Miller was able to recruit theater students from  
38 Ibsen State Teachers College. These students, along with a devoted following of local amateur  
39 actors, are able to put on a dinner theatre at the Crane River. In addition to acting in the plays,  
40 they also build sets, take tickets, and sell popcorn and beverages. Also, at certain times of the  
41 year, they cook and serve a dinner for patrons who come from as far away as Emerald,  
42 Nebraska.

43 It was the night of dress rehearsal, Tuesday, October 27, 2015. One of those mystical fall  
44 evenings, when the moon rises full and golden in the Eastern sky. A harvest moon. The dust from  
45 the corn harvest lies low, like a fog, covering the fields. One can almost envision Death stalking  
46 the fields, scythe over his shoulder, looking for a soul to claim. That night, the soul Death claimed  
47 was that of Louise Choanike.

48 Louise and I had talked earlier that day that if Scout Ting was going to be at the dress rehearsal,  
49 then we should have our best actors on the stage. See, I had finally emailed Scout Ting in  
50 regards to his/her company making *Burr* into a television series. I know I was against it at first,  
51 but with a few conditions agreed upon by Scout and myself, I finally felt it was ok for the TV  
52 series to be made. Yes, Exhibit #6 is a copy of the emails exchanged solely between Scout Ting  
53 and myself. So I texted Sawyer Neil, one of our student actors, the one who was to play  
54 Alexander Hamilton, and told him/her that s/he didn't need to come to the dress rehearsal that  
55 night. Exhibit #7 is an accurate copy of our texts.

56 As you may remember, Alexander Hamilton and Aaron Burr get into a duel. Louise played Aaron  
57 Burr. She has insisted that we use real flint lock pistols for the production. The pistols were  
58 supposed to be loaded with black powder and a wad of paper. In other words, firing only  
59 blanks.

60 However, on this fateful night, someone, not me, loaded my pistol with a real lead ball. When we  
61 got to the part of the play where Aaron Burr and I faced off, we both raised our pistols and  
62 fired. According to the play, I was supposed to delope and then act as if I had been struck with  
63 the bullet. I put on a convincing death scene, but out of the corner of my eye, I noticed that Louise  
64 grabbed her chest and slumped to the ground. I had aimed to the right of Louise, but those old  
65 muzzle loaders are notoriously inaccurate. Even though I aimed away from Louise, I still hit her.

66 When writing the play Louise and I had many arguments over whether or not Hamilton did  
67 delope. I have always insisted that historically, Hamilton did not delope, but rather fired directly  
68 at Burr and missed.

69 One of the stage hands, the Princess Bride kid, ran to Louise and started to yell, "Call 911." By  
70 the time Goldenrod volunteer EMT's arrived, it was too late. Louise was dead. Yes, Exhibit #4  
71 accurately shows where I was in the theatre, obviously I was on the stage!

72 Deputy Sheriff Dylan E. Perkins came up to me, grabbed my pistol by the barrel, smelled it and  
73 said, "This is the gun that did it." I was arrested immediately. I tried to explain that I was not  
74 supposed to be onstage that night, that I did not know that the gun was loaded, that I did not  
75 load the gun, that I aimed the gun away from Louise and that this was all some terrible accident,  
76 but Officer Perkins told me that I had best keep my mouth shut and hire a good lawyer.

77 I am well aware that it does not help my case that in my play, "*The Unloaded Gun*," the villain  
78 plots the perfect murder by getting his victim to play "Russian Roulette" with what was supposed  
79 to be an unloaded gun. However, I would note that Louise collaborated with me on that play.  
80 She would have known the mechanics of the plot as well as me.

81 There is not a day that goes by that I do not grieve the loss of my friend and co-author. I regret  
82 that I did not tell Louise "no", on that fateful night when she asked me to fill-in. Whether I go to  
83 the gallows, or am acquitted, the truth is that I am innocent, and that fact will never change.


WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

  
\_\_\_\_\_

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2016-2017 Nebraska State High School Mock Trial Competition.

  
\_\_\_\_\_

Stephanie Egger Nelson, Notary Public

My Commission Expires: December 31, 2016



IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

State of Nebraska

CR 711-1804

Plaintiff

)

)

vs.

)

Blake M. Brando

)

Honorable Tina Jelkin

Defendant.

)

Presiding Judge

)

**Witness Statement of Inigo Montoya Morton**

1 My name is Inigo Montoya Morton, and I saw Louise Choanike die. That's what I'm going to tell  
2 you about, but let me first explain my name to you so you can stop thinking about where you  
3 heard it. Duh. My parents are huge fans of "The Princess Bride", and they didn't want to call me  
4 The Dread Pirate Roberts, which is fortunate. I've seen that movie over 25 times, and it has  
5 probably been the driving force that led me to want to be an actor. That, or a fencing instructor.  
6 Anyway, it's got everything: drama, romance, sword fighting, and more. It's probably the best  
7 movie ever made. What am I saying? Probably? It definitely IS the best movie ever made, no  
8 question about it.

9 I still live with Mom and Dad at 2042 S. 35<sup>th</sup> Street in Goldenrod. I love listening to a wide  
10 variety of music including Bruno Mars (Uptown Funk), Adele (Rolling in the Deep), The Four Tops (I  
11 Can't Help Myself), Pharrell (Happy), Tim McGraw (Humble & Kind), Toby Keith (I Wanna Talk  
12 About Me), Taylor Swift (Shake It Off), Maroon 5 (Maps), U2, Miles Davis, Nat King Cole  
13 (Unforgettable), The Brothers Johnson (Stomp!), Justin Timberlake (Can't Stop the Feeling), One  
14 Republic (Counting Stars), The Jackson 5 (Rockin Robin), Maxi Priest, Beach Boys (Surfin Sarfari),  
15 Aretha Franklin (Freeway of Love), Nine Inch Nails, Black Box (Everybody Everybody), B-52's  
16 (Roam), Bruce Springsteen – aka The Boss (Born in the U.S.A.) and DNCE – just to name a few.  
17 My friends and I play Pokemon Go and we have been all over, including the stadium! My best  
18 friend, Westley, and I post on Instagram all the time! Other than that, we just hang out watching  
19 all the old 90's sitcoms on Netflix. We love the new Fuller House – D.J. was always my favorite!

20 Anyway, the night in question is burned into my memory; into my psyche; into the very core of my  
21 being. Such sincerity; such emotion; such utter shock. Never before have I seen such acting. Well,  
22 I guess it wasn't acting. It was real, and very realistic, and it sure was impressive. Made me want  
23 to be an actor even more than ever, and, believe you me, I was pretty darned motivated before.  
24 I will probably be a little wary of firearms on stage, however. Maybe being fixated with  
25 "realism" didn't turn out the best here for Choanike, since Brando killed her.

26 Anyway, let me start at the very beginning, a very good place to start. (Did I mention that my  
27 very first acting job was as one of the Von Trapp children in "The Sound of Music"? That is, if you  
28 don't count the Ghost of Marley in "A Christmas Carol" in the fifth grade. My moaning was the  
29 topic of discussion for years by the elementary drama department. Anyway. Oh, and I played

30 the Elm in our Kindergarten play "The Forest."). Anyway, I'm 18 now. Went to Goldenrod High  
31 School and graduated in May of 2015. All my acting has been in school and in community  
32 theatre, but then I auditioned for this gig. A fine production in my own home town! And I won the  
33 part! Well, to be truthful, there were only two other people who tried out, but that puts me in the  
34 top third, right? Better than my grades in science and math. So I got the part of Second Servant  
35 in *Burr*. A minor role, sure, with only five lines, but, hey, it's a start on the star-studded road to  
36 Broadway, right? I, also, was the assistant, the go-to person, the one to be relied upon. My role  
37 in that capacity was very important when working with famous actors and directors, like Louise  
38 Choanike and Blake Brando. Don't knock the importance of picking up caramel macchiatos,  
39 espressos, and dry cleaning. I feel I helped them both in their success. Well, until Ms. Choanike  
40 got shot by Blake Brando, that is. That really stunk.

41 I saw it all. Most of it anyway. It was a really exciting night! I saw Scout Ting arrive, fashionably  
42 late, and I was pumped! I knew they were there for me! I had to make an impression. Boy, was I  
43 nervous, but I made my five lines count that night. Well, I made my four lines count. I didn't get  
44 to say my last line, because of all the blood and murder and everything. That's probably why I  
45 haven't had any offers from Scout Ting so far. Probably in mourning or something.

46 Anyway, let me tell you what I saw. Exhibit #4, which I have been shown, is a true and accurate  
47 diagram of the stage area on October 27, 2015, I was in position D, which marks my spot on  
48 stage. I was waiting for my cue to come on stage. Gunshots, and then I was supposed to rush in  
49 and comfort Sawyer Neil who played Alexander Hamilton while he lay dying. Blake Brando was  
50 filling in for Neil, though. The night of the rehearsal, I heard Brando say something about needing  
51 to be on stage. Didn't look mad or anything. Looked forward to it, I would say, but doesn't  
52 everyone love being on stage? So, I hear the shots, run onstage towards Brando, but then I see  
53 Burr/Choanike acting like they were shot. She had a shocked look on her face, was standing,  
54 facing Brando, and her hands were on her chest. I could see blood oozing through her fingers. At  
55 first I thought it was a new twist on the play, to try to impress Scout Ting. You know, more action,  
56 and all, so I figured I'd play along. I ran right over to Choanike, just as she was saying to Brando  
57 in a stage whisper, "You killed me?" Inflection on the first and last words, tone rising on the end,  
58 like a good question should be delivered. I saw more blood, and I thought to myself that this is  
59 way more blood than the normal blood pack. Then Choanike fell to her knees, saying  
60 "Not.....the....way...." A straight line this time, deadpan, shocked. Then Choanike fell face first  
61 to the floor, saying "Not my life." Then Choanike raised herself up on one arm, her left arm, and  
62 said "nnnoooo." That "no" lasted maybe three seconds. Then she fell down, never to rise again.  
63 And that is exactly what I told the cop, with gestures and everything. I included tone of voice,  
64 intonation, volume, everything, because all of that is very important to an actor. So I just KNEW  
65 that every single word Choanike said mattered. Every word. I have an excellent memory. All  
66 my training and experience helped me.

67 When I was out there, in the moment with Choanike, I didn't even pay attention to anyone else.  
68 Not even Scout Ting. Complete focus is what I had. Focus, focus, focus, is what they always say to  
69 me, and, boy, did I ever have it that evening. I can even tell you exactly where Choanike was

70 looking the whole time, even as she was falling to the ground. During every single word she said  
71 and as she lay dying, every single word was specifically addressed to Blake Brando. And, now  
72 that I think about it, it shouldn't have surprised me one single bit. I should have known this would  
73 happen, the way they were always at each other. For two people who supposedly wrote plays  
74 together and worked together and who knows what else together, they fought like Banty  
75 roosters. Or the kind of pit bull that's been trained to fight, not the nice kind of pit bull that my  
76 neighbor has. Her name is Princess, and she's the sweetest thing! She especially likes it when I  
77 give her cheese. She loves cheese, especially hard cheeses, like a nice aged parmesan. When I  
78 make eggplant parmesan, I always buy extra cheese for her. I like to think that she appreciates  
79 it, and someday, if my house catches on fire, she will come dashing in through an open window  
80 and bark and bark and bark and wake me up out of a deep sleep or a smoke-induced stupor  
81 and save my life. That's what I think, anyway.

82  
83 Anyway, like I was saying. Fighting. That's what they did best. Before dress rehearsal even  
84 happened, they were at their typical "make snarky, mean faces" at each other thing. I had heard  
85 people talk about them trying to write together, and one would write some dumb line and the  
86 other would crab about it, and then they'd change the line when writing together, but then Brando  
87 would go back and change it back to what s/he wanted to make it better. Choanike kind of had  
88 some dumb ideas at times, and, honestly, she wasn't the greatest actor of all time. I could  
89 probably have done better, really. Even Sawyer Neil could have done better, and they weren't  
90 nearly as good an actor as I am. Also, I heard some of the actors (not me) complain about some  
91 of their lines as being too dumb or not "period appropriate" but I didn't complain. My lines were  
92 fine, I thought. Anyway, what was I talking about? Oh, yeah. Louise Choanike. Choanike was  
93 talking to Brando and looking at Brando after she got shot. She was most certainly talking to and  
94 looking at Brando. I saw it all. Getting shot was a complete surprise to her. She never suspected  
95 it. She never saw it coming. I know she would have moved or ducked or done something to get  
96 out of the way if she knew that Brando's gun was loaded. Heck, Choanike wouldn't have even  
97 gone on stage if she knew that her life was at risk at all. That's just the way she was. Wouldn't  
98 ever go on stage if she even suspected that the gun was loaded. Why be so dumb? 50/50  
99 chance isn't that great of odds, and even I know that, even with my bad math scores. Choanike  
100 was always like "Protect myself, me, me, me", don't you know. Not like me at all. Don't get me  
101 wrong, I did like doing things for her and for Brando. That's just how I roll. Some people are just  
102 selfish. Not me.

103 So when she got shot, she was like all shocked, had this real surprised expression that just stayed  
104 on her face, all with her eyebrows raised and this pained look on her face and all. You could tell  
105 she thought she was going to die. I mean, just look at what she said and all the blood and all the  
106 pain. To the pain. Just like in "The Princess Bride." Never mind. Anyway. So, after Choanike is  
107 dead and all, I heard other cast members spreading rumors and gossiping about how Choanike  
108 was really trying to kill Brando. That can't be true, can it? Maybe it is. Maybe that's what was  
109 planned. I really wasn't looking at Choanike when the guns went off. I was listening, sure, but my  
110 eyes were on Hamilton because that's who I was supposed to aid, remember? Focus. Remember?  
111 I got it.

112 And how about that gun switcharoo stuff that maybe happened? The stage manager – Quinn  
113 Dolan was always putting things here and there. Had to be in control. That was his/her job to be  
114 in charge of that stuff, but, hey, moving things makes my job harder. Like when your props are in  
115 one place one rehearsal and then in another a different time. That’s confusing to me, but  
116 sometimes it’s just a big rush and hurry and grab this and go there and all the hustle and bustle  
117 that goes on with the bright lights.

118 Yes, I saw the picture of the prop table, Exhibit #5, and that is how it looked that night, again,  
119 not the same from the other nights, but that night I remember the lucky gnome being on the table.  
120 And one more, thing, hey, did you hear about how Sawyer Neil got fired and how s/he said s/he  
121 left right away after that? Well, that’s baloney. I was back stage about an hour before  
122 rehearsal and heard the kerfuffle. Well, I didn’t hear it word for word or anything, people were  
123 always complaining about this or that, and Sawyer Neil was unusually good at whining. Anyway,  
124 I saw Sawyer Neil stomp out, but then about 10 minutes later, I saw him/her backstage by the  
125 prop table, which is right by the exit. I don’t know how long s/he had been there, but I can  
126 definitely say I saw him/her right there, by the prop table where the guns were. Well, every  
127 prop was on the table, but, hey, the guns were the important things, right? Isn’t that convenient? I  
128 never did like Sawyer Neil. Always walking around bragging about how good they were, how  
129 they were the best actor, how they had an “in” with Choanike and Brando. Especially with  
130 Brando. I would never act like that. In fact, I can just imagine Sawyer Neil doing something dirty  
131 like messing with the guns. I mean, wow, “death is on the line” and that’s a big thing to mess with,  
132 but I can certainly imagine Sawyer Neil being involved.

133 So, there, now you have it. That’s pretty much everything I have to say, which, I admit, is quite a  
134 lot. My statement has been given, under oath, with me swearing to tell the truth and nothing but,  
135 to the best of my ability. Honest.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

I M Morton

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2016-2017 Nebraska State High School Mock Trial Competition.

Stephanie Egger Nelson

Stephanie Egger Nelson, Notary Public

My Commission Expires: December 31, 2016

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

State of Nebraska

CR 711-1804

Plaintiff

)

)

vs.

)

Blake M. Brando

)

Honorable Tina Jelkin

Defendant.

)

Presiding Judge

)

**Witness Statement of Sawyer Neil**

1 This play was supposed to be my big break. I was rightfully cast as Alexander Hamilton in the  
2 Choanike-Brando production of *Burr*. It was my first lead in a legitimate play to actually create a  
3 new character that was destined to be famous. I'm not counting leads in my high school  
4 productions, because there were no other worthy actors attending Goldenrod High School to  
5 challenge me for the lead roles and we were just doing plays that had been done millions of time  
6 before. But honestly, who else could possibly be Tevye or Dorothy or Rum Tum Tugger? I mean I  
7 don't just play a role. I become the role. I'm very method. I can transform into a male, female,  
8 animal or inanimate object. Sure, I'm only 19 years old, and just graduated from high school, but  
9 I have been a theater aficionado ever since I first played Mary/Joseph in the Christmas pageant  
10 in preschool. I didn't bother going to college to study theater, why should I? I was born to do this!  
11 I'm like the LeBron James of the theater. What could college possibly teach me, especially after I  
12 landed the role of my lifetime playing Alexander Hamilton?

13 I didn't need to go to college for the partying either. The night that I graduated from GHS, (Go  
14 Knights!), I went to a bonfire with my classmates. It was out past the broken bridge in a deserted  
15 cornfield. Well, we thought it was deserted. About midnight, Deputy Roscoe P. Coltrane showed  
16 up and busted up the party. Everyone took off running, but I got caught trying to jump the fence.  
17 Deputy Coltrane wrote me a ticket for MIP. I didn't give him my driver's license and just told him  
18 my name was Muff Potter. I panicked! I couldn't give him my real name... Well, I left Max by  
19 the broken bridge, so when Deputy Coltrane couldn't find a "Muff Potter" in existence; he figured  
20 out that Max belonged to me... Max is the name I gave to my 2000 red Ford Focus. So on top  
21 of the MIP ticket, I also got convicted of false reporting. So, my partying days are over.

22 Oh, yeah, I live in a one room apartment at 1022 Lake Street, #11. I go to the Neihardt Library  
23 almost daily as I'm a real bookworm! This is an awesome library as they have a coffee shop  
24 complete with local pastries and my favorite is the chocolate croissant that melts in your  
25 mouth...along with a skinny mocha (no whip). I also exercise every morning at 6:30 a.m. at the  
26 local Y and at night I ride the trails, which are basically old railroad lines that have been paved.

27 When I heard about the role of Alexander Hamilton, I dug deep into the role. This was perfect  
28 for me! I loved the Revolutionary War era. I watched National Treasure at least a dozen times  
29 and I'm sure the Founding Fathers, including Alexander Hamilton, left clues to a huge treasure.  
30 But I digress. So I found a gun club and looked into dueling pistols. I wanted to be natural

31 handling the pistol. I learned everything about dueling and pistols and the historic account of the  
32 Burr-Hamilton duel. I even ordered a Revolutionary War era uniform and powdered wig to  
33 make my audition as authentic as possible. Thank goodness for 2-day shipping! I nailed it! They  
34 didn't even need a call back. They offered me the role on the spot. I was going to have my first  
35 real death scene! This was my break!

36 The cast had heard all the rumors about Scout Ting trying to adapt one of the Choanike-Brando  
37 productions for TV and hoped that we had other powerful people following *Burr*. *Burr* was brand  
38 new, but we had already been getting a lot of buzz. People were talking. We were just doing  
39 a few community theater performances to get picked up on Broadway. Goldenrod was our first  
40 live performance. We had two more scheduled performances, but I don't know what will happen  
41 with all that now. I guess it isn't my problem. I'll get to that in a minute.

42 I knew that Choanike-Brando productions were ready to hit it big. Brando tried to act all about  
43 the integrity of the theater, but s/he was just as big a money grubber as Choanike. Brando was  
44 making sure that s/he was gonna get their fair share of the pie. What did I care? I was just  
45 looking for one break to get me in the bright spotlight that I deserve. Chasing dollar signs  
46 worked for me.

47 So on Tuesday, October 27, 2015, we were in Goldenrod for our dress rehearsal. Out of  
48 nowhere, I get a message from Brando that I wasn't needed at the rehearsal. At first, I thought  
49 that was because I am so good that I don't need any practice and my talents shouldn't be wasted  
50 with such a mundane task as a rehearsal; but then it occurred to me that maybe Scout Ting or  
51 someone else was in town shopping the play! So, I texted Choanike and I was right! I was being  
52 squeezed out of my own big break! I went down to the Crane River Theater and demanded to  
53 see Brando. Then Quinn Dolan tells me that Brando was planning to play Hamilton him/herself!  
54 The nerve! Surely, something was rotten at the Crane River! I found Brando backstage by the  
55 prop table and really let him/her have it! I got right in his/her face and said, "I know what you  
56 are up to!" S/he looked shocked and said something like, "How could you know?" I said, "I know  
57 you are selling me out!" And s/he said that I needed to leave right away or else. Or else what?  
58 This was MY stage and MY big break. I wasn't going anywhere. And then it happened, s/he  
59 fired me. Fired ME! I was so mad, hurt, betrayed, angry, shocked, I stomped my foot and yelled,  
60 "You're gonna pay for this!" Sure, I was mad. Did I mention that? But I meant s/he was gonna  
61 lose a lot of money because I was the reason *Burr* was getting any buzz at all. Sure, Choanike  
62 and Brando wrote it, but that was nothing without my portrayal of Hamilton. Nothing. It would  
63 be a flop without me.

64 Anyway, I was so mad that I just stormed out the back stage door and went for a walk. I had to  
65 clear my head and cool off. Plus, I was still thinking about how to get back in the production. I  
66 had come too far to let this be the end of my road. I walked over to the park and sat on a  
67 bench. I have no idea how long I was gone. I was walking back to the Crane River to clear out  
68 my locker and get Max and peel out of there! I was still steaming mad about the betrayal and

69 how they could suggest that I wasn't good enough! Me?!! That is when I heard the sirens and saw  
70 the ambulance heading to the Crane River. By the time I got there, the EMTs were already there  
71 and all around Choanike. Serves her right. That's karma. I would have done it myself if I had the  
72 chance. Probably shouldn't have said that out loud.

73 When I saw the hubbub, I came back into the theatre and was told by some officious cop to sit  
74 down with the normal people, as if I were like them, as if I were somehow involved. I completed  
75 the little index card. I know what my texts said, but there is no way I loaded either pistol. That is  
76 just crazy. How would I know which actor would get the loaded pistol? Thinking that I had  
77 anything to do with this cold blooded murder is just crazy talk. I did hear Brando say s/he did not  
78 know that the pistol was loaded with a real ball, but I did not believe him/her. S/he looked  
79 relieved that Choanike was dead.

80 I have seen Exhibits #7 and #8 and they are true and accurate copies of the texts between me  
81 and Brando and between me and Choanike, although it is obvious that someone is misinterpreting  
82 their meaning, because I did not load the pistol with a ball. Well, it is true that I know enough  
83 about black powder pistols to know how to do it, but I did not load the pistols. As to how the cop  
84 got my text messages, I suppose s/he got them from the cell phones of Choanike and Brando  
85 since no one ever asked for my cell phone.

86 I have seen Exhibit#4 and it is a true and accurate diagram of the stage and back stage area. I  
87 have marked where I had the argument with Choanike and the back stage door where I exited.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,



SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2016-2017 Nebraska State High School Mock Trial Competition.



Stephanie Egger Nelson, Notary Public

My Commission Expires: December 31, 2016

**Exhibit #1**

**3x5 Police Note Cards**

Date: 10/27/15  
Name: Pamela Dorothy Donovan  
Address: 53 West 43rd Lane, Allston, NE  
Phone Number: 402-780-1968  
Date of Birth:  
Relation to Victim: First Aid - I called 911 and directed the first responders to the stage.

Date: 10/27/15  
Name: Button Gwinnett  
Address: 520 Chestnut Street, Goldenrod, NE  
Phone Number: (402) 516-1777  
Date of Birth:  
Relation to Victim: Scribe - I signed my last statement a long time ago.

Date: 10/27/2015  
Name: John Banner  
Address: 13 Stalag Camp Drive, Hammesburg, NE  
Phone Number: 402.324.1945  
Date of Birth:  
Relation to Victim: Security  
I see nothing, nothing.

Date: October 27, 2015  
Name: Sharon Ann Lane  
Address: 23 West 118th Street, Canton NE  
Phone Number: 402-680-1969  
Date of Birth:  
Relation to Victim: Theatre Nurse  
I tried to help Louise as best I could

Date: Annie Ruth Graham  
Name: Oct 27, 2015  
Address: 48 W 12th E Grand Township NE  
Phone Number: 402-816-1908  
Date of Birth:  
Relation to Victim: Set Painter  
Went of Gulf War - never thought I would see more gunfire



Date: Oct 27, 2015

Name: Elizabeth Ann Jones

Address: 5 East St. Apt 47, Goldenrod

Phone Number: 402-218-1966 - share w/ Carol Ann

Date of Birth:

Relation to Victim: I am from Allendale SC and am also a graduate student in theatre production. There were very few missed lines and the stage crew was working in a very coordinated manner until the shooting. Then it all just crashed &

Date: 10-27-2015

Name: Carol Ann Elizabeth Drazba

Address: 5 East Street, Apartment 46, Goldenrod, NE

Phone Number: (402) 218-1966

Date of Birth:

Relation to Victim: graduate student in theatre production. I am originally from Dunmore, PA. I share a duplex with Elizabeth Jones. We were together in the orchestra pit watching the production process for credit for a class. Everything was going so well; then it wasn't

Date: Oct. 27, 2015

Name: Hedwig Diane Orlovski

Address: 31 East Street, Apt 15, Goldenrod, NE

Phone Number: 402-113-0196 - ext. 7 - work

Date of Birth:

Relation to Victim: I am from Detroit, Michigan. Eleanor and I run a community theatre in Qui Nhon. Eleanor remarked that it seemed like the two dueling actually appeared not to like each other. Their faces were so serious for a dress rehearsal. Doubt we use this play at home.

Date: 10/27/15

Name: Eleanora Grace Atterman

Address: 31 East St. Apt. 5, Goldenrod, NE

Phone Number: 402-113-0196, ext. 7 - office #

Date of Birth: 12/31

Relation to Victim: I am originally from Westport VT. My friend, Hedwig Orlovski of Goldenrod, and I were in town to see a play and would be going on our neighborhood theatre group in Qui Nhon. The shooting was completely unexpected & unrelatable.

Date:

Oct. 27, 2015

Name: Charles Lucas

Address: 3360 E. Pershing Rd, Goldenrod

Phone Number: (402) 927-1817

Date of Birth:

Relation to Victim: puppy wrangler

They were nine feet apart. They both fired pistols. They both went down. How am I supposed to know why house got shot?

Date: Oct 27 15  
 Name: David The Rock, Goliath  
 Address: 117 Sunnyvale, Elkhart, NE  
 Phone Number: (402) 399-1582  
 Date of Birth:  
 Relation to Victim: SPOT LIGHT OPERATOR

If was cool, man, Louise went down like she had been hit with a rock.


Date: October 27 2015  
 Name: Eustace Graves  
 Address: Card 112, 48th St.  
 Phone Number: 308-770-0846 Goldenrod  
 Date of Birth:  
 Relation to Victim:

Jonathan I always prefer sword fights over gun fights. I don't care much for pistol duels.

Date: 10.27.15  
 Name: Jonathan Graves  
 Address: 1615 W 28th  
 Phone Number: (402) 224-1838  
 Date of Birth:  
 Relation to Victim: Actor. Wow, that was really real, man. I was standing stage left just in front of Indigo Mon-

Date: Quinn Dahn  
 Name: 402-442-1525  
 Address:  
 Phone Number:  
 Date of Birth:  
 Relation to Victim:

Date: Oct 27 15  
 Name: Summer Winters  
 Address:  
 Phone Number: 402-442-1525  
 Date of Birth:  
 Relation to Victim: Make-up  
 The makeup was great but wasted! The blood sure looked real. I mean on Blake. The other blood was real, right?

Date: Oct 26 27, 2015 

Name: Mary Therese Klumber

Address: 1 West 122nd St. Goldenrod

Phone Number: 765-440-1975

Date of Birth:

Relation to Victim: Childcare

I assist with providing Child-care for guests of the Theatre, Cost, Crew and Staff. I am so thankful that there were no children present this time.

Date: ~~Strike Grande~~

Name: 10/27/15

Address: 1906 Becke# Blvd Goldenrod

Phone Number:

Date of Birth:

Relation to Victim: Writer of play!

Tonight ONLY I was acting the part of Hamilton. I wasnt even supposed to be in the play!

Date: October 27, 2015

Name: Leigh Read - costume Director

Address: 1212 Florida Rd # 183A

Phone Number:

Date of Birth: 8/27

Relation to Victim: I was 15 feet from the action! I was off stage watching the costumes carefully. See, blood packets damage the shirts, but are not supposed to damage the rest of the costume, it would cost a fortune to stage this kind of production! Real blood would be impossible to get out of the shirt!

Date: October 27

Name: Nikolay Stavinogin

Address: 7311 Prairie Rd

Phone Number: 308-963-8902

Date of Birth: Carpenter

Relation to Victim: It was odd. I thought this was a family insult issue and would never go this far. I did not see or hear anything

Date: My birthday!

Name: David Tuff

Address:

Phone Number: 402 721 1865

Date of Birth: TODAY! A saturday now!

Relation to Victim: I thought they were araving about a pocket watch! I was getting ready to move set pieces when it happened! I saw the pistols on the table before it happened. Nothing out of place

Date: 102715  
Name: Craig Schneider - Deputy/Firearms  
Address: school  
Phone Number: you know where to find me  
Date of Birth:  
Relation to Victim:  
I missed the whole thing!  
Was busy talking about kickboxing w  
the crew

Date: October 27, 2015  
Name: Scott King \$\$\$  
Address: Hollywood! ♡ Burr!  
Phone Number:  
Date of Birth:  
Relation to Victim:  
I was supposed to see Blake on stage  
I saw them take 10 steps back  
fire the guns and then it was  
chaos!  
But Great material!

Date: Dress Rehearsal  
Name: Inigo Montoya Morton  
Address: immorton@gmail.com  
Phone Number: @immorton  
Date of Birth: Best day ever! April 3!  
Relation to Victim:  
I saw it happen. Well kinda  
I was waiting to come on stage  
and save Hammy, but that didn't  
happen. Bumma bout Louise

Date: Oct. 27, 2015  
Name: Thomas P. Becker  
Address:  
Phone Number: (402) 430-1823  
Date of Birth:  
Relation to Victim: I saw out of the situ-  
ation but cannot add any thing more.  
I was also there. It was probably out  
of the best since they were the boss of  
friends. They had to go to the place  
and were going to get millions of dollars  
from the movies, right?

Date: 10/27/15  
Name: Ben Brown + Tom Reynolds - roommates  
Address:  
Phone Number: 402-826-1856  
Date of Birth: They ran out of cards!  
Relation to Victim:  
Both actors  
We didn't see anything

**Exhibit #2**

**Autopsy Report**

**Autopsy:** ME-15-456

**Name:** Choanike, Louise

**Date of Birth:** 9-12-82

**Gender:** Female

**CAUSE OF DEATH:**

Gunshot wound to chest.

**CONTRIBUTING FACTORS:**

None identified.

**MANNER:**

Homicide.

**Autopsy Performed at:**

Wagon Wheel County Morgue

**Autopsy Authorized by:**

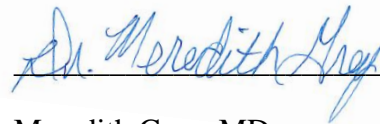
Wagon Wheel County Attorney

**Date and Time of Autopsy:**

10-28-15 9:30 am

**Pathologist:**

Meredith Grey, MD

A handwritten signature in blue ink that reads "Dr. Meredith Grey". The signature is written in a cursive style and is positioned above a horizontal line.

Meredith Grey, MD

Forensic Pathologist

**GROSS**

**EXTERNAL EXAMINATION:** The body is received in a black body bag with the zipper sealed with a white plastic zip tie lock with the number “000124” and “Goldenrod Police Department” imprinted on it. There is a yellow Wagon Wheel County Morgue identification tag with the name “Louise Choanike” and other identifying information printed on it. The body is that of an adult female with little necrosis. Decedent is in a full state of rigor mortis. The body is clothed in a replica ACME brand Colonial era navy and tan American officer’s uniform and boots. The body was recovered relatively soon after the time of death, thus lividity is minimal at this point. However, what lividity is present indicates that the decedent was on her back immediately after death and remained that way until she was transported to the Morgue. The body measures approximately 65 inches in length and weighs an estimated 135 pounds.

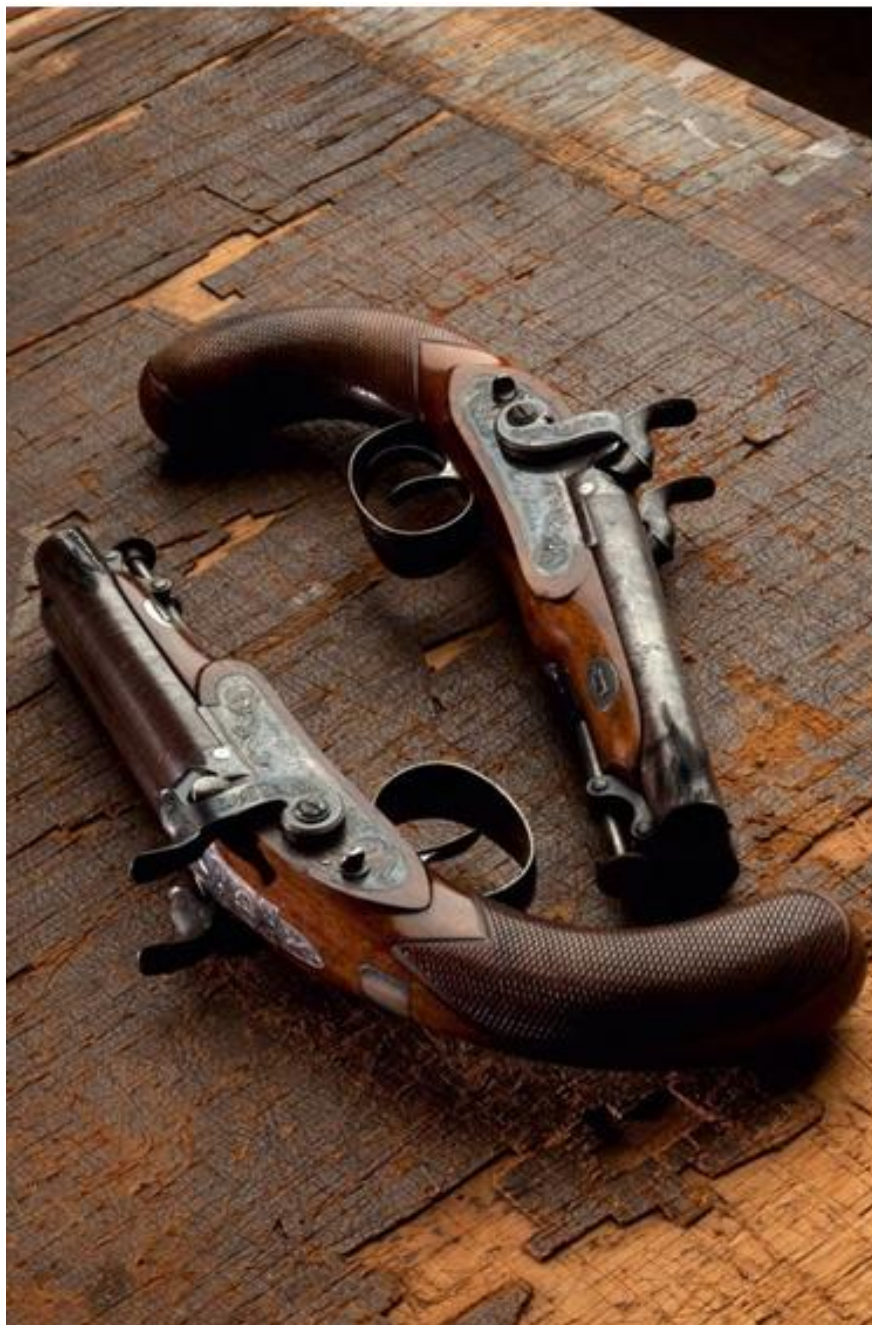
There is a single gunshot wound of the upper right chest. This wound is located 16 cm below the level of the right external auditory meatus and 9 cm right of the anterior midline of the chest. The hole measures 10 mm diameter. It is round with level edges. Edges show an abrasion ring measuring up to 2 mm. No powder stipple is identified. No soot is identified. The wound track shows deeper hemorrhage. A lead shot, seen on x-rays, is found within the soft tissue of the right chest and is recovered and submitted as evidence. Evaluation of this wound indicates it is an entrance wound. The path of the shot is slightly downward and backward. The track of this lead shot has been traced to have passed via the skin, soft tissue, right clavicle, upper lobe of the right lung, to rest near the soft tissue of the posterior 3<sup>rd</sup> right intercostal space. The passage of the lead shot through the upper lobe of the right lung created a 2 cm defect. There is no exit wound.

**SPECIMENS SAVED/ADDITIONAL STUDIES:** 49 mL of heart blood, 3 mL of vitreous humor are obtained. A blood glucose, blood alcohol, and drug screen testing was performed. The results were unremarkable.

**ADDITIONAL AUTOPSY NOTES:** Officers from the Goldenrod Police Department were present for the autopsy. Officers took photographs. X-rays were taken and findings were described above. Clothing worn by the decedent was turned over to Officers.

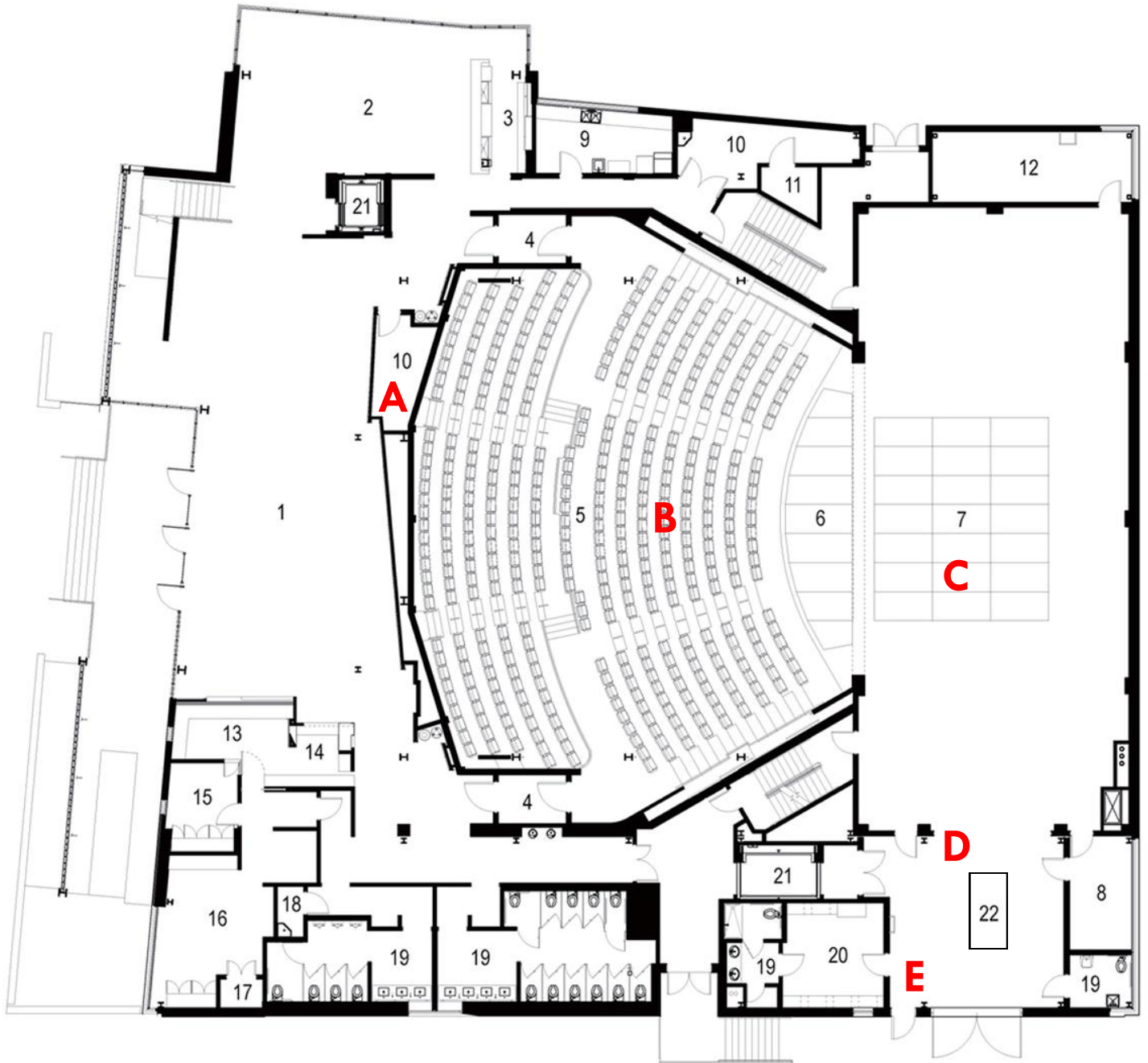
**Exhibit #3**

**Pistols on the stage floor**



**Exhibit #4**

**Theatre Diagram and Key**





## **Theater Floor Plan Key**

- 1 - Grand Lobby
- 2 - Lobby
- 3 - Refreshments
- 4 - Main Floor Theatre Entrance
- 5 - Auditorium
- 6 - Stage Apron
- 7 - Stage
- 8 - Stage Operator
- 9 - Catering Support
- 10 - Sound/Lighting Booth
- 11 - Elevator Mechanical
- 12 - Stage Manager
- 13 - Box Office
- 14 - Merchandising
- 15 - Office Manager
- 16 - Work Room
- 17 - Tele/Data
- 18 - Janitor
- 19 - Bathroom
- 20 - Dressing Room
- 21 - Elevator
- 22 - Scenery Dock/Prop Area

## **Witness Placement Key**

- A - Quinn Dolan
- B - Scout Ting
- C - Blake Brando
- D - Inigo Montoya Morton
- E - Sawyer Neil

**Exhibit #5**

**Prop Table**



## **Exhibit #6**

### **Emails between Scout Ting and Blake Brando**

**From:** Scout Ting <sting@crystalvision.nmt>  
**Sent:** Friday, July 17, 2015 6:35 AM  
**To:** Blake Brando <gnomemansland@nmail.neb>  
**Subject:** RE: Burr meeting

Blake,

I will plan to attend the performance in October. I will go ahead and begin to draw up the contract. You and I can finalize the details when I'm out in your neck of the woods. Thanks Blake!

Scout Ting  
CrystalVision, Inc.  
101 Riverside Drive  
Toluca Lake, California

**From:** Blake Brando <gnomemansland@nmail.neb>  
**Sent:** Wednesday, July 15, 2015 1:03 AM  
**To:** Scout Ting <sting@crystalvision.nmt>  
**Subject:** RE: Burr meeting

Hi Scout,

I just wanted you to know that we have started rehearsal for a production of "*Burr*." Live performances should begin sometime in late October, 2015. I will let you know more once the performance dates are firmed up. I think it would be great if you could fit it in to your schedule to fly out to Nebraska and catch a live performance in our local community theatre.

In our recent telephone conversation, you expressed some concern about negotiating with me alone rather than with both Louise and me. Let me assure you that I will take care of Louise, so that you need not worry. I am the only person that you need to talk to about this deal.

Best regards,

Blake

**From:** Scout Ting <sting@crystalvision.nmt>  
**Sent:** Tuesday, June 2, 2015 7:46 AM  
**To:** Blake Brando <gnomemansland@nmail.neb>  
**Subject:** RE: Burr meeting

Dear Blake,

I'm thrilled to hear that you are interested in pursuing this with my company, CrystalVision, Inc. I was certain from our last meeting that I would not be hearing from you, so this is a fantastic surprise! We here at CrystalVision always strive to maintain the integrity of each drama as we take it from the stage to living rooms nationwide. In response to your two proposals, I can offer the following:

1. You can (and should) have final decision making authority over the final conversion of this play. Please note however, that because you co-authored this, your partner must be agreeable to this term of our contract. Our typical stipend for assisting in the production is \$50,000. That will be payable to you, or to you and Louise if you choose to both assist in production.
2. I am happy to direct the balance of funds to the Ibsen State Teachers College Foundation to honor your parents. We can do this one of two ways: CrystalVision can either send the funds directly to the Foundation or we can pay you the balance directly and you can submit whatever funding you deem appropriate to the scholarship.

Again, so pleased that you are interested in working with me. This is going to be BIG!

Very Truly Yours,

Scout Ting  
CrystalVision, Inc.  
101 Riverside Drive  
Toluca Lake, California

**From:** Blake Brando <gnomemansland@nmail.neb>  
**Sent:** Monday, June 1, 2015 11:42 PM  
**To:** Scout Ting <sting@crystalvision.nmt>  
**Subject:** Burr meeting

Dear Ms. /Mr. Ting:

Thank you very much for meeting with Louise Choanike and me so long ago. Of course we are honored that your company wishes to turn our play, "*Burr*" into a made for television special presentation. I apologize that you had to witness the unpleasantness between Louise and me. As you can tell, Louise and I have our differences with respect to the commercialization of our work. Personally, I have not totally ruled out working with you on the project. My concern is that I have exclusive control over the production. "*Burr*" was my brain child, my creation. I cannot bear the thought that the play lose its artistic integrity in its conversion from the stage to the screen.

Louise is the problem. She does not worry about the artistry of the work, but rather can only concentrate on your generous offer. I do feel the play has great value and that your company should pay the amount that you offered. However, I have two conditions:

1. I be given sole, exclusive and absolute authority over how the play is converted to the screen. For my services, I would expect a reasonable stipend.
2. After paying Louise and me the sum of \$100,000.00 each, that the balance of the funds which your company has offered to pay, instead be donated to the Ibsen State Teachers College Foundation, for a scholarship in honor of my parents Bill and Betsey Brando.

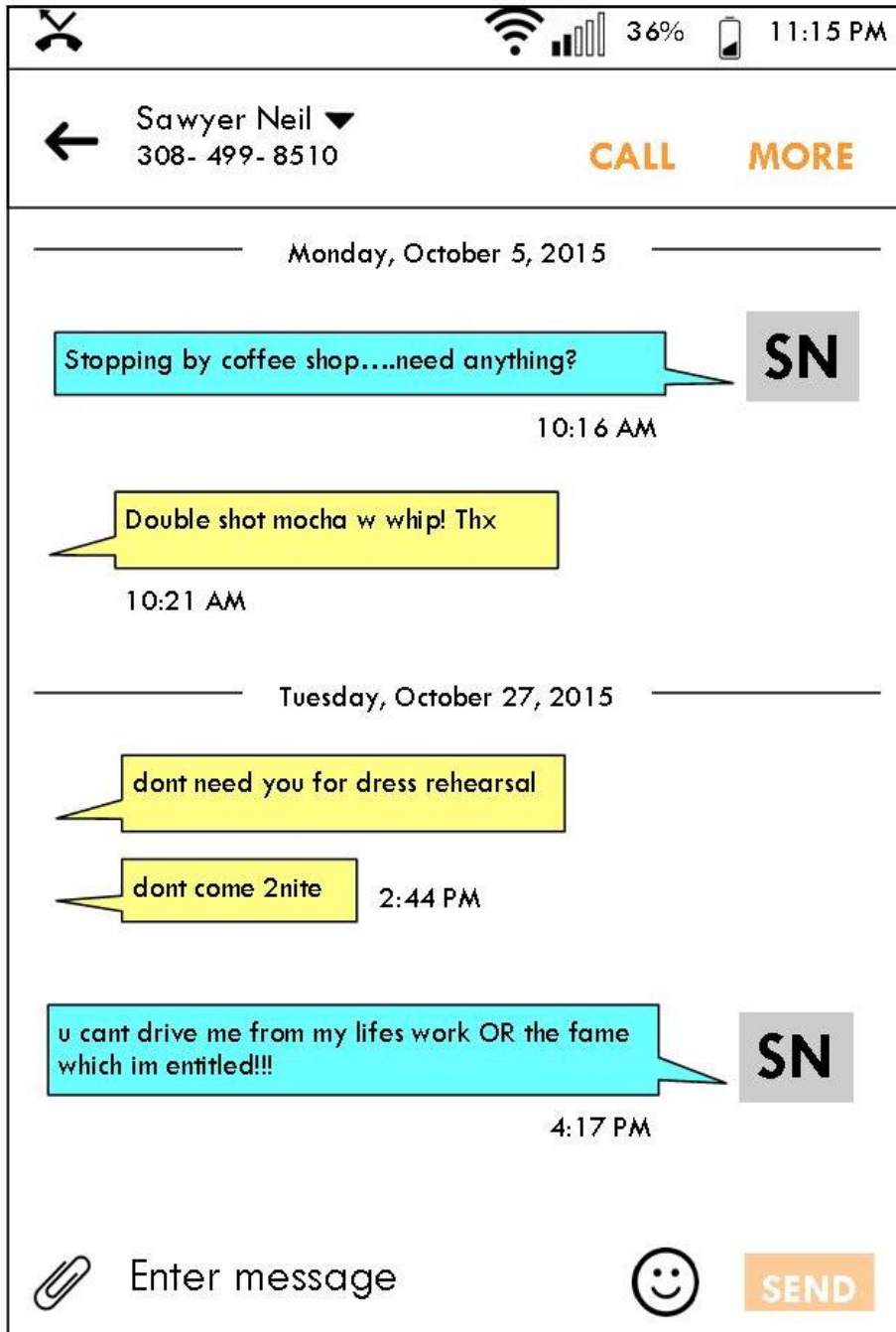
I will continue to work with Louise to get her to come around. I ask that you not disclose the contents of this email, or of our recent telephone conversations to anyone, especially Louise. I know that I can count on your discretion.

Sincerely yours,

Blake M. Brando  
1906 Beckett Blvd  
Goldenrod, Nebraska 69180

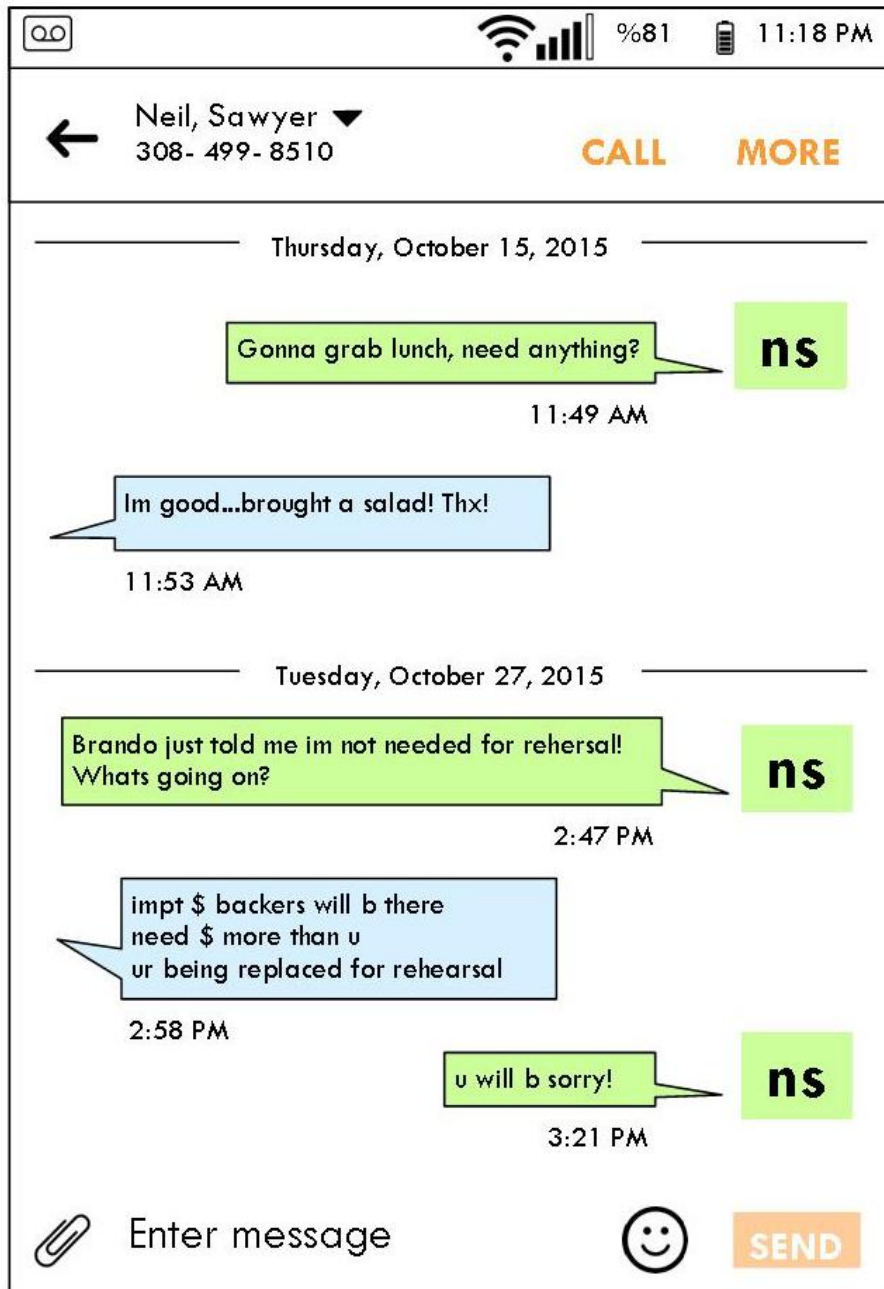
**Exhibit #7**

**Screenshot of Blake Brando's Phone**



**Exhibit #8**

**Screenshot of Louise Choanike's Phone**



**NEBRASKA HIGH SCHOOL MOCK TRIAL RULES**

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## I. RULES OF THE COMPETITION

The Rules of the Competition are based on the rules of the National High School Mock Trial Competition. Some additions or modifications have been made for Nebraska.

### A. THE PROBLEM

#### **Rule 1. Rules**

All trials are governed by the Nebraska High School Mock Trial Rules of the Competition, the Rules of Procedure, and the Federal Rules of Evidence (Mock Trial Version). The Nebraska Code of Criminal Procedure applies to this trial. Questions or interpretations of these rules are within the discretion of the mock trial coordinators, whose decisions are final.

#### **Rule 2. The Problem**

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

#### **Rule 3. Witness Bound by Statements**

Each witness is bound by the facts contained in her/his own witness statement, the statement of facts, if present, and/or any necessary documentation relevant to her/his testimony.

- If, on direct examination, an attorney asks a question which calls for an invention of facts, the question is subject to objection under Rule 4.
- If, on cross-examination, an attorney asks a question which calls for an invention of facts, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit. The question is not subject to objection. See Rule 4 for further clarification.
- A witness is not bound by facts contained in other witness statements.

#### **Rule 4. Invention of Facts**

Inventions of facts are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. The purpose of this rule is to keep the case as even as possible by not allowing either side to create an advantage for their side by inventing facts. In real trials this rule is not necessary because all of the facts are within the knowledge of the witnesses. Since mock trials use created fact situations, all of the necessary facts may not be within the knowledge of the witnesses. Therefore, for mock trials we need a rule to prevent inventions of facts that are not included in the case materials.

When an attorney objects to an invention of facts, the judge will rule in open court to clarify the course of further proceedings. The decision of the presiding judge regarding invention of facts or evidentiary matters is final.

#### **Direct and Redirect Examination**

Attorneys shall not ask questions calling for an invention of facts and witnesses shall not provide answers that involve an invention of facts. Attorneys for the opposing team may refer to Rule 4 in a special objection, such as: "Objection, Your Honor. The question calls for an invention of facts."

### **Cross and Recross Examination**

An invention of facts may only be allowed on cross or recross examination and only if the question being asked calls for facts that are not included in the case materials. If a witness is asked a question calling for an invention of facts, the witness may respond:

1. "I do not know the answer to that question because that information is not contained in the Nebraska Mock Trial case materials." OR
2. With any answer which is consistent with the witness' affidavit and other substantive issues of the case.

An answer that is contrary to the witness' affidavit may be impeached.

### **Rule 5. 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. In certain years the Nebraska case may have a specific gender witness role. This may be portrayed by any student on the team.

### **Rule 6. Voir Dire**

Voir dire examination of a witness is not permitted. This is the preliminary questioning of a witness or juror to determine competency, prejudices, biases, or personal knowledge.

## **B. THE TRIAL**

### **Rule 7. Team Eligibility**

Each team competing in the Nebraska High School Mock Trial Project must be composed of students who are registered in grades 9-12 in a Nebraska public, private or home school. Schools may enter as many teams as they can effectively organize and properly supervise. [Special permission may be granted for two schools to register a combined team. Contact the State Mock Trial Coordinator.] Exceptions on eligibility issues will be considered on a case-by-case basis.

A team that earns the right to compete at the State Championship shall be composed of the same students (including alternates) that participated at the Regional competition. If any student participant from the Mock Trial team is unable to compete and there are no alternates, another student may substitute for such participant as provided herein. The individual acting as the substitute must be enrolled as a student at the school and not have served on any other Mock Trial team at that school. Participation by an ineligible team member shall result in forfeiture of each trial in which the ineligible team member participated.

To be a part of the competition, schools must register their teams by completing and mailing the Official Mock Trial Entry Form to the State Coordinator, along with a check for **\$35 PER TEAM** (made payable to the **Nebraska State Bar Foundation**) no later than September 9, 2016. Registrations received after Friday, September 9<sup>th</sup> will be charged **\$70.00**. Also by September 23, 2016, each school should forward to their Regional Coordinator, the time and date preference form and if possible a school activities calendar for October and November.

### **Rule 8. Team Composition**

Teams may consist of a **minimum of six** and a **maximum of eight** students. Only **SIX** members may participate in any given trial. The duties of the two alternate team members may be assigned at the

discretion of the coaches. Students may only participate on one team per school year. Student timekeepers may be provided, but are not considered "official timekeepers" unless so designated by the trial judge.

### **Rule 9. Team Presentation**

Teams must be prepared to present both the Plaintiff and Defense sides of the case, using **SIX** team members per trial. For each trial, teams shall use three students as attorneys and three students as witnesses.

In the event of an emergency that would cause a team to participate with less than six members, the team must notify the Regional Coordinator as soon as possible. If the Regional Coordinator agrees that an emergency exists, he or she will decide whether the team will forfeit a trial or take appropriate measures to continue a trial round with less than six members. Trials may be rescheduled at the discretion of the Regional Coordinator. If the Regional Coordinator is unavailable, the presiding judge will make these decisions. A team proceeding with fewer than six team members may have points deducted from their point totals at the discretion of the scoring judges.

A team that forfeits a trial shall be given zero points, zero judges' ballots and a loss on their trial record. A team that was to have competed against a forfeiting team shall receive a win on their trial record.

The starting time of any trial may not be delayed longer than 15 minutes, unless agreed to by both teams and the presiding judge.

### **Rule 10. Team Duties**

Each of the three attorneys shall conduct one direct examination and one cross examination. In addition, one attorney shall present the opening statement and a different attorney shall present the closing argument.

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

The attorney who will cross-examine a particular witness is the only one permitted to make objections during the direct examination of that witness, and the attorney who questions a particular witness on direct examination is the only person who may make objections during cross-examination of that witness. Each team must call three witnesses. Witnesses shall be called only by their own team. Witnesses shall be examined by both teams. Witnesses may not be recalled by either team.

### **Rule 11. Swearing of Witnesses**

Witnesses shall be sworn, either individually or as a group, by the presiding judge, using the following oath:

***"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 12. Trial Sequence and Time Limits**

The trial sequence shall be as follows:

1. Plaintiff's opening statement
2. Defense's opening statement
3. Plaintiff's direct examination and Defense's cross-examination of Plaintiff's three witnesses
4. Defense's direct examination and Plaintiff's cross-examination of Defense's three witnesses

5. Plaintiff's closing argument
6. Defense's closing argument
7. Plaintiff may reserve a portion of its closing argument time for rebuttal if it does so at the beginning of its closing argument. The Plaintiff's rebuttal, if any, is limited to the scope of the Defense's closing argument.

### **Time Limits**

1. Each team shall have a total of 10 minutes for Opening Statement and Closing Argument. For example, a 3 minute opening and a 7 minute closing.
2. Each team shall have a total of 25 minutes for Direct and Redirect Examination.
3. Each team shall have a total of 20 minutes for Cross and Recross Examination.

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, except as allowed by this rule.

### **Rule 13. Timekeeping**

Time limits are mandatory and shall be enforced by the presiding judge. Time for objections, extensive questioning from the judge, or administering the oath shall NOT be counted as part of a team's allotted time. Time does not stop for introduction of exhibits. Each team may have its own timekeeper for the benefit of the team.

### **Rule 14. 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 presiding judge, the scoring judges may determine individually whether or not to deduct points in a category because of the overrun in time.

### **Rule 15. Prohibited Motions**

The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission. Other motions, for example, a motion for directed verdict, acquittal, or dismissal of the case at the end of the Plaintiff's case, may not be used. A motion for a recess may be used only in the event of an emergency or before closing arguments. Should a recess be called, team members are to remain in place and shall not communicate with any observers, coaches, or instructors regarding the trial.

### **Rule 16. Sequestration**

Teams may not invoke the rule of sequestration of witnesses (exclusion of witnesses from the courtroom).

### **Rule 17. Bench Conferences**

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

### **Rule 18. Supplemental Material/Illustrative Aids**

During the trial teams may refer only to materials included in the mock trial case packet. No physical evidence, illustrative aids, enlargements, props or costumes are permitted unless authorized specifically in the case materials.

### **Rule 19. Trial Communication**

Teacher sponsors, attorney coaches, non-participating team members (the two alternates), and observers shall not talk to, signal, communicate with, or coach their teams during trial. Team members (defined as

the three student attorneys and three student witnesses) participating in the trial may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' timekeeper(s) shall not be considered a violation of this rule. Timekeeper(s) may verbally communicate the remaining time to their teammates during a recess. Non-participating team members serving as the timekeeper(s) and/or the videographer may sit in the jury box if space allows.

Teacher sponsors, attorney coaches, and observers must remain outside the bar in the spectator section of the courtroom.

This rule remains in force during any recess time that may occur.

### **Rule 20. Viewing a Trial**

#### *Local and Regional Trials*

Check with the Regional Coordinator for your county regarding persons not associated with the competing teams viewing a trial. Coordinators may choose one of the following options:

- A. All trials are open to the public. Trials may be videotaped only by the competing schools or local media, OR
- B. Only team members, alternates, attorney-coaches, teacher-sponsors, observers or other persons directly associated with the competing teams may view a trial. Videotaping is allowed only by the competing teams IF both teams agree to permit it.

#### *State and National Championships*

Team members, alternates, attorney-coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except those authorized by the State Coordinator or the National Board, are not allowed to view other teams in competition, so long as their team remains in the competition.

### **Rule 21. Videotaping/Photography**

*Local and Regional Trials* -- See Rule 20.

*State and National Championships* -- Any team has the option to refuse participation in videotaping, tape recording, still photography, or media coverage, except that media coverage will be allowed by the two teams in the state championship round and at the national championship.

## **C. JUDGING**

### **Rule 22. Decisions**

All decisions of the judging panel are FINAL.

### **Rule 23. Composition of Panel**

The judging panel shall consist of one presiding judge and two scoring judges, all of whom shall complete individual score sheets. No mock trial shall proceed without three judges, unless one mock trial judge is unavoidably, unexpectedly absent. [Contact your coordinator if a mock trial judge is absent.]

If one mock trial judge is unavoidably, unexpectedly absent, the other two judges may proceed to score the trial and determine a winner by mutual agreement. If the two judges cannot agree on a winner, then the two teams shall retry the case at a mutually agreeable later date. Any mock trial with less than two judges shall be rescheduled by the two participating schools at a mutually agreeable later date.

The state championship trial may have a panel of five to twelve jurors (mock trial judges) at the discretion of the State Coordinator.

#### **Rule 24. Score Sheets/Ballots**

The term "ballot" will refer to the decision made by a presiding or scoring judge as to which team made the best presentation in the trial. The term "score sheet" is used in reference to the form on which speaker and team points are recorded. Score sheets are to be completed individually by all three judges. Scoring judges are not bound by the rulings of the presiding judge. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives the majority of the three ballots wins the trial.

Whether or not teams receive copies of the score sheets from their trials is up to the discretion of the local coordinators.

#### **Rule 25. Courtroom Decorum**

Mock trials are meant to simulate real trials in a courtroom atmosphere. Participants should act and dress accordingly. Check with your local coordinator for guidelines.

#### **Rule 26. Pre-trial Conferences**

Each mock trial should begin with a pretrial conference held in open court with all participants, coaches and spectators present. Mock trial attorneys may ask the presiding judge to mark exhibits and clarify rules of procedure or rules of evidence. Roster forms should be presented to all three judges.

### **D. DISPUTE RESOLUTION**

#### **Rule 30. Reporting a Rule Violation/Inside the Bar**

Alleged rule violations that involve students competing in a trial and occur during the trial should be brought to the attention of the presiding judge by a student attorney through an objection at the time of the alleged violation. The presiding judge shall rule on the objection and the trial shall continue. Any alleged rule violation known, or through the exercise of reasonable diligence should have been discovered during the trial and which is not brought to the attention of the judge, is waived.

If an alleged material rule violation could not reasonably have been discovered until after the trial has concluded, the alleged violation should be brought to the attention of the presiding judge immediately at the conclusion of the trial. The scoring judges 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 alleged rule violation. The student attorney may communicate with co-counsel and student witnesses before preparing the form. At no time in this process may teacher sponsors, attorney coaches or observers communicate with the students.

#### **Rule 31. Dispute Resolution Procedure**

The presiding judge will review the written dispute form and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce her/his decision in open court, retire to complete her/his score sheet and turn the dispute form in with the score sheets. If the presiding judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare their arguments, the judge will conduct a hearing on the

dispute, providing each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may teacher sponsors, attorney coaches or observers communicate with the students. After the hearing the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

**Rule 32. Effect of Violation on Score**

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

**Rule 33. Reporting of Alleged Rule Violation /Outside the Bar**

Disputes that involve people other than student team members and occur outside the bar during a trial round may be brought by teacher sponsors or attorney coaches exclusively. Such disputes must be made promptly to the appropriate local coordinator who will ask the complaining party to complete a dispute form. The form will be taken by the coordinator. The coordinator will (a) notify all pertinent parties; (b) allow time for a response, if appropriate; and (c) rule on the charge. The coordinator will notify all pertinent parties of her/his decision.

**II. RULES OF PROCEDURE**

The Nebraska Rules of Procedure are based on the Rules of the National High School Mock Trial Competition.

**A. BEFORE THE TRIAL**

Local coordinators will schedule trials once the school activities forms are completed by the individual teams. Twelve teams will compete at the state championship – one from each of twelve regions.

**Rule 34. Courtroom Setting**

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

**Rule 35. Team Roster**

*Before beginning a trial the teams must exchange copies of the Team Rosters. The form shall identify the gender of each witness so that references to such parties shall be made in the proper gender. Copies of the Team Rosters shall be made available to all three judges during the pretrial conference. A copy of the team roster shall be provided to the Regional Coordinator at the start of the regional competition.*

**Rule 36. Stipulations**

The attorney assigned the Plaintiff's opening statement shall offer any stipulations into evidence prior to beginning the opening statement.

**Rule 37. The Record**

The stipulations, indictment and charge to the jury shall not be read into the record.



## **B. BEGINNING THE TRIAL**

### **Rule 38. Jury Trial**

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

### **Rule 39. Standing During Trial**

Based on the Rule 4.16 of the National High School Mock Trial Competition Rules all attorneys shall stand when addressing the court or the jury, including opening statements, closing arguments, direct and cross-examination, and for the making of objections. Direct and cross-examination may be conducted from counsel table, a podium, or with leave of the court, from any place in the well of the court. Counsel shall obtain permission from the court before approaching a witness.

### **Rule 40. Objection During Opening Statement/Closing Argument**

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

If a team believes an objection would have been proper during the opposing team's closing argument, one of its attorneys may, following the closing argument, raise her/his hand to be recognized by the judge and 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 shall not rule on this "objection." Judges shall weigh the "objection" individually for purposes of determining their scores. No rebuttal by opposing team shall be heard.

## **C. PRESENTING EVIDENCE**

### **Rule 41. Argumentative Questions**

An attorney shall not ask argumentative questions. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.

### **Rule 42. Lack of Proper Predicate/Foundation**

Attorneys shall lay a proper foundation prior to moving for the admission of evidence. After motion has been made, the exhibits may still be objected to on other grounds.

### **Rule 43. Procedure for Introduction of Exhibits**

As an example, the following steps effectively introduce evidence.

1. All evidence shall be pre-marked as exhibits.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No. \_\_\_?"
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness. "I now hand you what has been marked as Exhibit No. \_\_\_ for identification."
5. Ask the witness to identify the exhibit. "Would you identify it please?"  
Witness answers with identification only.
6. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. \_\_\_ into evidence at this time. The authenticity of this exhibit has been stipulated."
7. Presiding Judge: "Is there an objection?"  
If proper foundation has not been laid, opposing counsel should object at this time.

8. Opposing Counsel: "No, your Honor," or "Yes, your Honor proper foundation has not been laid for Exhibit No. \_\_\_."
9. Presiding Judge: "Is there any response to the objection?"
10. Presiding Judge: "Exhibit No. \_\_\_ is/is not admitted."

#### **Rule 44. Use of Notes/Exhibits**

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

Exhibit Binders: Teams may prepare a binder of some or all of the exhibits, but at no time during the trial shall the binder be left on or near the witness stand. If an exhibit is admitted into evidence, only the copy of the exhibit authenticated by the witness and admitted by the presiding judge shall be used in evidence. Teams shall use only the exhibit actually admitted into evidence for the duration of the trial, including publication to the jury, during further testimony by any witness, and during closing argument. Exhibits may not be enhanced or enlarged without permission from the State Coordinator. No protective covering of paper exhibits is allowed.

#### **Rule 45. Redirect/Recross**

Redirect and recross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Federal Rules of Evidence (Mock Trial Version).

### **D. CLOSING ARGUMENTS**

#### **Rule 46. Scope of Closing Arguments**

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

### **E. DEBRIEFING/CRITIQUE**

#### **Rule 47. Debriefing/Critique**

The judging panel is allowed 10 minutes for debriefing. Presiding judges shall limit debriefing sessions to the 10 minutes total time allotted.

## **III. FEDERAL RULES OF EVIDENCE (Mock Trial Version)**

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

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

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

The Mock Trial Rules of Competition and these Nebraska High School Mock Trial Rules of Evidence govern Nebraska High School Mock Trial competition.

#### **ARTICLE I. GENERAL PROVISIONS**

##### **Rule 101. Scope**

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

##### **Rule 102. Purpose and Construction**

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

#### **ARTICLE IV. RELEVANCY AND ITS LIMITS**

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

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

##### **Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible**

All relevant evidence is admissible, except as otherwise provided by these Rules. Evidence which is not relevant is not admissible.

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

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

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

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

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

Plaintiff in a homicide case to rebut evidence that the alleged victim was the first aggressor;

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

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

#### **Rule 405. Methods of Proving Character**

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

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

#### **Rule 406. Habit, Routine Practice**

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

#### **Rule 407. Subsequent Remedial Measures**

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

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

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

- (1) furnishing or offering or promising to furnish--or accepting or offering or promising to accept--a valuable consideration in compromising or attempting to compromise the claim; and
- (2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

(b) **Permitted uses.** This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or

prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or Plaintiff.

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

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

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

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

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of *nolo contendere*;
- (3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state proceeding regarding either of the foregoing pleas; or
- (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which does not result in a plea of guilty or which results in a plea of guilty which is later withdrawn.

However, such a statement is admissible (1) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (2) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

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

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

**ARTICLE V. PRIVILEGES**

**Rule 501. General Rule**

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

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

## ARTICLE VI. WITNESSES

### Rule 601. General Rule of Competency

Every person is competent to be a witness.

### Rule 602. Lack of Personal Knowledge

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

### Rule 607. Who May Impeach

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

### Rule 608. Evidence of Character and Conduct of Witness

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

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

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

### Rule 609. Impeachment by Evidence of Conviction of Crime

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

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

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

(b) **Time limit.** Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the

interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

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

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

#### **Rule 610. Religious Beliefs or Opinions**

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

#### **Rule 611. Mode and Order of Interrogation and Presentation**

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

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

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

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

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

## **Rule 612. Writing Used to Refresh Memory**

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

## **Rule 613. Prior Statements of Witnesses**

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

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

## **ARTICLE VII. OPINIONS AND EXPERT TESTIMONY**

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

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

### **Rule 702. Testimony by Experts**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

### **Rule 703. Bases of Opinion Testimony by Experts**

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



#### **Rule 704. Opinion on Ultimate Issue**

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

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

#### **Rule 705. Disclosure of Facts or Data Underlying Expert Opinion**

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

#### **ARTICLE VIII. HEARSAY**

#### **Rule 801. Definitions**

The following definitions apply under this article:

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

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

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

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

- (1) **Prior statement by witness.** - The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is (A) inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or
- (2) **Admission by party-opponent.** The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

## **Rule 802. Hearsay Rule**

Hearsay is not admissible except as provided by these Rules.

## **Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial**

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

- (1) **Present sense impression.** - A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
- (2) **Excited utterance.** - A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
- (3) **Then existing mental, emotional, or physical conditions.** - A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
- (4) **Statements for purposes of medical diagnosis or treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
- (5) **Recorded recollection.** - A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.
- (6) **Records of regularly conducted activity.** - A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
- (8) **Public records and reports.** - Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(18) **Learned treatises.** - To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

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

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

#### **Rule 804. Hearsay Exceptions, Declarant Unavailable**

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

- (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
- (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
- (3) testifies to a lack of memory of the subject matter of the declarant's statement; or
- (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
- (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means. A Declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

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

- (1) **Former testimony.** Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
- (2) **Statement under belief or impending death.** In a Plaintiff for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

- (3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
- (4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as likely to have accurate information concerning the matter declared.
- (5) Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

**Rule 805. Hearsay within Hearsay**

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

**ARTICLE XI. OTHER**

**Rule 1103. Title**

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

**OFFICIAL TEAM ROSTER FORM**

Before beginning a trial the teams must exchange copies of the Team Rosters. The form shall identify the gender of each witness so that references to such parties shall be made in the proper gender. Copies of the Team Rosters shall also be made available to all three judges during the pretrial conference. At the conclusion of each trial, the presiding judge shall forward a copy of each team's roster to the local coordinator. **No changes in a team's roster should be made after the first round of local competition.** Contact your local coordinator with questions.

**NAME OF SCHOOL:** \_\_\_\_\_

**Name of Team** (if school has more than one team): \_\_\_\_\_

During this trial our team will be representing the: (circle one) Plaintiff/Prosecution OR Defense

**STUDENT ATTORNEYS**

	<u>Name</u>	<u>Direct Examination</u>	<u>Cross Examination</u>	<u>Other</u>
1.	_____			
2.	_____			
3.	_____			

**WITNESSES**

	<u>Name</u>	<u>(Circle One)</u>	<u>Trial Name</u>
1.	_____	Male/Female	_____
2.	_____	Male/Female	_____
3.	_____	Male/Female	_____

**NAMES OF ALTERNATES**

1. \_\_\_\_\_ 2. \_\_\_\_\_

**Teacher-Coach(es):** \_\_\_\_\_

**Attorney-Coach(es):** \_\_\_\_\_

**Signature of Teacher(s):** \_\_\_\_\_

## **TRIAL SCORING & DEDUCTION OF POINTS**

**TRIAL SCORING:** Trial winners are determined by which team earns the most judges' ballots. Do NOT add the two performance judges' team totals together to determine the trial winner.

Each of the performance judges should total their scores separately. If an individual judge's team totals are the same for both teams, that judge should indicate on the line ***If my total scores are tied, the win goes to \_\_\_\_\_***, which of the teams s/he feels gave the best overall performance. The team which earns the greatest number of points on a judge's score sheet (or receives the judge's vote if the numbers were tied) wins that judge's ballot. **TO WIN A TRIAL, A TEAM MUST WIN AT LEAST TWO JUDGES' BALLOTS.**

In other words, if each of the performance judges has awarded the greatest number of points to the same team, that team is the winner. If the performance judges have made a "split" decision (i.e., each awarded the most points to a different team) then the presiding judge must determine the winner based on which team gave the best overall performance.

### **Example A:**

Judge Smith's:	Team #1	<u>83</u> points &	Judge Jones'	Team #1	80 points &
score sheet shows:	Team #2	<u>76</u> points	score sheet shows:	Team #2	<u>78</u> points

In Example A, **Team #1 is the clear winner** because both performance judges gave them a greater number of points than the judges gave to Team #2 -- 83 and 80 versus 76 and 78.

### **Example B:**

Judge Smith's:	Team #1	<u>83</u> points &	Judge Jones'	Team #1	<u>79</u> points &
score sheet shows:	Team #2	<u>76</u> points	score sheet shows:	Team #2	<u>80</u> points

In Example B, Judge Smith has chosen Team #1 as the winner. Judge Jones has chosen Team #2 as the winner. Even though one team has more total points than the other, it is the number of judges' ballots NOT the total points which determines a trial winner. Therefore, this is a situation in which the performance judges have given a "split" decision. The presiding judge must determine the winner based upon overall team performance. In example B the team which earns the presiding judge's vote/ballot is the trial winner.

**DEDUCTION OF POINTS:** Performance judges may, at their discretion, consider subtracting points from an individual's score because of rule violations. For example, if a team violates its time limits, the performance judges MAY decide to reduce the points given to each of the three attorneys, or reduce the point total of the attorney who appeared to be the greatest cause of the time limit violation.

Other rule violations for which performance judges may wish to deduct points may be brought to the judges' attention during a dispute settlement (see Rules 30-33). For example, if it is brought to the judges' attention that a team member was improperly coached by a teacher or attorney-coach during the trial round, the judges may wish to reduce the points given to that particular team member.

**Whatever rule violations are brought to the attention of the judges, it is entirely within the judges' discretion whether or not they will deduct points from any participant's score. The decision of the judges is final.**

**PRESIDING JUDGE'S SCORE SHEET**

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

Plaintiff/Prosecution: \_\_\_\_\_ Defense: \_\_\_\_\_

Indicate your decision regarding which team made the best overall performance independent of the decisions of the performance judges. If the decisions of the performance judges are split, your decision as to the best overall performance will be used to decide which team wins the trial. If the two performance judges agree regarding which team gave the better performance, your score sheet will not be used in the calculation of the winner, but at the regional or state championships your score sheet may decide pairings and round advancement.

The criteria for BEST OVERALL PERFORMANCE are, among other things, whether ALL team members:

- complied with all rules of the competition and spirit of fair play;
- were poised and spoke clearly and distinctly;
- observed courtroom decorum;
- used their time effectively and stayed within their allotted time; and
- were courteous of their opponent.

**PERFORMANCE EVALUATION**

In my opinion, the team which gave the BEST OVERALL PERFORMANCE is the:

CIRCLE ONE:            Plaintiff/Prosecution            OR            Defense

COMMENTS (optional):

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\_\_\_\_\_  
Judge's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
**Please print name**



# Judge Lyle E. Strom High School Mock Trial Project

Sponsored by the Nebraska State Bar Foundation

## PERFORMANCE JUDGE'S SCORE SHEET

**P = Plaintiff/Prosecution** \_\_\_\_\_ **D = Defense** \_\_\_\_\_  
 (School Name) (School Name)

**Round:** \_\_\_\_\_ **Court Room:** \_\_\_\_\_

On a scale of 1 to 10, as outlined below, rate each team's performance in each of the 12 scoring categories.

Ineffective	Fair	Average	Excellent	Superior
1-2	3-4	5-6	7-8	9-10

**PLEASE DO NOT:** 1 – Leave any categories blank; 2 – Give any scores of zero; 3 – Use Fractions

P		D	
Opening Statement		Opening Statement	
<b>Plaintiff/Prosecution</b>			
First Plaintiff/Prosecution Witness	Attorney Direct Examination	Attorney Cross Examination	
	Witness Performance		
Second Plaintiff/Prosecution Witness	Attorney Direct Examination	Attorney Cross Examination	
	Witness Performance		
Third Plaintiff/Prosecution Witness	Attorney Direct Examination	Attorney Cross Examination	
	Witness Performance		
<b>Defense</b>			
Attorney Cross Examination		First Defense Witness	Attorney Direct Examination
		Witness Performance	
Attorney Cross Examination		Second Defense Witness	Attorney Direct Examination
		Witness Performance	
Attorney Cross Examination		Third Defense Witness	Attorney Direct Examination
		Witness Performance	
Closing Arguments		Closing Arguments	
Team Decorum & Professionalism		Team Decorum & Professionalism	
<b>Total Scores</b>			
<b>TOTAL PLAINTIFF/PROSECUTION SCORE</b> (Min. Points 12, Max. Points 120)		<b>TOTAL DEFENSE SCORE</b> (Min. Points 12, Max. Points 120)	

Tiebreaker (in case of tie, circle the party that won this round): Plaintiff/Prosecution Defense

Explanation of any point deduction: \_\_\_\_\_

Name (Print): \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_



**SUGGESTIONS FOR SCORING MOCK TRIALS**  
Nebraska High School Mock Trial Competition

<b>POINTS</b>	<b>PERFORMANCE</b>	<b>CRITERIA FOR EVALUATING STUDENT PERFORMANCE</b>
1-2	Ineffective	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, definitely ineffective in communication.
3-4	Fair	Minimally informed and prepared. Performance is passable but lacks depth in terms of knowledge of task and materials. Communications lack clarity and conviction.
5- 6	Average	Good, solid, but less than spectacular performance. Can perform outside the script but with less confidence than when using script. Logic and organization are adequate, but not outstanding. Grasps major aspects of the case, but does not convey mastery of same. Communications are clear and understandable, but could be stronger in fluency and persuasiveness.
7-8	Excellent	Fluent, persuasive, clear and understandable. Organizes materials and thoughts well and exhibits mastery of the case and materials.
9-10	Superior	Superior in qualities listed for "Excellent" rating. Thinks well on feet, is logical, and keeps poise under duress. Can sort out essential from the nonessential and use time effectively to accomplish major objectives. Demonstrates the unique ability to utilize all resources to emphasize vital points of the trial.

**Factors to Consider in Scoring**

**OPENING STATEMENTS**

Provided a case overview; mentioned the key witnesses; stated the relief requested; and provided a clear and concise description of their case.

**DIRECT EXAMINATION**

Used properly phrased questions (who, what, where, when, how); used proper courtroom procedure; demonstrated understanding of issues and facts; proper introduction of evidence; defended objections in clear, concise terms; used time effectively; and complied with all rules of the competition and spirit of fair play.

**CROSS EXAMINATION**

Used leading questions; properly impeached witnesses; raised proper objections and stated reasons clearly; knew Rules of Evidence and did not overuse objections; courteous of opponent; and complied with rules of competition and spirit of fair play.

**WITNESSES**

Credible; understood facts; responded spontaneously; poised and observed courtroom decorum.

**CLOSING ARGUMENTS**

Summarized the evidence; emphasized the supporting points of their own case and damaged

the opponent's; concentrated on the important, not the trivial; applied the applicable law; and used arguments that followed a logical pattern, in direct and easily understood language.

### **CONSTRUCTIVE CRITIQUES**

An important aspect of the educational process of mock trials is the critique provided by the presiding and performance judges at the conclusion of the trial. The comments and suggestions on this page are meant to assist judges in their roles as educators about the law and our legal system.

**Please read these comments and try to give students positive suggestions that will help them 1) do better next time, and 2) understand how our justice system works.**

For many students the critique is the most valuable part of the competition. They learn from hearing *specifically* what they did wrong, as well as from hearing your approval of what they did well.

- Humor is a welcome tension reliever during the critique.
- Your comments should bear in mind the educational goals of the mock trial project.
- Remember that you are helping *educate, guide and nurture* these young people. Treat them with the respect you expect to receive from them.
- Encourage questions during the critique.
- Be realistic about the legal system. It is not perfect.
- Let students see you as a real human being. Share your interests, concerns, and satisfactions.
- Remember you are a role model for the students and an ambassador for your profession.
- Maintain eye contact.
- Keep your critique to the time suggested (**15 minutes for the entire panel**).
- Let your personality come across. Let students know that not all attorneys use the same methods and techniques. Differences of opinions regarding style of trial presentations are common.

### **POSITIVE APPROACHES FOR SUGGESTIONS TO STUDENTS**

"Perhaps an alternative way of handling the questioning of that witness would have been to..."

"Your opening statement was good, but it may have been even better if you had..."

"I cannot recall hearing evidence about ..., which would have helped your client's case. If you did include such evidence I suggest that next time you make it somehow stand out stronger by..."

#### **DO NOT:**

Criticize students about their attire.

Expect high school students to understand all that law students or lawyers understand.

Talk down to students.

**DISPUTE RESOLUTION FORM -- INSIDE THE BAR**  
*(See Rules 30 & 33)*

DATE \_\_\_\_\_ PLACE OF TRIAL \_\_\_\_\_

SCHOOLS COMPETING \_\_\_\_\_

NAME OF STUDENT ATTORNEY FILING DISPUTE \_\_\_\_\_

SCHOOL OF STUDENT ATTORNEY FILING DISPUTE \_\_\_\_\_

**NATURE OF DISPUTE.** Explain briefly why you are filing this dispute. When finished, give this form to the PRESIDING JUDGE.

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**PRESIDING JUDGE**

*I have read this dispute form and determined that the dispute should be DENIED.*

My reasons for denying this dispute are \_\_\_\_\_

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**OR**

*I have read this dispute form and determined that the dispute should be HEARD. I will now present this form to opposing counsel and ask for their written response on the reverse side of this form.*

**SIGNATURE OF PRESIDING JUDGE** \_\_\_\_\_

**DATE & TIME** \_\_\_\_\_

**DISPUTE RESOLUTION FORM -- INSIDE THE BAR**  
*(Page Two)*

Opposing sides' RESPONSE TO DISPUTE.

**NAME OF STUDENT ATTORNEY RESPONDING** \_\_\_\_\_

**SCHOOL OF STUDENT ATTORNEY** \_\_\_\_\_

**RESPONSE TO DISPUTE. Write a brief response to the opposing side's dispute claim. When finished, return this form to the presiding judge.**

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**PRESIDING JUDGE** (please print): \_\_\_\_\_

The respective teams have submitted a dispute and a response to the dispute in writing. Both sides have now had an opportunity to argue the dispute in an open hearing in my presence. After reviewing the dispute, the response, the oral arguments, and the relevant mock trial rules, I have reached a decision in this matter. My decision is:

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**SIGNATURE OF PRESIDING JUDGE** \_\_\_\_\_

**DATE AND TIME** \_\_\_\_\_

**DISPUTE RESOLUTION FORM -- OUTSIDE THE BAR**  
*(See Rule 33)*

Date \_\_\_\_\_ Place of trial \_\_\_\_\_

Schools Competing \_\_\_\_\_

Name of TEACHER OR ATTORNEY COACH filing dispute \_\_\_\_\_

School of Teacher or Attorney Coach filing dispute \_\_\_\_\_

**NATURE OF DISPUTE:** Explain briefly why you are filing this dispute. When complete, give this form to the REGIONAL COORDINATOR.

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**COORDINATOR** (please print)

I received this Dispute Resolution Form on \_\_\_\_\_ (date) and have notified all pertinent parties of the nature of the dispute. I DID DID NOT feel that a response was necessary for me to make a decision.  
(circle one)

If received, the response is attached to this form.

My decision in the dispute is

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I have notified all pertinent parties of my decision.

**REGIONAL COORDINATOR'S SIGNATURE** \_\_\_\_\_

**DATE & TIME** \_\_\_\_\_

## 2016 MOCK TRIAL COORDINATORS & REGIONS

### REGION 1

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Counties: Adams, Clay, Franklin, Harlan, Kearney, Nuckolls, Phelps, and Webster

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**Nebraska State Bar Foundation**