

Connecticut Middle School Mock Trial Competition Competition Rules

The Connecticut Middle School Mock Trial competition is co-sponsored by the Connecticut Consortium for Law & Citizenship Education, Inc. and the Connecticut Bar Association. The following people may be contacted for questions regarding these rules:

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Also, please visit the Middle School Mock Trial Forum for the latest news and answers to questions at:
<http://www.cclce.org/bbs/>

100. Teams

101. Each middle school may enter up to two teams in the competition. We must have a commitment that all teams registered will compete. Each team shall be composed of not less than six nor more than fourteen students (with extras). For any single round in the competition, three students shall act as attorneys and three students shall act as witnesses. Thus, on larger teams, some students will be observers for a given round. PLEASE NOTE MINIMUM NUMBER OF STUDENTS IS SIX.

102. Coaches: Each team shall work with their school's teacher and a practicing attorney (or attorneys) to prepare for competition. Coaches may attend their team's competitions but may not give advice or signals to their team during the competition.

103. Judges: There will be an attorney judge for each trial, to be chosen by the Mock Trial Regional Coordinators. The Committee shall endeavor to find judges who are impartial to either competing school.

200. Competition Format

201. Roles: Teams must be prepared to present both sides of the case. There will be two trials for each school at the regional level, and teams will switch sides (plaintiff's case or defendant's case) for each round. Members within a team may reverse roles at different rounds so that witnesses may serve as attorneys at another round.

202. Delay of Trial: The failure of a team to report promptly at the assigned time should be reported to the judge, who will notify the competition staff. A team arriving more than 15 minutes late may forfeit the round.

203. Viewing of Enactments: Team members (including coaches, understudy witnesses and attorneys, etc.) may not view other teams in competition so long as they remain in the competition themselves. A video or audio tape recording of a team's mock trial proceedings is permitted so long as it is acceptable to all participants involved. The cost of such recording must be borne by the school(s) involved and may not be charged to the Consortium.

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204. Competition: Assignments in the competition will be done by the Mock Trial Committee.

206. Semi-Final Competition: All teams winning both sides of the trial will advance to this round.

207. Final Round—Between the top two teams. Will be held in January.

300. Facts in Trial Enactments

301. Statement of Facts: Each team will receive a Statement of Facts (including witness affidavits and stipulations) at the Orientation meeting. These facts may not be disputed or changed at trial.

302. Witnesses and Affidavits: Witnesses may not use notes while testifying at trial. Each witness is bound by his or her written statement. A witness is not bound by facts contained in other witnesses' statements. **ALL WITNESSES MUST TESTIFY** - that is, you cannot choose NOT to call a witness. Coaches must notify their opponents in advance of the trial concerning changes in name or sex of a particular witness.

303. Inferences from Affidavits: The teams are limited to facts in the record and any reasonable inferences therefrom. The teams cannot make up new facts or introduce exhibits other than those provided to them as part of the problem. At the same time, however, a team may make and argue any reasonable inferences from the facts in the record. If an attorney's question or a witness's answer violates this rule, the opposing attorney may object and ask the court for a bench conference to decide whether the testimony is a reasonable inference from the record. **(See Rules 701 and 702 of the Modified Rules of Evidence for further discussion.)**

304. Stipulated materials: For Mock Trial purposes all witness statements contained in the case materials have already been stipulated as admissible evidence. This means that both sides have Agreed that all statements are admissible. **(See Rule 601 of the Modified Rules of Evidence.)**

400. Research and Resources

401. Case Materials for Competition: During the trial, teams may use only those exhibits, court rules, statutes, and cases provided in the official competition case materials. Neither team may submit briefs to the Court.

402. Further Study: Teams may read other cases, statutes, and materials to add to their understanding of the problem and strategies others have used in similar situations.

500. Roles in the Competition

501. Attorneys: Attorneys control the presentation of evidence at trial and argue the merits of their side of the case. They do not themselves supply information about the facts of the case. Instead, they introduce evidence and question witnesses to bring out the full story. Attorneys must be sufficiently familiar with the witnesses' statements to recognize instances when testimony contradicts or extrapolates upon the affidavit in violation of Rule 303.

Attorneys research the case by reviewing the case materials supplied for the competition and plan their team's strategy for presenting evidence. Attorneys help witnesses study their roles and prepare their testimony. Attorneys may use notes in presenting their cases (opening statements, direct and cross-examination, objections and closing arguments).

Each team must examine each witness, either on direct or on cross-examination, as appropriate. Each of the three attorneys on a team must engage in the direct examination of one witness and the cross-examination of another. An attorney for a team presenting the opening statement may NOT make the closing arguments.

502. Witnesses: Witnesses tell the court the facts in the case. Each witness must follow Rule 303 to the best of his or her ability. Each team must see that their witnesses are thoroughly prepared and familiar with their roles and must call all of its assigned witnesses. Teams may not call any "surprise" witnesses (witnesses whose testimony is not outlined in the case materials.) Witnesses may NOT use notes in testifying during the trial. Witnesses may NOT sit with the attorneys or communicate during the trial, but shall stay in the courtroom at all times during the proceedings.

503. Bailiff: The Bailiff assists the judge in conducting the trial by opening court, swearing in witnesses, and serving as timekeeper. The bailiff should have a stopwatch for timekeeping and keep a record of the time used by each side on the official time sheet. The bailiff will indicate that a team has 2 minutes, 1 minute and no time remaining in a category by holding up a sign. IT IS THE RESPONSIBILITY OF EACH SCHOOL TO BRING ONE PERSON TO ACT AS BAILIFF (can be a student).

504. Judges: THE DECISIONS OF THE JUDGES ARE FINAL. During the trial the judges will evaluate the quality of a team's presentation, including the performance of ALL witnesses and attorneys. At the end of the trial, the judges will issue a decision as to which team made the better presentation in light of all the evidence and will discuss the case with the students if time allows. No ties will be allowed. Ballots will be given to teams and coaches after completion of the round with the name of the judge removed.

600. Courtroom Decorum

601. Courtesy Toward Judges: All participants should rise when a judge enters or exits the courtroom. Judges should be addressed as "Your Honor," even when making an objection. Request the court's permission to approach a witness or the bench. Do not interrupt or argue with the judge.

602. Courtesy Toward Witnesses: Do not intimidate or insult witnesses. Avoid confusing witnesses with verbose or convoluted questions. Do not insinuate facts which your team will not present evidence to support. For example, do not ask an opposing witness "have you been released yet from treatment by a psychiatrist for being a habitual liar?" unless you have evidence that this is true.

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603. **Courtesy Toward Attorneys:** The judges may not interrupt an attorney's opening or closing statement. Attorneys should avoid frivolous objections. Direct all your remarks to the judge or the witness, not to opposing counsel. For example, when making an objection, say "Your Honor, I object on the ground that..." rather than saying "Attorney Dumkoff, you know that evidence is hearsay!"

605. **Personal Appearance:** Personal appearance (clothing, grooming, etc.) creates an impression. Participants, both witnesses and attorneys, should consider the impression they wish to make. Avoid distracting habits such as gum-chewing, pencil-tapping, or nervous fidgeting.

606. **No food or beverages should be brought to any courthouse.**

607. **Be courteous during security checks.**

700. Courtroom Procedures

701. **Opening Court:** When the Judge enters the courtroom, the Bailiff shall open court by saying: "All Rise. The Superior Court for the State of Connecticut is now open and in session, the Honorable Judges _____ presiding. All persons having due cause of action herein, draw near and give attention according to law. You may be seated."

702. **Call of the Calendar:** The Judge will announce the name of the first case and ask if the parties are ready:
"The first matter on today's docket is _____. Is the Plaintiff ready? (Plaintiff's attorney answers "Ready, Your Honor"). Is the Defense ready? (Defense's attorney answers "Ready, Your Honor"). "You may proceed."

703. **Opening Statements (4 minutes per team):** In the opening statement, the Plaintiff/Prosecution, followed by the Defense, introduces the members of their teams and outlines the case as they intend to present it; introducing a team's members; highlighting key testimony; describing the relief requested.
"Your Honor, my name is _____ attorney for Mr./Ms. _____, the (Plaintiff/Defendant). My colleagues are _____, _____, and _____."

704. **Direct Examination by the Plaintiff/Prosecution (6 minutes per witness).** Plaintiff's attorneys conduct direct examination of their own witnesses to bring out the facts of the case.
"Your Honor, I would like to call Fran Witness to the stand." (Bailiff swears in the witness by asking the following: "Do you solemnly swear or affirm that the testimony you may give in the cause now pending before this Court shall be the truth, the whole truth and nothing but the truth according to the Mock Trial Rules?" The witness takes the oath or affirmation by saying: "I do.")

705. **Cross-Examination by Defense. (6 minutes per witness).** After the direct examination of a witness for the Plaintiff/Prosecution, a defense attorney cross-examines the witness in order to show the weaknesses in his or her testimony and test the witness's credibility. You may show inconsistencies in the witnesses' statements, bias, or try to secure admissions which help your case.

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706. Redirect Examination: Following the Cross-examination, the Plaintiff/Prosecution attorney who did the direct may ask **three questions** to "rehabilitate" the witness, to explain any damaging admissions, or to reestablish the testimony. The attorney cannot ask questions about facts not already brought out during the cross examination.

707. Re-Cross Examination: Again, the defense attorney may ask **three questions** to recross examine the witness on points brought out during redirect examination.

708. Direct Examination by Defense (6 minutes per witness): After the Plaintiff's team has presented all of its witnesses, the Defense may present its witnesses, which are examined following the same format as Rules 705, 706 and 707 above.

709. Closing Arguments (4 minutes per team): The Defense, followed by the Plaintiff / Prosecution, summarizes the case in the light most favorable to their respective positions, with reference to testimony which supports their case and relevant case and statutory provisions.

710. Verdict: The Judges will retire (leave the courtroom) to review their notes and to reach a decision. **The decision of the judge is final.**

HINTS ON PREPARATION FOR A MOCK TRIAL TOURNAMENT

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

All students should read the entire set of materials, and discuss the information/procedures and rules used in the mock trial contest.

The facts of the case, witnesses' testimony, and the points for each side in the case then should be examined and discussed. Key information should be listed on the chalkboard as discussion proceeds so that it can be referred to at some later time.

Even though a school team has to represent only one side in the case during any single round of the competition, all roles in the case should be assigned and practiced. This will help in practicing the case as well as preparing for future rounds.

The credibility of the 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 or their class ask them questions about the facts until they know them "cold."

Based on the experiences obtained through several years of mock trial competitions, we have found that the best teams generally had the students prepare their own questions, with the teacher-coach and attorney-advisor giving the team continual feedback and assistance on the assignment as it was completed. 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.

Opening statements should also be written by team members. Legal and/or non-legal language should be avoided where its meaning is not completely understood by attorneys and witnesses.

Closing arguments should not be totally composed before the trial, as they are supposed to highlight the important developments for the plaintiff and the defense which 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, especially during the closing argument.

As a team gets closer to the final round of the contest, the tournament requires that it conduct at least one complete trial as a "dress rehearsal." All formalities should be followed and notes taken by the teacher 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.

The ability of a team to adapt to different situations is often a key component 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.

TRIAL SETTING

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom, as well as the events that generally take place during the exercise and the order in which they occur. This section outlines the usual steps in a "bench" trial - - that is, a trial without a jury.

COURTROOM LAYOUT

JUDGE

BAILIFF

WITNESS STAND

JURY BOX

DEFENDANT'S TABLE

PLAINTIFF'S TABLE

AUDIENCE SEATING

PARTICIPANTS

The Judge

The Attorneys

- Plaintiff - Defendant (Civil Case) Prosecution
- Defendant (Criminal Case)

The Witnesses

- Plaintiff - Defendant (Civil Case)
- Prosecution - Defendant (Criminal Case)

STEPS IN A MOCK TRIAL

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 participants should rise and remain standing until the judge is seated.

The case will be announced ... i.e., "The Court will now hear the case of _____ v. _____."

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

Opening Statements

1. Plaintiff (in a civil case)
Prosecution (in a criminal case)

After introducing himself/herself and colleagues to the judge, the plaintiff's attorney in a civil case (or prosecutor in a criminal case) summarizes the evidence which will be presented to prove the case.

2. Defendant (in a civil or criminal case)

After introducing himself/herself and colleagues to the judge, the defendant's attorney in a civil or criminal case, summarizes the evidence for the Court which will be presented to rebut the case the plaintiff/prosecution has made.

Direct Examination by Plaintiff/Prosecution

The plaintiff/prosecution's attorneys conduct direct examination (questioning) of each of its own witnesses. At this time, testimony and other evidence to prove the plaintiff/prosecution's case will be presented. The purpose of direct examination is to allow the witness to narrate 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 away that might violate this rule.

Cross Examination by the Defense Attorneys

After the attorney for the plaintiff/prosecution has completed questioning a witness, the judge then allows the defense attorney to cross examine the witness. The cross examiner seeks to clarify or cast doubt upon the testimony of the opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through the use of effective cross examination.

Redirect Examination by Plaintiff/Prosecution

The Plaintiff/Prosecution's attorneys may conduct redirect examination of its witnesses to clarify any testimony that was cast in doubt or impeached during cross examination.

Recross Examination by the Defense Attorneys

The defense attorneys may recross examine the opposing witness to impeach previous testimony.

Direct Examination by Defense Attorneys

After the plaintiff/prosecution has presented its case, the defense attorneys conduct direct examination (questioning) of each of their own witnesses. At this time, testimony and other evidence to prove the defendant's case will be presented. The purpose of direct examination is to allow the witness to narrate the facts in support of the case.

Cross Examination by the Plaintiff/Prosecution Attorneys

After the attorney for the defense has completed questioning a witness, the judge then allows the plaintiff/prosecution attorney to cross examine the witness. The cross examiner seeks to clarify or cast doubt upon the testimony of the opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through the use of effective cross examination.

Redirect Examination by Defense Attorneys

The defense may conduct redirect examination of its witnesses to clarify any testimony that was cast in doubt or impeached during cross examination.

Recross Examination by the Plaintiff/Prosecution Attorneys

The plaintiff/prosecution may recross examine the opposing witness to impeach previous testimony.

Closing Arguments for the Defense

The attorney for the defense summarizes the case in a light most favorable for their side, with reference to testimony which supports their case, and relevant case and statutory provisions.

Closing Arguments for the Plaintiff/Prosecution

The attorney for the plaintiff/prosecution summarizes the case in a light most favorable for their side, with reference to testimony which supports their case, and relevant case and statutory provisions.

Modified Rules of Evidence and Procedure

In trials in federal and state courts in the United States, formal rules regulate the admission of and exclusion of evidence (what evidence can and cannot be presented in court). Evidence may be testimonial (a witness' testimony) or physical (documents, objects, photographs, etc.). The rules of evidence are designed to ensure that both parties receive a fair trial and to exclude any evidence that is irrelevant, untrustworthy, or unduly prejudicial.

Because of their complexity, for purposes of this mock trial competition, the rules of evidence have been modified and simplified as follows:

I. Scope of These Rules

Rule 101: Scope. These rules govern all proceedings in Mock Trial competition. The only rules of evidence to be considered in the competition are those included in these rules.

Rule 102: Objections. An objection which is not based upon these rules shall not be considered by the court (the judge).

II. Relevancy

Rule 201: Relevancy. Only relevant evidence is admissible. Relevant evidence is evidence (physical or testimonial) which tends to make the existence of a fact which is important to type case more or less probable than the fact would be without the evidence. However, relevant evidence may be excluded by the court if it is unfairly prejudicial, may confuse the issues, or is a waste of time. Evidence which is not relevant is not admissible.

Examples

1. *Relevant evidence:* In a lawsuit by Driver B for personal injuries sustained in a car accident at an intersection, testimony that Driver A ran a red light is relevant because it tends to prove that Driver A was at fault in causing the accident, and fault is an issue that is important to the case.
2. *Relevant evidence that may be excluded because it is unfairly prejudicial:* A plaintiff presents a cola picture of himself/herself after an accident which depicts gruesome, bloody injuries. Although the picture is relevant to show the existence and nature of the plaintiff's injuries, it may be found to be unfairly prejudicial if it is likely to inflame feelings of anger and sympathy to such an extent that a fair decision is jeopardized. Evidence that is extremely helpful to one side is not the same as evidence that is unfairly prejudicial.
3. *Relevant evidence that may be excluded because a waste of time:* Testimony about any matter that has already been fully presented through other evidence.
4. *Irrelevant evidence:* Testimony that Driver A has donated money to many charities when the only issue in the case is who caused a car accident.

Rule 202: Character. Evidence about the character of a party or witness, other than his/her character for truthfulness or untruthfulness, may not be introduced. Evidence about the character of a party for truthfulness or untruthfulness is only admissible if the party testifies.

Examples

1. *Inadmissible character evidence:* Testimony that a student has a reputation as a heavy drinker.
2. *Admissible character evidence:* Testimony by witness B that witness A has told lies on several occasions.

III. Witness Examination

A. Direct Examination (attorney questions witness s/he has called to the stand)

Rule 301: Direct Examination - Form of Questions. Witnesses should be asked neutral questions and may not be asked leading questions on direct examination. Neutral questions are open-ended questions that do not suggest the answer and that usually invite the witness to give a narrative response. A leading question is one that suggests to the witness the answer desired by the examining attorney and often suggests a "yes" or "no" answer.

Examples

1. Proper direct examination questions:
 - a. What did you see?
 - b. What happened next?
 - c. Were you speeding?
2. Leading questions (not permitted on direct):
 - a. Isn't it true that you saw the defendant run into the alley?
 - b. After you saw the defendant run into the alley, you called the police, correct?

Rule 302: Scope of Direct Examination. On direct examination an attorney may inquire as to any relevant facts of which the witness has first-hand, personal knowledge.

Rule 303: Refreshing Recollection. If a witness is unable to recall information contained in his/her witness statement or contradicts the witness statement, the attorney calling the witness may use the witness statement to help the witness remember.

Example

Witness cannot recall what happened after the defendant ran into the alley or contradicts witness statement on this point:

1. Mr./Ms. Witness, do you recall giving a deposition in this case?
2. Your Honor, may I approach the witness? (Permission is granted.) I'd like to show you a portion of the summary of your deposition, and ask you to review the first two paragraphs on page three.

3. Having had an opportunity to review your statement, do you now recall what happened after the defendant ran into the alley?

B. Cross Examination (attorney questions witness called by other side following the direct examination)

Rule 304: Cross-Examination - Form or Questions. An attorney should usually, if not always, ask leading questions when cross-examining the opponent's witnesses. Open-ended questions tending to evoke a narrative answer, such as "why" or "explain" should be avoided. (Leading questions are not permitted on direct examination because it is thought to be unfair for an attorney to suggest answers to a witness whose testimony is already considered to favor that attorney's side of the case. Leading questions are encouraged on cross-examination because witnesses called by the opposing side may be reluctant to admit facts that favor the cross-examining attorney's side of the case.) However, it is not a violation of this rule to ask a non-leading question on cross-examination.

Examples

1. *Good leading cross-examination question:*

Isn't it true that it was almost completely dark outside when you say you saw the defendant run into the alley?

2. *Poor cross-examination question:*

How dark was it outside when you saw the defendant run into the alley?

Rule 305: Scope of Cross-Examination. Attorneys may only ask questions that relate to matters brought out during direct examination or to matters relating to the witness' credibility or believability. The presiding judge may allow an attorney to expand the scope of cross-examination.

Rule 306: Impeachment. On cross-examination the cross-examining attorney may impeach the witness. Impeachment is a cross-examination technique used to demonstrate that the witness should not be believed. Impeachment is accomplished by asking questions which demonstrate either (1) that the witness has now changed his/her story from statements or testimony given by the witness prior to the trial, or (2) that the witness' trial testimony should not be believed because the witness is a dishonest and untruthful person.

Impeachment differs from the refreshing recollection technique. Refreshing recollection is used during direct examination to steer a favorable, but forgetful, witness back onto the beaten path. Impeachment is a cross-examination technique used to discredit a witness' testimony.

Example

1. *Impeachment with prior insistent statement:*

Attorney: Mr. Jones, you testified on direct that you saw the two cars *before* they actually collided, correct?

Witness: Yes.

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Attorney: You gave a deposition in this case a few months ago, correct?

Witness: Yes.

Attorney: Before you gave that deposition you were sworn by the court reporter to tell the truth, weren't you?

Witness: Yes.

Attorney: Mr. Jones, in your deposition, you testified that the first thing that drew your attention to the collision was when you heard a loud crash, isn't that true?

Witness: I don't remember ever saying that.'

Attorney: Your Honor, may I approach the witness? (Permission is granted.) Mr. Jones, I'm handing you the summary of your deposition and I'll ask you to read along as I read the second full paragraph on page two, "I heard a loud crash and I looked over and saw that he two cars had just collided. This was the first time I actually saw the two cars." Did I read that correctly?

Witness: Yes.

Attorney: Thank you Mr. Jones. No further questions, Your Honor.

2. *Impeachment with prior dishonest conduct:*

Attorney: Student X, isn't it true that last fall you were suspended from school for three days for cheating on a test?

Witness: Yes.

Rule 307: Impeachment by Evidence of a Criminal Conviction. For the purpose of attacking the credibility of a witness, evidence that he/she has been convicted of a crime shall be admitted, but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the value of this evidence as reliable proof outweighs its prejudicial effect to a party.

Example

Attorney: Is it true that you have been convicted of assault?

C. Redirect Examination (questions asked after the cross-examination, by the attorney who called the witness)

Rule 308: Redirect Examination. After cross-examination, up to three, but no more than three additional questions may be asked by the direct examining attorney, but such questions are limited to matters raised by the opposing attorney on cross-examination. Just as on direct examination, leading questions are not permitted on redirect.

Comment: If the credibility or reputation for truthfulness of the witness has been attacked successfully on cross-examination, the attorney whose witness has been damaged may wish to ask questions on redirect which will allow the witness to "rehabilitate" himself~herself (save the witness' truth-telling image). Redirect examination may also be used to strengthen a positive fact that was weakened by the cross-examination. Redirect examination is not mandatory. A good rule to follow is: if it isn't broken, don't fix it.

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Examples

1. *Cross-Examination of physician called by prosecution in murder case:*

Attorney: Doctor, you testified on direct that the decedent died of arsenic poisoning, correct? Witness:
Attorney: Isn't it true that you have a deposition in which you testified that you did not know the cause of death?
Witness: Yes, that's true.
Redirect:
Attorney: Doctor, why did you testify in your deposition that you did not know the decedent's cause of death?
Witness: I had not yet received all of the test results which allowed me to conclude that the decedent died of arsenic poisoning.

2. *Cross Examination:*

Attorney: Doctor, isn't it true that the result of test X points away from a finding of arsenic poisoning?
Witness: Yes.
Redirect:
Attorney: Doctor, why did you conclude that the decedent died of arsenic poisoning even though test X pointed away from arsenic poisoning?
Witness: Because all of the other test results so overwhelmingly pointed toward arsenic poisoning, and because test X isn't always reliable.

Comment: Neither one of these redirect examinations should have been conducted unless the attorney had a fairly good idea of what the witness' response would be. As a general rule, it is not advisable to ask a question if you have no idea what the answer will be.

D. Recross-Examination (questions asked by the cross-examining attorney after redirect)

Rule 309: Recross-Examination. After redirect, up to three, but no more than three, additional questions may be asked by the cross-examining attorney, but such questions are limited to matters raised on redirect examination. Recross is not mandatory and should not be used simply to repeat points that have already been made.

Example

Assume the cross-examination and redirect examination set forth in the example under Rule 308 above have occurred. A good Recross-examination would be the following:

Attorney: Doctor, isn't it true that when you gave your deposition you had received all of the test results except the result of test X?
Witness: Yes, that's true.

Comment The cross-examining attorney would then argue in closing argument that the doctor testified in his deposition that he did not know the cause of death at the time of his deposition and that the only test result received after the deposition was text X, which pointed away from arsenic poisoning.

IV. Hearsay

A. The Rule

Rule 401: Hearsay. Any evidence of a statement made out of court by someone other than the witness testifying, which is offered to prove the truth of the matter asserted in the out-of-court statement; is hearsay and is not admissible.

Example

1. Witness X testifies that "Mrs. Smith said that the decedent's wife had a bottle of arsenic in her medicine cabinet." This testimony is inadmissible if offered to prove that the deceased's wife had a bottle of arsenic in her medicine cabinet, since it is being offered to prove the truth of the matter asserted in the out-of-court statement by Mrs. Smith. If, however, the testimony is offered to prove that Mrs. Smith can speak English, then the testimony is not hearsay because it is not offered to prove the truth of the matter asserted in the out-of-court statement. However, the testimony is only admissible if Mrs. Smith's ability to speak English is relevant to the case.

Comment: Why should the complicated and confusing condition be added that the out-of-court statement is only hearsay when "offered for the truth of the matter asserted"? The answer is that hearsay is considered untrustworthy because the speaker of the out-of-court statement has not been placed under oath and cannot be cross-examined concerning the statement or concerning his/her credibility. In the previous example, Mrs. Smith cannot be cross-examined concerning her statement that the decedent's wife had a bottle of arsenic in her medicine cabinet, since witness X, and not Mrs. Smith has been called to give this testimony. However, witness X has been placed under oath and can be cross-examined about whether Mrs. Smith actually made this statement, thus demonstrating that she could speak English. When offered to prove that Mrs. Smith could speak English, witness X's testimony about her out-of-court statement is not hearsay.

B. Exceptions to Hearsay Rule

Rule 402: Hearsay Exceptions. The following, which would otherwise fall within the definition of hearsay, are not excluded from evidence by the hearsay rule:

Admission Against Interest. Hearsay is admissible if the out-of-court statement was made by a party in the case and contains evidence which goes against that party's side. Admissions against interest are permitted because they are thought to be more trustworthy than other hearsay, since people generally do not make statements that are against their own interest, unless they are true.

Examples

1. Witness X testifies that the defendant said she killed her husband.
2. Witness X testifies that after the accident, the plaintiff said he ran the red light.

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Excited Utterance. A statement relating to a startling event or condition made out of court by someone other than the witness testifying, which was made under the stress of excitement caused by the event or condition.

Example

1. Witness X testifies that Mrs. Smith opened the medicine cabinet and said, "Oh my God!"

Statements for Purposes of Medical or Psychological Diagnosis or Treatment. A statement made to a physician or psychological counselor that assists the physician or counselor in arriving at a diagnosis or conclusion about the patient's condition and/or that assists the physician or counselor in prescribing a course of treatment for the patient.

Example

1. Patient tells physician that he has had stomach pain for three days. The physician may testify that this is what the patient said.

State of Mind. A judge may admit hearsay evidence if a person's state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person's state of mind.

V. Opinion Testimony

Rule 501: Opinion Testimony by Non-Experts. For mock trial purposes, most witnesses are non-experts. If a witness is testifying as an expert, the witness' testimony in the form of opinions is limited to opinions which are rationally based on what the witness saw or heard and which are helpful in explaining the witness' testimony. Non-experts (lay witnesses) are considered qualified to reach certain types of conclusions or opinions based on what they see or hear. Generally, lay witnesses may give opinions about matters which do not require experience or knowledge beyond that of the average lay person. Note, however, that the opinion must be *rationally* based on what the witness saw or heard and must be helpful in understanding the witness' testimony.

Examples

1. Witness X, a non-expert, may testify that the defendant appeared to be under the influence of alcohol. However, it must be shown that this opinion is rationally based on witness X's observations by bringing out the facts underlying the opinion, e.g., the defendant was stumbling; his breath smelled of alcohol; his speech was slurred. If witness X thinks the defendant was under the influence because he had a strange look in his eye, then the opinion should not be permitted since it is not rational.
2. Witness X, a non-expert, may not testify that in his opinion the decedent died of arsenic poisoning, since this is not a matter that is within the general knowledge of lay persons. Only an expert, such as a forensic pathologist, is qualified to render such an opinion.

Rule 502: Opinion Testimony by Experts. Only persons who are shown to be experts at trial may give opinions on questions that require special knowledge beyond that of ordinary lay persons. An expert must be qualified by the attorney for the party for whom the expert is testifying. This means that before the expert witness can be asked for an expert opinion, the questioning attorney must bring out the expert's qualifications and experience. This is usually accomplished by asking the expert himself/herself about his/her background, training and experience.

Example

Attorney: Doctor, please tell the jurors about your educational background.
Witness: I attended Harvard College and Harvard Medical School.

Attorney: Do you practice in any particular area of medicine?
Witness: I am a board-certified forensic pathologist. I have been a forensic pathologist for 28 years.

VI. Physical Evidence

Rule 601: Introduction of Physical Evidence. Physical evidence (objects) must be relevant and authentic (shown to be what they appear to be) in order to be admissible. For mock trial purposes, all exhibits contained in the case materials have already been stipulated as admissible evidence and should not be altered to give either side an unfair advantage. This means that both sides have agreed that all exhibits are admissible. Therefore, it is not necessary to demonstrate through a witness' testimony that an exhibit is relevant or that it is authentic, nor is it necessary to seek a ruling from the court that the physical evidence is admissible. Exhibits are generally presented to the court through witness testimony.

Example

Attorney: Your honor, may we please have this marked as Plaintiff's Exhibit 1 (or Defendants Exhibit A)? (Exhibit is marked.) Let the record reflect that I am showing Plaintiff's Exhibit 1 (or Defendant's Exhibit A) to opposing counsel. (Exhibit is shown to opposing counsel.)
Your Honor, may I approach the witness?
The Court: You may.

Attorney: Witness X, I'm showing you what has been marked as Plaintiff's Exhibit 1. Do you recognize that exhibit?
Witness: Yes.

Attorney: Could you explain for the Court what that is?
Witness: It's a picture I took of the accident scene. (At this point, the attorney may ask the witness any additional relevant questions about the exhibit, and then give it to the judge).

VII. Invention of Facts and Extrapolation (special rules for Mock Trial competition)

The object of these rules is to prevent a team from "creating" facts not in the material to gain an unfair advantage over the opposing team.

Rule 701: Invention of Facts - Direct Examination. On direct examination the witness is limited to the facts given in the case materials. If the witness goes beyond the facts given (adds new facts or speculates about facts), the testimony may be objected to by opposing counsel as speculation or as invention of facts outside the case materials. If a witness testifies *in contradiction* of a fact given in the witness statement, opposing counsel should impeach witness' testimony during cross-examination.

Rule 702: Invention of Facts - Cross-Examination. If on cross-examination a witness is asked a question, the answer to which is not contained in the facts given, the witness may respond with any answer, so long as it is responsive to the question, does not contain unnecessary elaboration beyond the scope of the witness statement, and does not contradict the witness statement. An answer which is unresponsive or unnecessarily elaborate may be objected to by the cross-examining attorney. An answer which is contrary to the witness statement may be impeached by the cross-examining attorney.

VIII. Additional Rules of Evidence

Rule 801: Non-Responsive Answer. A witness' answer is objectionable if it fails to respond to the question asked.

Example

Attorney: Isn't it true that you hit student B?
Witness: Student B hit me first. S/he was asking for it, acting like a jerk and humiliating me in front of all my friends.

Attorney: Your Honor, I move to strike the witness' answer as non-responsive and ask that s/he be instructed to answer the question asked. (Another option is to impeach the witness with prior testimony if s/he testified in his/her deposition that s/he hit student B).

Rule 802: Lack of Personal Knowledge. A witness may not testify on any matter of which the witness has no personal knowledge. Personal knowledge means what the witness did, said, saw, heard, or otherwise perceived.

Example

1. If Witness X did not personally see arsenic in the medicine cabinet of the decedent's wife, he cannot testify that she had arsenic in her medicine cabinet. (This testimony would be based on his assumption from other facts, based on speculation, or based on what someone else told him, and not upon his own personal observations).

IX. Procedural Rules

Rule 901: Procedure or Objections. An attorney may object if s/he believes that the opposing attorney is attempting to introduce improper evidence or is violating the modified rules of evidence. The attorney wishing to object should stand up and object at the time of the claimed violation. The attorney should state the reason for the objection. It is not necessary to cite by rule number the specific rule of evidence that has been violated. (Note: Only the attorney who questions a witness may object to the questions posed to that witness by opposing counsel.) The attorney who asked the question may then make a statement about why the question is proper. The judge will then decide

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whether a question or answer must be discarded because it has violated a modified rule of evidence ("objection sustained"), or whether to allow the question or answer to remain in the trial record ("objection overruled"). Objections should be made as soon as possible; however, an attorney is allowed to finish his/her question before an objection is made. Judges may make rulings that seem wrong to you. Also, different judges may rule differently on the same objection. Always accept the judge's ruling graciously and courteously. Do not argue the point further after a ruling has been made.

The following are examples of common objections. (This is not a complete list. Any objection properly based on these modified rules of evidence is permitted):

- A. *Irrelevant evidence*: "Objection. This testimony is irrelevant."
- B. *Irrelevant evidence that should be excluded*: "Objection. This evidence is unfairly prejudicial (or a waste of time) and should be excluded because
- C. *Leading question*: "Objection. Counsel is leading the witness." (Remember, leading is only objectionable when done on direct or redirect examination.)
- D. *Improper character testimony*: "Objection. This is testimony about character that does not relate to truthfulness or untruthfulness."
- E. *Beyond the scope of direct, cross or redirect*: "Objection. Counsel is asking the witness about matters that were not raised during the direct (or cross or redirect) examination."
- F. *Hearsay*: "Objection. Counsel's question calls for hearsay." If a hearsay response could not be anticipated from the question, or if a hearsay response is given before the attorney has a chance to object, the attorney should say, "I ask that the witness' answer be stricken from the record on the basis of hearsay."
- G. *Improper opinion*: "Objection. Counsel is asking the witness to give an expert opinion, and this witness has not been qualified as an expert." OR, "Objection. Counsel's question calls for an opinion which would not be helpful to understanding the witness testimony (or which' is not rationally based upon what the witness perceived)."
- H. *Invention of facts*: "Your Honor, we object on the basis that opposing counsel's question seeks evidence that is outside the record in this case. Witness X has never given testimony in this case concerning. . ." If the witness gives testimony on direct that is beyond the scope of the materials, the cross-examining attorney should say "move to strike the testimony concerning... as beyond the scope of the case materials."
- I. *Lack of personal knowledge*: "Objection. The witness has no personal knowledge that would allow him to answer this question."

Rule 902: Motions to Dismiss. Motions for directed verdict or dismissal of the case are not permitted.

Rule 903: Closing Arguments. Closing arguments must be based on the evidence and testimony presented during the trial.

State of New Justice v. Chris Matthews

Mock Trial Statement of Stipulated Facts

1. The city of Banks is the state capitol and largest city in New Justice. The Banks
2. River runs through the center of the city, and a majority of the riverbank is
3. comprised of public parks. There are, however, some private developments
4. along the river. Approximately 20 years ago the city annexed 30 feet of property
5. along the bank of the river within the city limits for the development of a
6. greenbelt on both sides of the river. This greenbelt stretches for 30 miles along both
7. banks. Because of the private developments, there are some stretches where private
8. property restricts access to the greenbelt.

9. In response to complaints from property owners about greenbelt users cutting
10. across their yards, the city has recently passed a specific trespassing ordinance
11. and posted “No Trespassing” signs at the edge of the path where the greenbelt
12. meets private properties. The city has engaged in a public relations campaign
13. reminding people to avoid cutting across private property to access the greenbelt.
14. They are instead encouraged to use public access paths. Admittedly, the city does
15. not actively enforce the municipal ordinance.

16. One particular development that abuts the greenbelt for a three-mile stretch is the
17. Haycock development. This is the most prestigious development in Banks. All
18. lots in the development are in excess of an acre and homes are valued in the
19. millions of dollars.

20. Some of the most prominent members of Banks reside in the Haycock
21. development, including Chris Matthews, who has a home on the banks of the river,
22. and Daniel/Danielle (Danny/Dani) Jones, who lived across the street from Chris. Both
23. Chris Matthews and Danny/Dani Jones are natives of Banks, but they took far different
24. paths to celebrity status. Chris Matthews graduated at the top of his/her class from
25. Banks High School and enrolled at Massachusetts Institute of Technology (MIT). After
26. graduation from MIT, Chris started a computer software company. The company
27. was successful beyond anyone’s wildest imagination, developing operating
28. software now used in every personal computer around the world. Chris retired at
29. age 29, a multi-billionaire, to travel extensively, but maintains a main residence in Banks.

30. The other prominent resident of Haycock prior to his/her death was Danny/Dani Jones.
31. Danny/Dani graduated from Banks High School the same year as Chris Matthews.
32. While in high school, Danny/Dani excelled in various athletics and was the state player
33. of the year in soccer his/her senior year. Danny/Dani committed to go to college at Duke
34. to play soccer, but didn’t get the scholarship he/she wanted because of low grades.
35. Consequently, Danny/Dani went right from high school to the professional soccer
36. league.

37. In that league, Danny/Dani excelled and became a nationally recognized athlete.

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38. Danny/Dani also endorsed several products worldwide. However, in recent years
39. Danny/Dani's status had been slipping, and it was rumored that he/she might be traded or
40. even cut next year if he/she did not agree to a salary cut.

41. On August 10, Sgt. Kim Davis was dispatched at 1820 hours to 912 River Street
42. in response to a domestic disturbance call. Upon arriving at the residence of
43. Chris Matthews, Sgt. Davis discovered a person, later identified as Danny/Dani Jones,
44. being attacked by a Rottweiler. Sgt. Davis was unable to draw the dog away
45. from the victim, and fearing for the victim's safety, she/he shot the dog. Forensic
46. examination determined the dog died within minutes. The victim was
47. unconscious with severe lacerations to his head and neck. Paramedics were
48. called, but the victim was pronounced dead on arrival at Banks Memorial
49. Hospital. Sgt. Davis made contact with the owner of the residence where the attack
50. occurred, Chris Matthews, who allegedly gave a statement to Sgt. Davis.

Evidence

1. Exhibit 1 – A faithful reproduction of the diagram of the Haycock development, created by Sgt. Davis the day after the incident, contained in the packet.
2. Exhibit 2—A faithful reproduction of the No Contact Order contained in the packet. This is the no contact order that is referred to in Chris Matthew’s statement.
3. Exhibit 3—A faithful reproduction of the article written by Jo Foltz for ADTA and referred to in his/her witness statement.

Stipulations

1. There are no Fourth, Fifth, or Sixth Amendment issues.
2. Chris Matthews was not in custody when he/she spoke to Sgt. Kim Davis on August 10th, and she/he gave that statement freely.
3. All witness statements were taken in a timely manner.
4. A charge of Assault was pending against Danny/Dani Jones before his/her death, and the No Contact Order was signed by the Magistrate Judge as a result of the pending charge.
5. Any other witnesses to the fight at the Levings’ pool party are unavailable to testify.
6. All witnesses and the defendant can be played by either male or female students. The student’s gender does not impact the gender role of the witness (e.g. A female student may choose to play the role of a male witness and vice versa).

Witnesses

Prosecution

1. Kim Davis, patrol sergeant, Banks Police Department
2. Terry Meyer, nurse, Mercy Medical Hospital
3. Casey Donovan, legal spouse of Danny/Dani Jones at the time of his/her death

Defense

1. Andrew/Andrea (Andy) Michaels, ex-spouse of Danny/Dani Jones
2. Joseph/Josephine (Jo) Foltz, owner of Kanine Kennel
3. Chris Matthews, defendant

Charges

The prosecution charged Chris Matthews with Murder, with the lesser-included charge of voluntary manslaughter.

DEFINITIONS:

18-4001. MURDER DEFINED. Murder is the unlawful killing of a human being, including with malice aforethought or the intentional application of torture to a human being, which results in the death of a human being.

18-4002. EXPRESS AND IMPLIED MALICE. Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied when no considerable provocation appears or when the circumstances attending the killing show an abandoned and malignant heart.

18-4006. VOLUNTARY MANSLAUGHTER DEFINED. Manslaughter is the unlawful killing of a human being, without malice, upon a sudden quarrel or heat of passion.

18-4009. JUSTIFIABLE HOMICIDE BY ANY PERSON. Homicide is justifiable when committed by any person in lawful self-defense when there is reasonable ground to believe such person is in imminent danger of great bodily injury, but such person must have in good faith endeavored to decline any further struggle before the homicide was committed.

Explanation Of Law:

A lesser-included offense is one in which all elements of the included offense are elements of the charged offense. In this case, Voluntary Manslaughter is an included offense of Murder because Murder contains all of the elements of Manslaughter plus the additional element of malice. The prosecution should make an effort to prove the elements of Murder, but the jury could find the Defendant guilty of Murder or Voluntary Manslaughter, but not both.

The distinction between murder and manslaughter is that murder requires malice aforethought, while manslaughter does not.

There is no malice aforethought if the defendant acted with adequate provocation while in the heat of passion or a sudden quarrel, even if the defendant intended to kill the deceased. The provocation would have been adequate if it would have caused a reasonable person, in the same circumstances, to lose self control and act on impulse and without reflection.

Heat of passion may be provoked by fear, rage, anger terror, revenge, or other emotions. Adequate provocation does not exist, however, when a person acts from choice and malice aforethought even though experiencing any number of emotions.

SELF DEFENSE

A homicide is justifiable if the defendant was acting in self- defense.

In order to find that the defendant acted in self-defense, all of the following conditions must be found to have been in existence at the time of the killing:

1. The defendant must have believed that the defendant was in imminent danger of death or great bodily harm.
2. In addition to that belief, the defendant must have believed that the action the defendant took was necessary to save the defendant from the danger presented.
3. The circumstances must have been such that a reasonable person, under similar circumstances, would have believed that the defendant was in imminent danger of death or great bodily injury and believed that the action taken was necessary.
4. The defendant must have acted only in response to that danger and not for some other motivation.

In deciding upon the reasonableness of the defendant's beliefs, you should determine what an ordinary and reasonable person might have concluded from all the facts and circumstances which the evidence shows existed at that time, and not with the benefit of hindsight.

The danger must have been present and imminent, or must have so appeared to a reasonable person under the circumstances. A bare fear of death or great bodily injury is not sufficient to justify a homicide. The defendant must have acted under the influence of fears that only a reasonable person would have had in a similar position.

The burden is on the prosecution to prove beyond a reasonable doubt that the homicide was not justifiable. If there is a reasonable doubt whether the homicide was justifiable, you must find the defendant not guilty.

The kind and degree of force which a person may lawfully use in self-defense is limited by what a reasonable person in the same situation as such person, seeing what that person sees and knowing what the person knows, then would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. Although a person may believe that the person is acting, and may act, in self defense, the person is not justified in using a degree of force clearly in excess of that apparently and reasonably necessary under the existing facts and circumstances.

In the exercise of the right of self-defense, one need not retreat. One may stand one's ground and defend oneself by the use of all force and means which would appear to be necessary to a person in a similar knowledge. This law applies even though the person being attacked might more easily have gained by flight or by withdrawing from the scene.

Witness Statement Prosecution Witness

Kim Davis

1. I am a patrol sergeant with the Banks Police Department. My current assignment is
2. supervisory patrol officer for all canine units. As part of my supervisory responsibilities I
3. also work a patrol shift and am a drug recognition expert. I have been with the
4. department for 20 years and have been canine officer for 17 of those years. Currently
5. my canine partner is a four-year old German Shepherd named "Oky." Oky has been with
6. me for 18 months. I have won multiple awards at canine handling competitions.

7. I was on patrol on August 10th when I received a call regarding a domestic disturbance on
8. River Drive at around 1810 hours. This subdivision is comprised of very large homes on
9. multi-acre lots. When I arrived at the scene, I observed an adult being attacked by a
10. Rottweiler. The dog was vigorously biting at the victim's neck, and the victim appeared
11. to be unconscious. I attempted to yell at the dog hoping to distract it from the victim, but
12. was unsuccessful. Fearing for the safety of the victim, at that point I discharged two
13. rounds from my firearm into the dog, and it stopped instantly.

14. I then approached the victim who had severe lacerations to the head and neck. I
15. attempted to stop the bleeding for several minutes while waiting for an ambulance to
16. arrive at the scene. During that time, I identified the victim as Danny/Dani Jones.
17. Danny/Dani is sort of a local hero, having made it big in professional soccer. He/she is
18. also a big financial supporter of the police/youth athletic programs and has donated large
19. sums of money and time to the programs. I have worked on these programs as a
20. volunteer with Danny/Dani on several occasions and found him/her to be an outstanding
21. role model for our city's youth.

22. Once the ambulance arrived, I checked the dog and it was dead. I then attempted to
23. contact the dog's owner. The area of the attack is a common path from the Haycock
24. neighborhood to the river greenbelt, but I believe it is actually the property of the nearest
25. home, so I knocked on that door. Although I heard someone moving around inside, it
26. took several minutes and multiple knocks on the door to get an answer. Finally, a
27. man/woman who identified her/himself as Chris Matthews, answered the door. He/she
28. appeared very upset, and had scratches on his/her arms. I asked Chris if she/he knew
29. what happened, and she/he said that it was his/her dog that attacked Danny/Dani. Chris
30. stated she/he was working in the garden with the dog when Danny/Dani cut through
31. his/her lawn. Chris stated that she/he had filed a no contact order against Danny/Dani,
32. and that Chris told Danny/Dani to get off his/her property.

33. Chris claimed that Danny/Dani did not leave but started toward Chris in a very
34. threatening manner. Chris stated that at this point his/her dog attacked Danny. I asked
35. Chris whether she/he gave any command to attack, and she/he said "I didn't say a thing."
36. Chris then stated she/he tried to pull the dog off, screaming "Foos," which is the
37. command to stop the attack. Chris said the dog began to bite at Chris and would not
38. retreat. Chris then stated he/she went into the house to call 911. However, an
39. examination of 911 logs for that day indicated the only 911 call received was from Terry
40. Meyer's house. There was no call logged that day from Chris Matthews.
41. Danny/Dani was pronounced dead at the hospital a short time later. The next day I
42. attended the autopsy. The cause of death was determined to be severe lacerations to the

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43. neck aorta and loss of blood. One additional fact worth noting was that the autopsy
44. showed the presence of performance enhancing steroids, an illegal substance, in the
45. victim's blood at the time of death.

46. After speaking with all the witnesses in this case, I was troubled by the story given to me
47. by Mr./Mrs. Matthews. Based upon my training and experience, protection dogs, even
48. those with minimal training, will not attack unprovoked. Unless the dog itself is
49. attacked, it will only attack when commanded by its handler. This is most commonly
50. accomplished by giving the command "Blitz." Furthermore, even with the most
51. rudimentary of training, a dog will cease to attack when ordered to do so by his handler,
52. most commonly by giving the command "Foos." Thus, there is no way if a dog was
53. properly trained, it would attack without a command, or not withdraw when commanded.

54. Furthermore, all trained dogs instinctively meet force with force in an attack. That is
55. to say, dogs will cease being aggressive when the combatant stops being aggressive.
56. In fact, it is the rare dog that will not release immediately after biting. A dog has to be
57. specifically trained to maintain a bite. There is only one documented fatality in the
58. United States involving a police dog. For a dog's aggression to rise to the level that it
59. could kill an adult it would have to have been specifically trained and rewarded in the
60. past for such violent behavior.

61. My investigation indicates that the dog in this attack came from Kanine Kennel.
62. Kanine Kennel was recently investigated for providing dogs to a criminal dog-fighting
63. ring in California, although no charges were ever filed against the kennel or its owner.

64. It appeared to me that this was not an accidental attack. Based upon the inconsistency of
65. witness statements, the prior history of Chris Matthews and Danny/Dani Jones, and my
66. own experience with dogs, I felt the case should be referred to the prosecutor's office.

Witness Statement-Prosecution Witness

Terry Meyer

1. My name is Terry Meyer, I am 34 years old and I have lived in Banks for most of my life.
2. I am a nurse at Mercy Hospital. I am single, but I live with my two cats on River Street.

3. I grew up with Danny/Dani Jones and Chris Matthews. In fact, we all went to school
4. together at Banks High School. When my great uncle died two years ago, we discovered
5. that he had been investing quite successfully in the stock market. He left me the bulk of
6. his money because I nursed him through the last year of his life. I just recently built my
7. home on River and was surprised to learn Danny/Dani and Chris lived on the same street.
8. I live right beside Chris at 914 River Street and Danny/Dani lived across the street.

9. Danny/Dani and Chris were not the best of friends in high school. It was the typical jock
10. versus computer geek. I didn't run with either crowd. I enjoyed horseback riding and 4-
11. H. But we went to a small school, so you always knew the latest gossip. From what I
12. remember, Danny/Dani always made fun of Chris because Chris wasn't an athlete and
13. spent all of his/her time playing video games. Eventually, Chris had had enough. The
14. story was Chris somehow got past the firewall on the school's computer system and
15. changed Danny/Dani's biology grade on the final exam. As a result Danny/Dani couldn't
16. get the scholarship he/she wanted from Duke to play soccer. I guess that one grade made
17. all the difference. I don't think Danny/Dani found out what Chris had done until the
18. summer after graduation. It's a good thing because Danny/Dani really had it out for
19. Chris after that. After graduation Chris went away to some prestigious East Coast school
20. and stayed away from Banks for a while. Danny/Dani left Banks and became a famous
21. soccer star. I stayed in Banks and went to nursing school.

22. On August 10th, I was just getting home from work. It was about 6:00 p.m. and I was
23. letting my cat Sadie, outside to the front porch. She loves to sit in the windowsill. I can't
24. let her out in the backyard anymore because Chris's dog (I think he's a Rottweiler) is
25. really mean. He almost killed Sadie last fall when he literally lashed out at her through
26. the wrought iron fence. Sadie was just minding her own business in the backyard. She
27. was about to hop the fence when Chris' dog went crazy. That horrible dog tried to grab
28. her in his huge jaws but luckily she was too quick and he only caught hold of her back
29. legs before Chris, who was in the backyard at the time, came and pulled the dog off.
30. I had some serious veterinary bills to get Sadie fixed up. The dog is scary.

31. Anyway, as I was letting Sadie out on the porch, I saw Danny/Dani cutting across Chris'
32. lawn. It looked like he/she was carrying some hand weights-probably going for a run on
33. the greenbelt. The greenbelt runs along the river right behind our houses so a lot of
34. neighbors just cut through our yards. It's no big deal and everybody does it, but this time
35. was different. I didn't think that Chris and Danny/Dani were supposed to be around
36. each other because of a fight they had about two months before. On this day Danny/Dani
37. looked pretty mad and Chris looked like she/he was about to go into Chris' house. I saw
38. Chris and Danny/Dani exchanging words. I couldn't really hear exactly what they said
39. because I have a screened-in porch. I just noticed Chris and his/her Rottweiler "Rocky"
40. approaching Danny/Dani. I knew things were getting heated because I saw Chris and
41. Danny/Dani getting in each other's faces. The dog was barking ferociously. I heard
42. Chris yell something like "Letts" which sounded like some sort of command for his/her

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43. dog. Suddenly, the dog leaped up on Danny/Dani, pushed him/her to the ground and
44. looked like he had Danny/Dani by the throat. Chris was yelling at the dog, but I couldn't
45. hear what she/he was saying. All I know is the dog wasn't letting go. I ran inside and
46. dialed 911. When I got back outside, Rocky was still on top of Danny/Dani, and Chris
47. was nowhere to be seen. The next thing I knew, I heard sirens and the police showed up.

Witness Statement-Prosecution Witness
Casey Donovan

1. My name is Casey Donovan and I am...I mean was...married to Danny/Dani Jones. We
2. lived at 913 River Street and had been married for almost a year at the time of the
3. murder. I did not grow up in Banks but met Danny/Dani while he/she was on the
4. professional soccer circuit. I was a marketing consultant for Danny/Dani's team and we
5. met during the filming of a commercial. We hit it off right away. Danny/Dani was in the
6. process of a divorce when we started dating, and we got married right after the divorce
7. was final. I moved to Banks right after we were married.

8. The day of the murder I was home with Danny/Dani. That evening around 6:00 pm.,
9. Danny/Dani left to go for a run. He/she took his/her hand weights because he/she likes to
10. run with some resistance. Right after Danny/Dani left his/her agent called. I knew that
11. Danny/Dani had been waiting all morning for that phone call, so I ran out to try and catch
12. Danny/Dani. He/she usually cuts across our neighbor, Chris' yard to get to the greenbelt.
13. That was a very bad idea on this day.

14. As soon as I stepped outside, I heard yelling. I realized that the voices were
15. Danny/Dani's and Chris', but I couldn't tell what they were saying. I could see the two
16. of them yelling near Chris' backyard. Chris said some really nasty stuff to Danny/Dani
17. about pushing people around for fun. Danny/Dani got upset and started shaking. Before
18. Danny/Dani could even say anything though, Chris yelled out something that sounded
19. like "Blitz" and after Chris yelled, Rocky attacked Danny/Dani. There was blood
20. everywhere. I passed out at that point and do not know what happened after that.

21. Chris has had it out for Danny/Dani ever since they were in high school. Chris couldn't
22. handle that Danny/Dani was a successful professional athlete who had become a
23. household name. She/he was so jealous of Danny/Dani's success. Even after high
24. school, Chris wouldn't let things go. Danny/Dani told me that over the years Chris tried
25. to break up different endorsement deals Danny/Dani had. Danny/Dani also told me that
26. Chris did some things that prevented Danny/Dani from going to college.

27. After Danny/Dani's pro soccer career was over, Chris still could not let it go. Chris went
28. so far as to pick a fight with Danny/Dani at the Levings' pool party and then got the
29. police to charge Danny/Dani with assault. Anybody who was there that night knew that
30. Danny/Dani did not start anything. Danny/Dani wouldn't hurt a fly. He/she had some
31. problems in the past with trumped up domestic violence charges, but he/she has never
32. laid a hand on me. Plus, Danny/Dani did a lot of work with the Banks Boy's and Girl's
33. Club, and never once lost his/her temper or got violent with anybody. Anyway, after the
34. pool party, Chris got this vicious attack dog. Chris would walk that stupid dog up and
35. down the street and practice attack commands in the front yard of his/her house. Total
36. intimidation tactics! I knew it was just a matter of time until Chris snapped and did
37. something stupid.

**Witness Statement-Defense Witness
Andrew/Andrea (Andy) Michaels**

1. My name is Andy Michaels. I used to be married to Danny/Dani Jones. We were
2. married for almost five years. I eventually left Danny/Dani because he/she had some
3. serious anger issues. About four years into our marriage, we got into a huge argument
4. (one of many). Danny/Dani was traveling all the time with his/her soccer career so we
5. didn't get to see each other very often. Things were always tense. The night we fought,
6. Danny/Dani was accusing me of cheating. It's not like I had done anything wrong. I just
7. went to dinner with some friends one night when Danny/Dani was out of town and I
8. ended up having coffee with an old friend. Anyway, Danny/Dani found out, and things
9. got so out of hand I actually had to call the police. Danny/Dani came at me with one of
10. our kitchen knives and threatened to kill me. Danny/Dani used to take some performance
11. enhancement drugs and I think that made the anger problems even worse. Danny/Dani
12. was eventually prosecuted and convicted of domestic assault. That was the straw that
13. broke the camel's back for our marriage. Several months later, I filed for divorce. The
14. court made Danny/Dani do some domestic violence classes but things were never the
15. same.

16. I didn't know Chris Matthews very well when Danny/Dani and I were married. Chris
17. lived across the street from us. Danny/Dani always said that Chris ruined his soccer
18. career but I never really knew what happened. I do know that I was at this neighborhood
19. party about two months ago. I don't live in that neighborhood anymore, but I'm still
20. friends with everyone. Anyway, the Levings had a big pool party. I was uncomfortable
21. because Danny/Dani was there and it was the first time we had seen each other since the
22. divorce. Everyone was having a great time and the cocktails were flowing. I was
23. standing in the kitchen when I heard a ruckus outside by the pool. I didn't see what
24. started it, but I did see Danny/Dani pushing Chris backwards. Chris fell into the pool and
25. a couple of people pulled Danny/Dani back before things got any worse. I think they
26. were both drinking too much. I heard Danny/Dani had been charged with assault and that
27. there was a no contact order that prevented Danny/Dani from being within 100 yards of
28. Chris. I think they were supposed to go to court sometime in August to get that whole
29. mess worked out.

30. Since then, I've actually talked to Chris about the incident. Chris told me the next time
31. she/he got a chance she/he was going to "mess Danny up."

**Witness Statement-Defense Witness
Joseph/Josephine (Jo) Foltz**

1. I am the owner of Kanine Kennel, and I sold the dog in question to Chris Matthews. I
2. have been in business for eight years, and have sold dogs to many famous individuals
3. for protection. We also supply a large number of dogs to police departments around
4. the country. As part of our business practice, all our dogs are AKC registered with
5. examined pedigrees. Our kennel is also a member of the *American Dog Trainers*
6. *Association (ADTA)*, a highly reputable training organization, which requires our staff
7. to attend animal behavior courses, seminars and workshops annually. Private
8. purchasers are also required to attend a one week class at our facility in California
9. where we familiarize the owner with his or her dog and teach them proper training
10. and care of the dog.

11. I am familiar with the dog in question, and did some of the early training myself.
12. You have to understand that even the best-trained dog has the mentality of a four year
13. old. Thus, even the best-trained dog sometimes demonstrates behavioral problems.
14. We did have some difficulty training this dog at first, as he was a bit more aggressive
15. than most.

16. I have developed a specialty in the area of aggression training. One of my articles
17. has even been published by the *ADTA*. Early and appropriate socialization is critical
18. with aggressive breeds. We spent a lot of time with this dog identifying what was
19. influencing his aggression and teaching alternative behavior. By the time Chris came
20. to take him home, he was much gentler, more controllable, and well on his way to
21. becoming a great family pet. In fact, I remember when Chris came down to our
22. training class, she/he and the dog seemed to hit it off right from the start, and the dog
23. seemed to respond extremely well to Chris' commands given their new relationship.

24. I remember when Chris first contacted me about a purchase. Chris stated that she/he
25. had been assaulted by a neighbor recently and wanted some protection to make sure
26. nothing like that ever happened again. Chris also wanted to make sure the dog would
27. only attack on command, and not be otherwise aggressive, because of neighborhood
28. children the dog may have contact with. I recommended this particular breed
29. because of the generally gentle nature they have except when under command to
30. attack.

31. I cannot explain the dog's behavior on the day in question. The dog should have
32. obeyed the commands. Sometimes dogs will attack a person who is attacking their
33. handler, but only after a dog has developed a long-term relationship with the handler
34. over a number of years. Regardless, any dog would obey a handler's command to
35. withdraw, which is given by forcefully stating "Foos," a German word meaning
36. retreat.

37. The only thing I can think of is there may have been an odor that further provoked
38. the dog. Many of our dogs have some drug detection training, and become more
39. aggressive at even the slightest hint of illegal substances. If the victim had any illegal
40. substances, including illegal steroids, in his system, that may have made the dog more
41. aggressive.

42. As to allegations that we train fighting dogs under the table-that is preposterous.
43. We were investigated based upon accusation of a competitor, but were cleared of
44. all charges. We do have a reputation of providing effective guard dogs, but always
45. well trained. That is what our clientele demands.

Witness Statement-Defendant
Chris Matthews

1. My name is Chris Matthews. I am 35 years old and a retired computer
2. software engineer. I grew up in Banks. After graduating from MIT. I started
3. my own software business on the east coast. The business flourished and I
4. later sold it for quite a bit of money. At that time I retired so I could travel
5. and engage in some philanthropic activities and moved back to Banks. I am
6. divorced and have no children.

7. Danny/Dani Jones and I were high school classmates. I was not the most
8. popular student in school because my interests were math, science and
9. computers. I was constantly made fun of by the other kids. Danny/Dani
10. always seemed to be leading the teasing and bullying and really made my
11. high school experience one I would rather forget. Danny/Dani was your
12. typical jock-type. He/she was a soccer star and did not care about grades or
13. college. While I was worrying about my grades and whether I could get into a
14. great school, Danny/Dani was out partying and doing what he/she could to
15. make my life unbearable. I have never been able to forgive Danny/Dani for
16. what he/she did to me back then. That was part of the reason I made sure to
17. pick a college far away from Banks

18. But I got older and missed Banks. All of my family was here, and Banks has
19. always been a great place to raise a family. Trying to get my career going left
20. me without much time to meet someone and settle down. After I sold my
21. dot com business for millions of dollars, I began to think about moving back
22. to Banks. I considered my options and moved back several years ago, hoping
23. to meet someone and settle down and start a family.

24. When I started looking at homes, I found the neighborhood I live in now. I
25. loved the homes and the safety the neighborhood provides. It's the nicest
26. neighborhood in town and provides numerous security measures. The safety
27. aspect was especially important to me because while running my business, I
28. received several death and kidnap threats. It seems people will do just about
29. anything to make a buck these days.

30. Danny/Dani moved in across the street shortly after I moved in. I have to
31. admit that I was not happy about that at all. It dredged up all sorts of painful
32. high school memories. Danny/Dani would shoot me dirty looks from across
33. the street and make snide comments about what a nerd I still was.
34. Danny/Dani had recently retired from professional soccer and was always
35. bragging about how his/her name was a household word. I tried my best to
36. ignore Danny/Dani and make my dream of settling down with a family in
37. Banks a reality.

38. So, I went about my life, ignoring Danny/Dani's attitude and nasty comments.
39. But things really blew up at a pool party at the Levings' house. I was there,
40. talking to people and having some drinks with other people in the
41. neighborhood. Andy Michaels, Danny/Dani's ex was there, and we were

42. chatting when Danny/Dani arrived. Danny/Dani looked really angry.
43. Danny/Dani walked around and had some drinks and chatted with people, but
44. kept looking at Andy and me. We were really hitting it off and I think that
45. Danny/Dani just did not like the looks of it. Danny/Dani finally approached
46. me and started pointing at me and asking me what I thought I was doing. I
47. told Danny/Dani that it was a free country and I could talk to whomever I
48. wanted. I also told Danny/Dani that he/she should take his/her washed-up
49. soccer career and go home. Danny/Dani was drunk and I guess my
50. comment pushed him/her over the edge because he/she took a swing at me. I
51. ducked, but Danny/Dani pushed me into the pool. I was pretty mad. But the
52. other people at the party separated Danny/Dani and me. I called the police
53. and signed a citation charging Danny/Dani with assault. The next day, the
54. judge signed a no contact order requiring Danny/Dani to stay 100 yards away
55. from me and from my home.

56. Needless to say, I was a little scared after the pool party. Danny/Dani used to
57. push me around in high school and the pool party was the first time
58. Danny/Dani had tried to hit me since then. I also knew that Danny/Dani was
59. not happy that I had filed charges. So I went out and got a protection dog. I
60. figured that with everything going on with Danny/Dani and the other threats
61. to my safety that come with my wealth, a protection dog would be a good
62. idea. I had heard that Germany was where the best dogs came from so I
63. started calling around. I found Jo Foltz, who was recommended to me by a
64. friend. Jo imported dogs from Germany and was really well respected among
65. the rich and famous.

66. Jo agreed to sell me a dog, but I had to go to California and spend a week
67. learning the different commands and how to work with the dog. I got a male
68. Rottweiler, named Rocky. He was such a great dog. He was trained to attack
69. anybody who attacked me, with or without a command. He was very
70. business-like when he needed to be, but very sweet and a great family pet.
71. I'd had him for about a month and a half and when my nieces and nephews
72. came over to play, he acted just like a puppy with them. He was so gentle.
73. They pulled on his ears and everything and he had never once growled at
74. them. That's why I was so shocked when he attacked Danny/Dani the way he
75. did.

76. The attack itself is still so fresh in my mind. It was a summer evening and I
77. was in my front yard doing some gardening. Rocky was outside with me like
78. usual and he was playing with some dog toys. I was bent down over some
79. flowerbeds when I heard him start growling. I looked up and saw Danny/Dani
80. walking right next to my house with these things that looked like brass
81. knuckles in his/her hands. I got worried because Danny/Dani was just staring
82. at me as he/she walked by.

83. I yelled to get away and that I was going inside to call the police. Danny/Dani
84. started yelling at me that adults fight their own battles and don't go running to
85. mommy or the police to fix things for them. Danny/Dani yelled that he/she
86. would make sure that I paid for calling the police. Danny/Dani was just so

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87. mad. He/she started walking towards me and yelling about how nobody
88. wanted him/her to do endorsement deals anymore and how his/her life was
89. falling apart because of me.

90. I was really afraid at this point because Danny/Dani's face was beet red and
91. he was yelling so loud. But I was also getting really mad. I was just so sick
92. and tired of always being afraid of Danny/Dani and worrying about what
93. he/she was going to do to me. I felt like a baby for not taking care of my own
94. problems. I was so mad at that point that almost before I knew what I was
95. doing I told Danny/Dani that he/she was the loser because he/she got off on
96. beating up other people, especially Andy Michaels. It was common
97. knowledge that Danny/Dani had been convicted of domestic violence for
98. pulling a knife on Andy while they were married I told Danny/Dani to get off
99. my property and that there was a no contact order. Danny/Dani didn't leave
100. my property but just kept walking toward me in a threatening manner. I
101. guess Rocky thought the same thing because he jumped up and knocked
102. Danny/Dani to the ground.

103. It all happened so fast after that. The next thing I knew Rocky had
104. Danny/Dani by the throat. Danny/Dani was screaming and there was
105. blood everywhere. I was yelling "Foos" at Rocky, which means to release
106. and return, but Rocky just kept attacking. After trying that command a
107. couple of times, I ran up and tried to pull Rocky off Danny/Dani, but he
108. was clamped on. I couldn't pull him off. Rocky even turned around and
109. bit me a couple of times. I was afraid he would start attacking me, so I
110. backed off and went into the house to call 911. I was in the house when
111. the police arrived. Danny/Dani and I were both taken to the hospital.
112. While I was being treated for cuts and dog bites, I found out that
113. Danny/Dani had died.

Exhibit 2

**IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF
THE STATE OF NEW JUSTICE**

STATE OF NEW JUSTICE,

Case No. M0310325

Plaintiff,

vs./

NO CONTACT ORDER

Daniel/Danielle Jones

Defendant.

The above entitled matter having come before the Court, and good cause appearing,

IT IS HEREBY ORDERED that the above named defendant shall not harass, follow, contact, communicate with, or remain within 100 feet of: Chris Matthews

IT IS FURTHER ORDERED that the above named defendant shall not go within 300 yards of the above named person's residence as set forth below:

912 River Dr.
Residence Address

There are no exceptions to this Order which shall expire on end of case.

/s/
Defendant

/s/
Magistrate

6-11-05
Date

Exhibit 3

Training Dogs with Aggressive Tendencies

by
Jo Foltz

- 1) Start training your puppy early on. While old dogs can be taught new tricks, what's learned earliest, is often learned quickest and easiest. Moreover, the older the dog, the more bad habits will likely need to be "un-learned". When it comes to raising and training a dog, an ounce of prevention is certainly worth a pound of cure!
- 2) Train your dog gently and humanely, and whenever possible, teach him using positive, motivational methods. Keep obedience sessions upbeat so that the training process is enjoyable for all parties involved.
- 3) Does your dog treat you like "hired help" at home? Does he treat you like a human gymnasium when you're sitting on the furniture? Jump up on visitors? Demand your attention by annoying you to death? How well your dog responds to you at home affects his behavior out doors as well. If your dog doesn't respond reliably to commands at home (where distractions are relatively minimal), he certainly won't respond to you properly outdoors where he's tempted by other dogs, pigeons, passersby, sidewalk food scraps, etc.
- 4) Avoid giving your dog commands that you know you cannot enforce. Every time you give a command that is neither complied with nor enforced your dog learns that commands are optional.
- 5) One command should equal one response, so give your dog only one command (trice Max), then gently enforce it. Repeating commands tunes your dog out(as does nagging) and teaches your dog that the first several commands are a "bluff". Simply give your dog a single "Sit" command and gently place or lure your dog into the sit position, then praise/reward.
- 6) Avoid giving your dog combined commands which are incompatible. Combined commands such as "sit down" can confuse your dog. Using this example, say either "sit" or "down". The command "sit down" simply does not exist.
- 7) When giving your dog a command, avoid using a loud voice. Even if your dog is especially independent/unresponsive, your tone of voice when issuing an obedience command such as "sit" or "stay", should be calm and authoritative, rather than harsh or loud.
- 8) Whenever possible, use your dog's name positively, rather than using it in conjunction to reprimands, warnings or punishment. Your dog should trust that when it hears its name or is called to you, good things happen. His name should always be a word he responds to with enthusiasm, never hesitancy or fear.
- 9) Correct or, better yet, prevent the misbehavior, don't punish the dog, Teaching and communication is what it's all about, not getting even with your dog. Additionally, after-the-fact discipline does NOT work.
- 10) When training one's dog, whether praising or correcting, good timing is essential. Take the following example: You've prepared a platter of hors d'oeuvres for a small dinner party, which you've left on your kitchen counter. Your dog walks into the room and smells the hors d'oeuvres. He air-sniffs, then eyes the food, and is poised to jump up. This is the best, easiest and most effective time to correct your dog.

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- 11) Often, dog owners inadvertently reinforce their dogs' misbehavior, by giving their dogs lots of attention (albeit negative attention) when they misbehave. Needless to say, if your dog receives lots of attention and handling when he jumps up on you, that behavior is being reinforced, and is therefore likely to be repeated.
- 12) Keep a lid on your anger. Never train your dog when you're feeling grouchy or impatient. Earning your dog's respect is never accomplished by yelling, hitting, or handling your dog in a harsh manner. Moreover, studies have shown that fear and stress inhibit the learning process.

American Dog Trainers Association Online Magazine

Exhibit 1

