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Civility

You may have seen trials portrayed in the movies and TV shows in which the lawyers show, or barely conceal, contempt for one another and even towards the judge. This makes for good drama, but real trials are rarely conducted in this manner, and should never be.

The general duty of an attorney is set forth in the Ohio Rules of Professional Conduct, which are adopted by the Supreme Court of Ohio and govern the conduct of all Ohio attorneys. The Preamble to the Rules reads, in part, as follows:

As an officer of the court, a lawyer not only represents clients but has a special responsibility for the quality of justice. * * * A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. *** In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the legal system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

Specific provisions of the Ohio Rules of Professional Conduct require an attorney to: be punctual in fulfilling professional commitments, avoid offensive tactics, and treat all persons involved in the legal process with courtesy and consideration [Rule 1.2(a)]; be honest in all dealings with courts and other tribunals before which the attorney appears [Rules 3.3 and 3.5]; refrain from asking questions that have no purpose other than to embarrass or harass a witness or other person [Rule 4.4(a)]; refrain from engaging in undignified or discourteous conduct that is degrading to a tribunal [Rule 3.5(a)(6)]; and avoid conduct involving dishonesty, fraud, deceit, or misrepresentation or conduct that is prejudicial to the administration of justice [Rule 8.4(c) and (d)].

Students who participate as attorneys in the Ohio High School Mock Trial Program should strive to follow these principles of civility while representing the interests of their clients, and can expect the scoring judges to be favorably impressed as a result. The failure to maintain civility can be expected to have a negative impact on the scoring judges.

With the rare exception where a student is portraying a witness who might genuinely require some departure from the high standards of civility set for the legal profession, it will usually be more effective for a witness to respond courteously to the attorneys' questions, not to interrupt the attorney, and to wait while an attorney interposes an objection to the question just put to the witness. It is never a good idea, no matter how obstreperous the character being portrayed, for a witness to show disrespect to the court.

As for the attorneys, not only is civility expected, it can be surprisingly effective. Being civil does not mean being a push-over. Stridency often distracts from the inherent forcefulness of the argument being made. Cross-examination does not have to be badgering to be thorough and effective to the point where the witness's testimony is completely discredited; indeed, a badgering tone may only engender sympathy for the witness.

It is expected that advisors, coaches, and parents will, at all times, model civil behavior towards and respect for the court and members and supporters of the opposing team.

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THE OHIO CENTER FOR LAW-RELATED EDUCATION 2012 OHIO MOCK TRIAL COMPETITION MANUAL

Introduction

Ohio Mock Trial provides an opportunity for high school students to participate in an academic competition. The Ohio Mock Trial Competition is designed to foster a better understanding of the American democratic legal system and to encourage development of analytical and communication skills. In moving from the classroom to the courtroom, high school students add an important dimension to their learning experience in citizenship education. Students develop an appreciation for our justice system and the role of laws in our society. Through first-hand experience, the Mock Trial Competition can teach students about their rights and responsibilities under the Constitution. The Mock Trial experience prepares students for possible future involvement as parties, witnesses and jurors in trials; familiarizes students with the rules and procedures involved in litigation and the roles and responsibilities of judges and attorneys. The Mock Trial Competition also develops students' critical thinking skills, poise and public speaking ability. By working in partnership with the legal community, teachers and students learn how our legal system works and learn important democratic principles reflected in and protected by our justice system.

COMPETITION TERMS

The following list presents important terms to know to participate in the Ohio Mock Trial Competition. A glossary of legal terminology can be found at the back of the case section of this notebook.

Case Introduction: A narrative setting forth the facts of the case; it may not be used for purposes of impeachment during the trial.

Debriefing: A discussion by the judicial panelists of the teams' and individual performances.

Deliberations: A consideration of team performances by the judicial panel, which determines the results of the trial.

District Competition: The first round of competition run by volunteer district coordinators in which each team participates in two trials, one as plaintiff, and one as the defense. The district winners (teams who have won BOTH trials) advance to the regional competition.

Judicial Panelist: An attorney, judge, or magistrate who volunteers to evaluate teams participating in the competition.

Legal Advisor: An attorney, or judge who volunteers to coach teams participating in the competition.

Pretrial Conference: A brief meeting of judicial panelists, legal advisors, teachers and student attorneys before each trial to address questions and unresolved issues.

Regional Competition: The second round of competition run by volunteer regional coordinators in which each team that advances from the district competition will participate in two trials, one as plaintiff, and one as the defense. The regional winners (teams that have won BOTH trials) advance to the state competition.

State Competition: Rounds of competition take place in Columbus. The teams that won BOTH regional trials compete with teams from across the state. Teams are guaranteed one trial. Winning teams (see exception page 8, section I, letter A) keep advancing until two teams remain to compete in the Championship Round.

Simplified Ohio Rules of Evidence: Rules regarding the admission and exclusion of evidence.

Team: A group of 5-11 students from a school are called upon to present both the plaintiff and defense sides of the Mock Trial case using students as attorneys, witnesses and bailiff/timekeeper.

CASE INTRODUCTION

This year the Ohio Center for Law-Related Education presents to you State of Ohio v. Storm Jackson. In this year's case a college freshman is accused of stealing prescription drugs while attending two real estate open houses and while visiting at the houses of two friends. The Defendant, Storm Jackson, and his parents' names were on a sign in list at both of the open houses. Without a warrant, the Glenn Police Department subpoenaed and obtained Storm Jackson's cell phone GPS records, then arrested him. Storm Jackson has filed a motion to suppress, claiming that the evidence seized was the result of an improper search and seizure that violated his Fourth Amendment rights.

The State of Ohio is the Prosecution in this lawsuit. The Prosecution will argue that Storm Jackson's Motion to Suppress should be denied because no Fourth Amendment search took place with regard to his GPS records.

The Defendant, Storm Jackson, is challenging the use of the GPS evidence in court through a Motion to Suppress. The defense will argue that Jackson's Motion to Suppress should be granted because the Fourth Amendment protects GPS information obtained from the defendant's private cell phone.

Your job is to present the strongest evidence and the best legal arguments that can be offered on one side or another in the hypothetical factual scenario provided in these case materials. The attorneys who have prepared the case materials have based this case upon actual court decisions, with an eye toward framing the facts of this case in a manner that is evenly balanced between the arguments of the Prosecution and the Defendant. You should not rely on any court decisions or other legal information beyond that provided to you in these case materials.

The Ohio Center for Law-Related Education and the Case Committee for State of Ohio vs. Storm Jackson hope you will find this case challenging and thought provoking. It is our hope that

this case will give you a greater understanding of the Fourth Amendment to the United States Constitution.

It is also our hope that all who participate in the High School Mock Trial competition will have a great experience, and we want to take this opportunity to go over with you a few brief competition reminders. It is expected that advisors, coaches, and parents will, at all times, model civil behavior towards and respect for the court and members and supporters of the opposing team. Also, please remember that the competition coordinators and judges are volunteers who have taken time out of their schedules to participate in this program. Understand, as it is in authentic trial situations, that judges may demonstrate different degrees of preparedness and may make rulings at their discretion that the parties may not always agree or like. We urge the Mock Trial participants to be flexible and understanding throughout the competition process.

Best wishes and Good Luck!

The 2011-2012 High School Mock Trial Case Committee

PART ONE

2012 RULES OF COMPETITION

I. Competition Structure

- A. Competition consists of two trials at the district level, two trials at the regional level, and at least one trial at the state level. OCLRE staff has the option of providing two trials after determining how many teams will be present at the State Competition. If there is odd number of teams present at the district, regional or state competition, a team with an adequate number of team members will be scheduled to play both Plaintiff and Defense at the same time in order to create an even number. If after the completion of Trial 1 and Trial 2 at the state competition, the number of teams advancing is more than 8 or 16, Trial 3 will be used for a Play-in Round to reduce the number of advancing teams to 8 or 16. Teams participating in the Play-In Round will be drawn at random from the pool of advancing teams. For example, if 11 teams advance from Trial 2, then Trial 3 would have 3 matchups with 6 teams and 5 teams will automatically move on to Trial 4. From the 6 teams that compete in the Play-In Round, the 3 winning teams will join the 5 teams that automatically advanced, for a total of 8 teams in Trial 4. Play-In Round participants will be announced the morning of Day 2 at the State Competition. If after the completion of Trial 1 and Trial 2 at the State Competition, the number of teams advancing is 5, 6, or 7, the number of teams necessary to bring the remaining number of teams to 8 shall be selected at random from the group of teams with one loss to complete the quarterfinals bracket. The remaining 8 teams will then proceed with Trial 3 of the state competition. If after the completion of Trial 1 and Trial 2 at the State Competition the number of teams advancing is 4, Trial 3 will be held as the semi-final round with the remaining 4 teams. If after the completion of Trial 1 and Trial 2 at the State Competition the number of teams advancing is 3, 1 team will be selected at random from the group of teams with one loss to bring the remaining number of competing teams to 4. If after the completion of Trial 1 and Trial 2 at the State Competition the number of teams advancing is 2, Trial 3 will be held as the State Final trial. If after the completion of Trial 1 and Trial 2 at the State Competition the number of teams advancing is 1, that one advancing team will be named the State Champion and no further trials will be played. If after the completion of Trial 1 and Trial 2 at the State Competition the number of teams advancing is 0, 8 teams will be selected at random from the group of teams with one loss to complete the quarterfinals bracket and Trial 3 will be played with 8 teams.
- B. In the district and regional competitions, each team will participate in two trials and will play both Plaintiff and Defense. District site assignments and competition times will be released on **Friday, January 06, 2012**. The Center will attempt to provide teams with side playing first information **no earlier than** two days before the district, regional and state competition. This information will be sent by email to team and legal advisors. Be aware that changes can be made to side playing first up until the start of the trial without notice due to unforeseen circumstances (eg. the addition or drop of teams or weather). No side playing first requests will be considered for any reason. The district/regional coordinator will not under any circumstances shift teams and times on the day of the competition. Regional and State competition sites and times will be released after the District Competition. Courtroom assignments will be provided to teams at registration. Opponents will not be released in advance. At the State Competition, teams will advance in a single elimination tournament. Winners will play winners and losing teams will not advance (see exception page 8, section I, letter A). Advancing teams will be matched at random, and to the greatest extent possible, each side played in the previous trial switched. Scrimmage arrangements are the responsibility, and at the discretion of, the teacher. **Note: Please keep in mind when scrimmaging with a team in your area, you could meet them again in competition.**
- C. If a team has questions on the mock trial case or competition rules only the team and/or legal advisor may submit questions to the case and competition committees by contacting Addie

Natalie, Mock Trial coordinator, at 877-485-3510 or anatalie@ocltre.org. The question will be forwarded to the case or competition committee depending on the nature of the question, and if necessary, the answer will be posted on an errata sheet which can be found at www.ocltre.org. The errata sheet will be updated every TWO WEEKS, beginning Tuesday, October 4, 2011 and ending on Tuesday, January 24, 2012. The LAST DAY to submit a question is Tuesday, January 17, 2012.

- D. After the district competition, score sheets from the district competition will be sent to teams advancing to the regional competition. Individual team score sheets for all teams from all levels of competition will be provided no later than one month after the end of the State competition: April 10, 2012.
- E. The state champion earns the right to represent Ohio in the National High School Mock Trial Competition, if one is held, and will receive a stipend from the Ohio Center for Law-Related Education to help defray expenses for national competition. If the state champion team decides to represent Ohio in the National High School Mock Trial Competition, all state championship team members **MUST** be given the option of attending. If a team member is unable to attend for any reason, a written note must be provided to OCLRE by the student and the principal of the participating high school before the stipend will be sent. OCLRE understands that the winning team may need to add members to complete a roster for the national competition, and team members may be added as needed from the winning school. If team members are added, they must be confirmed by contacting OCLRE before the stipend will be sent. The winning team should contact OCLRE following the state competition to receive further information.

II. Competition Day Logistics

- A. Teachers must report to the registration table to register the team and to turn in an Official Team Roster. Teams will receive score sheets upon check-in at the district, regional and state competition. Please fill out your teams' relevant information on **ONE score sheet when playing Plaintiff and TWO score sheets when playing Defense**. Upon meeting with the other team you will exchange score sheets and fill in the needed information before the judges meet with you. **DO NOT SEPARATE THE SCORESHEET COPIES**. Score sheets must be filled out identifying team members and their roles. Teams will receive their courtroom assignment after the roster is turned in at registration.
- B. Teams will fill out the score sheets prior to the pretrial conference. This requires the cooperation of teams, advisors, and legal advisors.
- C. Teams (including team and legal advisors and others associated with and supporting the competing teams) may not observe other trials but team members may view their own team members' trials when they themselves are not competing.
- D. Teams may videotape their own trials at the presiding judge's discretion. Videos may be shared only with the teams featured in the specific videos.
- E. Teams may not use a lap top computer during the Mock Trial competition.
- F. The competition will run as scheduled **RAIN** or **SHINE**. The only way to guarantee that a team will compete is to arrive at an open competition site. Teams travel to and from Mock Trial at their own risk, and each team's advisor must determine whether it is safe for the team to travel to the competition site. The Ohio Center for Law-Related Education is not responsible for the safety of team members who travel to or from the Mock Trial competition. Teams **MUST** immediately contact the OCLRE office **and** the district/regional/state coordinator if weather or any other reason prevents their participation. In the event that a significant number of teams are not able to compete due to weather at the district or regional competitions, the OCLRE will make an effort to provide a suitable make-up competition for those teams, but cannot guarantee this will occur. If a make-up competition occurs, it will be scheduled within seven days of the original competition date established by OCLRE and teams may have to travel and compete on a weekend. If a team drops out of competition after district or regional

schedules have been released, the team must fax the Drop Form to both OCLRE and the district or regional coordinator.

- G. If a situation develops whereby a team is left without an opponent, eg. their scheduled opponent withdraws from the competition at the last moment, teams already competing at that site will be expected to fill in. If a team can play both sides at the same time, it will be assigned to do so and then the team members are finished for the day. The second round will be shortened by one trial. If there are no teams that can fill in, then a third trial will be scheduled between the two teams that were left without opponents.
- H. All students should wear a nametag (name only) so the judges can identify them. Witnesses should wear the name of the character they play. All others should wear their own names. It is the responsibility of the team to bring nametags with them.
- I. Team and legal advisors are the **ONLY** individuals from each team who may approach a site district/regional/state coordinator or volunteer with questions or concerns.

III. Eligibility for Competition

- A. Teams entering the Ohio Mock Trial Competition will be guided in the current case by a team advisor and an attorney, both of whom shall be rostered. The Ohio Center for Law-Related Education believes the teams should be teacher-driven to insure that educational standards are met. The attorney enriches the students' knowledge by providing essential in-depth understanding of the law and its role in democracy. Teams wishing to make an exception must apply in writing to the OCLRE staff. Decisions will be made by the OCLRE Board of Trustees.
- B. An official Competition Registration Form, team roster, signed behavior standards form and registration fee for each team must be returned to the OCLRE office postmarked by **Friday, December 2, 2011**. **A confirmation will be sent from OCLRE to the email address on the registration form. If the Competition Registration Form and Roster are returned AFTER Friday, December 2, 2011 each team registered will be penalized a late registration fee of \$30. If the Competition Registration Form is returned AFTER Tuesday, January 3, 2012 the team will be able to compete only on a space available basis and, if allowed to compete, will be penalized a late registration fee of \$30. If no spaces become available, the entire registration fee will be returned to the team.**
- C. It is understood that changes to the team roster may occur due to unforeseen circumstances. Please send in a revised roster as it becomes available. Team advisors though are **NOT** allowed to switch team members from the same school between teams if those teams are assigned to different competition sites **AFTER** the district placements are announced on Friday, January 06, 2012. No roster additions will be permitted for **ANY** reason after the district competition occurring on Friday, February 3, 2012, though advisors are able to drop team members if necessary. If you must update your roster after sending in your registration form please mail, email or fax a revised roster to the OCLRE office, and we will accommodate you to the best of our ability.
- D. A school may enter more than one team. Every effort will be made to accommodate second, third or more teams, although teams who are able to travel may be assigned to travel to other competition sites. All teams will be matched at random at district, regional and state competitions with the exception that two teams that play each other in one trial cannot be paired against each other in the following trial. If possible, no more than 50% of teams in a district competition site will be from the same school. If the majority of the teams assigned to one competition site are from the same school, the Center will make an effort to select a team(s) at random to travel to a Center selected location to compete.
- E. In order to compete, all teams must be accompanied on site, at the district, regional and state competitions, by a teacher or school official, legal advisor or other designated adult. If a school has more than one team, each team must be subject to the supervision of a designated adult who can adequately supervise the team's behavior. While the supervisor does not need to be in the room at all times, he or she must be available to respond promptly if there is a need. The adult

shall be listed on the team roster as the "designated adult supervisor." Failure to comply with this rule may, at the discretion of the coordinator in charge of the competition, be grounds for disqualification.

- F. The Center can, upon request, make revisions to materials and the competition format to accommodate students with I.E.P.'s and/or 504 plans.

IV. Team Membership and Roles

A. A mock trial team consists of a minimum of five to a maximum of eleven students (including alternates) on the official roster from the same high school, a team advisor, and a legal advisor. The team will have two attorneys (two different students), two witnesses (two different students), and a bailiff/timekeeper, playing Plaintiff and Defense sides of the case. If for any reason, including illness or other commitments, your team drops below the minimum number of students (five) your team will forfeit its right to continue in the competition. This is without exception. If a school has more than one team, an individual student can be listed and serve on only one team. Members of the team must be listed on the Official Team Roster that is turned in **with the competition registration form. Only those students listed on the Official Team Roster may participate in District, Regional and State Competition.** Although the team members must remain the same between the District, Regional and State competition, the members may change the parts they play. It is strongly suggested that a school submit a complete roster of eleven team members. A student at a school which does not have a mock trial team may compete at another area high school only with permission of both schools and the OCLRE.

B. A student may play one role per side. Students may change roles when presenting the other side of the case. The roles are as follows:

<u>Plaintiff</u>	<u>Defense</u>
Attorney	Attorney
Attorney	Attorney
Witness	Witness
Witness	Witness
Bailiff and/or Timekeeper (Official)	Timekeeper (to assist with running clock)

Each team must call two witnesses. Each team must have a student serve as bailiff & timekeeper during the trial. Each team must use two attorneys for each side played. Each attorney must conduct a direct and cross-examination and an opening or closing statement. Only the attorney who conducts the direct examination of witnesses may raise objections during the cross-examination of that witness.

4. All team members and any props or uniforms must pass through local courtroom security. As a general rule, courtroom security will not allow any weapon or object that looks like a weapon into the courthouse. Be sure to leave adequate time and be prepared to comply with courthouse security.
5. A timekeeper will be supplied by both teams and **must** use **ONLY** the provided time cards in the competition manual, timekeeper's sheet and two stopwatches.

If a time-keeping discrepancy of **more than 15 seconds** is discovered between the plaintiff and defense teams' timekeepers, the timekeepers should notify the presiding judge as soon as the discrepancy is discovered. In this event, one of the timekeepers should stand, wait to be recognized, and say "Your honor, we have a time discrepancy of more than 15 seconds." The presiding judge will ask the nature of the discrepancy and then rule on the discrepancy before the trial continues. Once the presiding judge rules, the timekeepers shall synchronize their stop watches to match the ruling of the presiding judge. The decisions of the presiding judge regarding timing disputes are

final, and no timekeeping disputes will be entertained after the trial has concluded.
Timing will begin at the Opening Statement, after the introductions are made.

- C. The student presentations should be the work product of the students themselves, guided, of course, by the teacher and legal advisor. It is important that presentations be the student's work rather than having the student simply memorize the words prepared by an adult.

V. Legal Advisors

- A. Teachers and legal advisors should work together to prepare the team for competition. The Ohio Center for Law-Related Education will help locate a local attorney, judge, or legal professional, if asked. **A legal advisor must be rostered.**
- B. A legal advisor can help the team as a constructive observer and critical teacher listening, suggesting, and demonstrating to the team. A legal advisor should:
 1. Discuss the legal issues raised in the case;
 2. Answer questions that students may have concerning general trial practices;
 3. Explain the reasons for the sequence of events/procedures found in the trial;
 4. Listen to the students' approach to the case;
 5. Discuss general strategies and raise key questions regarding the enactment;
 6. Explain the role of judges and the decision-making process.

VI. Judging and Scoring Guidelines

- A. Every effort will be made to provide each trial with a three judge panel, all of whom will complete score sheets. In some instances a trial may have to move forward with only two judges. If this scenario occurs and the two judges split on which team won the trial, the judges will add up each team's total points. If a split still persists the scoring judge's decision will be the determining score. The judicial panel will hear the trial as a "bench trial." This is not a jury trial and students should address the Court and not a jury. One judge will serve as the presiding judge and will control the courtroom and rule on motions and objections. The other judges will serve as scoring judges and evaluate the team and individual performances. All attempts will be made not to have the same judicial panel assigned to judge the same team more than one time.
- B. All judges will receive a bench brief, competition rules and scoring procedures.
- C. If judicial robes are available, judicial panelists are asked to wear the robe during competition.
- D. Only the presiding judge is to speak during a trial. The presiding judge's comments are limited to ruling on objections and do not include questioning witnesses or counsel.
- E. The trial will be judged based on individual and team performance, not the merits of the case.
- F. Attorney and witness awards will be based on the scoring judges' points added together and are not to be considered as "consolation" prizes. If there is a tie between the scoring judges' points on a three judge panel, the Presiding Judges points will be considered to break the tie. If a tie still exists the scoring judges will make the decision based on a general consensus. In a two judge panel the attorney and witness awards will be based on both judges points added together. If a tie exists on a two judge panel, the scoring judge will decide the winner.

Scoring Process

1. Each judge will evaluate each team member on a scale of 1-6. The team will be scored on a 2-12 point scale for its overall performance.
 - a. **At the district, regional and state trials**, each judge will score individual and team performances using whole numbers only. The team that earns the most points on an individual judge's score sheet is the winner of that ballot. A judge **CANNOT** have a tie between the two teams. If both scoring judges agree on the winner, that team will advance. If the scoring judges do not agree on the winner, the presiding judge's ballot will also be considered, with the team receiving the majority of the three ballots winning the trial.
 - b. All teams who win both of their trials, determined by receiving two ballots per trial, will advance in competition from districts to regionals and regionals to states.
 - c. **At the state competition**, teams will be eliminated after they lose one trial, though OCLRE retains the authority to allow each team to compete in two trials depending on the number of teams advancing to the state competition. Each scoring judge will score individual and team performances (must use whole numbers) and add the points at the end of the trial. A judge **CANNOT** have a tie between the two teams. If both scoring judges agree on the winner, that team will advance. If the scoring judge ballots are split, the presiding judge ballot will determine which team wins and therefore advances.

SCORING JUDGE RUBRIC

VII. Scoring Benchmarks

A. Scoring Judge Rubric

1. Attorney Performance Indicators:
 - ✓ *Advocacy skills:* creative, organized and convincing presentation
 - ✓ *Understanding of legal issues:* ability to apply law and facts to case
 - ✓ *Oratorical skills:* poised, able to think on feet, extemporaneous delivery
 - ✓ *Dememeanor/Professionalism/Civility*
 - ✓ *Mastery of trial technique:* effective use of objections, appropriate form of questioning, ability to recognize and rehabilitate own weaknesses, mitigate opponent's good points
 - ✓ Did not ask questions that called for an unfair extrapolation from the witness
 - ✓ Did not make excessive, unnecessary objections when the invention of fact had no material impact.
 - ✓ *Opening statement:* provided case overview, identified theory of the case, discussed the burden of proof, stated the relief requested and was non-argumentative
 - ✓ *Closing argument:* continued theory of the case introduced in opening statement, summarized the evidence, applied the applicable law, discussed the burden of proof, concentrated on the important - not the trivial, and overall was persuasive
 - ✓ *Complies with Competition Rules*
2. Witness Performance Indicators:
 - ✓ Knowledge of case facts and theory of team's case
 - ✓ Observant of courtroom decorum
 - ✓ Believability of characterization and convincing in testimony
 - ✓ Avoided unnecessarily long and/or non-responsive answers on cross examination
 - ✓ Articulate and responsive
 - ✓ Did not make unfair extrapolations
 - ✓ Complies with Competition Rules

Points Performance Evaluation Criteria

6	Exceptional	Exhibits mastery of all procedural and substantive elements
5	Very Good	Proficient in most procedural and substantive elements. Significantly advances team effort
4	Good	Moderately comfortable with procedural and substantive elements of the trial. Helps team on the whole
3	Fair	Lacks polish. Imprecise use of procedural and substantive trial elements
2	Weak	Does not advance team effort. Minimal comprehension of procedural and substantive elements
1	Poor	NO evidence of procedural and substantive elements

3. Team Effort Indicators:

- ✓ Did the team establish a credible theme for its argument?
- ✓ Did the team select appropriate witnesses to prove the argument?
- ✓ Was witness examination organized?
- ✓ Did witness examination develop the argument?
- ✓ Was the team's case carefully crafted and skillfully delivered?
- ✓ Complies with Competition Rules

4. Penalties

If a majority of the judging panel determines that there has been a material violation of a competition rule that affected the fairness of the trial, 5 points shall be deducted from the offending team's score on each judge's score-sheet. If the panel believes that a 5-point penalty is insufficient given the seriousness of the violation, the panel shall consult with the Competition Committee, which may impose additional sanctions including, but not limited to, disqualification. One example of a material rules violation warranting a serious penalty would be communication between team members and their teacher or legal advisor, whether through signals, notes, or electronically. All objections must be made before the presiding judge retires to deliberate; after that, complaints may be made only after the competition in writing using the complaint form. Such complaints will not alter the decisions of the judicial panel.

PART TWO

PROCEDURAL RULES OF MOCK TRIAL COMPETITION

I. Trial Rules and Procedures

A. Preparation

The case and competition sections of the Ohio Mock Trial notebook contain all materials necessary to participate in the competition. Students playing the roles of attorneys may make appropriate use of the case materials, including the legal briefs, the Judge's Order and all of the witness statements, subject to all other applicable rules of the mock trial competition. However, this does not include the case introduction, which is not considered a formal part of the case materials. For purposes of the mock trial, all documentary facts are stipulated as admissible evidence so they need not be formally introduced in court. Supplemental materials are also provided to help teachers teach the case and explain the legal issues and procedures involved. These materials may not be introduced into the trial; they are for educational purposes only.

If a legal citation is referred to in the case, it may be utilized in development of the legal theory and cited. However, only facts and information given about that citation in the case materials may be communicated to the court.

For example, if the Defendant's brief states,

"The Fourth Amendment to the United States Constitution protects a person from uninvited governmental intrusions when that person has a legitimate expectation of privacy that society is willing to recognize as reasonable. Katz v. United States, 389 U.S. 347 (1967); O'Connor v. Ortega, 480 U.S. 709 (1987),"

and the case law provided in Mock Trial Case materials includes Katz but not O'Connor, then teams may use the full Katz case. However, they may not use any part of O'Connor which is not quoted or summarized by the case materials.

It is the responsibility of the mock trial team to present and advocate the law and facts of the case to the judges. As in real life, the mock trial team should not assume judges know the facts of the case.

B. Time Limits

1. A trial is scheduled for two hours including all activities beginning with the pretrial conference and ending with the closing of court. The presiding judge will enforce the time limit and may, at his/her discretion, grant a time extension in the interest of fairness.
2. Each team must supply a student timekeeper. However, the team playing the Plaintiff side will supply the Official Timekeeper. Both teams may flash the cards provided in the manual in such a way that all participants can see them.
3. ***Timing will begin at the Opening Statement, after the introductions are made.***
4. If a time-keeping discrepancy of **more than 15 seconds** is discovered between the plaintiff and defense teams' timekeepers, the timekeepers should notify the presiding judge as soon as the discrepancy is discovered. In this event, one of the timekeepers should stand, wait to be recognized, and say "Your honor, we have a time discrepancy of more than 15 seconds." The presiding judge will ask the nature of the discrepancy and then rule on the discrepancy before the trial continues. Once the presiding judge rules, the timekeepers shall synchronize their stop watches to match the ruling of the presiding judge. The decisions of the presiding judge regarding timing disputes are final, and no timekeeping disputes will be entertained after the trial has concluded.
5. The time clock will stop for objections and responses.
6. The timekeeper will guide the judge's comments by showing a 1:00 minute card and a stop card 11 minutes and 12 minutes into the judge's comments.

C. Courtroom Setting

1. Plaintiff counsel on the right (facing bench).
2. Defendant's counsel on the left (facing bench).
3. Witnesses behind counsel tables.
4. Judges on the bench (or, if necessary, in the jury box).
5. Bailiff in front of the bench.
6. The Timekeepers (unless also acting as bailiff) and video camera person in the jury box, if possible.
7. Teachers and legal advisors behind the teams.

D. Conduct During Trial and Trial Sequence

1. The presiding judge controls the courtroom. He/She may ask anyone to leave, if necessary. Teams may videotape their own trials at the presiding judge's discretion. Videos may be shared only with the teams featured in the specific videos.
2. Until closing arguments have concluded, team attorneys may communicate only with each other. During the post-trial objection phase of the trial attorneys may communicate with the witnesses, bailiff and timekeeper performing in the actual round. However, none of the performing team members may communicate in any way with teachers, legal advisors, team members not performing in that round or any other observers once the judicial panelists enter the courtroom and the bailiff opens the court. *This restriction includes breaks during the trial.*
3. If a team prepares a third witness for trial that they do not call, that third witness may not participate in the trial in any way including, but not limited to, sitting with the other witnesses and conferring during the trial.
4. Attorneys may speak from a lectern in the center of the courtroom, if one is available. **Lecterns or other furnishings may not be moved into or out of any courtroom at any time.** The Plaintiff's side is responsible for returning the lectern and chairs to original position inside the courtroom following the trial. At the discretion of the presiding judge, attorneys may walk about the courtroom. The preference of the presiding judge should be raised and determined at the pre-trial conference.
5. No furnishing/equipment may be moved into the courtroom. Not all courtrooms are equipped with the same furnishings; therefore, blackboards and other visual aids may not be used. The rule on exhibits prevails.
6. The trial, including judges' comments, should not last longer than two hours.
7. Preparing Ballots for Pretrial Conference
Prior to the pre-trial conference, both teams roster the ballots for the round. This requires the teams to disclose which witnesses they will be calling. Teams must also disclose which segment of the trial each attorney will perform. All information will be recorded in the (3) three ballots provided (2) two for the scoring judges and (1) one for the presiding judge. These completed ballots will be given to the judicial panel at the pre-trial.
8. Pretrial Conference (10 minutes)
Student attorneys will participate in a pretrial conference with their judicial panelists. Teachers, legal advisors and/or designated adult supervisors are encouraged to attend. This brief orientation will include a discussion of competition rules and any questions raised by the participants. No motions will be entertained during the pre-trial conference. Pretrial conference may occur at the judge's bench or in a separate room if available at the judges' discretion. Rostered score sheets will be given to the judicial panel at the pre-trial. The Official Timekeeper will be identified and all time cards approved by the presiding judge.

9. Opening the Court
When the judicial panelists enter the courtroom, the bailiff opens the court by saying:
“All rise. Hear ye, hear ye, the U.S. District Court for the Middle District of Ohio [or whatever the name of the court may be], Mock City, Ohio [or whatever town in which the court is located] is open pursuant to adjournment. All having business before this honorable court draw near, give attention, and you shall be heard. You may be seated.”
10. Opening Statements (4 minutes maximum per statement)
The presiding judge should ask counsel for the Plaintiff to make an opening statement. Plaintiff counsel should introduce themselves and their team members and the roles they are playing and then present the opening statement. The same procedure is used with Defendant’s counsel. The timekeeper will stop, then reset, the stopwatch to zero after opening statements.
11. Swearing in Witnesses
a. The bailiff swears in with:
“Will all witnesses and parties who are to give testimony in these proceedings please step to the front?”
b. Then the bailiff holds up his/her right hand and says:
“Please raise your right hand. Do you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth and your testimony will comply with the Rules of the Ohio Mock Trial Competition?”
c. Witnesses answer and sit down. They will remain in the courtroom during the trial.
d. No motion for separation of witnesses will be entertained.
12. Testimony of Witnesses (Direct/redirect 20 minutes; Cross/recross 18 minutes)
a. Counsel for the Plaintiff and Defense will each call two witnesses. Plaintiff attorneys must call plaintiff witnesses and Defense attorneys must call Defense witnesses.
b. Counsel for the Plaintiff will present his/her case first. The presiding judge will ask counsel for Plaintiff to call the first witness. The witness will then testify in the following examination sequence:
Direct
Cross
Redirect
Recross
When the Plaintiff’s counsel calls the second witness, the witness will be called to the stand and the procedure repeated.
c. The presiding judge will then ask counsel for Defense to call his/her first witness. Defense follows the same procedure as the Plaintiff.
d. Witnesses are bound by their written statements and should not be assumed to have knowledge of facts set forth in the legal briefs, Judge’s Order, the statements of other witnesses.
e. Witness statements may be used by counsel to impeach a witness or refresh a witness’s memory in accordance with the Mock Trial Simplified Rules of Evidence. Witnesses may not, however, bring witness statements or notes to use as a trial aid during testimony.
f. Fair extrapolations are permitted only during cross-examination if they are (i) consistent with the facts contained in the case materials and (ii) do not materially affect the witness’s testimony. If a witness invents an answer that is

likely to affect the outcome of the trial, the opposition may object. **Teams that intentionally and frequently stray outside the case materials will be penalized.**

- g. If an attorney who is cross-examining a witness asks a question, the answer to which is not included in the witness's written statement or deposition, the witness is free to "create" an answer as long as it is not contrary to the statement. If the answer is contrary to the statement, the cross-examination attorney may impeach the witness.

13. Exhibits:

Only exhibits that are part of the case materials may be used as visual aids.

If used, the exact page from the case materials may be reproduced on 8 ½ x 11 paper, but not bound in plastic or modified in any way. The trial proceedings are governed by the Simplified Ohio Rules of Evidence found in this casebook.

14. Closing Arguments (5 minutes maximum each, with an additional 2 minutes Plaintiff rebuttal)

The presiding judge will allow attorneys two minutes (no longer) before closing arguments to incorporate results from cross or to collect their thoughts. During this time the timekeepers will stop both stopwatches and reset to zero. No one shall leave the courtroom and all rules on communication during the trial prevail. The presiding judge will ask Plaintiff's and Defendant's counsel if they are ready to present his/her closing arguments. Counsel for the Plaintiff will present his/her closing argument first, followed by Defense's closing argument. Counsel for the Plaintiff has the option of a two minute rebuttal after Defense's closing argument. These two minutes do not have to be requested in advance. The optional rebuttal is limited to the scope of the Defense's closing argument.

15. Objections During the Trial

In addition to evidentiary objections, objections may be made during the trial by an attorney who believes that any rule set forth in the Rules of Competition has been violated. For example, if an exhibit is mounted or modified, the other team's attorney may state an objection. Similarly, if an attorney observes what appears to be communication between a team and their teacher during trial, the attorney may state an objection. In making these objections, the procedure set forth for stating evidentiary objections (Simplified Ohio Rules of Evidence and Common Objections) should be followed. As with evidentiary objections, the objection must be made at the time of the claimed violation, and the attorneys knew or should have known of the violation. The presiding judge may make rulings as appear appropriate, including prohibiting use of an exhibit that has been modified, requiring compliance with the rule, admonishing individuals or teams, deducting penalty points from the team's score (such deductions to be done only by the entire panel during post-trial deliberations;), etc. All judges will not interpret the rules and guidelines the same way. The judge's decision, however, is final, and no appeals procedure is available. The clock stops for objections and judge's ruling.

16. Post-Trial Objections

After closing arguments are completed, and after the scoring judges have been excused to begin deliberation in chambers, the presiding judge will ask, "Does either team have serious reason to believe that a material violation of any rule has occurred during this trial? I will remain on the bench for three minutes, during which time any protest or objection may be brought to my attention by a team attorney. The team attorneys may communicate with all performing team members (witnesses, bailiff and timekeeper)

involved in this actual round but may not communicate in any way with legal advisors, teachers, or anyone outside their performing team members.”

- a. Motions for directed verdict or dismissal of the case are not permitted.
- b. Objections that could have been raised during the trial, including evidentiary objections, may not be raised at this time.

If no objection is made within three minutes, the presiding judge will mark his/her score sheet and then retire to assist with deliberations. If there is an objection, one of the attorneys for the team will stand and state the objection and the ground for objection. The judge may conduct an inquiry in the manner he/she deems appropriate; the judge in his/her discretion may solicit a response and/or inquire further into the facts. The presiding judge does not announce a finding but retires to assist with deliberations. The presiding judge then consults with the scoring judges and may consult with a member of the OCLRE staff.

17. Gross Rules Violation

If a majority of the judging panel determines that there has been a material violation of competition rule that affected the fairness of the trial, 5 points shall be deducted from the offending team’s score on each judge’s score-sheet. If the panel believes that a 5-point penalty is insufficient given the seriousness of the violation, the panel shall consult with the Competition Committee, which may impose additional sanctions including but not limited to disqualification. One example of a material rules violation warranting a serious penalty would be communication between team members and their teacher or legal advisor, whether through signals, notes, or electronically. All objections must be made before the presiding judge retires to deliberate; after that, complaints may be made only after the competition in writing using the complaint form and such complaints will not alter the decisions of the judicial panel.

18. Deliberation

Judicial panelists retire to chambers to add their ballots and discuss remarks to the teams. Scoring judges will also add points to determine the recipients of the outstanding witness and outstanding attorney awards. The Presiding Judge Final Tally Sheet and ALL three competition score sheets will be completed immediately after each trial by the two scoring judges and presiding judge and returned to the competition coordinator. Judges may not hang on to score sheets between trials.

19. Conclusion of Trial

The bailiff calls court back in session with:

“All rise. Court is now back in session.”

After the judges are seated, the bailiff says:

“You may be seated.”

20. Debriefing and Announcement of Outstanding Witness and Attorney Awards

The presiding judge will provide debriefing comments on the strengths and weaknesses of each team’s performance. The debrief should be precise, and last no more than 12 minutes. The timekeeper will give the judge a one minute warning and then a “stop.”

- a. Any penalties assessed on a team will be announced.
- b. The scoring judges will announce the outstanding witness and attorney awards, discuss the highlights of their performances, and present their certificates.
- c. **The winning team and scoring information will not be announced.** Results will be announced and posted by the Competition Coordinator at the end of the district and regional competition and at the conclusion of appropriate rounds of state competition. The Official Competition Score Sheet may be posted by the

district/regional coordinator at the end of the competition. After the district competition, score sheets from the district competition will be sent to the teams advancing to the regional competition. Individual team score sheets for all teams from all levels of competition will be provided no later than April 10, 2012, one month after the end of the state competition.

- e. Decisions of the judicial panel are final. Fill out an Official Competition Complaint Form and send it to OCLRE. The staff will investigate and answer the complaint.

21. Closing of Court

- a. The presiding judge will recognize and thank the teachers, legal advisors, students, and families for their support and will turn the court back to the bailiff.
- b. The bailiff closes the official proceeding with:
“All rise. This honorable court is hereby adjourned.”
- c. The plaintiff team is responsible for leaving the courtroom in the same condition as it was found. Both teams are responsible for taking their own papers and notebooks out and disposing of them properly.

PART THREE

SIMPLIFIED OHIO RULES OF EVIDENCE

Rules Unique to Mock Trial

I. Invention of Facts and Extrapolation (special rules for the Ohio Mock Trial Competition)

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

Invention of Facts - Direct Examination. **On direct examination the witness is limited to the facts given in his/her own written statement.** If the witness goes beyond the facts given (adds new facts or speculates about facts), the testimony may be objected to by the opposing counsel as speculation or as invention of facts outside the case materials. If a witness testifies *in contradiction* of a fact given in the witness statement, opposing counsel should impeach the witness’s testimony during cross-examination. [See *also*, Competition Instructions, “Testimony of Witnesses—Guidelines.”]

Invention of Facts - Cross-Examination. If on cross-examination a witness is asked a question, the answer to which is not contained in the facts given in the witness statement, the witness may respond with any answer, so long as it is responsive to the question, does not contain unnecessary elaboration beyond the scope of the witness statement, and does not contradict the witness statement. An answer which is unresponsive or unnecessarily elaborate may be objected to by the cross-examining attorney. An answer which is contrary to the witness statement may be impeached by the cross-examining attorney. [See *also*, Competition Instructions, “Testimony of Witnesses—Guidelines”].

Example

The limits on fair extrapolation apply only to cross examination, and no extrapolation is permitted on direct examination.

An accident reconstruction expert (Mr. Smith) has testified that the accident was caused by the failure of the defendant to maintain an assured clear distance ahead. The defendant has claimed that he was undergoing a type of epileptic seizure when the driver ahead stopped abruptly. The accident reconstructionist testifies that even a person experiencing this kind of epileptic seizure would have seen the car brake abruptly.

1. Unnecessary Elaboration

Cross-examiner: “But you’re not a neurologist, are you, Mr. Smith?”
Mr. Smith: “As a matter of fact, I have a Ph.D. in Neurology from Johns Hopkins University and have written extensively on epileptic seizures..”

If there is no hint in the case materials that Mr. Smith has expertise in neurology, it would be regarded as an unnecessary elaboration

Elaboration necessitated by the Question

Cross-examiner: “Have you testified before as an expert in accident reconstruction, or is this the first time that you have ever testified?”
Mr. Smith: “I have testified in 27 trials”

It may be reasonable for the expert to claim he has testified in 27 trials, if his age and background make that plausible, even if there is nothing in the case materials to reflect an answer to that question. It is an elaboration necessitated by the question.

II. Scope of Examinations

Scope of Direct Examination An attorney questions the witness she/he has called to stand. On direct examination an attorney may inquire as to any relevant facts of which the witness has first-hand, personal knowledge.

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's 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.

Redirect Examination After cross examination, additional questions may be asked by the direct examining attorney, but such questions are limited to matters raised by the opposing attorney on cross-examination. Just as on direct examination, leading questions are not permitted on redirect.

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

Examples:

1. ***Cross-examination of physician called by Plaintiff in murder case:***

Attorney: Doctor, you testified on direct that the defendant died of arsenic poisoning, correct?

Witness: Yes.

Attorney: Isn't it true that you have a deposition in which you testified that you did not know the cause of death?

Witness: Yes, that's true.

Redirect:

Attorney: Doctor, why did you testify in your deposition that you did not know the defendant's cause of death?

Witness: I had not yet received all of the test results which allowed me to conclude the defendant died of arsenic poisoning.

2. ***Cross-examination:***

Attorney: Doctor, isn't it true the result of test X points away from a finding of arsenic poisoning?

Witness: Yes.

Redirect:

Attorney: Doctor, why did you conclude that the defendant died of arsenic poisoning even though test X pointed away from arsenic poisoning?

Witness: Because all of the other test results so overwhelmingly pointed toward arsenic poisoning, and because test X isn't always reliable.

Comment: Neither one of these redirect examinations should have been conducted unless the attorney had a good idea of what the witness's response would be. As a general rule, it is not advisable to ask a question if you don't know what the answer will be.

Re-cross Examination After redirect, additional questions may be asked by the cross examining attorney, but such questions are limited to matters raised on redirect examination. Re-cross is not mandatory and should not be used simply to repeat points that have already been made.

Example:

Assume the cross-examination in the example above has occurred. A good re-cross-examination would be the following:

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

Witness: Yes, that's true.

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

III. Hostile Witness Rule- Mode and Order of Interrogation and Presentation

1. **Control by court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

2. **Scope of cross-examination.** Cross-examination shall be permitted on all relevant matters and matters affecting credibility.

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

4. **When is a witness hostile?** "Where a witness is an unwilling one, hostile to the party calling him, or stands in such a situation as to make him necessarily adverse to such party, his examination in chief may be allowed to assume something of the form of cross-examination, at least to the extent of allowing leading questions to be put to him." 44 OH Jurisprudence 3d 241, "hostile witness" §. 869

The issue is whether the witness's hostile attitude toward the party calling him/her is likely to make the witness reluctant to volunteer facts helpful to that party. Hostility may be demonstrated by the witness's demeanor in the courtroom, by other facts and circumstances, or by a combination thereof. Whether a witness is hostile is confided to the sound discretion of the presiding judge.

IV. Voir Dire

Voir Dire examination of a witness is not permitted

V. No offer of proof

No offers of proof may be requested or tendered

Article I. GENERAL PROVISIONS

RULE 101. Scope of Rules: Applicability; Privileges; Exceptions

Applicability. These rules govern proceedings in the Ohio Mock Trial Program and are the only basis for objections in the Ohio Mock Trial Program

- **No directed verdict or dismissal motion may be entertained.**

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

Evidence which is not relevant is not admissible.

RULE 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay

(A) Exclusion mandatory. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

(B) Exclusion discretionary. Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence.

RULE 404. Character

Character evidence. Evidence of a person's character, other than his/her character for truthfulness, may not be introduced. Evidence about the character of a party for truthfulness or untruthfulness is only admissible if the party testifies.

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 evidence is introduced sufficient to support a finding that S/he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

RULE 607. Who May Impeach

(A) Who may impeach. The credibility of a witness may be attacked by any party except that the credibility of a witness may be attacked by the party calling the witness by means of a prior inconsistent statement only upon a showing of surprise and affirmative damage. This exception does not apply to statements admitted pursuant to Evid.R. 801(D)(1)(A), 801(D)(2), or 803.

RULE 608. Evidence of Character and Conduct of Witness

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.

RULE 611. Mode and Order of Interrogation and Presentation

(A) **Control by court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(B) **Scope of cross-examination.** For Ohio Mock Trial Rules, see Simplified Ohio Rules of Evidence (Section II).

(C) **Leading questions.** Leading questions should not be used on the direct examination of a witness. Leading questions are permitted on cross-examination. When a party calls a hostile witness interrogation may be by leading questions.

RULE 612. Writing Used to Refresh Memory

If a witness uses a writing to refresh his memory while testifying, an adverse party is entitled to have the writing produced at the hearing. He/she is also entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness.

RULE 616. Bias of Witness

In addition to other methods, a witness may be impeached by any of the following methods:

(A) **Bias.** Bias, prejudice, interest, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

(B) **Sensory or mental defect.** A defect of capacity, ability, or opportunity to observe, remember, or relate may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

(C) **Specific contradiction.** Facts contradicting a witness's testimony may be shown for the purpose of impeaching the witness's testimony.

Article VII. OPINIONS AND EXPERT TESTIMONY

RULE 701. Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, his/her testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of his testimony or the determination of a fact in issue.

RULE 702. Testimony by Experts

A witness may testify as an expert if: (1) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony; and (2) The witness's testimony is based on reliable scientific, technical, or other specialized information.

RULE 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by him/her or admitted in evidence at the hearing.

RULE 704. Opinion on Ultimate Issue

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

RULE 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give his/her reasons therefore after disclosure of the underlying facts or data. The disclosure may be in response to a hypothetical question or otherwise.

Article VIII. HEARSAY

RULE 801. Definitions

The following definitions apply under this article:

(A) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him 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 trial or hearing and is subject to cross-examination concerning the statement, and the statement is (a) inconsistent with his testimony, and was given under oath subject to cross-examination by the party against whom the statement is offered and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (c) one of identification of a person soon after perceiving him, if the circumstances demonstrate the reliability of the prior identification.

(2) Admission by party-opponent. The statement is offered against a party and is (a) his own statement, in either his individual or a representative capacity, or (b) a statement of which he has manifested his adoption or belief in its truth, or (c) a statement by a person authorized by him to make a statement concerning the subject, or (d) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (e) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy upon independent proof of the conspiracy.

RULE 802. Hearsay Rule

Testimony which is hearsay is inadmissible.

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 unless circumstances indicate lack of trustworthiness.

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

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, 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 testimony.

RULE 804. Hearsay Exceptions; Declarant Unavailable

(A) Definition of unavailability. "Unavailability as a witness" includes any of the following situations in which the declarant:

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

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

(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 his or her death was imminent, concerning the cause or circumstances of what the declarant believed to be his or her impending death.

(3) Statement against interest. A statement that 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 the declarant believed it to be true. A statement tending to expose the declarant to criminal liability, whether offered to exculpate or inculcate the accused, is not admissible unless corroborating circumstances clearly indicate the truthfulness of the statement.

RULE 805. Hearsay Within Hearsay

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

Article IX. AUTHENTICATION AND IDENTIFICATION

RULE 901. Requirement of Authentication or Identification

(A) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

PART FOUR

EXAMPLES OF COMMON OBJECTIONS AND TRIAL PROCEDURE

I. Procedure for Objections

- A. An attorney may object if he/she believes that the opposing attorney is attempting to introduce improper evidence or is violating the Simplified Rules of Evidence. The attorney wishing to object should stand up and object at the time of the claimed violation. The attorney should state the reason for the objection, and if possible, cite by rule number the specific rule of evidence that has been violated. (Note: Only the attorney who questions a witness may object to the questions posed to that witness by opposing counsel.) The attorney who asked the question may then make a statement about why the question is proper. The judge will then decide whether a question or answer must be discarded because it has violated a simplified rule of evidence (objection sustained), or whether to allow the question or answer to remain in the trial record (objection overruled). Objections should be made as soon as possible; however, an attorney is allowed to finish his/her question before an objection is made. Any objection that is not made at the time of the claimed violation is waived. When an objection has been sustained, the attorney who asked the question may attempt to rephrase that question. Judges may make rulings that seem wrong to you. Also, different judges may rule differently on the same objection. Always accept the judge's ruling graciously and courteously. Do not argue the point further after a ruling has been made.

II. Examples of Common Objections

The following are examples of common objections. This is not a complete list. Any objection properly based on the simplified Ohio rules of evidence is permitted:

1. **Irrelevant evidence:** "Objection. This testimony is irrelevant."
2. **Irrelevant evidence that should be excluded:** "Objection. This is unfairly prejudicial (or a waste of time) and should be excluded because..."
3. **Leading question:** "Objection. Counsel is leading the witness." (Remember, leading is only objectionable if done on direct or redirect examination).
4. **Narrative Answer:** "Objection, this witness's answer is narrative" Commonly used on direct examination when a witness's answer has gone beyond the scope of the initial question
5. **Non-responsive Answer:** "The witness is nonresponsive, your honor. I ask that this answer be stricken from the record." The witness's answer does not answer the question being asked. Commonly used by the cross examining attorney during cross examination.

Example:

Attorney: Isn't it true that you hit student B?

Witness: Student B hit me first. He/she was asking for it, acting like a jerk and humiliating me in front of all my friends.

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

6. **Beyond the scope of cross or redirect:** "Objection. Counsel is asking the witness about matters that were not raised during the cross or redirect examination."
7. **Improper character testimony:** "Objection. This is testimony about character that does not relate to truthfulness or untruthfulness."
8. **Improper opinion:** "Objection. Counsel is asking the witness to give an expert opinion, and this witness has not been qualified as an expert." *OR* "Objection. Counsel's question calls for an

opinion which would not be helpful to understanding the witness's testimony (or which is not rationally based upon what the witness perceived.)"

9. ***Invention of facts:*** "Your Honor, we object on the basis that opposing counsel's question seeks evidence that is outside the record in this case. Witness X has never given testimony in this case concerning..." If the witness gives testimony on direct that is beyond the scope of materials, the cross-examining attorney should say "move to strike the testimony concerning...as beyond the scope of the case materials."

Example:

If witness X did not personally see arsenic in the medicine cabinet of the decedent's wife, he cannot testify that she had arsenic in her medicine cabinet.

10. ***Lack of personal knowledge:*** "Objection." The witness has no personal knowledge that would allow her to answer this question.
11. ***Speculation:*** "Objection. The witness is speculating/this question calls for speculation." A hybrid between lack of personal knowledge and improper opinion.
12. ***Hearsay:*** "Objection. Counsel's question calls for hearsay." If a hearsay response could not be anticipated from the question, or if a hearsay response is given before the attorney has a chance to object, the attorney should say, "I ask that the witness's answer be stricken from the record on the basis of hearsay."

Example:

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

Comment:

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

III. Other Trial Procedures

A. Opening Statement

An opening statement has been defined as "a concise statement of [the party's] claim [or defense] and a brief statement of [the party's] evidence to support it." Judge Richard M. Markus, *Trial Handbook for Ohio Lawyers* (Thomson-West, 2006 Edition), §7:1, p. 305. A party seeking relief should indicate the nature of the relief sought. It may be useful to acknowledge the applicable burden, or burdens, of proof. An opening statement is not supposed to be argumentative, and should be used by attorneys to present their theories of the case. Legal authorities can be cited, to show what issue or issues are before the court for decision. It is appropriate to lay out what the attorney expects the evidence will show, but the wise attorney will be conservative in this regard.

The most important aspect of the opening statement is to frame the issues. The attorney wants to frame the issues so that there is a compelling narrative (the theory of the case) in his/hers client's favor into which all the favorable facts and all favorable legal authority neatly fit. A well-crafted opening statement tells a story that will dominate the trial that follows.

B. Closing Statements

Closing statements, "are permitted for the purpose of aiding the [finder of fact] in analyzing all the evidence and assisting it in determining the facts of the case." Markus, op. cit., §35:1, at p. 1013. In a bench trial (to a judge, rather than to a jury), the closing statement is also the time to argue the law to the judge.

The attorney should point out to the court that his/her side has proven everything that it promised to prove, while pointing out that the other side failed to prove what it promised it would. It can now be shown how the evidence that was presented fits into the narrative (the theory of the case) that was introduced in opening statement, which, in turn, applying the law, compels a result in that side's favor. Remind the court what that favorable result is; i.e., the particular relief your client is seeking from the court.

On occasion, your evidence won't survive an objection, or the attorney's best witness will be forced to equivocate on an important point on cross-examination. When this occurs adjustments have to be made to the closing statement to fit the evidence actually presented in the trial.

The closing statements are the final opportunities to persuade the judge. In oral presentation, the statements having the most impact are the first statements, and the final statements. The attorney should try to make the first and last things said in closing argument the most vivid and persuasive, while reserving those points that have less emotional impact, but need to be said, for the middle of the statement.

C. Direct Examination - Form of Questions.

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

Examples:

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

D. Cross Examination - Form of Questions

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

Examples:

1. ***Good leading cross-examination question:***
Isn't it true that it was almost completely dark outside when you say you saw the defendant run into the alley? (This is a good question where the witness's

statement says it was “almost completely dark,” but a potentially dangerous question when the statement says it was “getting pretty dark out.”

2. **Poor cross-examination question:**

How dark was it when you saw the defendant run into the alley? (the witness could answer, “It wasn’t completely dark. I could see him.”)

E. Opinion Testimony by Non-Experts

For mock trial purposes, most witnesses are non-experts. If a witness is a non-expert, the witness’s testimony in the form of opinions is limited to opinions that are rationally based on what the witness saw or heard and that are helpful in explaining the witness’s testimony. Non-experts (lay witnesses) are considered qualified to reach certain types of conclusions or opinions about matters which do not require experience or knowledge beyond that of the average lay person. Note, however, that the opinion must be *rationally* based on what the witness saw or heard *and* must be helpful in understanding the witness’s testimony.

Examples:

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

F. Opinion Testimony by Experts

Only persons who are shown to be experts at trial may give opinions on questions that require special knowledge beyond that of ordinary lay persons. An expert must be qualified by the attorney for the party for whom the expert is testifying. Before a witness can testify as an expert, and give opinions in the area of his/her expertise, a foundation must be laid for his/her testimony by introducing his/her qualifications into evidence. In a sense, every witness takes the stand as a non-expert, and the questioning attorney must then establish the witness’s expertise to the court’s satisfaction for the witness to be able to testify as an expert. This is usually accomplished by asking the expert himself/herself about his/her background, training and experience.

Example:

Attorney: Doctor, please tell the jurors about your educational background.

Witness: I attended Harvard College and Harvard Medical School.

Attorney: Do you practice in any particular area of medicine?

Witness: I am board-certified forensic pathologist. I have been a forensic pathologist for 28 years.

It is up to the court to decide whether a witness is qualified to testify as an expert on a particular topic.

G. Refreshing Recollection (Rule 612)

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

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

1. Mr./ Mrs. Witness, do you recall giving a statement in this case?
2. Your Honor may I approach the witness? (Permission is granted.)
I'd like to show you a portion of the summary of your statement, and ask you to review the first two paragraphs on page three.
3. Having had an opportunity to review your statement, do you now recall what happened after the defendant ran into the alley?

H. Impeachment (Rule 607)

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

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

Examples:

1. ***Impeachment with prior inconsistent statement:***

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

Witness: Yes.

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

Witness: Yes.

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

Witness: Yes.

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

Witness: I don't remember saying that.

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

Witness: Yes.

Attorney: Thank you Mr. Jones.

2. ***Impeachment with prior dishonest conduct:***

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

Witness: Yes.

I. Introduction of Physical Evidence (Rule 901)

Generally, physical evidence (objects) must be relevant and authentic (shown to be what they appear to be) in order to be admissible. Exhibits are generally presented to the court through witness testimony. Specifically, for mock trial purposes, all exhibits contained in the case materials have already been stipulated as admissible evidence and may not be altered to give either side an unfair advantage. This means that both sides have agreed that all exhibits are admitted. Therefore, it is not necessary to demonstrate through a witness's testimony that an exhibit is authentic, an accurate representation or admissible, nor is it necessary to move the court for the admission of the physical evidence.

Example:

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

Judge: You may.

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

Witness: Yes.

Attorney: Could you explain to the Court what that is?

Witness: It's a map of the accident scene. (At this point, the attorney may ask the witness any additional relevant questions about the exhibit, and then give it to the judge.)

STATE OF OHIO

vs.

STORM JACKSON

Statement on 2012 HSMT Case

For reasons unrelated to the 2012 Mock Trial legal strategy, the State of Ohio will go first in this mock trial. Although the Defendant brought this Motion to Suppress, the State of Ohio will present its evidence in opposition to the Motion first. Then, the Defendant will present his evidence in support of the Motion. The order of arguments has no effect on the substance of the motion -- in particular, the Defendant still bears the burden

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF OHIO**

STATE OF OHIO	:	Case No. 2011-CV-2012
	:	
	:	
	:	
vs.	:	
	:	
	:	
STORM JACKSON	:	
	:	

ORDER FOR MOTION HEARING

This matter is before the Court on the Motion of Defendant to suppress cell phone GPS records filed in the above captioned matter. An evidentiary hearing on Defendant's Motion is scheduled to begin on August 22, 2011 and shall continue day to day until completion. Initially, it should be noted that the Prosecution and Defendant Storm Jackson have agreed that Defendant is challenging law enforcement's search of his cell phone records only. Defendant is not challenging the search of any residence where the alleged thefts occurred in this matter, and lacks standing to do so.

SO ORDERED

Judge Ima Goody

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF OHIO**

STATE OF OHIO,)	CASE NO. 2011-CV-2012
)	
Prosecution,)	
)	
vs.)	
)	
STORM JACKSON,)	
)	
Defendant.)	

DEFENDANT STORM JACKSON’S MOTION TO SUPPRESS

I. INTRODUCTION

Defendant Storm Jackson has been charged with several counts of Theft for allegedly taking prescription drugs from homes in Glenn, Ohio. Much of the evidence leading to Jackson’s arrest was based on information using Jackson’s cell phone to place him at the locations of the thefts at the approximate times the thefts occurred. Jackson is now challenging the use of that evidence in court, through this Motion to Suppress. Because the Fourth Amendment protects GPS information obtained from Defendant’s private cell phone, Defendant’s Motion to Suppress should be granted.

II. STATEMENT OF FACTS

Like most young adults, Storm Jackson carried a cell phone. That phone is now being used to accuse the Defendant of several serious crimes.

Storm Jackson is a young college student who grew up in the town of Glenn, Ohio with his parents, Tom and Mary Jackson. Storm has a close relationship with his parents and even accompanied them to several open houses in the Glenn area during his break in

the summer of 2011. Two of the open houses attended by the Jacksons were listed with Drew King, a real estate agent with Glenn Distinguished Homes.

King was “very busy” during June of 2011 and held several open houses. In fact, on June 26, King was so busy that King had to enlist the help of another agent to cover an open house for one of King’s listings. After some medications were reported missing from two open houses, King notified the police and turned over the sign-in sheets from the two open houses. These sign-in sheets are kept for business purposes by King and the contact information shared by open house attendees is self-reported by those attendees and not verified. The Jacksons’ names appeared on both sign-in sheets maintained by King.

Coincidentally, that same weekend two other Glenn residents reported medication missing from their homes. Both of these homes had hosted parties over the weekend, with numerous young adults present. With no eyewitnesses and many possible suspects, Detective Thurber of the Glenn Police Department requested cell phone records from Sprizon wireless for the time period in question – June 25-26, 2011. The information was turned over to police without a warrant.

Using GPS information from these cell phone records, Detective Thurber was able to place Storm Jackson in the locations where the thefts occurred at the general times the thefts occurred. The Sprizon GPS technology is accurate to an estimated range of ten meters and Sprizon is able to locate a subscriber using this GPS technology any time the subscriber’s phone is turned on.

Based on the GPS information obtained from Defendant’s cell phone, Detective Thurber charged Storm Jackson with several counts of theft relating to the missing

medications. Defendant has filed a Motion to Suppress, seeking to exclude all information relating to the warrantless disclosure of the cell phone records at trial.

III. LAW & ARGUMENT

A. Defendant's GPS information is protected by the Fourth Amendment.

The Fourth Amendment to the United States Constitution states that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated.” U.S. Const. amend. IV. In order to determine whether Fourth Amendment protections apply, a two-part test is used. First, this Court must consider whether the Defendant had a subjective, or individual, expectation of privacy in the GPS information obtained from his cell phone. Second, this Court must determine whether society, objectively, finds that expectation of privacy reasonable. *See Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

1. Defendant had a subjective expectation of privacy in his personal cell phone information.

In *Katz* the defendant was convicted of violating federal gaming laws after the government used evidence obtained by a recording device attached to the outside of a public telephone booth. *Id.* at 349. This device allowed the government to listen to and record defendant's portion of telephone conversations. *Id.* The Supreme Court reversed defendant's convictions and found that the government's actions violated the Fourth Amendment by intruding upon an area defendant had sought to preserve as private. *Id.* at 352. Specifically, the Court found defendant's actions of entering the phone booth and closing the door significant saying, “[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be

constitutionally protected.” *Katz*, at 351 (citations omitted). In this case Defendant Jackson also had a subjective expectation of privacy in the GPS information at issue.

Jackson purchased cellular *service*, not *surveillance*, from Sprizon and expected the information derived from that service to remain private. In fact, this case is even more intrusive than the Fourth Amendment violation in *Katz*. In *Katz*, defendant entered a phone booth and closed the door knowing he was about to engage in telephone conversations that he wanted to remain private. Here, Jackson was not even engaging in telephone conversations. There was no opportunity to keep this information private - the GPS data from Jackson’s phone was being transmitted anytime the phone was turned on. The phone carried by Jackson was, in effect, a twenty-four hour electronic monitoring system.

Additionally, even if Jackson should have been aware that Sprizon was collecting GPS data by virtue of the cellular service contract, the average user would assume that the data was being collected for phone company purposes, not law enforcement purposes. Sprizon normally uses the data for billing or marketing reasons, so it knows how much to bill a customer and where its network needs to be improved. Jackson, like any average cellular customer, did not realize that information collected from his private account would be handed over to the police any time it was requested. If law enforcement has a legitimate need for such information they can get it, with a warrant issued upon a showing of probable cause.

2. *Society recognizes a right to privacy in personal cell phone information as reasonable.*

Where information is obtained is pivotal in considering whether society deems an expectation of privacy reasonable. When information is voluntarily exposed to the public

Fourth Amendment protections generally do not apply. *United States v. Knotts*, 460 U.S. 276 (1983). However, the Fourth Amendment generally does apply to information that is not exposed to the public's view. *United States v. Karo*, 468 U.S. 705 (1984). In *Knotts* and *Karo* the United States Supreme Court considered similar facts and, in less than one year, reached different results.

In *Knotts* the Supreme Court found no Fourth Amendment violation when law enforcement, without a warrant, monitored a concealed beeper signal as it traveled along a public highway. *Knotts*, 460 U.S. 276. The Court reasoned that there was no expectation of privacy in the route that a vehicle traveled along a public road. *Id.* at 281. Indeed, this information could easily be visually verified by law enforcement.

However, the Court found a Fourth Amendment violation in *Karo*. In that case law enforcement monitored a beeper signal emitting from a barrel of ether. *Karo*, 468 U.S. at 708. Law enforcement had planted the beeper in the barrel of ether so that the barrel's location could be monitored. *Id.* However, because the barrel went inside a private residence and revealed facts that could not have been visually verified by law enforcement from outside the home the Fourth Amendment was violated. *Id.* at 715-16.

The Court stated:

We cannot accept the Government's contention that it should be completely free from the constraints of the Fourth Amendment to determine by means of an electronic device, without a warrant and without probable cause or reasonable suspicion, whether a particular article—or a person, for that matter—is in an individual's home at a particular time. Indiscriminate monitoring of property that has been withdrawn from public view would present far too serious a threat to privacy interests in the home to escape entirely some sort of Fourth Amendment oversight.

Id. at 716.

This finding from *Karo* controls the case at hand. The GPS information, like the beeper in the barrel of ether, was an electronic device transmitting information that was not voluntarily exposed to the public and could not have been visually verified by police because it revealed facts not in the public view - whether a particular person was in an individual's home at a particular time. Indeed, the very significance of the information is that it places Jackson inside private residences at certain times. It is also inevitable that Jackson would have been at his own home at various times over the course of the two days at issue here. The Fourth Amendment, as held by the *Karo* Court, protects the home. The information obtained by the police in this case must be suppressed.

Additionally, even if Jackson's cell phone information was voluntarily exposed to the public, *Knotts* is inapplicable due to the quantity of information obtained by the government. See *United States v. Maynard*, 615 F.3d 544 (D.C. Cir. 2010). In *Maynard* the government installed a GPS device on defendant's Jeep and monitored its movements for twenty-eight days. *Id.* The court found that *Knotts* was inapplicable because it dealt with one trip, not prolonged surveillance. *Id.* at 558. Continuous monitoring twenty-four hours a day for twenty-eight days did violate a reasonable expectation of privacy. *Id.* at 560. The *Maynard* Court reasoned that although a person's movements would certainly be exposed to the public during that time, no one expects all of their movements and habits to be exposed to a particular individual for such a period of time. *Id.* at 560-61. Additionally, the sum of the information compiled over twenty-eight days was able to give an intimate portrait of the defendant's life that would not have been available to the casual observer. *Id.* (holding that despite the Fourth Amendment violation the error was harmless given the overwhelming amount of evidence against the defendant).

In the case at hand, law enforcement was similarly able to piece together an intimate picture of Jackson's life due to the accuracy of the GPS information and the period of time exposed. Law enforcement was able to track Defendant's movements to within an estimated 10 meters of accuracy for two continuous days, June 25, 2011 through June 26, 2011, simply by requesting records from Sprizon. As the *Maynard* Court pointed out, some of Defendant's movements would certainly have been exposed to the public during this time; but no one, including Defendant, expects all of their movements over such an extended time period to be exposed to the public. This intrusion into the public's privacy will only become more pronounced as cell phone technology continues to advance. Society recognizes a right to privacy in this information as reasonable; therefore, Fourth Amendment protections should apply here.

IV. CONCLUSION

For the foregoing reasons, the Court should grant Defendant's Motion to Suppress. Defendant had a reasonable expectation of privacy in GPS information obtained from his cell phone, and society recognizes that expectation of privacy as reasonable. Therefore, the Fourth Amendment was violated when law enforcement obtained that information without a warrant.

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF OHIO**

STATE OF OHIO,

Prosecution,

vs.

STORM JACKSON,

Defendant.

CASE NO. 2011-CR-2012

**PROSECUTION’S BRIEF IN OPPOSITION TO DEFENDANT’S MOTION TO
SUPPRESS**

I. INTRODUCTION

Defendant, Storm Jackson’s Motion to Suppress presents the Court with the issue of whether the Fourth Amendment permits the police to obtain a criminal suspect’s cell phone global positioning system (GPS) records from the suspect’s wireless telephone provider without a search warrant. For the reasons set forth below, Defendant’s Motion to Suppress should be denied because no Fourth Amendment search took place with regard to Defendant’s GPS records.

II. STATEMENT OF FACTS

This case arises from four separate incidents of drug theft from private residences in Glenn, Ohio, over a 24 -hour period, from Saturday, June 25, 2011 to Sunday, June 26, 2011.

From 5 p.m. to 10 p.m. on Saturday, June 25, Skylar Kite and his wife hosted a neighborhood party. On Monday, June 27, Mr. Kite, who works as a pharmaceutical representative, grabbed his bag to visit medical offices. When he arrived at his first office, he noticed that 12 bottles of Vicodin were missing.

On Sunday morning, the Glenn Police Department (GPD) received a call from Sammy Delane, who reported that a bottle of Oxycontin had been stolen from the Delane residence sometime on Saturday night. Sammy's son, Bruce, was taking the medication for pain related to osteosarcoma. When Bruce went to refill his weekly pill box/dispenser on Sunday morning the theft of the Oxycontin was discovered.

From 2 p.m. to 4 p.m. on Sunday, Glenn-area real estate agent Drew King held open houses at the homes of the Evans and Cross families. Both open houses were busy, with numerous people touring each property. Pursuant to Drew King's standard practice, each house had a sign-in sheet for visitors. On Sunday evening, King received a phone call from Tim Evans, who reported that a bottle of Vicodin that had been prescribed for his knee surgery earlier that week had been taken from his home during the open house. Later, King received a similar call from Justice Cross, who reported that a bottle of Ritalin was missing from the Cross residence. Concerned, by these reports, King contacted GPD the next morning, and reported the incidents to Detective Peyton Thurber. At Detective Thurber's request, King provided the police with copies of the sign-in sheets for the Evans and Cross open houses. The only names that appeared on both sign-in sheets were Mr. and Mrs. Jackson and their son, Storm; Courtney Smith; and Riley Hines.

Thurber then requested the cell phone records of Storm Jackson from Sprizon Wireless as well as the GPS and historical cell site information.

Sprizon Wireless' GPS technology is accurate to within ten meters (approximately 30 feet). Sprizon Wireless collects location data from its phones – including latitude, longitude, and nearby cell towers – constantly, even when no calls are

being made. According to the cell phone GPS records, Storm Jackson was near the Delane house and the Kite house on Saturday night. The cell phone GPS records also confirmed that Storm attended both the Evans and Cross open houses. According to the cell phone GPS records, Storm spent most of the rest of the weekend at various locations in and around his parents' house.

Sprizon Wireless provided GPD with the cell phone GPS records for Storm for June 25 and 26.

Taking the GPS and historical cell site information, Thurber used the triangulation method to determine Storm's whereabouts at the times of the thefts. Thurber found that Storm was in the vicinity of all these homes at the time of the thefts, and deduced that Storm was the perpetrator. Storm's cell phone contract is in his own name, and contains the following provision: "Sprizon may collect, use, and share location data, including geographic data acquired through the use of global positioning system. This location data is used by Sprizon to provide and improve our products and services. It may be necessary—by law, legal process, litigation, and/or requests from public and governmental authorities—for Sprizon to disclose your location data. We may also disclose your location data if we determine that for purposes of national security, law enforcement, or other issues of public importance, disclosure is necessary or appropriate."

Based in part upon Storm's cell phone GPS records, GPD officers arrested Storm for the theft of the medications. Criminal charges were filed, and Storm Jackson now moves to suppress to exclude the cell phone GPS records from evidence at trial.

III. LAW AND ARGUMENT

Storm argues that this Court should suppress evidence of the cell phone GPS records because GPD violated the Fourth Amendment by obtaining those records from Sprizon Wireless without a search warrant. Storm's Motion to Suppress should be denied because no Fourth Amendment search took place with regard to Defendant's GPS records.

"The Fourth Amendment guarantees '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *Smith v. Maryland*, 442 U.S. 735, 739, 99 S.Ct. 2577, 2579 (1979). "In analyzing any Fourth Amendment issue, the threshold question is whether there has been either a 'search' or a 'seizure.'" *United States v. Forest*, 355 F.3d 942, 950 (2004) (vacated on other grounds). "[A] Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Id.* (citation omitted). The Sixth Circuit Court of Appeals "has used slightly different terminology, referring to a Fourth Amendment search as an invasion of a 'legitimate expectation of privacy.'" *Id.* (citation omitted). Storm's Motion to Suppress should be denied because GPD's use of Storm's cell phone GPS records did not constitute a search within the meaning of the Fourth Amendment.

In *Smith*, the U.S. Supreme Court held that no Fourth Amendment search took place where the phone company, at police request, installed at its central offices a pen register device to record the numbers dialed from the criminal suspect's home. In reaching its holding, the Court reasoned that the suspect voluntarily conveyed the phone numbers to the phone company, and thereby exposed that information to the phone

company's equipment in the normal course of business and assumed the risk that the information would be revealed to the police.

In concluding that the suspect did not have a subjective expectation of privacy with regard to the numbers he dialed, the *Smith* Court considered it significant that phone users typically know: (1) that they must convey numerical information to the phone company to place a call; (2) that the phone company has facilities to record that information; and (3) that the phone company records that information for a variety of legitimate legal purposes. In concluding that any subjective expectation of privacy the suspect may have had was not reasonable, the *Smith* Court cited well-established case law providing that a person has no legitimate expectation of privacy in information he/she voluntarily turns over to third parties.

In *United States v. Knotts*, 460 U.S. 276, 103 S.Ct. 1081 (1983), the U.S. Supreme Court held that no Fourth Amendment search took place where the police monitored the movements of a drug-crime suspect, principally on public roads, for approximately three days by placing a radio transmitter inside a chemical container sold to the suspect. The radio transmitter at issue in *Knotts* was used in conjunction with visual surveillance by the police and yielded no information which visual surveillance from public places would not have revealed. On those facts, the Supreme Court concluded that the Fourth Amendment does not require police to obtain a search warrant in order to electronically monitor the suspect's location.

In *Forest*, the Sixth Circuit applied *Knotts* to hold that no Fourth Amendment search took place where the Drug Enforcement Agency (DEA) used cellular phone site data, obtained by calling the drug-trafficking suspect to see which cellular transmission

towers were communicating with the suspect's phone, to track the suspect's movements on public highways. The defendant in *Forest* argued that *Knotts* was distinguishable and did not support the warrantless use of the cell-site data because, while the government owned the radio transmitter used in *Knotts*, the government had no ownership interest in the suspect's cell phone in *Forest*, and the suspect's cell phone contract did not authorize the disclosure of cell-site data. The defendant also argued that *Smith* was distinguishable and did not support the warrantless use of the cell-site data because it was the DEA, rather than the suspect, who "used" the suspect's phone, by calling it.

While acknowledging that *Smith* was distinguishable, the *Forest* Court reasoned that *Knotts* was not. Consequently, the *Forest* Court concluded that no Fourth Amendment search had taken place because the suspect's cell-site data was merely a proxy for his visually observable location and held that the suspect had no legitimate expectation of privacy in his movements along public highways.

In this case, as in the above-cited cases, no Fourth Amendment search took place with regard to Storm Jackson's cell phone GPS records. Storm Jackson had no subjective expectation of privacy in those records. Before receiving the cell phone from Sprizon Wireless, Storm signed a cell phone contract, which expressly provided consent for the collection of Storm's location data, but also to Sprizon Wireless' potential disclosure of that data to law enforcement. Consequently, like the suspect in *Smith*, Storm Jackson knew (1) that he would convey location data as well as Sprizon Wireless in carrying his phone; (2) that Sprizon Wireless has facilities to record his location data; and (3) that Sprizon Wireless used the location data for a variety of legitimate purposes. Even if Storm Jackson did believe that his cell phone GPS records would be kept secret, that,

pursuant to *Smith*, is not a belief that society recognizes as reasonable because a person has no legitimate expectation of privacy in information he voluntarily turns over the third parties. The numerical information at issue in *Smith* is not distinguishable in any meaningful way from the GPS location data at issue in this case. In short, Storm Jackson knowingly exposed the location data to Sprizon Wireless in the normal course of business and assumed the risk that the information would be revealed to the police. Thus, the Supreme Court's decision in *Smith* compels the conclusion that no Fourth Amendment search took place with regard to Storm Jackson's cell phone GPS records.

Knotts and *Forest* likewise demonstrate that Storm Jackson was subjected to no unconstitutional warrantless search in this case. As in *Knotts* and *Forest*, Storm Jackson's cell phone GPS records were merely a proxy for the visually observable location as Storm moved about on public roadways and upon the premises of the four houses from which drugs were stolen. If Glenn police officers had been visually surveilling Storm Jackson over the course of the 24-hour period at issue, they could have seen him travel to each of the four houses. Thus, it cannot be said that Storm Jackson had any legitimate expectation of privacy in his cell phone GPS records.

It is anticipated that Storm may argue that *United States v. Karo*, 468 U.S. 705, 104 S.Ct. 3296 (1984) supports the Motion to Suppress because Storm's cell phone GPS tracked Defendant while he was inside his home, and the Supreme Court has long held that warrantless searches inside a suspect's home are presumptively unreasonable. Storm's anticipated reliance upon *Karo* is misplaced because, as in *Knotts*, *supra*, GPD obtained Storm's cell phone GPS records in order to trace Storm's movements outside of Defendant's home, and a police car following the Defendant could have observed Storm

traveling to each of the four houses at issue in the case. Thus, this case does not present a situation, like in *Karo*, in which the electronic device was used to establish that a person or article remained in the suspect's home.

IV. CONCLUSION

For the foregoing reasons, the Court should deny Defendant's Motion to Suppress. Simply stated, Defendant's Fourth Amendment rights were not violated because GPD's use of Defendant's cell phone GPS records did not constitute a search within the meaning of the Fourth Amendment.

Respectfully submitted,

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25 consumption from public utility records, and motel registration records show information
26 used in the ordinary course of business. These records assist law enforcement with types
27 and times of crimes, associations, and other linkages. The GPS technology just goes a
28 step further and can narrow down where a caller's location was when data or calls were
29 sent and received.

30 Nationwide, police officers use this technology to track down suspects. The
31 Glenn Police Department's protocol, which follows the national trend, does not require a
32 search warrant to obtain and use the GPS information.

33 The first report I received of a potential drug ring was on the morning of Monday,
34 June 27 from Drew King, a local realtor. King reported that on Sunday, June 26, 2011,
35 at the open houses of 262 Elmwood Street and 400 Sycamore Street between 2 p.m. and
36 4 p.m., both owners complained that prescriptions were stolen from their medicine
37 cabinet.

38 Tim Evans of 262 Elmwood Street stated that around 7pm, he went upstairs to
39 take his Vicodin for his recent knee surgery, and found that the medication was missing.
40 He had just had the surgery on Friday morning, and the bottle was full. He filled the
41 prescription at the CVS on 5th Avenue.

42 Justice Cross, 400 Sycamore Street, described that she usually administers Ritalin
43 to her hyperactive seven-year old with dinner. She opened the downstairs half-bath
44 medicine cabinet and could not locate it. This prescription had 24 pills left and was filled
45 at the Walgreens on 6th Avenue, six days ago.

46 I got copies of the lists of potential buyers for each home. Mr. and Mrs. Jackson
47 and their son Storm Jackson, Courtney Smith, and Riley Hines were the only names that
48 appeared on both open house lists.

49 Next, Sammy Delane reported that on Sunday morning, June 26th, a bottle of
50 Oxycontin, which was needed for pain management for one of the Delane children, was
51 gone. Delane lives at 300 Pine Tree Grove. Delane had just refilled the prescription the
52 day before at Walgreen's on 6th Avenue, so the bottle had 30 pills in it.

53 Finally, Skylar Kite reported that on Monday, June 27, he grabbed his
54 pharmaceutical bag to visit medical offices, and when he got to his first office, he noticed
55 that 12 bottles of Vicodin were missing. He reported that his bag was at his home, 299
56 Palm Drive, all weekend long. He did have an outdoor party on Saturday evening, June
57 25, 2011. He and his wife hosted a neighborhood party which included the Jacksons but
58 no one in the family knows if they attended. Also, he stated that his son had invited
59 many friends.

60 I was very concerned after receiving these reports as Oxycontin is a Schedule II
61 controlled substance with high abuse potential which can go for as much as \$100 if
62 illegally sold and Vicodin can sell for nearly \$50 a pill.

63 I immediately interviewed those involved after the reports on Monday, June 27th.
64 Based upon my interviews, I narrowed down the suspect to Storm Jackson.

65 Then, I requested the cell phone records of Storm Jackson from Sprizon Wireless.
66 Also, I requested the GPS and historical cell site information. I spoke to Shannon
67 Gannon, from Sprizon Wireless. Gannon stated that the company uses the GPS
68 information for billing and market research and downloads this information. Gannon

69 provided me the GPS information, historical cell site information, and sites of the cell
70 phone towers. Gannon stated that the GPS information is downloaded to the Sprizon
71 system every hour.

72 Taking the GPS and historical cell site information, I used the triangulation
73 method, and then charged Storm Jackson with the thefts. He was in the vicinity of all
74 these homes at the time of the thefts. First, the GPS information showed Storm Jackson
75 in the residences of the two open houses on June 26, 2011. Second, the GPS data tracked
76 Storm Jackson just two blocks away from 300 Pine Tree Grove at 7pm on Saturday, June
77 25, 2011 which is probably Coach's Bar and Grille. Finally, the GPS information
78 revealed that Storm Jackson was within a two mile radius on June 25, 2011 of 299 Palm
79 Drive at 10pm.

80 Based upon my interviews and the GPS information, I obtained an arrest warrant
81 for Storm Jackson.

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92 **STATEMENT OF SHANNON GANNON**

93 **Sprizon Wireless Employee - Prosecution**

94 My name is Shannon Gannon. I work at Sprizon Wireless, which is a mobile
95 telecommunications network and wireless cell phone provider. I have a bachelor's
96 degree in mathematics from The Ohio State University, a master's degree from Case
97 Western Reserve University, and received my Ph.D. in mathematics from The Ohio State
98 University in 1980. In 1980, I started working for NaviStar Navigation, a company that
99 specialized in developing and enhancing commercial navigation handheld receivers.
100 When Sprizon bought NaviStar Navigation in 1988, I was asked to continue working at
101 Sprizon in the global positioning system (GPS) technology department.

102 When I started working for NaviStar, GPS systems were still a relatively novel
103 concept. Although GPS devices were originally designed for military purposes in the late
104 1970s, NaviStar and other companies started exploring the possibility of developing
105 commercial GPS receivers in the early 1980s. By the early 1990s, the GPS constellation
106 of satellites that became the backbone of GPS technology was completed, providing
107 nearly worldwide coverage. Although I frequently hear that GPS is a "new" type of
108 technology, it really isn't. It's very well established and has been an acceptable method
109 of positioning in scientific communities for years.

110 GPS systems rely on satellites in order to operate. At any given time, there are at
111 least 24 satellites constantly orbiting the earth. Each satellite possesses a very accurate
112 time clock that is synchronized with the time clocks in other GPS satellites. Each
113 satellite transmits a unique signal that contains the time of the transmission and the
114 location of the satellite. Most cell phones are equipped with special hardware that can

115 receive these signals from the satellites. The cell phone receives the transmissions from
116 the satellites and notes the time it received the signal. Using a complex, but highly
117 precise formula, the cell phone can use the transmissions and the information about the
118 location of the various satellites to calculate the latitude and longitude of the cell phone,
119 thereby pinpointing the location of the device. Although it's not an exact location, GPS
120 technology is very accurate. The latest generation of consumer equipment can precisely
121 locate something to within about ten meters (30 feet) of accuracy.

122 Most new cell phones that incorporate the required hardware integrate GPS
123 technology into applications for mapping, street directions, and to obtain information
124 about local services and merchants. Sprizon also captures the information for business,
125 marketing, and technical purposes. The information can be extremely valuable in
126 managing our networks and services. By precisely tracking where each mobile device is
127 located and the direction it is moving, we can better identify where our networks need to
128 be improved, where our dead spots are, and how and where our customers are using
129 different wireless services. We also use the data for scientific and marketing research
130 and services such as vehicle traffic volume monitoring.

131 Before we use the data for these purposes, we need the consent of each cell phone
132 user. To obtain this consent, we rely on the individual cell phone contract we require
133 each customer to sign at the time he or she purchases a Sprizon cell phone. Each of our
134 cell phone contracts includes the following provision: "Sprizon may collect, use, and
135 share location data, including geographic data acquired through the use of global
136 positioning system. This location data is used by Sprizon to provide and improve our
137 products and services. It may be necessary—by law, legal process, litigation, and/or

138 requests from public and governmental authorities—for Sprizon to disclose your location
139 data. We may also disclose your location data if we determine that for purposes of
140 national security, law enforcement, or other issues of public importance, disclosure is
141 necessary or appropriate.” This statement is located under a section titled “Location
142 Data” in the “Privacy” section of the contract. Identical language can also be found on
143 Sprizon’s website. Storm signed his contract for his current phone in November 2010
144 and we have a signed copy of the consent form on file.

145 To collect and maintain our data, Sprizon uses “phone detail records.” These
146 records are generated not only when calls are made or received, but also when the device
147 moves about the networks. In the case of a phone call, the records will provide the
148 following information: the number making the call, the number receiving the call, when
149 the call started, how long the call lasted, the phone number charged for the call, the cell
150 sector(s) or base station(s) that handled the call, and the result of the call (whether it was
151 answered, dropped, etc.). Even when the phone is not making calls, however, the phone
152 is collecting location data. In these cases, the records will provide information about the
153 customer’s latitude and longitude, as well as the location of the nearest cell towers. This
154 information is stored within the phone and is uploaded to Sprizon’s customer usage
155 database every hour. Pursuant to Sprizon’s data retention schedule, this data is deleted
156 from Sprizon’s system on a monthly basis.

157 In this case, I received a phone call from Peyton Thurber, a law enforcement
158 agent from the Glenn Police Department. Peyton requested the phone detail records for
159 Storm Jackson from June 25-26, 2011 for law enforcement purposes. I released the
160 information because Detective Thurber did not request the content of any

161 communications. Sprizon Wireless policy does not require a warrant and I released the
162 requested information. Based on my review of the data prior to disclosure, it appeared
163 that the correct scientific procedures were used in this instance and that the devices were
164 used to their full capacity.

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184 **STATEMENT OF DREW KING**

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186 **Real Estate Agent - Prosecution**
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188 My name is Drew King. I am a real estate agent with Glenn Distinguished Homes real
189 estate agency. I am a graduate of Glenn High School and received a B.S. degree from
190 Buckeye University. I have been a licensed real estate agent since 2001. I have lived in
191 Glenn all of my life. I love this city. As a city of approximately 50,000 residents, Glenn
192 is a great place to live and raise a family.

193 I concentrate my business in residential listings but a small percentage of my
194 work is in commercial listings. Although the economic downturn affected the housing
195 market in Glenn, I have been very excited that the number of residential listings has
196 picked up over the past 4 months or so.

197 When a home is listed for sale, I generally hold an open house once a month.
198 Typically, open houses are scheduled on Sunday afternoons for 2 or 3 hours. My practice
199 is to schedule open houses on Sundays from 2:00 p.m. to 4:00 p.m. Open houses allow
200 anyone who may be interested to tour the interior of a home for sale, ask me questions,
201 and if interested, make an offer to purchase. Open houses are open to the public and
202 quite often, entire families- mom, dad, kids, and grandparents will come through a house.
203 The owners generally are not present during the open house and unless the owners have
204 moved, their furniture and personal possessions remain in the house. Unless there are a
205 lot of people in the house at the same time, I generally walk around the house with the
206 prospective buyer to point out positive features of the house and answer any questions
207 they may have.

208 At each open house, I have a sign-in sheet to keep track of everyone who comes
209 through a house. The sign-in sheet helps me track the number of people who may be
210 interested in buying and also provides contact information for me to follow up after the
211 open house. The sign-in sheet includes name, address, telephone number, email address,
212 and reason for visiting the house. I send a thank you note to everyone who attends the
213 open house. I keep the sign-in-in sheet for six months after a house is sold in case I list
214 another house that is similar to the one on the open house. I have sold several homes
215 because I contacted someone who had attended an open house and was still looking even
216 months after attending one of my open houses. It also is a great way for me to market my
217 business.

218 June 2011 was very busy for me. I had five or six listings at the same time.
219 Owners of two of the houses, the Evanses and Crosses, were very motivated to sel,l and
220 because their houses were not far from each other, I decided that I would hold an open
221 house for both houses on the same Sunday, June 26, 2011. Both of the open houses were
222 scheduled from 2:00 p.m. to 4:00 p.m. Because I could not be at both houses at the same
223 time, my friend Addie staffed the Evans' house and I staffed at the Cross' house. The
224 Evans house is at 262 Elmwood Street and the Cross house is at 400 Sycamore Street in
225 Glenn. Both open houses were very busy with lots of prospective buyers walking
226 through the houses. At one point during the Cross open house, I had four families in the
227 house at the same time. Since I could not walk with all of the prospective buyers, I sat in
228 the kitchen and waited until they completed the tour and answered any questions they had
229 about the house.

230 About 7:30 p.m. on June 26, Tim Evans called and asked me if anything unusual
231 happened during the open house. I told him that although I did not see anything out of
232 the ordinary, there was a lot of activity throughout the afternoon. Mr. Evans advised me
233 that he was very concerned because when he went upstairs to take a Vicodin for pain he
234 was having following knee surgery he had on Friday, the bottle was gone. Since the
235 surgery was just two days before the open house, the bottle was nearly full. Mrs. Evans
236 had the Vicodin prescription filled at the CVS on 5th Ave. It is not unusual to have small
237 amounts of prescription drugs taken during an open house. I am very fortunate that very
238 rarely does an owner report anything other than pills missing following an open house.
239 Mr. Evans advised me that nothing else in the house appeared to be missing or out of
240 place. I asked him to call me if he found anything else but I have not heard back from
241 him. I explained to Mr. Evans that unless there is a witness, there really was nothing I
242 could do.

243 I became concerned that there was a problem when I got a call from Justice Cross
244 also on Sunday evening June 26. Ms Cross advised me that she usually administers
245 Ritalin to her 7 year-old son every night with dinner. On Sunday, she went to medicine
246 cabinet in the downstairs bathroom to get out a Ritalin tablet and could not locate the
247 prescription bottle. Ms Cross believed the prescription bottle had 24 tablets because she
248 had filled it at the Walgreens on 6th Avenue on Monday, six days before the open house.
249 As with Mr. Evans, Ms Cross advised me that nothing else appeared to be missing or out
250 of place. I asked her to call me if she found anything else but I have not heard back from
251 her. I explained to Ms Cross that although it was unlikely, I was going to alert the Glenn

252 Police Department because I was worried that the two missing prescriptions were related
253 and could be part of a drug ring targeting open houses.

254 The next morning I called the Glenn Police Department and spoke to Detective
255 Peyton Thurber. After advising the detective what Mr. Evans and Ms. Cross told me
256 about the missing prescriptions, Detective Thurber asked me if I had any records from the
257 open house. At Thurber's request, I made copies of the sign-in sheets for both the open
258 houses at the Evans and Cross residences on June 26. As I was making copies, I verified
259 that Mr. and Ms Jackson and their son Storm, Courtney Smith, and Riley Hines were the
260 only names that were on the sign-in sheet for both the Evans and Cross open houses.

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276 **STATEMENT OF QUINN RUBY**

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278 **Telecommunications engineer – Defense**

279 My name is Quinn Ruby. I am a telecommunications engineer, and I design GPS-
280 enabled hardware for consumer-grade electronics such as cellular phones.
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282 GPS technology is an increasingly common location-tracking tool with a wide
283 variety of military, law enforcement, and civilian applications. It is a common feature in
284 vehicles, emergency equipment and, most relevant to this case, cell phones. A GPS-
285 enabled device works by receiving a signal from GPS satellites and triangulating with
286 ground stations which assist in plaice a user in a location.

287 Although GPS can identify a device’s location fairly accurately, it is not a perfect
288 technology. GPS information can help identify a device’s location at a particular time,
289 but it cannot pinpoint any device’s location with 100% accuracy. Particularly in
290 consumer devices such as cell phones, numerous factors will affect the accuracy of the
291 signal location.

292 Anyone who has used a cell phone has experienced poor reception, such as when
293 the phone call gets fuzzy or drops entirely. There are many reasons for poor reception,
294 including bad coverage in a specific area, heavy cloud cover, interference from other
295 wireless signals, and signal blockage from buildings or mountains. The same basic
296 complications apply to GPS transmissions which are, after all, radio signals transmitted
297 between a cellular phone and multiple satellites approximately 12,000 miles above our
298 heads.

299 When reviewing GPS data, it’s often tempting to try to eliminate all possible
300 reasons for signal inaccuracy. A person may find themselves checking historical weather

301 patterns, measuring building blueprints for the width of walls and the building materials
302 used, or reviewing topographical maps to determine the impact of nearby hills or whether
303 the device was located in a valley at the time the data was captured. But the simple truth
304 is that there are too many variables; you can never eliminate all possible sources of
305 inaccuracy. You simply have to account for it and accept that the reported location is
306 fairly accurate but may be off by as much as 100 feet.

307 Even if you could take GPS data in absolutely ideal conditions – no natural
308 obstacles, no interference, no passing airplanes, perfect clear weather – consumer
309 technology is just not advanced enough to “pinpoint” the GPS-enabled device like many
310 people expect it to. Remember: these signals travel about 12,000 miles to hit the GPS.
311 The device’s location is ultimately determined by the various GPS satellites “measuring”
312 the distances of the transmissions; you can have very precise technology, but there is an
313 inevitable margin of error when you’re trying to make multiple 12,000 mile
314 measurements.

315 A simple example may help clarify. Imagine you are standing at the front door of
316 a friend’s house. Now imagine you step inside that friend’s house. You have traveled no
317 more than a few inches, but those few inches mean the difference between being inside
318 the house or outside the house. Now imagine a case in which the critical question is
319 whether a person was inside a specific house at a specific time, and you can begin to see
320 the unavoidable limitations of GPS data. Even if the GPS data indicates that cell phone
321 was in the vicinity of a particular house at a particular time, no consumer technology can,
322 from 12,000 miles away, pinpoint a person’s location within inches. Therefore, the GPS

323 data on its own cannot conclusively say that person was inside or outside a particular
324 home.

325 None of this means that GPS technology is useless. It can tell us the general
326 vicinity of a GPS-enabled device, often with great accuracy. But it is only one piece of
327 information. Without other information -- such as surveillance footage, testimony, or
328 fingerprints -- GPS data on its own is insufficient to “pinpoint” the location of a device.

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355 **STATEMENT OF SAMMY DELANE**

356 **Parent – Defense**

357 We live in Glenn Estates at 300 Pine Tree Grove. My spouse and I are not native
358 Ohioans; we grew-up on the New Jersey shores. We miss the beach, especially in the
359 summer. Our three children were born in Ohio so they do not know about the joy of the
360 beaches in the summer. We moved to Glenn, Ohio because of my work; our plan was to
361 move back to New Jersey after two years. However, as it often happens, 25 years later we
362 cannot imagine living anywhere else. Our family is well-established in Glenn.

363 When we moved to Glenn, it was the up and coming community. *Urban*
364 *Development Magazine* has consistently listed Glenn, Ohio as one of the top five best
365 mid-sized cities (population of 250,000 to 750,000) in the United States to live. *Urban*
366 *Development Magazine* uses sophisticated statistical models based on the following
367 criteria to identify the cities: (1) the purchasing power of the median family income; (2)
368 the median home sale prices to determine the affordability and availability of housing; (3)
369 local school district math and reading test scores as compared to the state’s average score
370 and the percent of students in public and private schools; (4) the quality of life using
371 variables such as air quality index, personal and property crime rates, percent of
372 residents with long commute times, and the percent of the population that walks or bikes
373 to work; (5) the number of arts and leisure activities likes museums, restaurants, bars,
374 golf courses and ski resorts within proximity of the city; (6) the weather; and (7) percent
375 of the populations that is single, married and divorced. As satisfied as we’ve been with
376 Glenn, we are concerned with the impact the recent rash of robberies in the area will have
377 on the ranking of the city. Glenn has weathered the nation’s economic down-turn with

378 incredible fortitude. It would be ironic that the recent multiple robberies in our area be the
379 thing that ruins Glenn's reputation.

380 As victims of a home break-in, our sense of safety and security in our home and
381 community has been shaken. On the morning of Sunday, June 26th, we discovered that
382 Bruce's medication was stolen. We bought a weekly pill box/dispenser for Bruce to keep
383 track of the pills. Every Sunday morning, Bruce fills the pill box with the medication
384 regimen for each day. We had just refilled his prescription the day before at the
385 Walgreen's on 6th Avenue, so the bottle had 30 pills in it.

386 Nine months ago Bruce was diagnosed with osteosarcoma and had part of his leg
387 amputated. To manage the constant, chronic pain, our child takes 20 mg of Oxycontin
388 twice a day. Oxycontin is a time-release formula of oxycodone, similar to heroin, and is
389 intended for long-term relief of severe pain. Because Oxycontin is a Schedule II
390 controlled substance with high abuse potential, we monitor closely how much our son
391 takes and when. On another occasion one or two pills went missing, we didn't give it too
392 much thought because we had so much going on and there were more left in bottle. We
393 blamed it on the pharmacist who probably did not count well. This time is different. The
394 entire bottle was stolen. We were outraged with the robbery, and the worst part was
395 helplessly seeing our son in excruciating pain.

396 Through this ordeal, we have been blessed with the support and friendship of Tom
397 and Mary Jackson and their family. We have known them for a long time. They were our
398 first neighbors; although we later moved into a bigger house, we have kept in close
399 contact with them. As a matter of fact, Storm Jackson and Bruce have been best friends
400 since first grade. They were involved in the same extra-curricular activities in and out of

401 school. If you see Storm, you would also see Bruce. Storm has always been very polite
402 and respectful of our home and family. Storm is like one of our own and has free range in
403 our home. While other friends have distanced themselves from Bruce, Storm visits often
404 and has been a constant positive presence. Storm is a good kid and true friend to him.

405 Before the diagnosis, Bruce also enrolled in the local Community College with
406 Storm. Although Bruce had to withdraw from most classes, Storm helped us convince
407 him to keep one class, calculus. Math comes naturally to Bruce, and concentrating on the
408 coursework helped our child forget the pain, even if for a short while. Bruce got an “A”
409 in calculus in spite of the chronic pain. Storm, who is generally a good student, seems to
410 be struggling in college. Either Storm’s mother or father made a passing comment about
411 Storm’s college grades “suffering” because of questionable friends. Although the
412 comment surprised me, I did not pay too much attention to it. We have so much going
413 on—our plate is more than full.

414 Storm was among the friends who came to visit the night before the pills were
415 discovered stolen. The week had been particularly rough for Bruce, and Storm knew he
416 needed “cheering” up. Storm arranged it all—called old friends and invited them to over
417 to our house. The kids spent hours listening to music, watching TV, and playing video
418 games. Although they mostly hung out in Bruce’s room, at some point during the night
419 they congregated in the kitchen. We knew some of the college friends from their high
420 school days with Storm and Bruce; the other kids are Storm’s new college friends. We
421 were not sure what to think about the new friends.

422 I called Storm immediately upon discovering the stolen pills. In times of crisis,
423 Storm has been able to connect and comfort Bruce only as true friends can. In addition to

424 the Oxycontin, the oncologist told our son early on to learn relaxation techniques to
425 manage the pain. Storm has been great at encouraging Bruce to embrace meditation for
426 the pain and even takes time during the visits to meditate with him. Since it would take us
427 several hours to obtain more Oxycontin for Bruce, I asked Storm to come over, meditate,
428 and keep him company. Storm came over quickly. We know we can trust Storm and are
429 thankful for the kind and caring attitude he has shown towards Bruce.

430 We have seen Storm grow-up in front of our very own eyes. Storm was a caring
431 person as a child and has become a fine young adult. As a teenager, Storm participated in
432 several marathons to raise money for all kinds of social causes. Storm has also been
433 great with our youngest child. Storm has been that older sibling our youngest one
434 needed, especially when we were too preoccupied with Bruce's illness. For example, our
435 youngest child needed a ride during spring break to a soccer tournament. We could not
436 take her because the tournament coincided with Bruce's treatment week. Storm was so
437 gracious and offered to take our youngest to the tournament so that we could be with
438 Bruce. Storm hung-out with our youngest as any older sibling would do.

439 Regarding the recent robberies, I am here to say: It wasn't Storm. Storm would
440 never hurt Bruce nor is Storm an addict. After all, I have known Storm since he was in
441 first grade. Storm has grown-up in our home; we know Storm as well as we know our
442 own children. Everyone in the Delane household would vouch for Storm's character and
443 integrity.

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447 **STATEMENT OF JADEN FITZGERALD**

448 **Senior Counsel for EIPG - Defense**

449 My name is Jaden Fitzgerald. I am Senior Counsel for the Electronic Information
450 Privacy Group (EIPG). My work focuses on consumer privacy, digital security, and
451 government surveillance. I completed my bachelors' degree in Computer Technologies
452 from Ohio Central University and obtained my J.D. from the Evergreen University
453 College of Law. I also obtained an LLM in Law, Science & Technology from Alexander
454 University College of Law.

455 I was a founding member of EIPG when it was formed in 1994. EIPG focuses on
456 a wide range of issues related to electronic privacy. The majority of my work is related
457 to satellite-based location services, more commonly known as GPS (Global Positioning
458 System) or mobile locating. Among other activities, I maintain a data base of reported
459 instances in which law enforcement, public agencies, and private entities use GPS
460 tracking to obtain data regarding activities of private citizens and employees. EIPG also
461 maintains a database that monitors state and federal legislation. EIPG analyzes the data to
462 identify trends regarding how information obtained from GPS tracking and other location
463 based services impact individual privacy concerns. Much of EIPG's research and
464 analysis is used to support proposed legislation, scholarly publications, law enforcement
465 and judicial training programs. EIPG's research also is used by private industry to
466 establish internal policies and procedures regarding how and when mobile location
467 systems can be used to monitor employees' activities both on and off the job. EIPG is
468 frequently asked to testify at congressional hearings. For example, I recently testified
469 before the Senate Commerce Committee hearing on "Consumer Privacy and Protection in

470 the Mobile Marketplace.” Given the nature of EIPG’s research, we often are asked to
471 make presentations regarding the ethical issues raised by using GPS tracking and
472 location-based services.

473 Today, the technology is so advanced that GPS and other mobile locating services
474 can identify an individual’s precise location almost anywhere on Earth. GPS technology
475 continues to grow more sophisticated, concealable, and inexpensive. GPS systems also
476 are very reliable and accurate. As demonstrated by EIPG’s research, the ability of GPS
477 systems to track and store an individual’s every move, including movements within their
478 homes, 24 hours a day, seven days a week, raises substantial privacy and ethical issues.
479 The results of our extensive surveys indicate that cell phone users are very concerned that
480 the data can easily be obtained and stored virtually indefinitely without anyone knowing
481 it.

482 EIPG has completed extensive research regarding the extent to which individual
483 users of electronic communication believe that data and other information that can be
484 obtained is private and should not be shared without their knowledge and consent.
485 Interestingly, most users are not even aware that cell phones can track their movements
486 using GPS software. As addressed in my recent senate committee hearings, most devices
487 on the market today have been tracking user locations and information without the user
488 even knowing such information is being collected.

489 EIPG’s research demonstrates that the majority of people who use electronic
490 communications, including cell phones, email, and text messages believe that all of their
491 conversations and any information that can be tracked and stored is highly personal and
492 private. When surveyed, most individuals believe that because they own the cell phone

493 and pay for the service, no data should be shared and they expect the service providers to
494 consider the data and information as highly confidential and should not be given to
495 anyone without their knowledge or consent. Additionally, such users also do not believe
496 that GPS data should be considered as part of the public domain because it uses shared
497 transmission devices. Answers to surveys and personal interviews indicate that cell
498 phone users believe that the ability of a third party, whether law enforcement or
499 employer, to track their every movement without their knowledge and consent amounts
500 to prying into the details of their daily lives and is a complete invasion of privacy.

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Exhibit A

Map of Glenn, Ohio

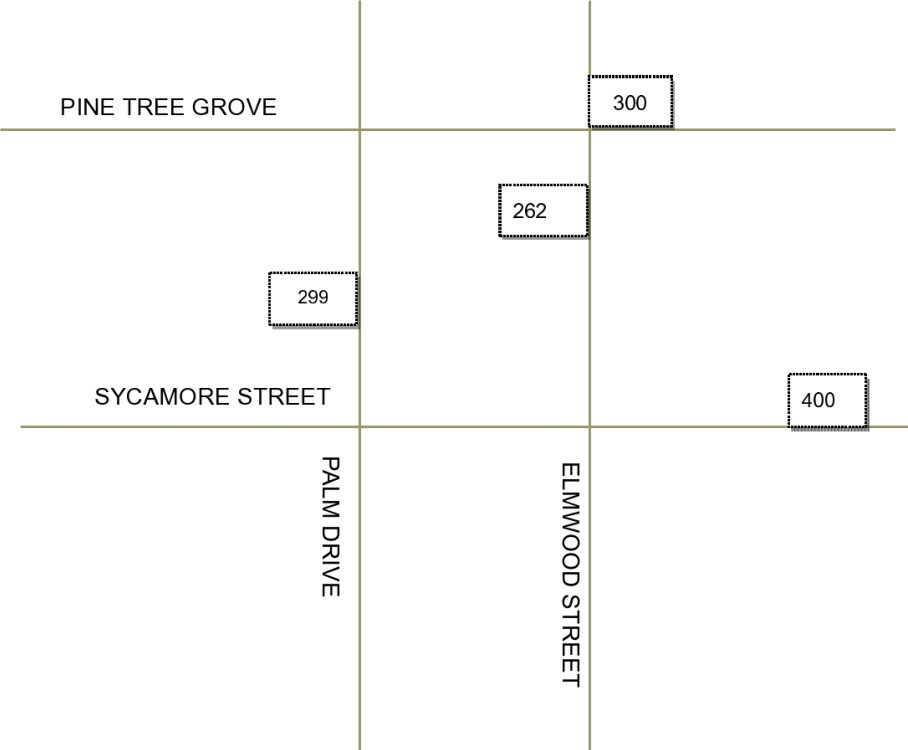


Exhibit B

GLENN DISTINGUISHED HOMES
 "The distinguished realtor you can trust."
 Drew King
 Realtor

SIGN IN SHEET FOR OPEN HOUSE
 262 Elmwood Street
 Glenn, Ohio
 June 26, 2011
 2-4 p.m.

NAME	ADDRESS	TELEPHONE NUMBER	E-MAIL ADDRESS	REASON FOR VISITING TODAY?
Riley Hines	789 Blue street	614-375-0001	rhines07@buckeye.net	2 nd bath home
MR. RANDY WATSON	955 LORA LANE	614-7659209	SUNSETSAITOR@WWW.net	MOVING FROM HOUSE BOAT
Courtney Smith	111 Buckeye Lane	614-455-5000	CSmith@buckeye.net	Larger Home
Tom Jackson			rsj@yahoo.com	smaller home
Mary Jackson			"	"
STORM JACKSON			"	"
Pennie Lee	30 Meadow Dr	614 484 2918	PL6E@aol.com	Larger family room
Eric Rogers	200 E Main St	614 231 6224	ER123@yahoo.com	New house
Leslie Reader	273 Pine Nut Dr.	614 754-8623	lreader@gmail.com	New Home!
Dan Striker	826 Wicker Ave	614 239-1254	striker@yahoo.com	larger home
Veronica Douglas	210 Fern Ln.		lady@aol.com	Having triplet... need larger house

Exhibit C

GLENN DISTINGUISHED HOMES
 "The distinguished realtor you can trust."
 Drew King
 Realtor

SIGN IN SHEET FOR OPEN HOUSE
 400 Sycamore Street
 Glenn, Ohio
 June 26, 2011
 2-4 p.m.

NAME	ADDRESS	TELEPHONE NUMBER	E-MAIL ADDRESS	REASON FOR VISITING TODAY?
Courtney Smith	111 Buckeye Lane	614-455-5000	csmith@buckeye.net	Larger home
Raura Maplewood	1809 Carol Ave	789-3317	lmaplewood@yahoo.net	large yard 3 car garage
Riley Hines	789 Blue Street	614-375-0001	r.hines07@buckeye.net	2 ⁺ bathroom home
Tom Jackson			TJ@yahoo.com	Smaller home
Nancy Jackson			"	"
Storm Jackson			"	"
Pernice Lee	30 Meadow Dr	614-484-2918	PLEE@aol.com	larger family room 1st time
Ben Kindred	6968 Maybrook Dr	614-564-7144	Ben.k.in@gmail.com	home buyer
Reg Smith	768 Clare St.	614-790-1112	—	larger kitchen
SAM GOLD	615 YORK ST.	937-298-4647	—	NEW HOME
Shandi Lots	888 Race Street		lots75@gmail.com	new house

The Constitution of the United States of America

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Case Law redacted and included in the High School Mock Trial Case Manual
Only those items listed can be used during the trial

Charles Katz v. United States

Michael Lee Smith v. State of Maryland

United States v. Leroy Carlton Knotts

United States v. James Connors Karo et al.

United States of America v. Craig Forest and Herman E. Garner, III

United States of America v. Lawrence Maynard

Glossary

Accused: Person against whom a criminal proceeding is initiated. “Accused” and “defendant” refer to one who in a legal manner is held to answer for an offense at any stage of the proceedings, or against whom a complaint in any lawful manner is made, charging an offense including all proceedings from the order of an arrest to final execution. A defendant is not accused until charged with the offense or until he becomes subject to actual restraint by arrest.

Action: Lawsuit; the legal demand for one’s right asserted in court.

Admissible Evidence: Evidence which may be received by a trial court to aid the trier of fact (judge or jury) in deciding the merits of a controversy.

Admissions: In criminal law, the voluntary acknowledgment that certain facts do exist or are true; but, of themselves, admissions are insufficient to be considered a confession of guilt. It is a statement by the accused which tends to support the charge, which tends to support the charge, but which is not sufficient to determine guilt.

Adversary System: The trial methods used in the U.S. and some other countries, based on the belief that truth can best be determined by giving opposing parties full opportunity to present and establish evidence, and to test by cross-examination the evidence presented by their adversaries, under established rules of procedure before an impartial judge and/or jury.

Affidavit: A written statement made or taken under oath.

Allegation: In pleading, an assertion of fact; the statement of the issue which the contributing party is prepared to prove.

Arraignment: In criminal practice, to bring the prisoner to court in person to answer a charge.

Arrest: “To deprive a person of his liberty by legal authority,” in the technical criminal law sense, seizure of an alleged or suspected offender to answer for crime.

Bailiff: A court attendant who keeps order and is responsible for the custody of the jury.

Bench: The court; the judges composing the court collectively. The place where the judge sits (as “approach the bench”) for the attachment or arrest of a person.

Bench Warrant: An order issued by the court, (“from the bench”) for the attachment or arrest of a person.

Bifurcation: One judicial proceeding that is divided into two stages in which different issues are addressed separately by the court. (A common example of a bifurcated trial is one in which the question of liability in a personal injury case is tried separately from and prior to a trial on the amount of damages to be awarded if liability is found. A bifurcated trial in such a case is preferable because if the defendant is not found liable, there is no need to spend the money or time in the presentation of proof and witnesses on the issue of damages).

Bill of Rights: The first ten amendments of the U.S. Constitution, in which the liberties, freedoms, and powers of citizens are listed.

Brief: A written argument submitted to the court by counsel setting forth facts and/or law supporting his or her client's case.

Burden of Proof: The duty to establish a fact or facts in dispute, i.e., the plaintiff in a personal injury lawsuit has the burden of proving that an injury occurred, and that the defendant caused it.

Case and Statutory Authorities: Court decisions and legislation that provide legal precedent.

Chambers: The private office or room of a judge.

Charges: The crimes of which a person is accused.

Circumstantial Evidence: Indirect facts about the circumstances involved in a case from which you can deduce or figure out how the event might have happened.

Citation: A reference to a source of legal authority, e.g., a citation to a statute or case. It is analogous to summons at law, in that it commands the appearance of a party in a proceeding; "a writ issued out of a court of competent jurisdiction, commanding the person the person named therein to appear on the day named, and do something therein mentioned, or show cause why he should not."

Clear and Convincing: As a standard of proof, it is that quantum of evidence "beyond a mere (preponderance)", but below that of "beyond a reasonable doubt," and such that it will produce in the mind of the trier of fact a firm belief as to the facts sought to be established.

Closing (Argument): Summary of remarks made to the jury by attorneys for both sides after all evidence has been presented in the trial.

Code: A collection of laws pertaining to related subjects arranged into chapters, table of contents and indices, issued by legislative authority; a complete compilation of law on a subject.

Common Law: Law which derives its authority solely from ancient usage and customs and from judgments and decrees of courts which recognize and enforce such usage and customs as distinguished from statutory law.

Complainant: One who seeks legal redress, i.e., a plaintiff in a civil action, or one who calls the police report to a crime.

Complaint: The first pleading or legal paper filed in court by the plaintiff which describes the plaintiff's claim against the defendant.

Defense Attorney: The lawyer who represents the defendant.

Deliberation: The act of discussing and coming to a decision in a legal case.

Deny: For the judge to refuse to agree to an attorney's statement, objection, desire to enter in evidence, etc.

Deponent: A witness; one who gives information concerning some fact or facts known to him, under oath in a deposition.

Direct Evidence: Proof of facts by witnesses who personally saw deeds or heard words spoken which constitute the facts to be proven- as distinguished from circumstantial evidence.

Dismissal: An order or judgment finally deciding a particular lawsuit in favor of the defendant by sending it out of court without trial.

Dissent: The disagreement of one or more judges of a court with the decision rendered by the majority.

DNA: (deoxyribonucleic acid) The nucleic acid found in the nuclei of all cells. It is considered as a gene.

Examination: The questioning of a witness by a lawyer at a trial or deposition. When the lawyer who called the witness to the stand questions the witness, the examination is direct. When the opposing lawyer is questioning, it is cross-examination.

Exclusionary Rule: A constitutional rule of law, which provides that otherwise admissible evidence may not be used in a criminal trial if it was the product of illegal police conduct.

Exhibit: A paper or article submitted in a court or produced during a trial or hearing and formally made part of the record.

Ex parte: Refers to situations in which only one party (and not the adversary) appears before a judge.

Expert Witness: A person who, because of training, work or experience, is qualified to testify on the technical or specific facts in a case (for example, a doctor).

Fact: Something that really exists; a known event or thing.

Federal Courts: The courts of the United States, as distinguished from the courts of individual states. These courts derive their legitimacy from the Constitution, Art. III, Sec. I Clause 1: "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

Felony: A major crime such as murder, arson, sexual assault, etc. The penalty can be imprisonment in the state prison for more than a year or death.

Fruit of the Poisonous Tree: In criminal law, the doctrine that evidence discovered due to information found through illegal search or other unconstitutional means (such as a forced confession) may not be introduced by a prosecutor. The theory is that the tree (original illegal evidence) is poisoned and thus taints what grows from it.

Habeas Corpus A writ of habeas corpus is a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. A habeas corpus petition is a petition filed with a court by a person who objects to his own or another's detention or imprisonment. The petition must show that the court ordering the detention or imprisonment made a legal or factual error.

Hearsay Rule: “Evidence of a statement, which is made other than by a witness while testifying at the Hearing, offered to prove the truth of the matter stated.” Hearsay evidence is inadmissible by this rule.

Hostile Witness: A witness who exhibits such antagonism toward the party which called him or her to testify that cross examination of that witness by that witness is permitted by the court.

Impartial: Fair; without prejudice; unbiased.

Impeachment of Witness: An attack on the credibility (believability) of a witness through evidence produced for that purpose. (A cross examination technique).

Inadmissible: That which under the rules of evidence cannot be admitted or received as evidence.

Incriminate: To hold another, or oneself, responsible for criminal misconduct; to involve someone, or oneself, in an accusation of a crime.

Indictment: A grand jury’s written accusation that charges a named party with the commission of a crime.

Information: A formal accusation of the commission of a criminal offense made by a competent public officer, such as a prosecutor, rather than by indictment by a grand jury.

Intent: A state of mind wherein the person knows and desires the consequences of his act which, for purposes of criminal liability, must exist at the same time the crime is committed.

Irrelevant: Evidence not bearing on the matter in dispute, not tending to prove or disprove any issue involved in the matter.

Judge: A person appointed or elected to hear and decide a case, and to make certain that legal procedures are followed.

Judgment: An order by a judge on a case; decision.

Jurisdiction: The power to hear and determine a case. (territorial/subject matter).

Jury: A given number of persons selected according to the law to determine issues of fact on the basis of evidence submitted to them.

Jury (Grand): A jury of inquiry which receives complaints and accusations in criminal cases. It hears the prosecutor’s evidence and issues indictments when satisfied that there is probable cause to believe that a crime was committed, that the accused committed a crime and that a trial should be held.

Jury (Petit): The ordinary jury of 12 (or fewer) persons selected to hear the trial of a civil or criminal case and is trier of fact, (distinguished from the grand jury).

Juvenile Code: Laws that apply to children under 18.

Law: Rule for society, usually made by the government, that the people must obey. In the United States, the legislative branch is responsible for making laws.

Lawyer: A person who has been licensed to represent others in legal matters.

Leading Question: One which suggests to a witness the answer desired by the inquirer, or puts words into the witness's mouth- prohibited on direct examination on the theory that the witness is friendly to the party who called him or her and will accept any suggestions made by that party's counsel rather than answering as he or she should, on the basis of his or her own recollection. (witness can answer "yes" or "no").

Litigation: The process of resolving a dispute over legal rights in court.

Misdemeanor: Offenses less serious than felonies; generally punishable by fine or imprisonment in local rather than state prisons.

Mistrial: Termination of a trial prior to verdict, with the case ordered for retrial, because of some basic flaw such as lack of jurisdiction or improper drawing of jurors, or because of some event in the courtroom which jeopardizes the rights of one of the parties to a fair trial.

Mock Trial: A simulated trial.

Moot: Not actual, theoretical or hypothetical - usually in reference to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing which would be affected by the court's decision.

Motion: An application to the court requesting an order or rule in favor of the applicant.

Motion to Dismiss: A request made by a lawyer to a trial judge to end or dismiss a case, for example, because of a lack of evidence.

Motion to suppress: A request made by a lawyer to a trial judge to prevent the introduction of evidence that would damage that lawyer's side of the case.

Objection: The taking of an exception to a question, answer, statement or procedure in trial- intended to focus the court's attention on some allegedly improper item of evidence or procedure and to obtain relief therefrom.

Opening Statement: Introduction to the case given by lawyers for each side at the start of a trial.

Overrule: A judge's decision to deny an objection or motion made by lawyers in the case.

Parties: Principals; the parties to a lawsuit are those who instituted it and those against whom it is brought.

Perjury: Lying under oath. Perjury is a crime.

Physical (Real) Evidence: Tangible items used to prove or disprove a point in trial.

Plain View: An exception to the general requirement of a valid search warrant to legitimize a search or seizure.

Plaintiff: A person who brings a civil action; the party who complains or sues.

Pleading: The process by which opposing parties alternately present their contentions in writing, each responding to the immediately preceding pleading of the other party, thereby narrowing the controversy until a single point of dispute emerges, called the issue. It is the issue which is resolved at the trial.

Precedent: Previous court decisions used for guidance in deciding questions of law in a similar case.

Preemption: The rule of law that if the federal government through Congress has enacted legislation on a subject matter it shall be controlling over state laws and/or preclude the state from enacting laws on the same subject if Congress has specifically declared it has "occupied the field." Preemption can occur by Congress passing a law, preempting state or local law. If Congress has not clearly claimed preemption, a federal or state court may examine legislative history to determine the lawmakers' intent toward preemption.

State powers can also be limited by the Supremacy Clause. Article VI, section 2 of the United States Constitution states: 'This Constitution, and the Laws of the United States which shall be made in Pursuance there of: and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.' This clause is commonly referred to as the Supremacy Clause.

Prejudicial Error: "Reversible Error"; an error in the course of a trial serious enough to require an appeals court to reverse the judgment.

Preponderance of Evidence: The greater weight (in terms of quality, not quantity) of evidence, or that evidence which is more believable and convincing.

Presumption of Innocence: A basic fundamental of our legal system; the theory behind due process, i.e., that a citizen accused of a crime by the government must be proven guilty beyond a reasonable doubt by factual evidence presented.

Pretrial Motion: A request from a lawyer to a trial judge to suppress evidence, postpone a case or change the location of a trial.

Probable Cause: A reasonable ground, established after investigation, for believing that facts exist warranting further proceedings.

Profiling: Profiling is the law-enforcement practice of scrutinizing certain individuals based on characteristics thought to indicate a likelihood of criminal behavior. Some profiling has no racial or ethnic basis; for example, people traveling alone are more likely to engage in terrorist activity than are those in groups.

Prosecuting Attorney: Lawyer who asserts the interests and rights of the people of the state against the defendant in a criminal charge.

Prove: Show with evidence that something exists or is true.

Reasonable Doubt: An accused person is entitled to acquittal if, in the minds of the jurors, guilt is not proved beyond a “reasonable doubt”; proof beyond a “reasonable doubt” is that which excludes every reasonable theory of the facts except that which it tends to support, which establishes the facts to a moral certainty but not beyond all possible or imaginary doubts.

Reasonable Suspicion: A standard less than probable cause established for arresting authorities.

Rebuttal: The introduction of answering evidence; proof by one party disputing provided by its adversary; also, the stage of a trial when such evidence is introduced.

Redirect Examination: The questioning of a witness during trial by the party that called him or her to testify, following cross examination by the other party upon matters arising out of such cross examination.

Right: What a person justly deserves; is entitled to have.

Search and Seizure, unreasonable: In general and unlawful search of one’s premises or person; a search which is unreasonably oppressive in its invasion of privacy.

Search Warrant: A written order from a justice or magistrate directing an officer to search a specific place for a specific object, issued upon a showing of probable cause.

Self Incrimination: The constitutional right of a person to refuse to answer questions or otherwise give testimony against him/herself which will subject him/her to a substantial likelihood of criminal incrimination.

Stand: The place where a witness sits to give testimony. In England and at one time in America, witnesses stood during testimony. The place where they stood was called the “stand.”

Stare Decisis: To abide by or adhere to decided cases, the policy of the courts to be guided by precedent and not to disturb a settled point of law as applied to a certain set of facts.

Stipulation: An agreement between opposing attorneys on any matter relating to the proceedings or trial, i.e., to extend the time to answer, to adjourn the trial date, to admit certain facts at the trial, etc. (Agreed facts)

Subpoena: A court order for a person to appear in court and give testimony.

Substantive Law: That part of the law which states, defines and regulates rights; distinguished from adjective law, which sets forth methods of enforcing rights created by substantive law.

Suppress Evidence: To withhold or prevent the publication or revelation of evidence.

Sustain: For the judge to agree with an objection, statement, or motion made by a lawyer in a case.

Sworn Statement: A statement made by a witness made under oath.

Testify: To speak in court under oath.

Testimonial Evidence: Statements or depositions by witnesses in a trial.

Testimony: Evidence given by a competent witness under oath, as distinguished from documentary evidence or evidence from sources.

Transcript: The record of proceedings in a trial or hearing.

Trial: The hearing and deciding of a case in a court of law.

Unanimous: In total agreement. In Ohio, jury decisions in criminal cases must be unanimous. In civil cases, 75% of the jurors must agree.

U.S. Constitution: The basic principles and beliefs which establish the structures and operations of the federal government of the United States and a skeletal description of the government.

U.S. Supreme Court: The Court is the highest tribunal in the nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law, and thereby, also functions as guardian and interpreter of the Constitution.

Verdict: The Jury's decision or finding on the issues submitted to it for determination.

Warrant: A written Order directing the search or arrest of a person or persons, issued by a court, body or official having the proper authority.

Witness: One who testifies to what he or she has seen, heard or otherwise observed.

OHIO HIGH SCHOOL MOCK TRIAL TIMEKEEPER
MANUAL
Timekeepers' Responsibilities

I. **BEFORE THE TRIAL**

A. Be sure to have in your Timekeeper's Packet:

- a) 1 Timekeeping Sheet;
- b) 1 Time Card Use Sheet;
- c) 2 stop watches;
- d) 1 set of time cards (teams **MUST** use the cards provided in the Competition Manual)

B. Enter the courtroom; take your position (at the end of the jury box closest to the audience, if possible). Rise when the judge and jury enter the courtroom. Be seated when the judge grants permission for all to be seated.

II. **DURING THE TRIAL**

A. Enter the Trial Number and Team Names in the spaces provided at the top of the Timekeeping Sheet. Arrange your stopwatches, time cards and Time Card Use Table.

B. Keep time during the trial, remembering the following.

1. Use one stopwatch for each side - **PLAINTIFF** on your left and **DEFENSE** on your right.
2. **RESET** stopwatch to zero *only* at the following times:
 - a) at the beginning of each side's opening statement;
 - b) at the beginning of each side's direct examination;
 - c) at the beginning of each side's cross examination; and,
 - d) at the beginning of each side's closing argument.
3. **DO NOT** reset stopwatch to zero at any other time.
 - a) **DO NOT** reset stopwatch to zero at the end of direct and cross examinations, since you will need to resume direct examination timing for redirect questioning, and cross examination time for re-cross questioning;
 - b) **DO NOT** reset stopwatch to zero at the end of the Plaintiff/Prosecution's closing argument, since you will need to resume the Plaintiff/Prosecution's closing argument timing for the Plaintiff/Prosecution's rebuttal.
4. **START** timing only when the actual opening statement/closing argument or questioning begins (e.g., *do not start* when an attorney asks to reserve time for rebuttal or when a witness is sworn).
5. **STOP** timing during objections, responses to objections, and questioning by the judge.

6. During the trial if there is more than a 15 second discrepancy between the Plaintiff/Prosecution and Defense teams' timekeepers, the procedure outlined below in Section V will be followed.
- C. Display time cards to the attorneys and witnesses at the intervals set out in the Time Card Use Table. Display the STOP card to the presiding, scoring judges, and teams.
- D. At the conclusion of the trial, if either side informs the court that it wishes to file a dispute and a dispute hearing is granted, please time the additional three-minute argument per side.

III. DURING THE RECESS

- A. Add the time used for each side and sign the timekeeping sheet.
- B. Give your timesheet to the presiding judge.
- C. Remind the judges that they have 12 minutes for debriefing and that you will signal when time for debriefing has expired.
- D. Help teams straighten up the courtroom for the next round.

IV. AFTER THE RECESS

- A. Reset your stopwatch to zero and start time for the debriefing.
- B. Signal the presiding judge when the 12 minutes allowed for debriefing have expired.

V. DISCREPANCIES IN TIME BETWEEN TEAM TIMEKEEPERS

- A. If a time-keeping discrepancy of more than 15 seconds is discovered between the plaintiff and defense teams' timekeepers, the timekeepers should notify the presiding judge as soon as the discrepancy is discovered. In this event, one of the timekeepers should stand, wait to be recognized, and say "Your honor, we have a time discrepancy of more than 15 seconds."
- B. The presiding judge will rule on any time discrepancy before the trial continues. Timekeepers will synchronize stop watches to match the presiding judge's ruling (for example if Plaintiff stop watch indicates 2 minutes left on a direct examination and the Defense stop watch indicates time is expired, the presiding judge may decide to split the difference in the timing variation and give Plaintiff 1 minute to conclude the direct examination. Defense would adjust timing to allow for the 1 minute timing decision.)
- C. Any discrepancies between timekeepers less than 15 seconds will not be considered a violation.
- D. Timekeepers may raise time discrepancies of 15 seconds or more as soon as they are discovered. No time disputes will be entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of timing disputes are final.

OHIO HIGH SCHOOL MOCK TRIAL COMPETITION

Timekeeper Instructions

1. **ALL TEAMS** are to bring two (2) **STOPWATCHES** and a *trained* TIMEKEEPER. No stopwatches and no timecards will be available at the competition site. Your timekeeper is to be *one of the official team members* listed on your roster. Timekeepers are to be so noted on your team roster in each round.
2. **TWO STOPWATCHES** are needed by each team (one stop watch for keeping time for the Plaintiff and one stop watch for keeping time for the Defense, regardless of which side your team is presenting), the Timekeeper's Responsibilities Sheet AND your own "**TIME-REMAINING**" CARDS. **Teams MUST use the timekeeper cards provided in the Competition Manual.** (The timekeeper must be familiar with the trial sequence chart and have practiced completing the tally sheet before the tournament begins.) In each trial, the timekeeper will sit in the jury box, if one is available, and keep time for **both teams**. In all trials, the **official timekeeper** will turn in the timing sheet in to the presiding judge.
3. The official timekeeper will (a) keep accurate time for both teams; (b) show "time-remaining" cards to both teams; and (c) notify the presiding judge that "TIME" has expired at the end of the trial by showing the "STOP" card.

If a time-keeping discrepancy of **more than 15 seconds** is discovered between the plaintiff and defense teams' timekeepers, the timekeepers should notify the presiding judge as soon as the discrepancy is discovered. In this event, one of the timekeepers should stand, wait to be recognized, and say "Your honor, we have a time discrepancy of more than 15 seconds. The procedure below will then be followed:

- The presiding judge will rule on any time discrepancy before the trial continues. Timekeepers will synchronize stop watches to match the presiding judge's ruling (for example if Plaintiff stop watch indicates 2 minutes left on a direct examination and the Defense stop watch indicates time is expired, the presiding judge might decide to split the difference in the timing variation and give Plaintiff 1 minute to conclude the direct examination. Defense would adjust timing to allow for the 1 minute timing decision.)
- Any discrepancies between timekeepers less than 15 seconds **WILL NOT** be considered a violation.
- Timekeepers may raise time discrepancies of 15 seconds or more as soon as they are discovered. No time disputes will be entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of timing disputes are final.

Timekeepers' cards, **provided in the competition manual**, are to show time remaining as indicated on the Time Card Use sheet. Rounding seconds used up or down to whole minute integers will make timekeeping easier. Both timekeepers are responsible for keeping accurate time.

REMEMBER:

Signed Timing Sheet is to be returned with the judges' packet at the conclusion of each round.

Ohio High School Mock Trial Competition
Time Card Use Table

For **Opening** Statements

When your stopwatch says	Hold up the timecard that says
1:00	3:00
2:00	2:00
3:00	1:00
3:30	:30
4:00	STOP

For **Direct** Examination

When your stopwatch says	Hold up the timecard that says
5:00	15:00
10:00	10:00
15:00	5:00
16:00	4:00
17:00	3:00
18:00	2:00
19:00	1:00
19:30	:30
20:00	STOP

For **Cross** Examination

When your stopwatch says	Hold up the timecard that says
3:00	15:00
8:00	10:00
13:00	5:00
14:00	4:00
15:00	3:00
16:00	2:00
17:00	1:00
17:30	0:30
18:00	STOP

For **Closing** Statements

When your stopwatch says	Hold up the timecard that says
1:00	4:00
2:00	3:00
3:00	2:00
4:00	1:00
4:30	0:30
5:00	STOP

For **Rebuttal** – Plaintiff ONLY (Optional)

When your stopwatch says	Hold up the timecard that says
1:00	1:00
2:00	STOP

Ohio High School Mock Trial Competition

Timekeeping Sheet

Plaintiff Team _____ Defense Team _____ Trial # _____

Opening Statements (4 minutes each)

Plaintiff _____

Defense _____

Direct/Redirect Examination of Two Plaintiff Witnesses (20 total minutes)

FIRST WITNESS (ending time) _____

SECOND WITNESS (cumulative ending time) >20 = time violation _____

Cross/Recross Examination of Two Plaintiff Witnesses (18 total minutes)

FIRST WITNESS (ending time) _____

SECOND WITNESS (cumulative ending time) >18 = time violation _____

Direct/Redirect Examination of Two Defense Witnesses (20 total minutes)

FIRST WITNESS (ending time) _____

SECOND WITNESS (cumulative ending time) >20 = time violation _____

Cross/Recross Examination of Two Defense Witnesses (18 total minutes)

FIRST WITNESS (ending time) _____

SECOND WITNESS (cumulative ending time) >18 = time violation _____

Closing Arguments (5 minutes each)

Plaintiff _____

Defense _____

Rebuttal (optional) (2 minutes)

Plaintiff _____

REMEMBER: CLOCK STOPS FOR OBJECTIONS!

TIMEKEEPER'S SIGNATURE

Acknowledgements

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