2013 MOCK TRIAL COMMITTEE

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The Massachusetts Bar Association expresses its sincere gratitude to this group of dedicated volunteers who spent countless hours developing this year’s case. It is their commitment to this program and to law-related education in Massachusetts that gives thousands of students this unique educational experience.

In addition, the Trial Court of the Commonwealth is a true partner in this effort, providing both staff and space to make this program possible. Please help us in thanking the courts after your competitions.

Special thanks also go out to both Brown Rudnick and the Massachusetts Bar Foundation for their continued support and financial generosity.

If you have general questions about the Mock Trial Program, please contact the MBA Public and Community Service department at (617) 338-0570 or e-mail MockTrial@MassBar.org.

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Dear Mock Trial Participant:

Thank you for participating in the Massachusetts Bar Association 2013 Mock Trial Program, proudly sponsored again by the law firm Brown Rudnick. For more than 25 years, the Mock Trial Program has been an important part of the MBA’s tradition of public service, providing high school students with a positive first experience with the law, as well as a valuable and dynamic educational experience. Mock Trial participants improve their critical thinking, analytical and rhetorical skills, important in both citizenship as well as academics.

This year’s case is a good old fashioned murder mystery. The victim, a wealthy widow with no children of her own, dies from a heart attack shortly after informing her heirs that she is giving half of her estate to a charity and her live-in caregiver will receive a remaining equal share with the grandnieces and grandnephews. The prosecution asserts that the defendant, one of her grandnephews, poisoned her by tampering with her medication to cause the heart attack. The defense asserts that the heart attack was natural, or that if it wasn’t, she was murdered by her live-in caretaker or another relative who was upset by the significant reduction in his share of the estate. Can the prosecution prove the charge beyond a reasonable doubt, or will the defense be able to poke enough holes to prevent the case from being proven to a moral certainty?

The tournament will begin in mid-January, with three preliminary rounds and will continue into March with 16 regional winners advancing to the playoffs. The tournament culminates in the State Finals, scheduled for Wednesday, March 20, 2013. All participating teams are invited and strongly encouraged to attend the State Finals at Faneuil Hall to observe the tournament’s competition at its highest level. The state champion team will compete for the national title in Indianapolis, Indiana from May 9 – May 11, 2013.

The Mock Trial Program has been structured with the following goals in mind:

- To further your student’s understanding of the law, court procedures, civil liberties and our legal system;
- To increase your student’s proficiency in basic life skills, such as listening, speaking, reading and reasoning;
- To develop your student’s advocacy skills regardless of which side of the case is being represented and irrespective of the party with which you most identify;
- To promote better communication and cooperation between you, your students, the schools and the legal profession; and
- To heighten your student’s consciousness of law-related professions and the academic studies, which lead to those professions.

We are grateful for the efforts and long hours dedicated by the members of the Mock Trial Committee. We must also thank the Administrative Office of the Trial Court for again allowing us access to the courts as well as the many attorneys, judges and teachers who volunteer their time. We thank you all for your participation, and we hope you find the experience challenging, enlightening and fun!

Sincerely,

Eric Schutzbank, Esq.
Chair, Mock Trial Committee
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PART I:
Mock Trial Statement of Philosophy,
Code of Conduct and Highlighted Rules

The Massachusetts Bar Association annual Mock Trial Program is governed by the rules set forth herein. Please pay particular attention to the following:

PURPOSE OF PROGRAM:
The purpose of the tournament rules is to create a level playing field so that all students can derive maximum educational benefit. To that end, teacher and attorney/coaches are encouraged to emphasize the educational rather than the competitive aspect of the tournament.

KNOWLEDGE OF THE RULES:
Teams are responsible and accountable for knowing and abiding by all the tournament rules. Rules may not be waived even by mutual consent of the parties. Any violation of the rules could result in disciplinary action that may consist of forfeiture or disqualification for the offending team(s).

COURTROOM COURTESY/DECORUM:
To allow students to experience first-hand how a real courtroom operates, the MBA schedules all trial enactments before sitting judges in district courthouses, whenever possible. While mock trials are taking place, the court is conducting its regular business. Accordingly, all students, teachers, and spectators are expected to conduct themselves with maturity and decorum, and to treat host judges and all courthouse personnel with all due respect.

TRIAL SPACE COURTESY:
Trial enactments are subject to the physical constraints of the individual courtrooms. Students and spectators may not rearrange courtroom furniture or remove equipment from any other courthouse office unless they have received the permission of the court. Teams are responsible for restoring the courtroom to its original condition at the conclusion of the trial, ready for the next day’s business.

PLAGIARISM:
Arguments presented in court are expected to be the team’s own effort. As with all academic work, plagiarism is prohibited. With the ready availability of videotapes of the trials, a team might inadvertently appropriate another team’s strategy or arguments. Coaches should exercise supervision over the use of videotapes to ensure that they are used properly.

WITHDRAWAL/CANCELLATIONS:
The decision to participate in the Mock Trial Program is a serious commitment and should not be undertaken lightly. It is inconsiderate when a school withdraws from a trial and/or the tournament at the last minute, after the other side has prepared carefully for the trial, made plans to leave school early and arranged for transportation.

Withdrawing on the day of the trial is also insensitive to the courts, which have agreed to clear courtroom space, and to the judges and attorneys who have volunteered to hear the cases. Please consider carefully your decision to participate in the tournament and then honor your commitment.

CODE OF CONDUCT FOR TEACHER AND ATTORNEY COACHES:
Mock Trial is a competition, and like all competitions, the behavior of coaches should reflect the highest standards of conduct. Just as in athletic competitions, the officials must be shown respect at all times. As part of teaching students about our legal system, we must emphasize that respect must always be shown to the judges and their decisions. While a coach may privately report perceived egregious misconduct of a judge to the Mock Trial Committee, the students should be shown at all times by word and by example that the judge and judge’s decision are to be respected. Coaches should likewise show the same respect to each other. In a difficult situation, coaches are expected to conduct themselves so as to move the competition and the tournament schedule forward.

If a coach fails to observe this code of conduct, the Mock Trial Committee may prohibit the coach from further participation in the tournament or impose such other appropriate sanctions. All decisions of the committee are final. The goal of the Mock Trial Program is to provide a positive experience of the legal system for coaches, students and volunteers.
PART II:

Tournament Rules

New, modified or highlighted rules appear in bold.

1. GENERAL CONTEST FORMAT

The commonwealth will be divided into 16 geographical regions. Within each region, each team will participate in three preliminary round trials, alternating between plaintiff/prosecution and defense. The team with the greatest number of victories will advance to the quarterfinals. In the event of a tie, there will be a single elimination tiebreaker to determine the regional representative. (See Section 3, Structure and Subsequent Scoring Issues, later in this section for more information on how byes affect scoring.) Regional representatives then will face off in the single elimination quarterfinals, with the winning teams advancing to the single elimination semifinals. The two remaining teams will face each other in the state finals.

2. TEAM COMPOSITION

2.1 Schools that wish to participate in the tournament may enter one team, which must be comprised of students currently attending that school and a teacher-coach, administrator, or other responsible party who is also from that school. No team may be comprised of students representing more than one school. Only high school students, grades 9–12 or its equivalent, are eligible to compete in trial enactments. Students who are not in grades 9–12 or its equivalent may participate in the Mock Trial Program by attending the meetings and trial enactments of a single high school team, but may not themselves compete or participate in trial enactments.

2.2 Each school's overall team may be comprised of any number of students, but no fewer than six and no more than nine students (three to six attorneys and three witnesses) may participate in any one trial. Violation of this rule is considered gross misconduct and will result in a 10 point reduction.

2.3 A team may use its members in several different ways. It may use the same roster of students throughout all trial enactments or it may rotate students after the first trial to give others a chance to participate in the tournament. Students may play different roles (attorney or witness) at different trial enactments, as long as no fewer than six and no more than nine students appear in any one trial. (See Part II, Sections 4 and 5, Witness Performance and Attorney Performance and Part III, Hints on Preparing for a Mock Trial.)

2.4 During the preliminary trials, at no time will any team play the same side three times. If you notice that your team is playing one side three times on your schedule, please contact Mock Trial Central immediately.

2.5 Use of a podium shall not be required of the participants at any level of competition unless otherwise instructed by the judge.

2.6 All teams are to work with their assigned attorney-coaches in preparing their cases. It is suggested that they meet with their attorney-coach at least twice prior to the first trial. For some suggestions regarding the attorney-coach's role in helping a team prepare for the tournament, see Appendix A Guidelines for Attorneys.

2.7 Prior to the first trial of the tournament, all teams are required to conduct one full trial enactment or dress rehearsal based on the case. (Several additional sessions devoted to the attorneys’ questioning of individual witnesses are suggested also.)

3. STRUCTURE AND SUBSEQUENT SCORING ISSUES

3.1 The total pool of registrants and where schools are geographically located determines into which region schools will be placed. We will make every effort to ensure that each region has enough teams for three trials. Inevitably, some regions will have an odd number of teams. Teams for whom there is no opponent within their region for a given trial will receive a bye. Byes are randomly assigned. **Byes that are assigned by the MBA will not count as a win or a loss.**

For example:

- School A is assigned two trials and one bye.
- School B is assigned three trials.
If school A wins both trials, its winning percentage is 100 percent. It will advance to the “sweet sixteen” round (or a tie-breaker if applicable).

If school A wins one trial, its winning percentage is 50 percent.

If school B wins two trials (a winning percentage of 67 percent), school B will advance and school A will not. Had school A won both trials, the bye would have worked to their advantage.

3.2 If a team withdraws before the first day of January during the tournament year, resulting in a second unopposed team, every attempt will be made to schedule the two unopposed teams.

3.3 Any withdrawal from the tournament after the first day of January during the tournament year will be counted as a win for the remaining team(s).

4. WITNESS PERFORMANCE

4.1 A student shall not perform both as a witness and as an attorney during the same trial enactment. Witnesses may take the stand in any order, but all witnesses must take the stand. Violation of this rule is considered gross misconduct and will result in a 10 point reduction.

4.2 Each witness is bound by his or her written affidavit. Witnesses are not to invent facts material to the case (See Simplified Rules of Evidence, Rules 301 and 302). Neither should cross-examining attorneys ask questions that require the witness to invent facts material to the case.

4.3 The witness affidavits are to be treated as sworn to under oath. If a witness testifies in contradiction of a fact in the witness statement, the opposition may impeach the testimony of the witness; that is, point out the contradiction on cross-examination in accordance with Rules 303a and 601.

4.4 If a witness invents an answer which is likely to materially affect the outcome of the trial, the opposition may object and ask for a bench conference; the judge will decide whether to allow the testimony.

4.5 The case materials provide sufficient legal points on which to question each witness without the witness inventing, or the cross-examining attorney requiring the witness to invent, facts. Judges will be instructed to deduct penalty points from witnesses for serious or repeated invention of facts, especially if the behavior appears to be intended to disrupt the presentation of the opponent’s case or to eat into their time allotment. Judges also will be instructed to deduct penalty points from cross-examining attorneys who repeatedly ask questions which require the witness to invent facts. (See Simplified Rules of Evidence, Rules 301 and 302.) Teachers should monitor witness and attorney preparation and stress the importance of a spirit of fair play.

4.6 Unless otherwise permitted by an advisory ruling issued by the Mock Trial Committee specifically relating to this rule, there shall be no use of props and/or any intentional alteration of students’ physical appearance and/or clothing in order to mimic the appearance of a trial character in the case. The witness’ appearance is assumed to be as she/he appears in the case in accordance with the characteristics provided in the trial materials. Judges have been advised not to award either bonus points or penalty points for any unintentional use of props and/or alteration of appearance and/or clothing. Any witness who clearly and intentionally uses a prop and/or alters her/his appearance and/or clothing in order to mimic the appearance of a trial character (e.g., wearing a theatrical wig and/or makeup, police uniform, badge, etc.) may be subject to penalty points at the judge’s discretion.

4.7 Witnesses shall stay in the courtroom at all times during the mock trial proceedings unless permission for a student to leave has been obtained from the opposing coach prior to the match.

4.8 Witnesses, whether plaintiff/prosecution’s or defendant’s, shall not sit at the attorneys’ table.

4.9 Witnesses are not permitted to use notes when testifying during the trial.

4.10 Voir dire of expert witnesses shall not be permitted; any questions directed to an expert about her/his credentials must be raised on cross-examination. However, nothing in this rule precludes appropriate objections to an expert’s testimony if proper foundation has been laid.

4.11 There shall be no sequestration of witnesses. If such a motion is made, it will be denied.
5. ATTORNEY PERFORMANCE

5.1 Each team must prepare an opening statement, three direct examinations, three cross-examinations and a closing argument.

5.2 The attorney presenting the opening statement may not make the closing arguments in the case. No attorney may conduct more than one direct examination. No attorney may conduct more than one cross-examination. Only one attorney from each side may conduct the examination of an individual witness, including reexaminations and objections.

5.3 A team with three attorneys will perform the tasks as follows:
- Attorney A does the opening statement, a direct examination and a cross-examination.
- Attorney B does the closing argument, a direct examination and a cross-examination.
- Attorney C does a direct examination and a cross-examination.

A team with four, five or six attorneys will divide the tasks in any way consistent with rule 5.2.

5.4 Attorneys may use notes in presenting their cases, i.e., opening arguments, direct examinations of witnesses, etc. However, undue reliance on notes is not encouraged. (See Appendix C, Matrix on Judging Criteria.)

6. TRIAL ENACTMENTS

6.1 The trial proceedings are governed by the Simplified Rules of Evidence found in this packet of materials. Procedural motions shall not be raised at trial.

6.2 Usual rules of courtroom decorum apply to all participants and spectators. Appropriate dress is required. The judge should give verbal warning without penalty points to students whose jackets are not buttoned, whose ties are not tied properly, or who are otherwise not appropriately attired. If the matter is not remedied, there may be further sanction involving the deduction of penalty points. No spectator signs or banners are permitted.

6.3 No photographs, or audio or video recording of the proceedings by anyone, including spectators and parents, is permitted without the permission of both the other side and the court.

6.4 No electronic devices may be used to assist in a team’s presentation during a trial. This includes video cameras, laptop computers, tape recorders, PDA’s, Blackberries and other similar devices.

6.5 Immediately prior to each trial enactment, the attorneys and witnesses for each team must be physically identified to the opposing team.

6.6 In all tiebreaker and subsequent rounds, teams must conduct a coin toss to determine which side the teams will argue. The coin toss is to be conducted as soon as both teams have arrived at the trial location and prior to the judge taking the bench. The coin toss procedure is as follows:
   a. Each team will designate a single representative who will participate in the coin toss process.
   b. The representatives will need to decide which team will toss the coin and which team will call “heads” or “tails.”
   c. The winner of the coin toss chooses which side her/his team will play (plaintiff/prosecution or defendant).

6.7 Immediately prior to each trial enactment, the coaches shall submit a prepared Student Roster and Performance Rating Sheet to the presiding judge.

6.8 The Stipulations of the Parties may not be disputed at the trial.

6.9 The presiding judge may interrupt an attorney’s opening and closing statements and ask questions.

6.10 Students may read other law, cases and materials in preparation for the mock trial. However, they may cite only the law and cases given and may introduce as evidence only those documents that are provided in this packet.

6.11 Exhibits and affidavits may be reproduced or enlarged and used during the trial; however, the contents of exhibits and affidavits may not be altered or redacted, except to reflect revisions posted on the Mock Trial Web site. This shall also apply to the use of the case materials as demonstrative aids or chalks.
6.12 During the actual trial (including any recesses, up to and until after both closing statements have been made) teacher-coaches, attorney-coaches, student witnesses, student observers and all other observers may not talk to, signal, or otherwise communicate with, or in any way coach their team. Behavior of this sort may result in disqualification of the team from the tournament.

7. SCOUTING

7.1 It is the intent of the Mock Trial Committee to prohibit scouting or even the appearance of scouting. Accordingly, members of a school’s team, including coaches and others directly associated with the team’s preparation are not to attend the trial enactments of any possible future opponent in the tournament. Coaches must assume responsibility for only one team and may not, for any reason, train teams together (except as provided in Rule 7.2), share information (including the use of any recordings) with other coaches about prospective opponents, or accompany any team other than their own team to a trial enactment.

7.2 While teams are encouraged to scrimpage each other before the tournament begins, a team may not participate in a scrimpage after its first trial has taken place. The only exception to this rule is that a team may, after winning its region, scrimpage any team that has been eliminated from the competition, so long as the eliminated team did not compete against any of the other teams remaining in the competition.

7.3 Any violation of the scouting rules, whether intentional or unintentional, should be brought to the attention of the Mock Trial Committee and may result in disciplinary action.

8. JUDGING

8.1 The Mock Trial Program depends on the generous support of hundreds of volunteers. Please thank your judges for their time, regardless of their decisions. With approximately 50 trials a week for five weeks, we simply would not have a program without their assistance.

8.2 Under no circumstances should teacher-coaches, attorney-coaches, or students debate with the judge after she/he gives a decision. We encourage you to provide feedback to the MBA on particular judges by using the evaluation forms provided.

8.3 The mock trials are designed to be hearings or bench trials, that is, trials held before a judge acting as finder of fact.

8.4 Judges must be provided with a prepared Student Roster Form (see back of packet) before each trial, that is, one on which the coaches have entered the names of all the participating witnesses and attorneys.

8.5 The presiding judge will render two decisions at the conclusion of the trial. The first decision rendered by the presiding judge is based on the merits of the legal case and the applicable law. The decision of guilt or innocence in a criminal case or finding in favor of the plaintiff or defendant in a civil case, does not determine which team wins or advances to the next round.

8.6 The second decision will be based on the quality of the students’ performances. The judges have been instructed to rate the performance of all witnesses and attorneys on the team. They also have been instructed to award points based on total performance. No consideration should be given to age or grade level. (See Appendix C for the Performance Rating Sheet and Matrix on Judging Criteria.)

8.7 At the sole discretion of the presiding judge, BONUS POINTS (a total of up to five points) may be awarded to a team’s total score to recognize superior team performance, exceptionally thorough preparation, a particularly professional and mature level of conduct, an especially sophisticated legal argument, well-made objections and responses and an outstanding ability to think and respond extemporaneously.

8.8 At the sole discretion of the presiding judge, PENALTY POINTS (a total of up to five points) may be deducted from a team’s total score for unsportsmanlike behavior. Such behavior might include, but would not be limited to, a team strategy of excessive objections, serious or repeated witness invention of facts designed to disrupt the presentation of the opponent’s case or to eat into their time allotment or any other behavior which, in the presiding judge’s opinion, is inconsistent with proper courtroom demeanor and the spirit
of this tournament. Penalty points also may be deducted from cross-examining attorneys who repeatedly ask questions which require the witness to invent facts or for other behavior of participants, which, in the opinion of the presiding judge, is inappropriate and deserving of punitive action.

8.9 In case of a mathematical tie, a tiebreaker point will be awarded. This is explained on the performance rating sheet. The total number of points awarded, including the tie breaker point if it is needed, determines which team prevails.

9. PERFORMANCE RATING SHEETS AND GRIEVANCE PROCEDURE

9.1 The criteria used to evaluate students’ performances are located in the Matrix on Judging Criteria in Appendix C of the case packet.

9.2 Judges have been encouraged to call opposing coaches into chambers at the conclusion of the trial enactment so that the coaches may review the scoring sheet and check the scores for mathematical accuracy. Coaches must sign the scoring sheet at that time. Even if the judge does not call the coaches into chambers, they are responsible for reviewing the scoring sheet and checking its accuracy at the conclusion of the trial. It is also the coaches’ responsibility, if they choose to do so, to copy the scores onto a clean copy of the Performance Rating Sheet so that students can review their individual performances. The MBA does not keep track of individual scores.

9.3 The scoring decision of the court is final. We ask that you accept the decision of the judges with dignity and remember that they are volunteering their time. As your attorney-coach will tell you, we don’t always agree with the judge’s decisions. For the correct procedure to follow in the event of a gross rule violation by a student or coach, see Section 11, Objections.

9.4 There is no formal grievance procedure. Failure or refusal to check the accuracy of the scores or to sign the scoring sheet will not preserve a right to appeal the decision of the court, which is final.

10. TIME LIMITS

The script for the trial enactment is designed to be completed within a two-hour time limit. The MBA has reserved a sufficient amount of time for the teams to be able to complete the trials. Teams that do not monitor their time and run longer than the two hour allotted time will bear sole responsibility for the inability to complete a trial. An incomplete trial will NOT be rescheduled. It will be counted as a loss to both teams.

10.1 The following time periods should be observed in preparing the case for trial.

- Opening statements: five minutes per side
- Direct examination: seven minutes per witness
- Redirect examination: time limit left to judge’s discretion; limit of three questions per witness
- Cross-examination: five minutes per witness
- Re-cross-examination: time limit left to judge’s discretion; limit of three questions per witness
- Closing arguments: seven minutes per side

10.2 A judge shall have discretion to allow additional time to compensate for time lost, such as time spent arguing objections.

10.3 In keeping with the atmosphere and decorum of a courtroom trial, timekeepers, stopwatches, and buzzers are not permitted during the enactment of the trial.

10.4 Each team will be responsible for monitoring its own and the other team’s time. Objections may be raised if time limits are exceeded. Ultimately, the judge is responsible for moving the trial along. Deliberate abuse of the time limits may result in deduction of points.

10.5 The determination of the abuse of the time periods is a discretionary decision of the judge. The judge’s decision on abuse of time is final and cannot be appealed.

11. OBJECTIONS

11.1 Physical constraints of the courtroom may prevent all counsel from sitting together at the counsel table.

11.2 Any objections, even to gross rule violations, must be raised during the course of the trial or they are lost. A gross rule violation might consist of a teacher, parent, school official or lawyer coaching or signaling the students on the team during the
course of the trial. Such coaching could include a verbal message, hand or facial gestures or coughing, and other noise making intended to convey a message to the students.

11.3 The proper procedure to follow in objecting to a gross rule violation is to request a bench conference and bring the objection to the attention of the presiding judge.

11.4 Coaches may raise objections, but only in the event of improper behavior on the part of opposing coaches or spectators. The intent of this rule is to allow coaches to object to behavior on the part of other adults when it might be difficult for students to object to or even to see an adult's behavior. Coaches must raise objections immediately at the time of the infraction. This rule does not allow coaches to make objections on behalf of their student attorneys regarding the substance of the trial. It applies only to gross rule violations such as coaching or signaling time that occur during the course of the trial.

11.5 Unless circumstances require otherwise (i.e. the physical constraints of the trial location) in order to avoid even the appearance of coaching, coaches and other spectators shall not sit in jury boxes or other seating which is forward of the attorney's tables. Students should be reminded not to communicate in any way with their coaches, witnesses or non-participating students during the course of the trial.

12. THE SCHEDULE

12.1 The times and dates of the trials are set by the court and, except under extreme circumstances, i.e., dangerous weather conditions, they cannot be changed. An unexcused absence from a trial will result in a forfeit for the absent team and a win for the opposing team.

12.2 Most trials will be scheduled between 1 and 2 p.m. Because courts are closed for business at 4:30 p.m., please keep an eye on the clock. We have asked judges to do the same.

12.3 The MBA will assess a fee of $250 to any school that drops out of the competition after the “latest dropout date to avoid penalty” listed in the Mock Trial Datebook, found in Rule 13 of the case materials.

12.4 A team that does not participate in an assigned trial shall have forfeited that trial. A team forfeiting a second trial during a tournament year will be considered to have dropped out of the tournament. Upon its second forfeit, the team will be assessed the drop out fee and may no longer compete in trials for the remainder of the tournament year.

A team which forfeits a trial is also subject to being suspended from the Mock Trial Program for the following year at the discretion of the MBA Mock Trial Committee. The team will have the opportunity to explain the reasons for the forfeit(s) before the decision of the committee. The amount of notice provided by the team in advance of the forfeit shall be considered by the committee as part of its deliberation.

Forfeiting a trial deprives another team of the opportunity to compete. Additionally, the trials for the tournament take many hours of staff time to coordinate. Please make sure you and your team members are committed to completing the tournament before you register.

12.5 No accommodations will be made for vacations or other non-mock trial related activities that are in conflict. Please do not put the staff in the position of having to tell you “no.”

12.6 The state police, the court or other authority of the trial location, the school district, or the principal of a participating school are the only relevant authorities who may declare a weather emergency. A weather emergency may not be declared by a teacher or team coach. A weather emergency may either reflect the closure of a school or trial venue, or the determination by a relevant authority that it is unsafe for students to travel. If a weather emergency has not been declared by a relevant authority, teams wishing to cancel a trial due to inclement weather must forfeit the trial. Except under exceptional circumstances, weather emergencies must be declared by 11 a.m. on the day of the trial. A coach of the team of a canceling school is responsible for informing both the coach of the other team and Mock Trial Central of the cancellation. Mock Trial Central will inform the judge and trial venue of the cancellation. The coach of the team giving notice must do so immediately after the emergency is declared, both
by telephone and by e-mail, and the team giving notice must receive prompt confirmation of the notice from the teacher coach or their adult (non-high school student) designee at the opposing school in order for the notice to be effective. To avoid miscommunication between teams, please make every effort to make live telephone contact with a responsible adult at the opposing school. Court time permitting, trials cancelled due to weather emergencies will be rescheduled. Failure to comply with provisions for weather emergencies may result in a forfeit.

12.7 Coaches shall confirm with each other (three school days) in advance of any given trial. At that time, coaches shall confirm which side each team will be playing. To ensure effective communication in the event of a weather, or other emergency, Mock Trial Central strongly recommends that coaches exchange emergency contact information—such as a cell phone, or other telephone number where they can be reached on the day of the trial. The Web site posting is final and official.

12.8 Teacher-coaches (of the winning team) must call in their scores to the MBA by 9 a.m. the next morning. Messages may be left on the MBA’s voice mail at (617) 338-0570. Scores also may be e-mailed to MockTrial@MassBar.org.

12.9 The teacher coach or their adult (non-high school student) designee must attend all trials with students. If not, the team will have to forfeit match.

13. MOCK TRIAL DATEBOOK

A schedule will be prepared in early January indicating the time and place of your trials and the side your team must argue. This will be posted in a secure area on the Web site.

Latest dropout date to avoid penalty... Nov. 26, 2012
Preliminary rounds begin........ week of Jan. 21, 2013
Snow make-ups.................. week of Feb. 11, 2013
Winter break.................... week of Feb. 18, 2013
Tiebreaker week ................. week of Feb. 25, 2013
Sweet Sixteen trials.............week of March 4, 2013
Elite Eight trials ............... week of March 11, 2013
Final Four .....................Monday, March 18, 2013
State Championship... Wednesday, March 20, 2013

14. MOCK TRIAL WEB SITE

Our home page, http://MockTrial.MassBar.org, serves as the most current and efficient source of information regarding clarifications on stipulations, case updates, trial results and answers to frequently asked questions.

There is a “registrants only” area located on the Web site. Your team will be randomly assigned a password. This password will give you access to your schedule at any time. (See Appendix D for log-in instructions). This Web-based system was designed to complement the relay of information with regard to scheduling and programmatic changes. While we will continue to contact you on the phone, staying abreast of your team’s trial schedule is your responsibility. We suggest you assign this task to one of your students.

If you have a question, comments or concerns, e-mail MockTrial@MassBar.org. We will post frequently asked questions to the Web site on a regular basis. Directions from your school to a specific court can also be accessed at MockTrial.MassBar.org.

If you do not have access to the Internet and/or e-mail, and did not inform us on your registration form, please call us immediately at (617) 338-0570.
PART III:
Hints on Preparing for a Mock Trial

Review all of the materials in the case packet
• All students should read the entire set of materials and discuss the information/procedures and rules used in the Mock Trial Program.
• 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.

Assign roles early
• Even though a team has to represent only one side in the case during any single trial, all roles in the case should be assigned and practiced. This will help in practicing the case as well as in preparing for future trials.
• Schools should designate alternates for both students and teacher-coaches in order to be prepared for unexpected illness or absence.
• The credibility of the witnesses is very important to a team’s presentation of its case. Experience has shown that close decisions in the trial enactments often hinge on individual differences in witness performance. Therefore, students acting as witnesses really need to “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.

Preparing opening/closing statements and witness questions
• Teams should allow their students to prepare their own questions, with the teacher-coach and attorney-coach giving the team continual feedback and assistance on the assignment as it is 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.
• Team members should prepare their opening statements. 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 trial, since they are supposed to highlight the important developments for the plaintiff/prosecution 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 closing arguments.

Practice, practice, practice
• As a team approaches the date of its first trial, it is required that the team conduct at least one complete trial as a kind of 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-coach should be invited to attend this session and comment on the enactment.

Prepare to adapt
• 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 her/his own way of doing things. Because the proceedings or conduct of the trial often depend in no small part on the judge who pre-sides, student attorneys and other team members should be prepared to adapt to judicial rulings and requests.

Some of the skills most difficult for team members to learn
• Deciding which facts are the most important to prove their side of the case and making sure such proof takes place.
• Stating clearly what they intend to prove in an opening statement and arguing effectively in their closing statement that the facts and evidence presented have proven their case.
• Following the formality of court, e.g., standing up when the judge enters, or when addressing the judge, calling the judge “Your Honor,” etc.
• Phrasing questions on direct examination that are not leading (carefully review the Simplified Rules of Evidence and watch for this type of questioning in practice sessions).

• Refraining from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions, which often lessen the impact of the point previously made.

(Stop and recognize which questions are likely to require answers that will make good points for your side. Rely on the use of those questions. Avoid pointless questions!)

• Thinking 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)

For more tips on how to prepare for your mock trial, go to MockTrial.MassBar.org and click on the “Mock Trial Tips” link.
PART IV:
Trial Procedures

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 a trial and the order in which they occur. This section outlines the usual steps in a bench trial, that is, a trial without a jury.

1. COURTROOM LAYOUT

Participants
- The judge
- The attorneys:
  - plaintiff/prosecution and defense
- The witnesses:
  - three witnesses for the plaintiff/prosecution
  - three witnesses for the defense

![Courtroom Layout Diagram]

2. STEPS IN MOCK TRIAL

The opening of the court
2.1 The plaintiff/prosecution team’s attorney-coach or teacher-coach shall serve as the court crier
2.2 The court crier shall first consult the judge as to the desired method for her/his introduction and the opening of the court. The judge will have sole discretion as to whether or not there will be formal process employed for her/his introduction and the opening of the court.
2.3 If the judge confirms that she/he would like a formal process, as the judge enters the Courtroom and/or approaches the bench to begin the trial, the crier shall cry aloud “All rise and remain standing!”
2.4 When the judge has ascended to the bench, the crier shall cry aloud, “Hear Ye! Hear Ye! The Mock Trial Court of the Commonwealth of Massachusetts is now in session. The Honorable Justice [judge’s last name] presiding. All persons having business herein can now be heard. You may be seated.”
2.5 The judge will then ask the attorneys for each side if they are ready. Often the judge will begin the trial by asking if there are any preliminary matters or by requesting stipulations. The lawyers would offer stipulations, if any, in response to that question.
2.6 Stipulations of the parties are issues that both sides have agreed to prior to the trial. Only the document in the case packet labeled Stipulations of the Parties and/or additional stipulations designated by the Mock Trial Committee are considered to have been stipulated to and may be entered as such. A team may not object to the admission of stipulations.
2.7 The judge shall direct the crier when to recess or adjourn court; upon adjournment the crier shall require all present to rise and cry aloud, “This court is adjourned. Please remain standing until the judge leaves the courtroom.”

Opening statements
2.8 Before proceeding with this opening statement, each team of attorneys should have one of its members introduce the team to the presiding judge:
“Your Honor, my name is Mr./Ms. ________. My colleagues are Mr./Ms. ________ and Mr./Ms. ______.”
2.9 Only the co-counsel are introduced to the judge at the beginning of the trial. Witnesses should be introduced in character (not by actual name) as they are called to the stand.
2.10 Occasionally, the judge will have all witnesses stand at the beginning of the trial to be sworn in, but, most often, the judge or the court officer will swear in each witness as she or he is called to the stand. The judge will ask each witness:
“Do you solemnly swear or affirm to tell the whole truth, and nothing but the truth, according to the Mock Trial Rules and Affidavits?

2.11 After introducing herself/himself and co-counsel to the judge, the plaintiff’s attorney/prosecutor summarizes the evidence that will be presented to prove the case.

2.12 After introducing herself/himself and co-counsel to the judge, the defendant’s attorney summarizes the evidence that will be presented to rebut the case the plaintiff/prosecution has made.

Direct examination by plaintiff/prosecution

2.13 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 a way that might violate this rule.

Cross-examination by the defense

2.14 After the attorney for the plaintiff/prosecution has completed questioning a 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. Inconsistent stories, bias and other damaging facts may be pointed out to the judge through effective cross-examination.

Redirect examination by the plaintiff/prosecution

2.15 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. Each side is limited to three questions per witness on redirect.

Re-cross-examination by the defense

2.16 The defense attorneys may re-cross examine the opposing witnesses to impeach previous testimony. Each side is limited to three questions per witness on re-cross.

Direct and redirect examination by the plaintiff/prosecution

2.17 Direct and redirect examination of each defense witness follows the same pattern as the steps above which describe the process for direct and redirect examination of the plaintiff/prosecution witnesses.

Cross and re-cross-examination by the plaintiff/prosecution

2.18 Cross and re-cross-examination of each defense witness follows the same pattern as the steps above which describe the process for cross and re-cross-examination of the plaintiff/prosecution witness.

Closing arguments (attorneys)

2.19 Defense: Defense’s closing statement is presented first. It is essentially the same for both the defense and the plaintiff/prosecution. Counsel for the defense reviews the evidence as presented, stresses the facts favorable to the defense and shows how the plaintiff/prosecution has failed to prove all the necessary elements of its case. Counsel concludes with a request that the court enter judgment on behalf of the defendant.

2.20 Plaintiff/Prosecution: The closing statement is a review of the evidence presented. It should review the evidence as presented, stress facts favorable to the plaintiff/prosecution and show how the plaintiff/prosecution has met its burden of proving all the necessary elements of its case. Counsel concludes with a request that the court enter judgment on behalf of the plaintiff/prosecution.

Burden of proof

2.21 Burden of Proof: In a civil case, the plaintiff is required to prove its case by a preponderance of the evidence; in a criminal case, the prosecution is required to prove its case beyond a reasonable doubt.

The judge’s role and decision

2.22 The judge is the person who presides over the trial to ensure that the parties’ rights are protected and that the attorneys follow the Simplified Rules of Evidence and trial procedure. In trials held without a jury or in evidentiary hearings, the judge also serves as the fact finder, that is, she/he determines the facts of the case and renders a judgment.
In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge probably will allow the evidence. The burden is on the attorneys to know the rules and to be able to use them to protect their clients by limiting the actions of opposing counsel and their witnesses.

Formal rules of evidence are complicated and differ depending on the court where the trial occurs. For purposes of the Mock Trial Program, the rules of evidence have been modified and simplified. Not all judges will interpret the rules of evidence or procedure in the same way, and you must be prepared to point out the specific rules (quoting them, if necessary) and to argue persuasively for the interpretation and application of the rule you think proper. No matter which way the judge rules, you should accept his or her ruling with grace and courtesy.

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope
These Simplified Rules of Evidence and Procedure govern the trial proceedings of the Mock Trial Program. The only rules of evidence that may be cited are those included here.

Rule 102. Objections Beyond the Scope of These Rules
An objection which is not contained or referred to in these Simplified Rules of Evidence and Procedure shall not be considered by the court. Counsel responding to such an objection is responsible for pointing out to the judge that the objection raised is not contained in these rules. If counsel fails to do so, the court may exercise its discretion in considering such an objection.

ARTICLE II. MODE AND ORDER OF INTERROGATION AND PRESENTATION

Rule 201. Form of Question During Direct Examination
On direct examination, witnesses may not be asked leading questions except as may be necessary to elicit background information or basic foundation to develop the witness’ testimony. A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a “yes” or “no” answer.

Example of a direct (non-leading) question: “Sergeant Brown, please describe what the defendant looked like the morning of the arrest.” (NOTE: This question is not leading provided that it has already been established that the defendant was arrested on a particular morning, and that Sgt. Brown observed the defendant on the morning of her arrest.)

Example of a leading question: “Sergeant Brown, when the defendant was arrested, wasn’t she wearing a red sweatshirt, blue jeans and white sneakers?”

Rule 202. Scope of Direct Examination
Direct examination may cover any relevant facts about which the witness has personal knowledge.

Rule 203. Narration
(a) Questions Calling for Narrative Testimony
Questions on direction examination must ask for specific information, and may not be so broad that the witness is invited to wander or narrate a story. Questions calling for narrative testimony are objectionable.

Example of a question that calls for narration: “Please tell the court everything you know about the accident.”

(b) Narrative and Non-responsive Answers
The witness’ answer to a question may not go beyond the facts about which the question was asked. Answers that go beyond the scope of the question are objectionable. If the judge sustains an objection on these grounds, the objecting attorney may make a motion to strike the improper testimony.
Rule 204. Form of Question During Cross-Examination
On cross-examination, an attorney may ask leading questions of the opponent’s witness.

Rule 205. Scope of Cross-examination
Cross-examination may cover any relevant facts about which the witness has personal knowledge (whether or not raised during the direct examination) or matters relating to the credibility of the witness.

Rule 206. Redirect Examination
After cross-examination, a maximum of three additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross-examination. The judge has the discretion to limit the scope of redirect.

Rule 207. Re-cross-examination
After redirect examination, a maximum of three additional questions may be asked by the cross-examining attorney, but questions must be limited to matters raised by the attorney on redirect examination. The judge has the discretion to limit the scope of re-cross.

Rule 208. Recalling Witnesses Prohibited
After a witness has been excused from further testifying, the witness may not be recalled by either party.

ARTICLE III. INVENTION OF FACTS
(Special Rules for Mock Trial Program)

Rule 301. “Invented Fact” Defined
An “invented fact” is a material fact which is not contained anywhere in the stipulations, in the evidence, or in any witness’ affidavit, and which is not a “fair and reasonable extrapolation” of facts which are clearly found within such case materials. An “invented fact” is not permitted because it would promote the unfair creation of inferences which are not supported by the case materials. The case materials provide sufficient factual and legal points on which to question each witness without the witness inventing, or the cross-examining attorney requiring the witness to invent facts.

A fair and reasonable extrapolation does not materially affect the outcome of the case or the arguments in the case, and must be reasonably inferred to be within the personal knowledge of the witness.

Example of a fair and reasonable extrapolation: A witness/soccer player states in her/his affidavit that the final score of the game was 2–1. The coach of the team does not mention the score of the game in her/his affidavit. It is reasonable to assume that the coach would have personal knowledge of the score, and it is a fair and reasonable extrapolation of the facts contained in the evidence (assuming the coach was at the game) to know the final score. The coach is permitted to testify that the final score of the game was 2–1.

Example of an unfair and/or unreasonable extrapolation: In the above example, if a conversation between two players occurred during the soccer game, and the statements made during the conversation are important to the case, unless the coach’s affidavit contains sufficient information to provide a foundation for the coach to testify to what was said, it is not reasonable to assume that the coach heard the conversation just because she/he was at the game. It would be an unfair extrapolation for the coach to claim that she/he heard the conversation.

Rule 302. Invention of Facts on Direct Examination
On direct examination, each witness is bound by the facts contained within her/his written affidavit, but is not required when testifying to be limited only to facts contained in her/his affidavit. A witness may testify to knowledge of other facts contained within the case materials, and to fair and reasonable extrapola
tions thereof, but such testimony must be reasonably based upon her/his personal knowledge.

Rule 303. Methods of Redressing Invention of Facts on Direct Examination
(a) Traditional Impeachment
If a witness testifies in contradiction to a fact in the witness’ own affidavit, opposing counsel should impeach the witness during cross-examination. If a witness testifies to an “invented fact,” opposing counsel may elect to impeach the witness during cross-examination, by asking questions to confirm that the fact is not contained in the witness’ affidavit (or elsewhere in the case materials), or may elect to object to the “invented fact,” pursuant to Rule 303(b), at the time it is offered by the witness.

(b) Objection Raised at Bench Conference
If a witness testifies to an “invented fact,” opposing counsel may immediately request a bench conference, at which time counsel may object to the invention of facts (as defined above). After the
bench conference, any fact deemed by the judge to be an “invented fact” shall not be permitted; the “invented fact” shall be stricken, and the witness shall be instructed to answer counsel’s questions without reference to the “invented fact.”

Invention of facts objections should be raised at bench conferences to preserve the integrity and decorum of the trial atmosphere. However, the granting of a bench conference is a discretionary decision of the judge and a request for a bench conference may not always be granted. If the judge declines a request for a bench conference, the invention of facts objection may be raised in open court.

**Sample objections that may be made at the bench conference:**

“Your Honor, the witness is creating facts which are not in the record.”

“Your Honor, the witness has invented facts which are not supported by the record.”

“Your Honor, the facts offered constitute an unfair or unreasonable extrapolation from the facts contained in the record.”

At a bench conference, counsel should be prepared to direct the judge to the invention of facts rules.

**Rule 304. Invention of Facts on Cross-examination**

On cross-examination, if a witness is asked a question the answer to which is not contained in the stipulations, in the evidence or in any witness’ affidavit, the witness may respond with any answer as long as it is responsive to the question, is not contrary to the witness’ affidavit and does not contain unnecessary elaboration. If the witness provides an answer that is contrary to the witness’ affidavit, the affidavit may be used to impeach the witness’ testimony.

A witness may not be impeached for failing to adopt facts from another affidavit or exhibit if she/he elects not to adopt such facts. If a witness is unable to respond in accordance with Rule 304, she/he may claim to have no recollection on which to base an answer. Questions calling for the invention of facts on cross-examination are not objectionable on those grounds.

**Example:** If the soccer player in the examples under Rule 302 above claims that the soccer coach was present and heard the entire conversation, but the coach does not admit that in her/his affidavit, the coach is not required to adopt the player’s statement and is allowed to deny that she/he heard the conversation, or may testify that she/he does not recall whether she/he heard the conversation. The coach’s credibility may not be questioned (i.e., she/he may not be impeached) solely because she/he failed to adopt the assertion of the soccer player that the coach heard the conversation. If the coach is asked whether she/he heard the conversation, counsel’s objection on the grounds that the question calls for invention should be overruled.

**ARTICLE IV. RELEVANCE**

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

“Relevant evidence” means evidence which tends to make the existence of any fact that is of consequence to the determination of the outcome of the case more or less probable than it would be without the evidence.

**Rule 402. Irrelevant Evidence Inadmissible**

Relevant evidence is admissible, except as otherwise provided in these rules or other law provided in the case materials. 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 (a) its probative value is outweighed by the danger of unfair prejudice; (b) if it confuses the issues; (c) if it is misleading; or (d) 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**

Evidence of a person’s character or character trait is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except for:

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 a crime offered by an accused, or by the prosecution to rebut same;
3. **Character of witness.** Evidence of the character of a witness as provided in Rules 603, 604 and 605.

**NOTE:** Although evidence of a person’s crimes or other wrongs is not admissible for the purpose of proving action in conformity therewith on a particular occasion (except for the instances noted above), it may be admissible for other purposes, such as proof of motive, opportunity, preparation, plan, knowledge, identity or absence of mistake or accident.
Example: Sam the Safecracker is on trial for a bank robbery in which the bank vault was opened by using both a dentist’s drill and the Pip Diamond, a uniquely flawless jewel that had been stolen from a safe in the Famed Farmer Museum the previous year. Evidence that Sam participated in the Famed Farmer heist is not admissible to prove that Sam is guilty of the bank robbery, but may be admissible to show that Sam had the opportunity to open the safe (using the Pip Diamond) or that the Famed Farmer heist was part of the plan or preparation for the bank robbery (in which the Pip Diamond was used).

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. Subsequent Remedial Measures
When measures 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 such subsequent remedial measures when offered for another purposes, such as proving ownership, control, or feasibility of precautionary measures (if controverted), or for impeachment.

Example: In a lawsuit for negligence arising out of a slip and fall in a grocery store parking lot, evidence that the grocery store added a sign after the accident, warning customers that the area may be slippery, will not be admissible to prove that the grocery store was at fault for the accident, but may be admissible to show that the parking lot is under the control of the grocery store (if the store owner denies it).

Rule 407. Compromise and Offers to Compromise
Evidence of compromise or offers to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion of such evidence when it is offered for another purpose.

ARTICLE V. PHYSICAL EVIDENCE
Rule 501. Prerequisites for Admission of Physical Evidence
Physical evidence may be introduced if it is relevant. Physical evidence will not be admitted into evidence until it has been identified and shown to be authentic, or its identification and authenticity have been stipulated. That a document is authentic means only that it is what it appears to be, not that the statements in the document are necessarily true.

NOTE: The exhibits in this mock trial are not automatically admissible at trial. While the authenticity of the exhibits has been stipulated, a proper foundation must be laid in order to introduce an exhibit in evidence.

Rule 502. Procedure for Introducing Physical Evidence
The proper procedure to use when introducing a physical object or document for identification and/or in evidence is as follows:

- Show the exhibit to opposing counsel, so that counsel is aware of what exhibit is being offered.
- Ask the judge to mark the exhibit for identification. “Your Honor, I ask that this document be marked as Exhibit A for identification.” At this point, you are not offering the exhibit as evidence, but rather marking it so that it is clear what document you are referring to when asking the witness questions about the exhibit.
- Hand the document to the witness and ask the witness to identify it. “I show you what has been marked as Exhibit A for identification. Would you please identify that exhibit?”
- Ask the witness questions about the exhibit to establish its relevance and other pertinent information.
- Offer the exhibit into evidence. “Your Honor, at this time I ask that the court admit Exhibit A in evidence as Exhibit 1.”
- The judge will ask opposing counsel if there is any objection, rule on any objection (after argument),
and either admit the exhibit into evidence or not.

**Rule 503. Use of a Writing to Refresh Recollection**

If a witness is unable to recall information contained in a document, the attorney, after requesting the Court's permission and showing the document to opposing counsel, and if no objection is sustained, may show a document to the witness to help the witness remember the information without introducing the document into evidence. The witness cannot read the document to the court and must return the document to counsel before answering the question.

**Rule 504. Publishing Documents to the Court**

Once a document has been admitted in evidence, counsel for either party may publish specific portions of the document to the court by directing the judge's attention to the relevant portion and reading it aloud. Opposing counsel may object only if counsel has misread the document.

**Example:** “I direct the court's attention to the second page of Exhibit 1, at the top, where it says ‘Dolores is deceased.’”

**Rule 505. Use of a Witness' Affidavit to Impeach**

Unless prohibited by Rule 802, a witness may be asked questions about her/his affidavit without introducing the document. If, after appropriate questioning, a witness refuses to admit having made a statement contained within her/his affidavit, the attorney may, in conformance with Rule 502, enter into evidence the affidavit containing the statement for the purpose of impeachment. An affidavit admitted into evidence under this rule may be considered by the Court only for the limited purpose of impeachment; the document admitted will be deemed to contain only the alleged inconsistent statement(s).

**ARTICLE VI. WITNESSES**

**Rule 601. General Rule of Competency**

Every person is presumed to be 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; the witness may not speculate. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses.

**Rule 603. Who May Impeach**

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

**Rule 604. Evidence of Character and Conduct of a 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 may not be offered for the purpose of attacking or supporting the witness' credibility, except on cross-examination either (1) to rebut testimony regarding the witness' character for truthfulness or untruthfulness, or (2) to impeach the witness' testimony regarding the truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

**Rule 605. Impeachment by Evidence of Conviction of Crime**

For the purpose of attacking the credibility of a witness, evidence that the witness 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 probative value of this evidence as reliable proof outweighs its prejudicial effect to a party.

**Rule 606. 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.

**ARTICLE VII. OPINIONS AND EXPERT TESTIMONY**

**Rule 701. Opinion Testimony by Lay Witnesses**

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' tes-
timony 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, background, training, and/or education may testify in the form of an opinion. **Prior to offering such an opinion the witness must be deemed qualified by the court, pursuant to a request by the attorney conducting the examination.**

**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 trial. The facts or data supporting an expert’s opinion need not be admissible in evidence provided that they are of a type reasonably relied upon by experts in the field in forming opinions or inferences.

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

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

(b) **Opinion on Guilt or Innocence in a Criminal Case**
In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

**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 an out-of-court statement offered to prove the truth of the matter asserted.

**Example of a statement which is offered for the truth of the matter asserted:**
“Ralph Malph told me the light was green” when offered to prove that the traffic light was green.

**Examples of statements not offered for the truth of the matter asserted:**
- The statement is offered to prove that the person to whom it was addressed had notice or knowledge of the contents of the statement (if relevant). In this case, whether the statement is true does not matter, what matters is that the listener heard the statement.
- The statement is offered because the statement itself constitutes a verbal act that is at issue, such as defamation or fraud. In this case, you may be even trying to show that the statement is false.
- The statement is offered as circumstantial evidence of the declarant’s state of mind (e.g., “I am Napoleon” offered to show that the declarant is insane).

**NOTE:** This list is by no means exhaustive.

(d) **Statements which are deemed not to be hearsay by rule. A statement is not hearsay if:**

(1) **Prior statement by witness.** The declarant testifies at the trial 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 an affidavit; (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.

(2) **Statement by a party-opponent.** The statement is offered against a party and is: (A) the party’s own statement in either an individual or representative capacity; (B) a statement of which the party has manifested an adoption or belief in its truth; (C) a statement by a person authorized by the party to make a statement concerning the subject; (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 and in furtherance of the conspiracy.

**NOTE:** The statement need not be an “admission.”
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 hearsay statements, but 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. Example: “She said, ‘He sure is driving awfully fast.’”

(2) **Spontaneous exclamation (also commonly referred to as “excited utterance”).** A statement made under the impulse of excitement or shock if its utterance was spontaneous to a degree that reasonably negated premeditation or possible fabrication and if it tended to qualify, characterize, or explain the underlying event. Example: “I can’t believe I ate the whole thing!”

(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. Example: “He said he had a terrible stomach ache.”

(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 him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly.

(6) **Records of regularly conducted activity (the “business records” rule).** A memorandum, report, record or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, made by a person with knowledge:

   (1) If kept in the course of a regularly conducted business activity; and

   (2) If it was the usual course of business to make the record at the time of the event recorded or within a reasonable time thereafter;

   (3) Unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness of the records in question.

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.

(7) **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.

(8) **Reputation as to character.** Reputation of a person’s character among associates or in the community.

(9) **Co-conspirator statements.** Statements by a co-conspirator in a criminal conspiracy.

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) Testifies to a lack of memory of the subject matter of the declarant’s statement; or

(3) Is unable to be present or to testify at the trial because of death or then-existing physical or mental illness or infirmity.

A declarant is not unavailable as a witness if any of the above is due to the wrongdoing of the proponent of a statement for the purposes of preventing the witness from attending or testifying.
(b) Hearsay exceptions

The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

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

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

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

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

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is admissible only if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

ARTICLE IX. PROCEDURAL RULES

Rule 901. Authority to object

Objections to an opening statement must be made and argued only by the attorney making the opposing opening statement. Objections during the direct examination or cross-examination of a witness must be made and argued only by the opposing attorney cross-examining or examining the same witness. Objections regarding a closing argument must be made and argued only by the attorney making the opposing closing argument.

Rule 902. Procedure for Objections

The attorney authorized to object may object any time any tournament rule or rule of procedure or evidence is violated, except as noted in Rule 906.

Rule 903. Motion to Strike

If an answer is unresponsive or otherwise objectionable, the opposing counsel may ask the judge to strike the objectionable testimony.

Rule 904. Other Motions

Motions for directed verdict or dismissal or any other motions not specified in the Simplified Rules of Evidence and Procedure are not permitted.

Rule 905. Closing Arguments

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

Rule 906. Objections During Opening Statements and Closing Arguments

No objections may be raised during the course of opening statements or closing arguments. An objection to a closing argument may be made immediately following the closing argument. A brief rebuttal or explanation is permitted at the discretion of the judge.
PART VI:
Trial Script and Exhibits
COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss. SUPERIOR COURT DEPARTMENT CRIMINAL ACTION NO. 2011 - 1492

COMMONWEALTH OF MASSACHUSETTS

v.

PAULA/PAUL BREEDY

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STIPULATIONS OF THE PARTIES

Now come the parties in the above-captioned matter and hereby agree and stipulate to the following:

Summary of the Case

1. On August 18, 2011, a grand jury returned an indictment alleging that the defendant murdered Dana K. Liberson with deliberate premeditation and malice. The indictment does not assert, and the Commonwealth does not allege, that this killing was committed with extreme atrocity or cruelty or in the commission or attempted commission of a felony punishable by a maximum sentence of imprisonment for life.

2. The fact finder in this case shall not consider the lesser included offense of manslaughter.

3. As set forth in paragraph seven of Detective Holloway’s Affidavit, fingerprint analyses conducted by the Oakham Police Department have conclusively established the following:
   a) fingerprints belonging to Coline/Colin Loiselle and Paula/Paul Breedy were found on the decedent’s pill bottles;
   b) fingerprints belonging to the decedent, Coline/Colin Loiselle, and Paula/Paul Breedy were found on the decedent’s yellow pill box; and
   c) fingerprints belonging to the decedent, Coline/Colin Loiselle and Paula/Paul Breedy were found on the doorknob of the decedent’s bedroom and connecting bathroom.

4. As set forth in paragraph 13 of Detective Holloway’s Affidavit, laboratory analysis conducted by the Oakham Police Department has conclusively established the presence of potassium in the decedent’s sink trap.

5. Forensic handwriting analysis performed on the purported “Additional Will” of Dana K. Liberson, dated Dec. 12, 2010, has been inconclusive.

6. If the purported “Additional Will” of Dana K. Liberson, dated Dec. 12, 2010, were authentic, it would be invalid and of no legal effect because it was not witnessed.

7. A true and accurate redacted copy of Dana K. Liberson’s will, originally executed April 4, 2005, is attached to the Affidavit of Detective Holloway as Exhibit A. This will has been properly admitted to probate as the last will and testament of Dana K. Liberson. All proceedings related to the will have been stayed pending the outcome of this case.

8. A true and accurate redacted copy of Dana K. Liberson’s draft revised will, scheduled to be executed in late March, 2012, is attached to the Affidavit of Detective Holloway as Exhibit B. This draft will was never executed and does not constitute a valid will.

9. At the time of her death, Dana K. Liberson’s net worth was not less than $25 million.
10. Any claim of attorney-client privilege or work product relating to the estate planning of Dana K. Liberson has been waived and shall not be raised by any party in this case.

11. As this is a bench trial, any evidence offered by the defendant to show that another individual may have killed Dana K. Liberson—commonly referred to as third-party culprit evidence—shall not be excluded on the grounds of undue prejudice.

12. No document shall be excluded from evidence on the grounds of completeness.

13. The jurisdiction and venue of this court are proper and may not be contested.

14. All pre-trial issues have been resolved and are not at issue in this trial.

15. All named witnesses must testify in this trial and their appearance as witnesses is not subject to objection. Any other person not called in this trial to testify is unavailable and no inquiry is permitted as to the reasons therefor.

16. Except as provided in paragraph 17 below, all documents and all signatures on documents are authentic. Notwithstanding this stipulation regarding authenticity, a party seeking to offer a document into evidence must establish that the document meets the other requirements of admissibility.

17. The parties dispute the authenticity of the purported “Additional Will” of Dana K. Liberson, dated December 12, 2010.

18. Any photographs, videos, reports, statements, charts, test results or any physical evidence referred to in any expert’s affidavit that are not provided in the case materials are not available; the information available from each item is limited to the facts provided in the case materials.

19. All witness roles in this case are gender-neutral.

20. The Miranda rights of any person are not an issue in this case.

21. All persons, places, and events described in the materials are completely fictional. Any resemblance to real persons, places or events is coincidental.

22. The parties hereby reference any additional stipulations listed on the MBA Mock Trial Website and duly incorporate said additional stipulations herein.

Witnesses for the Plaintiff
1. Coline/Colin Loiselle
2. Elizabeth/Arthur Holloway
3. Sabrina/Sebastien Latta, M.D.

Witnesses for the Defendant
1. Paula/Paul Breedy
2. Gladys/George Kravitz
3. Erica/Eric Vinorto

Trial Materials and Exhibits
1. Affidavit of Coline/Colin Loiselle
2. Affidavit of Elizabeth/Arthur Holloway
3. Will of Dana K. Liberson, dated April 4, 2005
4. Draft Will of Dana K. Liberson, dated April ___, 2011
STIPULATIONS OF THE PARTIES (cont.)

6. Excerpt from The Shlanker Chronicles
7. Affidavit of Sabrina/Sebastien Latta, M.D.
8. Curriculum Vitae of Sabrina/Sebastien Latta, M.D.
9. Medical Examiner’s Report including the Toxicology Report
10. Affidavit of Paula/Paul Breedy
11. Affidavit of Gladys/George Kravitz
13. Affidavit of Erica/Eric Vinorto
14. Curriculum Vitae of Erica/Eric Vinorto
AFFIDAVIT OF COLINE/COLIN LOISELLE

1. My name is Coline/Colin Loiselle. I am a Licensed Practical Nurse (LPN) working as a full-time live-in caretaker. I recently was placed with an elderly woman named Kaitlyn Connor who lives in Harvard, Massachusetts. Prior to that, I was placed with Dana K. Liberson. She liked everyone to call her DK.

2. I first met DK in early 2007 when her Geriatric Care Manager contacted my employer to arrange for an in-home caretaker to assist DK with her daily needs. At first it was just a job. Over the last few years, however, DK and I became really close. She was just like an aunt to me, and it became apparent that I was more emotionally available to her than her family members were.

3. I work for the Tyrrell Home Health Aid Agency. The THHAA is a private company that has contracts with several state elder services agencies to place caretakers with elders and others who need in-home assistance. The agency also contracts directly with those clients who are wealthy enough to pay directly for the service. Tyrrell Home Health placements range from students, who provide companionship, to non-medical assistants who run errands, all the way up to full registered nurses.

4. I dropped out from the UMASS registered nurse program when my mom got sick. I couldn't afford school without her help. I always wished I had been able to go back and get my nursing degree. I wanted to do something related to nursing and was able to become an LPN. It isn't exactly the same, but I get to help people and that was why I had tried to become an RN in the first place. DK was my first assignment. I had no idea when I first started how close I would become to DK.

5. DK needed a full-time caretaker because she was starting to show signs of dementia and had become physically frail. DK was 85 years old when I first met her. DK had a very mild level of dementia when I first met her. Most of the time, her faculties were intact. Her biggest problem was remembering which pills to take, as she was on a variety of medications. In addition to the medication issue, DK had trouble getting in and out of her shower and going up and down the stairs in her house.

6. DK was absolutely paranoid about her pills. She would tell me she was afraid that someone might tamper with them. She never said it to me outright, but I got the feeling that she was afraid one of her nephews or nieces was out to get her for her money. Sometimes I thought it was the tea that crazy neighbor Kravitz was bringing over that made her paranoid. Kravitz kept giving her licorice flavored tea even though I told her not to. I had read somewhere that a lot of licorice could be dangerous for DK. Kravitz told me that she/he was an herbalist and her/his teas wouldn't hurt DK. Kravitz seemed to think that just because she/he took a couple of classes at the Senior Center, she/he was a world class botanist. I secretly had to throw out the tea she/he left for DK all the time.

7. DK and I hit it off immediately. She loved that I had attended UMASS, just like her late husband and one of her grandnephews/grandnieces, Paula/Paul Breedy. I never understood why DK was so fond of that bum. She/he almost never came to see DK, lived in a house DK paid for and never held a full-time job in his/her life. That said, Paul/Paula was the least offensive of DK's relatives.

8. Her greedy family was just out for her money. Most of them never came to visit her unless they wanted something. The worst of the lot was Dana Koby-Capstick (everyone called him Kocap). How such a rotten apple could result from someone named after such a sweet lady like DK is beyond me. Kocap had a chip on his shoulder and felt that he should inherit all of DK's money. DK didn't like Kocap and knew that Kocap was a brat. DK said that she should disinherit Kocap but didn't because his parents were good people. Given how DK felt about Kocap, I made sure that the two of them were never alone.

9. By 2010, DK was more than simply my employer. When you live with a client full-time, it is hard not to become friendly with them. This was especially true with someone like DK. She was always concerned
about my well-being and made sure I had time off to spend with my own family and friends. The agency rules are very strict about not becoming too close to the client or taking any gifts from them. I tried to adhere to that, but it became difficult after 2010.

10. After being sick for many years, my mom passed away in 2009. I was devastated by it, as my Mom and I were very close. DK helped me make funeral arrangements and loaned me the money to pay for the funeral after we discovered that my mom had let her burial life insurance policy lapse. DK helped me deal with the loss of my mom and we became incredibly close during this tough time for me. I paid every penny back to DK once my mom's estate was settled. It wasn't much of an estate really; my sister, brother and I each received about $25,000 after all of Mom's bills were paid off, including the money to DK. I used the money to pay off my own credit card bills and to buy a new car.

11. In late 2010, I began to notice that DK was starting to have more memory lapses. Sometimes, she would forget for a moment that her husband was deceased. She was having difficulties remembering to pay her bills. My role as her caretaker was increasing. She no longer felt comfortable walking alone and she refused to use a walker. I would go out with her for all of her errands, made all of her meals and do not recall ever leaving her alone. Even though she had some additional memory issues, she was still “with it” more often than not.

12. DK never really discussed money with me. She had mentioned that her late husband was big in computers and had done very well investing the money he earned. She always said she liked being able to pay for everything her family needed. She regretted that her family seemed more interested in her money than in her. The one exception to this was Breedy. She called her/him on the phone several times a week. She said she really adored her/him. I couldn't understand why.

13. Kocap and I never got along. Kocap always assumed that I was going to rob DK blind. Kocap would say that home health workers are just a bunch of thieves. DK usually just ignored Kocap and told him to shut up and mind his own business. That always angered Kocap. Something just wasn’t right about Kocap, who had a pretty bad temper.

14. In late 2010, I was with DK when she had a heart attack. DK was lucky to survive it, as we had been walking in the woods near her house when it happened and it took the paramedics a long time to reach us. DK credited me with saving her life and told me she was very grateful. I told her I was just doing my job, but she said I was some kind of hero.

15. The entire family came out of the woodwork when DK was in the hospital. They acted like she was their favorite relative in the whole world. I couldn't believe that they were so greedy and hovering around like vultures. Breedy was the only one who seemed to legitimately be upset by DK’s heart attack, surprisingly. She/he visited her daily for a few weeks after she first came home from the hospital. She/he soon resorted to her/his former ways and stopped coming by.

16. The heart attack did more than make DK frailer. It seemed to advance her dementia as well. DK was clearly starting to have more memory lapses. Sometimes, she would confuse me with Breedy even though we look nothing alike.

17. I was surprised when a few weeks later DK asked me to join in a big family meeting. The entire family was there. DK informed us that she was changing her will, and would no longer be dividing the entire estate equally among her grandnieces and grandnephews. Instead, she planned to leave half of her estate to charity and the rest in equal shares to her grandnieces and grandnephews, and an equal share to me. She told everyone that her lawyer would be drafting the will for her to sign at the end of March. I was honored that she wanted to leave something for me. The rest of the family just glared at me. They tried to talk her out of leaving half of her estate to charity but she wasn't listening to any of them.
18. Kocap was really angry after DK made the announcement about her will and stormed out, screaming that it wasn't fair and that he was being cheated out of his inheritance. Breedy approached me and told me that she/he was glad that I was getting something in the will since she/he knew how much I had done for DK. Breedy also told me that she/he had a feeling that DK wasn't going to be around much longer. It was very odd.

19. A few weeks after the meeting, DK told me that Breedy was coming to visit. When Breedy arrived, she/he offered to stay for the weekend so that I could visit my sick sister. I took the opportunity. Before I left, I made sure that it would be okay with DK, and I made certain that all of the medications were in the pill box correctly so that all DK had to do was open the correct compartment and take her pills with dinner. If only I had realized that Breedy was going to kill DK for her money.

20. When I returned, I asked Breedy how everything had gone. She/he said that the weekend had been uneventful, and everything had gone smoothly.

21. DK died a couple of weeks after that, on March 20, 2011. She and I had dinner the night before, around 6 p.m. on Saturday night, and she had her pills with dinner as usual. Typically DK woke up around 7 a.m., but when she did not call for me by 7:45 a.m., I figured I should check on her. I found her body in her bedroom and immediately called 911. After crying for a couple of minutes, I also called Breedy to let her/him know about DK. I asked that she/he notify the family.

22. I could not believe it when I learned after she died that DK had written out a will that left me half of her estate. I never knew anything about that. The police showed the document to me — it didn't look like her handwriting. I had seen her handwriting a thousand times. I don't know how it got in with her private papers. I was both relieved and disappointed when I found out it wasn't valid.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY this 21st day of December, 2011.

Colin Loiselle

Coline/Colin Loiselle
AFFIDAVIT OF ELIZABETH/ARTHUR HOLLOWAY

1. My name is Elizabeth/Arthur Holloway and I am the Chief Detective and Deputy Chief of Police of the Oakham Police Department. I was the detective in charge of investigating the death of Dana K. Liberson, who died in her home on March 20, 2011.

2. I have been a police officer for more than 20 years. I received training at the police academy, where I took advanced training in forensic science and crime scene investigation, which included fingerprinting, retrieving blood, hair and other trace evidence samples and psychology. I began my career working in the Worcester Police Department as a patrol officer and, after four years, I became a detective in the Worcester PD. I take classes every year in current police tactics and investigative techniques, and I read a lot to keep up with the latest in forensics. I worked as a detective for 14 years and two years ago I took the job in the Oakham Police Department.

3. I have investigated more than 140 murder cases since becoming a detective in 1998. The murder of Dana K. Liberson was a cold, calculated murder with one of the oldest motives in the book — money. The heirs couldn’t wait for their inheritance, and, in this case, the defendant believed her/his inheritance was about to be significantly reduced, and boom — the poor woman was killed with her own medication.

4. On March 20, 2011, at 8:30 a.m., I was called to investigate the sudden and apparently unexplained death of Dana K. Liberson. The ambulance crew who initially arrived had already found her dead at the scene. They called the police department. This is standard protocol, when paramedics are called and the person is already deceased. Before the body is removed, the police routinely investigate to determine whether or not the area constitutes a crime scene. The victim’s neighbor, Gladys/George Kravitz, spoke with the medics and aroused their suspicion regarding the cause of death, which they mentioned to me when I arrived.

5. After the paramedics vacated the area, the first person I encountered was Coline/Colin Loiselle. Loiselle stated that she/he was the decedent’s caregiver, and up until that very day, the decedent (she/he called her “DK”) was in pretty good health. Loiselle stated that, as caregiver, she/he was at the decedent’s home full time. Upon further inquiry, I learned that Loiselle was paid to assist the decedent with some of her daily living activities, such as getting in and out of the shower and going up and down the stairs. Loiselle was also in charge of preparing the decedent’s medications. She/he would load the monthly pill dispenser the first day of every month with the various medications that DK was prescribed. She/he told me, unsolicited, that the decedent had a heart problem.

6. I asked Loiselle to show me the decedent’s medications and noted that the decedent took digoxin .125 mg tablets, furosemide, HCTZ (hydrochlorothiazide) capsules and potassium supplement capsules. As usual where there is an unexplained death, I noted the dates when the prescriptions were filled and counted out the number of remaining pills. I asked Loiselle when the decedent had last taken her medications and she/he stated the previous day, at dinnertime.

7. I entered the decedent’s bedroom and noted some items on her dresser: There was a hairbrush with a few strands of gray hair matted in it, pictures of her family, a container of baby powder, a box of Kleenex, some pill bottles, a hand mirror and a pill box. I also found a one-page document entitled, “My Additional Will,” a copy of which is attached. I dusted the pill bottles for fingerprints and the lab report indicated that the fingerprints on both bottles were of Loiselle and Paula/Paul Breedy. I also dusted the yellow pill box (the type used for monthly dosages) and found some prints, which were later identified as those of the victim, Loiselle and Breedy. I also dusted the doorknob of her bedroom and the bathroom off her bedroom and found prints later identified as belonging to Loiselle, Breedy and the decedent. Per standard procedure, I also collected samples from the sink traps in the kitchen and all the bathroom sinks, including the decedent’s bathroom sink, even though Loiselle told me that the decedent rarely used it.
8. I inquired of Loiselle if she/he knew of anyone who may have wanted to harm the victim or whether the decedent exhibited any suicidal tendencies. Loiselle at first appeared hesitant to talk, but then went on to state that the victim had quite a bit of family money, and a greedy family that was just out for her money. She/he stated that most of DK’s family never came to visit her unless they wanted something. She/he indicated that the “worst of the lot” was Dana Koby-Capstick (whom she said that everyone called “Kocap”), who “had a chip on his shoulder” and felt that he was going to, and still should, inherit all of the decedent’s money. The decedent was not too fond of Kocap and had said that she/he should disinherit Kocap but didn’t because his parents were good people. Loiselle was sure that the victim was in good spirits the day before her death, looking forward to their usual weekly activities, and did not exhibit any suicidal expressions.

9. Loiselle also told me that there was a recent meeting at the decedent’s house where the family was present. Loiselle said that DK announced at the meeting that she was changing her will to leave half of everything in equal shares to Loiselle and to DK’s great nephews and great nieces. Loiselle told me that Kocap was really angry when he heard that news and stormed out screaming that “it wasn’t fair” and that he was being “cheated out of his inheritance.” Loiselle also said that, on the way out of the meeting, the defendant approached her/him and told Loiselle that she/he was glad that Loiselle was getting something in the will because she/he knew how much Louiselle had done for the decedent. Breedy also told Loiselle that she/he was concerned that DK would not be around much longer and may not have an opportunity to change the will. At my request, DK’s lawyer provided me with a copy of DK’s existing will and the new will that she had drafted for DK. True and correct copies of those documents are attached to this affidavit.

10. After this meeting, Breedy, according to Loiselle, came by to visit more often than ever before. In fact, Breedy had taken care of DK the weekend of March 4th through the 6th so that Loiselle could take a few days off to watch her/his sister’s children, a fact that I was able to verify. Loiselle knew that Breedy was with the decedent on each of those days because when she/he called the decedent to check on her, DK told her that Breedy had been there that day.

11. As part of my investigation, I also spoke with Gladys/George Kravitz, the next door neighbor who had talked to the medic and thought that DK’s death was suspicious. Kravitz stated that she/he was a “great friend” of the victim and usually visited her several times a week to have a cup of tea and talk about “anything and everything.” Kravitz added that for the past several months they had been drinking their new favorite concoction, a licorice flavored tea, and had been trying out various types of scones.

12. I interviewed Kravitz further to find what she/he knew about the circumstances surrounding the victim’s death. Kravitz stated that she/he really knew nothing about the actual death, but that there had been a lot of “comings and goings” at DK’s house in the last few months. It should be noted that Kravitz apparently spends a lot of time gardening and, based upon my observation of the scene, could easily observe the decedent’s house. Kravitz said that she/he had heard several loud conversations among people she/he identified as the decedent’s great nephews and nieces in the last two months preceding DK’s death, arguing amongst themselves about some changes that DK planned to make in her will. Kravitz said that she/he heard Kocap state that, “DK will not be changing her will if I have anything to say about it.” Kravitz also heard Kocap say something like how he had waited all his life for his inheritance and was not going to let it slip away now.

13. After my initial investigation, an autopsy of the victim was performed to determine the cause of death. The medical examiner, Dr. Latta, reported that the cause of death was atrial fibrillation caused by an overdose of digoxin, one of the victim’s prescribed medications. The lab report also indicated that the substance that had been recovered from the trap of the victim’s bathroom sink had been potassium. As there were four digoxin pills missing from the prescription bottle, it became apparent that the decedent had been given an overdose of digoxin, and did not take her potassium supplements. Dr. Latta concluded (and I concurred)
that the overdose of digoxin and the lack of the potassium supplements caused DK’s untimely death.

14. As part of my investigation, I went to Breedy’s home to interview her/him. Breedy admitted that she/he was alone with the victim for the weekend a few weeks before her death, but Breedy denied any involvement in the decedent’s death. I asked Breedy if she/he would permit me to search her/his residence and she/he agreed, so long as she/he could watch me conduct the search. Behind Breedy’s bookcase, I found a copy of the New York Times best seller, *The Shlanker Chronicles*, with a bookmark in it. I was aware that the story was about a death by poisoning. I asked Breedy if she/he was familiar with the story. She/he immediately clammed up. I collected the book as evidence and properly bagged and marked it for further review. I have attached to this affidavit an excerpt from the book that I believe is evidence of Breedy’s *modus operandi*, and led Breedy to believe that he could easily murder DK by causing a digoxin overdose with the concurrent removal of her potassium, all without detection.

15. I originally suspected Loiselle, Kocap and Breedy. However, at the conclusion of my investigation, which is fully described herein, I determined that only Breedy had the motive, means and opportunity to kill the victim. Although the other grandnieces and grandnephews had a potential motive as well, I concluded that only Breedy had the opportunity to poison the victim.

16. Finding The Shlanker Chronicles in Breedy’s possession solidified my conclusion. After seeing this method of murder described in The Shankler Chronicles and confirming with Dr. Latta that it was medically possible, I concluded that Breedy was the murderer. I referred the case to the District Attorney’s Office and requested a warrant for Breedy’s arrest for the murder of Dana K. Liberson.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY this 9th day of July, 2012.

Elizabeth/Arthur Holloway

AE Holloway
LAST WILL AND TESTAMENT OF
DANA KAPSTICK LIBERSON

(Original executed on April 4, 2005)

I, Dana Kapstick Liberson, now or formerly of Worcester, Massachusetts, and being the wife of the late Donald Koby Liberson (d/o/d 3/20/69) being of sound mind and memory, but knowing the uncertainty of life, make this my last will, hereby revoking all wills and codicils heretofore made by me.

ARTICLE FIRST:

I hereby appoint my sister, Mary Jo Capstick, to be the Executrix under this, my Will.

Remainder of Article redacted.

ARTICLE SECOND:

Redacted.

ARTICLE THIRD:

I leave my entire estate to the following people in equal shares as follows:

a. My great niece/nephew, Paula/Paul Breedy;
b. My great nephew, Dana Koby-Capstick;
c. My great nephew, Daniel Stanford Gifford; and
d. My great niece, Sarah Chervy.

ARTICLE FOURTH:

Redacted.

ARTICLE FIFTH:

Any person who shall at any time commence proceedings in any court or take any action to have this will, or any portion hereof declared invalid, or who contests any part or all of the provisions included in this will, shall forfeit any interest in my estate, regardless of the outcome of such proceedings or contest.

ARTICLE SIXTH:

Any person which may claim to be a child of mine has been intentionally, and not as the result of oversight or error, omitted from the provisions of this will.
ARTICLE SEVENTH

Where a noun or pronoun is used in this instrument referring to a person, including, without limitation, to a descendant, beneficiary, trustee or personal representative, said noun or pronoun shall be regarded as referring to the appropriate person or persons, even though it be incorrect as to gender or as to being in the singular or plural.

Remainder of document redacted.
I, Dana Kapstick Liberson, now or formerly of Worcester, Massachusetts and being the wife of the late Donald Koby Liberson (d/o/d 3/20/69) being of sound mind and memory, but knowing the uncertainty of life, make this my last will, hereby revoking all wills and codicils heretofore made by me.

**ARTICLE FIRST:**
I hereby appoint my sister, Mary Jo Capstick, be the Executrix under this, my Will.

Remainder of Article redacted.

**ARTICLE SECOND:**
Redacted.

**ARTICLE THIRD:**
I leave my entire estate as follows:

1. I leave half of my estate equally to the following charitable institutions:
   a. The American Cancer Society;
   b. The American Diabetes Association;
   c. The American Dream Foundation; and
   d. The American Kidney Fund; and
   e. The American Red Cross.

2. I leave the other half of my estate equally to the following individuals:
   a. My great niece/nephew, Paula/Paul Breedy;
   b. My great nephew, Dana Koby-Capstick;
   c. My great nephew, Daniel Stanford Gifford;
   d. My great niece, Sarah Chervy; and
   e. My wonderful friend and trusted nurse, Coline/Colin Loiselle.
**ARTICLE FOURTH:**

Redacted.

**ARTICLE FIFTH:**

Any person who shall at any time commence proceedings in any court or take any action to have this will, or any portion hereof declared invalid, or who contests any part or all of the provisions included in this will, shall forfeit any interest in my estate, regardless of the outcome of such proceedings or contest.

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Where a noun or pronoun is used in this instrument referring to a person, including, without limitation, to a descendant, beneficiary, trustee or personal representative, said noun or pronoun shall be regarded as referring to the appropriate person or persons, even though it be incorrect as to gender or as to being in the singular or plural.

Remainder of document redacted.
Exhibit C

My Additional Will

Dated: December 12, 2010

I, Dana K. Liberson, being of sound mind, make this an addition to my last will of April 4, 2005.

THE ADDITION:
I am changing Article Third

Instead of my four grandnieces and nephews getting everything, I am leaving half of my estate to my dear friend and nurse, Coline/Colin Loiselle and the other half to my grandnieces and nephews.

Written as my free act and deed

December 12, 2010

X Dana K. Liberson
an exceptionally hot evening early in July as the young man left his apartment in the Shlanker complex and walked slowly, as though in hesitation, towards Karamazov bridge.

As he made his way to Helen’s apartment, Rod told himself that this was just practice, a dress rehearsal for the real thing. He would trace the familiar steps to her front door, ring the bell as he had countless times before, and then return home. A harmless visit. A dry run. A lark.

Fingering the key in his pocket—the one she had forgotten when she decided to forget him—Rod reflected again on how quickly it had all fallen apart. He had loved her intensely from the start, but you couldn’t admit that to others; he had learned that much from other failed romances he had described to his bar mates as “love at first sight.” They scoffed and gave him that pitying look he had grown to loathe. “Crush” sounded too juvenile. Finally he had settled on “carrying a torch.”

He imagined the despicable drunks sitting around the bar as the local news covered her untimely death, her accidental death. He practiced his measured response when one of them asked whether that was the same Helen he had been telling them about for weeks, the one who had been working her way through the golden age of Russian literature, and had paused to chat with him as he checked out each classic.

“You’re the one I was telling you about!” he might reply, with a practiced casual shrug, “I used to carry a torch for her.”

It has been easy to start bumping into her in the neighborhood. Her home address was right there in the library computer. Finding something to talk about had been simple as well—Rod had simply perused the list of books she had checked out over the past several years and started reading them. What else would a librarian do in his spare time?

The hard part was making it last. That was always the hard part.

Rod found himself at the front door to her apartment. He trotted up the front steps, found the familiar button with the hand-scrawled label reading “Ivanson,” and stabbed it with a trembling finger. Sweat was trickling down his neck, wilting the starched collar of his dress shirt. He felt a sudden chill, and goose pimples formed on his arms.

No one was home. He knew that already. She was volunteering at the museum, as she had every Tuesday afternoon since her retirement. The street was deserted. The building was quiet. No one saw Rod slip the key into the lock and turn the handle. No one heard him climb the carpeted stairs and walk quickly to her unit. No one responded to his just-in-case “Anyone home?” as he closed the door of her apartment behind him.

Careful not to disturb anything in the apartment, he stepped gingerly through the living room, entered the bedroom, and then clicked on the light switch in the bathroom. He cringed—already he had made a mistake. He extracted a pair of crumpled latex gloves from his back pocket and struggled to pull them over his clammy hands. Then he wiped down the light switch, took a deep breath, and went back to murdering Helen.

The pill box was right there on the counter, a pharmaceutical advent calendar. He confirmed that Sunday and Monday were empty, then popped open Saturday. It felt like cheating, like reading the last page of a mystery novel when you’ve only just met the characters. Rod was not here to read the tea leaves, however. He was here to edit.

He scattered Saturday onto the counter. Two yellow capsules, one white capsule, and an over-the-counter multi-vitamin. He put the multivitamin back in the container and focused on the capsules. In the medicine cabinet he found the bottles they had been taken from when Helen had filled the pill box. A quick capsule comparison sorted out white (potassium) from yellow (digoxin). Rod ticked a few extra white capsules into his hand and then returned the bottles to the medicine cabinet.

As he pried open the digoxin capsules, he smirked to himself and thought about laying foxglove flowers on her gravesite.

A few minutes later, it was done. He had loaded three doses of digoxin into a single capsule, resealed it, and dropped it into Saturday. Then—and this was the really clever bit—he had emptied the contents of the potassium capsules down the sink, leaving just a trace amount in the re-sealed capsules so that it would not be obvious that they were empty.

The Merck Manual in the reference section had inspired this element of the plan. Without the potassium supplements, the digoxin would become even more potent—dangerous digitalis, as it were. The odds of a heart attack were very high. The odds of it being traced back to an overdose were slim. The odds of it being traced to Rod were vanishingly small.

As he locked the door behind him, Rod paused for a moment at the threshold. His heart was steady, his hands no longer shook. On the way...
AFFIDAVIT OF SABRINA/SEBASTIEN LATTA, M.D.

1. My name is Sabrina/Sebastien Latta, M.D. My office is at 1058 Angel Ave., Worcester, Massachusetts. I am married with two children, Luke and Mary. I am the Assistant Medical Examiner for Worcester County, Massachusetts.

2. My credentials are completely and accurately described in my curriculum vitae, attached as Exhibit A. I have a degree in medicine from the University of Massachusetts Medical School. I completed my internship at Massachusetts General Hospital, and my residency in anatomy at the Veterans Administration Medical Center. I also did a residency in forensics at the University of California in San Francisco. I completed a fellowship at the Medical Examiner's office in San Francisco. I am board certified by the American Board of Pathology in forensic pathology. I am currently a Clinical Professor of Pathology at the University of Massachusetts Medical School. I have been employed as an Assistant Medical Examiner in Worcester County since 1990. I have performed more than 2,500 autopsies and have testified in state and federal courts as an expert in forensic medicine and pathology in more than 200 cases. In 2009, I received the prestigious Sivananjaiah Award for Excellence in Pathologic Investigation from the International Association of Coroners and Medical Examiners.

3. My first contact with the case of Dana K. Liberson occurred on March 20, 2011. State law requires any person who finds a dead body to report it to the medical examiner's office. According to standard practice, the medical examiner's office arrived at the scene after the police had completed their initial investigation.

4. After the police had notified us that the body was ready for removal, I dispatched technicians to transport the body to our office. The body arrived at 10:30 a.m. and we started our routine. We measured the deceased's height and weight, and we took photographs and fingerprints of the deceased. I then took the deceased's body temperature and noted the state of rigor mortis. I noted that there was no decomposition of the body. From the information gathered, I was able to estimate the time of death, which was approximately four to six hours before I examined the body. We then refrigerated the body.

5. There had been an investigating officer at the scene. I received a list of the deceased's medications, as well as the investigating officer's report, within a few hours after the body arrived. I later confirmed that the deceased had been prescribed the medications listed. Medical examiners typically rely on police reports and medical reports in determining the cause of death. The police report contained the same information as is contained in Det. Holloway's affidavit. The medical report described a history of the deceased's heart problems.

6. Detective Holloway called me from the scene to request that I perform a thorough toxicology analysis. The police report contained an inventory of pills in the deceased's home: digoxin .125 mg capsules, furosemide, HCTZ (hydrochlorothiazide) capsules and potassium supplement capsules. Digoxin is a purified form of digitalis, a chemical found in the commonly grown plant, foxglove. I actually have foxglove growing in my back yard.

7. Digoxin is used to treat congestive heart failure and arrhythmias; furosemide and HCTZ are diuretics, commonly used to treat high blood pressure and impaired kidney function. Over time, the use of the diuretics will deplete the patient's potassium levels, so potassium supplementation is necessary. Absent supplementation, these medications will deplete potassium levels over about a two-week period. Potassium depletion will render digoxin extremely dangerous; a small overdose could become fatal. Digoxin is a yellow powder, prescribed in capsules. Potassium supplement capsules are white, containing a white powder. HCTZ comes in an orange tablet; furosemide tablets are pink.

8. The police had collected a sample from all bathroom sink traps and the kitchen sink trap. The investigating officer had counted the pills in each bottle and listed the information from the bottles indicating the date
the pills were filled. I checked the number of pills against the prescription fill date. There were four pills missing from the 90-day supply of digoxin.

9. Normally, I would not test for potassium and digoxin in a routine autopsy because both are hard to test for accurately. Chemical analyses of digoxin and potassium are very infrequently done. To help with any measurement problems, I used a sample of the vitreous humor fluid from the deceased’s left eye. Still, digoxin and potassium levels are notoriously difficult to measure accurately.

10. Despite these difficulties, I was able to run a chemical analysis to obtain results which I believe are accurate to a reasonable degree of scientific certainty. The subject was 91 years of age in poor health, with pre-existing congestive heart failure, impaired renal function, heart rhythm disorder, high blood pressure, mild dementia and cataracts. The deceased’s medical records, which I read thoroughly, indicate a history of atrial fibrillation, and were consistent with the pre-existing conditions. Furthermore, the samples from the sink traps contained potassium residue.

11. The chemical analysis reflected in the lab report attached to the autopsy report showed a depressed level of potassium and an elevated level of digoxin. The normal ranges for a healthy, living individual are 3.5 to 4.5 milliequivalents per liter of potassium; for digoxin, the therapeutic level is .5 to .8 nanograms per liter. The deceased’s lowered level of potassium and her impaired renal function created a severe danger that would arise from an overdose of digoxin. The overdose, if sufficient, would cause severe atrial fibrillation with resulting death. In that case, death would have occurred approximately 12 hours after administration of the overdose. Based on the autopsy, the chemical analysis, the subject’s medical records, and my clinical judgment, in my opinion the deceased had ingested approximately four times the prescribed amount of digoxin.

12. Because the police report reflected the presence of licorice tea in the deceased’s home, I considered the possible role that licorice might have played in this death. Even if it were correct that the licorice tea depleted the deceased’s potassium, which cannot be ascertained medically, it could not have accounted for the elevated levels of digoxin in the deceased’s system.

13. Based on all of the information available to me, and my years of experience, my opinion is as follows: The subject took four extra doses of digoxin approximately 12 hours before death. The cause of death was atrial fibrillation caused by a digoxin overdose. Potassium depletion decreased the amount of digoxin necessary to cause a fatal heart arrhythmia (atrial fibrillation). Both the increased ingestion of digoxin and potassium depletion were necessary, because the potassium depletion decreased the amount of digoxin needed for a fatal dose. It is highly unlikely that such an overdose of digoxin would be caused by accident. If a home health professional had lost four digoxin pills, she or he would have made a record of it. The police report indicated no such record. The combination of taking too much digoxin and no potassium could not have been accidental. A person or persons unknown, who intended to cause death, intentionally caused the combination of potassium depletion and the digoxin overdose. The death of Dana K. Liberson was a homicide.

14. I generated a report and arranged for a meeting with the Worcester County District Attorney’s office. I have attached a true and accurate copy of my summary medical examiner’s report as Exhibit B.

15. I have reviewed all of the other affidavits in this case.

Signed under the pains and penalties of perjury this 15th day of August, 2011.

S. Latta, M.D

Sabrina/Sebastien Latta, M.D.
SABRINA/SEBASTIEN LATTA, M.D.

Forensic Pathology Consultant
438 Ryland Avenue
Southborough, MA 01772

CURRICULUM VITAE

EDUCATION AND TRAINING
1974 B.S., Duke University, Durham, NC
1978 M.D., University of Massachusetts Medical School, Worcester, MA

INTERNSHIP
1978–79 Massachusetts General Hospital, Boston, MA

RESIDENCY
1980–82 Anatomic Pathology, Veterans Administration Medical Center, San Francisco, CA
1979–80 Forensic Pathology, University of California, San Francisco, CA

FELLOWSHIP
1982–84 Forensic Pathology, Office of the Medical Examiner, San Francisco, CA

LICENSURE
California, MA

BOARD CERTIFICATION
American Board of Pathology in Forensic Pathology

ACADEMIC APPOINTMENTS
1982–1984 Instructor in Pathology, University of California, San Francisco, CA
1985–1990 Associate Clinical Professor, Pathology, University of Massachusetts Medical School, Worcester, MA
1990 to present Clinical Professor, Pathology, University of Massachusetts Medical School, Worcester, MA

EMPLOYMENT HISTORY
Assistant Medical Examiner, San Francisco County, CA 1982–84
Assistant Medical Examiner, Worcester County, Worcester, MA, 1990–present

PUBLICATIONS

PUBLICATIONS (cont.)

OTHER QUALIFICATIONS
Medico-legal autopsies: More than 2,500 performed personally.
Expert witness: California state and federal courts, Massachusetts state and federal courts. Approximately 200 cases.
Exhibit B

OFFICE OF THE MEDICAL EXAMINER
COUNTY OF WORCESTER
COMMONWEALTH OF MASSACHUSETTS
648 RYLAND STREET, WORCESTER, MA 01608

MEDICAL EXAMINER REPORT

Name Dana K. Liberson   Medical Examiner #   12-24-043
Date of birth February 15, 1921   Date of Death   March 20, 2011
Race White   Date of Autopsy   March 20, 2011
Sex Female   Time of Autopsy   10:54

MEDICINES TAKEN AND MEDICAL CONDITIONS

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<tr>
<th>DRUG</th>
<th>CONDITION</th>
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<tr>
<td>Digoxin</td>
<td>Congestive heart failure and arrhythmias.</td>
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<tr>
<td>Furosemide</td>
<td>High blood pressure and impaired kidney function.</td>
</tr>
<tr>
<td>HCTZ</td>
<td>High blood pressure and impaired kidney function.</td>
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<tr>
<td>potassium</td>
<td>Potassium depletion caused by furosemide and HCTZ. Supplementation was necessary to maintain safely high level of digoxin.</td>
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FINAL DIAGNOSES AND FINDINGS

I. Induced atrial fibrillation
   A. Potassium depletion
   B. Digoxin overdose

II. Non-lethal medical conditions:
   A. Congestive heart failure
   B. Impaired renal function
   C. High blood pressure
   D. Mild dementia
   E. Cataracts

II. Cause of death: Induced atrial fibrillation; digoxin overdose potentiates by potassium depletion

III. Manner of death: Homicide

IV. How incident occurred: Administered by person or persons unknown

Date: April 12, 2011

S. Latta, M.D
Sabrina/Sebastien Latta, M.D.
Asst. Medical Examiner
### COMPLETE BLOOD COUNT (BLOOD)

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<th>DATE</th>
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<th>Hgb 14.0-18.0 g/dL</th>
<th>Hct 40-52 %</th>
<th>MCV 82-98 fL</th>
<th>MCH 27-32 pg</th>
<th>MCHC 31-35 %</th>
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### RENAL & GLUCOSE (BLOOD)

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<th>Creat 0.5-1.2 mg/dL</th>
<th>Na 133-145 mEq/L</th>
<th>Potassium 3.5 to 4.5 mEq/L</th>
<th>Cl 96-108 mEq/L</th>
<th>HCO3 22-32 mEq/L</th>
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<td>.6 mg/dL</td>
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### MEDICATIONS

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<td>3/25/11</td>
<td>6.9 ng/ml</td>
<td>38</td>
<td>12</td>
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AFFIDAVIT OF PAULA/PAUL BREEDY

1. My name is Paula/Paul Breedy. I am 30 years old and am the grandniece/grandnephew of the decedent, Dana K. Liberson. For as long as I can remember, everyone called her “DK.” My great aunt was the nicest and most generous person I have ever known. DK’s passing was a shock to us all, and devastating to me. I had nothing to do with it.

2. Except for my college years, I have lived my entire adult life in Kendall, Massachusetts, which is a largely undeveloped area just outside of Worcester. I moved to Kendall after I left UMASS Amherst in my sophomore year. DK gave me the money to buy the modest house I live in when it became clear that the academic path was not going to be my path.

3. Living in Kendall has given me the opportunity to live a good and fulfilling life. My day starts early with a rigorous workout, and continues with a thorough reading of the Boston Globe, Boston Herald, New York Times, Washington Post, Washington Times, Wall Street Journal, Manchester Union Leader and the New York Post. The costs of my newspaper subscriptions are the largest recurring monthly items on my credit card. My work day begins with a review of the status of the financial markets, and then trading begins. My work day ends when the markets close in New York. In the evenings, I do a lot of reading and am a member of several book clubs. I have been a day trader for more than 10 years, and until the recession in 2008, had been quite successful. Unfortunately, like a lot of people now, I owe a lot of money to my creditors, and might have lost my house but for DK’s generosity in her will.

4. I have been estranged from my parents since even before I graduated from high school in 2000. Things between us were always difficult. Our political views, our outlooks on life and even our differences concerning my college choices, always seemed to spark heated debates. While they never treated me badly, they were continuously “hovering,” and we just never got along. Like my father, I was an only child; there was nobody else to divert their attention. What kept me sane during all that time was DK’s reassurance and support. She always told me not to worry because she would always be there for me and would always be on my side. I never told her about my financial problems.

5. DK was my mother’s aunt. DK’s husband, my great uncle, died before I was born. My great uncle was an inventory control specialist for a sweater manufacturer in Boston. In connection with his job, he created some of the early software code which was used by several original creators of personal computers. I was told that his codes, originally created in FORTRAN, were eventually incorporated into Commodore Computers and used by Tandy in their TRS-80 models. I understand that the codes were also used by Prime Computers. My great uncle was smart enough to copyright his inventions. DK told me that his residuals made them millions. DK actually showed me one of those checks. It covered the third quarter of 1997 and was for $750,000!

6. I think my parents were jealous of their success, and I think that is why DK always treated me so well. I think it had something to do with DK telling me that I reminded her of her late husband. My mother has a brother and a sister, and I also think that my aunt and uncle were likewise jealous of their success. My parents, and my aunt and uncle, knew that DK and her husband had millions of dollars, but apparently they had made a decision not to share the wealth with them. I think that not only fueled the jealousy, but it also angered them terribly. I remember hearing my father and my uncle routinely curse them for not being more generous to them.

7. I have three cousins. I get along with my uncle’s kids, but not with my other cousin, Dana Koby-Capstick (named for DK and her husband, and referred to by everyone simply as “Kocap”). Kocap is a real piece of work. He is the most two-faced individual on the planet, and is almost exactly one year older than me. He
always said he was going to inherit all of DK’s money, and bragged to me routinely that someday “all of that was going to be his.” Apparently sometimes things don’t go as you plan. Or maybe they do.

8. We were all at Thanksgiving Day dinner in 1999 at my parents’ house. It was my junior year of high school. In front of my entire family, my father boldly claimed that he was going to make sure I attended UMASS to get a great education. I was a very good student, and although I was considering UMASS, I had planned to visit some of the Ivy League schools. I was also considering Stanford (where my cousin Danny went — he told me it was the place for me), Duke, the University of Richmond and Michigan. I knew my grades, test scores and extra-curriculars were competitive and was astounded by the proclamation. I knew this was all about the money. So did DK.

9. During a quiet moment that day, DK approached me. She told me that if I wanted to go to a different school, she would take care of the costs because she knew my parents did not have the money. Unfortunately, Kocap was also in the room and heard the conversation. He was also planning to go to UMASS and blurted out, “Hey, what about me?” DK told him to mind his own business. Kocap stormed out of the room. That was the second most unfortunate incident that involved Kocap and me.

10. Since 2007, DK has had a live-in nurse, Coline/Colin Loiselle, who kept her on a very strict, but healthy, diet and made sure that she exercised daily. DK’s health was deteriorating, but she was taking a lot of pills which kept her healthy. I knew that Loiselle and DK had become quite good friends over that time, and that DK relied on Loiselle for just about all of her daily needs, including making sure that she took all her meds. Although I knew Loiselle from the time she/he started working for DK, I don’t really know her/him that well because usually when I visited DK, Loiselle would take the opportunity to do errands. For the past several years, DK did not drive and did not leave her house, except for medical appointments.

11. On Feb. 21, 2011, DK called me on the phone and asked me to come over to her house. She said she had some important business to discuss because Sarah was in town. I thought that perhaps she wanted me to invest in some stock, and I went right over. I was surprised when I got there to find that my cousins were also there. DK did have something important to tell us. DK said that she was going to change her will, and that she wanted us to know, so that there would be no fighting about it after she was gone. She told us that regardless of what was in her current will, she was going to change it and leave half to charity, and divide the other half among the four of us and Loiselle, for a total of five equal shares. She told us that she was going to include an in terrorem clause, meaning that if any of us challenged or contested the will, that their share would automatically be terminated, and the person making the challenge would get nothing. DK said that the lawyer would have the new will ready to be signed at the end of March.

12. At the time, because I had not yet known about that phony holographic will, I thought it was nice that Loiselle was included because she/he had been so good to my great aunt. Kocap, however, was furious. He told DK that she was “double-crossing” him, and he stormed out of the house. On his way out, he also said confidently, “This WILL NOT happen.”

13. My impression at the meeting was that my great aunt DK must have gotten some bad medical news and thought she was going to die. Her announcement made me sad, because I felt that she had just given her “farewell” speech to her loved ones. I made it a point to try to go visit her regularly after that, just to be sure that I got to see her as much as possible before she passed.

14. I went to see DK on the following Friday, March 4. I arrived at about noon and planned only to stay throughout the afternoon. Loiselle, however, was waiting for me and asked me if I would be able to stay for the weekend so she/he could attend to a sick relative. I hurried home, packed a weekend bag and returned within the hour. When I did, Loiselle quickly left.
15. DK and I had a nice visit that weekend. We talked about some movies and books we had both read, and watched the exciting finish of the Celtics/Bucks game on TV in the family room. DK was a huge Celtics fan. When the game ended, DK asked me to get her pills. I wasn’t sure if she was just excited about the finish, or if it was just time for the pills, but she was shaking like a leaf and said that her heart was beating a mile a minute. After I fumbled through her pill bottles and her pill box, all of which were neatly stored on DK’s dresser, DK selected whatever it was she needed to take and that was it.

16. I was planning to see DK again the following Sunday, but she said she wasn’t feeling well, so we cancelled. I regret that I did not have the chance to see her again.

17. A week later, on March 20, 2011, DK was found dead in her home. I was questioned by Det. Holloway from the police, and told the detective everything I have stated in this affidavit. During the questioning, Det. Holloway told me that the new will had never been signed and that Loiselle, Kocap and my other cousins were also being questioned. I understood why Kocap might be a suspect, but I asked why Loiselle was on their radar. The detective was vague, but told me that Loiselle may have had a will that left everything to her/him. I was shocked to hear that, but eventually it all made sense. That’s why Loiselle had me stay for the weekend.

18. Detective Holloway also requested permission to search my home, to which I readily agreed. While searching my home, Holloway told me that DK’s lawyer had drafted the new will to leave everything just as DK had told us at the meeting, and that an appointment had been scheduled for her office, but Loiselle never took DK over to sign it. Now, of course, I know why.

19. I was also told that a manipulation of her pills may have contributed to her death. I asked why they were searching my house instead of arresting Loiselle. When Det. Holloway found a copy of *The Shlanker Chronicles* on my bookshelf, she/he smirked and asked me, “Do you know how this story ends?” At that point, I thought it would be better not to say anything else. Holloway completed the search and left.

20. There was no reason for me to want to harm a person who had been so good to me my entire life. The money was no big deal. Kocap was the one who was furious that DK was going to change her will, and now it turns out that Loiselle thought she was going to steal everything from all of us. Besides, *The Shlanker Chronicles* was a *New York Times* best seller and a lot of people read it. They clearly charged the wrong person! Am I the only one who can see that?

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY this 24th day of September, 2012.

______________________________  
P. Breedy

PAULA/PAUL BREEDY
AFFIDAVIT OF GLADYS/GEORGE KRAVITZ

1. My name is Gladys/George Kravitz. I am 62 years old. I live at 33 Graniteville Road, Oakham, which is right next door to the house of my dear departed friend, Dana K. Liberson. My spouse Lesley and I have lived there since 1977. We have extensive gardens. I have always loved flowers; some people have called me a flower child or hippie. My mother would tell me how I would always bring her bouquets of wildflowers or paint psychedelic pictures of flowers.

2. I am very into herbs and other medicinal plants. I started with an interest in gardening. We had more than 600 square feet of flower beds, surrounded by rows of evergreen hedges. From the time Lesley and I moved into our home in Oakham, DK and I helped each other with our gardens. It was the start of our beautiful friendship. Later, I became interested in herbs and transformed many of my flower beds into herb beds. I have taken courses and I am quite the herbalist at this point. I have fresh herbs for my cooking and, more importantly, I have a wide variety of herbs to help our general health. More people should take advantage of all the herbal remedies that nature offers us. There would be less sickness and more happiness in the world.

3. As I mentioned, I am an accomplished herbalist. I have been certified by the Hearts of Herbs Certified Herbalist Program. I have also taken several courses from Tai Sophia Herbal Studies, and I am currently enrolled there. I have discussed herbal versus traditional Western medicine with DK many times. Traditional medicine is too reactive and not proactive. Moreover, when disease does strike, traditional medicine uses extremely strong and dangerous medication, when simpler, milder herbal remedies would do the job at least as effectively and much more safely. Sometimes Breedy or Loiselle would be present during these discussions. Breedy seemed not to care, but Loiselle, as expected, did not agree with me.

4. My garden is known all over town and contains some of the best herbs and teas in all of Massachusetts. One of my favorite plants is licorice. I use the leaves for tea and I boil the roots to extract the most wonderful sweetener, glycyrrhizin — 50 times sweeter than sucrose. I combine them with clove, chamomile and cinnamon in my very own tea. It is sweet, spicy and totally delicious. It soothes the throat and the stomach and helps relieve arthritis and gout. It helps prevent clogging of the arteries. A few cups of that tea and life’s troubles seem to slip away.

5. DK Liberson was my dear friend. Everyone needs a friend they can lean on and we were that for each other. We shared an interest in gardening and we loved spending time together, listening to Pete Seeger tunes and talking about our families. In fact, in recent years I did most of the tending of her garden. There were almost always plenty of flowers to make bouquets for the house. I would brew my special teas for her. We also shared my licorice and other naturally nutritious organically-grown food supplements. I think they especially helped DK with the dementia she was afraid she had. If she actually was tending in that direction, I am sure my teas and herbs were holding it at bay.

6. My spouse suffered from bursitis and thought she/he noticed that the bursitis felt better after some of my licorice tea. I thought about that and I thought about DK. I could see that her health was failing, and that she was visiting the doctor more often and that the size of her pill box was growing. We had often talked about the benefits of using herbs while sipping an occasional cup of licorice tea. I noticed that DK also seemed better after we shared a cup of licorice tea (I was very interested in these observations since I was taking a class on the medicinal benefits of herbal teas).

7. I thought I could better treat both Lesley and DK with some additional data to control dosage, so I asked each of them to keep track of the effects of the tea for a few weeks. They recorded brew strength and amount, and how they felt before drinking tea and then again 15 minutes after drinking the tea.
8. In DK’s case, we decided that I would leave the tea at her house and she would brew it herself. I would check in with her every few days. Her nurse, Loiselle, was not happy with our plan, but DK was determined. DK’s journal went pretty well, but there are gaps because Loiselle would sometimes claim there was no more tea or some other nonsense.

9. DK returned the journal to me the evening before she died. DK told me that drinking a higher quantity of strong tea helped her tremendously, and the journal clearly indicates that the licorice tea was indeed very beneficial. I have attached DK’s journal at the request of Breedy’s attorney.

10. I would occasionally see DK’s grand nieces and grand nephews, but only very occasionally until the last couple of months before DK’s passing. What a sorry lot they were, leeching off poor DK. I felt their only interest was her money. You could see they were just waiting for DK to croak and they were always fighting with one another over who deserved the biggest share. Breedy seemed to be nicer than Daniel and Sarah, who were so cold and heartless that I could feel a chill when I was near them, but Kocap was the worst. What they all deserved was the dung from the garden.

11. I heard Kocap saying to Sarah that he should get a bigger share of the inheritance because he visited more often than Sarah. Well, Sarah lives out of state, so it would be harder for her to visit. In case you are wondering why I know so much, well, what do you think DK and I talk about? Our relatives and neighbors, of course. What did you expect, politics or philosophy? There is nothing like some juicy gossip. Like once, I was working in the garden just about a month before DK passed on; I heard Kocap on his iPhone saying how he would be on easy street pretty soon. No respect for his elders.

12. Breedy, another grandniece/nephew, had a lot of negative energy. A college dropout, she/he couldn’t seem to get a grip on life. I am sure she/he would welcome her/his share of the inheritance. And I think she/he was getting DK to give her/him some supplements along the way. Now I am not talking about my herbal supplements, I am talking about small pictures of dead presidents. And yet one time I heard Breedy upbraiding Kocap about his greed. She/he told him that DK was their aunt and that fact should mean something all by itself, regardless of her wealth. I passed that along to DK, and she was glad to hear it.

13. But still, that Breedy was an odd one. Sometimes I would see her/him in parts of the house that she/he had no business in. One time I saw her/him going into DK’s bathroom. The house had five bathrooms; she/he didn’t need to use DK’s. And another thing, Breedy would visit in spates. I would see her/him several times in a month and then nothing for several months. She/he meant well, I think.

14. Although her relatives were infrequent visitors, there was a person DK saw more often than me. It was her live-in caretaker, Coline/Colin Loiselle. She/he took care of DK, including cooking, helping DK exercise, supervising the medications and taking DK out for appointments and such. Loiselle and I never seemed to hit it off right. I think it was because she/he thought that herbal medicine was bunk. On my part, I didn’t think she/he was all that good at her/his job. She/he certainly looked efficient and all whenever DK’s relatives came by. But every time they came, she/he decided it was time to do the errands. I think she/he thought it was an opportunity to go goof off.

15. Maybe it was simply that we were in some sort of competition with each other. But I know that whatever teas and supplements I brought for DK would sometimes disappear after I left. DK seemed to like Loiselle, but she was independent enough to have a secret place where we would stash the licorice tea, so she could have some whenever she wanted. But I digress; let me return to my observations of Loiselle. As an LPN, she/he left a lot to be desired. The bottles of medications were never in any order and often the caps were left off or they were half on. In the kitchen, things were always messy, and even dirty. I even scrubbed the pans from time to time, so that DK wouldn’t get food poisoning.
16. Whatever my feelings were about Loiselle, DK really seemed to like her/him. She told me she was thinking of changing her will to include Loiselle. DK told me that she was even planning on cutting all her relatives out of the will. From my point of view, I think that Loiselle was around too long. She/he was starting to feel entitled, if you ask me. I even saw her/him staring at the artwork and commenting on its value. I wonder if items DK says she lost were really lost.

17. The last afternoon she was alive, DK and I had a lovely time together. We had several cups of my licorice tea, and we talked about all sorts of things. We remembered things from our youths, we recalled wonderful places we visited, and we talked about how some of the mean people we knew finally got their comeuppances. I miss her so much.

18. On the day of her death, I approached Det. Holloway and tried talking to her/him about what I knew. She/he did not seem interested in anything I had to say. If she/he had ever asked, I would have told her/him about my herbal treatment of DK, including the licorice tea.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY this 15th day of March, 2012.

______________________________
G. Kravitz

Gladys/George Kravitz
# Exhibit A

**TEA JOURNAL OF D.K.**

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<td>Sweet</td>
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<td></td>
<td>Evening</td>
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<td>-</td>
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<td>-</td>
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<tr>
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<td>Midday</td>
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<td>Spicy</td>
</tr>
<tr>
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<td>Evening</td>
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<td>Weak</td>
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<tr>
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<td>0</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Midday</td>
<td>0</td>
<td>-</td>
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<td>-</td>
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<tr>
<td></td>
<td>Evening</td>
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<td>Strong</td>
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<td>Sweet</td>
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<tr>
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### Exhibit A (cont.)

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**Footnotes:****
- **50 MB A**
- **2013 High School Mock Trial Program**
AFFIDAVIT OF ERICA/ERIC VINORTO

1. My name is Erica/Eric Vinorto. My home office is at 2 Pistol Lane in Cambridge, MA. I am not married, but I have two cats, Clementine and Quincy.

2. I am a professor at Boston University’s School of Medicine, where I am the Chair of the Department of Pharmacology and Experimental Therapeutics. My research focuses on the identification of pharmacological treatments for mental disorders of learning and memory, including age-related mental decline. Some of the treatments we have studied include compounds derived from traditional herbal remedies that are available worldwide. Our goal is to make safe and inexpensive therapies available in less developed countries.

3. As a result of my research, I have become familiar with the properties of many common herbal remedies, including their potential effects on pharmacological therapies. These interactions can be hazardous when patients attempt to supplement prescription medication with herbal remedies. I consult with a number of pharmaceutical companies to advise them on the risks associated with interactions from herbal supplements, so that they may better advise both patients and doctors of the potential risks.

4. A copy of my curriculum vitae is attached to this affidavit as Exhibit A.

5. I have been retained by defense counsel at my usual consulting rate of $450/hour to provide an analysis of the autopsy and conclusions reached by Dr. Latta, including the possibility of alternative explanations for Liberson’s diminished potassium levels and associated fatal toxicity levels of digoxin. I have spent approximately eight hours reviewing the autopsy report, Dr. Latta’s affidavit and the affidavit of Gladys/George Kravitz, including the tea journal attached thereto, as well as refreshing myself on relevant medical literature about licorice and its properties.

6. Based on my research and experience, I have concluded to a reasonable degree of scientific certainty that there is a substantial possibility that Liberson’s atrial fibrillation could have been the result of a potassium deficiency caused by chronic ingestion of licorice tea. Given that possibility, and other discrepancies and potential discrepancies in the autopsy report, it cannot be said with any medical certainty that DK Liberson was administered an overdose of digoxin, or was deprived of her ordinary dose of potassium. There simply is insufficient evidence to conclude that death was intentional.

7. My first concern is the way in which the levels of digoxin and potassium in the deceased were measured. Typical chemical analyses, such as sodium and potassium levels, are never done in postmortem blood samples due to cell lysis (i.e., cells breaking down) and significant postmortem changes in the concentrations. Vitreous humor is typically used for chemical analysis due to its relatively protected nature. Concentrations of the typical analytes have been greatly studied in vitreous humor and “normal ranges” have been established. However, potassium is the one analyte that will significantly change in the vitreous following death. More than 95% of the vitreous potassium results are above the upper limit of the instrumentation, making interpretation somewhat meaningless.

8. Similarly, digoxin concentrations vary widely among postmortem cases. Most of the studies I have reviewed date from the 1970s and 80s; the science is out of date. Medical use of digoxin is sufficiently rare nowadays that I have never seen a case presented in the community and have not had any digoxin cases at B.U. to study directly. Determining the level of digoxin accurately post-mortem is virtually impossible, because the cells begin to release the chemical back into the bloodstream as they begin to decompose following death. It is imperative for an accurate reading that samples be collected from the body as soon as possible. A delay of even a few hours could significantly skew the results. Thus, although the lab report reflects a digoxin level that is approximately four times the expected therapeutic level, the actual level could have been normal prior to cell lyses and decomposition. It is entirely possible that Liberson took only her prescribed dosage and the levels of digoxin nevertheless were read at the elevated levels.
9. That ordinary dose of digoxin could have been fatal to Liberson given her low potassium level (assuming it was measured accurately), and there is a possible explanation for the potassium depletion that is unrelated to any alleged tampering with her medication. I understand from my review of the Kravitz affidavit and the tea journal that Liberson had been consuming large quantities of licorice tea, a common herbal supplement that some people use to treat a variety of ailments. Excessive consumption of licorice can be harmful to the liver and cardiovascular system, and can also deplete potassium levels. Licorice contains glycyrrhizin, a compound which decreases the kidney retention of potassium. Incidentally, glycyrrhizin can also be used as a sugar substitute, as it is 30–50 times sweeter than sucrose.

10. In one spectacular case in 2004 documented in a leading medical journal, a woman who had been consuming 200g of licorice candy a day landed up in the hospital with high blood pressure and muscle failure due to hypokalemia (low potassium). Licorice teas vary in potency, and the strength at which they are brewed varies among herbalists. Thus, it is impossible to discern how much licorice is consumed when drinking tea, and there are no studies showing the precise correlation between the amounts consumed and potassium levels. However, it is clear that drinking strong licorice tea on a daily basis over a prolonged period of time, could lead to depleted potassium levels that would make an ordinary dose of digoxin dangerous and potentially fatal.

11. Digoxin competes with potassium for binding to the same ATP pump — a trans-membrane ion channel that pumps sodium ions out and potassium ions in. Low levels of potassium therefore result in the ion exchanger absorbing more than the expected amount of digoxin, harming the sensitive heart muscle tissue and increasing the chance of atrial fibrillation. Thus, someone who had consumed a substantial amount of licorice and took an ordinary dose of digoxin would essentially be overdosing on digoxin, because its potency would be increased substantially due to hypokalemia from the glycyrrhizin in the licorice. In my opinion, this is a possible explanation for Liberson’s death.


E. Vinorto, Ph.D.

E. Vinorto, Ph.D.
CURRICULUM VITAE

PROFESSIONAL EXPERIENCE
2008–present Chair, Department of Pharmacology and Experimental Therapeutics, Boston University School of Medicine
Paid consultant for various pharmaceutical companies

Areas of Expertise
• Herbal supplement interactions with prescription medication
• Pharmacokinetics and pharmacodynamics
• Dietary antioxidants and chronic disease

1999–2008 Professor, Boston University School of Medicine

1994–1999 Assistant Professor, Harvard University School of Medicine

EDUCATION
1994 Ph.D., Biochemistry, Harvard University
1988 B.A., Chemistry, Boston University

PUBLICATIONS
Books


Articles


PART VII:
Pertinent Information, Statutory Case Law and Evidentiary Standards
PART VII:  
Pertinent Information, Statutory Case Law and Evidentiary Standards

I. STATEMENT OF THE CASE

In this case, the defendant has been charged criminally with first degree murder by deliberate premeditation with malice aforethought, in violation of Massachusetts General Laws, Chapter 265, Section 1.

The Commonwealth of Massachusetts bears the burden of proving each element of the charge beyond a reasonable doubt. The defendant has been arraigned and all pre-trial issues have been resolved. The matter is scheduled for trial before a judge today.

II. MURDER

“Murder is an unlawful killing with malice. A killing done in self-defense, because justified, is not unlawful. Malice is any unexcused intent to kill, to do grievous bodily harm, or to do an act creating a plain and strong likelihood that death will follow. Although unlawful, an intentional killing may be voluntary manslaughter, and not murder, if malice is mitigated by adequate provocation. Reasonable provocation negates malice in any unlawful killing.”


“Murder committed with deliberately premeditated malice aforethought, or with extreme atrocity or cruelty, or in the commission or attempted commission of a crime punishable with death or imprisonment for life, is murder in the first degree. Murder which does not appear to be in the first degree is murder in the second degree.”

M.G.L. c. 265, § 1.

“In order to prove murder in the first degree by deliberate premeditation, the commonwealth must establish beyond a reasonable doubt that the defendant reflected on his resolution to kill, and that his decision to kill was the product of ‘cool reflection’ for some short period of time.”


“[W]here the purpose is resolved upon and the mind determined to do it before the blow is struck, then it is, within the meaning of the law, deliberately premeditated malice aforethought.”


“Although the commonwealth is not required to prove that a defendant had a motive for committing a crime, if there is evidence of motive, that evidence is admissible.”


“The means by which a murder is committed do not constitute an essential element of the crime of murder under M.G.L. ch. 265, § 1.”


To establish causation, the commonwealth must prove that the defendant’s act “is a cause, which, in the natural and continuous sequence, produces the death, and without which the death would not have occurred.”

III. BURDEN OF PROOF

“In a criminal case, the commonwealth must prove a defendant’s guilt beyond a reasonable doubt.”


“Then, what is reasonable doubt? It is a term often used, probably pretty well understood, but not easily defined. It is not mere possible doubt; because every thing relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he is proved guilty. If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding, and satisfies the reason and judgment, of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether.”


IV. DIRECT VS. CIRCUMSTANTIAL EVIDENCE

“Probative evidence takes two forms: direct and circumstantial evidence. Direct evidence asserts or demonstrates the fact for which it is offered and if believed ... will prove the particular fact in question without reliance upon inference or presumption. Circumstantial evidence requires the trier of fact to make inferences to reach the fact proposition. There is no difference in probative value between direct and circumstantial evidence. In criminal prosecutions, circumstantial evidence is competent to establish guilt beyond a reasonable doubt. Circumstantial evidence ... although ‘indirect,’ ... can carry persuasive value equal to or even greater than that of direct proof.”


V. LACK OF DILIGENT POLICE INVESTIGATION:

“Defendants have the right to base their defense on the failure of police adequately to investigate a murder in order to raise the issue of reasonable doubt as to the defendant’s guilt ....”


“[T]he inference that may be drawn from an inadequate police investigation is that the evidence at trial may be inadequate or unreliable because the police failed to conduct the scientific tests or to pursue leads that a reasonable police investigation would have conducted or investigated, and these tests or investigation reasonably may have led to significant evidence of the defendant's guilt or innocence.”


“The fact that certain tests were not conducted or certain police procedures not followed could raise a reasonable doubt as to the defendant’s guilt....”


VI. GUIDING LEGAL PRINCIPLES (NOT TO BE CITED AS LAW)

1. Murder

Murder is the unlawful killing of a human being either with malice, or in the commission or attempted commission of certain felonies.

Murder committed with deliberate premeditation and malice is murder in the first degree. Murder committed
with extreme atrocity or cruelty and with malice is murder in the first degree. Murder committed in the commission or attempted commission of a felony punishable by a maximum sentence of imprisonment for life is murder in the first degree.

Murder which does not appear to be murder in the first degree is murder in the second degree. The degree of murder shall be found by the fact finder.

In this case, the Commonwealth alleges that the defendant committed murder with deliberate premeditation and malice.

In order to find the defendant guilty of this crime, the Commonwealth must prove three elements beyond a reasonable doubt:

- **Element Number One:** that the defendant committed an unlawful killing;
- **Element Number Two:** that the killing was committed with malice; and
- **Element Number Three:** that the killing was committed with deliberate premeditation.

Each of these three elements are defined as follows:

- **Element Number One:** an unlawful killing.
  
  The commonwealth must prove beyond a reasonable doubt that the defendant committed an unlawful killing. For a killing to be murder, it must be unlawful. The word “killing” refers to causing of death. Death must occur as a result of the defendant’s acts.
  
  An unlawful killing is a killing done without excuse. Not all killings are unlawful. A killing may be excused, for example, in the case of self-defense, defense of another, or, in some cases, accident. The evidence in this case does not raise the issue of whether this killing was excused.
  
  The burden of proof is on the commonwealth to prove beyond a reasonable doubt that the defendant unlawfully killed the deceased.

- **Element Number Two:** Malice.
  
  The second element the commonwealth must prove beyond a reasonable doubt is that the killing was committed with malice. Malice, as it applies to deliberately premeditated murder, means an intent to cause death. The Commonwealth must prove that the defendant actually intended to cause the death of the deceased.

- **Element Number Three:** Deliberate premeditation.
  
  The third element the commonwealth must prove beyond a reasonable doubt is that the killing was committed with deliberate premeditation. For the Commonwealth to prove deliberate premeditation, the commonwealth must prove that the defendant thought before he acted; that is, the defendant decided to kill after deliberation. The element of deliberation, however, does not require an extended time span, nor does it mean that the deliberation must be accomplished slowly. Rather it refers to the purposeful character of the premeditation. Deliberation may be a matter of days, hours or even seconds. It is not so much a matter of time as of logical sequence. First, the deliberation and premeditation, then the decision to kill, and lastly, the killing in furtherance of the decision. All of this may occur within a few seconds. However, deliberate premeditation excludes action which is taken so quickly that there is no time to reflect on the action and then decide to do it. The Commonwealth must show that the defendant’s resolution to kill was, at least for some short period of time, the product of reflection.

Adapted from *Model Jury Instructions on Homicide of the Supreme Judicial Court* (1999).

### 2. Direct and Circumstantial Evidence

There are two types of evidence which you may use to determine the facts of a case: direct evidence and circumstantial evidence. You have direct evidence where a witness testifies directly about the fact that is to be proved, based on what he claims to have seen or heard or felt with his own senses, and the only question is whether you believe the witness. You have circumstantial evidence where the witness cannot testify directly about the fact that is to be
proved, but you are presented with evidence of other facts and you are then asked to draw reasonable inferences from them about the fact which is to be proved.

Let me give you an example. Your daughter might tell you one morning that she sees the mailman at your mailbox. That is direct evidence that the mailman has been to your house. On the other hand, she might tell you only that she sees mail in the mailbox. That is circumstantial evidence that the mailman has been there; no one has seen him, but you can reasonably infer that he has been there since there is mail in the box.

The law allows either type of proof in a criminal trial. There are two things to keep in mind about circumstantial evidence:

The first one is that you may draw inferences and conclusions only from facts that have been proved to you.

The second rule is that any inferences or conclusions which you draw must be reasonable and natural, based on your common sense and experience of life. In a chain of circumstantial evidence, it is not required that every one of your inferences and conclusions be inevitable, but it is required that each of them be reasonable, that they all be consistent with one another, and that together they establish the defendant’s guilt beyond a reasonable doubt.

If the commonwealth’s case is based solely on circumstantial evidence, you may find the defendant guilty only if those circumstances are conclusive enough to leave you with a moral certainty, a clear and settled belief, that the defendant is guilty and that there is no other reasonable explanation of the facts as proven. The evidence must not only be consistent with the defendant’s guilt, it must be inconsistent with his (her) innocence.

Whether the evidence is direct or circumstantial, the commonwealth must prove the defendant’s guilt beyond a reasonable doubt from all the evidence in the case.

Instruction 2.240, Model Instructions for Use in Massachusetts Courts, Administrative Office of the Trial Court: (1999 ed.)
APPENDIX A:
Guidelines for Attorneys

The preparation phase of the tournament is intended to be a cooperative effort of students, teacher-coach and attorney-advisor. For such cooperation to occur, it is important for attorneys to avoid even the appearance of talking down to students or stifling discussion through the use of complicated legalese.

Experience has shown that students and teachers alike develop a better understanding of the case and learn more from the experience if the attorney-advisors do not dominate the preparation phase of the tournament.

Attorneys and witnesses may neither contradict the “Stipulation of the Parties” or “Witness Affidavit” sheets for the case (see Part V, Trial Script), nor introduce any evidence that is not included in this packet of materials.

All witnesses (three for each side) must take the stand.

The rules of evidence governing trial practice have been modified and simplified for the purposes of this mock trial tournament. (See Part IV of materials packet.) Other more complex rules are not to be raised during the trial enactment.

The first session with a student team should be devoted to the following tasks:

- Answering the questions that students have concerning general trial practices;
- Explaining the reasons for the sequence of events/procedures found in a trial;
- Listening to the students’ approach to the assigned case;
- Discussing general strategies as well as raising key questions regarding the enactment;
- Discussing the realities of the courtroom situation, that is, that each judge will conduct the trial differently. Students and teacher-coaches should be prepared to accept a judge’s ruling, whatever it is, with grace and courtesy;
- A second and subsequent session with students should center on the development of proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here an attorney can best serve as a constructive observer and critical teacher — listening, suggesting and demonstrating to the team;
- The decision of the judge in any mock trial enactment determines which team advances in the single elimination tournament. This decision is to be based on the quality of the students’ performances. Judges will be instructed to award points based on total performance and to give no consideration to age or grade level (see the Performance Rating sheet); and
- Years of tournament experience have shown that, except for opening the court, general procedural instructions, and rulings on objections, etc., it is best to keep judicial involvement/participation to a minimum during the trial enactment.
APPENDIX B:
Guidelines for Tournament Judges

It is essential that the presiding justice carefully rate each team on a clean Performance Rating sheet, since the best numerical score determines the prevailing team.

To avoid confusion, it is strongly recommended that judges award a score to each student immediately after her/his performance, rather than waiting until the trial is concluded.

The script for the trial enactment is designed for completion within a two-hour time limit. The MBA has reserved a sufficient amount of time for the teams to be able to complete the trials. Teams that do not monitor their time and run longer than the two-hour allotted time will bear sole responsibility for the inability to complete the trial. An incomplete trial will not be rescheduled. It will be counted as a loss to both teams. Due to our agreement with the courts, we ask that you help move the trials along. We encourage you to give the students a “post-competition pep-talk,” but please keep your eye on the clock.

- Attorneys have been asked to keep their presentations within the following guidelines:
  - Opening statements 5 minutes each
  - Direct examinations 7 minutes/witness
  - Cross-examination 5 minutes/witness
  - Redirect/re-cross-examinations 3 questions/witness
  - Closing statements 7 minutes each
- Each team will be responsible for monitoring its own and the other team’s time. Objections may be raised if time limits are exceeded. Ultimately, the judge is responsible for moving the trial along. In keeping with the atmosphere and decorum of a courtroom trial, timekeepers, stopwatches, and buzzers are not permitted during the enactment of the trial.
- The purpose of the tournament is to hear both sides; therefore, motions as to jurisdiction, to split the trial, or to dismiss for failure to establish a prima facie case, etc., should be denied. A foundation must be laid for admissibility of expert witness testimony, but no voir dire shall be allowed.
- There shall be no sequestration of witnesses at any time during the trial. If such a motion is made, the motion must be denied.
- The rules of evidence governing trial practice have been modified and simplified for the purpose of this Mock Trial Program. (See Part V, Simplified Rules of Evidence.) They are to govern the proceedings. Other more complex rules are not to be raised during the trial enactment.
- Attorneys and witnesses may neither contradict the “Stipulation of the Parties” or “Witness Affidavit” sheets for the case (see Part VI, Trial Script), nor introduce any evidence that is not included in this packet of materials. (See Part V, Simplified Rules of Evidence, Rules 701 and 702.)
- An attorney for a team presenting the opening statement may not make the closing arguments in the case, and no attorney shall conduct more than two examinations. Tournament procedures permit only one opening and closing statement for each party. (See Part II, section 5, Attorney Performance.)
- Under contest rules, student-attorneys are allowed to use notes in presenting their cases; witnesses may not use notes in testifying. However, undue reliance on notes should be reflected in the score. (Refer to Appendix C, Matrix on Judging Criteria.)
- Witness statements may be used by attorneys to “refresh” a witness’ memory and/or impeach the witness’ testimony in court.
- Students’ performances also should be evaluated on their use of objections. Refer to Appendix C, Matrix on Judging Criteria for more information.
- Points should be awarded based on total performance. No consideration should be given to age or grade level.
- No fractions of points are allowed (i.e., 7.5). Scoring is on a 10-point scale.
- The judge should give a verbal warning without penalty points to students whose jackets are not buttoned, whose ties are not tied properly or who are otherwise not appropriately attired. If the matter is not remedied, there may be further sanction involv-
Coaches have been instructed that they may raise objections, but ONLY in the event of improper behavior on the part of opposing teachers or spectators. Coaches must raise objections immediately at the time of the infraction. This rule does not allow coaches to make objections on behalf of their student-attorneys regarding the substance of the trial. It applies only to gross rule violations (such as coaching or signaling time) that occur during the course of the trial.

At the sole discretion of the presiding judge, **BONUS POINTS** (a total of up to five points) may be awarded to a team’s total score to recognize superior team performance, exceptionally thorough preparation, a particularly professional and mature level of conduct, an especially sophisticated legal argument, well-made objections which are sustained and an outstanding ability to think and respond expeditiously.

At the sole discretion of the presiding judge, **PENALTY POINTS** (a total of up to 5 points) may be deducted from a team’s total score for unsportsmanlike behavior. Such behavior might include, but would not be limited to, a team strategy of excessive objections, serious or repeated witness invention of facts designed to disrupt the presentation of the opponent’s case or to eat into their time allotment or any other behavior which, in the presiding judge’s opinion, is inconsistent with proper courtroom demeanor and the spirit of this tournament. Penalty points may also be deducted from cross-examining attorneys who repeatedly ask questions that require the witness to invent facts or for other behavior of students and adults, which, in the opinion of the presiding judge, is inappropriate and deserving of punitive action.

In case of an arithmetic tie, the tiebreaker point is to be awarded to one of the teams. This point should indicate which team, overall, gave the better performance, and it will determine who prevails in the trial enactment. (See explanation on bottom of the Performance Rating sheet).

The decision of the judge in a high school mock trial enactment determines which team advances in the tournament and which team is eliminated. (See the Performance Rating sheet and criteria for awarding points.)

Judges are encouraged to call the opposing coaches into chambers at the conclusion of the trial enactment so that they may review the scoring sheet and check the scores for arithmetic accuracy. Coaches have been instructed to sign the scoring sheets at that time. They have also been instructed that there is no formal grievance procedure. The decision of the court is final. The score sheet should be given to the coach of the prevailing team (after you have explained your verdict).

In the event that you encounter unsportsmanlike behavior from a teacher, lawyer-coach or student, contact us at (617) 338-0570 or e-mail MockTrial@MassBar.org.

Experience has shown that better understanding is promoted among students and teachers, and more good will generated, if the presiding judge in a mock trial takes a few minutes following the enactment to explain her/his decisions regarding the case and the teams’ presentations. Two decisions should be rendered: the first on the merits of the legal case, and the second, on the teams’ performance. As previously mentioned, we encourage you to spend a few moments explaining your decisions to the students, but we ask that you remember that courts expect the teams to be out of the building shortly after the two-hour time period is up.
## APPENDIX C: Matrix on Judging Criteria

### Attorney Performance: Opening Statement

<table>
<thead>
<tr>
<th>Content</th>
<th>9–10 Points</th>
<th>5–8 Points</th>
<th>1–4 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Articulates a theme for the case.</td>
<td>• The court can extract the theme for the case.</td>
<td>• Does NOT state a theme for the case.</td>
<td></td>
</tr>
<tr>
<td>• States what the witness and documentary evidence will show.</td>
<td>• States some of what the witness and documentary evidence will show.</td>
<td>• States little or none of what the witness and documentary evidence will show.</td>
<td></td>
</tr>
<tr>
<td>• Gives the court a clear picture of the case.</td>
<td>• Gives the court a correct but incomplete picture of the case.</td>
<td>• Does NOT give the court any picture or gives a confusing/contradictory picture of the case.</td>
<td></td>
</tr>
<tr>
<td>• Is persuasive without lapsing into argument.</td>
<td>• Is persuasive yet incorporates some thread of argument.</td>
<td>• Uses primarily argument.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Presentation</th>
<th>9–10 Points</th>
<th>5–8 Points</th>
<th>1–4 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Speaks clearly and with a solid command of the language.</td>
<td>• Speaks somewhat clearly and with a good command of the language.</td>
<td>• Does NOT speak clearly and has little command of the language.</td>
<td></td>
</tr>
<tr>
<td>• Presentation is organized.</td>
<td>• Presentation has some organization.</td>
<td>• Presentation is not organized.</td>
<td></td>
</tr>
<tr>
<td>• Rarely, if ever, refers to notes.</td>
<td>• Uses notes, but does not present as if memorized.</td>
<td>• Over-dependent on notes.</td>
<td></td>
</tr>
<tr>
<td>• Uses appropriate body language and voice inflections.</td>
<td>• Uses some appropriate body language and voice inflections.</td>
<td>• Uses little, if any, appropriate body language and voice inflections.</td>
<td></td>
</tr>
<tr>
<td>• Observes proper courtroom etiquette.</td>
<td>• Somewhat observes proper courtroom etiquette.</td>
<td>• Does NOT observe proper courtroom etiquette.</td>
<td></td>
</tr>
</tbody>
</table>

### Attorney Performance: Closing Argument

<table>
<thead>
<tr>
<th>Content</th>
<th>9–10 Points</th>
<th>5–8 Points</th>
<th>1–4 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Revisits the theme.</td>
<td>• Gives some reference to the theme.</td>
<td>• Gives little, if any, reference to the theme.</td>
<td></td>
</tr>
<tr>
<td>• Uses relevant law to support the argument.</td>
<td>• Uses some relevant law to support the argument.</td>
<td>• Uses little, if any, relevant law to support the argument.</td>
<td></td>
</tr>
<tr>
<td>• Cites relevant testimonial and documentary evidence that was entered during the trial.</td>
<td>• Cites some relevant testimonial and documentary evidence that was entered during the trial.</td>
<td>• Cites little, if any, relevant testimonial or documentary evidence that was entered during the trial and/or cites a substantial amount of testimonial or documentary evidence that was NOT entered in at trial.</td>
<td></td>
</tr>
<tr>
<td>• Does not cite testimonial and documentary evidence that was NOT entered in at trial.</td>
<td>• Cites little, if any, testimonial or documentary evidence that was NOT entered in at trial.</td>
<td>• Does NOT use persuasive language.</td>
<td></td>
</tr>
<tr>
<td>• Uses persuasive language.</td>
<td>• Uses somewhat persuasive language.</td>
<td>• Does NOT state what is requested of the court.</td>
<td></td>
</tr>
<tr>
<td>• Clearly states what is requested of the court.</td>
<td>• Somewhat, but not emphatically, states what is requested of the court.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Presentation</th>
<th>9–10 Points</th>
<th>5–8 Points</th>
<th>1–4 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Speaks clearly and with a solid command of the language.</td>
<td>• Speaks somewhat clearly and with some command of the language.</td>
<td>• Does NOT speak clearly or comfortably and has little, if any, command of the language.</td>
<td></td>
</tr>
<tr>
<td>• Refers to notes only when citing testimonial evidence and law presented at trial, otherwise does not read from notes.</td>
<td>• Refers to notes when presenting testimonial evidence and law presented at trial and shows undue reliance on notes.</td>
<td>• Primarily reads from notes or is clearly reiterating a memorized pre-written speech.</td>
<td></td>
</tr>
<tr>
<td>• Speaks with fluency and not as if reiterating a memorized speech.</td>
<td>• Speaks somewhat comfortably and seldom, if ever, lapses into reiterating a memorized speech.</td>
<td>• Uses little, if any, appropriate body language and voice inflections.</td>
<td></td>
</tr>
<tr>
<td>• Uses appropriate body language and voice inflection.</td>
<td>• Uses some appropriate body language and voice inflections.</td>
<td>• Does NOT observe proper courtroom etiquette.</td>
<td></td>
</tr>
<tr>
<td>• Always observes proper courtroom etiquette.</td>
<td>• Most always observes proper courtroom etiquette.</td>
<td></td>
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</tbody>
</table>

### Attorney Performance: Direct Examination

<table>
<thead>
<tr>
<th>Content</th>
<th>9–10 Points</th>
<th>5–8 Points</th>
<th>1–4 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• All questions are relevant.</td>
<td>• Most questions are relevant.</td>
<td>• Few, if any, questions are relevant.</td>
<td></td>
</tr>
<tr>
<td>• Asks who, what, when, why, where and how questions.</td>
<td>• Mostly asks who, what, when, why, where and how questions.</td>
<td>• Does NOT ask who, what, when, why, where and how questions.</td>
<td></td>
</tr>
<tr>
<td>• The questions are organized to clearly tell the witness’ story.</td>
<td>• Questions are organized to somewhat tell the witness’ story.</td>
<td>• The questions are NOT organized to somewhat tell the witness’ story.</td>
<td></td>
</tr>
<tr>
<td>• Necessary documentary evidence is entered through the appropriate witness and the proper foundation is laid when the evidence is entered.</td>
<td>• Most necessary documentary evidence is attempted to be entered, but proper foundations may not be laid every time.</td>
<td>• Little, if any, necessary documentary evidence is entered and/or proper foundations are NOT laid when evidence is attempted to be entered.</td>
<td></td>
</tr>
<tr>
<td>• When appropriate, the proper groundwork is laid for an expert witness and the expert witness’ testimony is fully developed.</td>
<td>• When appropriate, the proper groundwork is laid for the expert witness but the expert witness testimony is NOT fully developed.</td>
<td>• When appropriate, the proper groundwork is NOT laid for an expert witness.</td>
<td></td>
</tr>
<tr>
<td>• Makes and responds to objections demonstrating knowledge of the Rules of Evidence.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Shows knowledge of case theory and team strategy.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Presentation**

• Speaks clearly and with a solid command of the language.
• Asks no leading questions except for background questions.
• Lawyer(s) is/are able to effectively rebut objections from opposing side without losing composure.
• Rarely refers to notes.
• The witness is the focus of the examination at all times, not the lawyer.
• Uses appropriate body language and voice inflections.
• Observes proper courtroom etiquette.

### Attorney Performance: Cross-Examination

<table>
<thead>
<tr>
<th>Content</th>
<th>9–10 Points</th>
<th>5–8 Points</th>
<th>1–4 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• All questions are precisely aimed at attacking the witness’ testimony or the other side’s case.</td>
<td>• Most questions are aimed at attacking the witness’ testimony or the other side’s case.</td>
<td>• Few, if any, questions are aimed at attacking the witness’ testimony or the other side’s case.</td>
<td></td>
</tr>
<tr>
<td>• Appropriately uses affidavit to impeach the witness when necessary.</td>
<td>• Uses affidavit to impeach the witness when necessary.</td>
<td>• Does NOT use the affidavit to impeach the witness when necessary.</td>
<td></td>
</tr>
<tr>
<td>• Makes appropriate use of evidence when necessary.</td>
<td>• Makes use of evidence when necessary.</td>
<td>• Makes little, if any, use of evidence when necessary.</td>
<td></td>
</tr>
<tr>
<td>• Makes and responds to objections demonstrating knowledge of the Rules of Evidence.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Shows knowledge of case theory and team strategy.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Presentation**

• Speaks clearly and with a solid command of the language.
• Examination is conducted using predominantly leading questions.
• Questions are pointed to elicit yes or no answers, but there is some repetition of the wording of the questions.
• Lawyer sometimes and to a lesser degree reacts to the witness’ answers, especially if the witness is being evasive.
• Lawyer(s) is/are somewhat able to rebut objections from opposing side.
• Uses some appropriate body language and voice inflections.
• Most always observes proper courtroom etiquette.
## Witness Performance

<table>
<thead>
<tr>
<th>9–10 Points</th>
<th>5–8 Points</th>
<th>1–4 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Total knowledge and command of case and character (direct AND cross).</td>
<td>• Good knowledge and command of character (direct AND cross).</td>
<td>• Very little knowledge and command of character (direct AND cross).</td>
</tr>
<tr>
<td>• Portrays part in convincing and compelling way (direct AND cross).</td>
<td>• Some ability to portray the part (direct AND cross).</td>
<td>• Little ability to portray the part (direct AND cross).</td>
</tr>
<tr>
<td>• Able to respond to questions effectively on cross-examination.</td>
<td>• Responds less securely on cross-examination.</td>
<td>• Poor cross-examination responses.</td>
</tr>
<tr>
<td>• Knows affidavit extremely well.</td>
<td>• Good knowledge of affidavit.</td>
<td>• Poor knowledge of affidavit.</td>
</tr>
<tr>
<td>• Always gives specific responses to questions.</td>
<td>• Sometimes gives specific responses to questions.</td>
<td>• Rarely gives specific responses to questions.</td>
</tr>
<tr>
<td>• Is not argumentative unless absolutely necessary and only to the extent needed to clarify a question.</td>
<td>• Somewhat argumentative when not necessary.</td>
<td>• Overly argumentative.</td>
</tr>
<tr>
<td>• Always compliant to judge’s instructions.</td>
<td>• Sometimes compliant to judge’s instructions.</td>
<td>• Rarely compliant to judge’s instructions.</td>
</tr>
<tr>
<td>• Always projects answers to judge.</td>
<td>• Sometimes projects answers to judge.</td>
<td>• Rarely projects answers to judge.</td>
</tr>
<tr>
<td>• Response to questions is always audible.</td>
<td>• Response to questions is sometimes audible.</td>
<td>• Response to questions is rarely audible.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Requires rehabilitation.</td>
</tr>
</tbody>
</table>
1. Log onto the Mock Trial Web site by typing “http://MockTrial.MassBar.org” into your browser’s address field. Hit the “Enter” key.

2. In the upper right-hand corner, click the “Mock Trial Login” link.

3. In the form field labeled “ID”, enter your 6 digit Mock Trial Team Login ID, issued by Mock Trial Central at orientation.

4. Enter your password in the “PASSWORD” field. This will be a randomly generated non-sense word, issued by Mock Trial Central at orientation.

5. Click the “Login” button or hit the enter key to submit the form.

6. The “Mock Trial Login” link in the upper right hand corner will now read “Welcome” school next to it. For example, “Welcome, Lunenburg High School Mock Trial Team.” Now you will be able to access your team’s schedule.

   If you do not see the “Welcome…” in the upper right hand corner, or if an error message appears in red below the login box, repeat steps 3 through 5.

7. In order to log out of your school’s page, click the “LOG OUT” button below the “Welcome…” label in the upper right corner of the screen.

   The “ID” and “PASSWORD” information will be given out at the Mock Trial orientations.
**PHILOSOPHY OF THE MOCK TRIAL TOURNAMENT**

While the MBA’s Mock Trial Committee wishes this trial enactment to be as realistic an experience as possible, please remember that this is for the educational benefit of the students. All participants are urged to compete in a spirit of fair play. Winners must call in their scores to (617) 338-0570 or e-mail to MockTrial@MassBar.org by 9 a.m. the next morning.

Students are to be judged upon their knowledge of procedure, the law and the facts of the case, in addition to the overall quality of their presentation. For each of the performance categories listed below, we ask that you rate each individual on a scale of 1 to 10. **No fractions of points are allowed.** Students are to be judged on their total performance. No consideration should be given to age or grade level. Note: All categories must be judged except discretionary points. Bonus or penalty points are to be awarded solely at the judge’s discretion.

*Highest Score = 10 Lowest Score = 1*

**PROSECUTION**

<table>
<thead>
<tr>
<th>ATTORNEY PERFORMANCE (TIME LIMITS)</th>
<th>DEFENSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening statement (5 min.)</td>
<td>Opening statement (5 min.)</td>
</tr>
<tr>
<td>Direct of Elizabeth/Arthur Holloway (7 min.)</td>
<td>Cross of Elizabeth/Arthur Holloway (5 min.)</td>
</tr>
<tr>
<td>Direct of Dr. Sabrina/Sebastien Latta (7 min.)</td>
<td>Cross of Dr. Sabrina/Sebastien Latta (5 min.)</td>
</tr>
<tr>
<td>Direct of Coline/Colin Loiselle (7 min.)</td>
<td>Cross of Coline/Colin Loiselle (5 min.)</td>
</tr>
<tr>
<td>Cross of Paula/Paul Breedy (5 min.)</td>
<td>Direct of Paula/Paul Breedy (7 min.)</td>
</tr>
<tr>
<td>Cross of Gladys/George Kravitz (5 min.)</td>
<td>Direct of Gladys/George Kravitz (7 min.)</td>
</tr>
<tr>
<td>Cross of Erica/Eric Vinorto (5 min.)</td>
<td>Direct of Erica/Eric Vinorto (7 min.)</td>
</tr>
<tr>
<td>Closing argument (7 min.)</td>
<td>Closing argument (7 min.)</td>
</tr>
</tbody>
</table>

**WITNESS PERFORMANCE**

<table>
<thead>
<tr>
<th>Elizabeth/Arthur Holloway</th>
<th>Paula/Paul Breedy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dr. Sabrina/Sebastien Latta</td>
<td>Gladys/George Kravitz</td>
</tr>
<tr>
<td>Coline/Colin Loiselle</td>
<td>Erica/Eric Vinorto</td>
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</tbody>
</table>

**DISCRETIONARY POINTS**

<table>
<thead>
<tr>
<th>Bonus points (if applicable)</th>
<th>Bonus points (if applicable)</th>
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</thead>
<tbody>
<tr>
<td>Penalty points (if applicable)</td>
<td>Penalty points (if applicable)</td>
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</tbody>
</table>

**TOTAL POINTS**

<table>
<thead>
<tr>
<th>PROSECUTION</th>
<th>DEFENSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>TIE BREAKER* (if applicable)</td>
<td>TIE BREAKER* (if applicable)</td>
</tr>
</tbody>
</table>

*TIE BREAKER — If, and only if, there is a tie resulting from the addition of the points, the judge must award a special point based on overall impression to determine the winner of the competition.

Judge’s signature ____________________________________________________________________________________

Date _____________________________________________________________________________________________

Prosecution/plaintiff's signature** __________________________________________________________________

Defense coach’s signature** ________________________________________________________________________

**Please review the performance rating sheet carefully at the conclusion of the trial enactment. Your signature indicates that you have reviewed it and concur that it is arithmetically accurate. Failure or refusal to sign this sheet will not preserve a right to appeal the decision of the court, which is final.
2013 MOCK TRIAL STUDENT ROSTERS

Prior to each trial, coaches for the two competing teams should fill in the roster below with the names of the students who will be playing the roles for that particular trial. Only one performance rating sheet should be submitted to the judge. At the conclusion of the trial, the presiding judge will give the original performance rating sheet to the prevailing team. (Be sure to ask them for it if they do not give it to you). Upon request, the judge may allow the opposing team to copy the score sheet. The prevailing team’s coach must call in the score to the Mock Trial Central at (617) 338-0570 by 9 a.m. of the day following the trial. Messages may be left after business hours. Your cooperation is needed so that we can keep the scores on the Web page up to date.

PROSECUTION

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Direct of Elizabeth/Arthur Holloway
Direct of Dr. Sabrina/Sebastien Latta
Direct of Coline/Colin Loiselle
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Cross of Gladys/George Kravitz
Cross of Erica/Eric Vinorto
Closing argument
Witness — Elizabeth/Arthur Holloway
Witness — Dr. Sabrina/Sebastien Latta
Witness — Coline/Colin Loiselle

DEFENSE

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Cross of Coline/Colin Loiselle
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Closing argument
Witness — Paula/Paul Breedy
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