

2006-2007 NEBRASKA HIGH SCHOOL  
**MOCK TRIAL CASE**

*STATE OF NEBRASKA*  
*VS.*  
*WILLIE FLOUNDER*

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

# 2006-2007 NEBRASKA MOCK TRIAL

## CASE MATERIALS

### Table of Contents

<b>MEMO TO PARTICIPANTS</b> .....	ii
<b>ACKNOWLEDGEMENTS</b> .....	iii
<b>GOALS &amp; MOCK TRIAL OATH</b> .....	iv
<b>CODE OF ETHICAL CONDUCT</b> .....	v
<b>COMPETITION TIMELINE AND DATES</b> .....	vi
<b>THE PROBLEM</b>	
Statement of Facts.....	1
Witnesses, Exhibits, Stipulations and Legal Authorities .....	2-5
Information for Attempted First Degree Murder .....	6
Notice of Intent to Raise Insanity Defense .....	7
<b>WITNESS STATEMENTS</b>	
<b><u>For the Prosecution</u></b>	
Dee/Deon Niedermeyer.....	8-12
Pat N. Bookim .....	13-16
Dr. Cole D. Pearson .....	17-22
<b><u>For the Defense</u></b>	
Robin Kirkowski.....	23-24
Willie Flounder.....	25-27
Dr. P. T. Partee .....	28-32
<b>JURY INSTRUCTIONS</b> .....	33-39
<b>EXHIBITS</b> .....	40-48
<b>SUPPLEMENTAL MATERIALS</b>	
Excerpts from DSM-IV-TR.....	49-59
Information about Bullying .....	60-77
<b>RULES</b>	
Index to Rules .....	78-80
Rules of the Competition.....	81-87
Rules of Procedure.....	87-89
Federal Rules of Evidence (Mock Trial Version).....	89-98
<b>FORMS</b>	
Official Team Roster Form.....	99
Trial Scoring & Deduction of Points .....	100
Presiding Judge's Score Sheet .....	101
Performance Judge's Score Sheet.....	102
Suggestions for Scoring and Constructive Critiques .....	103-104
Dispute Resolution Form -- Inside the Bar .....	105-106
Dispute Resolution Form -- Outside the Bar .....	107
<b>COORDINATORS</b> .....	108-111
<b>OFFICERS, DIRECTORS AND STAFF</b> .....	112

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

**MEMO**

**TO: ALL MOCK TRIAL PARTICIPANTS**

**FROM: DORIS J. HUFFMAN, EXECUTIVE DIRECTOR**

**RE: 2006-2007 NEBRASKA HIGH SCHOOL MOCK TRIAL COMPETITION**

**DATE: AUGUST 25, 2006**

---

On behalf of the Nebraska State Bar Foundation, we welcome your participation in the 2006-2007 Mock Trial competition. This year's criminal case involves an attempted murder charge against a student for the shooting of another student. The defendant claims s/he was legally insane at the time of the incident.

It is my hope that the issue of bullying will be discussed. This issue is gender neutral as the research indicates. I would encourage you to read the various articles about bullying.

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

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

***Teacher Coaches, Attorney Coaches, and Judges*** - We strongly encourage you to focus on the goal of participation by students rather than stressing competition while preparing your case. Your contributions of time and talent are making many experiential educational opportunities available annually to over 1,200 Nebraska students. Your participation is an essential key element to the success of this program. You can be proud of the impact you have made on the lives of these students.

**Good luck and have fun!**

## ACKNOWLEDGEMENTS

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

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

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

A special thank you for members of the Nebraska State Mock Trial Case Writing Committee:

Chair Thomas E. Keefe, Lincoln

Michael D. Gooch, Omaha

Joel Nelson, Lincoln

Kristi Egger-Brown, Lincoln

Stephanie Hupp, Lincoln

Lory Ann Pasold, Lincoln

In addition, the Foundation would like to acknowledge and thank the following individuals who provided invaluable assistance to the Case Writing Committee: Dr. James Cole and Officer Mike Holm, both of Lincoln.

A special thank you is extended to the Nebraska Council of School Attorneys. This statewide organization has given \$1,000 annually to the winning State Champion for the last 13 years.

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

**Defense Counsel Association of Nebraska**  
**Nebraska Association of School Boards**  
**Nebraska Association of Trial Attorneys**  
**Nebraska Council of School Attorneys**  
**Nebraska County Attorneys Association**  
**Nebraska County Judges Association**  
**Nebraska Criminal Defense Attorneys Association**  
**Nebraska District Judges Association**  
**Nebraska State Bar Association**  
**Nebraska State Council for Social Studies**

## **NEBRASKA MOCK TRIAL GOALS**

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

### **MOCK TRIAL OATH**

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

# Nebraska Mock Trial Competition

## Code of Ethical Conduct

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

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

1. Team members promise to compete with the highest standards of deportment, showing respect for their fellow team members, opponents, judges, evaluators, attorney coaches, teacher coaches and Mock Trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know are wrong or in violation of the Rules, including the use of Invention of Facts. Members will not willfully violate the Rules of the competition in spirit or in practice.
2. Teacher Coaches agree to focus attention on the educational value of the Mock Trial Tournament. They shall discourage willful violations of the Rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition Rules and this Code of Ethical Conduct.
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 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.

## 2006-2007 Mock Trial Competition Dates

Entry deadline	September 11, 2006
Local and Regional Competition (8-week period in 12 regions)	October 1 - November 22, 2006
Regional winners selected and entered in State Championship	November 27, 2006
State Competition Lincoln, Nebraska	December 5-6, 2006
Annual Banquet Lincoln, Nebraska	December 5, 2006
State Finals Lancaster County Hall of Justice	December 6, 2006
National Championship Dallas, Texas	May 10-13, 2007

**NEBRASKA HIGH SCHOOL MOCK TRIAL PROBLEM  
CRIMINAL LAW**

**IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA**

<b>State of Nebraska</b>	)	<b>CR06-6887</b>
	)	
<b>Prosecution,</b>	)	
	)	
<b>vs.</b>	)	<b>Statement of the Facts</b>
	)	
<b>Willie Flounder</b>	)	
	)	
<b>Defendant.</b>	)	

Willie (William/Wilhelmina) Flounder is charged with attempted murder in that on May 1, 2006, in the city of Goldenrod, Lancaster County, Nebraska, on the grounds of the William Jennings Bryan High School, Flounder fired a shotgun at Dee/Deon Niedermeyer, seriously wounding him/her in the abdomen. The prosecution alleges that Flounder wanted to kill Niedermeyer because Flounder had been the victim of repeated intimidation and bullying by Niedermeyer.

Flounder claims s/he was legally insane at the time of the shooting.



IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska	)	CR06-6887
	)	
Prosecution,	)	
	)	
vs.	)	Witnesses, Exhibits,
	)	Stipulations and Legal
Willie Flounder	)	Authorities
	)	
Defendant.	)	

**Witnesses for the Prosecution**

Dee/Deon Niedermeyer - Student and Victim of Shooting  
Officer Pat N. Bookim - School Resource Officer at William Jennings Bryan High School  
Dr. Cole D. Pearson - Psychologist

**Witnesses for the Defense**

Robin Kirkowski - Student and Best Friend of Defendant  
Willie Flounder - Defendant and Student  
Dr. P.T. Partee - Psychologist

**Other Name in Case**

Ms. Pasold - Assistant Principal for Discipline at William Jennings Bryan High School

**Exhibits**

1. Email messages between Willie Flounder and Robin Kirkowski
2. Copy of Goldenrod Public Schools' Anti-Bullying Policy
3. Photo of Robin Kirkowski's Tri-Star Over/Under 12 Gauge Shotgun
4. Miranda Waiver Form, Signed by Willie Flounder
5. Psychological Test Reports for Willie Flounder
6. Goldenrod Police Department Incident Report of Shooting of Dee/Deon Niedermeyer completed by Officer Pat N. Bookim
7. William Jennings Bryan High School Referral Slip on Dee/Deon Niedermeyer Completed by Officer Pat N. Bookim

## **Stipulations**

Both sides stipulate to the following facts:

1. All exhibits included in the case are authentic and accurate in all respects. No objections to the authenticity of the exhibits will be entertained.
2. The signatures on the witness statements are omitted due to the electronic delivery of the case.
3. The requirements for venue have been met.
4. Whenever a rule of evidence requires that reasonable notice be given, it has been given.
5. In this case, Neidermeyer was taken to the Emergency Room at Goldenrod General Hospital. S/He was treated and then transferred to an Intensive Care Unit. After a stay of approximately 48 hours, Neidermeyer was admitted to a medical ward. After a period of time, during which Neidermeyer received appropriate medical care and some physical therapy, Neidermeyer was discharged.
6. The medical records, while themselves hearsay, indicate that the injuries to Neidermeyer were life threatening. That the injuries were life threatening is a fact which has been stipulated to by the parties.
7. In addition, the injuries referred to in paragraphs 5 and 6 of these stipulations were proximately caused by a shotgun discharge at very close range, within 15-18 feet from Neidermeyer.
8. Each party is required to accept these facts as true for purposes of this trial. Stipulated facts may be argued to the fact finder.

## **Burden of Proof**

Insanity cases differ in several ways from more common criminal trials. One important way in which they differ is in the allocation of the burden of proof and consequently the order in which evidence is adduced. In every criminal case, the burden of proving the guilt of the accused is upon the prosecution to establish beyond a reasonable doubt each and every element of the offense charged. This burden never shifts.

At the same time, the law presumes that every person is sane and that people intend the natural and logical consequences of their voluntary acts. This presumption is not mandatory. This means that a defendant may attempt to demonstrate that s/he was not sane and consequently s/he should not be held responsible for his/her actions. The law permits a defendant to offer evidence of his/her insanity in order to prevent conviction or in mitigation of punishment. However, the law also places the burden of proving that s/he was insane upon the defendant by a greater weight of the evidence.

Reasonable doubt is defined in the model jury instructions (see page 35). Greater weight of the evidence is defined in the model jury instructions (see page 35).

## **Order of Proof**

Because the prosecution has the highest burden, beyond a reasonable doubt, the prosecution must go first. Also, the prosecution gets to make its closing argument first. The defendant may put on evidence in reply to the prosecution's case or the defendant may essentially concede the bad acts, but claim a lack of criminal responsibility by reason of insanity by putting on evidence to support an insanity plea. In this case, the defendant has raised an insanity defense. Accordingly, the defendant may attempt to establish the elements of the insanity defense by the greater weight of the evidence.

The prosecution must be given an opportunity to respond to the evidence of insanity being offered by the defendant. This means that the trial of this case will proceed with the prosecution calling its two fact witnesses and then resting. The defendant will call all three of its witnesses, including its expert witness. The Defense will then rest. Thereafter the prosecution has the option of calling its third witness, an expert. This means the evidence goes: Prosecution, Defense, and Prosecution.

Closing arguments are also slightly different than in most criminal trials. The prosecution goes first. The prosecution may reserve some time for rebuttal. However, because the defendant also carries a burden of proof, the defendant may reserve time for its rebuttal as well. The defendant gets the last word on the insanity issue. This means the closing goes: Prosecution, Defense, Prosecution Rebuttal, and Defense Rebuttal.

## **Legal Authorities**

Nebraska Statutes provide:

### **28-201 Criminal attempt; conduct; penalties.**

- (1) A person shall be guilty of an attempt to commit a crime if he or she:
  - (a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or
  - (b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.
  
- (2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he or she intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.
  
- (3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

**28-302 Homicide; terms, defined.**

As used in sections 28-302 to 28-306, unless the context otherwise requires:

- (1) Homicide shall mean the killing of a person by another;
- (2) Person, when referring to the victim of a homicide, shall mean a human being who had been born and was alive at the time of the homicidal act; and
- (3) Premeditation shall mean a design formed to do something before it is done.

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

A person commits murder in the first degree if he or she kills another person purposely and with deliberate and premeditated malice.

**29-2203 Defense of not responsible by reason of insanity; how pleaded; burden of proof; notice before trial; examination of defendant; acquittal; further proceedings.**

Any person prosecuted for an offense may plead that he or she is not responsible by reason of insanity at the time of the offense and in such case the burden shall be upon the defendant to prove the defense of not responsible by reason of insanity by a preponderance of the evidence (greater weight of the evidence). No evidence offered by the defendant for the purpose of establishing his or her insanity shall be admitted in the trial of the case unless notice of intention to rely upon the insanity defense is given to the county attorney and filed with the court not later than sixty days before trial.

Upon the filing of the notice the court, on motion of the state, may order the defendant to be examined at a time and place designated in the order, by one or more qualified experts, appointed by the court, to inquire into the sanity or insanity of the defendant at the time of the commission of the alleged offense. The court may order that the examination be conducted at one of the regional centers or at any appropriate facility. The presence of counsel at the examination shall be within the discretion of the court. The results of such examination shall be sent to the court and to the prosecuting attorney. In misdemeanor or felony cases, the defendant may request the court to order the prosecuting attorney to permit the defendant to inspect and copy the results of such examination pursuant to the procedures set forth in sections 29-1912 to 29-1921. In the interest of justice and good cause shown the court may waive the requirements provided in this section.

If the trier of fact acquits the defendant on the grounds of insanity, the verdict shall reflect whether the trier acquits him or her on that ground alone or on other grounds as well.

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska	)	CR06-6887
	)	
Prosecution,	)	
	)	
vs.	)	Information for
	)	Attempted First
Willie Flounder	)	Degree Murder
	)	28-201, 28-303 FII
Defendant.	)	

\_\_\_\_\_, Deputy Lancaster County Attorney by authority of the State of Nebraska, comes here in person into Court at this, the 2006 TERM, thereof, and for the State of Nebraska gives the Court to understand and be informed that **WILLIE FLOUNDER** on or about May 1, 2006, in the County of Lancaster, and the state aforesaid, contrary to the form of the statutes in such cases made and provided then and there being, did intentionally engage in conduct which, under the circumstances as s/he believed them to be, constituted a substantial step in a course of conduct intended to culminate in her/his commission of the crime of First Degree Murder, to wit: did attempt to kill DEE/DEON NIEDERMEYER purposely and with deliberate and premeditated malice.

THE STATE OF NEBRASKA, Prosecution

By: \_\_\_\_\_  
DEPUTY COUNTY ATTORNEY

\_\_\_\_\_, Deputy County Attorney, being duly sworn according to law, says the facts stated in her/his foregoing amended information are true as s/he verily believes.

\_\_\_\_\_  
DEPUTY COUNTY ATTORNEY

SUBSCRIBED AND SWORN TO BEFORE ME this 15th day of June, 2006.

\_\_\_\_\_  
DEPUTY CLERK OF THE DISTRICT COURT

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska	)	CR06-6887
	)	
Prosecution,	)	
	)	
vs.	)	Notice of Intent to
	)	Raise Insanity Defense
Willie Flounder	)	
	)	
Defendant.	)	

COMES NOW the defendant, by and through his/her attorney of record, pursuant to Neb. Rev. Stat. §29-2203 (Reissue 1995) and hereby gives notice of his/her intent to rely on the insanity defense in the above entitled matter.

Willie Flounder, Defendant

BY: \_\_\_\_\_  
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 21, 2006, a copy of the foregoing was served upon all adverse parties of record by delivering same to their attorney at his/her office address.

\_\_\_\_\_  
Defendant's Attorney

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska ) CR06-6887  
)  
Prosecution, )  
)  
vs. ) Deposition of  
) Dee/Deon Niedermeyer  
Willie Flounder )  
)  
Defendant. )

1 My name is Dee/Deon Niedermeyer. I live at 2501 South 36th Avenue, which is  
2 next to Antelope Park, in Goldenrod, Nebraska. Oh, yeah, I have little twin sisters who are  
3 really a pain! Cindy and Carly are in the 8th grade and really whiny. At least my younger  
4 brother, Mike, who is 15, is pretty cool to hang out with. My dad, Doug, works in the  
5 wastewater department for the City of Goldenrod and my mom, Kristi, is a nurse at the  
6 Community Hospital.

7 I'm 17 and a senior at William Jennings Bryan High. My favorite classes are the  
8 science ones. Got a B-plus in biology. I even did some extra projects in my free time, just  
9 because it's pretty interesting to see what makes people and animals tick, you know? But  
10 that's the kind of stuff I don't tell my friends. They'd think I'm turning into a wuss. The  
11 other classes I don't like so much. Mostly C's and D's but I've got enough credits to  
12 graduate in the Spring if nothing bad happens.

13 Next year maybe I'll be in the Army or at Ong State University. I'd really like to  
14 see what the Army is like and do my part to defend our country. The only thing is, I'm  
15 worried the recruiter could find out about this whole shooting deal, and also another deal I  
16 had two years ago. Egged this kid's house. And no, it wasn't Flounder's or Robin Kirkowski's  
17 house. It was this other kid, named like Wellington or some other snooty name. Nobody  
18 got hurt, but they filed some juvenile court case and I had to pay \$40 restitution to the  
19 parents to clean their windows or whatever. Like they needed the money: they've got one  
20 of those half-million dollar houses along the golf course. If it wasn't for their moron kid, I  
21 never would have done it. This kid had been bugging me at school. She was always talking  
22 about how her parents were going to buy her a Subaru WRX after she passed driver's ed,  
23 and just acting like she was better than me and everyone else. So me and my friend Iggy  
24 got a couple dozen eggs one Friday night and just plastered her house. Okay, I know it was  
25 wrong and immature, but I was only 15 at the time.

26           Anyway, I hope that doesn't cause any trouble getting into the Army. If it does,  
27 then I'll probably study animal science at the University. Maybe be a veterinarian or a dog  
28 trainer. I've got a Rottweiler named Omega. We spend a lot of time together in the yard  
29 and at the park. Omega is completely trained - won't even take off after a rabbit unless I  
30 say it's okay. I even take Omega to the nursing home down the block once a week to let  
31 the old people pet him. Been doing that ever since I was 13. Dogs are better than people  
32 in most ways. They're loyal and tough. Most people can't be trusted. They talk behind  
33 your back and then act all nicey-nice to your face. Drives me crazy. Plus there are so  
34 many people who whine about little stuff. Maybe I'm just old-school. My grandparents tell  
35 me that back in their day people stepped up and took responsibility for what they did and  
36 didn't sue each other or go on TV and spill their guts about their awful childhood and all  
37 that junk.

38           Which brings me to this whole shooting thing. I still can't believe it happened.  
39 Flounder looked me right in the eye and said something like, "Stop it" or "Stop you" and  
40 then there was a loud bang and this screaming pain in my guts and then the lights went out.  
41 And now Flounder is claiming insanity, and that mental illness is to blame?! What a joke!  
42 There was no insanity in those eyes or that voice. Just hate. How weak is it to shoot  
43 someone just because you've been talking a little smack to each other?

44           I guess I'm getting a little ahead of myself. Willie and Robin were just two kids at  
45 school. Didn't even remember until after I got shot that Willie's dad killed himself, which  
46 is definitely sad. We've gone to pretty big schools with a lot of kids, so you don't always  
47 get to know everyone. The only thing I remember about Flounder going back a few years is  
48 that he/she kept kind of a distance from everyone except Kirkowski. Can't remember  
49 Flounder ever even hanging out on the same part of the playground or in the same part of  
50 the cafeteria as me and my friends. It's kind of weird that we went to school together  
51 quite a few years and never really ran across each other, you know? Seems like maybe we  
52 had gym class together in 8<sup>th</sup> grade.

53           To be honest, Flounder and Kirkowski didn't really mean anything to me until one  
54 time this last March they were walking down the hallway, whispering to each other and  
55 kind of looking at me. Then one of them laughed. They seemed just like a lot of other kids  
56 at school -- all cliquish and thinking they're better than me. Flounder maybe seemed a  
57 little weird, kinda nervous and shifty-eyed, but some kids try to act weird because they  
58 think it's cool and they think they belong in New York sipping lattes or something instead  
59 of stuck here with the rest of us.

60           I didn't say anything to them that day, but a few weeks later I saw Robin coming  
61 down the hallway between classes with that same smug look. So I just said something like,  
62 "What are you lookin' at?" and threw a little shoulder in that direction. Knocked a few  
63 books down, whatever. It wasn't like a punch or even a real shove.

64           Nothing happened for a while - several weeks I mean - other than that I may have  
65 shot them a look when I saw one of them in the hallway, just to let them know I was onto  
66 them. Well, okay, there was this one day in like late March, after school was out for the  
67 day, and I saw Flounder in the hallway and had a little fun. Flounder was getting some pills



68 out of a little brown bottle in his/her locker, turned around and saw me and kinda jumped,  
69 lookin' all freaked out, and then slammed the locker and started walking real fast. So just  
70 for fun I followed right along, maybe 15 feet behind, all the way around second floor then  
71 down to first floor. As we were going down the steps I said something like, "Where's your  
72 significant other?" Flounder didn't say anything - just kind of looked back real quick and  
73 sped up. The "significant other" joke was about Kirkowski. That's the only person I ever  
74 saw Flounder with, except maybe Officer Bookim every once in a while. Seemed like  
75 Flounder and Kirkowski were also trying to suck up to Officer Bookim.

76 Anyway, after I followed Flounder down to the first floor that day s/he ran real  
77 quick into the library. I just kind of nodded my head as I walked past the library window  
78 and I kept on going. Just playin', you know? I do wonder what those pills were that  
79 Flounder had in the locker. Contrary to popular belief and rumor, I don't do drugs so I  
80 have no idea if the stuff Flounder was taking was illegal or prescription.

81 Then there was one other time in maybe late April when I wadded up a milk carton  
82 in the cafeteria and threw it halfway across the room and it bounced on Flounder's table.  
83 Flounder looked around all paranoid-like. I tried to look the other way and keep my poker  
84 face but probably cracked up a little bit.

85 So then we get to April 28 - Arbor Day. I was at the track meet watching some  
86 friends do their thing. I used to compete in the long jump freshman and sophomore years,  
87 but then there was that thing with that jerk who ran hurdles and the coach wound up  
88 encouraging me to "pursue other interests." Yeah, it was a fight and I got the better of it.  
89 But please don't think I'm some kind of punk. I just stick up for myself. That hurdler kid  
90 made some crack about my hair, or my clothes. Maybe both, I don't really remember. We  
91 got into a scuffle and I got the blame.

92 But I'm still a track fan. So there I was at the meet on that Friday afternoon,  
93 going to get a Coke at the concession stand and Flounder and Kirkowski come walking by.  
94 They looked at me and kind of smirked and once again they're whispering crap. I'm almost  
95 sure I heard the word, "Neanderthal." Now I'm no Rhodian scholar, but I know what that  
96 means. So yeah, I walked up made some comment. I kind of got up into Flounder's face.  
97 Flounder wound up on the ground for a second; must have tripped or something. No, I  
98 didn't punch him/her, if that's what you're wondering. Flounder got up and said something  
99 back, I said something else, and then it seemed like people were breaking it up.

100 Officer Bookim yanked me by the shoulders, turned me around and said something  
101 about not picking on Flounder and what was I thinking and some kids have a rough time. I  
102 walked away and went home. All I said as I was walking away was something about seeing  
103 them some other time and I stuck out my thumb and forefinger, so it looked kinda like a 9  
104 millimeter, and said "Smoke you" or "Smoke you, loser" or something like that. But it's not  
105 like I meant anything by it. Just talk, you know. I don't have a gun and wouldn't know how  
106 to shoot one if I did. They'll have to teach me from scratch if I get into the Army.

107 I mean, if that little run-in at the track meet was the worst thing that's happened  
108 to Flounder, then it's been a pretty charmed life. Don't people get used to that kind of  
109 stuff on the playground when they're 6 years old? No one's life is a picnic. My old man

110 used to wake me up and make me do push-ups every morning and tell me I was worthless  
111 and weak to try to interrupt my concentration. But I don't go around blaming him for my  
112 problems. If anything, it just made me mentally tougher.

113 I never threatened to do anything to Flounder, and it makes me laugh when people  
114 try to say Flounder was the victim of "bullying." Yeah, I got a copy of our school's bullying  
115 policy. Bookim gave me a copy. It's the same thing as Exhibit 2. Not much to it. I  
116 thought bullying was beating up a smaller kid every day for their lunch money, not talking a  
117 little trash when there was two of them and one of me! But I guess these touchy-feely  
118 counselors have brainwashed most kids into thinking that the world is supposed to be  
119 sweet and nice and full of flowers all the time. Give me a break. I'm only 17 and I know  
120 better. Maybe I gave Flounder a little bit of a hard time, and if I had to do it all over  
121 maybe I'd just let them talk about me and let it ride. But what went on between us was  
122 nothing worse than what happens every day at every school in this city.

123 So then we get to May 1, 2006. A day that will live in infamy or something. First  
124 we get called into Ms. Pasold's office and read the riot act about fighting. They put us in  
125 different rooms. So I sat there in a little room where they keep all the dusty old  
126 overhead projectors and stuff while Ms. Pasold talked with Flounder. Then Ms. Pasold  
127 came in and I told my side of the story: they've been talking smack about me behind my  
128 back and I'm just not gonna have that. Plus I pointed out that I didn't even hit Flounder,  
129 even though I'd been provoked. Ms. Pasold said something about a "pattern of behavior"  
130 with me. Whatever.

131 Then Ms. Pasold said it would be good for us to be in the same room and brought me  
132 into her office. Flounder was already in there. Ms. Pasold started talking about better  
133 ways to deal with conflict and how we were almost adults and needed to handle things more  
134 maturely. Flounder wouldn't even look at me or Ms. Pasold. Just staring down at his/her  
135 feet the whole time. Kinda making these real low noises. I couldn't tell if it was crying or  
136 mumbling. Maybe both. Sounds funny to say now, but for a second I kinda felt sorry for  
137 Flounder. I mean, it just wasn't that big a deal to get so upset about.

138 Then Ms. Pasold said I was suspended for 3 days. Didn't seem right, but I can deal  
139 with just about anything. Then she told Flounder to go home for the rest of the day and  
140 come back in the morning. She didn't call it a suspension for Flounder, just said something  
141 like, "Go home and collect yourself."

142 So I walked out to the front lot to get in my vintage '89 Camaro (okay, it's got some  
143 rust and 165,000 miles on it, but it's still a sweet car). Officer Bookim followed us out the  
144 door. Flounder was about 20 yards ahead of me. I was digging around in my pocket for my  
145 car keys and looking back to make sure I hadn't already gotten them out and dropped them  
146 or something. Then when I looked back around to the front, there was Flounder pointing  
147 that shotgun right at me. Not shaking or foaming at the mouth or acting crazy at all.  
148 Someone was hollering in the background - I've heard since that it was Bookim. Then, like  
149 I said, I got shot and the next thing I remember is waking up in the hospital two weeks  
150 later. My mom showed me the scar on my belly in the mirror. You should see it - long and  
151 jagged.

152 I've been to the edge and definitely appreciate every day much more now. Heck, I  
153 don't even feel very angry at Flounder. All I want is for Flounder and all these other  
154 people to quit acting like that gun fired itself. Why won't Flounder show some character  
155 and just admit that the plan was to kill me? Some sophomore kid at school (wish I could  
156 remember the kid's name) told my friend Iggy, and Iggy told me, that Flounder and  
157 Kirkowski had been planning this a while, even put stuff on the internet about it. Dude,  
158 that's how a cold-blooded punk acts, not someone who's sick.

#### WITNESS ADDENDUM

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

Signed,

---

Dee/Deon Niedermeyer

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2006-2007 Nebraska State High School Mock Trial Competition.

---

Thomas Nelson Michaels, Notary Public  
My Commission Expires: December 31, 2006

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska	)	CR06-6887
	)	
Prosecution,	)	
	)	
vs.	)	Deposition of
	)	Pat N. Bookim
Willie Flounder	)	
	)	
Defendant.	)	

1 I'm Officer Pat N. Bookim. I live at 7301 N.W. 5th Boulevard in Goldenrod,  
2 Nebraska with my spouse, *Gale/Gail*, and two children, *Stephanie*, age 4, and *Johnny*, age 2,  
3 and our Yellow Labrador Retriever named *Sport*. We have a nice brick, ranch-style home  
4 on the western edge of town, but we have thought a lot about moving into a larger home a  
5 little closer to the center of town because we both have long commutes to work and what  
6 with the price of gas continuing to rise, we just need to do something.

7 I have been employed with the Goldenrod Police Department for eleven years and  
8 have worked as a School Resource Officer, or SRO, at William Jennings Bryan High School  
9 for the past three of those years. Before Bryan, I was an SRO at Johnny Carson High  
10 here in town and before that I worked second or third shift in a patrol car in the  
11 southeast part of town. I did my training to be a law enforcement officer at the  
12 Nebraska State Patrol's Grand Island Training Center in 1995. I am a graduate of the  
13 University of Nebraska at Kearney with a bachelor's degree in Criminal Justice. I earned  
14 my degree in December 1994 and *Gail/Gale* and I were married on January 2, 1995. That  
15 was a busy time for both of us. *Gail/Gale* also graduated from UNK in 1994, but s/he  
16 graduated in August with a bachelor's degree in computer science. S/he was in the M.D.  
17 Gooch Honors Program for computer science and time management. S/he also earned  
18 his/her teaching certificate and is now working in the Goldenrod Public Schools as a  
19 computer science teacher.

20 I grew up in Chadron and *Gail/Gale* is from North Platte. We met at college during  
21 my third year of studies and *Gail's/Gale's* second year. S/he's the smart one in the family.

22 I like working at the schools. Most of the kids are great and I've become good  
23 friends with many of the staff members, especially Ms. Pasold, the assistant principal for  
24 discipline. Together we handle most of the disciplinary problems for the school. It's not a  
25 bad school. I've see much worse, believe me.

26 I have had some contact with Willie Flounder, Robin Kirkowski and Dee/Deon  
27 Niedermeyer. Flounder mostly keeps to him/herself. Kind of a loner type. So about a year  
28 ago I thought I'd better take the initiative. I encouraged Flounder to come into my office  
29 just to talk. Finally in January of this year Flounder started coming in a few times. Mostly  
30 we'd talk about how things were going at school. Flounder was pretty guarded, let me tell  
31 you. It was difficult to get him/her to open up. Nothing that Flounder said was so serious  
32 that it led to an incident report or any other follow-up by me. Besides, Flounder never  
33 seemed to want to reveal the names of any of his/her tormentors, so there really wasn't  
34 much I could do but listen and try to encourage Flounder to get help. Most of the time  
35 Flounder just seemed to like hanging out in my office. I told Flounder about Nebraska's  
36 anti-bullying website at <http://www.nde.state.ne.us/safety/Anti-Bullying.html> and  
37 encouraged Flounder to tell his/her parents and ask them to get involved. Flounder would  
38 kind of go into a fog when I mentioned parents.

39 Then there was this time, maybe March or April, when Flounder came into my office  
40 and literally burst into tears. S/he wouldn't say why. I felt I had to do something, so  
41 after I calmed Flounder down and sent him/her back to class, I called his/her parents. I  
42 was lucky to reach mom at home. Whoa, no wonder this poor kid has problems. I learned  
43 from mom that dad committed suicide and that Flounder has struggled ever since. Not  
44 with school, mind you. Mom was adamant about that. Flounder's grades are okay and  
45 according to mom s/he does his/her homework and lots of chores at home. Mom said that  
46 most of Flounder's time is spent in his/her room on the computer. Mom did say that  
47 Flounder suffers from nightmares, but not as frequently as before. Mom also said that  
48 Flounder has seen plenty of counselors. S/he is not a behavior problem, according to mom.  
49 I explained to mom that I was not calling about any behavior problems. I was just  
50 concerned about Flounder's interactions with other students at school. I don't think mom  
51 got it. She just said, "Oh well, s/he's still young."

52 Kirkowski is similar to Flounder, but so unlike him/her in so many ways. Kirkowski  
53 actually likes to spend most of his/her time in either my office or Ms. Pasold's. This is  
54 clearly a kid who craves adult attention. And Kirkowski is not shy about talking. Kirkowski  
55 talked about his/her best friend (I suspect only friend) who just happens to be Flounder.  
56 Kirkowski also filled me in on the worst bullies in school. Niedermeyer's name often  
57 headed the list. I recall many conversations Kirkowski and I had about Flounder. About  
58 the time Niedermeyer threw milk all over Flounder in the cafeteria. About the time  
59 Niedermeyer was stalking Flounder in the school. According to Kirkowski, Niedermeyer  
60 was "out to get Flounder." Kirkowski also filled me in on a little of Flounder's background -  
61 - that s/he lost his/her father when he shot himself; that mom works a lot to make enough  
62 money to barely get by; that Flounder has seen lots of shrinks, but that none of them  
63 really understand Flounder.

64 Niedermeyer has been in my office on numerous occasions and not just to talk.  
65 Niedermeyer has always been a bully ever since I arrived at this school. With  
66 Niedermeyer nothing ever got too physical to my knowledge, at least not until recently.  
67 But Niedermeyer could intimidate other students, sometimes with just a stare.

68 Niedermeyer's favorite pastime seemed to be to torment the most vulnerable students  
69 (you know, like Flounder) by making fun of their clothing, their hair, their wheels, or all of  
70 the above.

71 The first time I ever witnessed anything firsthand between Niedermeyer and  
72 Flounder was on April 28 at the track meet. I remember having two students come running  
73 up to me saying that there was a fight going on over by the concession stand. By the time  
74 I got to the stand, there were a dozen or so students milling about and laughing. I  
75 remember Flounder and Kirkowski were together facing off at Niedermeyer. Niedermeyer  
76 was facing away from me as I approached and s/he made a remark about Flounder's "cheap  
77 Goodwill shoes." Flounder responded, "We'll see if s/he gets his/her way." I'm not sure  
78 what kind of message Flounder was sending. I also thought I heard Kirkowski mumble  
79 something like, "It shoulda been taken care of." Niedermeyer was closest so I grabbed  
80 him/her by the shoulder. I may have said something to Niedermeyer when I grabbed  
81 him/her, I don't remember.

82 I asked Flounder, Kirkowski and Niedermeyer what was going on. Kirkowski  
83 volunteered that Niedermeyer started it and was picking on them, "again." Flounder said,  
84 "Nothing." Kirkowski was willing to tell me a little bit about what happened, but Flounder  
85 seemed reluctant for some reason to say much of anything. Flounder seemed distant.  
86 Kirkowski told me that words were exchanged between Niedermeyer and Flounder and  
87 then Niedermeyer "hit Flounder." Flounder said, "Just forget it." I told them that  
88 Niedermeyer would have to answer to Ms. Pasold on Monday. I told Flounder that s/he'd  
89 have to provide his/her side of the story to Ms. Pasold on Monday as well. Flounder did  
90 have a slightly bloody nose, but s/he said it was nothing - s/he just bumped it.  
91 Niedermeyer said, "it was just a misunderstanding and nothing happened." I told  
92 Niedermeyer to expect to be in Ms. Pasold's office on Monday morning because I would be  
93 filing a referral (Exhibit #7). Then I told Niedermeyer to beat it. I never heard  
94 Niedermeyer say anything as s/he was leaving, but all of a sudden Flounder was screaming,  
95 "See, s/he's gonna kill me." Finally, I broke up the crowd and tried to get Flounder to go  
96 with Kirkowski to the first aid station.

97 On Monday morning I delivered the notice to both Flounder and Niedermeyer that  
98 their presence was required at the assistant principal's office immediately. I escorted  
99 each student to an office. I sat with the one not being interviewed by Ms. Pasold. Then  
100 she wanted both students to meet together and I sat in on that meeting. For some reason  
101 Flounder seemed inappropriately angry. S/He even yelled out once, "Everybody was  
102 laughing." Ms. Pasold told Flounder to cool down, collect him/herself, go home for today  
103 and come back tomorrow. Niedermeyer was suspended for three days.

104 I walked both Niedermeyer and Flounder out the front door. Flounder was acting  
105 strange. S/He kept mumbling something about "suspended for three days" like it was  
106 him/her instead of Niedermeyer who was suspended. Flounder looked angry. Flounder  
107 took off at a sort of quick pace and said something like, "Niedermeyer's gonna kill me."  
108 That's all I remember Flounder saying. Niedermeyer was lagging a little behind, but I  
109 watched both of them walk into the parking lot. Next thing I know I see Flounder pull a

110 shotgun out of his/her vehicle and point it at Niedermeyer. I ran, shouting at Flounder to  
111 "stop, don't do anything." Just before a shot rang out and Niedermeyer collapsed I heard  
112 Flounder shout, "I have to stop you." By the time I got to them, Niedermeyer had been  
113 shot and Flounder had dropped the shotgun and was looking a little dazed. Flounder sat  
114 down on the ground, grabbed his/her knees and said nothing. I immediately called on my  
115 radio for emergency assistance, gunshot victim, and I tried to see what Niedermeyer's  
116 condition was. Within a short time EMTs arrived to take Niedermeyer to the hospital.  
117 Then I arrested Flounder. I prepared an Incident Report on the shooting and Exhibit 6 is  
118 an accurate copy of the report I prepared.

119 When the prosecutor received the defense notice that Flounder would claim  
120 insanity, I had to show the prosecutor some email messages between Flounder and  
121 Kirkowski. One of the things I do as part of my job as SRO to maintain campus security is  
122 monitor student emails. I thought the prosecutor would be interested in seeing what  
123 Flounder was writing to Kirkowski about Niedermeyer. I can tell the messages are from  
124 Flounder's computer by the header information. I have reviewed all of the contents of  
125 these messages as part of my investigation into the shooting of Niedermeyer and Exhibit 1  
126 is a true and accurate copy of some of the e-mails I retrieved.

#### WITNESS ADDENDUM

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

Signed,

\_\_\_\_\_  
Pat N. Bookim

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2006-2007 Nebraska State High School Mock Trial Competition.

\_\_\_\_\_  
Thomas Nelson Michaels, Notary Public  
My Commission Expires: December 31, 2006

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska ) CR06-6887  
)  
Prosecution, )  
)  
vs. ) Deposition of  
) Dr. Cole D. Pearson  
Willie Flounder )  
)  
Defendant. )

1 My name is Dr. Cole D. Pearson. My address is 666 Heathcliff Lane, Goldenrod,  
2 Nebraska. I am divorced and live by myself. I have a Ph.D. in psychology from the  
3 Northern University of Tennessee State, which I received in 1996. Prior to that, I earned  
4 a B.S in educational psychology and an M.S. in Gerontology from the same school. I moved  
5 to Nebraska after graduation to accept a position with the city hospital, Goldenrod  
6 General. I am licensed and accredited to practice psychology in Nebraska. I belong to the  
7 Nebraska Psychological Association and to the American Psychological Association. I have  
8 been primarily assigned to do crisis intervention work at the local emergency room. I do  
9 have a private practice where I see patients. My private practice is essentially family-  
10 based therapy.

11 I received a call on May 2, 2006, asking that I come to the juvenile detention  
12 center to assess the defendant, Willie Flounder. Before meeting with the defendant, I  
13 reviewed a probable cause affidavit, which had apparently been filed with the court, and I  
14 reviewed a report generated by Officer Bookim. Additionally, before I met with the  
15 defendant in person, I met with someone from the prosecutor's office who told me that  
16 they expected that the defendant would try to claim insanity.

17 I met with the defendant at 8:45 a.m. on May 9<sup>th</sup>, which was the first day I could  
18 fit this evaluation into my busy schedule. I met the defendant in an interview room at the  
19 detention center. Also present was a corrections officer to ensure my safety. When I  
20 entered the room, my impression of the defendant was that s/he was a normal appearing  
21 teenager of his/her stated age of 17. S/he seemed guarded and depressed. I explained  
22 my purpose in being there and explained that nothing we spoke about would be covered by  
23 a physician/patient privilege. Also, at the suggestion of the prosecutor's office, I  
24 administered what are known as Miranda warnings. I have reviewed Exhibit #4, and it  
25 appears to be a true and correct copy of the Miranda warning form I used. As the form  
26 indicates, the defendant agreed to answer my questions.



27 I began the actual interview by obtaining some history. Some of this history was  
28 provided by the defendant, Willie Flounder. Later, I supplemented this history from my  
29 contacts with Flounder's family and school and from a review of information obtained by  
30 Dr. Partee. It may be significant to indicate which information came from the defendant.  
31 It is in italics.

32 Mr./Ms. Flounder's parents both have a history of substance abuse. In addition,  
33 the defendant's father was diagnosed with a bipolar disorder. Despite these disorders,  
34 the father was a successful businessman. The parents' marriage consisted of chronic  
35 marital conflict, including domestic violence, primarily perpetrated by the father, and  
36 frequent separations occurred, followed by reconciliations. Marital counseling was  
37 partially "successful" in keeping the marriage intact, but relapses into substance abuse,  
38 marital conflict, and occasional violence perpetrated mostly by the father were common.  
39 Substance abuse counseling by a Goldenrod Drug and Alcohol Council provider failed to  
40 prevent relapses, possibly in large part because the co-morbidity conditions of both  
41 parents were not appropriately addressed.

42 Medical records indicate that the defendant's mother was using illegal drugs while  
43 she was pregnant with the defendant. The defendant was born prematurely and under  
44 weight, and a provisional diagnosis of mild teratogenesis was noted at birth. Following  
45 early infancy, the defendant was slow to meet developmental stages of growth, and there  
46 was concern that s/he may be mentally retarded, but by early childhood s/he appeared to  
47 be developing within normal standards.

48 *Willie is an only child.*

49 *Although apparently neither his/her father nor his/her mother physically abused*  
50 *Willie, during his/her early childhood on a number of occasions Willie was present when*  
51 *his/her father physically abused his/her mother. When the defendant was about five,*  
52 *both parents entered an intensive, inpatient treatment that addressed co-occurring*  
53 *disorders. (In addition to the substance dependence disorders, the father's bipolar and*  
54 *mother's dependency disorders were addressed during inpatient treatment and in follow-*  
55 *up individual and family psychotherapy. Both became active in AA.) There were no further*  
56 *relapses into substance abuse by either parent, and domestic violence ceased. His/her*  
57 *father's mood disorder appeared to be under control.*

58 *Willie's father began showing him/her more attention and taught him/her how to*  
59 *shoot when Defendant was about six years old. They began to go hunting and fishing*  
60 *together. Willie's mother reports that Willie appeared to be particularly happy during*  
61 *these few years.*

62 When the defendant was seven years old his father committed suicide by shooting  
63 himself with a shotgun. There is post hoc evidence the defendant's father was depressed  
64 before the suicide, but he was never treated for this depression. The defendant's father  
65 was at home on a weekend and had relapsed into drinking during the day. The defendant  
66 did not volunteer any information about this event. Upon being pressed, the defendant  
67 disclosed that *his/her father was alone that evening in his bedroom when Willie heard the*

68 *shot coming from his/her father's bedroom. Willie ran to his/her father's bedroom and*  
69 *discovered the body with his/her father's head mostly blown away.*

70 For several months following the shooting death of his/her father, the defendant  
71 showed no evidence of an emotional disorder; in fact, his/her mother became concerned  
72 about his/her lack of emotional expression - s/he never cried and never mentioned the  
73 suicide. It is not clear that s/he could even recall the event. S/He seemed to act as if  
74 nothing had happened.

75 However, after about three months, the defendant began showing signs of  
76 persistent fearfulness. S/He expressed concern about leaving the house, about being  
77 alone, and about sleeping without a light on in the room. His/Her mother reported s/he  
78 began to wake up at night crying, and *Willie described nightmares that involved a monster*  
79 *about to kill him/her. S/He was easily startled by sudden noises. S/He became fearful*  
80 *about doing mildly dangerous activities, like climbing a tree. S/He was invited to go*  
81 *hunting with a childhood friend and his/her friend's father, but s/he refused to go, saying*  
82 *s/he felt sick. His/Her mother noted s/he became frequently irritable. Bedwetting*  
83 *became a problem.*

84 After several weeks when s/he did not seem to improve, the defendant's mother  
85 took him/her to see a psychologist who diagnosed Flounder with "Posttraumatic Stress  
86 Disorder With Delayed Onset." The defendant was referred to a psychiatrist for acute  
87 anxiety medication, and s/he entered outpatient psychotherapy in the UNL clinical  
88 psychology specialized anxiety treatment program. Anxiety symptoms abated but were  
89 not entirely eliminated. The defendant was able to function in at least a minimally  
90 appropriate manner at home, in the community, and at school. Sleep improved but  
91 occasional nightmares continued. The defendant received additional specialized behavioral  
92 therapy for enuresis, and this problem was soon eliminated, except for rare relapses.

93 In particular, both in his/her community and at school, the defendant continued to  
94 have mild symptoms of social phobia. S/He avoided most peers at school, especially  
95 assertive, outgoing, or aggressive students. S/He was seen by both adults and peers as  
96 timid and passive. There is no evidence on any occasion where s/he became aggressive  
97 towards another child. S/He avoided rough play activity. *Willie has had one close friend*  
98 *since early childhood, and they were constantly together at school and in the*  
99 *neighborhood. S/He and his/her friend never argue - they never got into even a mild*  
100 *disagreement. This pattern of behavior continued into adolescence.*

101 In junior high school, the defendant's apparently excessive avoidance of others and  
102 his/her fearfulness was noted by a school counselor who recommended counseling to  
103 his/her mother. However, the mother saw no need for counseling since Flounder seemed  
104 to have at least one good friend and was never a behavioral problem at home. Also his/her  
105 school reports did not indicate that there were any academic problems.

106 The defendant's academic achievement fell generally in the average range. S/He  
107 did his/her homework and assignments successfully and on time; the only concern teachers  
108 had was somewhat excessive absences due to apparent mild sicknesses - flu, cold, sore  
109 throat, etc. Otherwise teachers did not notice him/her very much - s/he was quiet, never

110 approached his/her teachers, and s/he was never a behavioral problem prior to his/her  
111 conflict with Niedermeyer. S/He was known to avoid physically active sports, and s/he  
112 was reluctant to join most group activities. The defendant explained that attending school  
113 was not really all that much fun. The defendant explained that s/he did not really have  
114 many friends, except Robin Kirkowski. When I asked the defendant to tell me about the  
115 very best part of his/her life, s/he could not provide an answer.

116 During this portion of the interview, the defendant appeared oriented as to time  
117 and place. S/He was responsive and provided logical and mostly coherent answers to my  
118 questions.

119 When I asked why s/he was in custody, the defendant said, "I punished  
120 Niedermeyer." In response to my question, why did Niedermeyer deserve punishment, the  
121 defendant said, "You (referring to the author of this report) know what Niedermeyer was  
122 like, everyone does. S/He had to be stopped." When I asked what the defendant did to  
123 punish Niedermeyer, Defendant said, "I shot him/her four or five times." When I asked  
124 the defendant where the weapon came from, s/he said, "I have to travel armed just in  
125 case. Lucky for me and the world I was prepared this time." Later in the interview, the  
126 defendant indicated that s/he was standing just outside of his/her car and then grabbed a  
127 gun from the backseat and shot Niedermeyer. I asked the defendant to summarize events  
128 leading up to the shooting. S/He said, "Niedermeyer had to be stopped."

129 The defendant appeared to have a flat affect. S/He did not make much eye  
130 contact. S/He was somewhat vague and unresponsive. S/He was not spontaneous. The  
131 defendant appeared to be upset at times with occasional brief crying episodes but was  
132 coherent and generally appropriately responsive. The defendant reported s/he  
133 remembered shooting Niedermeyer, although s/he was unclear about when the event  
134 occurred. S/He did remember going to the car and taking out a gun. S/He says  
135 Niedermeyer hit him/her, although other witnesses said Niedermeyer only shoved  
136 him/her. S/He said s/he had to kill Niedermeyer because Niedermeyer was going to kill  
137 him/her. However, the defendant was unable to describe why s/he thought that, except  
138 that Niedermeyer was always "bothering" him/her and trying "to hurt or kill" him/her.

139 When asked about the statement "My father wants to have me killed," which  
140 Officer Bookim attributed to the defendant in the Incident Report of the shooting, the  
141 defendant did not remember making the statement and said that s/he did not think about  
142 his/her father. When I asked the defendant if s/he felt remorse for shooting  
143 Niedermeyer, s/he replied, "No."

144 I had access to the test results obtained by Dr. Partee, the psychologist for the  
145 defense (SIRS, MMPI-A and WISC-III). In general I found the test data to be valid but  
146 I disagree with Dr. Partee's interpretation. Specifically, s/he said that, although SIRS  
147 data did not obtain significance for malingering, scores were high enough to suggest  
148 possible symptom exaggeration by the defendant. Also, s/he noted the F scale on the  
149 MMPI-A was high enough to suggest exaggeration, although I have to admit that research  
150 has demonstrated that individuals with severe mental or emotional disorders tend to score  
151 high on this scale. Furthermore, the MMPI-A results are consistent with the defendant

152 suffering from a serious emotional disorder with some cognitive disturbances, but not at  
153 the level of a psychosis. The defendant clearly has an emotional disorder, characterized  
154 by pathological anxiety, depression and anger, as well as some mild symptoms of a thinking  
155 disorder. However, when seen by this examiner, there was no evidence of bizarre ideation  
156 or other psychotic symptoms, such as hallucinations. In addition, the defendant's possible  
157 exaggeration of Niedermeyer's actual danger to him/her was not sufficient to diagnose  
158 evidence of significant paranoia or delusional thinking.

159 I conclude, to a reasonable degree of psychological certainty, that the defendant  
160 meets the dual diagnoses of "Depressive Disorder, Not Otherwise Specified" (DSM IV-TR  
161 311) and "Anxiety Disorder, Not Otherwise Specified" (DSM IV-TR 300.00). Given the  
162 explosive and possibly impulsive nature of the shooting event, there is evidence of a  
163 possible underlying bipolar disorder, although the evidence is inconclusive. I do not believe  
164 the psychological assessment and test results support a diagnosis for a psychotic disorder;  
165 rather, I conclude the defendant has an emotional disorder characterized by high levels of  
166 anxiety, depression, and anger, stemming from the defendant's history of being a victim of  
167 harassment and being vulnerable to emotional instability, as is evident from his/her  
168 history. I cannot strongly reach an opinion as to whether or not the defendant may have  
169 been malingering or feigning symptoms, although there is evidence the defendant was  
170 exaggerating his/her symptoms.

171 Concerning the defendant's history, I accept that Mr./Ms. Flounder has had mental  
172 health issues for some time. However, s/he has also participated in therapy and was  
173 taking medication. This intervention appears to have been largely successful, considering  
174 the generally successful behaviors (doing chores and homework assignments, etc.)  
175 demonstrated before this shooting incident.

176 I was asked to apply the following criteria for the determination of insanity,  
177 according to the McNaghten Rule as established by Nebraska Statute:

178 ...whether at the time of the alleged offense ... the defendant had the  
179 mental capacity: 1) to understand what s/he was doing, and the nature  
180 and quality of his/her acts; or 2) to distinguish between right and wrong  
181 with respect to it; or 3) to know that such act was wrong and deserved  
182 punishment.

183 I conclude that, at the time of the shooting, Mr./Ms. Flounder acted in a reasonably  
184 coherent manner, demonstrating goal-directed behavior by going and getting a gun.  
185 Furthermore, there is evidence that the defendant had been thinking about and even  
186 possibly planning to kill Niedermeyer. Although Flounder has an emotional disorder with  
187 some mild cognitive symptoms, under McNaghten s/he knew what s/he was doing at the  
188 time of the shooting. There is no significant reason to believe s/he could not tell the  
189 difference between right and wrong since any thinking disturbance s/he may have had did  
190 not obtain at the level of a severe psychosis. Willie Flounder does not meet criteria for  
191 the insanity defense.

WITNESS ADDENDUM

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

Signed,

---

Dr. Cole D. Pearson

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2006-2007 Nebraska State High School Mock Trial Competition.

---

Thomas Nelson Michaels, Notary Public  
My Commission Expires: December 31, 2006

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska ) CR06-6887  
)  
Prosecution, )  
)  
vs. ) Deposition of  
) Robin Kirkowski  
Willie Flounder )  
)  
Defendant. )

1 My name is Robin Kirkowski. I'm 17 and a senior at William Jennings Bryan High.  
2 I'm an only child. I live in an apartment with my mom in Goldenrod, Nebraska. The address  
3 is 808 West 10th, Apartment 18. I'm a big hunter. I go hunting a lot with my Uncle Steve  
4 and Aunt Verna. I got a new shotgun for Christmas - a 12 gauge, over/under. Can't wait to  
5 use it.

6 I've been best friends with Willie Flounder ever since I can remember. I like  
7 hanging out at Willie's house. Dee/Deon Niedermeyer has been picking on me and Willie  
8 since 4<sup>th</sup> grade. Most of the time it is just name-calling and trying to embarrass us, but  
9 Willie gets pretty upset. Niedermeyer is a jerk to others, too. We know Niedermeyer  
10 egged Wellington's house a few years ago.

11 It seems like every day Niedermeyer is saying something, or shoving me or Willie,  
12 and is a jerk. In March, Flounder and I were just in the hallway between classes and  
13 Niedermeyer walked by looking all mad about something. We weren't doing anything, but a  
14 few days later, Niedermeyer catches me by myself in the hallway and says "What are you  
15 lookin' at?" I wasn't even looking at him/her. Then s/he said, "This will teach you and  
16 Flounder for laughing at me!" and s/he practically tackled me. Knocked me into the lockers  
17 and all my books fell on the ground. S/he's just a punk.

18 I have talked to Officer Bookim about Niedermeyer and the trouble Willie and I  
19 have had with Niedermeyer before. I hang out with Officer Bookim a lot. I like going to  
20 Bookim's office and talking about stuff. S/he's cool.

21 Willie can't take Niedermeyer picking on him/her. It is really upsetting.  
22 Sometimes Willie gets real mad, but sometimes s/he gets real sad. Not like crying and  
23 stuff, but Willie gets really upset and says, "Niedermeyer can't keep doing this to me/us."  
24 I think Willie should go talk to somebody, a counselor or something. I know s/he has seen  
25 a counselor before, but I don't know if s/he still is. I think s/he takes some kind of pills,  
26 but I don't know what they are for. Even still, sometimes when we would go to a shooting

27 range or were just shooting at cans in the backyard, Willie would say how great it would be  
28 to get rid of Niedermeyer.

29 On April 28, we were at a track meet. I didn't even know Niedermeyer was there,  
30 but Willie saw Niedermeyer. When Niedermeyer came walking by, I tried to avoid a  
31 situation. Too late. Willie said something about Niedermeyer, and I didn't hear it. Then  
32 Niedermeyer said "Why don't you say it to my face?" and some other stuff. I have never  
33 seen Willie so angry. The two of them went at each other like they were going to fight.  
34 Niedermeyer hit Willie. All I know is Niedermeyer was shoving Willie, then all of a sudden  
35 Willie was on the ground with a bloody nose. There were lots of people around, so someone  
36 got in the middle of it. Officer Bookim came over so nothing happened after that. Willie  
37 was really hot about it, so I thought we should leave, and we left. I didn't see Willie over  
38 the weekend, but we did send some e-mails. Willie just kept saying how Niedermeyer has  
39 to be stopped and that Niedermeyer was trying to kill him/her.

40 On Monday, May 1, I was planning to go hunting with my Uncle Steve and Aunt  
41 Verna. It was turkey season. I was going to meet my aunt and uncle right after school, so  
42 I brought my shotgun to school. I caught a ride to school with Willie because I thought  
43 s/he was going hunting with us or would at least drop me off at my uncle's. It was going to  
44 be my first chance to go hunting since I got my new gun for Christmas. I left my shotgun  
45 in Willie's car out in the parking lot. I was just sitting in class and heard a gun shot. I  
46 raced to the windows just like everyone else, and there was Willie with my gun and  
47 Niedermeyer was on the ground and blood was everywhere. I knew Willie was upset from  
48 the track meet, but didn't think s/he would do anything like this. Willie must have been  
49 out of his/her mind.

#### WITNESS ADDENDUM

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

Signed,

---

Robin Kirkowski

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the  
2006-2007 Nebraska State High School Mock Trial Competition.

---

Thomas Nelson Michaels, Notary Public  
My Commission Expires: December 31, 2006

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska	)	CRO6-6887
	)	
Prosecution,	)	
	)	
vs.	)	Deposition of
	)	Willie Flounder
Willie Flounder	)	
	)	
Defendant.	)	

1 My name is Willie Flounder. I just turned 17. My address is 2044 Madison Street  
2 in Goldenrod, Nebraska.

3 I'm the person who shot Dee/Deon Niedermeyer. I guess that's why I'm telling  
4 you my side of the story. I'm not sure Niedermeyer would tell the truth about what  
5 happened. What a lying jerk.

6 I don't know why I have to talk about my family and my life. I already talked to  
7 the police and two shrinks about all of this. My parents have nothing to do with this - it is  
8 all Niedermeyer's fault. But they say I have to do this, so here it goes. I am an only child.  
9 My mom and dad used to fight a lot, I guess. Whenever they fought, I would usually tune  
10 them out or leave the house. Sometimes they didn't even notice. Sometimes my dad would  
11 move out of the house for a while, but mom and dad always seemed to get back together.  
12 My mom thinks I didn't know when they were using drugs or alcohol, but kids see a lot of  
13 things. I even tried my mom's vodka a couple of times, but I didn't like the way it tasted.

14 I don't remember a lot about the day my dad killed himself, just the gun shot. I'll  
15 never forget that. My mom and I didn't really talk about it much. Neither of us really  
16 wanted to. I figure that's life, there is nothing I can do to change it. He wasn't around  
17 that much anyway.

18 Robin Kirkowski is my best friend. We have known each other since Kindergarten.  
19 Robin and I like to hang out and listen to music. Sometimes I even get to go along with  
20 him/her and his/her uncle and aunt when they go hunting. His/her aunt taught me how to  
21 shoot guns, and I think it is pretty cool. His/her uncle even paid for me to take a Hunter's  
22 Safety class. He's pretty nice. Robin and I have fun shooting cans when it's not hunting  
23 season. Sometimes I pretend that the cans are the people I don't like. Like Niedermeyer.  
24 It's just a way to vent.

25 Niedermeyer is not cool. Niedermeyer is a real creep. S/He picks on everyone at  
26 school. I hate the way s/he treats me and Robin. S/He is always making fun of the way I



27 talk and asking me where my dad is. S/He knows exactly where my dad is - everyone at  
28 school knows what happened to him. I remember one time when Niedermeyer threw an  
29 empty milk carton at me during lunch. It landed on my tray. S/He came over to where  
30 Robin and I were sitting, and said "Sorry, I missed the trash." S/He gave me that look  
31 s/he always gives me. S/He took my lunch and threw it in the trash. Niedermeyer said  
32 s/he would clean up the mess s/he made and took my tray. I wasn't even done with my  
33 lunch. The whole cafeteria laughed. I hate him/her.

34 "Neandermeyer" was always giving me the "look." That's what I call him/her. It's  
35 because s/he is a neanderthal. S/He thinks I have it out for him/her. I don't. I try to  
36 mind my own business.

37 Officer Bookim seemed pretty cool, so I tried to tell Bookim about what was going  
38 on. I went to his/her office a couple of times. Once I got there, it didn't really seem like  
39 a big deal, so I really never told him/her about what Niedermeyer was doing. I mean,  
40 couldn't everyone see what was going on with Niedermeyer anyway? Officer Bookim told  
41 me about some website about bullying. Whatever. I didn't need that kind of help.

42 Niedermeyer was really acting like a jerk a few days before s/he got shot. S/He  
43 said something to me and Robin that really made us mad. Who made him/her king/queen  
44 anyway? Robin told me to just let it go, but it was really hard. S/He's been treating us  
45 like second-class citizens all our lives.

46 The day of the track meet, Robin and I were minding our own business, when  
47 Neandermeyer showed up. S/He walked right up to us and said "What did you say about  
48 me, punk?" I told him/her I didn't say anything, and the next thing I know I was on the  
49 ground. I can't believe s/he pushed me. Everyone started laughing at me, and then  
50 someone finally helped me up. I had a bloody nose. When I stood up, I saw Niedermeyer  
51 point his/her finger at me like a fake gun. S/He pulled the "trigger" and then acted like  
52 s/he was blowing off the smoke. I was really scared. I didn't know what Niedermeyer was  
53 going to do to me next. I take Niedermeyer's threats very seriously.

54 Officer Bookim was right there when it happened. I couldn't believe I got called  
55 into the office for it a few days later. I didn't do anything wrong. Ms. Pasold even made  
56 me sit in her office with Niedermeyer for some kind of dispute resolution. Yeah, right,  
57 like that's really going to work with someone like Niedermeyer. I got sent home for the  
58 rest of the day. I knew my mom was going to be so mad. I left Ms. Pasold's office and  
59 went to the parking lot.

60 Niedermeyer followed me out to the parking lot because s/he got suspended, too.  
61 S/He looked really mad about being suspended. I'm sure s/he thought it was all my fault.  
62 When I got to my car I saw Robin's shotgun. I don't really want to talk about it, but then  
63 I shot Niedermeyer. I thought s/he was going to kill me. This is all Niedermeyer's fault.  
64 I had to stop him/her or s/he was going to kill me.

65 I've seen copies of the e-mails that the police found on my computer. I sent them  
66 all right. And I meant every word. Niedermeyer did have to be stopped. But I was NOT  
67 planning on killing him/her, if that's what you think. I'm a peaceful person. Everyone would  
68 tell you that.

69            Now I'm facing prison because of Niedermeyer. I can't take it. This is all his/her  
70 fault.

WITNESS ADDENDUM

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

Signed,

---

Willie Flounder

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2006-2007 Nebraska State High School Mock Trial Competition.

---

Thomas Nelson Michaels, Notary Public  
My Commission Expires: December 31, 2006

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska ) CR06-6887  
 )  
 Prosecution, )  
 )  
 vs. ) Deposition of  
 ) Dr. P. T. Partee  
 Willie Flounder )  
 )  
 Defendant. )

1 My name is Dr. P.T. Partee and my address is Rural Route 7, Goldenrod, Nebraska.  
2 Yah, I live out near Egger-Brown Lake. My nickname is "Fish." I love fishing. It has  
3 everything - danger, excitement and solitude, all wrapped up in one. Fishing seems to go  
4 right along with my profession, which involves "fishing" through people's thoughts to try to  
5 figure them out. That's the reason I went into this field. I attended the University of  
6 Minnesota for my undergraduate studies, double majoring in psychology and sociology. I  
7 decided to get my Masters there and then my Ph.D. in adolescent psychology in 1986. I  
8 have specialized in adolescents all the way through my career. Prefer it that way, you  
9 know.

10 Kids seem to understand me, and I do a pretty good job of understanding them.  
11 Well, I should understand them. My spouse Terry and I have three children of our own  
12 and now we have a little grandson, too. Terry works as a loan officer at the Peoples Bank  
13 of Goldenrod. You need to be down to earth and just listen to them sometimes. Seems to  
14 me that some others in my profession, who tend to be a bit wet behind the ears, just like  
15 to hear themselves talk, so they can't ever really understand people. You have to be able  
16 to get people to trust you. That's what it's all about - getting inside their heads. Fishing  
17 for thoughts and feelings, fears and joys.

18 It's the kids that keep me here. I've been at the adolescent psych unit at the  
19 Regional Center here in Goldenrod, Nebraska, for the past 20 years. I have seen kids  
20 come and go; some success stories; some not so successful; some downright depressing.  
21 This case falls in the last category. At least for now. Things can change.

22 I have been called as an expert witness approximately 60 times in different types  
23 of cases. Only about 10 of them were insanity cases. Which brings me to the Patient,  
24 Willie Flounder.

25 Okey dokey, then. Yah, poor kid. I saw Flounder for the first time on May 2, 2006,  
26 the day after s/he was brought to the JDC or juvenile detention center. They knew

27 something was wrong with him/her right away. Anyone could see that. I am called quite  
28 often by the staff at the JDC; maybe once a month to assess a kid, maybe more often.  
29 This case was an odd one from the very beginning. As a general rule, it's best to go in and  
30 see a patient as soon as possible after an incident, so that's what I did. The only  
31 information I had before I saw Flounder was a summary from the JDC staff about  
32 her/him having shot a person at school. The victim had allegedly terrorized Flounder for  
33 some time. Also, information indicated that Flounder had prior mental health issues.  
34 Flounder's attorney also called me to ask that I assess Flounder for potential insanity  
35 issues, as s/he seemed to meet the legal definition as far as the attorney could tell. We  
36 agreed on my usual fee of \$1,500.00 for the evaluation, deposition, and future testimony.  
37 I also explained that fee did not depend on what conclusions I might draw in the  
38 evaluation. Also, I do not think it is a conflict to evaluate someone for the JDC and to be  
39 retained in the same case. I did not double bill the case, I just charged the law firm.

40 So, as you can tell there, I didn't have a lot of information to start with, but  
41 Flounder was as cooperative and as forthcoming with me as was possible, considering what  
42 s/he had been through over the last few days.

43 I explained to Flounder why I was there, that I just wanted to find out about  
44 his/her life, family, background and what had been going on over the last few days. When  
45 I asked about Flounder's family, s/he said "I'm fine, my mom is fine, I'm fine." I asked  
46 about his/her's father, because at the time I didn't know about his suicide, and s/he said  
47 "I don't know, I never knew." Flounder started to get upset, so I changed the subject.

48 Flounder presented himself/herself as confused, emotionally upset and somewhat  
49 disoriented. For example, Flounder thought the shooting occurred on the night preceding  
50 my evaluation. Yet s/he also said it occurred at school during daylight. S/He was unable  
51 to explain the inconsistency. Also Flounder said, several times that, "Niedermeyer wanted  
52 to kill her/him." Again s/he appeared confused when asked who "him/her" was. S/He  
53 eventually said, "Niedermeyer was going to kill me," but later s/he said Niedermeyer was  
54 killing all of them."

55 Flounder reported being unable to sleep at the jail, but still had a nightmare that  
56 Niedermeyer was hitting and killing his/her best friend, and s/he was helpless and unable  
57 to stop her/him. S/he reports s/he had similar nightmares prior to the shooting, although  
58 none as scary as this one. During this interview on several occasions Patient presented as  
59 incoherent, and I was unable to determine what or whom s/he was describing. The  
60 interview was interrupted by frequent bouts of crying.

61 When asked what happened at school, Flounder stated "Niedermeyer wanted to kill  
62 him/her." When I questioned who "him/her" was, s/he looked confused, got a puzzled  
63 expression, and after about three minutes of silence, finally said "Niedermeyer was going  
64 to kill me." S/he could not explain what this meant or why, but Flounder was clearly in fear  
65 of Niedermeyer, even while sitting in a safe room with me.

66 On several occasions during my interview, Flounder was incoherent, mumbling,  
67 speaking very quickly, and at times very softly, and there were times I could not  
68 understand what Flounder was saying at all. On several occasions during my evaluation,

69 what I could audibly understand, I could make no sense of, as s/he was talking in the third  
70 person and used incomplete sentences which were not cohesive.

71 I tried to administer some psychological tests during my evaluation on May 2, 2006,  
72 however, Flounder was extremely distracted, confused and could not complete the tests.  
73 The majority of Flounder's test responses were "I don't know."

74 I told Flounder that I would come back and finish up with the tests in a few days.  
75 S/He acknowledged that, saying "I will try to go to sleep now for awhile." When I left, the  
76 JDC staff pointed Flounder's mother out to me, as she had been waiting to have a visit  
77 with her/him. I introduced myself and set an appointment later that day to meet with her.  
78 I also got telephone numbers for other family members, including her/his grandparents  
79 and aunt. Before my appointment with Flounder's mother, I obtained a history from the  
80 grandparents and aunt, and received information about the School Resource Officer or  
81 SRO's observations of the shooting incident at school with the bully. The SRO's  
82 observations are consistent with delusional thinking and cognitive confusion by Flounder.  
83 These symptoms are consistent with behavioral evidence of transient dissociative  
84 symptoms.

85 I met with Flounder for our second session on May 10, 2006. S/He was better  
86 oriented, emotionally controlled, and was cognitively intact. S/He was still having some  
87 issues with confusion and provided some inconsistent details which s/he could not explain.  
88 Flounder stated that s/he did not remember stating "My father wants to have me killed,"  
89 shortly before the shooting as was reported in the SRO's report. Flounder indicated that  
90 s/he does not think much about his/her father.

91 I administered a battery of psychological tests.

92 1. The Structured Interview of Reported Symptoms (SIRS) test was administered  
93 to Flounder to assess potential malingering or feigning. This instrument is an empirically  
94 developed assessment tool based on validated research designed to detect feigning,  
95 exaggeration or malingering of psychological symptoms of mental illness. Research  
96 supports the instrument's reliability and validity, although caution is recommended in  
97 testing adolescents. (Note test meets both Frey and Daubert standards.) Six of eight  
98 primary scales failed to meet criteria for exaggeration, feigning or malingering. However,  
99 it was noted that there was some inconsistency in response style and scores were  
100 moderately high, although not significant, but approaching an indeterminate conclusion.

101 2. The Minnesota Multiphasic Personality Inventory - Adolescent (MMPI-A) was  
102 administered to Flounder to assess reported symptoms of mental, emotional or behavioral  
103 disorders. The MMPI falls within the standard of care for psychologists in assessing  
104 mental disorders including psychotic disorders. It is an empirically derived instrument and  
105 is the most heavily researched instrument among all psychological tests designed to  
106 evaluate mental illness. (Note test meets both Frey and Daubert standards.) Significant  
107 elevations were found on scales measuring depression, paranoia, schizophrenia, and social  
108 introversion. I have reviewed Exhibit Number 5 and it is a true and accurate copy of the  
109 test results I obtained administering the MMPI-A to Flounder.

110 The SIRS data is consistent with Flounder's MMPI-A performance, with witness  
111 observations, with the client's personal history, and with the clinical interview. The MMPI-  
112 A results are especially convergent evidence of Flounder's tendency to be confused and to  
113 be both emotionally and mentally disturbed. Two scales did fall within the "indeterminate"  
114 range, neither supporting nor rejecting feigning, exaggeration or malingering. Although the  
115 MMPI-A F scale, designed to detect faking mental illness, was moderately high, I noted  
116 that a high F score is consistent with a severe mental or emotional disorder, and additional  
117 evidence would be necessary to conclude the score represents symptom exaggeration or  
118 malingering.

119 Overall, I concluded that this test and related information in the clinical interview  
120 and personality test failed to provide evidence of significant symptoms of exaggeration,  
121 feigning, or malingering.

122 3. The Wechsler Intelligence Scale for Children - IV (WISC-IV) was administered  
123 and an IQ of 96 was obtained. The WISC-IV is a widely used test with considerable  
124 research supporting its validity and reliability. A score of 96 falls within the average  
125 range of functional intelligence. However, considerable inconsistency and apparent  
126 confusion was noted, and I concluded that a pre-morbid IQ (i.e., a score free from the  
127 effects of a mental disorder) might be significantly higher.

128 I also concluded within a reasonable degree of psychological certainty that at the  
129 time of the shooting, Willie Flounder met the diagnosis of "Brief Psychotic Disorder,  
130 Persecutory Type, With Marked Stressor" (DSM IV-TR 298.8). This diagnosis involves a  
131 "nonbizarre" delusion; specifically that Niedermeyer was planning to kill her/him. Flounder  
132 expressed this belief on multiple occasions both to witnesses and during my interview. (It  
133 is "nonbizarre" because it could be true although "delusional" because it is extremely far  
134 fetched in terms of reality.) Also there was evidence of disorganized or incoherent  
135 speech during the interview, which was partially confirmed by witness statements. And  
136 there was evidence of confusion and disorientation about the shooting event. The  
137 disorganization of thinking and the delusional quality of Flounder's thinking are consistent  
138 with a psychotic disorder. The disorder is classified as "brief" because over several weeks  
139 there is evidence of abatement of the psychotic symptoms, especially partial remission of  
140 Flounder's symptoms of disorganized thinking and transient dissociative symptoms.

141 An acute psychotic disorder characterized by delusional, disorganized thinking  
142 made it impossible for Flounder to understand the nature and quality of his/her acts or to  
143 distinguish right from wrong with respect to the act at the moment of the shooting.

144 In my expert opinion and within a reasonable degree of scientific certainty, Willie  
145 Flounder was definitely insane at the time of the incident.

#### WITNESS ADDENDUM

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

Signed,

---

Dr. P. T. Partee

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the  
2006-2007 Nebraska State High School Mock Trial Competition.

---

Thomas Nelson Michaels, Notary Public  
My Commission Expires: December 31, 2006

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska	)	CR06-6887
	)	
Prosecution,	)	
	)	
vs.	)	Court's Instructions
	)	To the Jury
Willie Flounder	)	
	)	
Defendant.	)	

*(Note: This material is provided for the information and education of the participants. It will not be read in court or submitted to a jury. Attorneys may rely upon these instructions in their arguments to the presiding judge and during closing arguments.)*

LADIES AND GENTLEMEN OF THE JURY:

You are instructed by the Court as follows:

**INSTRUCTION NUMBER 1**

Depending on the evidence, you may return one of several possible verdicts. You may find the defendant:

- (1) Guilty of attempted first degree murder; or
- (2) Not guilty; or
- (3) Not responsible by reason of insanity.

**INSTRUCTION NUMBER 2**

**A. Attempted First Degree Murder -- Elements**

The material elements which the state must prove by evidence beyond a reasonable doubt in order to convict the defendant of the crime of attempted first-degree murder are:

1. that the defendant, Willie Flounder, attempted to kill Dee/Deon Niedermeyer; and
2. that the defendant did so purposely and with deliberate and premeditated malice; and
3. that the defendant did so on or about May 1, 2006, in Lancaster County, Nebraska.



A person shall be guilty of an attempt to commit a crime if s/he:

1. Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as s/he believes them to be; or
2. Intentionally engages in conduct which, under the circumstances as s/he believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his/her commission of the crime.

When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, s/he intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

The state has the burden of proving beyond a reasonable doubt each and every one of the foregoing material elements of the crime of attempted first degree murder necessary for conviction.

### **B. Effect of Findings**

If you find from the evidence beyond a reasonable doubt that each of the foregoing elements is true, it is your duty to find the defendant guilty of the crime of attempted first degree murder. On the other hand, if you find the state has failed to prove beyond a reasonable doubt any one or more of the foregoing material elements, it is your duty to find the defendant not guilty. The burden of proof is always on the state to prove beyond a reasonable doubt all of the material elements of the crime charged in the Information, and this burden never shifts.

If the state did prove beyond a reasonable doubt all of the elements of the crime charged in the Information, then you must go on to consider the defendant's defense that s/he was insane at the time s/he committed the crime of attempted first degree murder.

## **INSTRUCTION NUMBER 3: INSANITY DEFENSE**

### **A. Elements**

The defense of insanity has two elements. These are:

- (1) that the defendant had a mental disease, defect, or disorder at the time of the acts charged; and
- (2) that this mental disease, defect, or disorder impaired his/her mental capacity to such an extent that either:
  - (i) s/he did not understand the nature and consequences of what s/he was doing; or

(ii) s/he did not know the difference between right and wrong with respect to what s/he was doing.

### **B. Burden of Proof**

The defendant must prove both elements of the insanity defense by the greater weight of the evidence. The greater weight of the evidence means evidence sufficient to make the claim of insanity more likely true than not true. It does not necessarily mean a greater number of witnesses or exhibits.

If you decide that the defendant proved both elements of the insanity defense by the greater weight of the evidence then you must find him/her not responsible by reason of insanity. Otherwise, you must find him/her guilty.

#### **INSTRUCTION NUMBER 4:**

The defendant is presumed to be innocent.

This presumption of innocence is evidence in favor of the defendant and continues throughout the trial, until and unless s/he shall have been proved guilty beyond a reasonable doubt.

#### **INSTRUCTION NUMBER 5:**

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

#### **INSTRUCTION NUMBER 6:**

"Deliberate" means not suddenly or rashly, but doing an act after first considering the probable consequences.

"Intentionally" means willfully or purposely.

"Malice" means intentionally doing a wrongful act without just cause or excuse.

"Premeditation" means forming the intent to act before acting. The time needed for premeditation may be so short as to be instantaneous, provided the intent to act is formed before the act and not simultaneously with the act.

"Purposely" means intentionally.

#### **INSTRUCTION NUMBER 7:**

Various states of mind are elements of the crime charged against the defendant. In deciding whether the defendant acted with the requisite state of mind, you should consider his/her words and acts and all the surrounding circumstances.

**INSTRUCTION NUMBER 8:**

Evidence is either direct or circumstantial.

Evidence is direct when a witness testifies from his/her own personal knowledge concerning a material element of the crime charged. Evidence is circumstantial when it relates to the existence or non-existence of facts from which a material element of the crime charged may be inferred and when that inference usually and reasonably follows according to the common experience of mankind.

Whenever circumstantial evidence is relied upon to establish any material element of a crime, it is necessary that the facts essential to the conclusion sought must be proved by competent evidence beyond a reasonable doubt, and, when taken together, must be of such character as to be consistent with each other and with the conclusion sought to be established thereby and inconsistent with any reasonable hypothesis of innocence.

Therefore, notwithstanding that some of the evidence may be circumstantial, if you are satisfied beyond a reasonable doubt, from all the evidence, that the evidence cannot be accounted for upon any reasonable theory consistent with the innocence of defendant and that it permits of no reasonable conclusion other than the guilt of the defendant, then you should so find. If you have such a reasonable doubt, you must find him/her not guilty.

**INSTRUCTION NUMBER 9:**

You are the sole judges of the credibility of the witnesses and the weight to be given to their testimony. In determining this, you may consider the following:

1. The conduct and demeanor of the witness while testifying;
2. The sources of information, including the opportunity for seeing or knowing the things about which the witness testified;
3. The ability of the witness to remember and to communicate accurately;
4. The reasonableness or unreasonableness of the testimony of the witness;
5. The interest or lack of interest of the witness in the result of this case;
6. The apparent fairness or bias of the witness;
7. Any previous statement or conduct of the witness that is consistent or inconsistent with the testimony of the witness at this trial;
8. Any other evidence that affects the credibility of the witness or that tends to support or contradict the testimony of the witness.

**INSTRUCTION NUMBER 10:**

During this trial, I called your attention to some evidence that was received for specified limited purposes; you must consider that evidence only for those limited purposes and for no other.

During this trial I called your attention to certain out-of-court statements that were received in evidence only to aid you in deciding the credibility of the witnesses. You must consider those statements only with regard to the credibility of the witnesses and for no other purpose.

**INSTRUCTION NUMBER 11:**

Evidence of the defendant's character has been received to help you decide whether s/he committed the crime charged. You may consider this evidence along with all the other evidence in making your decision.

**INSTRUCTION NUMBER 12:**

In this case, non-experts have expressed opinions. The value of an opinion expressed by a non-expert witness depends upon the facts on which it rests, and such opinion when given in evidence is to be considered along with and as a part of the testimony in the case. The same rules as to weight and credibility apply to non-expert witnesses who have expressed opinions as to expert witnesses. You have the right to accept as true, or reject as false or unreliable, the opinion of any non-expert witness in accordance with the manner in which s/he may have impressed you.

**INSTRUCTION NUMBER 13:**

A witness who has special knowledge, skill, experience, training, or education in a particular area may testify as an expert in that area. You determine what weight, if any, to give to an expert's testimony just as you do with the testimony of any other witness. You should consider the expert's credibility as a witness, the expert's qualifications as an expert, the sources of the expert's information, and the reasons given for any opinions expressed by the expert.

**INSTRUCTION NUMBER 14:**

Your duty is to decide whether the defendant is guilty or not guilty or not responsible by reason of insanity of attempted first-degree murder. My duty is to decide what happens to the defendant if you decide that s/he is guilty or not responsible by reason of insanity. You must make your decision without considering what might happen to the defendant.

### COMMENT TO JURY INSTRUCTION NUMBER 3: INSANITY DEFENSE

*(Note: This material is provided for the information and education of the participants. Attorneys are not permitted to use this information in their closing arguments.)*

This Comment and the Jury Instructions are from the Nebraska Jury Instructions 2d (NJI2d) published by Thomson/West.

The test for insanity in Nebraska is the McNaghten test. *See* State v. Vosler, 216 Neb. 461, 345 N.W.2d 806 (1984); State v. Simants, 197 Neb. 549, 250 N.W.2d 881 (1977), *cert. denied*, 434 U.S. 878, 98 S.Ct. 231, 54 L.Ed.2d 158 (1977) *rehearing denied*, 434 U.S. 961, 98 S.Ct. 496, 54 L.Ed.2d 322 (1977); State v. Jacobs, 190 Neb. 4, 7, 205 N.W.2d 662, 664 (1973), *cert. denied*, 414 U.S. 860, 94 S.Ct. 75, 38 L.Ed.2d 111 (1973). As the Nebraska Supreme Court put it:

Where a person is so diseased in mind, at the time the act is charged to have been committed, that he [is] incapable of comprehending the nature of the act and is unable to distinguish between right and wrong with respect to it, he is not accountable. Thompson v. State, 159 Neb. 685, 691, 68 N.W.2d 267, 271 (1955).

To raise an insanity defense, therefore, a defendant must both suffer from a mental disease *and* because of the disease be unable to understand the nature and quality of his act or be unable to determine that his act is wrong. State v. Vosler, 216 Neb. 461, 345 N.W.2d 806 (1984); State v. Simants, 197 Neb. 549, 250 N.W.2d 881 (1977), *cert. denied*, 434 U.S. 878, 98 S.Ct. 231, 54 L.Ed.2d 158 (1977) *rehearing denied*, 434 U.S. 961, 98 S.Ct. 496, 54 L.Ed.2d 322 (1977); State v. Jacobs, 190 Neb. 4, 7, 205 N.W.2d 662, 664 (1973), *cert. denied*, 414 U.S. 860, 94 S.Ct. 75, 38 L.Ed.2d 111 (1973); Washington v. State, 165 Neb. 275, 85 N.W.2d 509 (1957); Thompson v. State, 159 Neb. 685, 68 N.W.2d 267 (1955). To constitute a defense the insanity must be shown to exist at the time the crime was committed. State v. Lamb, 213 Neb. 498, 330 N.W.2d 462 (1983); State v. Newson, 183 Neb. 750, 164 N.W.2d 211 (1969).

The Nebraska cases almost uniformly focus on the second part of the test: the defendant's capacity. *E.g.*, State v. Lamb, 213 Neb. 498, 330 N.W.2d 462 (1983); State v. Simants, 197 Neb. 549, 250 N.W.2d 881 (1977), *cert. denied*, 434 U.S. 878, 98 S.Ct. 231, 54 L.Ed.2d 158 (1977) *rehearing denied*, 434 U.S. 961, 98 S.Ct. 496, 54 L.Ed.2d 322 (1977); State v. Jacobs, 190 Neb. 4, 205 N.W.2d 662 (1973), *cert. denied*, 414 U.S. 860, 94 S.Ct. 75, 38 L.Ed.2d 111 (1973). Implicit in the cases, however, is the recognition that a mental disease must have caused the incapacity. While, therefore, a drug induced psychosis could constitute a mental disease, a voluntary drunk is not entitled to an insanity acquittal even if, as a result of his drunkenness, he either did not know what he was doing

or did not know it was wrong. *See* NJI2d Crim. 8.0 and Comment; TVRZ v. State, 154 Neb. 641, 48 N.W.2d 761 (1951). Similarly, a defendant is not entitled to an instruction that his "diminished capacity" might have prevented him from having the requisite intent. *State v. Ryan*, 233 Neb. 74, 444 N.W.2d 610 (1989).

NJI2d Crim. 7.0 is phrased in terms of "mental disease (defect, disorder)" rather than simply as "mental disease." Mental "defect or disorder" encompasses the case of a person whose incapacity derives not from mental illness but from, for example, severe retardation. Such a person is covered by the insanity defense in Nebraska. *See* *Washington v. State*, 165 Neb. 275, 85 N.W.2d 509 (1957). *See generally* Model Penal Code § 4.01 and Comment (Offic. Dr. and Rev. Comments 1985). Since, properly stated, retardation is a condition of the mind, not a mental disease, the Committee elected to provide the alternative terms, mental "defect or disorder," to cover retardation and like conditions that give rise to an insanity defense. Use of an alternative term simply characterizes more accurately; it neither changes the Nebraska insanity defense nor covers anyone not already covered under Nebraska law. Choice between alternative terms is not substantive; the choice simply permits the instruction to track the term employed in testimony during the trial.

The Nebraska statute on insanity describes the plea as "not responsible by reason of insanity" and the verdict as an "acquittal." Neb.Rev. Stat. § 29-2203 (Reissue 1995). It therefore seemed consistent with legislative intent to use either formulation to describe the jury verdict. NJI2d Crim. 7.0 employs "not responsible by reason of insanity" language because that language more accurately describes what the verdict actually means.

The insanity statute also directs that the verdict reflect whether the acquittal was solely by reason of insanity or on other grounds as well. *Id.* This requirement is accomplished by the structure of NJI2d Crim. 3.2 [ELEMENTS; EFFECT OF FINDINGS (Insanity Defense) ]. The jury there is directed to consider the insanity defense only after considering the elements of the crime and concluding that the defendant is guilty. Thus any verdict of "not responsible" by definition is solely on that ground alone.

In Nebraska, insanity is an affirmative defense to be proved by the defendant by the greater weight of the evidence. Neb.Rev.Stat. § 29-2203 (Reissue 1995). *See NJI2d Civil 2.12A (Burden of Proof---Greater Weight of the Evidence Defined) and Comment.* *See* *Leland v. Oregon*, 343 U.S. 790, 72 S.Ct. 1002, 96 L.Ed. 1302 (1952), *rehearing denied*, 344 U.S. 848, 73 S.Ct. 4, 97 L.Ed. 659 (1952) (constitutional to place burden on defendant to prove insanity beyond a reasonable doubt). As with all other elements of the state's case-in-chief, proving state of mind remains the state's burden to prove beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

**EXHIBIT #1**

From: robink@wjb.edu  
To: wflounder@wjb.edu  
Sent: Thursday, April 13, 2006 8:45 p.m.  
Subject: Look out for Niedermeyer

Hey-

You know how Neandermeyer was looking mad at us on Monday in the hallway? Yesterday, I went to my locker after 4<sup>th</sup> period and Niedermeyer caught me by myself in the hallway and said what are you lookin at? I wasn't even looking at him/her! Then s/he said this will teach you and Flounder for laughing at me and s/he practically tackled me. Knocked me into the lockers and all my books fell on the ground. S/he's just a punk. I just grabbed my books and got out of there! Be careful Niedermeyer is out to get us!

RK

---

From: wflounder@wjb.edu  
To: robink@wjb.edu  
Sent: Thursday, April 13, 2006 8:55 p.m.  
Subject: Re: Look out for Niedermeyer

Got your e-mail. I knew s/he was mad at me. I knew s/he was out to get me. S/he has to be stopped.

WF

---

From: robink@wjb.edu  
To: wflounder@wjb.edu  
Sent: Thursday, April 20, 2006 9:30 p.m.  
Subject: Wanna go hunting?

Hey-

I want to go hunting and try out my new shotgun. Turkey season opens and Uncle Steve says we can go whenever we give him a call. I got my license! When do you want to go?

RK

---

From: wflounder@wjb.edu  
To: robink@wjb.edu  
Sent: Thursday, April 20, 2006 9:45 p.m.  
Subject: Re: Wanna go hunting?

Yeah, I wanna go!! Maybe someday after school we can go. I should probably go shoot at cans again before we go out for real. Let's do that first. Can I use your gun?

WF

---

From: robink@wjb.edu  
To: wflounder@wjb.edu  
Sent: Saturday, April 29, 2006 9:30 a.m.  
Subject: Track meet

Hey-

I can't believe what happened at the track meet yesterday! I can't believe Niedermeyer hit you! And Bookim didn't do anything!! I thought s/he was cool. Why do you have to go to the Principal's office? You didn't do anything wrong! I told Bookim that Neandermeyer was picking on you and s/he hit you. Maybe they just want you to tell the Principal yourself what happened. Have you seen your counselor lately? Maybe your counselor should know about all this...

Do you still want to go hunting after school on Monday?

RK

---

From: wflounder@wjb.edu  
To: robink@wjb.edu  
Sent: Saturday, April 29, 2006 9:45 a.m.  
Subject: Re: Track meet

Yeah, I still want to go Monday after school. I will pick you up on Monday morning and we'll go right after school. I don't know why I have to see the Principal. You know Neandermeyer's out to get me. It should have been taken care of a long time ago and this wouldn't have happened. It's not gonna happen again. I don't need to see my counselor. My counselor can't protect me. I have to protect myself. It won't happen again.

WF

---



## **Anti-Bullying Policy**

Goldenrod Public Schools provides physically safe and emotionally secure environments for all students and staff. Positive behaviors (non-violence, cooperation, teamwork, understanding and acceptance of others) are encouraged in the education program and are required of all staff. Inappropriate behaviors, including but not limited to bullying, intimidation and harassment, must be avoided by students and all staff. Strategies and practices are implemented to reinforce positive behaviors and to discourage and protect others from inappropriate behaviors.

**Date of Adoption (or Last Revision):**  
**Related Policies and Regulations:**

**6-10-2003**  
**2130, 2131, 4770, 4770.1, 5480,**  
**6411, 6411.1**  
**State Board of Education**  
**Minutes of February 2003;**  
**Anti-Bullying**

**Legal Reference:**

**GOLDENROD PUBLIC SCHOOLS**  
**GOLDENROD, NEBRASKA**

**POLICY AND REGULATION MANUAL**



**GOLDENROD POLICE DEPARTMENT  
MIRANDA WARNING AND WAIVER**

The following Advisement of Rights is given to WILLIE FLOUNDER  
(Subject)  
by DR. COLE D. PEARSON of the Goldenrod Police Department at Goldenrod,  
(Officer)  
Lancaster County, Nebraska, on MAY 9, 2006 at 0940 hours.  
(Date) (Time)

- Q. I would like to advise you that I am a Police Officer. Do you understand that?
- A. Yes.
- Q. You have the right to remain silent and not make any statements or answer any of my questions. Do you understand that?
- A. Yes.
- Q. Anything you may say can be, and will be, used against you in a court of law. Do you understand that?
- A. Yes.
- Q. You have the right to talk to a lawyer before answering any questions and have the lawyer with you during the questioning. Do you understand that?
- A. Yes.
- Q. If you cannot afford a lawyer, you have the right to have a lawyer appointed for you prior to questioning, at no cost to you. Do you understand that?
- A. Yeah.
- Q. Knowing your Rights in this matter, are you willing to answer questions or make a statement to me now?
- A. Yes.

Willie Flounder  
(Subject Signature)

WITNESSES:  
Dr. Cole D. Pearson  
\_\_\_\_\_

Tests administered to Willie Flounder ((Forensic Case # 705)  
May 10,2006

Structured Interview of Reported Symptoms

This instrument is designed to measure systematically deliberate distortions, feigning, or fabrications in the self-report of symptoms by a client.

Subtest Results:

<u>Scale</u>	<u>Score</u>
Rare Symptoms (RS)	2
Symptom Combinations (SC)	3
Improbable/Absurd Symptoms (IA)	2
Blatant Symptoms (BL)	4
Subtle Symptoms (SU)	10
Selectivity of Symptoms (SEL)	7
Severity of Symptoms (SEV)	4
Reported v. Observed Symptoms (RO)	1

Scale results: There are four classifications for the scores for each scale: "Honest," "Indeterminate," "Probable Feigning" and "Definite Feigning." Two scales [Subtle Symptoms (SU) and Selectivity of Symptoms (SEL)] fall within the "Indeterminate" range ( SU: 8-15 and SEL: 6-17). All other scores fall within the "Honest" range.

Wechsler Intelligence Scale for Children-IV

Client's age at time of testing: 16

<u>Scale</u>	<u>IQ</u>
Verbal IQ:	106
Performance IQ:	89
Full Scale IQ:	96

MMPI-A

See test profile

# MMPI-A

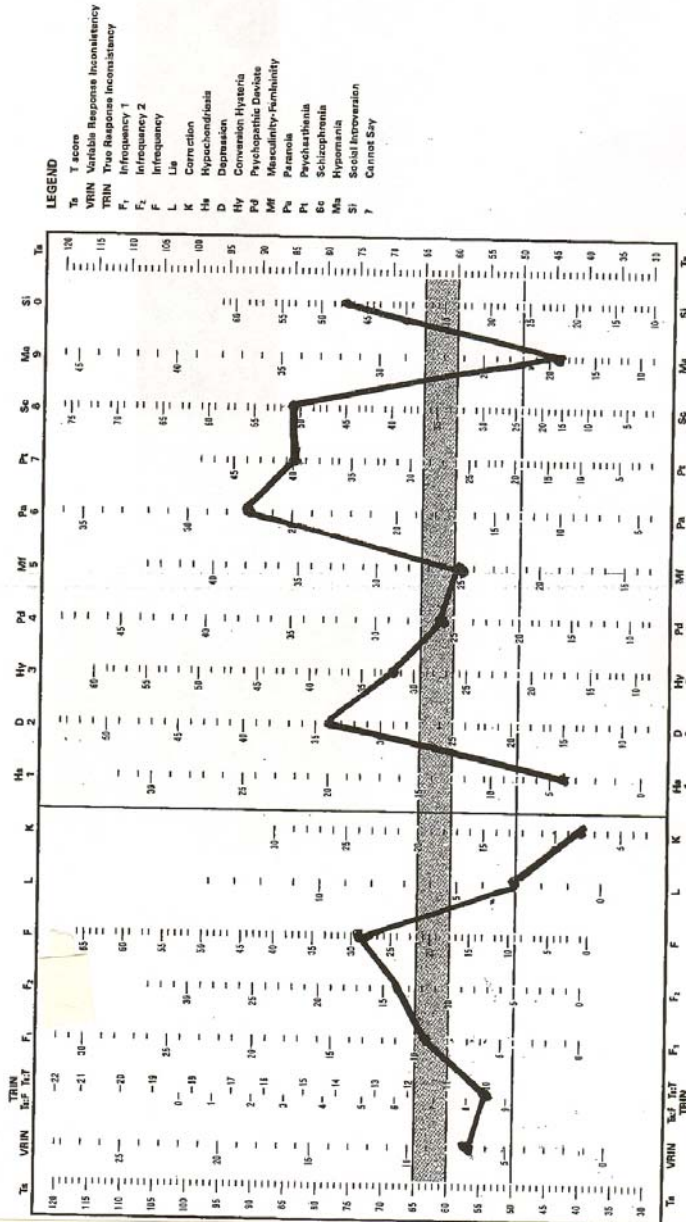
Minnesota Multiphasic  
Personality Inventory - ADOLESCENT

## Profile for Basic Scales

James N. Bickman, Carolyn L. Williams, John R. Graham, Robert P. Adler,  
Michael J. Taylor, S. Blair-Thomas, and Beverly Kastenmar  
S. R. Mattaway and G. C. Spitznagel

Copyright © 1992 REGENTS OF THE UNIVERSITY OF MINNESOTA. All rights reserved.  
Adapted and reproduced with authorization from the MMPI-A test. Copyright © 1942, 1943,  
(revised 1970), 1992 REGENTS OF THE UNIVERSITY OF MINNESOTA. All rights  
reserved. Distributed exclusively by National Computer Systems, Inc., P. O. Box 1416,  
Evanston, IL 60201.  
Printed in the United States of America.  
"Minnesota Multiphasic Personality Inventory - Adolescent" and "MMPI-A" are trademarks of  
the University of Minnesota.

Name Forensic Case #705  
Address Juvenile Detention Center  
Grade Level — Date Tested 5/10/06  
Setting — Age —  
Referred By —  
Scorer's Initials DTP



Raw Score 7 10 9 14 29 3 8 4 34 32 26 25 27 40 51 19 47  
? Raw Score 0

- LEGEND
- Ts T score
  - VRIN Variable Response Inconsistency
  - TRIN True Response Inconsistency
  - F1 Infrequency 1
  - F2 Infrequency 2
  - F3 Lie
  - F4 Correction
  - F5 Hypochondriasis
  - F6 Depression
  - F7 Conversion Hysteria
  - F8 Psychopathic Deviate
  - F9 Masculinity-Femininity
  - F10 Paranoia
  - F11 Psychasthenia
  - F12 Schizophrenia
  - F13 Hypomania
  - F14 Social Introversion
  - F15 Cannot Say



**GOLDENROD POLICE DEPARTMENT  
GOLDENROD, NEBRASKA**

INCIDENT REPORT

CASE NUMBER	DATE	TIME	TYPE OF INCIDENT	LOCATION
G006-4444	5-1-06	0937	Attempted homicide	WJBHS parking lot
V I C T I M	NAME: LAST FIRST <b>Niedermeyer Dee/Deon</b>		DOB: <b>3/6/89</b>	
	ADDRESS: <b>2501 South 36 Avenue, Goldenrod, NE</b>		HOME PHONE: <b>402-555-2859</b>	
S U S P E C T	NAME: LAST FIRST <b>Flounder Willie</b>		DOB: <b>6/6/89</b>	
	ADDRESS: <b>2044 Madison Street, Goldenrod, NE</b>		HOME PHONE: <b>402-555-5678</b>	
COMMENTS OF INVESTIGATOR: As I was escorting Niedermeyer and Flounder out of WJB High School on May 1, 2006 in to the school parking lot, Flounder said "my father wants to have me killed." Flounder stopped at a vehicle, which later turned out to be to his/her own, reached inside the back seat and pulled out a shotgun. Niedermeyer was just a few feet behind Flounder at the time and s/he stopped as s/he approached Flounder. Flounder pointed the shotgun at Niedermeyer's midsection and pulled the trigger. Flounder looked at me and said, "You know that I had to stop her/him." I called for medical assistance and later arrested Flounder. The shotgun has been checked into property under this case number.				
OFFICER PREPARING REPORT: <b>P Boekim SRO at WJBHS</b>			BADGE NUMBER: <b>GLARD 125</b>	

WILLIAM JENNINGS BRYAN HIGH SCHOOL  
GOLDENROD, NEBRASKA

## REFERRAL FOR:

Student's Name: Dee/Deon NiedermeyerDate of Referral: 4-28-06Person Making Referral: Officer Pat Bookim, SRO

Reason for Referral: I was working security at the WJB Invitational Track Meet on 4/28/06. We had 6 schools in addition to our own team and everyone was preparing for Districts a little over a week away. Everything went smoothly for the 1st hour and a half, but then 3 WJB students came racing up to me with a report of a fight over by the concession stand. I made my way over there to find Dee/Deon Niedermeyer picking on Willie Flounder and Robin Kirkowski. Niedermeyer was running off at the mouth, as usual, about something or another and Flounder was sitting on the ground with a bloody nose. I grabbed Niedermeyer's left shoulder and asked what was going on. Niedermeyer said s/he accidentally bumped into Flounder and Flounder fell. "Musta bumped his/her nose or something." Kirkowski insisted that Niedermeyer elbowed Flounder intentionally in the nose and made both Flounder and Kirkowski spill the drinks they just bought. I told them that we'll have to let Ms. Pasold sort this out on Monday. I told Niedermeyer that s/he'd have to leave the track meet. I tried to get Flounder to go to the first aid station, but s/he would have none of it.

# Excerpts from DSM-IV-TR

(American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, Washington, DC, American Psychiatric Association, 1994*)

This information is provided to assist in the participants' understanding of the psychological definitions and diagnostic information referred to in this case.

## 298.8 Brief Psychotic Disorder

### Diagnostic Features

The essential feature of Brief Psychotic Disorder is a disturbance that involves the sudden onset of at least one of the following positive psychotic symptoms: delusions, hallucinations, disorganized speech (e.g., frequent derailment or incoherence), or grossly disorganized or catatonic behavior (Criterion A). An episode of the disturbance lasts at least 1 day but less than 1 month, and the individual eventually has a full return to the premorbid level of functioning (Criterion B). The disturbance is not better accounted for by a Mood Disorder With Psychotic Features, by Schizoaffective Disorder, or by Schizophrenia and is not due to the direct physiological effects of a substance (e.g., a hallucinogen) or a general medical condition (e.g., subdural hematoma) (Criterion C).

### Specifiers

The following specifiers for Brief Psychotic Disorder may be noted based on the presence or absence of precipitating stressors:

**With Marked Stressor(s).** This specifier may be noted if the psychotic symptoms develop shortly after and apparently in response to one or more events that, singly or together, would be markedly stressful to almost anyone in similar circumstances in that person's culture. This type of Brief Psychotic Disorder was called "brief reactive psychosis" in DSM-III-R. The precipitating event(s) may be any major stress, such as the loss of a loved one or the psychological trauma of combat. Determining whether a specific stressor was a precipitant or a consequence of the illness may sometimes be clinically difficult. In such instances, the decision will depend on related factors such as the temporal relationship between the stressor and the onset of the symptoms, ancillary information from a spouse or friend about level of functioning prior to stressor, and history of similar responses to stressful events in the past.

### Associated Features and Disorders

Individuals with Brief Psychotic Disorder typically experience emotional overwhelming confusion. They may have rapid shifts from one intense affect to another. Although brief, the level of impairment may be severe, and supervision may be required to ensure



that nutritional and hygienic needs are met and that the individual is protected from the consequences of poor judgment, cognitive impairment or acting on the basis of delusions. There appears to be an increased risk of mortality (with a particularly high risk for suicide), especially among younger individuals. Preexisting Personality Disorders (e.g., Paranoid, Histrionic, Narcissistic, Schizotypal, or Borderline Personality Disorder) may predispose the individual to the development of the disorder.

### **Specific Culture Features**

It is important to distinguish symptoms of Brief Psychotic Disorder from culturally sanctioned response patterns. For example, in some religious ceremonies, an individual may report hearing voices, but these do not generally persist and are not perceived as abnormal by most members of the person's community.

### **Prevalence**

Cases of Brief Psychotic Disorder are rarely seen in clinical settings in the United States and other developed countries. The incidence and prevalence of cases that do not come to clinical attention are unknown. However, psychotic disturbances that meet the A and C criteria for Brief Psychotic Disorder but not the B criterion (i.e., the duration of active symptoms is 1-6 months as opposed to remitting within a month) are more common in developing countries than in developed countries.

### **Course**

Brief Psychotic Disorder may appear in adolescence or early adulthood, with the average age at onset being in the late 20s or early 30s. By definition, a diagnosis of Brief Psychotic Disorder requires a full remission of all symptoms and a return to the premorbid level of functioning within 1 month of the onset of the disturbance. In some individuals, the duration of psychotic symptoms may be quite brief (e.g., a few days).

### **Familial Pattern**

Some evidence suggests that Brief Psychotic Disorder may be related to Mood Disorders, whereas other evidence suggests that it may be distinct from both Schizophrenia and Mood Disorders.

### **Differential Diagnosis**

A wide variety of general medical conditions can present with psychotic symptoms of short duration. Psychotic Disorder Due to a *General Medical Condition* or a delirium is diagnosed when there is evidence from the history, physical examination, or laboratory tests that indicates that the delusions or hallucinations are the direct physiological consequence of a specific general medical condition (e.g., Cushing's syndrome, brain tumor). Substance-Induced Psychotic Disorder, Substance-Induced Delirium, and Substance Intoxication are distinguished from Brief Psychotic Disorder by the fact that a substance (e.g., a drug of abuse, a medication, or exposure to a toxin) is judged to be etiologically related to the psychotic symptoms. Laboratory tests, such as a urine drug screen or a blood alcohol level, may be helpful in making this determination, as may a careful history of substance use with attention to temporal relationships between substance intake and onset of the symptoms and the nature of the substance being used.

The diagnosis of Brief Psychotic Disorder cannot be made if the psychotic symptoms are better accounted for by a mood episode (i.e., the psychotic symptoms occur exclusively during a full Major Depressive, Manic, or Mixed Episode). If the psychotic symptoms persist for 1 month or longer, the diagnosis is either Schizophreniform Disorder, Delusional Disorder, Mood Disorder With Psychotic Features, or Psychotic Disorder Not Otherwise Specified, depending on the other symptoms in the presentation. The differential diagnosis between Brief Psychotic Disorder and Schizophreniform Disorder is difficult when the psychotic symptoms have remitted before 1 month in response to successful treatment with medication. Because recurrent episodes of Brief Psychotic Disorder are rare, careful attention should be given to the possibility that a recurrent disorder (e.g., Bipolar Disorder, recurrent acute exacerbations of Schizophrenia) may be responsible for any recurring psychotic episodes.

An episode of Factitious Disorder, With Predominantly Psychological Signs and Symptoms, may have the appearance of Brief Psychotic Disorder, but in such cases there is evidence that the symptoms are intentionally produced. When Malingering involves apparently psychotic symptoms, there is usually evidence that the illness was feigned for an understandable goal.

In certain individuals with Personality Disorders, psychosocial stressors may precipitate brief periods of psychotic symptoms. These are usually transient and do not warrant a separate diagnosis. If psychotic symptoms persist for at least 1 day, an additional diagnosis of Brief Psychotic Disorder may be appropriate.

### **Diagnostic criteria for 298.8 Brief Psychotic Disorder**

- A. Presence of one (or more) of the following symptoms:
- (1) delusions
  - (2) hallucinations
  - (3) disorganized speech (e.g., frequent derailment or incoherence)
  - (4) grossly disorganized or catatonic behavior
- Note: Do not include a symptom if it is a culturally sanctioned response pattern.
- B. Duration of an episode of the disturbance is at least 1 day but less than 1 month, with eventual full return to premorbid level of functioning.
- C. The disturbance is not better accounted for by a Mood Disorder With Psychotic Features, Schizoaffective Disorder, or Schizophrenia and is not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication) or a general medical condition.

*Specify if:*

**With Marked Stressor(s)** (brief reactive psychosis): if symptoms occur shortly after and apparently in response to events that, singly or together, would be markedly stressful to almost anyone in similar circumstances in the person's culture

**Persecutory Type.** This subtype applies when the central theme of the delusion involves the person's belief that he or she is being conspired against, cheated, spied on, followed, poisoned or drugged, maliciously maligned, harassed, or obstructed in the pursuit of long-term goals. Small slights may be exaggerated and become the focus of a delusional system. The focus of the delusion is often on some injustice that must be remedied by legal action ("querulous paranoia"), and the affected person may engage in repeated attempts to obtain satisfaction by appeal to the courts and other government agencies. Individuals with persecutory delusions are often resentful and angry and may resort to violence against those they believe are hurting them.

### **300.00 Anxiety Disorder Not Otherwise Specified**

This category includes disorders with prominent anxiety or phobic avoidance that do not meet criteria for any specific Anxiety Disorder, Adjustment Disorder With Anxiety, or Adjustment Disorder With Mixed Anxiety and Depressed Mood. Examples include:

1. Mixed anxiety-depressive disorder: clinically significant symptoms of anxiety and depression, but the criteria are not met for either a specific Mood Disorder or a specific Anxiety Disorder
2. Clinically significant social phobic symptoms that are related to the social impact of having a general medical condition or mental disorder (e.g., Parkinson's disease, dermatological conditions, Stuttering, Anorexia Nervosa, Body Dysmorphic Disorder)
3. Situations in which the disturbance is severe enough to warrant a diagnosis of an Anxiety Disorder but the individual fails to report enough symptoms for the full criteria for any specific Anxiety Disorder to have been met; for example, an individual who reports all of the features of Panic Disorder Without Agoraphobia except that the Panic Attacks are all limited-symptom attacks
4. Situations in which the clinician has concluded that an Anxiety Disorder present but is unable to determine whether it is primary, due to a general medical condition, or substance induced

### **309.81 Posttraumatic Stress Disorder**

#### **Diagnostic Features**

The essential feature of Posttraumatic Stress Disorder is the development of characteristic symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury, or other threat to one's physical integrity; or witnessing an event that involves death, injury, or a threat to the physical integrity of another person; or learning about unexpected or violent death, serious harm, or threat of death or injury experienced by a family member or other close associate (Criterion A1). The person's response to the event must involve intense fear, helplessness, or horror (or in children, the response must involve disorganized or agitated behavior) (Criterion A2). The characteristic symptoms resulting from the exposure to the extreme trauma include persistent reexperiencing of the traumatic event (Criterion B), persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (Criterion C), and persistent symptoms of increased arousal (Criterion D). The full symptom picture must be present for more than 1

month (Criterion E), and the disturbance must cause clinically significant distress or impairment in social, occupational, or other important areas of functioning (Criterion F).

Traumatic events that are experienced directly include, but are not limited to, military combat, violent personal assault (sexual assault, physical attack, robbery, mugging), being kidnapped, being taken hostage, terrorist attack, torture, incarceration as a prisoner of war or in a concentration camp, natural or manmade disasters, severe automobile accidents, or being diagnosed with a life-threatening illness. For children, sexually traumatic events may include developmentally inappropriate sexual experiences without threatened or actual violence or injury. Witnessed events include, but are not limited to, observing the serious injury or unnatural death of another person due to violent assault, accident, war, or disaster or unexpectedly witnessing a dead body or body parts. Events experienced by others that are learned about include, but are not limited to, violent personal assault, serious accident, or serious injury experienced by a family member or a close friend; learning about the sudden, unexpected death of a family member or a close friend; or learning that one's child has a life-threatening disease. The disorder may be especially severe or long lasting when the stressor is of human design (e.g., torture, rape). The likelihood of developing this disorder may increase as the intensity of and physical proximity to the stressor increase.

The traumatic event can be reexperienced in various ways. Commonly the person has recurrent and intrusive recollections of the event (Criterion B1) or recurrent distressing dreams during which the event is replayed (Criterion B2). In rare instances, the person experiences dissociative states that last from a few seconds to several hours, or even days, during which components of the event are relived and the person behaves as though experiencing the event at that moment (Criterion B3). Intense psychological distress (Criterion B4) or physiological reactivity (Criterion B5) often occurs when the person is exposed to triggering events that resemble or symbolize an aspect of the traumatic event (e.g., anniversaries of the traumatic event; cold, snowy weather or uniformed guards for survivors of death camps in cold climates; hot, humid weather for combat veterans of the South Pacific; entering any elevator for a woman who was raped in an elevator).

Stimuli associated with the trauma are persistently avoided. The person commonly makes deliberate efforts to avoid thoughts, feelings, or conversations about the traumatic event (Criterion C1) and to avoid activities, situations, or people who arouse recollections of it (Criterion C2). This avoidance of reminders may include amnesia for an important aspect of the traumatic event (Criterion C3). Diminished responsiveness to the external world, referred to as "psychic numbing" or "emotional anesthesia," usually begins soon after the traumatic event. The individual may complain of having markedly diminished interest or participation in previously enjoyed activities (Criterion C4), of feeling detached or estranged from other people (Criterion C5), or of having markedly reduced ability to feel emotions (especially those associated with intimacy, tenderness, and sexuality) (Criterion C6). The individual may have a sense of a foreshortened future (e.g., not expecting to have a career, marriage, children, or a normal life span) (Criterion C7).

The individual has persistent symptoms of anxiety or increased arousal that were not

present before the trauma. These symptoms may include difficulty falling or staying asleep that may be due to recurrent nightmares during which the traumatic event is relived (Criterion D1), hypervigilance (Criterion D4), and exaggerated startle response (Criterion D5). Some individuals report irritability or outbursts of anger (Criterion D2) or difficulty concentrating or completing tasks (Criterion D3).

### **Specifiers**

The following specifiers may be used to specify onset and duration of the symptoms of Posttraumatic Stress Disorder:

**Acute.** This specifier should be used when the duration of symptoms is less than 3 months.

**Chronic.** This specifier should be used when the symptoms last 3 months or longer.

**With Delayed Onset.** This specifier indicates that at least 6 months have passed between the traumatic event and the onset of the symptoms.

### **Associated Features and Disorders**

**Associated descriptive features and mental disorders.** Individuals with Posttraumatic Stress Disorder may describe painful guilt feelings about surviving when others did not survive or about the things they had to do to survive. Phobic avoidance of situations or activities that resemble or symbolize the original trauma may interfere with interpersonal relationships and lead to marital conflict, divorce, or loss of job. The following associated constellation of symptoms may occur and are more commonly seen in association with an interpersonal stressor (e.g., childhood sexual or physical abuse, domestic battering, being taken hostage, incarceration as a prisoner of war or in a concentration camp, torture): impaired affect modulation; self-destructive and impulsive behavior; dissociative symptoms; somatic complaints; feelings of ineffectiveness, shame, despair, or hopelessness; feeling permanently damaged; a loss of previously sustained beliefs; hostility; social withdrawal; feeling constantly threatened; impaired relationships with others; or a change from the individual's previous personality characteristics.

There may be increased risk of Panic Disorder, Agoraphobia, Obsessive-Compulsive Disorder, Social Phobia, Specific Phobia, Major Depressive Disorder, Somatization Disorder, and Substance-Related Disorders. It is not known to what extent these disorders precede or follow the onset of Posttraumatic Stress Disorder.

**Associated laboratory findings.** Increased arousal may be measured through studies of autonomic functioning (e.g., heart rate, electromyography, sweat gland activity).

**Associated physical examination findings and general medical conditions.** General medical conditions may occur as a consequence of the trauma (e.g., head injury, burns).

### **Specific Culture and Age Features**

Individuals who have recently emigrated from areas of considerable social unrest and civil conflict may have elevated rates of Posttraumatic Stress Disorder. Such individuals may be especially reluctant to divulge experiences of torture and trauma due to their

vulnerable political immigrant status. Specific assessments of traumatic experiences and concomitant symptoms are needed for such individuals.

In younger children, distressing dreams of the event may, within several weeks, change into generalized nightmares of monsters, of rescuing others, or of threats to self or others. Young children usually do not have the sense that they are reliving the past; rather, the reliving of the trauma may occur through repetitive play (e.g., a child who was involved in a serious automobile accident repeatedly reenacts car crashes with toy cars). Because it may be difficult for children to report diminished interest in significant activities and constriction of affect, these symptoms should be carefully evaluated with reports from parents, teachers, and other observers. In children, the sense of a foreshortened future may be evidenced by the belief that life will be too short to include becoming an adult. There may also be "omen formation"-that is, belief in an ability to foresee future untoward events. Children may also exhibit various physical symptoms, such as stomachaches and headaches.

### **Prevalence**

Community-based studies reveal a lifetime prevalence for Posttraumatic Stress Disorder ranging from 1% to 14%, with the variability related to methods of ascertainment and the population sampled. Studies of at-risk individuals (e.g., combat veterans, victims of volcanic eruptions or criminal violence) have yielded prevalence rates ranging from 3% to 58%.

### **Course**

Posttraumatic Stress Disorder can occur at any age, including childhood. Symptoms usually begin within the first 3 months after the trauma, although there may be a delay of months, or even years, before symptoms appear. Frequently, the disturbance initially meets criteria for Acute Stress Disorder in the immediate aftermath of the trauma. The symptoms of the disorder and the relative predominance of reexperiencing, avoidance, and hyperarousal symptoms may vary over time. Duration of the symptoms varies, with complete recovery occurring within 3 months in approximately half of cases, with many others having persisting symptoms for longer than 12 months after the trauma.

The severity, duration, and proximity of an individual's exposure to the traumatic event are the most important factors affecting the likelihood of developing this disorder. There is some evidence that social supports, family history, childhood experiences, personality variables, and preexisting mental disorders may influence the development of Posttraumatic Stress Disorder. This disorder can develop in individuals without any predisposing conditions, particularly if the stressor is especially extreme.

### **Differential Diagnosis**

In Posttraumatic Stress Disorder, the stressor must be of an extreme (i.e., life-threatening) nature. In contrast, in Adjustment Disorder, the stressor can be of any severity. The diagnosis of Adjustment Disorder is appropriate both for situations in which the response to an extreme stressor does not meet the criteria for Posttraumatic Stress Disorder (or another specific mental disorder) and for

situations in which the symptom pattern of Posttraumatic Stress Disorder occurs in response to a stressor that is not extreme (e.g., spouse leaving, being fired).

Not all psychopathology that occurs in individuals exposed to an extreme stressor should necessarily be attributed to Posttraumatic Stress Disorder. Symptoms of avoidance, numbing, and increased arousal that are present before exposure to the stressor do not meet criteria for the diagnosis of Posttraumatic Stress Disorder and require consideration of other diagnoses (e.g., a Mood Disorder or another Anxiety Disorder). Moreover, if the symptom response pattern to the extreme stressor meets criteria for another mental disorder (e.g., Brief Psychotic Disorder, Conversion Disorder, Major Depressive Disorder), these diagnoses should be given instead of, or in addition to, Posttraumatic Stress Disorder.

Acute Stress Disorder is distinguished from Posttraumatic Stress Disorder because the symptom pattern in Acute Stress Disorder must occur within 4 weeks of the traumatic event and resolve within that 4-week period. If the symptoms persist for more than 1 month and meet criteria for Posttraumatic Stress Disorder, the diagnosis is changed from Acute Stress Disorder to Posttraumatic Stress Disorder.

In Obsessive-Compulsive Disorder, there are recurrent intrusive thoughts, but these are experienced as inappropriate and are not related to an experienced traumatic event. Flashbacks in Posttraumatic Stress Disorder must be distinguished from illusions, hallucinations, and other perceptual disturbances that may occur in Schizophrenia, other Psychotic Disorders, Mood Disorder With Psychotic Features, a delirium, Substance-Induced Disorders, and Psychotic Disorders Due to a General Medical Condition.

Malingering should be ruled out in those situations in which financial remuneration, benefit eligibility, and forensic determinations play a role.

### **Diagnostic criteria for 309.81 Posttraumatic Stress Disorder**

- A. The person has been exposed to a traumatic event in which both of the following were present:
  - (1) the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others
  - (2) the person's response involved intense fear, helplessness, or horror. Note: In children, this may be expressed instead by disorganized or agitated behavior
- B. The traumatic event is persistently reexperienced in one (or more) of the following ways:
  - (1) recurrent and intrusive distressing recollections of the event, including images, thoughts, or perceptions. Note: In young children, repetitive play may occur in which themes or aspects of the trauma are expressed.
  - (2) recurrent distressing dreams of the event. Note: In children, there may be frightening dreams without recognizable content.

(3) acting or feeling as if the traumatic event were recurring (includes a sense of reliving the experience, illusions, hallucinations, and dissociative flashback episodes, including those that occur on awakening or when intoxicated). Note: In young children, trauma-specific reenactment may occur.

(4) intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event

(5) physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event

C. Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma), as indicated by three (or more) of the following:

(1) efforts to avoid thoughts, feelings, or conversations associated with the trauma

(2) efforts to avoid activities, places, or people that arouse recollections of the trauma

(3) inability to recall an important aspect of the trauma

(4) markedly diminished interest or participation in significant activities (5) feeling of detachment or estrangement from others

(6) restricted range of affect (e.g., unable to have loving feelings)

(7) sense of a foreshortened future (e.g., does not expect to have a career, marriage, children, or a normal life span)

D. Persistent symptoms of increased arousal (not present before the trauma), as indicated by two (or more) of the following:

(1) difficulty falling or staying asleep

(2) irritability or outbursts of anger .

(3) difficulty concentrating

(4) hypervigilance

(5) exaggerated startle response

E. Duration of the disturbance (symptoms in Criteria B, C, and D) is more than 1 month.

F. The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

*Specify if:*

**Acute:** if duration of symptoms is less than 3 months

**Chronic:** if duration of symptoms is 3 months or more

*Specify if:*

**With Delayed Onset:** if onset of symptoms is at least 6 months after the stressor

### **311 Depressive Disorder Not Otherwise Specified**

The Depressive Disorder Not Otherwise Specified category includes disorders with depressive features that do not meet the criteria for Major Depressive Disorder, Dysthymic Disorder, Adjustment Disorder With Depressed Mood, or Adjustment Disorder



With Mixed Anxiety and Depressed Mood. Sometimes depressive symptoms can present as part of an Anxiety Disorder Not Otherwise Specified. Examples of Depressive Disorder Not Otherwise Specified include

1. Premenstrual dysphoric disorder: in most menstrual cycles during the past year, symptoms (e.g., markedly depressed mood, marked anxiety, marked affective lability, decreased interest in activities) regularly occurred during the last week of the luteal phase (and remitted within a few days of the onset of menses). These symptoms must be severe enough to markedly interfere with work, school, or usual activities and be entirely absent for at least 1 week postmenses.
2. Minor depressive disorder: episodes of at least 2 weeks of depressive symptoms but with fewer than five items required for Major Depressive Disorder.
3. Recurrent brief depressive disorder: depressive episodes lasting from 2 days up to 2 weeks, occurring at least once a month for 12 months (not associated with the menstrual cycle).
4. Postpsychotic depressive disorder of Schizophrenia: a Major Depressive Episode that occurs during the residual phase of Schizophrenia.
5. A Major Depressive Episode superimposed on Delusional Disorder, Psychotic Disorder Not Otherwise Specified, or the active phase of Schizophrenia.
6. Situations in which the clinician has concluded that a depressive disorder present but is unable to determine whether it is primary, due to a general medical condition, or substance induced.

### **Additional Conditions That May Be a Focus of Clinical Attention**

#### **V65.2 Malingering**

The essential feature of Malingering is the intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding military duty, avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs. Under some circumstances, Malingering may represent adaptive behavior - for example, feigning illness while a captive of the enemy during wartime.

Malingering should be strongly suspected if any combination of the following is noted:

1. Medicolegal context of presentation (e.g., the person is referred by an attorney to the clinician for examination)
2. Marked discrepancy between the person's claimed stress or disability and the objective findings
3. Lack of cooperation during diagnostic evaluation and in complying with the prescribed treatment regimen
4. The presence of Antisocial Personality Disorder

Malingering differs from Factitious Disorder in that the motivation for the symptom production in Malingering is an external incentive, whereas in Factitious Disorder external incentives are absent. Evidence of an intrapsychic need to maintain the sick role suggests Factitious Disorder. Malingering is differentiated from Conversion Disorder and other Somatoform Disorders by the intentional production of symptoms and by the obvious, external incentives associated with it. In Malingering (in contrast to Conversion Disorder), symptom relief is not often obtained by suggestion or hypnosis.



- [NDE Home](#)
- [Safety Home](#)
- [Anti-Bullying and Positive Student Behavior HOME](#)
- [Positive Student Behavior](#)
- [Bullying - General Information](#)
- [Program Design and Development](#)
- [Needs Assessment and Evaluation](#)
- [Training/Instruction](#)
- [Prevention and Intervention Strategies](#)
- [Parent Information](#)
- [Resources and Links to Anti-Bullying Websites](#)

## **Anti-Bullying and Positive Student Behavior**

### **Bullying General Information**

Understanding some key components of bullying is important in addressing this issue. These components include, but are not limited to: understanding what bullying is and is not, the need to address issues of bullying, and some characteristics of the people who are involved in bullying.

#### **What bullying is and is not**

##### Definition of Bullying/Harassment

##### Normal Conflict versus Bullying

Conflict is normal. However, bullying is not normal conflict. While "normal" conflict occurs at any place or time, is accidental and often between friends, bullying behaviors generally occur where the person bullying feels safe engaging in power-seeking behavior which is intentionally harmful and directed at someone he or she would not identify as a friend. Because bullying differs from normal conflict, it requires different and specific [prevention and intervention strategies](#).

##### Bullying behaviors

Bullying includes repeated verbal or non-verbal behaviors with the intent to cause physical, emotional/psychological or social harm. Bullying may be direct; for example, hitting, dirty looks, public embarrassment, or extortion. Bullying can also be indirect; for example, electronic messages and websites, gossip and rumors or exclusion. Bullying behaviors that are not addressed generally escalate into more aggressive behaviors over time. These are learned behaviors and can be addressed best by teaching and practicing pro-social behaviors.

#### **Why address the issues of bullying?**

There is now research that supports the position that academic achievement improves for all students when they know they are in a safe learning environment. Conversely, a learning environment that inadvertently supports bullying behaviors may experience a decline in the academic achievement of students who are targeted as well as those who engage in bullying behaviors and who witness bullying. In addition to the impact on academic achievement, other reasons for addressing bullying in school include:

- Guidance/Compliance with state and/or federal policy/legislation
- Professional association resolutions
- Local/district school safety plan and policies
- School reputation and image
- Litigation
- Research on the impact of bullying
- Local/district data
- National data

#### **Those involved in bullying**

- The person(s) who exhibit bullying behaviors (bully, perpetrator)
- The person(s) who exhibit target behaviors (target, victim)

- The person(s) who observe bullying (bystanders, witnesses)

Some characteristics of people who are involved in bullying

Bullies: Many people who bully have learned the behavior in the context of various environments including: family, school, community and culture.

Some general characteristics include the following list.

- Generally average intelligence
- May have solid and positive self-esteem, especially if bullying is valued in the social system.
- Have a small network of friends-wannabes
- Thrive on feelings of dominance-encouraged by targets fighting back
- Lack empathy / compassion and respond with a flat affect
- View targets as objects
- Concerned with own wants and pleasures not the needs and rights of others
- Tend to hurt other kids when adults are not around
- View weaker siblings or peers as prey
- Use blame, criticism, and false allegations
- Refuse to accept responsibility for their actions
- Lack foresight-don't see consequences of behavior
- Crave attention

Targets: A person (or group of persons) who is exposed repeatedly and over time to negative actions on the part of one or more other persons. There are two types of identified targets-passive and provocative.

Passive Targets

- Quiet, sensitive, and cautiously interacts with peers.
- Appear more physically and emotionally weak.
- Difficulty making/keeping friends.
- Lonely and seek solace with pets, books, toys, TV, or computers.
- More comfortable with adults than peers.
- When faced with conflict, may withdraw, run away, break down or cry.
- Lack skills of assertiveness.
- Diminished self-confidence.
- More prone to depression (suicide) and other psycho-social/health problems.

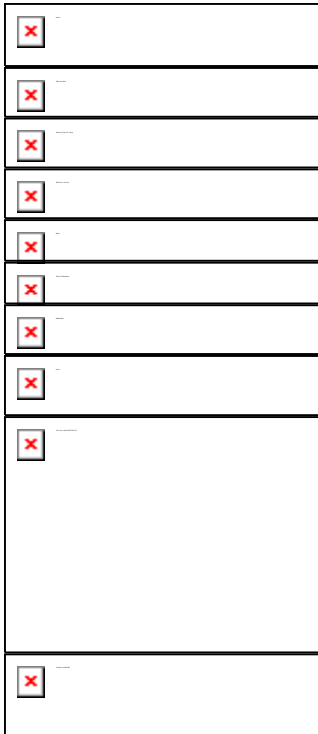
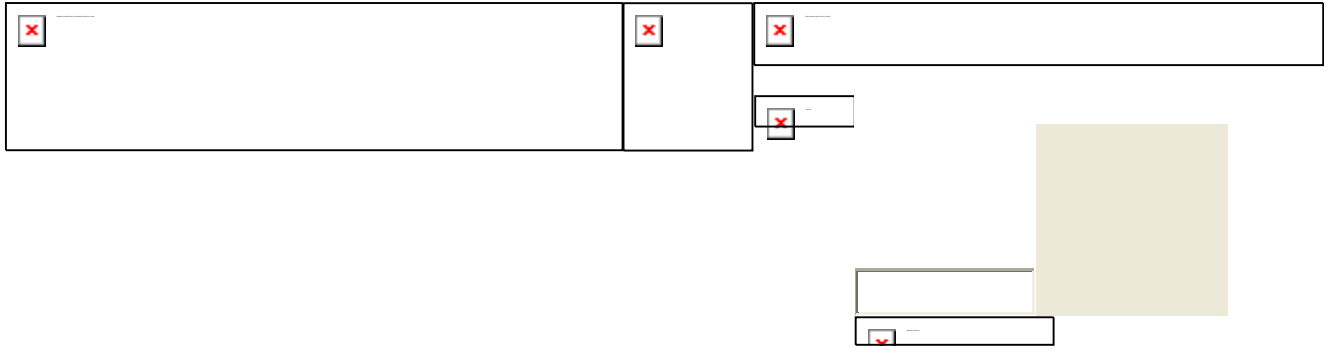
Provocative Targets

- May be labeled as "bully", but actually is a target trying to salvage pride and avenge self.
- Personal qualities seem to invite others picking on them.
- Anxious and insecure.
- May seek younger targets to pick on.
- Instead of shrinking back from conflict, manifest feelings through restlessness.
- Pesky behavior and repeatedly irritate/provoke others.
- May use verbal taunts rather than physical force to "egg on" the situation.
- The significant difference between a provocative target and a bully is that the provocative target *loses in the end*

- Rather than "back down," they are prone to lose the fight.

Bystanders: Bystanders include any person or group of people who witness bullying incidents. Bystanders can be any age and from any population group. Generally, the following characteristics are noted.

- Involved in some capacity in most bullying episodes
- More respectful and friendly toward the bullies than the targets
- Seldom intervene to stop the bullying
- Feel empathy for the target
- Fear becoming a target if associated with target
- Afraid of doing something that will make the situation worse
- Seldom step forward to defend the target unless they also become a target
- May feel guilt for not intervening
- Lack knowledge and skills in how to help or intervene in bully/harassment conflict



## Bullying

This document is also available in a [portable document format](#) (PDF 69 KB).

- [Introduction](#)
- [What You Can Do](#)
- [Helpful Links](#)
- [References](#)

---

### Introduction [top](#)

In the United States, bullying among children and teenagers has often been dismissed as a normal part of growing up. Little attention has been paid to the devastating effects of bullying, or to the connection between bullying and other forms of violence. In recent years, however, students and adults around the country have begun to make a commitment to stop bullying in their schools and communities.

---

### What is bullying?

Bullying includes a wide variety of behaviors, but all involve a person or a group repeatedly trying to harm someone who is weaker or more vulnerable. It can involve direct attacks (such as hitting, threatening or intimidating, maliciously teasing and taunting, name-calling, making sexual remarks, and stealing or damaging belongings) or more subtle, indirect attacks (such as spreading rumors or encouraging others to reject or exclude someone).

---

### How common is bullying?

Almost 30 percent of teens in the United States (or over 5.7 million) are estimated to be involved in bullying as either a

bully, a target of bullying, or both. In a recent national survey of students in grades 6 to 10, 13 percent reported bullying others, 11 percent reported being the target of bullies, and another 6 percent said they bullied others and were bullied themselves.<sup>1</sup>

Limited available data suggest that bullying is much more common among younger teens than older teens. As teens grow older, they are less likely to bully others and to be the targets of bullies.<sup>2</sup>

Bullying occurs more frequently among boys than girls. Teenage boys are much more likely to bully others and to be the targets of bullies. While both boys and girls say others bully them by making fun of the way they look or talk, boys are more likely to report being hit, slapped, or pushed. Teenage girls are more often the targets of rumors and sexual comments.<sup>3</sup> While teenage boys target both boys and girls, teenage girls most often bully other girls, using more subtle and indirect forms of aggression than boys. For example, instead of physically harming others, they are more likely to spread gossip or encourage others to reject or exclude another girl.<sup>4</sup>

---

### **How does bullying affect teens who are the targets of bullies?**

Bullying can lead teenagers to feel tense, anxious, and afraid. It can affect their concentration in school, and can lead them to avoid school in some cases. If bullying continues for some time, it can begin to affect teens' self-esteem and feelings of self-worth. It also can increase their social isolation, leading them to become withdrawn and depressed, anxious and insecure. In extreme cases, bullying can be devastating for teens, with long-term consequences. Some teens feel compelled to take drastic measures, such as carrying weapons for protection or seeking violent revenge. Others, in desperation, even consider suicide.<sup>5,6,7</sup> Researchers have found that years later, long after the bullying has stopped, adults who were bullied as teens have higher levels of depression and poorer self-esteem than other adults.<sup>8</sup>

---

### **Bullying can also affect those teens who witness the bullying.**

In one study of junior high and high school students, over 88 percent said they had witnessed bullying in their schools.<sup>9</sup> Teens who witness bullying can feel guilty or helpless for not standing up to a bully on behalf of a classmate or friend, or

for not reporting the incident to someone who could help. They may experience even greater guilt if they are drawn into bullying by pressure from their peers. Some teens deal with these feelings of guilt by blaming the victim and deciding that he or she deserved the abuse. Teens sometimes also feel compelled to end a friendship or avoid being seen with the bullied teen to avoid losing status or being targeted themselves.<sup>10,11</sup>

---

### **Which teens are most likely to become bullies?**

While many people believe bullies act tough in order to hide feelings of insecurity and self-loathing, in fact, bullies tend to be confident, with high self-esteem.<sup>12,13</sup> They are generally physically aggressive, with pro-violence attitudes, and are typically hot-tempered, easily angered, and impulsive, with a low tolerance for frustration. Bullies have a strong need to dominate others and usually have little empathy for their targets. Male bullies are often physically bigger and stronger than their peers.<sup>14</sup> Bullies tend to get in trouble more often, and to dislike and do more poorly in school than teens who do not bully others. They are also more likely to fight, drink, and smoke than their peers.<sup>15</sup>

Teens who come from homes where parents provide little emotional support for their children, fail to monitor their activities, or have little involvement in their lives, are at greater risk for engaging in bullying behavior. Parents' discipline styles are also related to bullying behavior: an extremely permissive or excessively harsh approach to discipline can increase the risk of teenage bullying.<sup>16</sup>

Surprisingly, bullies appear to have little difficulty in making friends. Their friends typically share their pro-violence attitudes and problem behaviors (such as drinking and smoking) and may be involved in bullying as well.<sup>17</sup> These friends are often followers who do not initiate bullying, but participate in it.<sup>18</sup>

As mentioned above, some teenagers not only bully others but are also the targets of bullies themselves. Like other bullies, they tend to do poorly in school and engage in a number of problem behaviors. They also tend to be socially isolated, with few friends and poor relationships with their classmates.<sup>19</sup>

---

### **What are the long-term consequences of bullying behavior?**



Bullying is often a warning sign that children and teens are heading for trouble and are at risk for serious violence. Teens (particularly boys) who bully are more likely to engage in other antisocial/delinquent behavior (e.g., vandalism, shoplifting, truancy, and drug use) into adulthood. They are four times more likely than nonbullies to be convicted of crimes by age 24, with 60 percent of bullies having at least one criminal conviction.<sup>20</sup>

---

### **What can schools do to stop bullying?**

Effective programs have been developed to reduce bullying in schools. Research has found that bullying is most likely to occur in schools where there is a lack of adult supervision during breaks, where teachers and students are indifferent to or accept bullying behavior, and where rules against bullying are not consistently enforced.<sup>21</sup>

While approaches that simply crack down on individual bullies are seldom effective, when there is a school-wide commitment to end bullying, it can be reduced by up to 50 percent. One effective approach focuses on changing school and classroom climates by: raising awareness about bullying, increasing teacher and parent involvement and supervision, forming clear rules and strong social norms against bullying, and providing support and protection for all students. This approach involves teachers, principals, students, and everyone associated with the school, including janitors, cafeteria workers, and crossing guards. Adults become aware of the extent of bullying at the school, and they involve themselves in changing the situation, rather than looking the other way. Students pledge not to bully other students, to help students who are bullied, and to make a point to include students who are left out.<sup>22</sup>

---

### **What You Can Do [top](#) If You Are Being Bullied...**

1. **Talk to your parents or an adult you can trust, such as a teacher, school counselor, or principal.** Many teens who are targets of bullies do not talk to adults because they feel embarrassed, ashamed, or fearful, and they believe they should be able to handle the problem on their own. Others believe that involving adults will only make the situation worse. While in some cases it is possible to end bullying without adult intervention, in other more extreme cases, it is necessary to involve school officials and

even law enforcement. Talk to a trusted adult who can help you develop a plan to end the bullying and provide you with the support you need. If the first adult you approach is not receptive, find another adult who will support and help you.

2. **It's not useful to blame yourself for a bully's actions.** You can do a few things, however, that may help if a bully begins to harass you. Do not retaliate against a bully or let the bully see how much he or she has upset you. If bullies know they are getting to you, they are likely to torment you more. If at all possible, stay calm and respond evenly and firmly or else say nothing and walk away. Sometimes you can make a joke, laugh at yourself, and use humor to defuse a situation.
3. **Act confident. Hold your head up, stand up straight, make eye contact, and walk confidently.** A bully will be less likely to single you out if you project self-confidence.
4. **Try to make friends with other students.** A bully is more likely to leave you alone if you are with your friends. This is especially true if you and your friends stick up for each other.
5. **Avoid situations where bullying can happen.** If at all possible, avoid being alone with bullies. If bullying occurs on the way to or from school, you may want to take a different route, leave at a different time, or find others to walk to and from school with. If bullying occurs at school, avoid areas that are isolated or unsupervised by adults, and stick with friends as much as possible.
6. **If necessary, take steps to rebuild your self-confidence.** Bullying can affect your self-confidence and belief in yourself. Finding activities you enjoy and are good at can help to restore your self-esteem. Take time to explore new interests and develop new talents and skills. Bullying can also leave you feeling rejected, isolated, and alone. It is important to try to make new friendships with people who share your interests. Consider participating in extra-curricular activities or joining a group outside of school, such as an after-school program, church youth group, or sports team.
7. **Do not resort to violence or carry a gun or other weapon.** Carrying a gun will not make you safer. Guns often escalate conflicts and increase the chances you will be seriously harmed. You also run the risk that the gun may be turned on you or an innocent person will be hurt. And you may do something in a moment of fear or anger you will regret for the rest of your life. Finally, it is illegal for a teen to carry a

handgun; it can lead to criminal charges and arrest.

### **If Someone Else is Being Bullied...**

1. **Refuse to join in if you see someone being bullied.** It can be hard to resist if a bully tries to get you to taunt or torment someone, and you may fear the bully will turn on you if you do not participate, but try to stand firm.
2. **Attempt to defuse bullying situations when you see them starting up.** For example, try to draw attention away from the targeted person, or take the bully aside and ask him/her to "cool it." Do not place yourself at risk, however.
3. **If you can do so without risk to your own safety, get a teacher, parent, or other responsible adult to come help immediately.**
4. **Speak up and/or offer support to bullied teens when you witness bullying.** For example, help them up if they have been tripped or knocked down. If you feel you cannot do this at the time, privately support those being hurt with words of kindness or condolence later.
5. **Encourage the bullied teen to talk with parents or a trusted adult.** Offer to go with the person if it would help. Tell an adult yourself if the teen is unwilling to report the bullying. If necessary for your safety, do this anonymously.

---

#### **Helpful Links [top](#)**

##### **[Addressing the Problem of Juvenile Bullying](#)**

Office of Juvenile Justice and Delinquency Prevention,  
Department of Justice

This fact sheet reviews recent research on bullying and presents information on effective bullying prevention approaches.

##### **[Division of Violence Prevention](#)**

National Center for Injury Prevention and Control, Centers  
for Disease Control and Prevention

This Web site contains a number of fact sheets and publications on youth violence, with links to other valuable resources. It also includes the truth and myths about youth violence, kids' stories, things you can do to avoid violence, and a reading list for teens.

##### **[Bullying In Schools. ERIC Digest](#)**

U.S. Department of Education

This document provides a concise summary of research on

bullying and what we know about effective programs to prevent bullying in schools.

### **Survey on Bullying in U.S. Schools**

National Institute of Child Health and Human Development,  
National Institutes of Health

This news release summarizes the results of a recent national survey of 6th to 10th graders on bullying in U.S. schools.

### **A Teenager's Guide to... Fitting in, Getting involved, Finding yourself**

Family and Youth Services Bureau, Department of Health and Human Services

When times get tough, it's important to know there are people you can count on. The ideas in this booklet can help you learn to deal with tough times and enjoy the good times by finding the people and places that are right for you. You might find these ideas useful in your everyday life. Or read them to see if they might be helpful to a friend.

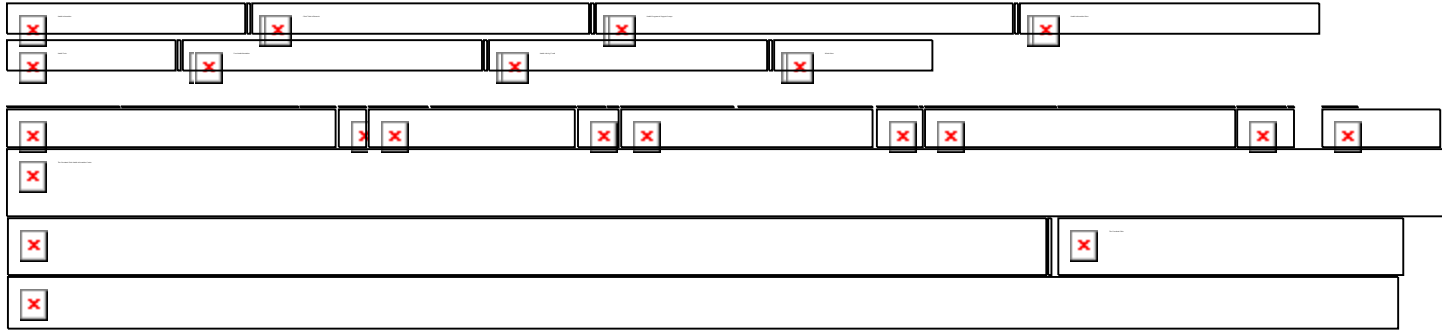
---

#### **References [top](#)**

1. Nansel, T.R., Overpeck, M., Pilla, R.S., Ruan, W.J., Simons-Morton, B., and Scheidt, P. (2001). Bullying behaviors among U.S. youth: Prevalence and association with psychosocial adjustment. [\*Journal of the American Medical Association\*](#), 285(16), 2094-2100.
2. Nansel, T.R., Overpeck, M., Pilla, R.S., Ruan, W.J., Simons-Morton, B., and Scheidt, P. (2001). Bullying behaviors among U.S. youth: Prevalence and association with psychosocial adjustment. [\*Journal of the American Medical Association\*](#), 285(16), 2094-2100.
3. Nansel, T.R., Overpeck, M., Pilla, R.S., Ruan, W.J., Simons-Morton, B., and Scheidt, P. (2001). Bullying behaviors among U.S. youth: Prevalence and association with psychosocial adjustment. [\*Journal of the American Medical Association\*](#), 285(16), 2094-2100.
4. Olweus, D. (1993). [\*Bullying at School: What We Know and What We Can Do\*](#). Cambridge, Massachusetts: Blackwell Publishers, Inc., 19.
5. Egan, S.K. and Perry, D.G. (1998). Does low self-regard invite victimization? *Developmental Psychology*, 34, 299-309.
6. Hodges, E.V.E. and Perry, D.G. (1999). Personal and interpersonal antecedents and consequences of victimization by peers. *Journal of Personality and Social Psychology*, 76, 677-685.
7. Rigby, K. (2001). Health consequences of bullying and its prevention in schools. In J. Juvonen and S. Graham, eds. [\*Peer Harassment in School: The Plight of the Vulnerable and Victimized\*](#). New York, New York: Guilford Press.
8. Olweus D. (1994). Bullying at school: long-term outcomes for the victims and an effective school-based intervention program. In: L.R. Huesmann, ed. [\*Aggressive Behavior: Current Perspectives\*](#). New York, New York: Plenum Press, 97-130.

9. Hoover, J.H., Oliver, R., and Hazler, R.J. (1992). Bullying: Perceptions of adolescent victims in Midwestern USA. *School Psychology International*, 13, 5-16.
10. Olweus, D. (1993). Bullying at School: What We Know and What We Can Do. Cambridge, Massachusetts: Blackwell Publishers, Inc., 43-44.
11. Salmivalli, C. (2001). Group view on victimization: Empirical findings and their implications. In J. Juvonen and S. Graham, eds. Peer Harassment in School: The Plight of the Vulnerable and Victimized. New York, New York: Guilford Press.
12. Nansel, T.R., Overpeck, M., Pilla, R.S., Ruan, W.J., Simons-Morton, B., and Scheidt, P. (2001). Bullying behaviors among U.S. youth: Prevalence and association with psychosocial adjustment. *Journal of the American Medical Association*, 285(16), 2094-2100.
13. Olweus, D. (1993). Bullying at School: What We Know and What We Can Do. Cambridge, Massachusetts: Blackwell Publishers, Inc., 34.
14. Olweus, D. (1993). Bullying at School: What We Know and What We Can Do. Cambridge, Massachusetts: Blackwell Publishers, Inc., 34-43.
15. Nansel, T.R., Overpeck, M., Pilla, R.S., Ruan, W.J., Simons-Morton, B., and Scheidt, P. (2001). Bullying behaviors among U.S. youth: Prevalence and association with psychosocial adjustment. *Journal of the American Medical Association*, 285(16), 2094-2100.
16. Olweus, D. (1993). Bullying at School: What We Know and What We Can Do. Cambridge, Massachusetts: Blackwell Publishers, Inc., 39-43.
17. Nansel, T.R., Overpeck, M., Pilla, R.S., Ruan, W.J., Simons-Morton, B., and Scheidt, P. (2001). Bullying behaviors among U.S. youth: Prevalence and association with psychosocial adjustment. *Journal of the American Medical Association*, 285(16), 2094-2100.
18. Olweus, D. (1978). Aggression in the Schools: Bullies and Whipping Boys. Washington, DC: Hemisphere (Wiley).
19. Nansel, T.R., Overpeck, M., Pilla, R.S., Ruan, W.J., Simons-Morton, B., and Scheidt, P. (2001). Bullying behaviors among U.S. youth: Prevalence and association with psychosocial adjustment. *Journal of the American Medical Association*, 285(16), 2094-2100.
20. Olweus D. (1992). Bullying among schoolchildren: Intervention and prevention. In: R.D. Peters, R.J. McMahon, V.L. Quinsey, eds. Aggression and Violence Throughout the Life Span. London, England: Sage Publications, 100-125.
21. Olweus, D., Limber, S., and Mihalic, S. (1999). Blueprints for Violence Prevention, Book Nine: Bullying Prevention Program. Boulder, Colorado: Center for the Study and Prevention of Violence
22. Olweus, D., Limber, S., and Mihalic, S. (1999). Blueprints for Violence Prevention, Book Nine: Bullying Prevention Program. Boulder, Colorado: Center for the Study and Prevention of Violence.

[Back to Top](#)



## The Changing Face of the Class Bully

The bully. He's tough, ruthless, cunning, merciless, manipulative and mean. He's habitually cruel or overbearing, especially to smaller or weaker people. In the classic depiction, the bully forces his younger classmates to fork over their lunch money. He's a ruffian, a tough kid. He picks fights with other boys and intimidates through fear. But today *he* has competition. Because today's bully is just as likely to be the prettiest girl in the school—and the most popular.

"There is a myth among adults that people don't like bullies, but in the social fabric of kids, many female bullies are highest on the social ladder," says Kathleen M. Quinn, M.D., head, child and adolescent psychiatry, The Cleveland Clinic. "They are powerful and desirable—the Queen Bees."

Bullying typically arises when a popular but insecure girl fears losing her social status because of some newly identified threat. "Female bullying starts in late elementary school and continues through middle school and into early high school, with the peak at age 13," says Dr. Quinn. "It is most likely to become a problem when there is competition for boys, a place on the cheerleading squad or other 'prize' that defines social status."

Sometimes it is a female classmate whose own star is rising; sometimes it is a new female student who captures the boys' attention. The overwhelming desire to maintain power drives some girls to target these "threats" for repeated acts of aggression.

While urban girls often imitate boys by resorting to physical violence, suburban girls inflict harm and distress through verbal intimidation, social isolation and rejection. For instance,

they often enlist the help of friends to torture a victim by sending hate e-mails and notes, ignoring the girl, whispering about her, taunting her and excluding her from social gatherings. Any ploy is fair game, including spreading lies.

"Their methods can be very insidious and slip easily under the radar of adults," says Dr. Quinn. "These girls become adept at looking angelic."

As a consequence, teachers tend to underestimate female bullying as a problem. But according to one report published in spring 2001 by the Henry J. Kaiser Family Foundation in collaboration with Nickelodeon, 75 percent of middle school children say bullying is widespread. Parents may be unaware of its existence or its impact. Yet approximately 160,000 students miss school each day to avoid being bullied. Bullying is a source of clinically relevant depression and anxiety among children; it has even been linked with teen suicide. (Suicide linked to bullying is sometimes called "bullycide.")

### **Who gets bullied?**

Female bullying commonly occurs in the wake of transition: an individual changes schools, elementary kids graduate to middle school, kids change schools because of redistricting or bussing. Such transitions disrupt the existing social structure and the jockeying to re-establish that structure can result in bullying.

"A lot of bullying," says Dr. Quinn, "centers on what you wear, how much you own, what you look like. It occurs during a period when most children are trying to find themselves, and they view the world in black and white. They are either 'in' or 'out.' There is no middle," says Dr. Quinn. In short, there is no room for individuality in these age groups; it's all about belonging.

Not surprisingly, children who are different in appearance, or whose social class or economic status does not match those of the 'in' crowd, are common targets of bullying. At the other end of the spectrum, a girl who possesses an item the bully covets can be a target. For instance, a girl who comes to school with a cool handbag or the newest "in" jeans—items the queen bee wants and doesn't have—can suddenly find several of her peers turning on her.

Ironically, the unsuspecting target of bullying often is an attractive, outgoing girl who transfers into a school and sparks the attention of her male classmates. A queen bee may view this newcomer as a threat. So the bully will cajole her followers to exclude the newcomer from their inner circle, effectively isolating her. Rumors may be started to smear her reputation, with the hope that the boys will lose interest in or even shun her.

Some girls may turn on their best friend for reasons the friend is never told. For instance, just to climb the social ladder and gain acceptance in the "in" crowd, a girl may betray a best friend's trust by revealing to other friends critical comments made in confidence.

### **Resolving problems**

Despite the continued belief in some circles that bullying is a harmless phase of childhood and adolescence, that enduring or standing up to it can "build character" or that ignoring it will make it stop, no studies thus far have demonstrated any evidence that supports such notions. In fact, bullying can have devastating, lasting consequences that affect not only the bully and the victim, but also the community in which the activity occurs. Studies have also

shown, says Dr. Quinn, that bullying can erode school morale and undermine academic performance.

But bullying, says Dr. Quinn, also cries out for adult intervention. That means that adults have to be aware that bullying is common and that sometimes they are in the best position to do something to stop it.

"It is very important for parents and teachers to reflect on whether they are part of the solution or part of the problem," says Dr. Quinn. "Are the kids learning to bully at home? Is ignoring the problem at school making it worse?"

Parents of bullied children need to do their best to document details of the incident (e.g., time and place, participants, possible witnesses, what transpired), present that information to school administrators and ask them to develop a plan of action for resolving the problem. Dr. Quinn also advises parents to compare notes with other parents and even ask for their support in getting school administrators to act.

To be effective, interventions must involve the entire school, says Dr. Quinn, with a no-tolerance policy for bullying coming from the principal. Educational videos, role playing and regularly held school assemblies that focus on preventing bullying can help draw attention to the problem and give students the tools they need to stop it. "Interventions energize groups so that no bullying goes unaddressed," says Dr. Quinn. "The objective is to make bullying unacceptable."

Thankfully, female bullying tends to dissipate with age. As children mature and become more secure, says Dr. Quinn, they are less interested in identifying and ridiculing targets who are "different." They also become more accepting of individuality. By 10<sup>th</sup> grade, the tables turn on the female bully. She becomes the outcast, no longer admired and respected, and ironically, a target for ridicule.

Bullying boys, says Dr. Quinn, may not be so quick to evolve. "The kids who bully throughout high school tend to be those with antisocial tendencies. Some maintain their bullying ways into adulthood, and continue to rule through intimidation. These children badly need to learn how to channel their anger, frustration or contempt in acceptable ways," says Dr. Quinn.

### **If you suspect your daughter is being bullied...**

Many children who are bullied think they have done something wrong, are too embarrassed to talk about the incidents or fear that the rejection by peers will disappoint a parent. Some girls feel that talking to parents will be a waste of time, because they assume the parents will not stand up for them. As a result, many girls endure bullying silently. Warning signs of bullying include:

- Reluctance to go to school
- Tearfulness
- Falling grades
- Frequent visits to the school nurse
- Torn or missing clothes or possessions
- Nightmares, bedwetting or sleep disturbances
- Refusal to use the bathroom at school



- Loneliness

Parents who suspect that all is not well with their daughters should use open-ended questions to broach the topic. For example: "You've been talking about how you don't have any friends. What makes you feel that way?" Depending on the answer, a parent might follow up with, "Is someone mistreating you?" Parents should show concern. If the child will not open up, says Dr. Quinn, parents who experienced bullying as children, or had friends who endured it, can talk about these personal experiences as a means of encouraging children to open up.

### **Selected reading for parents**

*Bullies & Victims: Helping Your Child Survive the Schoolyard Battlefield.* By Suellen Fried and Paul Fried; M Evans & Co. (1994).

*Your Child: Bully or Victim? Understanding and Ending Schoolyard Tyranny.* By Peter B. Sheras, Ph.D; Fireside (2002).

*Odd Girl Out: The Hidden Culture of Aggression in Girls.* By Rachel Simmons; Harcourt (2002).

*Queen Bees and Wannabees: Helping Your Daughter Survive Cliques, Gossip, Boyfriends, and Other Realities of Adolescence.* By Rosalind Wiseman; Crown, 2002.

© Copyright 1995-2005 The Cleveland Clinic Foundation. All rights reserved

This article appears in the **Health Extra Newsletter**. For other articles or for more information about **Health Extra**, [Click Here](#).













[Click here to go to the Department of Psychiatry and Psychology Web site.](#)

[Know someone who could use this information?....send them this link.](#)

**To read more about this and related topics, see:**

[Social Development During the Teen Years](#)

[Adolescents and Depression](#)

             
This information is provided by the Cleveland Clinic and is not intended to replace the medical advice of your doctor or health care provider. Please consult your health care provider for advice about a specific medical condition. For additional written health information, please contact the Health Information Center at the Cleveland Clinic (216) 444-3771 or toll-free (800) 223-2273 extension 43771 or visit [www.clevelandclinic.org/health/](http://www.clevelandclinic.org/health/). This document was last reviewed on: 1/1/2004



We subscribe to the HONcode principles  
[Verify here](#)

The Cleveland Clinic  
Department of Patient Education and Health Information  
9500 Euclid Ave. NA31 Cleveland, OH 44195  
216/444-3771 or 800/223-2273 ext.43771  
healthl@ccf.org  
©The Cleveland Clinic 2006

index#11432

The majority of studies show that the most common type of bullying experienced by both boys and girls is verbal.

<b>Table 1. Common Forms of Bullying</b>		
	<b>Direct bullying</b>	<b>Indirect bullying</b>
<b>Verbal bullying</b>	Taunting, teasing, name-calling	Spreading rumors
<b>Physical bullying</b>	Hitting, kicking, shoving, destruction or theft of property	Enlisting a friend to assault someone for you
<b>Non-verbal/ Non-physical bullying</b>	Threatening, obscene gestures	Excluding others from a group, manipulation of friendships, threatening e-mail

Fleming, M and Towey, K, eds. Educational Forum on Adolescent Health: Youth Bullying. May 2002. Chicago: American Medical Association.

**Find this article on the Internet at:**

<http://www.ama-assn.org/ama1/pub/upload/mm/39/youthbullying.pdf>

# **Bullying**

## **Other Internet Resources**

Safe & Responsive Schools, <http://www.unl.edu/srs/index.html>

Center for the Study and Prevention of Violence, <http://www.colorado.edu/cspv/>

Stop Bullying Now, <http://stopbullyingnow.hrsa.gov/index.asp>

Juvenile Justice Bulletin,  
[http://www.ncjrs.gov/html/ojjdp/jjbul2000\\_04\\_5/contents.html](http://www.ncjrs.gov/html/ojjdp/jjbul2000_04_5/contents.html)

National Youth Violence Prevention Resource Center,  
<http://www.safeyouth.org/scripts/index.asp>

The Prevention Researcher, <http://www.tpronline.org/articles.cfm?subjectID=43>

Kid Source Online,  
<http://www.kidsource.com/kidsource/content3/bullies.k12.2.html>

School Bully Online, <http://www.bullyonline.org/schoolbully/index.htm>

Stop School Bullying, [http://www.kzoo.edu/psych/stop\\_bullying/index.html](http://www.kzoo.edu/psych/stop_bullying/index.html)

National Association of School Psychologists,  
[http://www.naspcenter.org/factsheets/bullying\\_fs.html](http://www.naspcenter.org/factsheets/bullying_fs.html)

# NEBRASKA HIGH SCHOOL MOCK TRIAL RULES

## I. RULES OF THE COMPETITION

<b>A. THE PROBLEM</b> .....	<b>81-82</b>
1 Rules	
2 The Problem	
3 Witness Bound by Statements	
4 Invention of Facts	
5 Gender of Witnesses	
6 Voir Dire	
<b>B. THE TRIAL</b> .....	<b>82-85</b>
7 Team Eligibility	
8 Team Composition	
9 Team Presentation	
10 Team Duties	
11 Swearing of Witnesses	
12 Trial Sequence and Time Limits	
13 Timekeeping	
14 Time Extensions and Scoring	
15 Prohibited Motions	
16 Sequestration	
17 Bench Conferences	
18 Supplemental Material/Illustrative Aids	
19 Trial Communication	
20 Viewing a Trial	
21 Videotaping/Photography	
<b>C. JUDGING</b> .....	<b>85-86</b>
22 Decisions	
23 Composition of Panel	
24 Score Sheets/Ballots	
25 Courtroom Decorum	
26 Pre-Trial Conferences	
27-29 Reserved for future use	
<b>D. DISPUTE RESOLUTION</b> .....	<b>86-87</b>
30 Reporting a Rule Violation/Inside the Bar	
31 Dispute Resolution Procedure	
32 Effect of Violation on Score	
33 Reporting a Rule Violation/Outside the Bar	

## II. RULES OF PROCEDURE

<b>A. BEFORE THE TRIAL</b> .....	<b>87</b>
34 Team Roster	
35 Stipulations	
36 The Record	

<b>B.</b>	<b>BEGINNING THE TRIAL</b> .....	<b>88</b>
	37 Jury Trial	
	38 Standing during Trial	
	39 Objection during Opening Statement/Closing Argument	
<b>C.</b>	<b>PRESENTING EVIDENCE</b> .....	<b>88-89</b>
	40 Argumentative Questions	
	41 Lack of Proper Predicate/Foundation	
	42 Procedure for Introduction of Exhibits	
	43 Use of Notes	
	44 Redirect/Recross	
<b>D.</b>	<b>CLOSING ARGUMENTS</b> .....	<b>89</b>
	45 Scope of Closing Arguments	
<b>E.</b>	<b>DEBRIEFING/CRITIQUE</b> .....	<b>89</b>
	46 The Debriefing/Critique	
<b>III.</b>	<b>THE FEDERAL RULES OF EVIDENCE (Mock Trial Version)</b>	
	<b>ARTICLE I. GENERAL PROVISIONS</b> .....	<b>90</b>
	101 Scope	
	102 Purpose and Construction	
	<b>ARTICLE II. JUDICIAL NOTICE</b> .....	<b>90</b>
	<b>ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS</b> .....	<b>90</b>
	<b>ARTICLE IV. RELEVANCY AND ITS LIMITS</b> .....	<b>90-92</b>
	401 Definition of "Relevant Evidence"	
	402 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible	
	403 Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time	
	404 Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes	
	405 Methods of Proving Character	
	406 Habit; Routine Practice	
	408-409 Reserved for future use	
	410 Inadmissibility of Pleas, Plea Discussions, and Related Statements	
	<b>ARTICLE V. PRIVILEGES</b> .....	<b>92</b>
	501 General Rule	
	<b>ARTICLE VI. WITNESSES</b> .....	<b>92-94</b>
	601 General Rule of Competency	
	602 Lack of Personal Knowledge	
	607 Who May Impeach	
	608 Evidence of Character and Conduct of Witness	
	609 Impeachment by Evidence of Conviction of Crime	
	610 Religious Beliefs or Opinions	

611	Mode and Order of Interrogation and Presentation	
612	Writing Used to Refresh Memory	
613	Prior Statements of Witnesses	
<b>ARTICLE VII. OPINIONS AND EXPERT TESTIMONY .....</b>		<b>94-95</b>
701	Opinion Testimony by Lay Witness	
702	Testimony by Experts	
703	Bases of Opinion Testimony by Experts	
704	Opinion on Ultimate Issue	
705	Disclosure of Facts or Data Underlying Expert Opinion	
<b>ARTICLE VIII. HEARSAY .....</b>		<b>95-98</b>
801	Definitions	
802	Hearsay Rule	
803	Hearsay Exceptions, Availability of Declarant Immaterial	
804	Hearsay Exceptions; Declarant Unavailable	
805	Hearsay within Hearsay	
<b>ARTICLE X. CONTENTS OF WRITING, RECORDINGS AND PHOTOGRAPHS.....</b>		<b>98</b>
<b>ARTICLE XI. OTHER .....</b>		<b>98</b>
1103	Title	

## I. RULES OF THE COMPETITION

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

### A. THE PROBLEM

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

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

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

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

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

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

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

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

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

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

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

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



### Cross and Recross Examination

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

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

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

### Rule 5. Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender. In certain years the Nebraska case may have a specific gender witness role. This may be portrayed by any student on the team.

### Rule 6. Voir Dire

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

## **B. THE TRIAL**

### Rule 7. Team Eligibility

Each team competing in the Nebraska High School Mock Trial Project must be comprised of students from one school who are registered in grades 9-12 in a Nebraska public or private school. Schools may enter as many teams as they can effectively organize and properly supervise. [Special permission may be granted for two schools to register a combined team. Contact the State Mock Trial Coordinator.]

Participation by an ineligible team member shall result in forfeiture of each trial in which the ineligible team member participated.

To be a part of the competition, schools must register their teams by completing and mailing the Official Mock Trial Entry Form to the State Coordinator, along with a check for **\$35 PER TEAM** (made payable to the Nebraska State Bar Foundation) no later than September 11, 2006. Also by September 22, 2006, each school should forward to the Regional Coordinator, a school activities calendar for October and November.

### Rule 8. Team Composition

Teams may consist of a *minimum* of *six* and a **maximum** of **eight** students. Only **SIX** members may participate in any given trial. The duties of the two alternate team members may be assigned at the discretion of the coaches. Team members from one team within a school may not be members of another team. Student timekeepers may be provided, but are not considered "official timekeepers" unless so designated by the trial judge.

### Rule 9. Team Presentation

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

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

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

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

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

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

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

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

Each team must call three witnesses. Witnesses shall be called only by their own team. Witnesses shall be examined by both teams. Witnesses may not be recalled by either team.

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

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

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

### **Rule 12. Trial Sequence and Time Limits**

The trial sequence shall be as follows:

1. Prosecution's opening statement
2. Defense's opening statement
3. Prosecution's direct examination and Defense's cross-examination of Prosecution's two witnesses
4. Defense's direct examination and Prosecution's cross-examination of Defense's three witnesses
5. Prosecution's direct examination and Defense's cross-examination of Prosecution's third witness
6. Prosecution's closing argument
7. Defense's closing argument

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

### **Time Limits**

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

Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial, except as allowed by this rule.

### **Rule 13. Timekeeping**

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

### **Rule 14. Time Extensions and Scoring**

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the presiding judge, the scoring judges may determine individually whether or not to deduct points in a category because of the overrun in time.

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

No motions may be made. For example, a motion for directed verdict, acquittal, or dismissal of the case at the end of the Prosecution's case may not be used. A motion for a recess may be used only in the event of an emergency. Should a recess be called, team members are to remain in place and shall not communicate with any observers, timekeepers, coaches, or instructors regarding the trial.

### **Rule 16. Sequestration**

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

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

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

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

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

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

Teacher sponsors, attorney coaches, non-participating team members, 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 participating in the trial may, among themselves,

communicate during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

Non-participating team members, teacher sponsors, attorney coaches, and observers must remain outside the bar in the spectator section of the courtroom. Only team members participating in the particular trial may sit inside the bar.

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

#### *Local and Regional Trials*

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

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

#### *State and National Championships*

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

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

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

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

## **C. JUDGING**

### **Rule 22. Decisions**

All decisions of the judging panel are FINAL.

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

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

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

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

**Rule 24. Score Sheets/Ballots**

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

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

**Rule 25. Courtroom Decorum**

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

**Rule 26. Pre-trial Conferences**

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

**D. DISPUTE RESOLUTION**

**Rule 30. Reporting a Rule Violation Occurring During The Trial**

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

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

**Rule 31. Dispute Resolution Procedure**

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

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

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

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

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

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

**II. RULES OF PROCEDURE**

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

**A. BEFORE THE TRIAL**

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

**Rule 34. Team Roster**

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

**Rule 35. Stipulations**

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

**Rule 36. The Record**

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

## **B. BEGINNING THE TRIAL**

### **Rule 37. Jury Trial**

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

### **Rule 38. Standing During Trial**

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

### **Rule 39. Objection During Opening Statement/Closing Argument**

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

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

## **C. PRESENTING EVIDENCE**

### **Rule 40. Argumentative Questions**

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

### **Rule 41. Lack of Proper Predicate/Foundation**

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

### **Rule 42. Procedure for Introduction of Exhibits**

As an example, the following steps effectively introduce evidence.

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

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

**Rule 43. Use of Notes**

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

**Rule 44. Redirect/Recross**

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

**D. CLOSING ARGUMENTS**

**Rule 45. Scope of Closing Arguments**

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

**E. DEBRIEFING/CRITIQUE**

**Rule 46. Debriefing/Critique**

The judging panel is allowed 15 minutes for debriefing. Presiding judges shall limit debriefing sessions to the 15 minutes total time allotted.

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

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

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

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

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



## **Article I. General Provisions**

### **Rule 101. Scope**

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

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

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

## **Article II. Judicial Notice**

Not Applicable

## **Article III. Presumptions in Civil Actions and Proceedings**

Not applicable

## **Article IV. Relevancy and its Limits**

### **Rule 401. Definition of "Relevant Evidence"**

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

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

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

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

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

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

(a) **Character Evidence.** Evidence of a person's character or character trait, is not admissible to prove action regarding a particular occasion, except:

(1) **Character of accused.** Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;

(2) **Character of victim.** Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;

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

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

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

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

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

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

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

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

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

(1) a plea of guilty which was later withdrawn;

(2) a plea of nolo contendere;

(3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or

(4) any statement made in the course of plea discussions made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in

fairness, be considered with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

## **Article V. Privileges**

### **Rule 501. General Rule**

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

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

## **Article VI. Witnesses**

### **Rule 601. General Rule of Competency**

Every person is competent to be a witness.

### **Rule 602. Lack of Personal Knowledge**

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

### **Rule 607. Who may Impeach**

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

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

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

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

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

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

*(this rule applies only to witnesses with prior convictions.)*

(a) **General Rule.** For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) **Time Limit.** Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence

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

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

(e) Not applicable.

**Rule 610. Religious Beliefs or Opinions**

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

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

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

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

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

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

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

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

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

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

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

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

### **Article VII. Opinions and Expert Testimony**

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

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

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

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

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

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

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

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

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

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

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

## **Article VIII. Hearsay**

### **Rule 801. Definitions**

The following definitions apply under this article:

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

(b) Declarant. A "declarant" is a person who makes a statement.

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

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

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

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

## **Rule 802. Hearsay Rule**

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

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

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

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

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

(3) Then existing mental, emotional, or physical conditions. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believe unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purposes of medical diagnosis or treatment. Statements made for the purpose of medical diagnosis or treatment.

(5) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.

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

(22) Judgment of previous conviction. Evidence of a judgment finding a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain

the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

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

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

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

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

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

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

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



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

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

**Rule 805. Hearsay within Hearsay**

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

**ARTICLE X. Contents of Writing, Recordings and Photographs**

Not applicable.

**ARTICLE XI. Other**

**Rule 1103: Title.**

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



## TRIAL SCORING & DEDUCTION OF POINTS

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

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

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

### Example A:

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

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

### Example B:

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

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

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

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

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

**PRESIDING JUDGE'S SCORE SHEET**

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

Prosecution: \_\_\_\_\_

Defense: \_\_\_\_\_

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

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

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

**PERFORMANCE EVALUATION**

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

CIRCLE ONE:            Prosecution    OR    Defense

COMMENTS (optional):

---

---

---

---

---

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

\_\_\_\_\_  
Date

**PERFORMANCE JUDGE'S SCORE SHEET**

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

Prosecution: \_\_\_\_\_

Defense: \_\_\_\_\_

Name of School

Name of School

Rate the performance of each team member on a scale of 1 to 10, recording one score in each box.

Do **NOT** use fractions. 1-2= not effective 3-4= fair 5-6= good 7-8= excellent 9-10= outstanding

Ballot		Prosecution	Defense
<b>Opening statements</b>		( )	( )
<b>Prosecution first witness</b>	Direct Examination	( )	
	Cross Examination		( )
	Witness Performance	( )	
<b>Prosecution second witness</b>	Direct Examination	( )	
	Cross Examination		( )
	Witness Performance	( )	
<b>Prosecution third witness</b>	Direct Examination	( )	
	Cross Examination		( )
	Witness Performance	( )	
<b>Defense first witness</b>	Direct Examination		( )
	Cross Examination	( )	
	Witness Performance		( )
<b>Defense second witness</b>	Direct Examination		( )
	Cross Examination	( )	
	Witness Performance		( )
<b>Defense third witness</b>	Direct Examination		( )
	Cross Examination	( )	
	Witness Performance		( )
<b>CLOSING ARGUMENTS</b>		( )	( )
<b>TEAM TOTALS</b> (add scores in each column)		( )	( )

Please deliver ballot to coordinator before critique.

Tiebreaker (in case of tie, circle the party that won this round.)  
**PROSECUTION**                      **DEFENSE**

\_\_\_\_\_  
 (Signature of Judge)

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

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

**Factors to Consider in Scoring**

**OPENING STATEMENTS**

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

**DIRECT EXAMINATION**

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

**CROSS EXAMINATION**

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

**WITNESSES**

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

**CLOSING ARGUMENTS**

Summarized the evidence; emphasized the supporting points of their own case and damaged the opponent's; concentrated on the important, not the trivial; applied the applicable law; and responded to the judge's questions with poise.

## CONSTRUCTIVE CRITIQUES

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

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

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

Humor is a welcome tension reliever during the critique.

Your comments should bear in mind the educational goals of the mock trial project.

Remember that you are helping *educate, guide and nurture* these young people. Treat them with the respect you expect to receive from them.

Encourage questions during the critique.

Be realistic about the legal system. It is not perfect.

Let students see you as a real human being. Share your interests, concerns, and satisfactions.

Remember you are a role model for the students and an ambassador for your profession.

Maintain eye contact.

Keep your critique to the time suggested (15 minutes for the entire panel).

Let your personality come across. Let students know that not all attorneys use the same methods and techniques. Differences of opinions regarding style of trial presentations are common.

### POSITIVE APPROACHES FOR SUGGESTIONS TO STUDENTS

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

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

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

### **DO NOT:**

Criticize students for their dress.

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

Talk down to students.

**DISPUTE RESOLUTION FORM -- INSIDE THE BAR**

*(See Rules 30 & 33)*

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

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

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

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

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

---

---

---

---

---

---

---

---

---

---

**PRESIDING JUDGE**

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

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

---

---

---

---

**OR**

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

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

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



DISPUTE RESOLUTION FORM -- INSIDE THE BAR

(Page Two)

Opposing sides' RESPONSE TO DISPUTE.

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

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

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

---

---

---

---

---

---

---

---

---

---

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

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

---

---

---

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

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

DISPUTE RESOLUTION FORM -- OUTSIDE THE BAR

(See Rule 33)

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

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

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

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

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

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

**COORDINATOR** (please print)

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

If received, the response is attached to this form.

My decision in the dispute is

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

I have notified all pertinent parties of my decision.

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

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

## 2006-2007 MOCK TRIAL COORDINATORS & REGIONS

### REGION 1

**Coordinator:** **Honorable G. Glenn Camerer**, County Court  
Scotts Bluff County Courthouse  
1725 10th St.  
Gering, NE 69341-2446  
**(308) 436-6648**  
Fax: (308) 436-6759

Counties: Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan and Sioux

### REGION 2

**Coordinators:** **Neleigh N. Korth**  
P.O. Box 29  
Ogallala, NE 69153  
**(308) 284-2091**  
Fax: (308) 284-0886  
[nkorth@kc911.net](mailto:nkorth@kc911.net)

**James Korth**  
P.O. Box 119  
Ogallala, NE 69153  
**(308) 284-4001**  
Fax: (308) 284-8319  
[korthjames@hotmail.com](mailto:korthjames@hotmail.com)

Counties: Arthur, Dawson, Grant, Hooker, Keith, Lincoln, Logan, McPherson and Thomas

### REGION 3

**Coordinators:** **Honorable Edward D. Steenburg**  
P.O. Box 358  
Ogallala, NE 69153  
**(308) 284-3693**  
Fax: (308) 284-6825  
[edward.steenburg@courts.ne.gov](mailto:edward.steenburg@courts.ne.gov)

**Karen Wilson**, Clerk Magistrate  
P.O. Box 222  
Grant, NE 69140-0222  
**(308) 352-4415**  
Fax: (308) 352-4700  
[karen.wilson@courts.ne.gov](mailto:karen.wilson@courts.ne.gov)

**Honorable David W. Urbom**  
P.O. Box 477  
Arapahoe, NE 68922-0477  
**(308) 345-4539**  
Fax: (308) 345-7907  
[dave.urbom@courts.ne.gov](mailto:dave.urbom@courts.ne.gov)

Counties: Chase, Dundy, Frontier, Furnas, Gosper, Hayes, Hitchcock, Perkins and Red Willow

**REGION 4**

**Coordinator:** **Honorable Mark D. Kozisek**  
Brown County Courthouse  
P.O. Box 105  
Ainsworth, NE 69210-0105  
**(402) 387-2162**  
Fax: (402) 387-0918  
[mkoz@threeriver.net](mailto:mkoz@threeriver.net)

Counties: Boyd, Brown, Cherry, Holt, Keya Paha, and Rock

**Coordinator:** **Tami K. Schendt**  
431 South 10th Street  
Broken Bow, NE 68822  
**(308) 872-6327**  
Fax: (308) 872-6988  
[custeratty@yahoo.com](mailto:custeratty@yahoo.com)

Counties: Blaine, Custer, Garfield, Greeley, Howard, Loup, Sherman, Valley, and Wheeler

**REGION 5**

**Coordinators:** **Honorable Teresa K. Luther**  
Hall County Courthouse  
111 W. 1st Street  
Grand Island, NE 68801-6016  
**(308) 385-5666**  
Fax: (308) 385-5669  
[tluther@hcgi.org](mailto:tluther@hcgi.org)

**Nicole M. Mailahn**  
P.O. Box 1060  
Kearney, NE 68848-1060  
**(308) 234-5579**  
Fax: (308) 234-9305  
[nmailahn@jonlaw.com](mailto:nmailahn@jonlaw.com)

Counties: Buffalo & Hall

**Coordinator:** **Bradley J. White**  
P.O. Box 942  
Hastings, NE 68902-0942  
**(402) 462-8035**  
Fax: (402) 463-8280  
[bradley.j.white@wellsfargo.com](mailto:bradley.j.white@wellsfargo.com)

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

**REGION 6**

**Coordinators:** **Honorable Donna Farrell Taylor**  
PO Box 65  
Neligh, NE 68756-0065  
**(402) 887-4650**  
Fax: (402) 887-4160  
[judgetaylor7jdcc@yahoo.com](mailto:judgetaylor7jdcc@yahoo.com)

**Honorable John E. Samson**  
PO Box 1237  
Fremont, NE 68025-1237  
**(402) 727-2780**  
Fax: (404) 727-2773

**Honorable Kenneth Vampola**  
428 North Broad  
Fremont, NE 68025  
**(402) 727-2755**  
Fax: (402) 727-2762  
[judgevamp@aol.com](mailto:judgevamp@aol.com)

Counties: Antelope, Burt, Cedar, Cuming, Dakota, Dixon, Dodge, Knox, Madison, Pierce, Stanton, Thurston, Washington and Wayne

**REGION 7**

**Coordinator:** **Honorable Robert R. Steinke**  
Platte County Courthouse  
P.O. Box 1188  
Columbus, Nebraska 68602-1188  
**(402) 563-4956**  
Fax: (402) 562-6718  
[Kay -- 563-4953]  
[judgers@megavision.com](mailto:judgers@megavision.com)

Counties: Boone, Colfax, Merrick, Nance, and Platte

**Coordinators:** **Honorable Michael J. Owens**  
Box 201  
Aurora, NE 68818-0201  
**(402) 694-6334**  
Fax: (402) 694-6619  
[judgeowens@hamilton.net](mailto:judgeowens@hamilton.net)

**Honorable Linda C. Senff**  
P.O. Box 27  
Central City, NE 68826  
**(402) 946-2812**  
Fax: (402) 946-3838  
[lcslaw@hamilton.net](mailto:lcslaw@hamilton.net)

Counties: Butler, Hamilton and Polk

**REGION 8**

**Coordinator:** **Honorable Robert O'Neal**  
1210 Golden Gate Drive, Suite 2165  
Papillion, NE 68046-2890  
**(402) 593-5920**  
Fax: (402) 593-2221  
[boneal@sarpy.com](mailto:boneal@sarpy.com)

Counties: Cass, Otoe, and Sarpy

**REGION 9**

**Coordinator:** **Honorable Vicky L. Johnson**  
P.O. Box 865  
Wilber, NE 68465-0865  
**(402) 821-2823**  
Fax: (402) 821-3179  
[judgejohnson@diodecom.net](mailto:judgejohnson@diodecom.net)

Counties: Fillmore, Gage, Jefferson, Johnson, Nemaha, Pawnee, Richardson, Saline and Thayer

**REGION 10**

<b>Coordinators:</b> <b>Honorable John A. Colborn</b> 575 South 10 <sup>th</sup> Street Lincoln, NE 68508 <b>(402) 441-7303</b> Fax: (402) 441-6190 <a href="mailto:jcolborn@ci.lincoln.ne.us">jcolborn@ci.lincoln.ne.us</a>	<b>Honorable Laurie J. Yardley</b> 575 South 10 <sup>th</sup> Street Lincoln, NE 68508 <b>(402) 441-7275</b> Fax: (402) 441-6055
---	--

Counties: Lancaster, Saunders, Seward and York

**REGIONS 11 & 12**

**Coordinators:** **Susanne Dempsey**  
1904 Farnam Street, #400  
Omaha, NE 68102  
**(402) 933-7456**  
Fax: (402) 933-6691  
[sdempsey@incontrolaw.com](mailto:sdempsey@incontrolaw.com)

County: Douglas

## NEBRASKA STATE BAR FOUNDATION

### Officers

Dean G. Kratz, Omaha, President  
Robert H. Berkshire, Omaha, Vice President  
Gary W. Radil, Omaha, Secretary  
Charles E. Wright, Lincoln, Treasurer  
Kile W. Johnson, Lincoln, Assistant Treasurer

### Board of Directors

Hon. C. Arlen Beam, Lincoln	*Richard A. Knudsen, Lincoln
Patricia J. Bramhall, Papillion	William R. Kutilek, Lincoln
Charlotte J. Conner, Valley	William J. Mueller, Lincoln
Dale C. Crandall, Burwell	Michael G. Mullin, Omaha
Linda R. Crump, Lincoln	Robert E. O'Connor, Jr., Omaha
*Thomas M. Davies, Lincoln	William R. Reinsch, Plattsmouth
William G. Dittrick, Omaha	Jane L. Schoenike, Lincoln, Ex-Officio
Thomas B. Fischer, Omaha	Richard E. Shugrue, Omaha
Nancy S. Freburg, Kearney	Robert A. Skochdopole, Omaha
*Keith I. Frederick, Omaha	Bruce I. Smith, Grand Island
Stanley C. Goodwin, McCook	Galen E. Stehlik, Grand Island
Charles F. Gotch, Omaha	Hon. Lyle E. Strom, Omaha
*Deryl F. Hamann, Omaha	*George E. Svoboda, Fremont
Daniel D. Jewell, Norfolk	Nancy A. Svoboda, Omaha
*Harold W. Kay, North Platte	*Charles Thone, Lincoln

\*Past Presidents

### Staff Members and Contact Information

Doris J. Huffman, Executive Director  
Cindy Lilleoien, Law-Related Education Consultant  
Verna Weber, Program Assistant  
Mary Grieser, Law-Related Education Administrative Assistant

P.O. Box 95103  
Lincoln, NE 68509-5103  
Phone: (402) 475-1042  
Fax: (402) 475-7106  
Email: [doris@nebarfnd.org](mailto:doris@nebarfnd.org)  
Website: [www.nebarfnd.org](http://www.nebarfnd.org)