



WADE EDWARDS

The *Wade Edwards High School Mock Trial Competition* honors a young man whose short life epitomized the ideals of democracy. In 1996, as a junior in high school, the National Endowment selected Wade's essay "Democracy and Voting Rights" as one of 10 national winners for the Humanities and Voice of America.

Wade understood the importance of our justice system to the preservation of individual rights and liberties and dreamed of one day becoming a trial lawyer. He also encouraged his father, Senator John Edwards to serve the public by running for elected office.

Wade's spirit and humanity live on in this competition, with the hope that the knowledge and experience the participants gain will empower and inspire them to participate in the preservation of democratic ideals through the justice system.

The NC Academy of Trial Lawyers Education Foundation, Inc. sponsors this annual competition. NCATL is a nonprofit, nonpartisan association dedicated to protecting people's rights through community and professional legal education, championing individual rights, and protecting the safety of North Carolina families—in the home, in the workplace, and in the environment.

Program sponsors include the Z. Smith Reynolds Foundation and legal professionals statewide.

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Elizabeth Edwards	Ex-Officio Member

2004-2005 Case Materials



DEVELOPED BY:

The North Carolina Academy of Trial Lawyers Education Foundation, Inc. for the Wade Edwards High School Mock Trial Competition.

SPECIAL THANKS TO:

Andy McVey of Murchison Taylor & Gibson, for writing an original mock trial problem. And to Michele Robertson, Jon Wall and Gordon Widenhouse, Jr. for their work in editing the problem.

The many volunteers who have truly caught the mock trial spirit and devote their time and energy to make this program so successful.

The students, parents, teachers and legal professionals statewide whose support have enabled us to continue a program that provides a practical, hands-on learning experience with a healthy dose of fun competition.

REGIONAL & SITE COORDINATORS

(RC) = Regional Coordinator

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The focus of the Mock Trial program is education; it is designed to:

- Improve students' public speaking, writing, listening and critical thinking skills;
- Encourage effective communication between the educational and legal communities;
- Promote tolerance, professionalism, and cooperation among young people of diverse interests.

Each year, hundreds of students from all across the state gather inside courthouses to participate in the *Wade Edwards High School Mock Trial Competition*. Through the involvement of judges, attorneys, paralegals, teachers and students, courtrooms are turned into classrooms.

For weeks, teams composed of six to eight students work with attorneys, legal assistants and a teacher advisor to prepare for their day in court. No outside research is necessary because all case materials and rules of evidence are provided. At the trial, students become the attorneys, witnesses, bailiffs, courtroom artists and journalists. This hands-on approach is a fun and effective way for students to learn about the judicial process and the fundamental importance of the jury system.

There are two qualifying rounds at each regional competition. During these rounds, students present both sides of the case. For example, if a team argues the defendant's side in the morning round, they will present the prosecution's case in the afternoon. A panel of legal professionals evaluates each team. Scores are not based on the merits of the case but on how well teams demonstrate critical thinking skills, public speaking, courtroom demeanor and teamwork. Based on their scores, the top two teams advance to a single final round. The winner from each regional competition advances to the State Finals to compete for the right to represent North Carolina at the National Mock Trial Championship.

In the United States, trial by jury is not only a constitutional right guaranteed by the Sixth and Seventh Amendments, it is also the method by which other fundamental rights of Americans are protected. The better students understand the justice system, the more prepared they will be to fulfill their responsibilities as citizens and future jurors.

The Courtroom Art and Courtroom Journalism Contest provide high school students the opportunity to participate in the competition while working in a medium they enjoy. As a reporter, artist or photographer, each student spends a day immersed in the events surrounding a civil or criminal trial. Students are assigned to a courtroom and expected to apply their creative and artistic talents to a real-life situation. No outside preparation is required.

Courtroom Art Contest

At a regional mock trial competition, students observe the morning trial rounds and make preliminary sketches. Contestants complete their work during the second round of trials.

Regional Champions receive a certificate and are automatically entered into the State Finals contest. Regional Champions have approximately four weeks to submit more detailed works, preferably paintings, which are judged at the State Finals contest. The state winner is announced at the State Finals awards ceremony. The works of the State Champion and the other State Finalists are later used on promotional materials for the program.

Courtroom Journalism Contest

Feature Writing Competition: Students interview mock trial teams and cover a particular team's trial at competition. After the trial, students have about four weeks to submit their story to the State Office. Feature stories should highlight a team or the students' experiences in the mock trial program.

News Writing Competition: Students observe a mock trial during Round I of competition and during Round II they write "on deadline" in an assigned room. Stories are collected at the end of Round II and submitted to the State Office for judging. News stories should focus on the trial as an actual news event and should treat the mock trial as a real-life situation.

Photography Competition: Students submit one black and white photo that captures the spirit of competition. Although they watch a performance of the mock trial, contestants' entries can depict the action behind the scenes as well.



September 11 & September 18, 2004

Team & Attorney Advisor Training

First and second year team advisors are required to attend a Training Workshop in Raleigh on September 11 or Winston-Salem on September 18. During the workshop, the basics of the mock trial competition are explained and the case materials are discussed. Journalism and Art advisors are not required to attend but are welcome if they would like to hear more about the program. Team advisors with three or more years of experience are also invited. Students may attend.

October 8, 2004

Team Roster & Registration Fees/ Art and Journalism Courtroom Contestant Names Due

Completed team rosters, found in the back of your case materials, are due to the State Office by 5:30 pm. The registration fee of \$55 per team and \$5 for each courtroom artist and journalist are also due. The names of students competing in the Courtroom Art and Courtroom Journalism contests must also be submitted. After this date, the mock trial teams will be notified of their regional competition site assignment.

October 20, 2004

Last Day To Withdraw From Regionals

To withdraw from competition, a team must contact the State Coordinator in writing no later than October 24. Teams that withdraw before the deadline are eligible to receive a refund.

November 13, 2004

Regional Competition

Mock trial teams, courtroom artists and courtroom journalists compete at one of ten regional competition sites. Registration begins at 9 am, and students should plan to spend the day at the courthouse—the final round will end at approximately 6 pm.

January 22-23, 2005

State Finals Competition

Ten regional winners and six qualifying teams will meet in Charlotte to compete for the State Title and the right to represent North Carolina at the National Championship in May. An awards ceremony honoring the team, journalism and art champions will take place on Sunday. Postponement dates are February 22-23, 2005.

May 5-7, 2005

National Championship

North Carolina's State Champion travels to our very own Charlotte, NC to compete against teams from more than 40 other states.



HONOR ROLL OF STATE CHAMPION TEAMS



<u>YEAR</u>	<u>SCHOOL</u>	<u>NATIONAL TOURNAMENT HOST</u>
1993	INDEPENDENCE HIGH, Charlotte, NC	Atlanta, GA
1994	SALEM ACADEMY, Winston-Salem, NC	Chicago, IL
1995	SALEM ACADEMY, Winston-Salem, NC	Denver, CO
1996	ASHEBORO HIGH, Asheboro, NC	Pittsburgh, PA
1997	SALEM ACADEMY, Winston-Salem, NC	Nashville, TN
1998	WESTOVER HIGH, Fayetteville, NC	Albuquerque, NM
1999	ASHEBORO HIGH, Asheboro, NC	St. Louis, MO
2000	ASHEBORO HIGH, Asheboro, NC	Columbia, SC
2001	ASHEBORO HIGH, Asheboro, NC	Omaha, NE
2002	ASHEBORO HIGH, Asheboro, NC	St. Paul, MN
2003	ASHEBORO HIGH, Asheboro, NC	New Orleans, LA
2004	ASHEBORO HIGH, Asheboro, NC	Orlando, FL

PAST MOCK TRIAL CASES

<u>Year</u>	<u>Case</u>	<u>(C) = CRIMINAL, (V) = CIVIL</u>	<u>Topic</u>
1994-95	Noble v. Kaitesburg School District	(V)	Sexual Harassment, Title IX
1995-96	State of Utopia v. Martha Monroe	(R)	Murder, Domestic Violence
1996-97	State of North Carolina v. Mitchell	(R)	Felony Hit and Run
1997-98	Hewitt v. Sports Pros, Inc.	(V)	Wrongful Death, Negligence
1998-99	State of NC v. Rafter	(C)	Felony Drug Offenses
1999-00	State of NC v. Anderson	(C)	Assault, Ethnic Intimidation
2000-01	Gardner v. Utopia News Press	(V)	Libel, Invasion of Privacy
2001-02	State of NC v. Sammy Brewster	(C)	Involuntary Manslaughter, Social Host Liability
2002-03	Estate of Hunter Knox v. Drew Greene	(V)	Pedestrian-Motor Vehicle Accident, Contributory Negligence
2003-04	Terry Johnson v. Schifano Rental Management, Inc.	(V)	Injury from fire, Building Codes



THE MOCK TRIAL EXPERIENCE



"The *Wade Edwards High School Mock Trial Competition* has for more than a decade educated young people and their families about the system of justice. I know firsthand about this program, named after my son Wade. My wife Elizabeth and I have regularly participated as judges in the state competition."

United States Senator John Edwards

EDUCATORS

"I highly recommend the Mock Trial Program for every student, from the potential high school dropout to the student enrolled in gifted classes."

Michael E. Ward, State Superintendent

"One of the greatest highlights of the experience is watching the students as everything is pulled together."

Cynthia Vaughn, Northwest Guilford High School

"NCATL should be commended for your continuous and unfailing support of law education in North Carolina. Thank you."

Allen Guidry, J. H. Rose High School

"My students learned commitment to excellence, how teamwork really counts in a true-life situation, respect for the earnest efforts of individuals, how to make difficult decisions, and an understanding of the justice system."

Mary C. Kelly, Asheboro High School

STUDENTS

"It's more than a competition between teams; it is learning something that can be used for the rest of your life."

Keyotta Sanford, South Granville High School

"Mock Trial is a really good way for me to exercise acting skills, public speaking skills and presentation skills. It's a fun thing for me to do because it's challenging to the mind and a good leadership experience."

William Rothwell, Gaston Christian School

"I loved becoming involved and communicating with real lawyers and judges."

Tess McEnery, Northwest Guilford High School



THE MOCK TRIAL EXPERIENCE



JUDGES

"The Academy's mock trial program is a great practical way for young people to learn about our legal system through first-hand experience... what an opportunity these young people have to personally develop respect for the system of laws we live by."

Linda McGee, Court of Appeals Judge

"This wonderful project enables students to develop a wide array of skills, which will greatly assist them in whatever careers they pursue."

Jesse B. Caldwell, III, Judge

LEGAL PROFESSIONALS

"The whole experience was positive. The students were very organized as well as the Academy staff."

Kimliz Mooney, Volunteer

"A great experience for all who participated; wonderful service and a great learning opportunity."

David Vanderhoof, Presiding Judge

"Wonderful experience for the students AND lawyers involved."

Julia Young, Evaluative Juror

"These high school students demonstrate such a high level of dedication, commitment and desire to be the best in whatever area of the competition they participate in."

Daina Delgado, Fayetteville Site Coordinator

"Students learn that the law is about them. Participation teaches that our law depends as much on the individuals involved in the system as on the written law."

Chris Nichols, Attorney Advisor

"These students with little or no experience with the justice system, from many different backgrounds, put their hearts and souls into the case, work through the issues, and compete as if their clients life and liberty were really at stake."

Michelle Robertson, Past Mock Trial Program Chair



A. ADMINISTRATION

Rule 1.1. Rules

The Wade Edwards High School Mock Trial Rules of Competition and the Wade Edwards High School Mock Trial Simplified Rules of Evidence and Procedure will govern all trials.

Questions or interpretations of these rules are within the discretion of the State Mock Trial Planning Committee of the NC Academy of Trial Lawyers Education Foundation, Inc (“State Office”), whose decisions are final.

Rule 1.2. Regional Competitions and State Finals Competition

The Wade Edwards High School Mock Trial Competition consists of the Team Courtroom Competition and the Courtroom Art and Journalism Contests. Each year, the State Office determines the total number and location of regional sites in which to hold the competition. The Wade Edwards High School Mock Trial Regional Competitions (“Regionals”) are held on a Saturday in November. The Wade Edwards High School Mock Trial State Finals Competition (“State Finals”) is held at least 8 weeks after Regionals and is a two-day tournament.

Rule 1.3. Code of Conduct

The Rules of Competition, as well as proper rules of courthouse and courtroom decorum and security, must be followed. The State Office possesses discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violation or breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program.

Rule 1.4. Emergencies

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

Rule 1.4.a. In the event of an emergency that would cause a team to be unable to continue a trial or to participate with less than six members, the team must notify the State Office as soon as reasonably practical. If the State Office, or its designee(s), in its sole discretion, agrees that an emergency exists, the State Office, or its designee(s), shall declare an emergency and will decide whether the team will forfeit or may direct that the team take appropriate measures to continue any trial round with less than six members. A penalty may be assessed.

Rule 1.4.b. A forfeiting team will receive a loss and points totaling the average number of the ballots and points received by the losing teams in that round. The non-forfeiting team will receive a win and points totaling the average number of ballots and points received by the winning teams in that round.

Rule 1.4.c. Final determination of emergency, forfeiture, reduction of points, or advancement will be made by the State Office and/or designated competition official.

Rule 1.5. Courthouse Security

Participants and spectators must follow all security requirements as instructed by the State Office, or its designees. Participants must wear badges with a team letter. Observers must wear name badges.

Rule 1.6. Food and Beverages in the Courthouse

Food and beverages are NOT ALLOWED in any courtroom at any time - including water. After receiving a warning, teams that fail to follow this rule are subject to forfeiture of round(s) and/or disqualification.



Rule 1.7. Attorney Advisor(s)

Each school or organization should have an attorney advisor who works with the students. The State Coordinator's Office can match an attorney with a school or organization, or a team may choose their own advisor. Legal Assistants and area law students can also be a great resource in preparing students for competition.

Rule 1.8. Team/Attorney Advisor Training Workshop

First and second-year team advisors are required to attend a training workshop. Workshops are scheduled for **Saturday, September 11, 2004** in Raleigh and **Saturday, September 18, 2004** in Winston-Salem. The session introduces teams to the case law, program basics and rules.

Rule 1.9. Case Materials

To prepare for competition, students are limited to the:

- Supplied case materials,
- Wade Edwards High School Mock Trial Rules of Competition, and
- Wade Edwards High School Mock Trial Simplified Rules of Evidence and Procedure.

Rule 1.10. Team Travel Expenses

Expenses for the regional and state competition are the responsibility of the participants and their sponsoring school(s)/organization(s). However, no team shall be denied participation due to financial difficulties. To request assistance, a team advisor or student representative must contact the State Office in writing (State Coordinator, NCATL Mock Trial, PO Box 10918, Raleigh, NC 27605-0918) no later than the last day of the month prior to the competition (Oct. 29, 2004 or Dec. 31, 2004). The NCATL Education Foundation, Inc. will pay the registration fee for the National Championship and contribute towards the state championship team's travel expenses.

Rule 1.11. Assignment of Regional Competition Site

The State Coordinator reserves the right to assign each team to a regional competition site based on the following: (1) the top four sites selected by the registrant; (2) having an even number of teams; and (3) travel time and cost considerations for the school. On October 11, 2004, (the first Monday following the deadline for team rosters and registration fees), the State Coordinator will notify each school of their assigned regional competition site(s).

Rule 1.12. Reassignment of Teams for Regional Competition Site

If the State Coordinator discovers, no later than October 20, 2004 (the deadline to withdraw a team from a regional competition), that an odd number of teams are registered in a region, s/he may reassign teams to a different region. The team advisor and/or attorney advisor of a reassigned team will be promptly notified.

B. THE PROBLEM

Rule 2.1. The Problem

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

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

Rule 2.2. Witness Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement, the statement of facts, if present, and/or any necessary documentation provided in the case material that is relevant to his/her testimony. Fair extrapolations are allowed, provided reasonable inference may be made from the witness'



statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 2.3, “unfair extrapolation.”

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

Rule 2.3. Unfair Extrapolation

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

Rule 2.3.a. Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation.

Rule 2.3.b. If a witness is asked information not contained in the witness' statement, the answer must be consistent with the statement and may not materially affect the witness' testimony or any substantive issue of the case.

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

Rule 2.3.d. When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings.

Rule 2.3.e. Possible rulings by a judge include:

- No extrapolation has occurred;
- An unfair extrapolation has occurred;
- The extrapolation was fair; or
- Ruling is taken under advisement.

Rule 2.3.f. The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

Rule 2.4. Gender of Witnesses

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

Rule 2.5. Voir Dire

Voir dire examination of a witness is not permitted.

C. TEAMS

Rule 3.1. Student Eligibility

All students in grades 9 to 12 are eligible to compete. A student must be currently enrolled as a full-time student in order to participate as a team member or must be an active member of a sponsoring organization.

Rule 3.2. Team Eligibility for Regional Competition

Teams must be properly registered with the State Coordinator. Teams must be comprised of students from the same high school or from an established organization. The State Coordinator will decide questions regarding the composition of a team. A team must have at least one team advisor and/or an attorney advisor. Team members must be listed on the Official Team Roster (as stated in Rule 3.5.). Any exceptions must be reviewed and approved by the State Office.

Rule 3.2.a. There is no limit on the number of teams a school/organization may register for the competition. However, only two teams from each school/organization may register to compete at the same regional competition site. If a school/organization registers more than two teams, additional teams must compete at different regional competition sites.

Rule 3.2.b. If a school/organization has won a regional championship for two consecutive years, its team(s) will not be permitted to compete in that region for a third year, but may compete at any of the remaining regional competition sites. The State Coordinator reserves the right to assign each team to a regional competition site (as stated in Rule 1.11.).

Rule 3.3. Team Eligibility for State Finals Competition

Teams advance to the state tournament by virtue of winning a regional championship round or by the advancement criteria stated in Rule 5.6.

Rule 3.3.a. The State Office determines the total number of team slots available. All regional championship teams are guaranteed a slot to compete. The State Office will award any remaining slot(s) to the highest-ranking team(s) based on the advancement criteria stated in Rule 5.6. as applied to the results at Regionals. The State Office will promptly notify each team advancing to the State Finals and will provide registration information and a schedule of events.

Rule 3.3.b. Teams competing in the State Finals Competition must be comprised of students who participated on the team at the regional competition. Any exceptions must be reviewed and approved by the State Office as stated in Rule 3.5.a.

Rule 3.3c. If a team advancing to the State Finals is unable to participate and, as a result, an odd number of teams are registered to compete, the State Office shall select a replacement team starting with the next highest-ranked team as specified in Rule 3.3.a.

Rule 3.4. Team Eligibility for the National High School Mock Trial Championship

Teams competing in the National High School Mock Trial Championship must be comprised of students who participated on the current state championship team. The State Office may designate an alternate team should the state championship team be unable to participate, so long as all students on the team are from the same original team. A maximum of 8 students comprise the state entry in the National Competition.

Rule 3.5. Official Team Roster Form

To participate at Regionals, a team must submit a Team Roster to the State Office by October 8, 2004. Changes to a Team Roster must be requested in writing and sent to the State Office no later than one week prior to competition. The State Coordinator must approve all changes.

Rule 3.5.a. During on-site registration, teams are not permitted to make changes to the Team Roster unless determined and approved by the State Office and/or designated competition official to be an emergency or the result of an unforeseen and unavoidable circumstance. The Team Roster will become official at the time of on-site registration.

Rule 3.5.b. The Team Roster Form must be turned in at registration. Additional Team Roster forms will be distributed at registration. These forms must be filled in with the team code. Teams must be identified by the code assigned at registration. No information identifying team origin should appear on the form. Before beginning a trial, the teams must exchange copies of the Team Roster Form. The Form should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster Form should also be made available to the panel of evaluative jurors and presiding judge before each round.

Rule 3.6. Team Composition and Presentation

Teams consist of a maximum of eight official members assigned to roles representing the Prosecution/Plaintiff and Defendant sides. The prosecution/plaintiff will have a total of seven members participating in a round. The seventh member will be the bailiff. The defendant's side will have a total of six students participating in the round.

Rule 3.6.a. For each trial round, teams shall use three students as attorneys and three students as witnesses.

Rule 3.6.b. Student presentations must be the work product of the students themselves, guided by team and legal advisors.

Rule 3.7. Team Roles

Because each team has to present both sides of the case, there are 13 different roles to fill:

- 3 Prosecution/Plaintiff attorneys
- 3 Defense/Defendant attorneys
- 3 Prosecution/Plaintiff witnesses
- 3 Defense/Defendant witnesses
- 1 Bailiff* (a Prosecution/Plaintiff team role only)

* Teams are required to provide the bailiff for the trial when presenting the Prosecution/Plaintiff's case. (For the duties of the bailiff, please see the appendix.)

Because only eight students can participate on one team, some students will have to assume two roles. However, students are limited to only one role per competition round. For example, a student can be a witness for the prosecution and an attorney for the defense; s/he cannot portray two witnesses (or an attorney and a witness) during the same round.

Rule 3.8. Team Duties

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

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

Rule 3.8.a. Both sides at the beginning of the trial must give opening statements.

Rule 3.8.b. The attorney who conducts the direct examination of a witness is the only person who may object to the opposing attorney's questions during that witness' cross-examination. The attorney who conducts the cross-examination of a witness is the only one permitted to object during the direct examination of that witness.

Rule 3.8.c. Each team must call three witnesses. Witnesses must be called only by their own team during their case-in-chief and examined by both sides. Neither side may recall a witness.

Rule 3.8.d. If an attorney conducts more than one cross examination and/or more than one direct examination and/or gives both the opening and closing arguments, the opposing counsel may make an objection to the judge, “I object on the ground that counsel is in violation of Rule 3.8.” at the time the violation occurs. *The offending team will receive a score of zero for each violation in the appropriate score box (es) for all three of their score sheets for that trial round.*

D. THE TRIAL

Rule 4.1. 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 presiding judge.

Rule 4.2. Stipulations

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

Rule 4.3. Reading Into The Record Not Permitted

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

Rule 4.4. Swearing of Witnesses

The following oath may be used before questioning begins:

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

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

Rule 4.5. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

- Opening Statement (4 minutes per side)
- Direct and Redirect (optional) Examination (20 minutes per side)
- Cross and Re-cross (optional) Examination (15 minutes per side)
- Closing Argument (4 minutes per side)

Rule 4.5.a. The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/Plaintiff may reserve no more than half of its allotted closing time for a rebuttal argument. The Prosecution/Plaintiff's rebuttal is limited to the scope of the Defense's closing argument.

Rule 4.5.b. For direct examinations and cross examinations, attorneys may divide the allotted time among witnesses in any way that best suits their case.

Rule 4.5.c. Attorneys are not required to use the entire time allotted to each part of the trial. However, time remaining in one part of the trial may not be transferred to another part of the trial.

Rule 4.6. Timekeeping

Time limits are mandatory and will be enforced. The Bailiff serves as the official timekeeper. Each team is permitted to have its own timekeeper and timekeeping aids.

Rule 4.6.a. Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

Rule 4.6.b. Time does not stop for introduction of exhibits.

Rule 4.7. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the evaluative jurors may determine individually whether or not to discount points in a category because of over-runs in time.

Rule 4.8. Motions Prohibited

No motions may be made. A motion for directed verdict, acquittal or dismissal of the case at the end of the Prosecution/Plaintiff's case may not be used.

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

Rule 4.9. Sequestration

Teams may not invoke the rule of sequestration.

Rule 4.10. Bench Conferences

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

Rule 4.11. Supplemental Material/Costuming

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

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

Rule 4.12. Trial Communication

Coaches, alternates and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any emergency recess that may occur. Team members may communicate among themselves during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

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

Rule 4.13. Viewing a Trial

Team members, alternates, attorney-coaches, team-sponsors, and any other persons directly associated with a mock trial team—except for those authorized by the State Office—are not allowed to view other teams in the competition, so long as their team remains in the competition. Scouting other teams is not permitted. If two teams are entered in a competition by a school/organization, then only the teacher(s) and attorney advisor(s) may move between the courtrooms.

Rule 4.14. Videotaping/Photography

Any team has the option to refuse participation in videotaping, tape recording and still photography by opposing teams. Media coverage will be allowed. Media representatives authorized by the Regional & Site Coordinators or the State Office will wear identification badges.

Rule 4.15. Jury Trial

The case will be tried to a jury; arguments are to be made to judge and jury. Teams may address the evaluative jurors as “the jury.”

Rule 4.16. Standing During Trial and Movement About the Courtroom

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

Rule 4.16.a. At Regionals, attorneys are to remain seated when conducting direct and cross examinations (as is the accepted courtroom procedure practiced in North Carolina) unless given permission by the judge: to approach the witness to view an exhibit or statement; to approach the bench to enter an exhibit into evidence; or to discuss rule violations.

Rule 4.16.b. At State Finals, attorneys are to stand when conducting direct and cross examinations (this is the rule for the National Competition and is the procedure followed in some states).

Rule 4.17. Objections During Opening Statement/Closing Statement

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

Rule 4.17.a. If a team believes an objection would have been proper during the opposing team's opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, “As stated in Rule 4.17, had I been permitted to object during closing arguments, I would have objected to the opposing team's statement that _____ because _____.” The presiding judge will not rule on this “objection.”

Rule 4.17.b. Presiding judges and evaluative jurors will weigh the "objection" individually. No rebuttal by the opposing team will be heard.

Rule 4.18. Objections

1. **Argumentative Questions:** An attorney shall not ask argumentative questions.
2. **Lack of Proper Predicate/Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.
3. **Assuming Facts Not in Evidence:** Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a "hypothetical question").

4. **Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for a specific answer. (Example of improper question: "Tell us what you know about this case.")
5. **Non-Responsive Answer:** A witness' answer is objectionable if it fails to respond to the question asked.
6. **Repetition:** Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Teams are not precluded from raising additional objections which are available under the *Wade Edwards High School Mock Trial Simplified Rules of Evidence and Procedure*.

Rule 4.19. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence:

1. All evidence will be pre-marked as exhibits.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No. __?"
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness.
5. "I now hand you what has been marked as Exhibit No. __ for identification."
6. Ask the witness to identify the exhibit. "Would you identify it please?"
7. Witness answers with identification only.
8. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. __ into evidence at this time. The authenticity of this exhibit has been stipulated."
9. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
10. Opposing Counsel: "No, your Honor," or "Yes, your Honor." If the response is "yes," the objection will be stated on the record. Court: "Is there any response to the objection?"
11. Court: "Exhibit No. __ is/is not admitted."

Rule 4.20. Use of Notes

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

Rule 4.21. Redirect/Re-cross

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

Rule 4.22. Scope of Closing Arguments

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

Rule 4.23. The Critique

The presiding judge and evaluative jurors are allowed ten minutes for debriefing. The timekeeper will monitor the critique following the trial. The presiding judge is to limit critique sessions to a combined total of ten minutes.

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

Rule 4.24. Offers of Proof

No offers of proof may be requested or tendered.

E. JUDGING AND TEAM ADVANCEMENT

Rule 5.1. Finality of Decisions

All decisions of the evaluative jurors are final.

Rule 5.2. Composition of Judging Panels

The judging panel will consist of at least three individuals. The composition of the judging panel and the role of the presiding judge will be at the discretion of the Regional & Site Coordinators or State Coordinator, with the same format used throughout the competition, as follows:

1. One presiding judge and two evaluative jurors (all three of whom complete score sheets); or
2. One presiding judge and three evaluative jurors (only evaluative jurors complete score sheets); or
3. One presiding judge and two evaluative jurors (only evaluative jurors complete score sheets and the presiding judge completes a form which selects only the winner and does not assign point totals for either team).

Rule 5.2.a. Evaluative jurors may be persons with substantial mock trial coaching or scoring experience or attorneys. Each panel of evaluative jurors shall include at least one attorney. The presiding judge shall be an attorney.

Rule 5.2.b. At the discretion of the Regional & Site Coordinators or the State Coordinator, the Championship round may have a larger panel.

Rule 5.2.c. All presiding judges and evaluative jurors receive the case materials, instructions and scoring guidelines in advance of the competition. They are also required to attend a mandatory training/orientation session offered before each trial round the day of the competition.

Rule 5.3. Score Sheets/Ballots

The term "ballot" will refer to the decision made by an evaluative juror as to which team made the best presentation in the round. The term "score sheet" is used in reference to the form on which speaker and team points are recorded.

Rule 5.3.a. Score sheets are to be completed individually by the evaluative jurors. Evaluative

jurors are not bound by the rulings of the presiding judge.

Rule 5.3.b. The team that earns the highest points on an individual score sheet is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes.

Rule 5.3.c. While the presiding judge and evaluative jurors may deliberate on any special awards (i.e., Outstanding Attorney/Witness), they should not deliberate on individual scores.

Rule 5.4. Best Attorney/Best Witness Awards

The presiding judge designates the students who will receive “Best Witness” and “Best Attorney” for a trial. Certificates are presented to winners during the awards ceremony.

Rule 5.5. Completion of Score Sheets

Each evaluative juror shall record a number of points (1-10) for each presentation in the trial.

Rule 5.5.a. Points scored must be whole numbers and greater than zero.

Rule 5.5.b. At the end of the trial, each evaluative juror shall total the sum of each team’s individual points and place this sum in the appropriate Total box.

Rule 5.5.c. The team with the higher score receives the ballot.

Rule 5.5.d. Finally, each evaluative juror shall write and/or circle the winner of the ballot in the Tiebreaker Box. **NO TIE IS ALLOWED IN THE COLUMN TOTALS BOXES.**

Rule 5.5.e. In the event that an evaluative juror's tabulation of points is found to be incorrect, and when corrected results in a tie in the column Totals boxes, the Tiebreaker Box shall determine award of the ballot.

Rule 5.6. Team Advancement

At the regional competition, each team will compete in no fewer than two rounds and therefore have six separate score sheets. The two top-ranked teams will compete in the regional final round. Teams will be ranked based on the following criteria IN THE ORDER LISTED:

1. Win/Loss Record - equals the number of rounds won or lost by a team;
2. Total Number of Ballots - equals the number of evaluative jurors' votes a team earned in each round;
3. Total Number of Points Accumulated in Each Round;
4. Point Spread Against Opponents - The point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

Rule 5.7. Power Matching/Seeding

Power matching will be used at the regionals and State Finals Competition.

A random method of selection will determine opponents in the first round. The power-match system will determine opponents for all subsequent rounds. The two teams emerging with the strongest

record from the general rounds will advance to the final round. The ballots from the championship round will determine the first-place team.

Power matching will provide that:

1. Pairings for the first round will be at random;
2. All teams are guaranteed to present each side of the case at least once;
3. Brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order: (1) win/loss record; (2) ballots; (3) speaker/team points; (4) point spread. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket, the next highest with the next lowest, and so on until all teams are paired;
4. If there is an odd number of teams in a bracket, the team at the bottom of that bracket will be matched with the top team from the next lower bracket;
5. Teams will not meet the same opponent twice;
6. At the State Finals, to the greatest extent possible, teams will alternate side presentation in subsequent rounds. Bracket integrity in power matching will supersede alternate side presentation. In regional competition, teams will alternate sides even if brackets must be compromised.

Rule 5.8. Selection of Sides For Championship Round

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

1. The team with the letter/numerical code that comes first will be considered the “Designated Team.”
2. A designee of the state coordinator will toss the coin.
3. If the coin comes up heads, the Designated Team shall represent the plaintiff/prosecution in the Championship Round. If the coin comes up tails, the Designated Team shall represent the defendant/defense.

Rule 5.9. Odd Number of Teams Participating in State Finals

A “bye” becomes necessary when an odd number of teams are present for any given round at a regional or state tournament. It is the intent of the State Office to avoid "byes" where possible.

Rule 5.9.a. If an odd number of teams are competing, the following procedure will apply:

- a. A team receiving a bye in round one will be awarded a win, three ballots and the average number of points for all round one winners, which total will be adjusted at the end of each round to reflect the actual average earned by that team.
- b. The team drawing the bye in rounds two through three will, by default, receive a win and three ballots for that round. For the purpose of power-matching, the team will temporarily be given points equal to the average of its own points earned in its preceding trials. At the end of the third round, the average from both actual trial rounds participated in by the team will be used for the final points given for that team's bye round.

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

Rule 5.9.b. The State Office and/or other designated competition officials have the discretion on how to handle a bye in all rounds of the tournament.

F. DISPUTE RESOLUTION

Rule 6.1. Reporting a Rules Violation/Inside the Bar

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

Rule 6.1.a. If any team believes that a substantial rules violation has occurred, one of its student attorneys must indicate that the team intends to file a dispute. The evaluative jurors will be excused from the courtroom, and the presiding judge will provide the student attorney with a dispute form, on which the student will record in writing the nature of the dispute. The student may communicate with other student attorneys and/or student witnesses before lodging the notice of dispute or in preparing the form.

Rule 6.1.b. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure.

Rule 6.2. Dispute Resolution Procedure

The presiding judge will review the written dispute and determine whether the dispute should be heard or denied.

Rule 6.2.a. If the dispute is denied, the judge will record the reasons for this, announce her/his decision to the Court, retire to complete her/his score sheet (if applicable), and turn the dispute form in with the score sheets.

Rule 6.2.b. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response.

Rule 6.2.c. 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 judge may question the spokespersons.

Rule 6.2.d. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys.

Rule 6.2.e. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 6.3. Effect of Violation on Score

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

Rule 6.4. Reporting a Rules Violation/Outside the Bar

Only during a trial round may a team or attorney-coach exclusively report on any disputes that occur outside the bar. Such disputes must be made promptly to a Regional or Site Coordinator or a member from the State Office, who will ask the complaining party to complete a dispute form.

Rule 6.4.a. The form will be taken to the tournament's communication center, whereupon a dispute resolution panel will (a) notify all pertinent parties; (b) allow time for a response, if appropriate; (c) conduct a hearing; and (d) rule on the charge. The dispute resolution panel may notify the judging panel of the affected courtroom of the ruling on the charge or may assess an appropriate penalty.

Rule 6.4.b. The dispute resolution panel will be composed of representatives of the State Office and other competition officials.

Art and Journalism Rules of Competition:

AJ Rule 1.1. Regional and State Finals Competition

There are four categories that students can compete in at both the regional and state level. They can compete in the news writing, feature writing, courtroom art or photography contests.

AJ Rule 1.2. Number of Students Competing

A school/organization can send two students per category to the regional competition. The maximum number of students allowed to compete from one school/organization is eight.

AJ Rule 1.3. Time Limits and Deadlines

Each student will adhere to all of the time limits and deadlines set out in the Mock Trial calendar and rules. Failure to follow these guidelines can result in disqualification.

AJ Rule 1.3a Courtroom Art

Students will observe a mock trial during round I of competition and make preliminary sketches. The student will give his/her work to the regional or site coordinator to keep during lunch. The students then complete their work during round II in an assigned room. Round II begins at 2pm and ends at 4pm. The student must complete their work by the end of round II. The art will be collected at 4pm and sent to the state office.

AJ Rule 1.3.b. Feature Writing

Students interview mock trial teams and cover a particular team's trial at competition. After the trial students have until January 7, 2005 to submit their story to the state office.

AJ Rule 1.3.c. News Writing

Students observe a mock trial during round I of competition. He/she will give the composition to the regional or site coordinator during lunch. During round II, students write "on deadline." Round II begins at 2pm and ends at 4pm. Stories will be collected at 4pm and sent to the state office for judging.

AJ Rule 1.3.d. Photography

Students can take pictures all day at the competition. They are free to take pictures in various courtrooms as long as they are not distracting the competing teams. Students have until January 7, 2005 to submit a 5x7 black and white photograph to the state office.

AJ Rule 1.4. Materials

AJ Rule 1.4.a. Courtroom Art

Students must bring their own scratch paper, a flat surface to draw on and their own art pencils etc. The state office will provide the competitors with a piece of paper to do the final work on.

AJ Rule 1.4.b. Feature Writing

Students must bring their own paper and writing utensil. They must also bring a flat surface to write on. The final draft can be handwritten or typed.

AJ Rule 1.4.c. News Writing

Students must bring their own paper and writing utensil. They must also bring a flat surface to write on.

AJ Rule 1.5. Judging Criteria

All of the entries will be judged at the state office. The points awarded by each judge will be averaged. The average from each judge will be added to the other averages to come up with a point total. The entry with the highest points from a region will be the regional winner. The entry with the highest points overall will be declared the state winner. The state runner-up will be the state entry with second highest point total. In the case of a tie, the award will go to both participants.

AJ Rule 1.5.a. Courtroom Art

Each criterion will be judged on a ten-point scale. Ten being the highest. The artwork will be judged on how well the artwork is rendered (50%) and how well the piece of art captures the spirit of the mock trial (50%).

AJ Rule 1.5.b. Feature Writing

The story will be judged according to the strength of the story, including quotes, descriptions etc. (40%); the accuracy of the story, including grammar and spelling (25%); and the reporter's illustrated knowledge of the law (35%)

AJ Rule 1.5.c. News Writing

The stories will be scored according to correct use of grammar and spelling (15%); clarity and conciseness of the story, including direct quotes and descriptions of the scene (20%); coverage of the most newsworthy developments (30%); illustrated knowledge of the basic legal procedures of the case (35%).

AJ Rule 1.5.d. Photography

The judges will rate the photographs according to how well the photographer captured the spirit of the competition (50%) and whether the work is technically and artistically sound (50%).

Deadlines

October 8, 2004: Final registration deadline for Courtroom Artist and Courtroom Journalist contest. (\$5 per student)

November 13, 2004: Regional competition 9am-6pm

January 7, 2005: State Finals Courtroom Art, Photography, and Feature Story submissions due. (Note: The state office must receive the entries by 5pm on this date.)

AJ Rule 1.6. Case Materials

All participants in the art, journalism and photography contest can request a copy of the case materials. They can use the case materials, but are not required to.

AJ Rule 1.7. Presentation

AJ Rule 1.7.a. Courtroom Art

The artist can use any medium for the artwork as long as it is done on paper. The state competition artwork can be matted, but it is not required. Please do not frame the state competition artwork. The academy will frame all of the state competition art. Please sign your work. Please enclose a piece of paper with your name, school/organization and region on it.

AJ Rule 1.7.b. Feature Writing

The feature stories can be handwritten or typed. They can be in a report cover, but it is not required. Please only include your contestant number and region on the story. Please include a piece of paper with the entry that has your name, school/organization, region and contestant number on it.



ART AND JOURNALISM RULES OF COMPETITION



AJ Rule 1.7.c. News Writing

All news articles should be handwritten unless there is a special circumstance. Please notify the state coordinator before the regional competition if there are any special circumstances. Please only include your contestant number and region on the story. Please include a piece of paper with the entry that has your name, school/organization, region and contestant number on it.

AJ Rule 1.7.d. Photography

The photograph must be black and white. It must be a 5x7. The photograph can be matted, but it is not required. Please do not frame the photograph. The academy will frame all regional winners and state finalists. Please only include your contestant number and region on the back of the picture. Please include a piece of paper with the entry that has your name, school/organization, region and contestant number on it.

AJ Rule 1.8. Release of work

All work that is entered in the Wade Edwards Mock Trial Art and Journalism Competition is the property of the North Carolina Academy of Trial Lawyers. All students must sign a release at the regional competition.

INTRODUCTION

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 proper objection, however, the judge will probably allow the evidence. In the Wade Edwards High School Mock Trial competition, the burden is on the mock trial team to know the Wade Edwards High School Mock Trial Simplified Rules of Evidence and Procedure and to use the Rules to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of the mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence and its numbering system. Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure. Text in italics represents 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 Wade Edwards High School Mock Trial Rules of Competition and the Wade Edwards High School Mock Trial Simplified Rules of Evidence and Procedure govern the Wade Edwards High School Mock Trial Competition.

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope

The Wade Edwards High School Mock Trial Simplified Rules of Evidence and Procedure govern the trial proceedings of the Wade Edwards High School Mock Trial Competition.

Rule 102. Purpose and Construction

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

ARTICLE II. JUDICIAL NOTICE

Not Applicable

ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Not applicable

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. Definition of "Relevant Evidence"

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

Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible

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

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

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

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

- (a) **Character Evidence.** Evidence of a person's character or *character trait* is not admissible to prove *action regarding* a particular occasion, except:
- 1. Character of accused.** Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
 - 2. Character of victim.** Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;
 - 3. Character of witness.** Evidence of the character of a witness as provided in Rules 607, 608 and 609.
- (b) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

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

Rule 406. Habit; Routine Practice

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of 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 measures are taken after an event, which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the

claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct investigation or prosecution.

Rule 409. Payment of Medical or Similar Expenses

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

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

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

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

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

Rule 411. Liability Insurance (civil case only)

Evidence that a person was or was not insured against liability is not admissible upon the issue of 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: communications between husband and wife; communications between attorney and client; communications among grand jurors; secrets of state; and communications between psychiatrist and patient.

ARTICLE VI. WITNESSES

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

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

Rule 607. Who May Impeach

Any party, including the party calling the witness, may attack the credibility of a witness.

Rule 608. Evidence of Character and Conduct of Witness

- (a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.
- (b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of a crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness if they (1) concern the witness' character for truthfulness or untruthfulness, or (2) concern the character for truthfulness or untruthfulness of another witness as to whose character the witness being cross-examined has testified.

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

Rule 609. Impeachment by Evidence of Conviction of Crime

(This rule applies only to witnesses with prior convictions.)

- (a) **General Rule.** For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.
- (b) **Time Limit.** Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old, as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.
- (c) **Effect of pardon, annulment, or certificate of rehabilitation.** Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted and the person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of innocence.

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

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: make the *questioning* and presentation effective for ascertaining the truth, avoid needless *use* of time, and protect witnesses from harassment or undue embarrassment.
- (b) **Scope of cross-examination.** *The scope of cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.*
- (c) **Leading questions.** Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.
- (d) **Redirect/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 other attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on re-cross, but such questions must be limited to matters raised on redirect and should avoid repetition.*

Rule 612. Writing Used to Refresh Memory

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

Rule 613. Prior Statements of Witnesses

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

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

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the

witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts

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

Rule 703. Bases of Opinion Testimony by Experts

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

Rule 704. Opinion on Ultimate Issue

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

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

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

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

ARTICLE VIII. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

(a) **Statement.** 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 that are not hearsay. A statement is not hearsay if:**

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

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

Rule 802. Hearsay Rule

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

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

1. Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
2. Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
3. Then existing mental, emotional, or physical conditions. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
4. Statements for purposes of medical diagnosis or treatment. Statements made for the purpose of medical diagnosis or treatment.
5. Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.
6. Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(Note: some subparts deleted)

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

Rule 804. Hearsay Exceptions, Declarant Unavailable

- (a) **Definition of unavailability.** “Unavailability as a witness” includes situations in which the declarant –
1. is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or
 2. persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so; or
 3. testifies to a lack of memory of the subject matter of the declarant’s statement; or
 4. 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.
 6. A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.
- (b) **Hearsay exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
1. **Former testimony.** Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
 2. **Statement under belief of impending death.** In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant’s death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.
 3. **Statement against interest.** A statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the declarant’s own birth, adoption, marriage, acquiring personal knowledge of the matter stated; 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 not means of acquiring personal knowledge of the matter stated; (B) a statement concerning the

foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

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

Rule 805. Hearsay within Hearsay

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

The Host State has the obligation to review Hearsay Rules and make recommendations on omissions or additions to the Hearsay Instructions.

ARTICLE IX. CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

Not applicable.

ARTICLE X. OTHER

Rule 1103. Title.

These rules may be known and cited as the Wade Edwards High School Mock Trial Simplified Rules of Evidence and Procedure

Regional Competition Schedule

NOTE: Times May Vary For Each Regional Site

8:30-9:30am	Team Registration
9:00-10:00am	Judges' Meeting
10:00am	Welcome Address
10:20am-noon	Round I
11:50am-1:30pm	Special Lunch Round (Occurs when odd number of teams compete)
Noon-1:30pm	Lunch
12:30-1:30pm	Judges' Meeting
2:00-3:40pm	Round II
3:00-4:00pm	Judges' Meeting
4:00pm	Announcement of Finalists
4:20-6:00pm	Final Round

GENERAL SUGGESTIONS FOR ALL STUDENT PARTICIPANTS

- Always be courteous to witnesses, other attorneys and the judge.
- Always stand when talking to the judge and when the judge enters or leaves the room.
- Dress appropriately.
- Always say, "Yes, Your Honor" or "No, Your Honor," when answering a question from the judge.
- Those acting as attorneys shouldn't make objections while the other side is asking questions unless they are relatively sure that the judge will agree with the objection. Judges do not like for attorneys constantly to make objections or to make objections without being able to explain the reason for the objections.
- If the judge rules against you on a point or in the case, take the defeat gracefully and act cordially toward the judge and the other side.



TEAM ROSTER



A TEAM IS COMPOSED OF NO MORE THAN EIGHT STUDENTS. Each team will try both sides of the case, so some students will have to take on two roles. However, each student can portray only one role per side. If your school/organization has two or more teams, do not use letters or numbers to differentiate; please assign each team a color, such as LHS Blue Team and LHS White Team.

SCHOOL/ORGANIZATION NAME: _____

TEAM ADVISOR(S): _____

LEGAL ADVISOR(S): _____

Names of Participating Students

1.	5.
2.	6.
3.	7.
4.	8.

PLAINTIFF

DEFENDANT

THREE (3) ATTORNEYS (Name of Students Performing the Following Tasks)	
OPENING:	OPENING:
CLOSING:	CLOSING:
DIRECT EXAMINATION	CROSS EXAMINATION
Aaron/Erin Wilson	Aaron/Erin Wilson
Terry Britton	Terry Britton
Stephen/Stephanie Akers	Stephen/Stephanie Akers
CROSS EXAMINATION	DIRECT EXAMINATION
Don/Donna Gusmer	Don/Donna Gusmer
Jamie Brooks	Jamie Brooks
Samuel/Samantha Reynolds	Samuel/Samantha Reynolds
THREE (3) WITNESSES (Name of Students Presenting the Following Roles)	
Aaron/Erin Wilson	Don/Donna Gusmer
Terry Britton	Jamie Brooks
Stephen/Stephanie Akers	Samuel/Samantha Reynolds
BAILIFF (Plaintiff side only)	

The information above is correct and my team will follow the NC Rules of Competition and the Mock Trial Rules of Evidence and Procedure during competition. In particular, our team will adhere to Rule 3.8.: "Each of the three attorneys will conduct one direct examination and one cross-examination; in addition, one will present the opening statements and another will present the closing arguments."

ADVISOR SIGNATURE: _____

DATE: _____

Teams are required to provide the bailiff for the trial when presenting the Prosecution/Plaintiff's case. The Bailiff will also serve as the official timekeeper.

To open Court (also used to end a Court recess):

"All rise. The U.S. District Court for the Utopia District of North Carolina is now in session. The Honorable Judge _____ presiding." All participants remain standing until the judge is seated. Then say, "Be seated."

Call the day's calendar at the judge's request:

"Your case is Aaron/Erin Wilson vs. Gander's Clothier's, Inc."

Swear in all witnesses at the judge's request:

This should be done at the beginning of the trial. When the judge asks you to swear in the witnesses, have them stand and raise their right hand.

"Please stand and raise your right hand. 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?"

When they respond, "I do," say, "You may return to your seats."

Mark all exhibits into the Court:

When an item is offered for identification, mark it in pencil: Exhibit 1, 2, etc.

★ Keep time and know time guidelines for competition:

You must have a watch (with a second hand) to enforce time. A stopwatch is preferable. Interruptions in the presentation do not count as time. Do not include time when the witnesses are being sworn in, attorneys are making objections, or the judge is ruling on objections. Time does not stop for the introduction of physical evidence. You will be provided with large time cards marked with "15", "10", "5", "4", "3", "2", "1", "40 sec", "20 sec", "Stop." Show these cards to the attorney(s) and to the judge(s) at the appropriate times.

Court recess and jury deliberation:

When motioned to do so by the judge, say: "All rise." When the judge has left the bench say, "Court is in recess. Please remain seated."

Close the Court (after the jury verdict is announced):

When motioned to do so by the judge, say: "All rise." When the judge has left the bench say, "Court is adjourned."

TIME LIMITS

- Opening Statement
(4 minutes per side)
- Direct and Redirect
(optional)
Examination
(20 minutes per side)
- Cross and Re-cross
(optional)
Examination
(15 minutes per side)
- Closing Argument
(4 minutes per side)



TIME KEEPING SHEET



Petitioner/ Plaintiff _____ Team Code _____ Round: (Circle One) 1 2 3 4 Final Level: (Circle One) Regional State Final
 Respondent/ Defendant _____ v. Team Code _____ Courtroom: _____

REMEMBER: CLOCK STOPS FOR OBJECTIONS!

1.	PLAINTIFF	DEFENSE
Opening Statements (4 minutes each)	_____	_____

2. -Reset Clock-	PLAINTIFF		DEFENSE
	<u>Direct</u>	<u>Redirect</u>	<u>Cross</u> <u>Re-cross</u>
Plaintiff Witness #1	_____	_____	_____
Plaintiff Witness #2	_____	_____	_____
Plaintiff Witness #3	_____	_____	_____
	(20 minutes total)		(15 minutes total)

3. -Reset Clock-	DEFENSE		PLAINTIFF
	<u>Direct</u>	<u>Redirect</u>	<u>Cross</u> <u>Re-cross</u>
Defense Witness #1	_____	_____	_____
Defense Witness #2	_____	_____	_____
Defense Witness #3	_____	_____	_____
	(20 minutes total)		(15 minutes total)

4. -Reset Clock-	PLAINTIFF	DEFENSE
Closing Arguments (4 minutes each)	_____	_____

Timekeeper's Signature

Date

Timecards should be printed on yellow paper

For **Direct Examination**

When your stopwatch says	Hold up the timecard that says
5:00	15:00
10:00	10:00
15:00	5:00
16:00	4:00
17:00	3:00
18:00	2:00
19:00	1:00
19:20	0:40
19:40	0:20
20:00	STOP

For **Cross Examination**

When your stopwatch says	Hold up the timecard that says
5:00	10:00
10:00	5:00
11:00	4:00
12:00	3:00
13:00	2:00
14:00	1:00
14:20	0:40
14:40	0:20
15:00	STOP

For **Opening Statements & Closing Arguments**

When your stopwatch says	Hold up the timecard that says
1:00	3:00
2:00	2:00
3:00	1:00
3:20	0:40
3:40	0:20
4:00	STOP

15

10

5

4

3

2

1

40

sec

20
sec

STOP



SCORE SHEET



ROUND: (CIRCLE ONE) 1 2 3 4 Final LEVEL: (CIRCLE ONE) REGIONAL STATE FINALS

P		V.		D	REGION: _____ COURTROOM: _____
Plaintiff/ Petitioner	Team Code		Team Code	Defendant/ Respondent	

Using a scale of 1 to 10, rate the Plaintiff and Defendant in the categories below.
Do NOT use fractional points or award zero points (unless required by Rule 3.8.d)

P	TEAM SCORES	D
	Opening Statements	
	Prosecution/ Plaintiff's Case in Chief	
	Witness #1	
	Direct Examination	
	Cross Examination	
	Witness Presentation	
	Witness #2	
	Direct Examination	
	Cross Examination	
	Witness Presentation	
	Witness #3	
	Direct Examination	
	Cross Examination	
	Witness Presentation	
	Defense/ Defendant's Case in Chief	
	Witness #1	
	Direct Examination	
	Cross Examination	
	Witness Presentation	
	Witness #2	
	Direct Examination	
	Cross Examination	
	Witness Presentation	
	Witness #3	
	Direct Examination	
	Cross Examination	
	Witness Presentation	
	Closing Arguments	
	TOTAL SCORE: (Add Scores in Each Column) Points cannot be a tie. (See rule 5.5d)	

SCORING GUIDE

Do NOT score based on the case's legal merits.

1 – 2 Not Effective	Unsure, illogical, uninformed, unprepared, speaks incoherently, depends on notes.
3 – 4 Fair	Minimally informed and prepared. Communication lacks clarity, conviction and persuasiveness. Passable performance.
5 – 6 Good	Good, solid, but less than spectacular performance. Grasps major aspects of case, but does not convey mastery of it.
7 – 8 Excellent	Fluent, persuasive, clear and understandable. Organizes materials and thoughts well. Exhibits mastery of case and materials.
9 – 10 Outstanding	Superior grasp of case. Thinks well on feet, is logical, keeps poise under pressure. Demonstrates ability to utilize all resources in order to emphasize vital points of trial. Effective use of time.

Witnesses should present believable characteristics and convincing testimony. They should also show preparation under direct examination and the ability to field questions under cross with confidence and poise.

Evaluative Juror's Signature	Date
Name: (Printed) _____	

Winner/Ballot:
 Circle one: Plaintiff Defendant
 The winner is the team with the most points. (See rules 5.5c & 5.5d)



TEAM DISPUTE FORM

Inside the Bar [Rule 6.1]



DATE: _____

ROUND: (CIRCLE ONE) 1 2 3 4 Final

LEVEL: (CIRCLE ONE) REGIONAL STATE FINALS

TEAM LODGING DISPUTE: _____
(ENTER TEAM CODE)

REGION: _____

OPPOSING TEAM: _____
(ENTER TEAM CODE)

COURTROOM: _____

Grounds For Dispute: _____

Initials of Team Spokesperson: _____

Hearing Decision of Presiding Judge: (circle one) **Grant** **Deny**

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

Initials of Opposing Team's Spokesperson: _____

Judge's Notes From Hearing: _____

Decision of Judge Regarding Dispute: (circle one) **Refer to Panel** **Do Not Refer to Panel**

Comments: _____

This Form Must Be Returned to the Regional Coordinator or Designated Competition Official Along With the Score sheets of All the Evaluative Jurors.

Signature of Presiding Judge

Name (Printed)



TEAM DISPUTE FORM

Outside the Bar [Rule 6.4]



DATE: _____

ROUND: (CIRCLE ONE) 1 2 3 4 Final

COURTROOM: _____

LEVEL: (CIRCLE ONE) REGIONAL STATE FINALS

REGION: _____

PERSON LODGING DISPUTE: _____

TEAM AFFILIATED WITH: _____

(ENTER TEAM CODE)

OPPOSING TEAM CODE: _____

Grounds For Dispute: _____

Initials of Trial Coordinator: _____ Time Dispute Presented to Coordinator: _____

Hearing Decision of Dispute Panel: (circle one) **Grant** **Deny**

Reason(s) for Denying Hearing: _____

Notes From Hearing: _____

Decision / Action of Dispute Panel:

Signature of Trial Coordinator

Date / Time of Decision

OFFICIAL CASE MATERIALS

IN THE U.S. DISTRICT COURT
FOR THE UTOPIA DISTRICT OF NORTH CAROLINA
UTOPIA DIVISION
CIVIL ACTION NO.: 1-04-CV-0000

AARON/ERIN WILSON, :
 :
 Plaintiff, :
 :
 v. :
 :
GANDER'S, INC. :
 :
 Defendant. :

Note: This is a fictitious case and is not based upon any known or unknown characters or circumstances. Any similarity to actual persons, places or circumstances is coincidental and purely unintentional. The case materials are not intended to reflect upon the hiring and firing practices of any actual retailer and neither the NCATL Education Foundation, Inc. or the author and editors are aware of any retailer which bases personnel decisions on the criteria discussed in the materials.

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Wilson v. Gander's, Inc.

Until December of 2003, Aaron/Erin Wilson was employed as a manager at the Gander's store at Utopia Center, a shopping mall in Utopia, North Carolina. Gander's is a large, nationwide retail chain that has sold men's apparel since 1984. Gander's added women's apparel in 1993, when company officials began to take note of the fact that young women were purchasing items traditionally marketed to young men (boxer shorts, baseball caps, etc.). Gander's operates thirteen districts nationwide. Other stores in this district are located in Charlotte, Raleigh, and Winston-Salem, North Carolina; Columbia and Greenville, South Carolina; Knoxville, Tennessee; and Atlanta and Savannah, Georgia.

Company officials publicly describe the Gander's age demographic as "twenty-something," although more than a few parents would tell you that the Gander's fad begins earlier, as high school and middle school students clamor for \$49.95 baggy Oxford shirts. Gander's has tried in earnest to rebuild its image after a small public relations disaster in 2001. The 2001 Christmas catalog ("Take a Gander at This") was 70 pages in length, although the first image of Gander's merchandise did not appear until page 24. The earlier pages contained suggestive images of 18- to 22-year-olds and raised the ire of more than a few organizations that called for boycotts of Gander's until the catalog was pulled.

Although Gander's may not be the first to admit it, the retailer has spent sizeable sums of money conducting market research. The upshot of the research confirms what Gander's had long believed to be true—Young people are more likely to buy things from attractive peers. Although racially diverse, those who comprise the Gander's work force have two things in common: 1) They are young (generally 16-30) and 2) They are attractive, athletic and stylish. Aaron/Erin acknowledges having felt some implied pressure to hire individuals who met these criteria and himself/herself qualified on both fronts until mid-2003.

In July of 2003, Aaron/Erin was diagnosed with multiple myeloma, an aggressive form of cancer that attacks bone marrow through the production of malignant plasma cells. Always an athlete, Aaron/Erin thought s/he had simply injured a shoulder while rock climbing. Subsequently, a bone scan revealed that the bone had fractured as a result of the development of a tumor.

Familiar with the company's reputation of employing only beautiful store managers, Aaron/Erin initially concealed the fact that s/he had cancer, using personal days to cover a brief hospital stay and subsequent follow-up appointments with his/her physician.

As chemotherapy progressed, Aaron/Erin's hair began to thin beyond the point at which a Gander's baseball cap could continue to conceal his/her condition. By August, Aaron/Erin's physician, Dr. Terry Britton, introduced a treatment regimen that included prednisone, which caused Aaron/Erin to develop a bloated appearance. Rumors ran rampant that Aaron/Erin abused drugs or suffered from AIDS. At a November store meeting, in an effort to squelch those misconceptions, Aaron/Erin announced to store employees and District Manager Sam/Samantha Reynolds that s/he had multiple myeloma.

Dr. Britton opines that the cancer from which Aaron/Erin suffers is terminal, but concedes that appropriate medical treatments (chemotherapy, stem cell transplants, etc.) are effective in addressing many of the symptoms. Britton's own son worked at the Raleigh Gander's while in college, but was terminated for reasons that have never been explained to the doctor. Dr. Britton finds it very suspect that his/her "already husky" son was terminated after he gained forty pounds. Dr. Britton also acknowledges that the Hippocratic oath states, "First, do no harm," and that Dr. Britton perceives that testifying adversely to a patient potentially goes against this oath.

Reynolds tells a far less sympathetic story about Aaron/Erin. According to Reynolds, s/he took a chance hiring Aaron/Erin, who had not taken as much as a single business class as an undergraduate at the University of North Carolina-Chapel Hill. The Utopia store's sales numbers were sluggish at various points since Aaron/Erin became the General Manager in November of 2002. Moreover, Reynolds verbally reprimanded Aaron/Erin concerning a run-in Aaron/Erin had with a customer in December of 2003.

On December 18, 2003, during the Christmas rush, Reynolds terminated Aaron/Erin with a letter citing sales numbers, stating, "I no longer have confidence that you are capable of portraying the image Gander's wishes to convey to its customers and employees."

Jamie Brooks, Gander's Vice President of Human Resources, defends Reynolds's decision, and describes Gander's long-standing equal employment opportunity policy and numerous examples of disabled employees in the Gander's network. However, in addition to a Master's in Human Resources, Brooks has a Ph.D. in Social Psychology and has completed a dissertation entitled "The Attractive Sales Clerk: Persuading the Young Buyer to Part with His Dollars."

Stephen/Stephanie Akers preceded Aaron/Erin as the General Manager of the Utopia store, serving from June of 1999 until his/her resignation in November of 2002. Between May of 2000 and his/her resignation, s/he worked directly with Aaron/Erin, who served as his/her Assistant Manager. Akers relates that the Utopia sales figures were as low during his/her tenure as they were during Aaron/Erin's. He/she attributes these numbers to factors such as 9/11 and "Take a Gander at This". Akers was asked to resign and has been advised by his/her counsel to assert the 5th Amendment in response to questions concerning his/her resignation, but Akers is insistent that s/he will answer all questions, since s/he did not embezzle any money, as Reynolds suggested.

Fifteen-year-old Don/Donna Gusmer will describe a confrontation s/he had with Aaron/Erin on December 15, 2003. Gusmer admits that s/he may have provoked Aaron/Erin, but swears that Aaron/Erin's reaction was out of proportion to the incident. Gusmer also concedes that Aaron/Erin "looked real sick" at the time of the incident—that s/he "looked like s/he was going to die right then and there."

Aaron/Erin's cancer is now in remission and generally s/he appears healthy, although Dr. Britton believes that s/he will probably not live to see his/her thirty-second birthday. S/he has commenced a lawsuit in the United States District Court for the Utopia District of North Carolina, alleging that Gander's terminated him/her in violation of the Americans with Disabilities Act of 1990 ("ADA"), and that revenues and customer relations were a pretext for illegal discrimination.

Gander's takes the position that Aaron/Erin was not disabled for purposes of the ADA and that Aaron/Erin was terminated for a legitimate, non-discriminatory reason.

Witnesses

Plaintiff

Aaron/Erin Wilson
Terry Britton
Stephen/Stephanie Akers

Defendant

Don/Donna Gusmer
Jamie Brooks
Samuel/Samantha Reynolds

Exhibits

Gander's EEO Policy
Written Warning
Charge of Discrimination filed with EEOC
Two Charts showing annual sales comparisons
Gander's Gift Certificate
Email from Don/Donna Gusmer
Gift Certificate to Don/Donna Gusmer

[Editor's Note: In a real case, the judge instructs the jury as to the law and the issues in the case. The judge will not instruct the jury in the mock trial competition. The jury in the mock trial competition is comprised of legal professionals who evaluate team performance based on the educational criteria listed on the mock trial score sheet. A jury "verdict" is announced, but it does not determine which team wins the round. The following jury instructions are offered only to focus students on the issues involved in this case. Note also that in a real case, questions of whether the Plaintiff has proved a prima facie case of discrimination, and whether the Defendant has articulated a legitimate, non-discriminatory reason for the employment action (burdens of production, not proof) are often resolved by the Court, and not the jury. Students should therefore not infer that the jury instructions mirror the current status of the "real" law but, rather, that this is the law in Utopia.]

In this case, you will be called upon to answer as many as three questions—also called issues. As I discuss each issue, I will tell you which party has the "burden of proof" on that issue. The party having the burden of proof is required to prove, by the greater weight of the evidence (also called a preponderance of the evidence), the existence of the facts that entitle that party to a favorable answer on that issue.

The greater weight of the evidence does not refer to the quantity but rather to the quality and convincing force of the evidence. It means that you must be persuaded, considering all of the evidence that the necessary facts are more likely than not to exist. If you are so persuaded, it is your duty to answer the issue in favor of the party with the burden of proof. If you are not so persuaded, or you are unable to say, it would be your duty to answer against the party with the burden of proof.

In determining whether to believe any witness, you should apply the same tests of truthfulness that you apply in your everyday affairs. As applied to this trial, these tests may include: the opportunity of the witness to see, hear, or remember the facts or occurrences about which he or she testified; the manner and appearance of the witness; any interest, bias, or prejudice the witness may have; the apparent understanding and fairness of the witness; whether the testimony is reasonable; and whether the testimony is consistent with the other believable evidence in the case. You should not be swayed by pity, sympathy, or partiality. You must not consider the effect of a verdict on the Plaintiff or Defendant or any other party. All parties expect that you will carefully and fairly consider all of the evidence in the case, follow the law as given to you by the Court, and reach a just verdict, regardless of the consequences.

First Issue: Prima Facie Discrimination

Before reaching the other substantive issues in the case, you must first consider whether the Plaintiff has established a prima facie case of discrimination in violation of the Americans with Disabilities Act of 1990 (the "ADA").

On this issue, the burden of proof is on the Plaintiff. More particularly, the Plaintiff must prove by a preponderance of the evidence that the Plaintiff is a qualified individual with a disability, (2) that s/he performed his/her job satisfactorily, and (3) that s/he suffered an adverse employment action.

In order to establish that s/he is a qualified individual with a disability, a Plaintiff must establish that although s/he is disabled, s/he can perform the essential function of his/her position with or without accommodation. One is disabled if s/he has a physical or mental impairment that substantially limits his/her ability to perform one or more major life activities. Such life activities may include, without limitation, walking, seeing, hearing, reading, breathing, concentrating, or processing thoughts. The relevant inquiry is not whether the Plaintiff is disabled at the time of the trial but, rather, whether the Plaintiff is disabled at the time employment action was taken.

Adverse employment actions shall include termination, demotion, or any other employment action resulting in the loss of the tangible benefits of employment. An adverse employment action by the supervisor is an action of the employer.

If you find the Plaintiff has failed to establish a *prima facie* case of discrimination in violation of the ADA, you must answer the first issue “NO” and proceed no further. If, however, you answer the first issue “YES,” you must proceed to the second issue.

Second Issue: Legitimate, Non-Discriminatory Reason

The second issue you must consider is whether the Defendant had a legitimate, non-discriminatory reason for the adverse employment action taken against the Plaintiff. On this issue, the Defendant has the burden of proof. In determining whether the Defendant’s proffered reason for employment action is discriminatory, you may consider such factors as the industry in which the Defendant is engaged and the purpose or purposes for which the Defendant’s business exists. It is not your role to second-guess the Defendant’s business judgment. In and of themselves, errors in business judgment do not establish discrimination.

If you find the Defendant has offered a legitimate, non-discriminatory reason for the action, you must answer the second issue “YES” and proceed to the third issue. However, if the Defendant took action against the Plaintiff solely for a discriminatory purpose, you must answer the issue “NO” and proceed no further.

The burden of production then shifts to the Defendant to introduce evidence that it had a legitimate, nondiscriminatory reason for the adverse action. If the Defendant makes this showing, then the presumption of discrimination is eliminated and the plaintiff must demonstrate by a preponderance of the evidence that the defendant's stated reason for the action was merely a pretext for discrimination.

Third Action: Pretext

If you resolve the second issue “YES” in favor of the Defendant, the third issue you must consider is whether the reason or reasons offered by the Defendant for the adverse employment action taken against the Plaintiff were pretextual. “Pretextual” means false or, though true, not the real reason for the action taken.

Here, the Plaintiff has the burden of showing that the Defendant had an unlawful, discriminatory motive in taking the action. The Plaintiff is not required to produce direct evidence of unlawful motive. You may infer knowledge and/or motive as a matter of reason and common sense from the existence of other factors, such as tendered explanations that you determine to be pretextual in nature.

If you find that the Plaintiff has proven that the proffered reason or reasons were pretextual, then you must resolve this issue “YES” in favor of the Plaintiff. If you do not so find, you must resolve this issue “NO” in favor of the Defendant.

**AFFIDAVIT OF
STEPHEN/STEPHANIE AKERS**



1 My name is Stephen/Stephanie Akers. I started work at Gander's in Manchester, New Hampshire, my
2 sophomore year of high school. Upon graduation from high school, I headed south to Raleigh, North
3 Carolina, where I attended North Carolina State University and earned my business degree while working
4 nights at the Raleigh Gander's. I then completed a two-year Master's program in Business Administration
5 at the University of North Carolina at Chapel Hill and continued to work at Gander's.
6

7 In June of 1999, I entered the Gander's store management program and became the General Manager of the
8 store in Utopia. I held that position until November of 2002, when I resigned my employment after being
9 accused of embezzlement.
10

11 I'm sure you've heard about how my employment with Gander's came to an end. It was in all the papers,
12 but what was reported is not accurate. As you probably know, Sam Reynolds had me charged with
13 embezzling money. I never embezzled anything, and notwithstanding my lawyer's admonitions that I
14 should assert the 5th Amendment privilege, I am more than happy to tell what really led up to my
15 termination.
16

17 The Gander's home office in St. Louis contacted me and asked if I would like to interview for Sam
18 Reynolds' position. I was told to keep it hush-hush. When Gander's sent Sam's boss to interview me at
19 the Utopia store, Sam made a surprise visit to the store and walked in on the interview. I didn't get the
20 promotion and, over the next several weeks, Sam made my life miserable. I think s/he must have felt
21 threatened by me.
22

23 Eventually, I resigned in November of 2002 but, no matter what Sam may tell you, nobody asked for my
24 resignation. I was just tired of the intimidation. I have never stolen a thing, but that didn't prevent Sam
25 from going before a magistrate judge and swearing out a warrant against me three days after I resigned.
26

27 I recommended that our District Manager, Sam Reynolds, hire Aaron/Erin Wilson as an Assistant Manager
28 in May of 2000. Sam initially expressed reservations about Aaron/Erin's candidacy and, more particularly,
29 the lack of any real business background. I gave Aaron/Erin a resounding endorsement. We had known
30 each other at UNC, mainly as a result of our mutual love for rock climbing, hiking, and the outdoors. I was
31 glad to see Sam make the right call for a change and accepted my recommendation.
32

33 Aaron/Erin was the model employee. S/he had an incredible work ethic and, unlike the other Assistant
34 Manager at the store, s/he was not a "clock puncher" who was constantly worried about what time the
35 workday would end. When you work in retail management, your free time is not your own. You have to
36 be prepared to work long hours, and Aaron/Erin was. S/he always asked good questions and appeared to
37 have a sincere interest in learning the Gander's way of doing things.
38

39 Sometimes I had a problem with the way Gander's did things. Sam Reynolds would tell female employees
40 how much makeup they could wear. I had heard from one former employee that Sam told her to go to the
41 gym with instructions to lose "the freshman fifteen."
42

43 I have stayed in touch with Aaron/Erin since my termination. We have become very close friends over the
44 last year or so. Of course, the rock climbing and hiking have fallen to the wayside because of Aaron/Erin's
45 medical condition.
46

47 I was disgusted to hear that Aaron/Erin was terminated for poor sales performance. Sales dropped after
48 September 11, 2001 and they never recovered. The world just became a different place. People stopped
49 spending money the way they did before 9/11.
50

51 Although you would think a retail chain would try to find a way to recover some of those lost sales,
52 Gander's apparently wanted to flush its market share down the tubes. The home office published "Take a
53 Gander at This," which may be the most distasteful Christmas catalog ever used to promote a retailer.

**AFFIDAVIT OF
STEPHEN/STEPHANIE AKERS**



54 The catalog was 70 pages in length, although the first image of Gander's merchandise did not appear until
55 page 24. The earlier pages contained suggestive photographs and images of 18- to 22-year-olds and raised
56 the ire of more than a few organizations, which called for boycotts of Gander's.

57
58 The chairman of the Utopia City Council told me that he would personally see to it that our store was
59 closed down for violating the obscenity ordinance if we did not stop selling the catalog. Eventually, the
60 national boycotts caused the folks at the home office to take notice. The catalog was pulled, without
61 apology or explanation. You cannot fairly expect a retailer to recover from that sort of public relations
62 nightmare, and the Utopia Gander's store never did.

63
64 According to what Aaron/Erin told me, the store's average daily sales when s/he was General Manager
65 were \$8,216.24. My average daily sales were about \$6,400.00. And you mean to tell me Sam didn't make
66 up the reason s/he let Aaron/Erin go? Please. Let's not be naïve about this.

67
68 This 20th day of July, 2004.

69
70
71
72

/s/

Stephen/Stephanie Akers

1 My name is Dr. Terry R. Britton. I live in the Bethel Park community outside Utopia, North Carolina,
2 where I practice medicine with Utopia Health Associates (sometimes called “UHA”), a multi-specialty
3 group. I am Board-certified in hematology and oncology, sometimes referred to as the hemonc
4 (pronounced “HEEM-onk”) specialty. Before relocating to Utopia, I attended college and medical school
5 at East Carolina University. After receiving my M.D. in 1986, I completed a residency in Norman,
6 Oklahoma. I relocated to Utopia thereafter and have been with UHA ever since.
7

8 When I became a physician I took the Hippocratic oath, which begins, “First, do no harm.” I take that oath
9 very seriously. I am among those who believe that testifying adversely to the interests of one of my
10 patients potentially violates this oath. Although I certainly want to remain professionally objective, I
11 believe one of the things you have to do as a physician is to develop an alliance of trust with your patient.
12 That trust is potentially destroyed if the patient believes your testimony is unfavorable. However, if asked
13 to testify, I will testify, and I will do so truthfully.
14

15 Of course, there is a fee for my in-court time, which is time I would otherwise spend treating patients. That
16 fee is \$475 per hour.
17

18 Multiple myeloma, or myelomatosis, is a cancer that develops in the blood plasma cells. In a healthy
19 person, these cells produce antibodies that ward off disease and infection. In individuals with multiple
20 myeloma, these cells are overproduced and collect in the bone marrow, crowding out normal bone marrow
21 and wreaking havoc on the bone structure.
22

23 According to the American Cancer Society’s research I have seen, only about two percent of all individuals
24 suffering from multiple myeloma are younger than 40 years of age. Moreover, multiple myeloma is not
25 exactly the most common form of cancer. Fewer than twenty thousand Americans are diagnosed with it
26 every year.
27

28 At any given time, I am treating less than five patients with the disease. I know I have treated one patient
29 who was forty-two when he was diagnosed, but I can’t recall treating anyone in their 20’s or even their
30 30’s, until Aaron/Erin Wilson.
31

32 Perhaps that is why I find Aaron/Erin’s case to be so remarkable. Aaron/Erin was referred to me by UHA
33 family practitioner Dr. Janet Ward in June of 2003. What I learned from Dr. Ward was that Aaron/Erin
34 appeared to have sustained a massive fracture to Aaron/Erin’s left shoulder. Ward had taken some initial x-
35 rays that suggested a large mass was lying at the top of the shoulder joint.
36

37 From that point, I ordered a procedure known as a bone scan, a procedure I frequently use for purposes of
38 ruling out the presence of tumors and infections. The patient is injected with a radioactive marker through
39 an intravenous (IV) line. Several hours later, we place the patient in a scanner and look for the higher
40 concentrations of the radioactive marker. These higher concentrations look darker on the image. We use a
41 highly unscientific term for these areas: Hot spots. Hot spots suggest the possible presence of tumors,
42 infections or small fractures that we aren’t able to pick up with an x-ray.
43

44 After the bone scan, it is my practice to order a Computerized Tomography scan, more commonly referred
45 to as a “CT” scan. The CT scan allows me to look at images of the body in cross-sections of a millimeter
46 or less. It affords me an opportunity to look at the structure of the bone.
47

48 The results of Aaron/Erin’s bone scan were not good. The shoulder area lit up like a Christmas tree,
49 leading me to the preliminary conclusion that we either had a very large tumor or a significant infection up
50 there. In addition, I noted eleven other hot spots, most notably in Aaron/Erin’s rib cage and near his/her
51 shinbone. The CT scan confirmed the presence of the tumor in Aaron/Erin’s shoulder but, based on my
52 interpretation of the imaging, the other hot spots had not fully developed into tumors.



53 We commenced chemotherapy immediately, and it continued in monthly weeklong cycles, into the winter
54 months. Thankfully for Aaron/Erin's sake, we were able to do most of the chemo treatments on an
55 outpatient basis.

56
57 After attempting other chemotherapy options, we opted for MP treatment—a combination of melphalan
58 and prednisone. Melphalan is an alkylating agent that aims to hinder the division of cancerous cells by
59 interfering with their DNA code. Prednisone is a steroid from the cortizone family. It is used in
60 conjunction with melphalan because our experience shows that the combination works better together than
61 just melphalan alone.

62
63 Aaron/Erin complained to me more than once that the prednisone caused him/her to look bloated. This is
64 not an infrequent complaint. I have heard this from a number of other patients and have personally
65 observed it. Aaron/Erin also complained of considerable trouble urinating, which is a function of his/her
66 body's protein levels. Upon my recommendation, Aaron/Erin has also ceased hiking, camping, biking,
67 rock climbing and other potentially strenuous physical activities.

68
69 I have been asked to render an opinion as to whether Aaron/Erin's cancer can be controlled through
70 medical treatment. The answer to that question is yes, and no. I can control the symptoms for some time.
71 For instance, the MP treatment will kill cancerous cells and, if 100% successful, will keep Aaron/Erin in
72 remission for some time. Unfortunately, the cancer will recur. Even the more dramatic sorts of treatment,
73 such as stem cell transplantation, are not cures for cancer.

74
75 My understanding is that Aaron/Erin's lawsuit involves Ganders, Inc. Aaron/Erin agreed that we would not
76 discuss it with one another, although I seem to remember reading about it in *The Utopia Star-Tribune*.

77
78 The fact that the case involves Gander's is a bit of an unhappy coincidence for my family. My son worked
79 at the Raleigh Gander's while he was a student at N.C. State. The store manager terminated him for
80 reasons that have never been explained to me. I find it very suspect that my already husky son was
81 terminated after he gained forty pounds. I suspect we do not have a case against Gander's, but suffice it to
82 say I will be watching the outcome of Aaron/Erin's lawsuit with great interest.

83
84 This 1st day of August, 2004.

85
86 /s/
87 _____
88 Terry Britton, M.D.

1 My name is Aaron/Erin Wilson. I am twenty-seven years old. I am single and I live by myself in Utopia,
2 North Carolina. As you might imagine, it is a bit hard to maintain a steady relationship when you finally
3 reveal the fact that you have cancer to the person you are dating. You can only deceive the people you care
4 about for so long.

5
6 I was Assistant Manager of the Gander's store from June of 2000 until November of 2002. Then, I was
7 promoted to the General Manager position, and I held it until December of 2003. I am currently looking
8 for work, if you know of any openings.

9
10 I am told that I am a medical oddity. I have a form of cancer known as multiple myeloma. Dr. Janet Ward,
11 my family physician, tells me that I am the youngest person she has ever known to have this disease by
12 some thirty-two years. My oncologist, Dr. Britton, says s/he has never seen anything like it, either.

13
14 I love the outdoors. I am—well, I was—an avid rock climber, hiker and camper. Ironically, it was my love
15 for the outdoors that led me to discover my cancer. I was with my friends, Stephen/Stephanie Akers and
16 Charlie Coker and my father on a 2003 Father's Day climb at Pilot Mountain, North Carolina, when I felt
17 something pop in my right shoulder. I was in excruciating pain. My friends rushed me to an urgent care
18 facility in Winston-Salem. I got a prescription for some pain medicine and was able to drive home,
19 although the pain was pretty bad.

20
21 I thought I had just over-done it, but I could not move the next morning. I went to see Dr. Ward, who
22 admitted me to the hospital. Thankfully, I had never taken a day off from work and was able to take eight
23 of my 56 "banked" vacation days. If Sam Reynolds had known I was hospitalized, s/he would have fired
24 me immediately. After all, Gander's is well known for its policy of hiring only beautiful and healthy
25 people. The corporate office actually has conducted research on why you don't want to hire sick people.

26
27 Those next eight days were no vacation, though. I was poked, prodded, and scanned at Utopia Hospital. I
28 was introduced to Dr. Britton for the first time. S/he gave me the news about the cancer. A bone scan
29 revealed that the bone at the top of my shoulder had fractured as a result of the development of a tumor.
30 Four rounds of chemo treatments later, the tumor was gone, but I am not cancer free.

31
32 I am no doctor, but it is my understanding that multiple myeloma is pretty darn aggressive. It can attack
33 anywhere there is bone marrow. Dr. Britton tells me I have a reasonably good chance of going into
34 remission for a while, provided I follow my treatment regimen but, right now, I have a couple of "hot
35 spots" that s/he is trying to knock out. As I understand them, these "hot spots" are areas of cancer cell
36 activity that have not fully developed into tumors. The long-term prognosis is not so great. Dr. Britton
37 tells me I will likely not make it to see my mid-30's but I try to take care of myself and I pray a lot. I am
38 all about the power of positive thinking.

39
40 I knew that if I disclosed my cancer to Sam Reynolds, I was a goner. I explained away the sling I wore on
41 my shoulder in June and July as a rock climbing injury. In June, July, and September (three of our slowest
42 months) I burnt a total of 22 personal days.

43
44 August was brutal for me. I had a weeklong round of chemotherapy treatments. Because we had our
45 "Back to School" sale running, I would take chemo at the hospital in the morning and come to the store in
46 the evenings and try to pretend nothing was wrong. I was so sick I thought I would die, and I'm sure I was
47 not my usual friendly self. I would have liked to have stayed in bed the week after that particular round of
48 chemo but, instead, I was at the store working on our inventory plan.

49
50 Although the dosage of my monthly chemo treatments was not all that high, my hair began to thin a little
51 bit. I wore a Gander's baseball cap to cover that, but I am sure it started to show some time in the fall. By
52



53 October, Dr. Britton had me on heavy doses of prednisone. They make me a bit hyper and maybe even a
54 little inattentive. I actually wasn't paying attention one day and backed out of the driveway before I raised
55 the garage door. Needless to say, I didn't tell Sam Reynolds about that. The prednisone also caused me to
56 become bloated.

57
58 That made me nervous. Sam has a low tolerance for people who aren't perfect looking. I distinctly
59 remember a conversation we had one day when he pulled me out of earshot of other employees. I had just
60 hired a sixteen-year-old who was struggling with acne. Referring to this new hire, Reynolds said, "Why
61 did you go and hire him? It looks like he fell out of an ugly tree and hit every branch on the way down."
62

63 And then there was the story of what happened in Savannah. At a district sales meeting, long-time
64 Savannah store manager Jane Thompson told me that Reynolds had directed her to "fire Gimpy,"
65 Reynolds' not so polite method of referring to an Assistant Manager who had cerebral palsy.
66

67 In late October of 2003, I started attending group therapy for terminally ill young adults. Several of the
68 people in the group are pretty well known in Utopia for being HIV-positive. One of my employees saw us
69 exiting our November 13, 2003 therapy meeting. Within a day, rumors at the store were rampant about
70 how I was dying of AIDS.
71

72 I knew I had to do something to squelch the rumors, so I called a store meeting on November 17, 2003. I
73 asked Sam Reynolds to fly up from the district office. I took three deep breaths, and I shared the news.
74 Many of my employees were very supportive. Sam Reynolds simply said "Sorry to hear that" and pulled
75 out his/her PDA to send an email message. S/he was probably sending an email to the home office in St.
76 Louis, trying to figure out how to fire me.
77

78 The reasons Sam gave me for my termination are trumped up. My sales numbers are on track with those of
79 my predecessor. Sam never provided me any sort of counseling about our sales performance.
80

81 I wish somebody had given me an opportunity to respond to the Don/Donna Gusmer incident before letting
82 me go. S/he came into the store literally two minutes after closing time and wandered aimlessly for 45
83 minutes while I was trying to close out the cash register for the day. I tried to give him/her his space and
84 let him figure out what s/he wanted while I tended to other matters. When s/he finally came up to the cash
85 register, I tried to break the tension with a comment along the lines of "I was beginning to think you
86 weren't going to buy anything." S/he threw our merchandise on the floor and ran out of the store. I didn't
87 say anything else.
88

89 Before filing this suit, at the direction of my lawyer, I filed a Charge of Discrimination with the Equal
90 Employment Opportunity Commission. The contents of that Charge are true to the best of my knowledge.
91 I do not know the outcome of that Charge, but I am informed that the EEOC elected not to pursue the claim
92 on my behalf. I do not know why.
93

94 I know it is possible I stand to win a large sum of money if I prevail in my lawsuit against Gander's.
95 Anyone who knows me knows that this case is not about the money. It's about standing up for myself and
96 teaching Gander's a lesson I hope it will never forget.
97

98 This 12th day of August, 2004.
99

100 /s/
101 _____
102

Aaron/Erin Wilson



1 My name is Don/Donna Gusmer. I am 15 years old. I live about ten miles outside Utopia, North Carolina
2 in the Bethel Park community. I live there with my mother and father and my younger sister, Debbi (age
3 10).
4

5 I am a sophomore at F. Scott Fitzgerald High School. Many of my classmates come from wealthy families,
6 and I feel a great deal of pressure to fit in. As far as I can tell, I don't fit in. My parents are always telling
7 me how witty and smart I am and how I should get involved in extracurricular activities. I can tell they're
8 just trying to make me feel better about myself. I had thought about trying out for the mock trial team, but
9 I just don't know if it's for me.

10
11 While I appreciate my parents' vote of confidence, I don't really consider myself witty or smart. However,
12 I know enough about people to know they make value judgments about me based upon the neighborhood I
13 live in, the make of my father's car and the clothes I wear. I don't live in a \$300,000 house, and my dad
14 doesn't drive a Mercedes 740. Mom and Dad do give me freedom to pick out some of my own clothes, as
15 long as I pay for them with my allowance money and they are not too extravagant.
16

17 This explains how I came to be at Gander's at Utopia Center on the evening of December 15, 2003. If you
18 go to Fitzgerald and you don't regularly wear clothes with the Gander's goose logo, you might as well be
19 invisible to the popular kids. I had decided that I had been invisible long enough.
20

21 I had done chores around the house for several weeks. I had managed to save about sixty-five dollars, and
22 the money was burning a hole in my pocket. My parents would never approve if I told them I wanted to
23 buy expensive clothes, so I fibbed to my dad and told him to drop me at the Utopia Center movie theatre,
24 supposedly to meet a friend for a movie. From there, I walked to Gander's.
25

26 As I discovered, sixty-five dollars really won't buy very much at Gander's. I saw a rugby shirt I really
27 liked, but it was priced \$54.99. The clearance rack had some Gander's t-shirts in my size for \$13.50 each.
28 I must have spent forty-five minutes going back and forth between the clearance rack and the rugby
29 display, agonizing about whether to buy the rugby or four t-shirts. I finally decided that I would rather
30 have a gaggle of four Gander's geese, so I took four t-shirts from the rack to the cash register.
31

32 This was my first encounter with Aaron/Erin Wilson. S/he was standing behind the register. His/her face
33 was swollen and pale. S/he looked really sick—more like somebody you'd expect to see at the hospital
34 than someone working at the mall.
35

36 Anyway, when I brought the shirts up to the register, Aaron/Erin laughed at me and remarked, "I was
37 beginning to think you weren't going to buy anything." S/he looked disgusted. Apparently, s/he had been
38 watching me labor over my decision as to what I should buy, but s/he had never once asked if s/he could
39 help me.
40

41 I was offended by the comment. After all, it's kids like me who are paying Aaron/Erin's salary, and there I
42 was, being mocked for wanting to take my time to make a good decision. I responded, "Come to think of
43 it, you're right. I don't want to buy anything." I started to leave the sales counter.
44

45 I understand Aaron/Erin says I then threw the t-shirts on the floor and walked out. That did not happen. As
46 I recall, I accidentally knocked two of them onto the floor as Aaron/Erin went ballistic, shouting, "Get out
47 of here, and don't come back."
48

49 On the morning of December 16, I woke up still indignant about the incident. I got on my computer and
50 found a web site for Gander's. I wanted to talk to Aaron/Erin's supervisor about what had happened. I
51 used the on-line staff directory to get a phone number for the Human Resources Department. The HR
52 people then gave me Sam Reynolds' name and number.



53 When I telephoned him/her, Sam Reynolds was almost insistent that I put the incident in writing. I told
54 him/her I just wanted to let somebody know and didn't have any interest in getting Aaron/Erin in trouble.
55 Reynolds said s/he understood but told me she really needed me to document the incident. She offered to
56 send me a \$50 Gander's gift certificate if I could send him/her a short email about the incident before noon.
57 I was already on Christmas break, so I spent a few minutes knocking out a short email message.

58
59 People at school have really begun to notice me since I became involved in this case.

60
61 This 13th day of May, 2004.

62
63 /s/

64 _____
65 Don/Donna Gusmer

1 My name is Jamie Brooks. I am employed as the Vice President of Human Resources of Ganders, Inc., in
2 St. Louis. Gander's is a large nationwide retail chain that has sold men's apparel since 1984. Gander's
3 added women's apparel in 1993, when company officials began to take note of the fact that young women
4 were purchasing items traditionally marketed to young men (boxer shorts, baseball caps, etc.). Gander's is
5 broken down into thirteen regions, with each region consisting of between six and ten stores.
6

7 I work at the company's home office in St. Louis, Missouri. I majored in Sociology at St. Louis University
8 and received my B.A. degree in 1983. I then studied Social Psychology at Granite State University,
9 earning a Ph.D. in 1987. My dissertation was entitled, "The Attractive Sales Clerk: Persuading the Young
10 Buyer to Part with His Dollars." I was not immediately able to find a job in my field, so I went back to
11 school again, this time receiving a Master's in Human Resources from Wayne State University in 1990.
12

13 I went directly from Wayne State to Gander's, where I worked as Vice President of the Marketing
14 Department until January of 2002. I was head of Marketing when Gander's published its 2001 Christmas
15 catalog, "Take a Gander at This." I am afraid we got carried away with that publication. We were trying to
16 use it as an opportunity to show we market to young adults of various races, ethnicities and genders. Most,
17 if not all, of the models in the catalog were very attractive. In hindsight, we probably didn't give enough
18 thought to the fact that we might be perceived as selling models rather than merchandise.
19

20 Keep in mind, though, that while I was Vice President of Marketing, I commissioned and personally
21 oversaw a study, the results of which suggested that sixteen- to twenty-four-year-olds are more likely to
22 make purchases from individuals they perceive as "attractive" and "healthy." In the study, a researcher
23 gave each subject \$25.00 and instructed the subject to enter a mock retail store, select merchandise, and
24 take the merchandise to one of two cashiers at a check-out counter. The cashiers (actually researchers)
25 were instructed not to say anything to the subject, or to make eye contact with the subject, until he or she
26 selected one of the two cashiers. Thereafter, the subject was asked to describe the cashier from whom he or
27 she had made the purchase, selecting from "attractive" or "not attractive" and "healthy" or "not healthy".
28 Then the subject was asked to make the same description with regard to the cashier he or she did not select.
29

30 In 274 of the 300 trials, subjects described the selected cashier as "attractive," "healthy," or both. In 249 of
31 these 274 trials, subjects identified the rejected cashier as "not attractive," "not healthy," or both. In only
32 three instances was the selected cashier described as both "not attractive" and "not healthy". The results
33 were not remarkably different for male and female subjects. The results were also consistent across the age
34 demographic of 16 to 24. I was pleased with the methodology of our study, which was consistent with
35 several earlier studies conducted by other social psychologists. We actually invited a number of the
36 subjects back to assist us in the selection of our models for the catalog.
37

38 We don't have any "written-in-stone" hiring policies. However, we have developed a brand image geared
39 to selling our merchandise to a younger crowd, and we have spent significant money on research that
40 scientifically demonstrates our sales will increase if we project a young, healthy and attractive image.
41 Gander's has spent \$70 million in the past two years, and much more over the last 15 years, developing that
42 brand image. Our own internal research, which wasn't cheap either, also indicates that we can further
43 project that image, and increase sales, through the retention of young, healthy and attractive sales
44 personnel. Again, we don't have any hiring rules on this criteria, and we certainly follow all of the
45 employment laws, but we can't ignore this valuable information or pretend we haven't spent millions
46 developing the goodwill of our company, which is intertwined with the image of young, healthy, attractive
47 people.
48

49 The results of our study were discussed at a district manager's meeting in Orlando, Florida. I have not been
50 able to confirm whether Sam Reynolds was at that particular session of the meeting. A number of
51
52

53 individuals snuck out of some of the afternoon sessions and headed to the theme parks with their families.
54 I hasten to add that, as far as I know, none of our district managers has ever been told that they should
55 refrain from hiring sick or disabled individuals.
56

57 After the PR flap ensued following “Take a Gander at This”, I accepted the position I currently occupy.
58 My current responsibilities include assuring that Gander’s administrative and managerial employees
59 comply with our equal employment opportunity policy and training employees with regard to our hiring
60 and firing practices. I am known for saying “Document, document, document,” stressing to supervisors the
61 need to carefully prepare documentation supporting disciplinary action.
62

63 I also assist our in-house and outside counsel in personnel matters that end up in litigation. I take pride in
64 our litigation record. We employ approximately 5,500 individuals. Currently, we have only two ADA
65 lawsuits pending nationwide. There is the Wilson case, which we have decided to defend vigorously. The
66 other is a claim brought by a former assistant manager at the Savannah, Georgia Gander’s, against store
67 manager Jane Thompson and Sam Reynolds. We have made a modest offer to settle the Georgia lawsuit
68 and we are confident we will be able to settle the case for less than we would otherwise be paying our
69 outside counsel to defend the suit.
70

71 As the top personnel officer, I am the custodian of all personnel records of current and former employees. I
72 placed two different documents in Aaron/Erin Wilson’s file at the direction of Sam Reynolds. One was a
73 written warning; the other was a memorandum of termination. Although I encourage supervisors to review
74 any proposed disciplinary action with me before taking it, Sam is a veteran district manager with ten years
75 of experience, and I trust his/her good judgment in making employment-related decisions. However, in
76 early December of 2003, Sam did tell me to “be on the lookout” for a possible termination of his General
77 Manager. Sam indicated s/he was “tired of looking at lagging sales numbers in Utopia.”
78

79 Sam telephoned me on December 20 and told me to look for a Fed Ex package containing a written
80 warning and a termination letter relative to Aaron/Erin Wilson. I’m not exactly sure when the documents
81 were prepared, but the notation on the bottom indicates that I put each of them in Aaron/Erin’s file on
82 December 21, 2003.
83

84 My review of Sam’s personnel file indicates that s/he had completed at least two sensitivity training
85 seminars regarding the disabled. It is clear that Wilson was let go because of his/her store’s sales
86 performance, and I believe Wilson has unfairly targeted Sam because of the pending lawsuit in Savannah.
87

88
89 This 16th day of June, 2004.
90

91 /s/
92

93 _____
Jamie Brooks

1 My name is Sam Reynolds. My better half, Chris, and I live with our three rug-rats, Ben, Diana and
2 Kaeley, in Dunwoody, Georgia.
3

4 I am the District Manager for Gander's, a clothing retailer that has developed a significant presence in the
5 U.S. over the last twenty years. Gander's began with men's apparel in 1984. Gander's added women's
6 apparel in 1993, when the home office in St. Louis began to take note of the fact that young women were
7 purchasing items traditionally marketed to young men (boxer shorts, baseball caps, etc.).
8

9 Gander's has thirteen districts nationwide. My district consists of stores located in Charlotte, Raleigh,
10 Utopia, and Winston-Salem, North Carolina; Columbia and Greenville, South Carolina; Knoxville,
11 Tennessee; and Atlanta and Savannah, Georgia. Geographically speaking, my district is the biggest in the
12 country. As a result, I rarely get to see my home or my kids, or so it seems. I am on the road an average of
13 thirty-six weeks a year, visiting the various stores. Basically, my job is to manage the store managers,
14 whom we call "General Managers," and to assure the profitability of the stores.
15

16 I have been with Gander's since I got my MBA degree from the University of Alabama in 1994. At age 34,
17 I am about the average age of Gander's District Managers.
18

19 I tend to take a little heat from the folks in St. Louis about my tendency to shoot from the hip. I may have
20 made an inappropriate remark or two over the course of ten years, but by no means am I some kind of
21 bigot. By and large, though, I think the home office is well satisfied with my work performance. Most of
22 my stores (except Columbia, Utopia, Savannah and Raleigh) are extremely profitable. That could explain
23 why I received \$98,000.00 in discretionary bonus compensation last year, bringing my total compensation
24 package to \$182,500.00.
25

26 Before I delve into what happened with Aaron/Erin Wilson, I want to respond to some things Jane
27 Thompson has said about the termination of a store employee in Savannah. I never told anybody to "fire
28 Gimpy." I would never use that kind of insensitive term to refer to another person. I was taking a light-
29 hearted jab at myself one day when Jane dropped me at the Savannah Airport. I had just had knee surgery
30 and I hobbled out of her car, saying, "Gimpy has to go." The fact that we had been talking a few minutes
31 earlier about her Assistant Manager's work performance is just coincidental. It's pretty sorry for Jane to be
32 taking pot shots at me, now that we have both been drug into the Savannah lawsuit.
33

34 As for Aaron/Erin, I am disturbed to see that s/he is hiding behind a tragic medical condition. S/he knows
35 why I let him/her go. By December of 2003, I had absolutely zero confidence that Aaron/Erin could
36 continue to project the image I wanted and needed for the Utopia store. Our gross sales for that store were
37 in the tank. I had tried to afford Aaron/Erin every opportunity to improve the store's performance, and it
38 just wasn't happening.
39

40 In fact, I issued Aaron/Erin a written warning about the sales performance several weeks earlier, and I
41 never received any sort of indication from Aaron/Erin that s/he was the least bit concerned. I understand
42 Stephen/Stephanie Akers intends to testify that his/her numbers were bad, too, and I did not do anything
43 about it. I personally saw Akers remove \$426.00 from the cash register one day. S/he was in charge of
44 reporting his/her numbers to me. Candidly, I think she monkeyed with the numbers to make them appear
45 lower, thus accounting for his/her own self-made cash shortfalls.
46

47 Assuming Stephen/Stephanie's figures are correct, there were a number of other factors that explain why I
48 kept him/her on so long. After September 11, 2001 and the terrorist attacks, Americans stopped spending
49 money the way they did before. There was also a plant closing in Utopia during her employment, and
50 many folks lost their jobs. Finally, there was the unfortunate "Take a Gander at This" PR campaign, thanks
51 to those bozos in St. Louis. We took a hit at most of our stores. Unfortunately, Utopia never bounced
52 back, even after I had given it a reasonable time to do so.

**AFFIDAVIT OF
SAMUEL/SAMANTHA REYNOLDS**



53 The incident with Don/Donna Gusmer was pretty well the last straw for Aaron/Erin. I can't have a General
54 Manager treating people that way. When I heard about the incident, I explained to the customer that I
55 could not take action without a written complaint. I never offered to send a gift certificate to Gusmer and
56 only did that as a good will gesture after I received the complaint.

57
58 I don't know what all this talk is about how you have to be good looking to work at Gander's. I certainly
59 don't subscribe to that philosophy or require that the General Managers who work for me do so. I was not
60 at the particular training session in Orlando which Jamie Brooks references in his/her affidavit. I don't care
61 what you look like, or what medical condition you have, if you can push our merchandise.

62
63 I do wish Aaron/Erin the best in his/her recovery and I certainly would not wish multiple myeloma on
64 anybody.

65
66
67
68 This 22nd day of July, 2004.

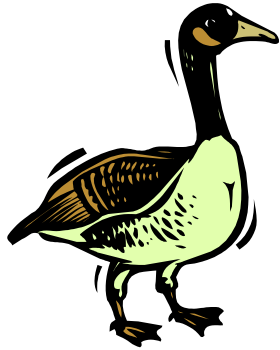
69
70
71
72 /s/

73
74
75 _____
Samuel/Samantha Reynolds

EQUAL EMPLOYMENT OPPORTUNITY POLICY

Gander's is an equal employment opportunity employer which does not discriminate with respect to compensation, terms, conditions or privileges of employment on the basis of race, color, sex, religion, national origin, age, disability or other non-relevant criteria.

EEO Policy Rev. 5/1/98

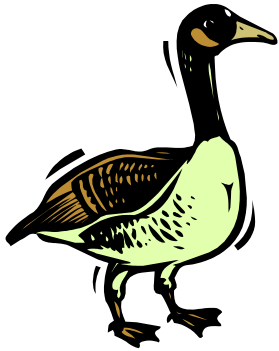


GANDER'S CLOTHIERS
Southeastern District
1072 Duck Ave., Suite 300
Atlanta, GA 30036
Telephone: 404-555-1234

CUSTOMER SATISFACTION GIFT CERTIFICATE

This certificate entitles **D. Gusmer** to a **Fifty Dollar (\$50.00)** merchandise credit to be applied against the purchase price of merchandise from our store in **Utopia Center, Utopia, North Carolina.**

Sam Reynolds
District Manager
December 21, 2003



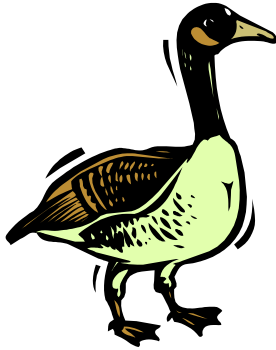
GANDER'S CLOTHIERS
Southeastern District
1072 Duck Ave., Suite 300
Atlanta, GA 30036
Telephone: 404-555-1234

TO: Aaron/Erin Wilson
FROM: Sam Reynolds
DATE: November 25, 2003
RE: **WRITTEN WARNING**

I regret that I must issue you this written warning as a result of the Utopia store's poor sales performance in recent months. While you have shown initiative in other areas of your job, I trust you understand that as the General Manager, you bear the ultimate responsibility for the store's sales performance.

The Utopia store should be booking at least \$9,500.00 a day in gross sales. I am hereby placing you on notice that if you do not achieve this goal, I may be forced to take other disciplinary action against you, up to and including dismissal. Your prompt attention to this matter will be greatly appreciated.

cc: Personnel File



GANDER'S CLOTHIERS
Southeastern District
1072 Duck Ave., Suite 300
Atlanta, GA 30036
Telephone: 404-555-1234

TO: Aaron/Erin Wilson
FROM: Sam Reynolds
DATE: December 17, 2003
RE: Your Employment with Ganders, Inc.

This memorandum is to inform you of the termination of your employment relationship with Gander's, effective immediately, for several reasons. As the General Manager of the Utopia store, you were ultimately responsible for the store's sales figures. You will recall that we previously discussed the store's poor performance on at least one other occasion.

On December 15, 2003, you allowed a customer to shop more than thirty minutes without ever acknowledging the patron, and then proceeded to make a rude remark as the customer brought merchandise to the cash register. For these reasons, I no longer have confidence that you are capable of portraying the image Gander's wishes to convey to its customers and employees.

To address several matters:

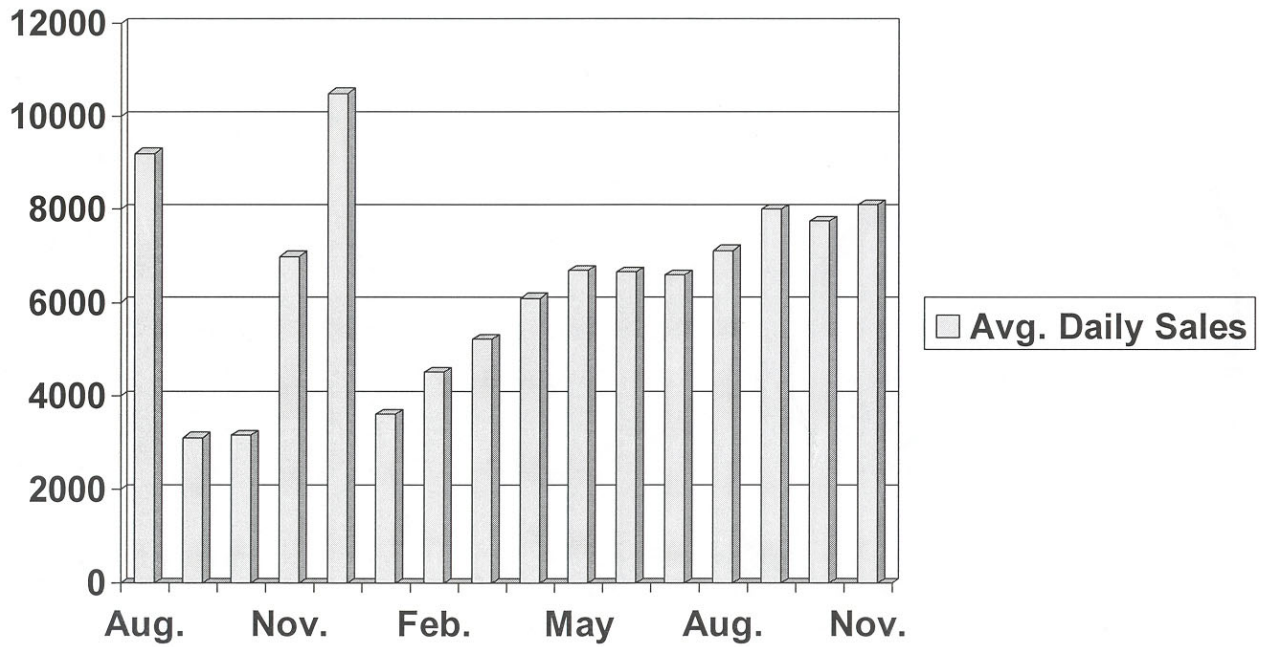
1. I understand your health insurance is likely to be of very real concern to you at this time. You will receive a letter under separate cover, which details your right to continue your coverage under Gander's group policy, at your expense, for a period of eighteen months, in accordance with COBRA.
2. Gander's will not oppose you if you file an application for unemployment benefits.
3. Requests for employment references should be directed to my attention. It is Gander's policy to limit responses to reference requests to confirmation of your dates of employment and last job title.
4. You should make arrangements with me to remove your personal belongings from the store at a mutually convenient time. You should also take this opportunity to notify me of the status of all pending job tasks.

Thank you for your past service to Gander's. Best wishes for a happy holiday season.

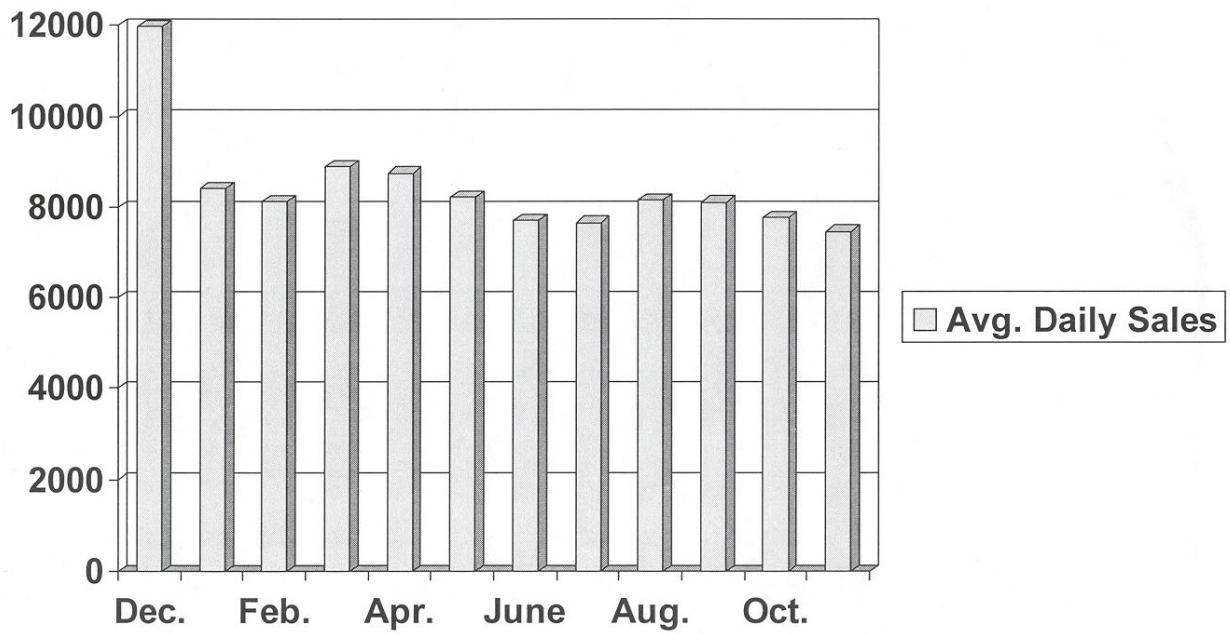
cc: Personnel File

CHARGE OF DISCRIMINATION		AGENCY	CHARGE NUMBER
This form is affected by the Privacy Act of 1974. See Privacy Act Statement before completing this form.		<input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	1145-04-0017
_____ and EEOC			
NAME (Indicate Mr., Ms., Mrs.) Aaron/Erin Wilson		HOME TELEPHONE (include Area Code) (336) 555-1234	
STREET ADDRESS CITY, STATE AND ZIP CODE 365 Williamston St., Utopia, NC 28003		DATE OF BIRTH May 11, 1977	
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (if more than one list below)			
NAME Ganders, Inc.	NUMBER OF EMPLOYEES, MEMBERS 5500	TELEPHONE (include Area Code) 314-555-1212	
STREET ADDRESS CITY, STATE AND ZIP CODE 2719 Arch Street, St. Louis, MO 63102		COUNTY St. Louis	
NAME (Indicate Mr., Ms., Mrs.) Ganders, Inc. (Alternate Address-- Dist. Office)		HOME TELEPHONE (include Area Code) (404) 555-1234	
STREET ADDRESS CITY, STATE AND ZIP CODE 1072 Duck Ave., Suite 300, Atlanta, GA 30036		COUNTY Fulton	
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box (es))		DATE DISCRIMINATION TOOK PLACE EARLIEST (ADEA/EPA) LATEST (ALL)	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> AGE <input type="checkbox"/> RETALIATION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify)		December 17, 2003	
		<input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (if additional paper is needed, attach extra sheet(s)).			
<p>I believe I was discriminated against in violation of the Americans with Disabilities Act of 1990. My district manager (Sam Reynolds) knew that I had a disability (multiple myeloma) at least as early as November 17, 2003. On December 17, 2003, Reynolds terminated my employment, advising me that due to my physical appearance (caused by my multiple myeloma), I no longer projected the Gander's image.</p>			
I want this charge filed with both the EEOC and the State or Local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - (When necessary for State and Local Requirements)	
I declare under penalty of perjury that the foregoing is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief	
Date 1/12/04	Charging Party (Signature) <i>Aaron/Erin Wilson</i>	SIGNATURE OF COMPLAINANT <i>Aaron/Erin Wilson</i>	
		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE	

Gander's Utopia Daily Sales Averages, by Month (8/01-11/02)



Gander's Utopia Daily Sales Averages, by Month (12/02-11/03)



Sam Reynolds

From: D. Gusmer (dgusmer@yahoo.com)
Sent: December 16, 2003
To: Sam Reynolds
Subject: Utopia Gander's

Thank you for talking with me this morning. As I told you in our telephone conversation, I went to the Gander's at the Utopia Mall yesterday evening. It was nearing closing time when I arrived.

As far as I could tell, there was only one employee working in the store. I do not recall the first initial, but the last name on the employee's nametag was "Wilson." This wasn't somebody I would have expected to see working in your store. This looked like somebody who belonged in the hospital - all pale and washed out.

I'm not particularly interested in seeing that this employee get in trouble, but you need to know what's happening in your store.

I wandered back and forth between merchandise racks for what seemed like forever. The employee never offered to help and instead just let me wander.

That's why I was so startled when I brought the merchandise up to the register, only to hear this Wilson person tell me, "I was beginning to think you weren't going to buy anything."

I was upset by the remark and I replied, "Come to think of it, you're right. I don't want to buy anything from you." I rushed out of the store.

I appreciate your offering to send me the \$50.00 gift certificate. Perhaps I could trouble you to let me know a date when this employee is not working, so I can spend it without fear of running into "Wilson" again. My address follows:

D. Gusmer
123 Easy Street
Bethel Park, NC 28001

1. The Opening of the Court

Either the clerk of the court or the judge will call the Court to order.

When the judge enters, all the participants should remain standing until the judge is seated.

The case will be announced, i.e., "The Court will now hear the case of ____ vs. ____."

The judge will then ask the attorney for each side if they are ready.

A representative of each team will introduce and identify each member of the team and the role each will play.

2. Opening Statement

- (1) Prosecution (in criminal cases)/Plaintiff (in civil cases)

The prosecutor in a criminal case (or plaintiff's attorney in a civil case) summarizes the evidence that will be presented to prove the case.

- (2) Defendant (in criminal or civil case)

The defendant's attorney summarizes the evidence that will be presented to rebut the case the prosecution has made.

3. Direct Examination by Plaintiff's Attorneys

The prosecutors (plaintiff's attorneys) conduct the direct examination of their own witnesses. At this time, testimony and other evidence to prove the prosecution's (plaintiff's) case will be presented. The purpose of direct examination is to allow the witness to state the facts in support of the case.

Note: The attorneys for both sides, on both direct and cross examination, should remember that their only function is to ask questions; attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

4. Cross-Examination by the Defendant's Attorneys

After the attorneys for the prosecution (plaintiff) have completed questioning each witness, the judge then allows the other party (i.e., defense attorney) to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out to the jury and the judge through cross-examination.

5. Direct Examination by the Defendant's Attorneys

After all the prosecution's (plaintiff's) witnesses have been examined by both sides, the defense will present its witnesses. Direct examination of each defense witness follows the same pattern as the above process for the prosecution's/plaintiff's witnesses.

6. Cross-examination by the Prosecution/Plaintiff's attorneys.

Cross-examination of each defense witness follows the same pattern as the step above for cross-examination by the defense of the prosecutions/plaintiff's witnesses.

7. Closing Arguments (Attorneys)

- (a) Prosecution (Plaintiff)

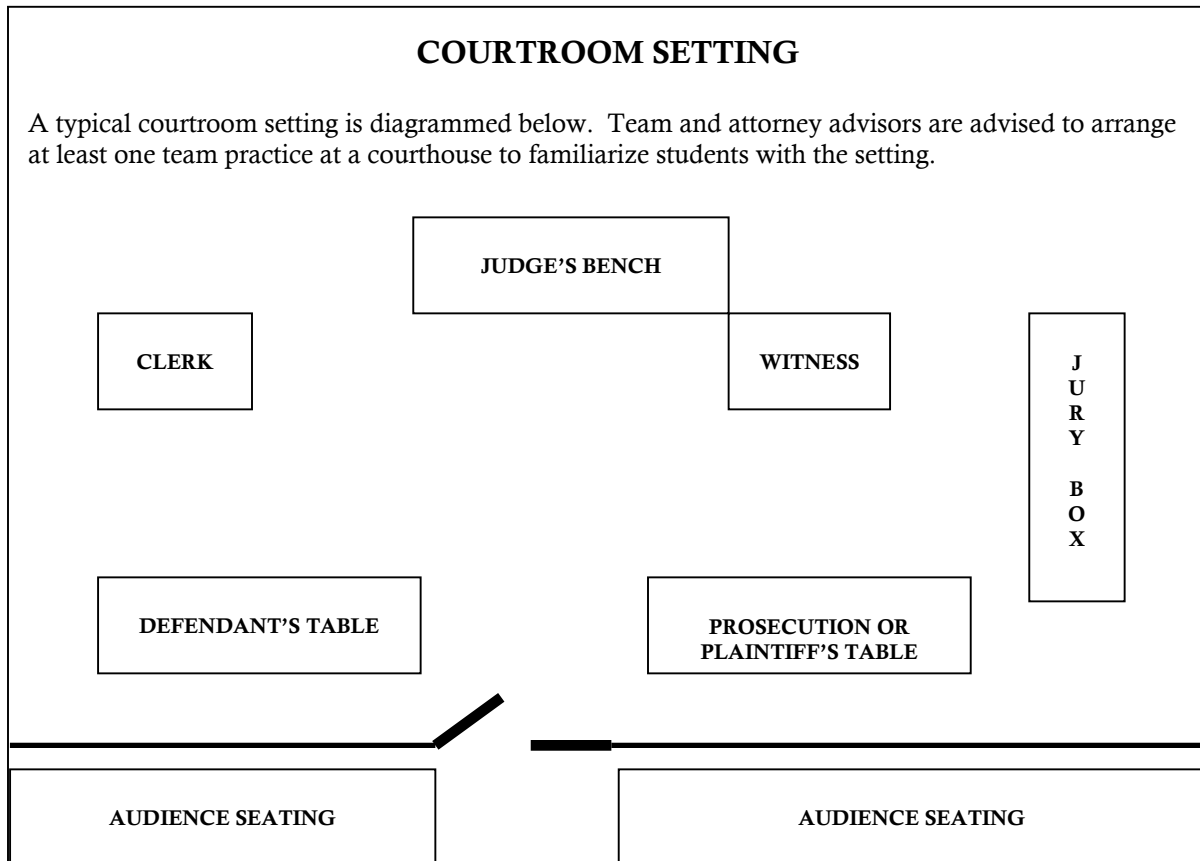
The closing argument is a review of the evidence presented. It should indicate how the evidence has satisfied the elements of the charge or claim, point out the law applicable to the case, and ask for a favorable verdict.

(b) Defendant

The closing argument for the defense is essentially the same as for the prosecution. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not satisfy the elements of the charge or claim, stresses the facts favorable to the defense and asks for a verdict favorable to the defense.

THE JUDGE'S ROLE AND DECISION (VERDICT)

The judge is the person who presides over the trial to assure that the parties' rights are protected, and that the attorneys follow the rules of evidence and trial procedure.



The following tips have been developed from previous experiences in training mock trial teams.

1. The facts of the case, witnesses' testimony, and the points for each side in the case should be examined and discussed. Key information should be listed as discussion proceeds so that it can be referred to at some later time. (SEE THE "SOURCES OF PROOF" CHARTS)
2. Credibility of witnesses is very important to a team's presentation of its case. As a result, students acting as witnesses need to really "get into" their roles and attempt to think like the persons they are playing. Students who are witnesses should read over their statements (affidavits) many times and have other members of the team ask them questions about the facts until they know them cold.
3. Student team members have primary responsibility for deciding what possible questions should be asked of each witness on direct and cross-examination. Questions for each witness should be written down and/or recorded.
4. The best teams generally have students prepare their own questions and responses, with the team-coach and attorney-advisor giving continual feedback and assistance. Based on the experience of these practice sessions, attorneys should revise their questions and witnesses should restudy the parts of their witness statements where they are weak.
5. Team members should also write out opening and closing statements. Legal and/or non-legal language should be avoided where its meaning is not completely understood by attorneys and witnesses.
6. Closing statements should not be totally composed before trial as they are supposed to highlight the important developments for the prosecution/plaintiff and the defense that have occurred during the trial. The more relaxed and informal such statements are, the more effective they are likely to be. Students should be prepared for interruptions by judges who like to question the attorneys.
7. As a team gets closer to the first round of the competition, it is advised to conduct at least one complete trial as a "dress rehearsal." All formalities should be followed and notes taken by the team-coach and students concerning how the team's presentation might be improved. A team's attorney-advisor should be invited to attend this session and comment on the enactment.
8. The ability of a team to adapt to different situations is often a key part in a mock trial enactment since each judge—or lawyer acting as a judge—has his or her own way of doing things. Since the proceedings or conduct of the trial often depend in no small part on the judge who presides, student attorneys and other team members should be prepared to adapt to judicial rulings and requests, even if they appear contrary to outlined contest procedures and rules.

Some of the things most difficult for team members to learn to do are:

- a. To decide which are the most important points to prove their side of the case and to make sure such proof takes place.
- b. To tell clearly what they intend to prove in an opening statement and to argue effectively in their closing statement that the facts and evidence presented have proven their case.
- c. To follow the formality of court, e.g., standing up when the judge enters or when addressing the judge, calling the judge “your honor,” etc.
- d. To phrase questions on direct examination that are not leading (carefully review the rules and watch for this type of questioning in practice sessions).
- e. Not to ask so many questions on cross-examinations that well made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions that often lessen the impact of points previously made. (Stop — recognize what questions are likely to require answers that will make good points for your side. Rely on the use of these questions. Avoid pointless questions!)
- f. To think quickly on their feet when a witness gives an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at the attorney or witness. (Practice sessions will help prepare for this.)

This section outlines various techniques and tips for preparing students to be witnesses in mock trials. Included are suggestions for both the preparation before trial and the presentation at trial of the opening statement, direct examination, cross-examination and the closing statement.

GENERAL SUGGESTIONS

- If you are going to testify about records, familiarize yourself with them before coming to trial.
- Do not try to memorize what you will say in court, but try to recall what you observed at the time of the incident.
- If asked whether you have discussed the case with anyone, you should indicate any occasion when you have talked with the prosecutor, the defense attorney, or anyone else.
- When answering questions, speak clearly so you will be heard. The court must hear and record your answer; therefore, do not respond by shaking your head.
- Listen carefully to the questions. Before you answer, make sure you understand what was asked. If you do not understand, ask that the question be repeated.
- Do not give your personal opinions or conclusions when answering questions unless specifically asked. Give only the facts, as you know them, without guessing or speculating. If you do not know, say you do not know.
- If you realize that you have answered a question incorrectly, ask the judge if you may correct your mistake.
- If the judge interrupts or an attorney objects to your answer, stop answering immediately. Likewise, if an attorney objects to a question, do not begin your answer until the judge tells you to continue.
- Be polite while answering the question. Do not lose your temper with the attorney questioning you.
- Always be courteous to witnesses, other attorneys, and the judge.
- Always stand when the judge enters or leaves the room.
- Dress appropriately (this may mean coat and tie for males and dresses or equivalent for females).
- Always say, “Yes, Your Honor” or “No, Your Honor” when answering a judge’s question.
- If the judge rules against you in the case, take the defeat gracefully and be cordial to the judge and the other side.

DIRECT EXAMINATIONS

Advice on Preparing:

- Learn the case inside and out, especially your witness statement or deposition.
- Know the questions that your side’s attorney will ask and prepare clear and convincing answers that contain the information that the attorney is trying to elicit from your testimony.
- Practice with the attorney.

Advice on Presenting:

- Be as relaxed and in control as possible. An appearance of confidence and trustworthiness is important.
- Do not read or recite your witness statement verbatim.
- Be sure that your testimony is never inconsistent with the facts set forth in your witness statement (or deposition).
- Do not panic if the attorney or judge asks you a question you have not rehearsed.

CROSS EXAMINATIONS

Advice on Preparing:

- Learn the case thoroughly, especially your witness statement.
- Anticipate what you will be asked on cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, inconsistencies and problems in your testimony and be prepared to explain them.
- Practice, practice, practice!

Advice on Presenting:

- Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.
- Be sure that your testimony is never inconsistent with the facts set forth in the your witness statement.
- Do not read or recite your witness statement word for word.
- Cross-examination can be tough, try not to get flustered.

IT IS ESSENTIAL THAT THE EXPERT MAINTAIN THE APPEARANCE OF IMPARTIALITY DURING CROSS EXAMINATION.

Often the opposing side's expert(s) will be present in the court during your testimony. Do not attempt to appeal to the opposing expert by compromising your opinion or qualifying in any way your background or educational experience.

An opinion offered by an expert witness should be given in the following manner:

During the direct examination:

- The factual basis should be laid out:
 - a) Witness describes his/her observations at the scene and uses his/her visual aids (diagrams, schematics, models, photographs);
 - b) In reviewing the factual basis upon which an opinion is based, a witness should draw the court's attention to those aspects of photographs and diagrams that relate directly to his/her opinion.
- Following the factual basis being given, a witness should state in summary fashion his/her opinion on the question(s) in issue;
- Following the statement of opinion, witness should in summary form, state what data s/he used in arriving at that opinion, whether s/he used accepted formula(s) if appropriate;
- Where the witness is giving more than one opinion, s/he should repeat the same steps above. Where more than one opinion is expressed, at the end of his/her evidence-in-chief, she/he should summarize his/her opinions.

During the cross-examination:

- The witness should ensure s/he does not hedge or qualify the opinion already given;
- In cross examination the witness should refrain from using the term, "my opinion";
- In cross-examination, if the answer to a question put to the expert requires an explanation, then s/he should ensure that the explanation is given.

NOTE:

1. In giving expert evidence remember the key is brevity and simplicity.
2. Always ensure that you have a full knowledge of the case – not just your part.
3. Know – in lay terms – the concepts behind the formula you use.
4. Ensure your exhibits are in order, well in advance of trial.

Accusations	Facts to Prove (See Jury Charge)	Witnesses/Exhibits Used to prove facts
1.	A. B. C. D.	1. 2.
2.	A. B. C. D.	1. 2.
3.	A. B. C. D.	1. 2.
4.	A. B. C. D.	1. 2.
5.	A. B. C. D.	1. 2.

1. Determine your accusations and/or rebuttals in the case (review documents)
2. Determine facts necessary to prove evidence (review the Jury Charge's discussion of the law)
3. Determine which witness or exhibit will prove which fact to the court

Rebuttals (to each charge)	Facts to Present (See Jury Charge)	Witnesses/Exhibits Rebut accusations
1.	A. B. C. D.	1. 2.
2.	A. B. C. D.	1. 2.
3.	A. B. C. D.	1. 2.
4.	A. B. C. D.	1. 2.
5.	A. B. C. D.	1. 2.

1. Determine your accusations and/or rebuttals in the case (review documents)
2. Determine facts necessary to prove evidence (review the Jury Charge's discussion of the law)
3. Determine which witness or exhibit will prove which fact to the court

P's Witnesses	Direct Examination	Cross Examination	Object
D's Witnesses	Direct Examination	Cross Examination	Object

1. Determine the order of witnesses
2. Assign duties for team attorneys