

# THE 2008 FLORIDA HIGH SCHOOL MOCK TRIAL COMPETITION

## The State of Florida

**v.**

## Marla Manning

Version 1.5, March 2008

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## **TRIAL OVERVIEW**

- I. The presiding judge will ask each side if they are ready for trial. Team rosters/roles should be presented to the judges.
- II. Presiding judge announces that all witnesses are assumed to be sworn.
- III. Opening Statements - no objections allowed; however, after each opening has concluded, the opposing counsel may raise his/her hand to be recognized and state that if they could have objected they would have objected to. The presiding judge does **not** need to rule on this. No rebuttals allowed.
- IV. Cases presented. See Rule XV for the trial sequence and time limitations.
- V. Closing Statements - no objections allowed; however, after each closing statement has concluded, the opposing counsel may raise his/her hand to be recognized and state that if they could have objected - they would have objected to...The presiding judge does **not** need to rule on this.
- VI. No jury instructions need to be read at the conclusion of the trial.

Judges should complete score sheets **before** debriefing. This is crucial and ensures completed score sheets.

- VII. If a material rules violation is entered, scoring judges should exit the courtroom but stay in the vicinity. The presiding judge will follow the rules for this type of dispute. Scoring judges will return to the courtroom to determine if the presiding judge feels the dispute may be considered in scoring. Specific forms are needed. See Rule XVII - DISPUTE SETTLEMENT.
- VIII. **ALL DECISIONS OF THE JUDGES ARE FINAL.** Debrief/Critique ONLY.  
**JUDGES DO NOT ANNOUNCE SCORES OR PERFORMANCE DECISIONS!**

## **CODE OF ETHICAL CONDUCT**

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

As a means of diligent application of the Florida High School Mock Trial Competition's Rules of the Competition, the Mock Trial Advisory/Policy Committee has adopted the following Code of Ethical Conduct for all participants.

1. Team members promise to compete with the highest standards of ethics, showing respect for their fellow team members, opponents, judges, evaluators, attorney coaches, teacher coaches, and mock trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know are wrong or in violation of the rules, including the use of unfair extrapolations. Members will not willfully violate the rules of the competition in spirit or in practice.
2. Teacher coaches agree to focus attention on the educational value of the Mock Trial Competition. They shall discourage willful violations of the rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition's rules and this Code of Ethical Conduct.
3. Attorney coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition's rules and this Code of Ethical Conduct. Attorney coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.
4. All participants (including observers) are bound by all sections of this code and agree to abide by the provisions. Teams are responsible for insuring that all observers are aware of the code. Students, teacher coaches, and attorney coaches will be required to sign a copy of this code. This signature will serve as evidence of knowledge and agreement to the provisions of the code. Teams will receive scores on ethical conduct during each round.
5. Staff and Mock Trial Advisory Committee members agree to uphold the rules and procedures of the Florida High School Mock Trial Competition while promoting ethical conduct and the educational values of the program.

## **STATEMENT OF THE CASE**

Defendant Marla Manning and her husband David Manning have been married since 2000, and they have a six-year-old son, Sean. Both Marla and David drive expensive automobiles.

In November 2006, the Manning family was living together in a rented luxury condominium building in Ocean Heights, Florida. The condo unit they leased together is on the penthouse level of the building and shares the top floor with only one other unit. The two units share a common hallway. Although the hallway is shared, only residents of the two units, their authorized guests, and the condominium manager are permitted to access the top floor of the building. The general public is prohibited by the condominium's front guard from gaining access to this common hallway.

The condominium is a very large one, over 3,000 square feet, with four bedrooms and three bathrooms. In early 2006, the couple found themselves in financial straits, so they agreed that David would get a side job. Marla does not have a job. Eventually, David told Marla that he was starting his own private investigation business, and would be using one of the extra bedrooms as his home office. Unbeknownst to Marla, David never actually intended to start a private investigation company. Instead of using one of the bedrooms as an office, he instead allegedly turned it into an indoor marijuana-growing facility. This room was always kept locked, and David had the only key to the room, telling Marla that he needed to maintain strict privacy for his clients' personal files. Marla, of course, was never the wiser. However, from time to time, Marla would notice a strange scent in the home, like that of burnings leaves, which reminded her of marijuana. She knew that David, on occasion, smoked marijuana, but Marla never smoked at all.

Sean specifically was forbidden by his father from entering the room, although he did wander into the room on one occasion when David inadvertently left the door unlocked. One day Marla noticed Sean wandering around in the room, and she quickly snatched him out, closing the door behind them. When Sean asked his mother about all the dirt and plants in the room, Marla, with a puzzled look on her face, replied that David likes live plants because they help him breathe better. She further told her son not to tell anyone else about what he saw in the room because the landlord did not approve of tenants running businesses out of their apartments. Sean solemnly agreed to keep the "family secret." Although Marla's interest was piqued about the plants she saw growing in the room during the brief moments she was inside, she never returned to investigate nor did she ever question David about it.

Four or five times a week, Marla went to a fitness center not far from her condo to work out. When she went to the fitness center, she always left her son Sean with a babysitter named Lori Lambert. Marla had been using Lori as Sean's babysitter for several months. Lori works part-time at a day-care center, and she supplements her income by babysitting.

On the evening of November 22, 2006, Marla dropped Sean off at Lori's apartment and headed to the gym. Because Marla's car was in the shop having some transmission repair work done, Marla drove David's SUV that evening. Lori fed Sean dinner, turned on the television,

and played games with him to keep him entertained. Later in the evening, Lori was talking with Sean about his home, and Sean told Lori, “My Daddy has plants growing in his home office, and it sometimes smells like leaves are burning in the house.” Lori asked Sean what he meant, and Sean said, “Will Daddy get in trouble with the landlord?” Lori assured him that no one would get into any trouble, and Sean proceeded to describe what he had seen in the bedroom. Lori thought that what Sean described sounded like something she had seen while watching a television documentary on indoor marijuana operations. At first she felt that Sean was simply repeating something he had heard on television, but his concern that Marla would be angry with him for telling the “secret” convinced Lori that Sean was telling the truth.

A short time later, Marla returned to pick up Sean. Marla quickly paid Lori, and without more than a quick comment of “good night,” rushed out the door with Sean. Marla put Sean in the front seat of David’s SUV and drove off. While speeding down the highway on the way back to her condo, Marla lost control of the vehicle and collided with the retaining wall. Although the car was in pretty bad shape, Marla and Sean had only assorted minor cuts and bruises. While inspecting the accident scene, an Ocean Heights police officer found that a printout from a website on the subject of growing marijuana had fallen out of the wrecked SUV.

Upon hearing the news of the accident, Lori felt guilty that she had not acted on Sean’s statements immediately. She called the Ocean Heights Police Department and placed an anonymous tip that Marla and David might be running a marijuana growing operation in their condo unit. Lori gave police the address where the Mannings lived, adequately described Marla and Sean (Lori had never met David), and provided a description of the components of the marijuana “garden” that Sean had told her. Lori did not say how she had learned these facts.

Based on Lori’s tip, two Ocean Heights Police Officers took their drug-sniffing dog, Jack, to the Mannings’ condo building. Immediately upon entering the building they noticed a janitor getting into the elevator. The janitor usually did not have access to the penthouse level of the building, but was given a key by the owner of the other unit who had asked the janitor to clean up a mess left in the hallway by some of the guests at a party the Mannings had held the night before. The janitor thought nothing of allowing the officers to ride to the penthouse level with him.

The officers then searched the hallway for evidence of marijuana production. As they walked Jack past the Mannings’ door, the dog alerted the officers that it detected marijuana. Neither of the officers could smell any odor themselves. Based on the anonymous tip, the drug-sniffing dog’s alert, and notes found in the accident report of Marla’s crash that “a computer printout describing the process of indoor marijuana growing” had been found outside of the wrecked vehicle, the officers obtained a warrant to search the condo. When they entered the unit, the officers found the indoor marijuana growing facility in the locked bedroom. They placed both David and Marla Manning under arrest.

David and Marla Manning were charged individually with possession, manufacturing or cultivating cannabis pursuant to Section 893.13(1)(a)2., Florida Statutes, and with neglect of a child under Section 827.03(3), Florida Statutes. While David entered into a plea agreement with the State, Marla has exercised her right to a jury trial, in part, to challenge the charges on the



ground that she lacked actual or constructive possession of any controlled substance. Thus, this problem concerns only Marla's charges, not David's.

In Marla's case, the State sought to introduce evidence of the marijuana-growing facility found in the Mannings' condo unit. Marla objected to the admission of that evidence, arguing that it had been obtained in violation of her right to be free from unreasonable searches and seizures under Article I, Section 12 of the Florida Constitution and the Fourth Amendment to the United States Constitution. She argued that the use of the drug-sniffing dog violated her expectation of privacy in her condo unit and that the remaining support for the search warrant – i.e., the anonymous tip and the marijuana cultivation material found at the wrecked car – was insufficient to establish probable cause. The trial court denied Marla's motion and allowed the evidence to be admitted during trial.

**IN THE CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT, IN AND  
FOR GULF COUNTY, FLORIDA**

STATE OF FLORIDA,

CASE NO. 2007 CA 1214

v.

**\*\*INFORMATION\*\***

DAVID MANNING and  
MARLA MANNING,

Defendants.

\_\_\_\_\_/

INFORMATION FOR:

Count I POSSESSION, MANUFACTURING, OR CULTIVATION OF CANNABIS (F3)  
Count II NEGLECT OF A CHILD (F3)

---

IN THE NAME OF AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

O. C. EANIA, State Attorney for the Twenty-First Judicial Circuit of the State of Florida, charges that in Gulf County, Florida, the above-named defendants:

COUNT I: Between on or about November 1, 2006, and on or about November 22, 2006, did unlawfully and knowingly possess, manufacture, and/or cultivate approximately 65-70 cannabis plants, meaning all parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or its seeds, or resin, contrary to Sections 893.03(1)(c)7., 893.13(1)(a)2., and 775.082(3)(d), Florida Statutes.

COUNT II: Between on or about November 1, 2006, and on or about November 22, 2006, did unlawfully and knowingly engage in illegal activities that could reasonably be expected to result in serious physical or mental injury, or a substantial risk of death, to a child under the age of 18, contrary to Sections 827.03(3)(a)2., 827.03(3)(c), and 775.082(3)(d), Florida Statutes.

STATE OF FLORIDA  
COUNTY OF GULF

O. C. EANIA, STATE ATTORNEY  
TWENTY-FIRST JUDICIAL CIRCUIT

\_\_\_\_\_/S/  
Mary D. Blake, Designated Assistant State Attorney



### **STIPULATED PROCEDURAL MATTERS**

1. Florida High School Mock Trial Rules of Evidence and Procedure apply.
2. All Witness Statements, Exhibits, and the signatures thereon are authentic.
3. All Witness Statements were given under oath.
4. All charging documents were signed by the proper parties.
5. All references to Florida law are from the most recent edition of Florida Statutes.
6. Jurisdiction, venue, and chain of custody of the evidence are proper.
7. Stipulations cannot be contradicted or challenged.

### **OTHER STIPULATED FACTS**

1. Marla Manning and David Manning have been married since 2000 and they have a son, Sean.
2. Sean Manning was born on October 10, 2000.
3. In November 2006, the Manning family was living together in Ocean Heights, Florida.
4. Lori Lambert was Sean's babysitter.
5. Marla dropped off Sean at Lori's apartment on the evening of November 22, 2006.
6. Marla picked up Sean from Lori Lambert's apartment on the evening of November 22, 2006, and was involved in a traffic accident.
7. Marla was driving David's SUV at the time of the accident.
8. The Ocean Heights Police Department investigated the accident scene.
9. The police found a printout of a web site on the subject of growing marijuana at the accident site.

10. Lori made an anonymous call to the Ocean Heights Police Department to tell them that Marla and David might be running a marijuana growing operation in their condo unit.
11. Ocean Heights Police Officers took a drug-sniffing dog to the Manning's condo building.
12. In the hallway outside of the Manning's door, the drug-sniffing dog alerted.
13. A search warrant was issued on November 23, 2006, by Judge Somebody.
14. David and Marla Manning were charged individually with possession, manufacturing or cultivating cannabis and with neglect of a child.
15. The State has lawfully gained access to Marla Manning's statement pre-trial.

## WITNESS LIST

The following witnesses shall be called by the parties:

<b>For the Prosecution</b>	<b>For the Defense</b>
Lori Lambert *	Marla Manning *
Investigator Tony (Toni) Davis **	Principal Mike (Michelle) Gordon **
Dr. Mary J. (Wendel) Hasher **	Irene (Eugene) C. Green **

Each team must call all three witnesses for their respective party.

\* This witness must be female.

\*\* This witness may be either male or female (alternative names in parenthesis).

## SWORN STATEMENT OF LORI LAMBERT

1 My name is Lori Lambert, and I am twenty-two years old. I live at 7900 Bird Way #113,  
2 Ocean Heights, Florida 32162. I work at the We-Care Day Care center three days a week. I have  
3 been working there for two years. However, I need to make more money than We-Care can pay  
4 me, so I also do babysitting on the side. I am a regular babysitter for four young children.  
5

6 I was a babysitter for Sean Manning during the months of April through most of  
7 November 2006. Sean was six years old when I babysat for him, and was the smartest of all the  
8 kids I babysat. I would watch Sean at my apartment when his mom, Marla, went to the gym. I  
9 never met Sean's Dad. Marla worked out a lot so Sean would stay with me in the evenings four  
10 or five days a week. Marla always dropped Sean off and picked him up. Marla paid me in cash  
11 every time she picked up Sean.  
12

13 On November 22, 2006, Marla dropped Sean off at my apartment around 6:30 p.m.  
14 before she went to the gym. I remember that evening she drove a different car than she usually  
15 does. I didn't ask her anything about it. I just noticed the car was another really fancy SUV.  
16 After Marla left, I fed Sean dinner—Mac and Cheese, his favorite meal. We also watched a little  
17 T.V.; he especially likes to watch the Disney channel. And, we played some games, like hide-  
18 and-seek and go fish. I am really good at keeping the kids busy and entertained. After we  
19 finished playing games, we sat down on the couch and turned the T.V. back on.  
20

21 While the T.V. was on, I began to ask Sean about all the things he likes to do at school  
22 and at home. Then all of a sudden, Sean told me that his Daddy had plants growing in his office  
23 at the house. He also said that sometimes there's a funny smell in the house. When I asked him  
24 what he was talking about, he asked me if his Daddy would get in trouble with the landlord. I  
25 didn't understand why he'd asked that, but I told him no one was getting in trouble with anyone.  
26

27 Once I convinced him no one was going to get in trouble, Sean told me that one day his  
28 Daddy's office door was unlocked. He told me his Daddy usually kept the door locked and he  
29 was never allowed to go into the room. But on this day, even though he knew he wasn't  
30 supposed to go in, he went into the room and meddled around. Sean told me exactly what he  
31 saw in the room. He said he saw lots of dirt and plants all around the room. He said it looked like  
32 a garden, but only inside the house. He said he'd never seen a garden indoors before. He also  
33 said there was no desk to write on or chairs to sit on, and that it smelled funny in his Daddy's  
34 office. At first I thought Sean was making up a story because sometimes he likes to tell silly  
35 stories. Then I thought Sean saw something on T.V. and was just sort of making up the story  
36 based on something he had seen on television. I remember not too long ago I saw a television  
37 documentary on indoor marijuana operations. I couldn't remember if that show was on when  
38 Sean was at my apartment or not.  
39

40 Anyway, after he told me the story, Sean was really afraid that his mommy would be  
41 angry with him for telling me the "secret." He made me promise not to tell anyone that I knew  
42 the secret. Sean was so worried about his mom being mad at him for telling the secret that I just  
43 knew he was telling the truth. Soon Marla came to pick up Sean. She paid me in cash as  
44 always, with lots of crumpled up money, and quickly rushed out the door. I remember that night

45 Marla was in more of a rush than usual. Also, she had a shorter workout than usual too. Anyway,  
46 she thanked me for watching Sean, grabbed him, and they rushed out the door. I watched out my  
47 kitchen window as she put Sean in the front seat of the SUV.  
48

49 Later that night, around 8:30, my good friend came by with her seven year old, who was  
50 to spend the weekend with me while his mother went out of town. She told me that she heard  
51 Marla and Sean were in a car accident. Once I heard that, I wondered whether Marla was “high”  
52 at the time she picked up Sean, which might have caused the accident. I always knew they must  
53 have been involved in some drug dealings because how else can they afford to live in a  
54 penthouse, drive fancy cars, and work out at elite gyms?  
55

56 I felt really badly that I didn’t do anything about Sean’s “secret.” So right away, I called  
57 the Ocean Heights Police Department from my home phone. I didn’t tell them who I was, but I  
58 told them that I thought Marla and David Manning might be running a marijuana growing  
59 business in their condominium unit. I gave them the Manning’s address. I also told the police  
60 what the “office” looked like, including the “indoor garden.” However, I never told the police  
61 that I didn’t see the room or the house myself. But, again, they didn’t ask either. The times  
62 before when I’ve called under circumstances like this, they usually ask a lot of questions, but I  
63 guess they must have been busy or something. I really need to be careful though, being that I’m  
64 not “technically” a U.S. citizen; I just haven’t gotten around to applying for a green card yet, but  
65 I will.  
66

67 I haven’t seen or heard from Marla since the accident. I hope Sean is doing ok. I miss  
68 having that little guy around.  
69  
70

71 \_\_\_\_\_  
72 /s/  
73 Lori Lambert

74 SIGNED AND SWORN to this 9 day of October 2007.  
75

76 \_\_\_\_\_  
77 Patricia Stratigas, Notary Public  
78 State of Florida  
My Commission Expires: 11/02/09



**INVESTIGATIVE REPORT BY INVESTIGATOR TONY DAVIS OF THE  
OCEAN HEIGHTS POLICE DEPARTMENT (CASE NO. 2007-017072)**

1 In addition to my affidavit which I provided in support of the search and arrest warrants, I state  
2 the following:

3  
4 A search and arrest warrant was executed at approximately 6:00 a.m. on November 23,  
5 2006. Officer Bell and I returned to the Manning's home around 6:25 a.m. that morning, and we  
6 obtained entrance into the home by David Manning.

7  
8 Upon entering the home, it looked like a normal house with a living room filled with a  
9 sofa and regular furniture. However, behind a locked door in one of the bedrooms we discovered  
10 at least 65 marijuana plants being grown in a manner consistent with that described by the web  
11 site page found in proximity to the vehicle that was driven by Marla Manning the previous day.  
12 Also discovered were grow house materials, including power sources, a removable air  
13 conditioning unit, fertilizer, and potting soil. No latent finger prints of value were found in the  
14 bedroom.

15  
16 In a bedroom on the other side of the condo unit we located items consistent with that of  
17 items found in the room of a six-year-old boy. Additionally, we found several school papers,  
18 letters and sports trophies with the name "Sean Manning."

19  
20 We discovered that Marla Manning lived in the condo with her husband David Manning.  
21 Upon being questioned about the marijuana found growing in their condo and the presence of  
22 their son at the condo during the time when the marijuana was being cultivated, both David and  
23 Marla refused comment. We commenced to arrest David and Marla Manning on the charges of  
24 Manufacturing or Cultivating Marijuana and Child Neglect.

25  
26 Following, lab safety officers from the Ocean Heights Police Department responded to  
27 the residence to assist with the identification and removal of the lab components and chemicals.  
28 The Ocean Heights Police Department team identified, sampled, and removed the components of  
29 the lab, and packaged them for disposal. Indicators found at the scene suggest the lab was  
30 operative within the past few months. Approximately 65-70 growing marijuana plants, yielding  
31 1/4-1/2 pounds of "smokable" material, \$700 cash, and manufacturing materials were located  
32 and seized. Also, a set of keys containing a key chain with the initials "D.M." and a copper key  
33 matching the lock to the room containing the contraband. No other items of evidentiary value  
34 were found.

35  
36  
37 \_\_\_\_\_  
/s/  
Officer Tony Davis

38  
39 SIGNED AND SWORN to this 23 day of November 2007.

40  
41 \_\_\_\_\_  
Patricia Stratigas, Notary Public

42 State of Florida

43 My Commission Expires: 11/02/09

**SWORN STATEMENT OF DR. MARY J. HASHER**

1 My name is Mary J. Hasher, Pharm. D., M.D., Ph.D. My initial higher education was in  
2 pharmaceutical studies. I thought I would make an excellent research pharmacist, studying the  
3 effects of various medications and reactions in people. However, during my fifth year of  
4 pharmacy school, I developed an interest in patient responses and interactions with various illicit  
5 and illegal drugs, and turned my focus to medical school. I was fortunate to enroll in the dual  
6 program at the University of North Florida to obtain my medical degree and Ph.D. at the same  
7 time. While my medical studies ran the gamut of health care issues, my doctoral program and  
8 dissertation focused on the effects of cannabis (a/k/a marijuana, pot, weed, Mary Jane, widow  
9 and/or hash) and its supposed medical risks and benefits.

10  
11 Following my internship and residency at Jackson Memorial Hospital in Miami, Florida,  
12 I became licensed as a Medical Doctor in four (4) states, including Florida. I was successful in  
13 passing my written and oral board certification examinations on my first attempt and now hold  
14 the distinction of being board certified in both forensic pathology and pain management. Aside  
15 from my teaching responsibilities at a local university, I have been engaged as an expert witness  
16 in numerous civil (malpractice), criminal (homicides, drug related, DUIs) and administrative  
17 (licensure) matters involving pharmaceutical and/or medical issues.

18  
19 My continued love of learning and research, in combination with national organizations  
20 has confirmed the following information regarding marijuana. Marijuana is a Schedule I  
21 controlled substance under the Federal Controlled Substances Act and Chapter 893, Florida  
22 Statutes. Although some states think otherwise, both U.S. and Florida law mandate that  
23 marijuana has a high potential for abuse, and there currently is no accepted medical use for the  
24 drug in the United States. I note that marijuana was, at one time, on the U.S. pharmacopoeia.  
25 However, in 1942 it was removed from the list and its medical use prohibited.

26  
27 Since the attack in New York on 9/11, we, in the medical community, have been notified  
28 of an increase in overall usage of marijuana. This has been linked to an increase in the indoor  
29 cultivation of marijuana. This indoor cultivation is in direct correlation with the increased border  
30 patrols, and the drug organizations' fear of seizures at the border crossings. According to a  
31 recently unclassified federal report, marijuana cultivation in Florida has increased dramatically  
32 within the last 10 years. In particular, indoor cultivation has increased also. In 2006,  
33 approximately 36,172 indoor marijuana plants were eradicated compared to only 10,354 outdoor  
34 marijuana plants. Although the 2006 year confiscation of the indoor plants was about 10,000  
35 less than in 2005, it was still a major increase from 2001 when approximately 15,100 indoor  
36 plants were seized. Because so many people are growing it, the use is becoming more wide  
37 spread.

38  
39 Although statistics indicate there has been a slight decline in minor children and  
40 teenagers using marijuana, the presence of pot within our communities continues to be a health  
41 concern for all involved. My research indicates that while some people experience stress  
42 reduction, increased creativity and pain relief while using marijuana, the vast majority of users  
43 have experienced multiple health risks. Those risks include an increase in upper respiratory  
44 problems, difficulty with short term memory issues, mild to severe anxiety attacks, headaches,

45 confusion, paranoid feelings, irritability, increased food intake, anger and aggressive behavior,  
46 psychological dependency on pot and loss of coordination or athletic abilities.

47  
48 For those who use pot on a daily basis, learning becomes more difficult because one's  
49 ability to concentrate is disrupted. The more pot one uses, the more likely that intelligence will  
50 be stunted as well as a lack of social skills. Surveys have shown that students who smoke the  
51 drug have significant reduction in critical skills such as attention, memory, and simple learning  
52 techniques. Thus learning new math skills or chemical reaction problems may be out of reach of  
53 frequent pot users.

54  
55 Genetics has also been an interesting subject for me. Research has shown that young  
56 people exposed to the effects of pot use, either through a parent /guardian's use (second hand  
57 smoke) or other exposure does have an affect on young persons. Environmental/social factors  
58 such as the availability of pot, expectations of how the drug would/could affect them, influences  
59 of family members or friends and other factors will effect how young persons appreciate this  
60 drug as well as other illegal substances. Minor children are very much influenced by their  
61 parents and close family members. The psychological attachments of young children to their  
62 authority figures are impressive and must be adequately addressed to ensure a safe nurturing  
63 environment. It has been shown that parents who use illicit drugs, such as marijuana, are less  
64 nurturing and attentive to the needs of young children. Lastly, I must highlight that the effects of  
65 pot usage during pregnancy does affect a child's neurological well-being.

66  
67 \_\_\_\_\_ /s/  
68 Mary J. Hasher

69  
70 SIGNED AND SWORN to this 9 day of October 2007.

71 \_\_\_\_\_  
72 Patricia Stratigas, Notary Public  
73 State of Florida  
74 My Commission Expires: 11/02/09

## SWORN STATEMENT OF MARLA MANNING

1 My name is Marla Manning. I live at 1256 Lady of the Sea Drive, Apt. #11-A in Ocean  
2 Heights, Florida with my husband, David Manning, and six-year-old son, Sean. David and I  
3 married in 2000, and moved into Silver Sands Condominiums on the penthouse floor of the  
4 building. We shared the floor with only one other family, the Greens. David was the primary  
5 push for this particular condo because of its private location. Access to the floor is very, very  
6 limited; only the condo manager, David, myself, or our neighbors are allowed access, and we are  
7 the only ones who can grant access to visitors. In fact, you have to have a special key pass to  
8 gain access to the top floor via the elevator or stairs. For instance, when I order a package, one  
9 of us has to physically pick it up from the office on the first floor.

10  
11 David and I had a lot in common, but one thing we always disagreed on was smoking.  
12 David would occasionally smoke cigarettes and sometimes marijuana, when he got stressed, but  
13 I detested even the smell of that stuff. I never once smoked weed. Sometimes I'd sense a smell  
14 in the house like leaves burning or something. It wasn't that often, but whenever I did, I'd say  
15 something to David about it. He'd always promise not to smoke in the house, but even the smell  
16 on his clothes could irritate me. After a while, I would just brush it off because it wasn't that  
17 often, and I never saw any drugs in the house.

18  
19 Overall, David is a great husband and provider. Actually he is the sole supporter of our  
20 family; I'm what you would call a "homemaker." Even last year when we fell upon hard times,  
21 David still did not approve of my getting a job. Instead he decided to start his own private  
22 investigation business and run it out of our home. I am not business-minded so I never got  
23 involved in any way whatsoever with David's work. He didn't ask me to help him with the  
24 business, and I never volunteered to help. He always said he liked to separate his business from  
25 personal life in order to protect the privacy of his clients, you know. He says they're mostly  
26 "high profile" clients. So, no one was allowed to ever go into the room where he maintains his  
27 office, including me and Sean. It's always locked, and David has the only key.

28  
29 One day while I was washing dishes, I called for Sean, but he didn't answer. When I  
30 went to look for him, I found him wandering around in David's office. I guess he'd forgotten to  
31 lock the door. Not wanting David to walk in and find us in his "private" office, I hurried in and  
32 snatched Sean out of the room. During the few seconds that I was in the room, I noticed a lot of  
33 plants inside, but I did not recognize them right off. I was in the room for such a short period of  
34 time that I didn't really get a good look at them.

35  
36 Once we were out, I scolded Sean about disobeying his father's orders, and admonished  
37 him about ever going into that room again. Sean nodded with a pitiful look on his face, but then  
38 he began to ask me about all the dirt and plants in Daddy's room. Sean is an inquisitive kid, but  
39 he's usually satisfied if I can give him a reasonable explanation for his inquiries, like "Santa  
40 Clause doesn't have to come down the chimney all the time; he'll always find a way to deliver  
41 gifts to good little children." So, once I explained to Sean that his daddy likes live plants in his  
42 office because it helps him to breathe better and that he shouldn't worry because they wouldn't  
43 hurt anything, he didn't ask any more questions. I knew that the landlord did not allow tenants to  
44 run businesses in their homes, so I told Sean not to tell anyone about his father's private office

45 because we'd get in trouble with the landlord. I admit I was a little curious about all those plants  
46 in David's office, but I decided not to mention anything to David about it because I didn't want  
47 him to know that Sean or I had been in his "private" office.  
48

49 For about a year, I have been trying to work out four to five times a week. The Platinum  
50 Gym is not far from our home and it's usually not that busy during the evenings (plus, I'm not  
51 much of a morning person). When David was busy or away from home, I would take Sean to the  
52 babysitter, Lori Lambert, and then go work out. Lori had been babysitting Sean for several  
53 months. Although her apartment was a little out of the way, I liked her style and the way she  
54 cared for Sean, so the distance didn't matter.  
55

56 On the evening of Friday, November 22, 2006, I dropped Sean off at Lori's about 6:30  
57 p.m. because David had some important phone calls to make for his business. I returned to pick  
58 up Sean about an hour and fifteen minutes later. He seemed fine, but I noticed Lori had a  
59 strange, puzzled look on her face as if she wanted to say something. But I was in a hurry  
60 because David had left a message on my cell phone that he was preparing dinner and hoped the  
61 three of us could have some family time together. I thought that was a great idea since he'd been  
62 so busy lately.  
63

64 Unfortunately, on the way home, Sean and I were involved in a car accident. Somehow  
65 in all of my excitement, I lost control of the truck and swerved into a construction barricade  
66 along the median on the road. I don't usually drive David's SUV, but that day my car was in the  
67 shop. I'm so used to driving my Mercedes SLK 55 AMG that it often takes me a while to adjust  
68 to driving David's oversized Cadillac Escalade, especially on narrow roads like the one we were  
69 on. Fortunately, Sean and I sustained only minor cuts and bruises, and the truck was only  
70 slightly dented on the front end. Pretty incredible considering how hard I hit the barricade. I  
71 mean, everything sort of shifted to the front of the truck, and I noticed some loose papers even  
72 flew out the window. We had to wait about 20 minutes for the police to finally arrive; then I was  
73 able to drive us on home; I didn't feel we need to go to the hospital or anything.  
74

75 David was happy to see that we were ok. I was still a little shaken up, and so was Sean,  
76 but we were able to at least settle down long enough to have dinner and get some rest. The next  
77 morning, our sleep was abruptly interrupted by loud knocking on our front door around 6 a.m.  
78 David and I woke up, startled and half asleep. My heart was beating fast, as I waited in the  
79 bedroom while David went to the door.  
80

81 When David hesitated but finally opened the door after it was announced that the police  
82 were at the door. David opened the door to find two police officers, one waiving a search  
83 warrant in his face. David called for me to come out of the bedroom. I had no idea what they  
84 wanted; I thought I had taken care of everything with the accident. They told us to stay back  
85 while they searched our home, and boy did they tear through there mercilessly! The whole time  
86 they were searching our place, I was wondering what they were looking for and who in the world  
87 gave them access to our floor. When they got to the locked bedroom, they didn't even ask us for  
88 a key to unlock it; they just bust right through the door.  
89

90 It wasn't until the police bombarded the place that I realized the plants in David's office  
91 were marijuana. The entire situation was so upsetting to me that I started crying hysterically. I  
92 could not believe that David would do something like this. The police read us our rights and  
93 arrested us both on the spot. David told me not to talk and that we would be calling our lawyers  
94 as soon as we got to the station. And that's just what we did.

95  
96  
97 \_\_\_\_\_ /s/  
98 Marla Manning  
99

100 SIGNED AND SWORN to this 9 day of October 2007.

101 \_\_\_\_\_  
102 Patricia Stratigas, Notary Public  
103 State of Florida  
104 My Commission Expires: 11/02/09

**SWORN STATEMENT OF PRINCIPAL MIKE GORDON**

1 My name is Mike Gordon, and I have been the principal of Gulf County Elementary  
2 School for the past four years. I have known Marla Manning for over 2 years. Her son is in the  
3 first grade at GCES, and ever since he began school, Marla has been one of the most active  
4 parents in the school. In fact, I got to know Marla and her husband even before Sean came to  
5 school. Since it is their first child, they were concerned about creating the best learning  
6 environment for Sean, so they came to talk to me before he was even enrolled here.  
7

8 Since Sean began Kindergarten, Marla has been heavily involved. We try to have as  
9 many field trips to museums and other centers of learning for the young children, and Marla is  
10 always first in line to volunteer to be a parent-aid on the field trips. I think deep down inside,  
11 Marla always wanted to be a teacher, but it just did not work out that way, so now that she has a  
12 child, she wants to make sure that education is fun and interesting for Sean.  
13

14 Most of the interaction I have with the family is limited to Marla. David does not really  
15 come around as much. I think he is usually busy with work, but I have never heard Marla  
16 complain for a second. She always seems genuinely happy and always is pleasant and kind to  
17 the children. She also seems to have befriended a lot of the other parents of children here at  
18 school.  
19

20 As for Sean, he is shy but is an intelligent and well-adjusted child. He seems very  
21 attached to his Mother, and he is always happy when she is with our class. When she is not  
22 around, Sean gets along fine with his classmates. However, on a couple of occasions, his  
23 teachers have reported that Sean sometimes has difficulty remaining attentive in class and has a  
24 tendency to forget things easily, particularly when just told to him. But, he is only 6 years old.  
25

26 Marla has expressed interest to me in being a member of the PTA, and she even has  
27 aspirations of running for a position on the Board. I hope she follows through with that because  
28 she would make an excellent addition to the PTA Board. She has discussed with me her desire  
29 to have more children and that may impede her ability to become actively involved.  
30

31 Overall, Marla is a wonderful parent and very helpful to us when she is involved in  
32 activities. We hope she continues to stay involved with the school as Sean gets older and as she  
33 has more children entering our school system.  
34

\_\_\_\_\_  
/s/  
Mike Gordon

35  
36  
37  
38 SIGNED AND SWORN to this 9 day of October 2007.

39 \_\_\_\_\_  
40 Patricia Stratigas, Notary Public  
41 State of Florida  
42 My Commission Expires: 11/02/09

## SWORN STATEMENT OF IRENE C. GREEN

1 My name is Irene Charming Green, but my friends just call me “IC” – a nickname from a  
2 long time ago at a high school party. Boy was that fun, but a different lifetime ago. I live at  
3 1256 Lady of the Sea, Dr., Apt. #11-B, Ocean Heights, Florida 32169. I have lived in Ocean  
4 Heights my whole life, except when I went to college and the big city for a short time. I was an  
5 interior design major with a flair for modern design and use of space. I have always been  
6 fascinated with the efficient use of space, using every inch of a room or home for the best  
7 practical means, yet leaving areas wide open so as not to feel crowded.  
8

9 I was fortunate to marry the man of my dreams, Baron Buchanan (“BB”) Green. BB  
10 made a fortune in international banking. After we married, I just tinkered a bit in my interior  
11 design, but was/am primarily a stay at home wife and mother. Of course, my children are older  
12 now, but when they were younger, we were always on the go.  
13

14 BB & I have lived in our penthouse at Silver Sands Condominiums for about ten years.  
15 We love most the privacy of it, which is why we don’t mind paying a premium to live there.  
16 There are only two units on our floor, and they both share a common hallway. But we’re the  
17 only ones with access to the penthouse level, besides the condominium manager, the front guard,  
18 and of course, our authorized guests. The general public is prohibited by the condo’s front guard  
19 from gaining access to the penthouse level, including the common hallway. Suffice it to say, no  
20 one is ever just “dropping by” because they’re “in the neighborhood”!  
21

22 We were delighted when David Manning and his lovely wife, Marla, moved onto the  
23 floor next door. When Marla learned of my talents, she asked me to help her decorate their  
24 place. We had a ball, decorating each room in the home. Well, not every room because Marla  
25 said we’d leave David’s “personal room” as it was. He was very private about that, and I do not  
26 think Marla ever went in there, at least not when I was around. I think a first-time mom always  
27 likes getting advice from a seasoned veteran.  
28

29 David and Marla are an interesting couple with many talents and adventures to share. We  
30 have enjoyed watching their young Sean grow. He is an absolute delight and our children have  
31 enjoyed his company on many occasions. On several occasions, David and Marla have allowed  
32 Sean to spend the night in our home while they celebrated their anniversary, a birthday or some  
33 big transaction that David had completed. David and Marla are very involved with Sean,  
34 although I do see Marla handling the bulk of the parenting duties.  
35

36 Marla is so kind and loving with Sean. That boy can do no wrong. Marla is never far  
37 from him. Sean is a smart little boy, too, although at times his imagination can run wild. BB and  
38 I have attributed that to all those neat, yet challenging computer games he plays, as well as the  
39 frequent international trips they go on. I remember one time recently when visiting their home,  
40 Sean tried to go into David’s office, but Marla absolutely forbade it. The door was locked  
41 anyway, and I recall Marla stating she did not have a key. I think David was out of the country  
42 at the time, but I am not sure. I just know I did not see David that visit.  
43



44 We were so distressed when we learned that Marla had that accident with little Sean in  
45 the car. She is always so careful; then again, she's so used to driving her sporty little SLK 55  
46 AMG Mercedes around that it must be odd tackling David's huge SUV. Both she and David  
47 have Sean's best interest at heart. We were pleased to learn that neither Marla nor Sean was  
48 injured in the accident. I wanted to drop by to see how they were doing that night and bring her  
49 some cake from the bridal shower I'd thrown for one of our friends that day, but I decided  
50 against it, thinking that they'd probably need their rest.

51  
52 I remember that as BB and I were retiring to sleep, we heard some strange noises in the  
53 hallway. We thought it might have been the janitor cleaning the hallway, as we had been told by  
54 the condo manager that he would be there. But, we got up to check just to be sure. To our  
55 surprise, through the peephole, we saw two police officers and a dog snooping around the  
56 hallway outside the Manning's place. We didn't know what to think of it.

57  
58 The next day, after the couple was arrested, we realized the police had discovered lots of  
59 pot growing in the condo. The news was all so disturbing. Marla is a fine mother and is  
60 constantly teaching Sean different new things. I find it incomprehensible that she would do  
61 anything to intentionally harm or endanger Sean.

62  
63  
64  
65  
66  
67  
68  
69  
70  
71

\_\_\_\_\_  
/s/  
Irene C. Green

SIGNED AND SWORN to this 9 day of October 2007.

\_\_\_\_\_  
Patricia Stratigas, Notary Public  
State of Florida  
My Commission Expires: 11/02/09

## **EXHIBIT LIST**

<b><u>No.</u></b>	<b><u>Description</u></b>
A.	Condominium Lease Agreement
B.	Photographs of marijuana plants taken from the Manning's condo
C.	Page 1 of Web site titled "Beginner's Guide to Growing Marijuana"
D.	Accident Report
E.	Search Warrant and Supporting Affidavit

**EXHIBIT "A"**

**SILVER SANDS CONDOMINIUMS LEASE AGREEMENT**

**THIS LEASE (the "Lease") dated this 1st day of November, 2006, BETWEEN:**

**Jack D. Tripper**

Address: 1256 Lady of the Sea Dr., Ocean Heights, Florida 32169  
Telephone: 123-456-7890  
(the "Landlord")

OF THE FIRST PART

**-AND-**

**David Manning and Marla Manning**

Address: 7894 Bay Street, Ocean Heights, Florida 32167  
Telephone: 123-987-4561  
(collectively and individually the "Tenants")

OF THE SECOND PART

**IN CONSIDERATION OF** the Landlord leasing certain premises to the Tenants, the Tenants leasing those premises from the Landlord and the mutual benefits and obligations provided in this Lease, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Lease agree as follows:

**Leased Premises:**

1. The Landlord agrees to rent to the Tenants the condominium municipally described as 1256 Lady of the Sea Drive, Apt. 11-A, Ocean Heights, Florida, (the "Premises") for use as residential premises only. The Premises are more particularly described as follows: Penthouse A. Neither the Premises nor any part of the Premises will be used at any time during the term of this Lease by Tenants for the purpose of carrying on any business, profession, or trade of any kind, or for the purpose other than as a private single-family residence.
2. Subject to the provisions of this Lease, apart from the Tenants, no other persons will live in the Premises without the prior written permission of the Landlord, except for: Sean Manning (minor child).
3. No guests of the Tenants may occupy the Premises for longer than one week without the prior written consent of the Landlord.
4. No pets or animals are allowed to be kept in or about the Premises without the prior written permission of the Landlord. Upon thirty (30) days notice, the Landlord may revoke any consent previously given pursuant to this clause.
5. Subject to the provisions of this Lease, the Tenants are entitled to the use of parking (the "Parking") on or about the Premises. Only properly insured motor vehicles may be parked in the Tenants' space.
6. The Premises are provided to the Tenants without any furnishings.

## **Terms and Conditions:**

7. TERM. The term of the Lease commences at 12:00 noon on November 1, 2006, and ends at 12 noon on November 1, 2007.
8. RENT. The rent reserved by the Landlord for the Leasehold Premises for the term herein provided shall be one-thousand-seven-hundred and fifty dollars (\$1750.00) Dollars, which the Tenants hereby covenant and agree to pay to the Landlord, for the use and occupancy of the Leasehold Premises, payable monthly installments.
9. DAMAGE DEPOSIT. The Tenants shall further pay to the Landlord, prior to occupancy of the Premises, a security deposit in the sum of one-thousand-seven-hundred and fifty dollars (\$1750.00) Dollars, the receipt of which is hereby acknowledged as having been heretofore deposited with the Landlord in conjunction with this Lease, to be held as security for any damages to the Premises, or as payment, in whole or in part, for any costs or expenses incurred by the Landlord resulting from the failure of Tenants to surrender the premises in the condition described in Paragraph 15 herein. Unless withheld by the Landlord, in whole or in part, by reason of any damage to the Premises, the security deposit shall be returned to the Tenants within thirty (30) days after the termination of this lease, provided that the Tenants have delivered to the Landlord a forwarding address, in writing, at or prior to the date the Tenants shall surrender the Premises to the Landlord.
10. LATE CHARGE. In the event that any payment required to be paid by Lessee hereunder is not made within three (3) days of when due, Lessee shall pay to Lessor, in addition to such payment or other charges due hereunder, a "late fee" in the amount of ten (\$10.00) Dollars per day.
11. DEFAULT. If Lessee fails to pay rent when due and the default continues for seven (7) days thereafter, Lessor may, at Lessor's option, declare the entire balance of rent payable hereunder to be immediately due and payable and may exercise any and all rights and remedies available to Lessor at law or in equity or may immediately terminate this Agreement.
12. UTILITIES. During the term of this lease the Landlord will assume payment for the electric, water, cable, and phone bills. The Tenants shall be responsible for all other utilities, including garbage collection. The Landlord will provide garbage containers. A recycling container is also provided the Tenants for glass and aluminum cans. It will be the Tenants' responsibility to place garbage containers and recycling container at the curb for pick up on Monday evenings and to return the recycling container to its appropriate place no later than Tuesday evening. The Tenants agree to keep and maintain the Leasehold Premises, parking lot and surrounding area in a clean and sanitary condition at all times, free of all garbage and debris. All garbage and similar debris shall be deposited by the Tenants in facilities provided by the Landlord for garbage collection.
13. MAINTENANCE AND REPAIRS. During the term of this lease, the Landlord shall provide for the necessary repairs and maintenance of the Premises. The Tenants shall not provide, nor arrange for any repair or maintenance of the Premises, and the Landlord shall not be responsible or liable to the Tenants, or to any other person, for the costs of any repair or maintenance provided or arranged by the Tenants. The Tenants shall promptly notify the Landlord of the need for any repair or maintenance to the Leasehold Premises.
14. SURRENDER OF PREMISES. The Tenants hereby agree to keep and maintain the Premises in as good repair and condition as that now existing and at the expiration of this lease to surrender the Premises in like repair and condition, natural wear and tear accepted.

15. QUIET ENJOYMENT. No loud music may be played at any time, and the Tenants shall conduct themselves in a quiet manner at all times.
16. PARKING. The Tenants hereby agree to observe all reasonable rules and regulations imposed by the Landlord for the use and occupancy of the Premises, and parking on facilities to be provided by the Landlord, and such rules and regulations shall be deemed to be conditions and covenants of this lease. The Landlord shall provide parking space for two (2) motor vehicles in the parking lot at a space to be designated by the Landlord. Any rules or regulations established by the Landlord relating to parking shall be strictly observed by the Tenants and may be subject to change at the Landlord's discretion.
17. ASSIGNMENT. This lease, and the use and occupancy of the Leasehold Premises, may not be assigned, transferred or sublet, without the express written consent of the Landlord which will not be unreasonably withheld.
18. INSPECTION OF PREMISES. The Landlord, and/or the agents of the Landlord, may at any and all times during the term of this lease, enter into the Leasehold Premises for the purpose of inspection and/or repair, and for purposes of exhibiting the Leasehold Premises to prospective tenants, upon prior notice to the Tenants, except in the case of an emergency.
19. MODIFICATION. This agreement contains the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements. This agreement may not be modified, cancelled or otherwise amended unless in writing, duly executed by the parties hereto.
20. BINDING EFFECT. This agreement shall be binding on and shall inure to the benefit of the parties hereto, their respective heirs, successors, personal representatives and assigns.
21. SEVERABILITY. The obligations of the Tenants herein shall be joint and several.

LESSOR:

LESSEE:

\_\_\_\_\_/s/\_\_\_\_\_  
Signature

\_\_\_\_\_/s/\_\_\_\_\_  
Signature

Print Name: Jack D. Tripper

Print Name: David and Marla Manning

Social Security Number:  
000-00-0000

Social Security Number:  
001-00-0001, 001-01-0002

Date:  
November 1, 2006

Date:  
November 1, 2006

**EXHIBIT "B"**

**\*PHOTOGRAPHS TAKEN FROM THE MANNING'S HOME (NOVEMBER 23, 2006)**



## **EXHIBIT "C"**

Beginner's Guide to Growing Marijuana

Page 1 of 790

# **Beginner's Guide to Growing Marijuana**

Indoor Marijuana Cultivation

Marijuana For sale

This is a guide that I pulled off the net that puts everything in plain and simple english, and doesn't go to deep into advanced botony and gardening. I find this one to be the best guide out there.

Introduction:

Growing marijuana indoors is fast becoming an American Pastime. The reasons are varied. With the increased interest and experimentation in house plant cultivation, it was inevitable that people would apply their knowledge of plant care to growing marijuana. Many of those who occasionally like to light up a joint may find it difficult to locate a source or are hesitant to deal with a perhaps unsavory element of society in procuring their grass. There is, of course, the criminal aspect of buying or selling grass; Growing marijuana is just as illegal as buying, selling, or smoking it, but growing is something you can do in the privacy of your own home without having to deal with someone you don't know or trust. The best reason for growing your own is the enjoyment you will get out of watching those tiny little seeds you picked out of you stash sprout and become some of the most lovely and lush of all house plants.

Anyone Can Do It

Even if you haven't had any prior experience with growing plants in you home, you can have a successful crop of marijuana by following the simple directions in this pamphlet. If you have had problems in the past with marijuana cultivation, you may find the solutions in the following chapters. Growing a marijuana plant involves four basic steps:

1. Get the seeds. If you don't already have some, you can ask your friends to save you seeds out of any good grass they may come across. You'll find that lots of people already have a seed collection of some sort and are willing to part with a few prime seeds in exchange for some of the finished product.
2. Germinate the seeds. You can simply drop a seed into moist soil, but by germinating the seeds first you can be sure that the seed will indeed produce a plant. To germinate seeds, place a group of them between about six moist paper towels, or in the pores of a moist sponge.

Leave the towels or sponge moist but not soaking wet. Some seeds will germinate in 24 hours while others may take several days or even a week.

3. Plant the sprouts. As soon as a seed cracks open and begins to sprout, place it on some moist soil and sprinkle a little soil over the top of it.

<http://www.mellowgold.com/grow/begin/>

8/31/2006

# EXHIBIT "D"

## State of Florida - Motor Vehicle Accident Report

REPORT NO. <b>09551755</b>		PLATE NO. <b>111</b>	ACCIDENT DATE <b>11-22-06</b>	ACCIDENT TIME <b>19:55</b>	REPORT TYPE <input checked="" type="checkbox"/> POLICE <input type="checkbox"/> SELF-REPORTING	LOCAL NUMBER <b>06-100-9999</b>	LOCAL CODE <b>0207</b>	PRIORITY <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
REPORTING OFFICER / ID <b>CPL R.T. HARTNETT 1428</b>		ARREST AND AREA <b>AL B-61</b>	SUPERVISOR OFFICER / ID	REPORTING AGENCY	OFFENSE / VIOLATION	COUNTY / RANGE OF OFFENSE <b>009 Ocean Heights</b>		SECTION <b>16</b>	
01	MD	0	0193	GREENBELT ROAD		04	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	0	
01	MU	0	0630	63RD AVENUE		005	58	E 0 0 1 0 1 0 1 0 0 U	
04	ACROSS-ROAD DIAGRAM <small>Show &amp; Label: Road, Traffic Signs, the Travel Direction considered with the Left-Minute Reference Method, and Movement of Traffic Data.</small>			01	NORTH				
01									
02									
01									
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00									
11									
03									
03									
01	NAME (Print, Surname, Last)		01		NAME (Print, Surname, Last)		01		
01		<b>Marie Manning</b>		01		<b>Marie Manning</b>		01	
TYPE OF DRIVER		ADDRESS (Street, City, State, Zip)		TEL. (Work, Home, Cell)		TYPE OF DRIVER		ADDRESS (Street, City, State, Zip)	
01		<b>1250 Lady of the Sea Dr. #11-A Ocean Heights, FL 32109</b>		<b>301-982-9999</b>		01		<b>1250 Lady of the Sea Dr. #11-A Ocean Heights, FL 32109</b>	
VEHICLE IDENTIFICATION		VEHICLE IDENTIFICATION		VEHICLE IDENTIFICATION		VEHICLE IDENTIFICATION		VEHICLE IDENTIFICATION	
12		01 01 00		29		00		00	
40		13 01 01		BH98077, BH98078, BH98079		01		01	
04		M-123-458-789-000		FL C		01		01	
02		1-1-1979		01		01		01	
02		01		01		01		01	
01		David Manning		301-982-9999		01		01	
11		01		01		01		01	
01		01		01		01		01	
00		01		01		01		01	
00		01		01		01		01	
02		Driver		Destination		01		01	
W		W		Arlen M. Martin		7900 Bird Way #123		Ocean Heights, FL 32102	
N/A		N/A		N/A		N/A		N/A	

MSP FORM 1 (3/98)      MSP - CENTRAL RECORDS DIVISION COPY



**EXHIBIT "E"**

IN THE CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT,  
IN AN FOR GULF COUNTY, FLORIDA

**In the matter of the Search of**

Home of David & Marla Manning, Silver Sands Condominiums, Apt. 11-A

**SEARCH WARRANT**

1256 Lady of the Sea Drive, Apt. 11-A  
Ocean Heights, Florida 32169

**Case Number: 2007-017072**

TO: Any Authorized Officer of the United States

Affidavit(s) having been made before me by affiant, Tony Davis, who has reason to believe that / / on the person of or /X/ on the premises known as the Home of David & Marla Manning, Silver Sands Condominiums, Apt. 11-A.

**SEE ATTACHMENT A.**

in the Twenty-first Judicial Circuit, there is now concealed a certain person or property, namely cannabis plants and other drug paraphernalia.

**SEE ATTACHMENT B.**

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

**SEE ATTACHMENT C.**

YOU ARE HEREBY COMMANDED to search on or before 12-3-2006 @ 10:00 p.m.  
Date/Time

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search at any time in the day or night as I find reasonable cause has been established, and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to Circuit Court Judge or Magistrate as required by law.

11-23-2006 @ 6:08 a.m.  
Date and Time Issued

Ocean Heights, Florida  
City and State

Lawrence O. Somebody  
Name and Title of Judicial Officer

/s/  
Signature of Judicial Officer

**Search and Seizure Warrant (condo apartment)**

**ATTACHMENT A**

1256 LADY OF THE SEA DRIVE  
APARTMENT 11-A  
OCEAN HEIGHTS, FLORIDA 32169

1256 Lady of the Sea Drive, Apt. 11-A, (between Hacker Street and Federal Avenue) is contained in an eleven-story, residential condominium building, known as Silver Sands Condominiums, with concrete siding and a tin roof, consisting of approximately 42 residential apartment homes. Apartment 11-A (the "PREMISES") is on the eleventh floor of the building, also known as the "Penthouse Floor;" the number "11-A" appears beside the door to the PREMISES.

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**Search and Seizure Warrant (contents)**

**ATTACHMENT B**

THE PREMISES KNOWN AND DESCRIBED AS 1256 LADY OF THE SEA DRIVE  
APARTMENT 11-A, OCEAN HEIGHTS, FLORIDA 32169

Cannabis plants, meaning all parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or its seeds, or resin, drug paraphernalia; grow house materials, including power sources, air conditioning units, fertilizers, and potting soil, in violation of Sections 893.03(1)(c)7. and 893.13(1)(a)2. Florida Statutes.

---

**Sworn Testimony of Investigator Tony Davis**

**ATTACHMENT C**

I, Tony Davis, being duly sworn, states that:

1. I have been an Investigator with the Ocean Heights Police Department (OHPD) for approximately 9 years. I am currently assigned to the Drug Investigations Unit which works in tandem with the Ocean Heights Interdiction Team (OHIT). The Drug Investigation Unit investigates all types of illegal narcotics including marijuana, heroin, cocaine, methamphetamine, ecstasy, and illegal prescription drugs. I have worked regularly with my canine partner, "Jack," for more than three years, during which we have logged over 480 hours of training, over 500 deployments, and have located over \$3 million in drugs. Jack's alert has contributed to issuing over 32 search warrants for drug investigations. I have provided drug detection dog support to over 20 federal, state and local agencies.

2. I make this affidavit in part from personal knowledge based on my participation in this investigation and in part on information gained through a fellow officer involved and a

citizen informant. In particular, I have relied on information provided by Officer R. T. Hartnett who investigated a single vehicle crash involving residents of the Premises.

### Summary of Investigation

3. On the night of Friday, November 22, 2006, we received a 911 call from a tipper stating that marijuana was being cultivated at a residential unit in Silver Sands Condominiums. The caller gave the name and physical description of two of the subjects staying at the target residence. The first subject being known to the caller as Marla Manning and the second subject as Marla Manning's juvenile son, Sean Manning. The caller also advised that the minor son described to her equipment he observed in his house which the anonymous caller believes is consistent with equipment that would be used in the cultivation of marijuana. We traced the 911 call and learned that it came from an apartment at 7900 Bird Way #113, Ocean Heights, Florida 32162, which is inhabited by a "Lori Lambert."

4. Acting on this information, this officer along with K-9 Officer Rick Bell, proceeded to the target residence located at the Silver Sands Condominiums in Ocean Heights at approximately 9 p.m. Upon arrival at Silver Sands, Officer Bell and I found that the target residence was one of two residences on the penthouse level and that a security access key was required to access the common hallway. We were approached by Jerry Faust, a janitor tasked with cleaning one of the residences on the penthouse level after a party hosted by the occupants that afternoon. Mr. Faust stated that he would be happy to allow us access to the penthouse level common hallway area.

5. Once we arrived at the penthouse level hallway, we released the K-9 officer, "Jack," in the hallway outside the Manning residence. Jack did alert on the door of the target residence signifying the positive presence of an illicit substance. Neither Officer Bell nor I observed any evidence of illegal activity in the common hallway, and we were unable to smell any illegal contraband which may have been due to the overpowering smell of incense, which seemed to be coming from one of the residences.

6. Upon completing our sweep of the penthouse level hallway, we were contacted by Officer R. T. Hartnett of the Ocean Heights Police Department who advised us that he was conducting an accident investigation of a single vehicle crash. Officer Hartnett stated that in his accident investigation he had located a printed web page regarding the indoor cultivation of hydroponic marijuana. Officer Hartnett further advised the printed web page had been found on the ground near a vehicle driven by Marla Manning and that her son, Sean Manning, was a passenger in the vehicle at the time of the crash. Officer Hartnett stated that the address on Marla Manning's driver license matched the address of the target of our investigation.

7. My request for this search warrant is based on the anonymous telephone tip; the fact that Jack alerted for the positive presence of illegal contraband on the target residence; and the printed web page regarding the cultivation of indoor hydroponic marijuana found near the scene of a single car accident involving the occupants of the target residence.

\_\_\_\_\_  
/s/  
Signature of Affiant  
Tony Davis

Sworn to before me and subscribed in my presence,

November 22, 2006 at Ocean Heights, FL  
Date City and State

## **APPLICABLE LAW**

Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317 (1983)

State v. Betz, 815 So.2d 627 (Fla. 2002)

Berry v. State, 316 So.2d 72, 73 (Fla. 1st DCA 1975)

Mahla v. State, 383 So.2d 730, 731 (Fla. 1st DCA 1980)

Sheppard v. State, 521 So.2d 288 (Fla. 1st DCA 1988)

Smith v. State, 904 So.2d 534, 536-538 (Fla. 1st DCA 2005)

Sanders v. State, 385 So.2d 735 (Fla. 2d DCA 1980)

State v. Miller, 606 So.2d 1210 (Fla. 2d DCA 1992)

McDuffy v. State, 837 So.2d 590 (Fla. 2d DCA 2003)

State v. D.D.D., 908 So.2d 1180, 1182 (Fla. 2d DCA 2005)

State v. Garcia, 374 So.2d 601 (Fla. 3d DCA 1979)

State v. Evans, 692 So.2d 216, 218 (Fla. 4th DCA 1997)

Reed v. State, 944 So.2d 1054 (Fla. 4th DCA 2006)

Marsdin v. State, 813 So.2d 260, 261 (Fla. 4th DCA 2002)

Davis v. State, 834 So.2d 322, 327 (Fla. 5th 2003)

Riggs v. State, 918 So.2d 274, 278 -279 (Fla. 2005)

Salyers v. State, 920 So.2d 747, 749 (Fla. 5th DCA 2006)

*This is merely a list of suggested readings, and should not be viewed as a mandatory or comprehensive list to be relied upon for purposes of this competition.*

## **JURY INSTRUCTIONS**

### **25.2 DRUG ABUSE — SALE, PURCHASE, MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT § 893.13(1)(a), Fla.Stat.**

Certain drugs and chemical substances are by law known as "controlled substances." (Specific substance alleged) is a controlled substance. To prove the crime of (crime charged), the State must prove the following (applicable number) elements beyond a reasonable doubt:

1. (Defendant)
  - [sold]
  - [purchased]
  - [manufactured]
  - [delivered]
  - [possessed with intent to sell]
  - [possessed with the intent to purchase]
  - [possessed with intent to manufacture]
  - [possessed with intent to deliver]

a certain substance.

2. The substance was (specific substance alleged).

*Give if possession is charged.*

3. (Defendant) had knowledge of the presence of the substance.

*Definitions (Give as applicable)*

*Sell:*

"Sell" means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

*Manufacture §893.02(12)(a), Fla.Stat*

"Manufacture" means the production, preparation, packaging, labeling or relabeling, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly. Manufacturing can be by extraction from substances of natural origin, or independently by means of chemical synthesis. It can also be by a combination of extraction and chemical synthesis.

*Deliver § 893.02(5), Fla.Stat.*

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

*Possession*

To "possess" means to have personal charge of or exercise the right of ownership, management, or control over the thing possessed.

Possession may be actual or constructive.

Actual possession means:

- a. the thing is in the hand of or on the person, or
- b. the thing is in a container in the hand of or on the person, or
- c. the thing is so close as to be within ready reach and is under the control of the person.

***Give if applicable.***

Mere proximity to a thing is not sufficient to establish control over that thing when the thing is not in a place over which the person has control.

Constructive possession means the thing is in a place over which the person has control, or in which the person has concealed it.

***Give if applicable. See Chicone v. State, 684 So.2d 736 (Fla. 1996).***

If a thing is in a place over which the person does not have control, in order to establish constructive possession the State must prove the person's (1) control over the thing, (2) knowledge that the thing was within the person's presence, and (3) knowledge of the illicit nature of the thing.

Possession may be joint, that is, two or more persons may jointly have possession of an article, exercising control over it. In that case, each of those persons is considered to be in possession of that article.

If a person has exclusive possession of a thing, knowledge of its presence may be inferred or assumed.

If a person does not have exclusive possession of a thing, knowledge of its presence may not be inferred or assumed.

**Lesser Included Offenses**

<b>SALE, MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO SELL, MANUFACTURE OR DELIVER CONTROLLED SUBSTANCE — 893.13(1)(a)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
None			
	Attempt, except when delivery is charged	777.04(1)	5.1
	If delivery of cannabis is charged	893.13(3)	
	If possession of cannabis is charged	893.13(6)(b)	
	If possession is charged and offense would be a second degree felony under 893.13(1)(a)1	893.13(6)(a)	

**Comment**

Note § 893.13(1)(g), Fla.Stat., if the charge involves possession or delivery without consideration of not more than 20 grams of cannabis. If the defense seeks to show a lack of knowledge as to the nature of a particular drug, an additional instruction may be required. See State v. Medlin, 273 So.2d 394 (Fla. 1973).

This instruction was adopted in 1981 and amended in 1989 and 1997.

**16.6 NEGLECT OF A CHILD (Without Great Bodily Harm, Permanent Disability,  
or Permanent Disfigurement)  
§ 827.03(3)(c), Fla.Stat.**

To prove the crime of Neglect of a Child, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant)

*Give as applicable.*

- a. [willfully] [by culpable negligence] failed or omitted to provide (victim) with the care, supervision, and services necessary to maintain (victim's) physical or mental health.
  - b. failed to make a reasonable effort to protect (victim) from abuse, neglect, or exploitation by another person.
2. (Defendant) was a caregiver for (victim).
  3. (Victim) was under the age of 18 years.

Neglect of a child may be based on repeated conduct or on a single incident or omission that resulted in, or reasonably could have been expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.

*Definition. Give in all cases.*

"Caregiver" means a parent, adult household member, or other person responsible for a child's welfare.

*Definition. Give if applicable.*

I will now define what is meant by the term "culpable negligence": Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care for others. For negligence to be called culpable negligence, it must be gross and flagrant. The negligence must be committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily harm.

**Lesser Included Offenses**

<b>NEGLECT OF A CHILD — 827.03(3)(c)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
None			
	Culpable negligence	784.05	8.9

**Comment**

This instruction was adopted in June 2002.



## **RULES OF THE STATE COMPETITION**

### **Rule I: Team Composition/Presentation**

- 1) The competition is open to students currently enrolled in grades 9-12 in Florida schools. All students on a team must be enrolled in the same school in the district they are representing.
- 2) **Only one team may represent a high school at any level of competition.**
- 3) Teams shall consist of six to eight students including alternates to be used in any manner deemed appropriate by the teacher and coach, as long as the distribution of duties does not conflict with competition Rule IV. For each trial round, teams shall use three students as attorneys and three students as witnesses.
- 4) Students may switch roles for different **rounds** of trials (i.e. a student may be an attorney for the defense and a witness for the plaintiff during separate rounds).
- 5) Each team must be fully prepared to argue both sides of the case. (Prosecution/Plaintiff and Defense/Defendant) using six team members.
- 6) Students of either gender may portray the role of any witness. The competition will strive to make roles gender neutral. However, some cases will warrant a specific gender role. In such cases, students of either gender may portray the role but the gender of the witness may not change from the case as presented.
- 7) Team Roster/"Roll" Call

Copies of the Team Roster form must be completed and returned prior to arrival at the competition site. Teams should be identified by the code assigned at registration.

Before beginning a trial, teams will be asked to prepare a "Roll Call" list to identify the students participating in each round and their corresponding roles. No information identifying team origin should appear on the list.

- 8) All teacher coaches and students must attend the mandatory general assembly/orientation. Attorney coaches who accompany their team must also be present.
- 9) Immediately following the mandatory general assembly, all teachers and attorney coaches affiliated with participating Mock Trial teams must attend a Teacher and Coaches Meeting, which will include a review of the rules and power matching system.

### **Rule II: The Case**

- 1) The case may contain any or all of the following stipulations: documents, narratives, exhibits, witness statements, etc.

- 2) The stipulations (and fact statements, if any) may not be disputed at the trial. Witness statements may not be altered.
- 3) All witnesses must be called.

### **Rule III: Trial Presentation**

- 1) The trial proceedings will be governed by the Florida Mock Trial Simplified Rules of Evidence. Other more complex rules may not be raised at the trial. Questions or interpretations of these rules are within the discretion of the State Mock Trial Advisory Committee, whose decision is final.
- 2) Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection outside the scope of the problem.

If, on cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony.

Adding facts that are inconsistent with the witness statement or with the Stipulated Facts and which would be relevant with respect to any issue in the case is not permitted. Examples include, but are not limited to (a) creating a physical or mental disability, (b) giving a witness a criminal or bad record when none is suggested by the statements, (c) creating facts which give a witness standing as an expert and (d) materially changing the witness' profession, character, memory, mental or physical ability from the witness' statement by testifying to "recent changes."

- 3) If certain witnesses are stipulated to as experts, their expert qualifications may not be challenged or impeached by the opposing side. However, their testimony concerning the facts of the case may be challenged.
- 4) On direct examination, the witness is limited to the facts given. If a witness testifies in contradiction to the facts given in the witness statement, that testimony may be impeached on cross-examination by the opposition through the correct use of the affidavit. The procedure is outlined in the Rules of Evidence.
- 5) On cross-examination, no restrictions will be made on the witness or the cross-examination, except that the answer must be responsive and the witness can be impeached.

If the attorney who is cross-examining the witness asks a question, the answer to which is not contained in the stipulations or affidavit then the witness may respond to that question with any answer as long as the answer **does not contradict or materially change** the affidavit.

If the answer by the witness is contrary to the stipulations or the affidavit, the cross-examination attorney may impeach the witness.

- 6) Use of **voir dire** examination of a witness is not permitted.

#### **Rule IV: Student Attorneys**

- 1) Team members are to evenly divide their duties. During any single round, each of the three attorneys will conduct one direct and one cross; in addition, one will present the opening statements and another will present closing arguments. In other words, the attorney duties for each team will be divided as follows:
  - a) Opening Statements
  - b) Direct/Re-direct Examination of Witness #1
  - c) Direct/Re-direct Examination of Witness #2
  - d) Direct/Re-direct Examination of Witness #3
  - e) Cross/Re-cross Examination of Witness #1
  - f) Cross/Re-cross Examination of Witness #2
  - g) Cross/Re-cross Examination of Witness #3
  - h) Closing Arguments
  - i) Prosecution's/Plaintiff's optional closing rebuttal (**see Rule XV**)

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

**The attorney who will examine a particular witness on direct examination is the only person who may make the objections to the opposing attorney's questions of that witness on cross examination, and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness.**

Each team must call the three witnesses listed in the case materials. Witnesses must be called only by their own team and examined by both sides. Witnesses may not be recalled.

- 2) Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial.
- 3) To permit judges to hear and see better, attorneys will stand during opening and closing statements, direct and cross-examinations, all objections, and **whenever addressing the presiding judge**. Students may move from the podium only with the permission of the presiding judge.

#### **Rule V: Swearing of Witnesses**

The presiding judge will indicate that all witnesses are assumed to be sworn.

#### **Rule VI: Case Materials**

Students may read other cases, materials, and articles in preparation for the mock trial. **However, students may cite only the case materials given, and they may introduce into evidence only those documents given in the official packet.** In addition, students may not use, even for demonstrative purposes, any materials that are not provided in the official packet. **The following are not permitted: props, costumes, enlargements, computers, phones, or electronic devices of any kind.**

#### **Rule VII: Trial Communication**

Instructors, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any recess time that may occur. Team members within the bar area may, among themselves, communicate during the trial; however, no disruptive communication is allowed.

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. **Only the six members participating in this round may sit inside the bar.**

#### **Rule VIII: Trial Start Time**

The starting time of any trial will not be delayed for longer than ten minutes unless approved by the Mock Trial Coordinator. Incomplete teams will have to begin without their other members or with alternates.

#### **Rule IX: Conduct/Attire**

**All participants are expected to demonstrate proper courtroom decorum and display collegial sportsmanlike conduct. Appropriate courtroom attire is required. Adherence to the Code of Ethics is expected of all participants.**

**Rule X: Videotaping/Photography**

Cameras and recording devices are permitted in certain courtrooms; however, the use of such equipment may not be disruptive **and must be approved in advance of the competition by The Florida Law Related Education Association, Inc.** When one team requests to videotape during a trial, the opposing team must be consulted and their permission granted prior to taping.

**Rule XI: Witnesses**

Witnesses are to remain in the courtroom during the entire trial.

**Rule XII: Jury Trial**

For purposes of the competition, students will assume this is a jury trial. The scoring judges will act as the jury. The presiding judge is the trial judge. Students should address the scoring judges and the presiding judge.

**Rule XIII: Viewing a Trial**

Team members, alternates, attorney coaches, teacher coaches, and any other persons directly associated with a mock trial team, except those authorized by the State Advisory Committee, are not allowed to view other teams in competition so long as their team remains in the competition. Judges should maintain order in the courtroom. If observers are disorderly, they will be asked to vacate the premises.

**Rule XIV: Decisions**

**ALL DECISIONS OF THE JUDGES ARE FINAL.**

**Rule XV: Time Limits**

- 1) A total time will be given to each side for direct, cross, re-direct, and re-cross.

The sequence and time limits are:

Opening Statements	5 minutes per side
Direct Examination and Re-direct Examination (optional)	24 minutes total per side
Cross Examination and Re-cross Examination (optional)	21 minutes total per side
Closing Argument	5 minutes per side

None of the foregoing may be waived **except the optional times**, nor the order changed.

The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; **the Prosecution/ Plaintiff may reserve one minute or less of the closing time for a rebuttal**. Prosecution/Plaintiff must notify the judge before beginning closing argument if the rebuttal time is requested. The Prosecution's/Plaintiff's rebuttal is limited to the scope of the defense's closing argument.

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

- 2) Timing will halt during objections and responses to objections. **Timing will not halt during the admission of documentary evidence, unless there is an objection by opposing counsel**. In the interest of fairness, time extensions may be granted at the discretion of the presiding judge. All objections should be argued in open court, not at the bench. Timing will resume after the judge has ruled on the objection. Students should avoid the use of tactics to "run out the clock" during the admission of evidence. Judges will be instructed to consider this in the Team Ethics scoring category.
- 3) A "timekeeper" will be provided and will keep the official time of the trial. The timekeeper's role will be expanded to time the 10 minute debrief session for each side. This will help ensure that the schedule is maintained. The timekeeper will announce to the court when time has expired in each of the separate segments of the trial. Further, the timekeeper will bring a calculator to each courtroom and double check the scores of scoring judges to ensure **no ties**. Judges will be instructed **not** to tie the teams during any round. This will eliminate the issue of vote assignments during ties.
- 4) Teams are permitted to keep their own time. However, this will **not** be considered the official time of the trial. **Teams are not permitted to have an extra person be the timekeeper**. One of the six participants may be the timekeeper. Team timekeepers must not interfere with the trial or obstruct the view of any witness.

### **Rule XVI: Judging**

- 1) The **presiding judge** provides a mandatory performance vote during each round/trial for the team that he or she feels gave the better performance during that round/trial.

The presiding judge does not award points to the teams. The presiding judge's score sheet is a short form on which the judge declares which team in his or her opinion exhibited the best performance.

The presiding judge **should not** announce the mandatory performance vote.

- 2) The **scoring** judges (jury) will utilize prepared score sheets to **rate** the quality of the students' **performances** in the round/trial. The judges will be instructed to rate the performance of all witnesses and attorneys on the team. Judges will **not** announce the **presentation decision**. Judges should make field notes on students' performances during the round/trial.
- 3) Judges will be instructed not to tie teams in any round/trial. In the event scores are computed by the judges and errors are found in the computations, score room staff will correct the errors and the corrected scores will be the official scores after adding the individual categories/assessments.
- 4) The team receiving the majority of the performance votes from the three judges is declared the winner of the trial/round.
- 5) To enhance the students' learning experience, the judges will be instructed to give each team an **oral critique** after their deliberation. The decision on **which team** gave the better performance will **not** be given to the participants. Students and their coaches will have the opportunity to meet informally with all the judges for 20 minutes (10 minutes per team) immediately following the round/trial. Score sheets should be completed **before** the debriefing. Debriefing sessions will be timed by the timekeepers to avoid lengthy debriefs.
- 6) **ALL DECISIONS OF THE JUDGES ARE FINAL.**
- 7) The **Team Ethics** category will score students on the standards recognized in the **Code of Ethical Conduct**.
- 8) Attorney coaches of mock trial teams that do not advance from the local competition may **not** serve as a judge in any capacity at any level of competition during the remainder of the competition year.

Teacher coaches of mock trial teams may **not** serve as judges in any capacity.  
Teacher coaches may serve as timekeepers if their team does not advance from their local competition.

## **Rule XVII: Dispute Settlement**

### 1) **Reporting a Rules Violation Inside the Bar**

If any team has serious reason to believe that a **material rules violation** has occurred during a trial round, one student attorney member of the team shall communicate that a dispute exists to the presiding judge **immediately after** the trial is over and before the critique begins. The scoring judges will be excused from the courtroom, but should remain in the vicinity.

- 2) The presiding judge will ask that both teams remain in the courtroom. A dispute form shall be completed by the student attorney to record in writing the nature of the dispute.

The student attorney may communicate with other student attorneys and witnesses on the team before preparing the form. No more than 3 minutes may be taken to complete the form.

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

### 3) **Dispute Resolution Procedure**

The presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce her/his decision to the Court, retire to complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the presiding judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing student counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare their arguments, the presiding judge will conduct a hearing on the dispute, providing each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the presiding judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. The judge will make a final decision as to whether or not a rules violation has occurred. That decision will be recorded in writing on the dispute form. The presiding judge is **not** required to announce his/her decision to students.

### 4) **Effect of Violation on Score**

**If** the presiding judge determines that a substantial rules violation has occurred, the presiding judge will inform the **scoring** judges of the dispute and provide a summary of each team's argument. The scoring judges will consider the dispute before finalizing their scores. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring judges. All decisions of the judges are **FINAL**.

## **Rule XVIII: Reporting a Rules Violation Outside the Bar**

- 1) Disputes that (a) involve people other than student team members and (b) occur outside the bar only during a trial round may be brought by teacher or attorney-coaches exclusively. Such disputes must be entered on a complaint form and turned in to the registration area. The Mock Trial State Coordinator and/or Advisory Committee will review the dispute for appropriate action, if needed. Decisions and actions of the coordinator and/or committee are **FINAL**.



### **Rule XIX: Score Sheets/Ballots**

- 1) Score sheets will be completed individually by scoring judges. The presiding judge will cast a **mandatory** performance vote, but no points for each round. Judges may **not** inform students of score sheet results.
- 2) The term “ballot” will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term “score sheet” is used in reference to the form on which speaker and team points are recorded. Score sheets are to be completed individually by the scoring judges. Scoring judges are not bound by the rulings of the presiding judge. **The team that earns the highest points on an individual judge’s score sheet is the winner of that ballot.** The team that receives the majority of the three ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the judging panel may deliberate on any special awards (i.e., Outstanding Attorney/Witness) the judging panel should not deliberate on individual scores.
- 3) Individual assessment categories **including team ethics and team performance** shall be judged on a 1-10 scale **by scoring judges only.**
- 4) In the event of a mathematical error in tabulation by scoring judges, score room staff will enter the **correct tabulation** of the scores.

### **Rule XX: State Competition Power Matching/Seeding Model**

- 1) The Florida High School Mock Trial Competition uses a *power matching* system.
- 2) A random method of selection will determine the opponents in the first round. A power match system will determine opponents for all other rounds. The two schools emerging with the strongest record from the four rounds will advance to the final round. **The first-place team will be determined by ballots from the championship round only.**
- 3) Power matching will provide that:
  - a) Pairings for the first round will be at random.
  - b) All teams are guaranteed to present each side of the case at least once.
  - c) Brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order: (1) win/loss record; (2) ballots; (3) total points; then (4) point spread. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired.
  - d) If there are an odd number of teams in a bracket, the team at the bottom of that bracket will be matched with the top team from the next lower bracket.

- e) Teams will not meet the same opponent twice.
- f) To the greatest extent possible, teams will alternate side presentation in subsequent rounds. Bracket integrity in power matching will supersede alternate side presentation.

**Rule XXI: Completion of Score Sheets**

- 1) Each scoring judge shall record a number of points (1-10) for each presentation of the round/trial. At the end of the trial, each scoring judge shall total the sum of each team's individual points and place this sum in the **column totals** box. The team with the greater number of points wins that scoring judge's performance vote/ballot for that trial/round.
- 2) The presiding judge shall circle either prosecution/plaintiff or defense/defendant on his or her score sheet/ballot to indicate which team the presiding judge feels gave the better performance during the trial/round. The team that the presiding judge circles on their score sheet/ballot receives that presiding judge's performance vote/ballot for that trial/round.

**Rule XXII: State Competition Team Advancement**

Teams will be ranked based on the following criteria in the order listed:

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

**Rule XXIII: Effect of a Bye/Default**

- 1) A "bye" becomes necessary when an odd number of teams are present for the tournament. For the purpose of advancement and seeding, when a team draws a bye or wins by default, the winning team for that round will be given a win and the number of ballots and points equal to the average of all winning team's ballots and points of that same round. The Mock Trial State Coordinator may, if time and space allow, arrange for a "bye round" to allow teams drawing a bye to compete against one another in order to earn a true score.

- 2) The Mock Trial State Coordinator has the discretion on how to handle a bye in all rounds of the tournament.

#### **Rule XXIV: Eligibility**

- 1) All students on a team must be enrolled in the same public or private school in the district for which they are competing.
- 2) Each judicial circuit may send only one team to compete in the Florida High School Mock Trial State Finals.
- 3) The Mock Trial State Coordinator reserves the right to enlist participation from each district and circuit.

#### **Rule XXV: State Competition Awards**

Trophies will be awarded to the top five teams. Four best witness awards and four best attorney awards will also be presented. Both the presiding judge and the scoring judges will vote on the best witness and best attorney awards. Additionally, two professionalism awards will be awarded based upon team recommendations. Student certificates and school plaques will be presented to all participants.

#### **Rule XXVI: Interpretation of State Competition Rules**

- 1) All rules of competition for the Florida High School Mock Trial Competition, as set forth above, are subject to the interpretation of the Advisory Committee of the Florida High School Mock Trial Competition.
- 2) No exceptions are permitted at the competition site unless approval has been given by the Advisory Committee prior to the competition.
- 3) The Advisory Committee and/or State Mock Trial Coordinator will serve as the final arbiter at the competition site.
- 4) The Florida High School Mock Trial Competition Advisory Committee may invite additional circuit teams to participate in the State Finals Competition if it determines, in its sole discretion, that doing so would provide for diversity within the competition, would resolve disputes at the circuit level in a fair manner, or would otherwise advance the goals of the competition and serve the students who have competed at the circuit level.

#### **Rule XXVII: Circuit Competitions**

- 1) The State competition power matching and seeding system is optional for use during circuit competitions.

- 2) Team advancement procedures will be the responsibility of circuit coordinators.
- 3) Circuit coordinators should contact The Florida Law Related Education Association, Inc. for approved alternate models.

## SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

In American courts, elaborate rules are used to regulate the kind of proof (i.e., spoken testimony by witnesses or physical evidence) that can be used in trials. These rules are designed to ensure that both parties receive a fair hearing. Under the rules, any testimony or physical objects deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial may be kept out of the trial.

If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. Usually, the attorney stands and says, "I object, your honor," and then gives the reason for the objection. Sometimes the attorney whose questions or actions are being objected to will then explain why he or she thinks the rule was not violated. The judge then decides whether the rule has been violated and whether the testimony or physical items must be excluded from the trial.

Official rules of evidence are quite complicated. They also differ depending on the kind of court where the trial occurs. For purposes of this mock trial competition, the rules of evidence you will use have been made less complicated than those used in actual courts. The ideas behind these simplified rules are similar to actual rules of evidence.

### **A. Witness Examination/Questioning**

#### **1. Direct Examination**

Attorneys call and question their own witnesses using direct as opposed to leading questions. Example:

Elyse Roberts is called by her attorney to explain the events leading up to her filing suit against Potomac County.

*"Ms. Roberts, where do you work? How long have you worked there? Please describe your working relationship with Mr. Kevin Murphy during the first month of employment. Why did you meet with your supervisor, Fran Troy? Did you seek advice from a therapist during this time?"*

Questions such as the above do not suggest the answer. Instead, they introduce a witness to a particular area of importance, leaving the witness free to relate the facts. Obviously, the witness will have been prepared to answer such questions in a particular way. But the question by its terms does not "lead" to the answer.

#### **a. Leading Questions**

A **leading question** is one that suggests the answer. It does not simply call the witness' attention to a subject. Rather, it indicates or tells the witness what the answer should be about that subject. **Leading questions** are **not** permitted on direct examination, but questions on cross-examination should be leading.

Examples:

*“Mrs. Roberts, despite repeated invitations, you chose not to participate in office social functions, correct?”*

*“Isn't it true, that due to all the stress from work you decided to go to a therapist?”*

These questions are obviously in contrast to the direct examination questions in the preceding section. **Leading questions** suggest the answer to the witness. This is **not** proper for direct examination when a party is questioning its own witness.

## **b. Narration**

While the purpose of direct examination is to get the witness to tell a story, the questions must ask for **specific information**. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. At times, the witness' answer to a direct question may go beyond the facts asked for by the question asked. Narrative questions are objectionable.

Example Narrative Question:

*“Ms. Roberts, please tell the court about the events that contributed to your decision to sue the county.”*

Narrative Answer:

*“It all began the night I found out that it was the county that was dumping on my land. At first I thought it was my neighbors, but they denied having any part in the dumping. I decided to watch my vacant lot and see if I could catch the person responsible. I drove down to my lot the night of the 13<sup>th</sup> and parked in a place where I could see the lot but no one could see me...”*

## **c. Scope of Witness Examination**

Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge.

## **d. Character**

For the purpose of this mock trial, evidence about the character of a party may not be introduced unless the person's character is an issue in the case.

### **1. Methods of Proving Character (Section 90.405)**

- a) Reputation: When evidence of the character of a person or of a trait of his/her character is admissible, proof may be made by testimony about his/her reputation.
- b) Specific Instances of Conduct: When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of his/her conduct.

#### e. Refreshing Recollection

When a witness uses a writing or other item to refresh his/her memory while testifying, an adverse party is entitled to have such writing or other item produced at the hearing to inspect it, to cross-examine the witness thereon, and to introduce it, or in the case of writing, to introduce those portions which relate to the testimony of the witness, in evidence.

### 2. Cross Examination (questioning the opposing side's witnesses)

Cross-examination **should** involve leading questions. In fact, it is customary to present a witness with a proposition and ask the witness to either agree or disagree. Thus, good cross-examination calls only for a yes or no answer.

Examples:

*“Mr. Roberts, in direct examination you testified that litigation was very stressful for you, correct? In fact you were so stressed that you did work at home or called in sick. Isn't this true?”*

*“As an assistant district attorney, you knew that trying only three cases while settling 75 cases was not a job performance your supervisor would rate highly, didn't you?”*

*“Thus given the stress you felt, your poor attendance at work and poor job performance, it was not unusual for your supervisor to transfer you to another Bureau, was it?”*

Leading questions are permissible on cross-examination. Questions tending to evoke a narrative answer should be avoided.

#### a. Scope of Witness Examination

Cross-examination is not limited. Attorneys may ask questions of a particular witness that relate to matters brought out by the opposing side on direct examination of that witness, matters relating to the credibility of the witness, and additional matters otherwise admissible, that were not covered on direct examination.

## **b. Impeachment**

On cross-examination, the attorney may want to show the court that the witness should not be believed. A witness' credibility may be impeached by showing evidence of the witness' character and conduct, prior convictions, and prior inconsistent statements. If the witness testifies differently from the information in their sworn affidavit, it may then be necessary to "impeach" the witness. That is, the attorney will want to show that the witness previously said something that contradicts the testimony on the stand.

### **1. Impeachment Procedure**

Impeachment may be done by comparing what a witness says on the witness stand at trial to what is contained in the witness' affidavit. By pointing out the differences between what a witness now says and what the witness' affidavit says, the attorney shows that the witness has contradicted himself or herself.

### **2. Who May Impeach?**

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

- a) Introducing statements of the witness which are inconsistent with his/her present testimony;
- b) Showing that the witness is biased;
- c) Attaching the character of the witness in accordance with the state mock trial competition rules of evidence and procedure;
- d) Showing a defect of capacity, ability, or opportunity in the witness to observe, remember, or recount the matters about which he/she testified; and
- e) Proof by other witnesses that material facts are not as testified to by the witness being impeached.

### **3. Section 90.610 Conviction of Certain Crimes as Impeachment**

A party may attack the credibility of any witness, including an accused, by evidence that the witness has been convicted of a crime if the crime was punishable by death or imprisonment in excess of 1 year under the law under which he was convicted, or if the crime involved dishonesty or a false statement regardless of the punishment, with the following exceptions:



- a) Evidence of any such conviction is inadmissible in a civil trial if it is so remote in time as to have no bearing on the present character of the witness.
- b) Evidence of juvenile adjudications is inadmissible under this subsection.

**4. Section 90.614 Prior Statements of Witness**

- a) When witness is examined concerning his prior written statement or concerning an oral statement that has been reduced to writing, the court, on motion of the adverse party, shall order the statement to be shown to the witness or its contents disclosed to him.
- b) Extrinsic evidence of a prior inconsistent statement by a witness is inadmissible unless the witness is first afforded an opportunity to explain or deny the prior statement and the opposing party is afforded an opportunity to interrogate him on it, or the interests of justice otherwise require. If a witness denies making or does not distinctly admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. This subsection is not applicable to admissions of a party-opponent.
- c) Re-direct and re-cross examination/questioning. If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness' truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Re-cross examinations follows re-direct examination but is limited to the issues raised on re-direct only and should avoid repetition. The presiding judge may exercise reasonable control over questioning so as to make questioning effective to ascertain truth, avoid needless waste of time, and protect witnesses from harassment.

## B. Objections

An attorney can object any time the opposing attorneys have violated the rules of evidence. The attorney wishing to object should **stand up and do so at the time of the violation**. When an objection is made, the judge may ask the reason for it. Then the judge may turn to the attorney whose question or action is being objected to, and that attorney usually will have a chance to explain why the judge should not accept the objection. The judge will then decide whether a question or answer must be discarded because it has violated a rule of evidence or whether to allow the question or answer to be considered as evidence. The legal term “objection sustained” means that the judge agrees with the objection and excludes the testimony or item objected to. The legal term “objection overruled” means that the judge disagrees with the objection and allows the testimony or item to be considered as evidence.

### 1) Standard Objections on Direct and Cross Examination

- a) **Irrelevant Evidence:** *“I object, your honor. This testimony is irrelevant to the facts of this case.”*
- b) **Leading Questions:** *“Objection. Counsel is leading the witness.”* Remember, this is **only** objectionable when done on direct examination (Ref. Section A1.a).
- c) **Narrative Questions and Answers:** may be objectionable (Ref. Section A1.b).
- d) **Improper Character Testimony:** *“Objection. The witness’ character or reputation has not been put in issue or “Objection. Only the witness’ reputation/character for truthfulness is at issue here.”*
- e) **Hearsay:** *“Objection. Counsel’s question/the witness’ answer is based on hearsay.”* If the witness makes a hearsay statement, the attorney should also say, *“and I ask that the statement be stricken from the record.”*
- f) **Opinion:** *“Objection. Counsel is asking the witness to give an opinion.”*
- g) **Lack of Personal Knowledge:** *“Objection. The witness has no personal knowledge that would enable him/her to answer this question.”*
- h) **Lack of Proper Predicate:** Exhibits will not be admitted into evidence until they have been identified and shown to be authentic (unless identification and/or authenticity have been stipulated). Even after proper predicate has been laid, the exhibits may still be objectionable due to relevance, hearsay, etc.
- i) **Ambiguous Questions:** An attorney shall not ask questions that are capable of being understood in two or more possible ways.
- j) **Non-responsive Answer:** A witness’ answer is objectionable if it fails to respond to the question asked.

**k) Argumentative Question:** An attorney shall not ask a question which asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.

**l) Unfair Extrapolation/Beyond the Scope of the Statement of Facts**

Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation. Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral.

Note: Fair extrapolations may be allowed, provided reasonable inference may be made from the witness's statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection Outside the Scope of the Problem. If in CROSS examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony.

**m) Asked and Answered:** *“Objection. Your honor, the question has already been asked and answered.”*

**n) Objections Not Recognized in This Jurisdiction:** An objection which is not contained in these materials shall not be considered by the Court. However, if counsel responding to the objection does not point out to the judge the application of this rule, the Court may exercise its discretion in considering such objection.

**Note:** Attorneys should stand during objections, examinations, and statements. No objections should be made during opening/closing statements but afterwards the attorneys may indicate what the objection would have been. The opposing counsel should raise his/her hand to be recognized by the judge and may say, “If I had been permitted to object during closing arguments, I would have objected to the opposing team’s statement that \_\_\_\_\_.” The presiding judge will not rule on this objection individually and no rebuttal from the opposing team will be heard.

**2) Opinions of Witnesses**

**a) Expert Opinion**

**i) Section 90.702 Testimony by Experts**

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education

may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

**ii) Section 90.703 Opinions on Ultimate Issue**

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it included an ultimate issue to be decided by the trier of fact.

**iii) Section 90.704 Basis of Opinion Testimony by Experts**

The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, him at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence.

**iv) Expert Opinion (additional information)**

An expert shall not express an opinion as to the guilt or innocence of the accused.

**b) Lay Opinion**

**i) Section 90.701 Opinion Testimony of Lay Witnesses**

If a witness is not testifying as an expert, his testimony about what he perceived may be in the form of inference and opinion when:

- (1) The witness cannot readily, and with equal accuracy and adequacy, communicate what he has perceived to the trier of fact without testifying in terms of inferences or opinions and his use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and
- (2) The opinions and inferences do not require a special knowledge, skill, experience, or training.

**ii) Lay Opinion (additional information)**

All witnesses may offer opinions based on the common experience of laypersons in the community and of which the witnesses **have first-hand knowledge**. A lay opinion may also be obtained. For example, Sandy Yu, as the personnel director, would know of other complaints of sexual harassment in the office and any formal reprimands, even though he is not an expert in sexual harassment. They may be asked questions within that range of

experience. No witness, not even an expert, may give an opinion about how the case should be decided.

The cross-examination of opinions proceeds much like the cross-examination of any witness. Questions, as indicated above, may be based upon the prior statement of the witness. Inconsistencies may be shown. In addition, the witness may be asked whether he or she has been employed by any party, to show bias or interest. Or a witness giving an opinion may be asked the limits of certainty in that opinion, as follows:

*“Dr. Isaacs, please read this portion of your sworn statement to the court.”*

*“I have studied the records of this case, and have conducted two one-hour interviews with Elyse Roberts on March 29 and 31st. In those interviews, she described to me her family history, her work environment, the actions of her co-workers and supervisor and her resulting feelings.”*

*“This is your statement, is it not, Dr. Isaacs? Ms. Roberts selected you because of your expertise in sexual harassment in the workplace, correct? During your two-hour interview you were only concerned with evaluating Ms. Roberts’ working environment and not other psychological factors that may have caused her problems. Thus you really can’t say that Ms. Roberts’ difficulty on the job was only caused by the actions of Mr. Murphy, can you?”*

The point of these questions is not to discredit the witness. Rather, the objective is simply to treat the witness as a responsible professional who will acknowledge the limits of her or his expertise and testimony. If the witness refuses to acknowledge those limits, the witness then is discredited.

It is always important in cross-examination to avoid arguing with the witness. It is particularly important with an expert. Thus, the cross-examination should be carefully constructed to call only for facts or to draw upon statements the witness has already made.

### **c) Lack of Personal Knowledge**

A witness may not testify to any matter of which the witness has no personal knowledge. The legal term for testimony of which the witness has no personal knowledge is "incompetent."

### **3) Relevance of Testimony and Physical Objects**

Generally, only relevant testimony may be presented. Relevant evidence is physical evidence and testimony that makes a fact that is important to the case more or less

probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. Such relevant but excludable evidence may be testimony, physical evidence, or demonstrations that have no direct bearing on the issues of the case or do not make the issues clearer.

**a) Introduction of Documents, Exhibits, Items, and Other Physical Objects Into Evidence**

There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case, and the attorney must be prepared to its use on that basis. Below are the basic steps to use when introducing a physical object or document for **identification and/or use as evidence**.

- i) Show exhibit and have it marked by the judge. Say “Your Honor, I ask that this \_\_\_\_ be marked for identification as Plaintiff’s/Defendant’s Exhibit No. \_\_\_\_”
- ii) Show the exhibit to opposing counsel for possible objection. Ask the witness to identify the exhibit. “I now hand you what is marked as Exhibit No. 1. Do you recognize this document?”
- iii) At this point the attorney may proceed to ask the witness a series of questions about the exhibit.
- iv) If the attorney wishes to place the document into evidence, say, “Your Honor, I offer this \_\_\_\_ marked as Plaintiff’s/Defendant’s Exhibit No. 1 into evidence and ask the Court to so admit it.”

Court: *“Is there any objection?”*

Opposing Counsel: *“No, your Honor.” or “Yes, your Honor.”* (then state objection).

Court: *“Plaintiff’s/Defendant’s Exhibit No. 1 is (is not) admitted.”*

**NOTE: A witness may be asked questions about his/her statement without its introduction into evidence; but to read from it or submit it to the judge, it must first be admitted into evidence. Exhibits can be pre-marked.**

**4) Hearsay and Exceptions to this Ruling**

**a) What is Hearsay?**

Hearsay evidence is normally excluded from a trial because it is deemed untrustworthy. “Hearsay” is a statement other than one made by the witness

testifying at the trial, offered in evidence to prove that the matter asserted in the statement is true. An example of hearsay is a witness testifying that he heard another person saying something about the facts in the case. The reason that hearsay is untrustworthy is because the opposing side has no way of testing the credibility of the out-of-court statement or the person who supposedly made the statement. Thus, for example, the following questions would be objectionable as “hearsay” if you are trying to prove that the color of the door was red:

*“Mr. Edwards what color did Bob say the door was?”*

This is **hearsay**. Mr. Edwards is using Bob's statement for him to prove the color of the door. Instead, Bob or someone who saw the door needs to be called to testify as to the color of the door.

#### **b) Reasons for Prohibiting Hearsay**

Our legal system is designed to promote the discovery of truth in a fair way. One way it seeks to accomplish this goal is by ensuring that the evidence presented in court is “reliable”; that is, we can be fairly certain the evidence is true. Hearsay evidence is said to be “unreliable” for four reasons:

- i) The hearsay statement might be distorted or misinterpreted by the witness relating it in court.
- ii) The hearsay statement is not made in court and is not made under oath
- iii) The hearsay statement is not made in court, and the person who made it cannot be observed by the judge or jury (this is important because the judge or jury should be allowed to observe a witness' behavior and evaluate his/her credibility).
- iv) The hearsay statement is not made in court and the person who made it cannot be challenged by cross-examination.

#### **c) When Can Hearsay Evidence Be Admitted?**

Although hearsay is generally not admissible, there are certain out-of-court statements that are treated as not being hearsay, and there are out-of-court statements that are allowed into evidence as exceptions to the rule prohibiting hearsay.

Statements that are not hearsay are prior statements made by the **witness himself** and admissions made by a **party opponent**.

##### **i) Exceptions**

Hearsay is not admissible, except as provided by these rules. For purposes of this mock trial, the following exceptions to the hearsay rule will be allowed; even though the declarant is available as a witness.

**(1) Spontaneous Statement**

A statement describing or explaining an event or condition made while the declarant perceived the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.

**(2) Excited Utterance**

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

**(3) Medical Statements**

Statements made for the purpose of medical diagnosis or treatment by a person seeking the diagnosis, or made by an individual who has knowledge of the facts and is legally responsible for the person who is unable to communicate the facts, which statements describe medical history, past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis or treatment.

**(4) Recorded Recollection**

A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. A party may read into evidence a memorandum or record when it is admitted, but no such memorandum or record is admissible as an exhibit unless offered by an adverse party.

**(5) Records of a Regularly Conducted Activity**

**(a)** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by testimony of the custodian or other qualified witness, unless the



sources of information or other circumstances show lack of trustworthiness. The term “business” as used in this paragraph includes a business, institution, association, profession, occupation, and calling for every kind, whether or not conducted for profit.

- (b) No evidence in the form of an opinion or diagnosis is admissible under paragraph (a) unless such opinion or diagnosis would otherwise be admissible if the person whose opinion is recorded were to testify to the opinion directly.

**(6) 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 public treatises, periodicals or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness, or by other expert testimony, or by judicial notice.

**(7) Then Existing Mental, Emotional, or Physical Condition**

- (a) A statement of the declarant’s then existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to:

- (i) Prove the declarant’s state of mind, emotion, or physical sensation at that time or at any other time when such state is an issue in the action.

- (ii) Prove or explain acts of subsequent conduct of the declarant.

- (b) However, this subsection does not make admissible:

- (i) An after-the-fact statement of memory or belief to prove the fact remembered or believed, unless such a statement relates to the execution, revocation, identification, or terms of the declarant's will.

- (ii) A statement made under circumstances that indicate its lack of trustworthiness.

**C. Trial Motions**

**No trial motions are allowed except for special jury instructions as permitted in these case materials.**

**Examples:**

Directed verdict, dismissal, acquittal, motion in limine, motion to sequester witnesses.

**Exception:**

Motion for Recess may only be used in emergency situations.

**D. Attorney Demeanor**

**\*\*See Code of Ethical Conduct**

**Note: Please refer to Official Case Materials for any specific additions relative to this trial.**

## **GUIDELINES FOR TEACHER COACHES**

### **A. Role of the Teacher Coach**

The teacher coach is expected to help the team members decide which students will play which parts in the mock trial and to assist the students in playing those roles. As part of the sizeable responsibility of acting as team coaches, teachers are responsible for the following areas:

1. **Rules of the Program:** All teachers and teams are expected to adhere to the rules, facts and all other materials provided in the 2008 Mock Trial Competition Case Materials. Therefore, please make sure you are familiar with the Competition rules.
2. **Role Assignments:** Team members should be strongly encouraged to select roles based on their interests and abilities and not on the basis of any gender or cultural stereotypes which might be drawn from the characterizations in the fact pattern.
3. **Team Preparation:** Attorneys will also help coach each team. Teams should prepare both sides of the case and are strongly urged to arrange and conduct preliminary mock trials with other teams prior to competing in the district and circuit competition. Preliminary trials require only one attorney or judge to act as the presiding judge, as it is not necessary to award points to the teams during these practice rounds.
4. **Education:** Education of the students is the primary goal of the Mock Trial Competition. Healthy competition helps to achieve this goal, but teachers are reminded of their responsibility to keep the competitive spirit at a reasonable level. The reality of the adversarial system is that one party wins and the other loses, and teachers should be sure to prepare their teams to be ready to accept either outcome in a mature manner. Teachers can help prepare students for either outcome by placing the highest value on excellent preparation and presentation, rather than on winning or losing the trial.
5. **Observers:** Other classes, parents, and friends of the participants are welcome to attend the trials. **However, please note that space in the courtroom is limited.** The presiding judge may ask overflow observers to leave the courtroom. All observers must be seated during the trial.
6. **Arrival Times:** Teachers are responsible for getting their teams to the assigned courtroom 15 minutes prior to the starting time of each trial.

## GUIDELINES FOR ATTORNEY COACHES

1. Much as you will want to help the students, point them in the right direction and give them the benefit of your experience, remember that the students will develop a better understanding of the case and learn more from the experience if the attorney coaches do not dominate the preparation phase of the tournament. The preparation phase of the contest is intended to be a cooperative effort of students, teacher and attorney coaches.
2. Avoid (even the appearance of) “talking down” to students and/or stifling discussion through the use of complicated “legalese.”
3. The first session with a student team should be devoted to the following tasks:
  - a. Answering questions that students may have concerning general trial practices;
  - b. Explaining the reasons for the sequence of events/procedures found in a trial;
  - c. Listening to the students’ approach to the assigned case; and
  - d. Emphasizing the key points, such as the elements to be proved, and the relevance and importance of available legal authority.
4. Subsequent sessions 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 teacher...listening, suggesting and demonstrating to the team.
5. Attorney coaches **should not** prepare opening statements, closing statements, or questions for the students. Students should be encouraged to do as much of their own preparation as possible.

# Florida High School Mock Trial Competition

## SCORE SHEET/BALLOT

P = Prosecution: \_\_\_\_\_ D = Defense: \_\_\_\_\_  
 (Team Code) (Team Code)

Date: \_\_\_\_\_ Round: (circle one)    **1**    **2**    **3**    **4**    **F**

Using a scale of **1 to 10**, rate the **P** and **D** in the categories below.

Do **NOT** use fractional points. Please use a ballpoint pen.

Not Effective      Fair      Good      Excellent      Outstanding  
 1      2      3      4      5      6      7      8      9      10

<b>Score Sheet/ Ballot</b>	<b>P</b>		<b>D</b>
<b>Opening Statement</b>	(_____)		(_____)
<b>Prosecution's First Witness</b>	<b>Direct Examination</b>	(_____)	
	<b>Witness Presentation</b>	(_____)	<b>Cross Examination</b>
<b>Prosecution's Second Witness</b>	<b>Direct Examination</b>	(_____)	
	<b>Witness Presentation</b>	(_____)	<b>Cross Examination</b>
<b>Prosecution's Third Witness</b>	<b>Direct Examination</b>	(_____)	
	<b>Witness Presentation</b>	(_____)	<b>Cross Examination</b>
<b>Defense's First Witness</b>			<b>Direct Examination</b>
	<b>Cross Examination</b>	(_____)	<b>Witness Presentation</b>
<b>Defense's Second Witness</b>			<b>Direct Examination</b>
	<b>Cross Examination</b>	(_____)	<b>Witness Presentation</b>
<b>Defense's Third Witness</b>			<b>Direct Examination</b>
	<b>Cross Examination</b>	(_____)	<b>Witness Presentation</b>
<b>Closing Argument</b>	(_____)		(_____)
<b>Ethical Conduct</b>	(_____)		(_____)
<b>Team Performance</b>	(_____)		(_____)
<b>Column Totals: DO NOT TIE TEAMS</b>	(_____)		(_____)

Note: Any errors in *ADDITION* will be corrected by score room staff. Please review your individual scores and return to trial coordinator.

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

## Florida High School Mock Trial Competition

### EXPLANATION OF RATINGS USED ON THE SCORE SHEET/BALLOT

Participants will be rated in the categories on the ballot on a scale of 1-10 points (10 being the highest), according to their roles in the trial. The Scoring Judges are scoring **STUDENT PRESENTATION** in each category. The Scoring Judges are **NOT** scoring the legal merits of the case. Each category is to be evaluated separately and fractional points **ARE NOT** to be awarded. One team **MUST** be awarded more total points than the other. The team winning the majority of the ballots shall win the round.

Judging panels also may recognize outstanding individual presentations by selecting one **MOST EFFECTIVE ATTORNEY** and/or one **MOST EFFECTIVE WITNESS** per round. The decision must be representative of the majority of the panel members.

Judges may **NOT** disclose the score sheet/ballot results or the identities of the Most Effective Attorney and/or Witness to anyone other than the mock trial coordinator. Sign your score sheet/ballot before turning it over to the presiding judge on your panel. **DO NOT ANNOUNCE SCORES OR RESULTS TO THE TEAMS DURING THE CRITIQUE!**

POINT(S)	PERFORMANCE	CRITERIA FOR EVALUATING STUDENT PERFORMANCE
1-2	Not Effective	<ol style="list-style-type: none"> <li>1. Exhibits lack of preparation/understanding of the case materials.</li> <li>2. Communication unclear, disorganized, and ineffective.</li> <li>3. Unsure of self, does not think well on feet, depends heavily on notes.</li> </ol>
3-4	Fair	<ol style="list-style-type: none"> <li>1. Exhibits minimal preparation/understanding of the case materials.</li> <li>2. Communication minimally clear and organized, but lacking in fluency and persuasiveness.</li> <li>3. Minimally self-assured, but lacks confidence under pressure.</li> </ol>
5-6	Good	<ol style="list-style-type: none"> <li>1. Exhibits adequate preparation/understanding of the case materials.</li> <li>2. Communications are clear and understandable, but could be stronger in fluency and persuasiveness.</li> <li>3. Generally self-assured, reads from notes very little.</li> </ol>
7-8	Excellent	<ol style="list-style-type: none"> <li>1. Exhibits mastery of the case materials.</li> <li>2. Communication is clear, organized, fluent and persuasive.</li> <li>3. Thinks well on feet, poised under pressure, does not read from notes.</li> </ol>
9-10	Outstanding	<ol style="list-style-type: none"> <li>1. Superior in qualities listed for 7-8 points' performance.</li> </ol>

**Florida High School Mock Trial Competition**  
**PRESIDING JUDGE BALLOT**

Prosecution: \_\_\_\_\_ Defense: \_\_\_\_\_  
(Team Code) (Team Code)

Round#: \_\_\_\_\_

Please make your decision, offer some written comments, and hand in this score sheet to the Timekeeper as soon as possible. Thank you for participating.

**I. Performance Evaluation - MANDATORY**

Performance Decision: In my opinion the better mock trial performance was shown  
by the

**PROSECUTION / DEFENSE (Circle One)**

This is a team performance score based on the clarity and effectiveness of arguments presented and the professional demeanor exhibited by team members.

**Note: Do not announce your performance decision.**

**II. Comments**

\_\_\_\_\_  
Judge's Signature & Date

**Florida High School Mock Trial Competition**  
**MOST EFFECTIVE ATTORNEY FORM**

*(Mandatory)*

This form is to be completed by **All Judges**

\_\_\_\_\_  
Date of Competition Round

\_\_\_\_\_  
Enter Team Code

\_\_\_\_\_  
Round

**ATTORNEY**

*I wish to award the following team  
member the title of*

**MOST EFFECTIVE  
ATTORNEY**

*For this round:*

\_\_\_\_\_  
Name of Team Member from Team Roster

*Prosecution's or Defense's Attorney  
(Circle One)*

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



**Florida High School Mock Trial Competition**  
**MOST EFFECTIVE WITNESS FORM**

*(Mandatory)*

This form is to be completed by **All Judges**

\_\_\_\_\_  
Date of Competition Round

\_\_\_\_\_  
Enter Team Code

\_\_\_\_\_  
Round

**WITNESS**

*I wish to award the following team  
member the title of*

**MOST EFFECTIVE  
WITNESS**

*For this round:*

\_\_\_\_\_  
Name of Team Member from Team Roster

*Prosecution's or Defense's Witness  
(Circle One)*

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

**Florida High School Mock Trial Competition**  
**LEGAL PROFESSIONALISM AWARD BALLOT**

Teachers: Please complete this ballot as your official recommendation for the Legal Professionalism Award. Only one entry per school will be accepted. You may wish to discuss with your students their feelings about the professionalism, spirit, and ethical conduct of other teams to aid in your decision. Please refer to the definition and quotes about professionalism.

**Teams should NOT nominate themselves.**

Recommendation #1: \_\_\_\_\_

Comments:

Recommendation #2: \_\_\_\_\_

Comments:

Submitted By: \_\_\_\_\_

School: \_\_\_\_\_

District: \_\_\_\_\_

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

**Two awards will be presented.**



**Florida High School Mock Trial Competition**  
**TEAM DISPUTE FORM**

Date: \_\_\_\_\_ Round (*Circle one*)    **1 2 3 4 Final**

Prosecution: \_\_\_\_\_ Defense: \_\_\_\_\_  
(Team Code) (Team Code)

**TEAM LODGING DISPUTE:** \_\_\_\_\_ (Enter Team Code)

Grounds for Dispute:

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Initials of Team Spokesperson: \_\_\_\_\_ Time Dispute presented to Presiding Judge: \_\_\_\_\_  
Hearing decision of Presiding Judge (Circle one): **GRANT / DENY** Initials of Judge: \_\_\_\_\_

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

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Initials of Opposing Team's Spokesperson: \_\_\_\_\_

Presiding Judge's Notes from Hearing:

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Decision of Presiding Judge Regarding Dispute (Circle one): **Refer to Panel/Not Refer to Panel**

Reason(s) for Presiding Judge's Decision:

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**This form must be returned to the Mock Trial Coordinator along with the score sheets of the Scoring Judges and the ballot of the Presiding Judge.**

\_\_\_\_\_  
Signature of Presiding Judge

**Florida High School Mock Trial Competition**  
**TEAM ROSTER FORM**

Each Prosecution and Defense team should complete this sheet in triplicate. Copies are to be made available to the judging panel (3 copies) before each round. The team code can be filled in after registration at the competition site.

**Note:** Do not place team or attorney coach or teacher coach identifying information on the forms used in competition rounds.

**Please print or type**

\_\_\_\_\_  
Team Code

In this round, students listed on this roster represent the:  
*(Circle One)*

**Prosecution**

**Defense**

**Names of Team Attorneys**

**Identify Tasks to be Presented**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Names of Team Witnesses**

**Identify Roles to be Performed**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **PROFESSIONALISM**

The Florida Bar's Standing Committee on Professionalism's working definition of professionalism:

**Professionalism is the pursuit of practice of the highest ideals and tenets of the legal profession. It embraces far more than simply complying with the minimal standards of professional conduct. The essential ingredients of professionalism are character, competence, and commitment.**

Other thoughts on professionalism:

*"...To me, the essence of professionalism is a commitment to develop one's skills and to apply that responsibility to the problems at hand. Professionalism requires adherence to the highest ethical standards of conduct and willingness to subordinate narrow self-interest in pursuit of the more fundamental goal of public service. Because of the tremendous power they wield in our system, lawyers must never forget that their duty to serve their clients fairly and skillfully takes priority over the personal accumulation of wealth. At the same time, lawyers must temper bold advocacy for their clients with a sense of responsibility to the larger legal system which strives, however imperfectly, to provide justice for all."*

Justice Sandra Day O'Connor

*"Professionalism is no more, and no less, than conducting one's self at all times in such a manner as to demonstrate complete candor, honesty, and courtesy in all relationships with clients, associates, courts, and the general public. It is the personification of the accepted standard of conduct so long recognized and observed by able lawyers throughout history, that a lawyer's word is his bond. It encompasses the fundamental belief that a lawyer's primary obligation is to serve his or her client's interests faithfully and completely, with compensation only a secondary concern, and with ultimate justice as the final goal."*

Don Jackson, former chair of the Senior Lawyer Division of the American Bar Association

## **OATH OF ADMISSION TO THE FLORIDA BAR**

The general principles which should ever control the lawyer in the practice of the legal profession are clearly set forth in the following oath of admission to the Bar, which the lawyer is sworn on admission to obey and for the willful violation to which disbarment may be had.

“I do solemnly swear:

“I will support the Constitution of the United States and the Constitution of the State of Florida;

“I will maintain the respect due to courts of justice and judicial officers;

“I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

“I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

“I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

“I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

“I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone’s cause for lucre or malice. So help me God.”