
Michigan High School
Mock Trial Tournament 2012
Materials



Introduction

Welcome to students, teachers, attorneys, educators, judges, law students, legal assistants and others who will participate in the 2012 Michigan High School Mock Trial Tournament.

We hope that you will find your involvement to be an intellectually stimulating and personally rewarding experience. Beyond that, the Tournament's goals are to:

- Further understanding of the law, court procedures and the legal system.
- Increase proficiency in basic life skills such as listening, speaking, reading and reasoning.
- Promote communication and cooperation between the school community—teachers and students—and the legal profession.

The Tournament is governed by the rules set out in the pages that follow. The final segment of this packet contains the Case Materials.

This 2012 mock-trial case was initially drafted by the Hon. Thomas P. Franczyk, Judge, Erie County Court in Buffalo, NY, for use in the 2010 Buffalo Niagara Trial Competition held in Buffalo, NY. The case originally contained a civil case, *The Hartfeldt Insurance Co., Inc. v. Zak Nugent Siriusz*, and a criminal case, *The People v. Thomas Osiski*. The criminal case has been adapted for this competition, and the civil case has been removed. We extend our sincere thanks to Judge Franczyk for granting us permission to adapt this case for use in our competition.

And for those who are interested, Judge Franczyk also wrote the music that accompanies this case and played the part of the victim in the available audio recording.

We hope you find these materials interesting and educational, and we wish you the best of luck at this year's tournaments.

Summary

People of New Michigan v. Thomas Osiski

The defendant, Thomas “Duke” Osiski, has been indicted by the Grand Jury of Rockford, New Michigan, on the charge of Second Degree Murder. He is accused of causing the death of his former band-mate, Martin Lewis Siriusz by shooting Siriusz in the head on May 31, 2009, in Siriusz’s in-home recording studio at 77 Rockaway Road in Rockford, New Michigan, just three weeks before they were scheduled to begin a twenty-city reunion tour for their band “Sir Osis.”

The People allege that Osiski, furious over Siriusz’s eleventh-hour decision to cancel the tour (thereby depriving Osiski of several-hundred-thousand dollars in much-needed income and setting the stage for significant breach-of-contract lawsuits with concert promoters), shot Siriusz above and just behind his right ear with his (Siriusz’s) own .9mm pistol while Siriusz was seated at his piano listening to a playback of his latest (and, as it turned out, his last) recording, entitled “Hanging at Death’s Door.”

The defendant denies shooting his long-time friend and former band-mate, contending that he went to the recording studio in an attempt to persuade Siriusz to reconsider his decision, but when he entered the room, he found Siriusz slumped forward on the piano with the “Death’s Door” soundtrack still playing. Seeing a bottle of alcohol and an open bottle of sleeping pills on the piano, Osiski assumed that Siriusz had accidentally OD’d as he had done a few times before when they were together as “Sir Osis” back in the 1980’s. With his right hand, Osiski grabbed Siriusz by the right shoulder and nudged him in an effort to wake him up. As he did so, he felt a strange wetness and noticed blood on his hand. He then took a closer look and observed a lot of blood above and behind Siriusz’s right ear and down his neck. He looked down and saw Siriusz’s .9mm pistol on the floor below his right hand, which was hanging down from his side. He then put his hand over Siriusz’s right wrist and tried to feel for a pulse. As he did, he cried, “Marty, what have you done to yourself?”

Feeling no pulse, Osiski ran out of the studio, through the kitchen, and out to the back patio, where he saw Siriusz’s son, Pat Nugent Siriusz, standing naked in the shallow end of the pool and rubbing a bar of soap up and down his arms and under his arm pits. Startled by Osiski’s sudden appearance, Pat said, “whoa, what are you doing here?” Osiski replied, “Your father, I think he shot himself!” Pat replied, “What are you talking about?” Osiski said, “He’s in the recording studio. He’s a bloody mess. I found his gun.”

Osiski then called 911 and the Rockford police arrived shortly thereafter. They immediately noticed blood on Osiski’s hand and were skeptical of his explanation. They brought him to headquarters where they took statements from him and Pat Nugent Siriusz.

Later, homicide detective Tyler arrived at the scene and observed Siriusz’s body still slumped over the piano. He took note of the bottle of booze and the pills and directed the Evidence officer to collect them as evidence along with the gun on the floor. He noticed blood on the gun and blood on Siriusz’s right hand.

The gun, a .9mm pistol, had eight live rounds in the magazine. No spent cartridge casings were found. Ballistic analysis determined that the fatal bullet (which was removed at autopsy from behind

Siriusz's left eye), came from that gun. Gun powder residue recovered from the wound site, the somewhat irregularly shaped entry wound, and the blood on the gun barrel suggested that the fatal shot was fired from a contact or near-contact (i.e., within inches) distance between the muzzle and the deceased's head.

Fingerprint analysis of the gun was not possible due to smudging of latent prints detected on the handle. DNA from three sources was found on the gun handle grips. Two of the sources included the deceased and the defendant; the third source of DNA was inconclusive. On Memorial Day, May 25, 2009, sometime after Siriusz had informed Osiski and Pat that he was canceling the tour before it started, Siriusz was drunk and waving his gun around the house (including pointing it at himself), whereupon Osiski grabbed it out of his hand, gave it to Pat and said "hide this thing before he blows somebody's head off." (Pat denies this, claiming that Osiski took the gun from his father and left with it. He further explained that he had grabbed the gun one time in the past when his father was acting crazy and threatening to end it all.)

Latent fingerprints lifted off the piano keys compared positively with both the deceased and Pat. Pat explained that he had been recording a song that he had written, "Chip off the Old Rocker" and that he had been doing some over-dubs and sound adjustments in the studio in the weeks before his father's death.

The autopsy report listed the cause of death as a gunshot wound to the head. The bullet entered just above and behind the right ear and traveled through the brain from back to front, right to left and slightly upward in trajectory, lodging just behind the left eye. The manner of death was listed as "homicide."

The autopsy further revealed that the deceased had lung cancer (from years of smoking unfiltered cigarettes) which had metastasized to his brain. Left untreated (and had Siriusz not been shot), his life expectancy would have been nine months to a year. Siriusz told no one of his diagnosis, which he learned from his doctor in April 2009. With radiation, he might have survived a couple of years. At the time of his death, he had a blood-alcohol content (BAC) of .17 (over twice the legal limit) and traces of Nitrazepam, a sedative, in his blood, the combination of which was potentially fatal.

The chorus to "Hanging at Death's Door" which was still playing when Osiski entered the studio, goes:

Shadows fall while voices call me to the other side,
Should I stay or should I go and take that lonesome ride,
If you find me lying here, don't pick me off the floor
Too much drinkin's got me thinkin': I'm hanging at death's door.

In view of finding the deceased's blood and the gun powder grains on Osiski's hands, Osiski's DNA on the gun, his strong motive to kill his former band mate, and his comments, "I'm finished. You're just a dead-man walking," when Siriusz told him that he was backing out of the tour, Osiski was indicted for murder. Pat Nugent Siriusz was granted immunity and testified before the Grand Jury.

After Siriusz's death, the Hartfeldt Insurance Company refused to pay Pat (Siriusz's sole beneficiary) the one-million dollar death benefit under his father's life insurance policy. Shortly before Pat was going to file suit against Hartfeldt, Hartfeldt brought an action against Pat seeking a

declaratory judgment that he is not entitled to collect under the policy. Hartfeldt cites the clause in the policy that excludes coverage for suicide. In the alternative, Hartfeldt contends that Pat Nugent Sirius killed his father and, therefore, should not be allowed to benefit from his crime. Pat denies killing his father and claims that Duke Osiski killed him.

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Note: The facts alleged in the case summary are not stipulated facts and may not be used in trial by any party.

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A. General Tournament Rules

1. Eligibility to Participate

The Tournament is open to all high schools in Michigan. A school may enter teams in either of the regional tournaments, but not both. An official team consists of from six to ten students from the same school and one or more adult coaches. Since there are a total of twelve roles to be played, depending upon the size of the team, two to six members of a team will have to take on dual roles. Requests to combine students from more than one school to form a team will be considered on a case-by-case basis. Such requests must be made before the registration deadline.

2. Regional Tournaments

The regional tournaments will be conducted in the courtrooms of the Kent County Courthouse in Grand Rapids and of the Oakland County Courthouse in Pontiac on Saturday, March 10, 2012.

3. State Final Tournament

Ten teams will compete in the State Finals Tournament on Saturday, March 24, 2012 in Lansing. The ten finalists will be selected from the teams that performed the best in the two regional tournaments. The number of teams in the Final Tournament from each regional tournament will be in proportion to the total number of teams competing in each regional tournament.

4. Tournament Structure

- a. At each Tournament, there will be three rounds of trials. All teams are guaranteed the opportunity to participate in at least two rounds and are assured to be assigned at least one round as the Prosecution and at least one as the Defense. Teams may elect to withdraw after the first two rounds of the tournament. The desire to do so must be made known to the tournament director immediately following the completion of the second round. Each round will be judged by three Tournament judges, who will be lawyers or members of the judiciary. In all rounds, each team will face a different opponent.
- b. Tournament staff will make every effort to ensure that teams will not present the same side of the case before any judge to whom that team presented its case in an earlier round. However, should this occur, it will not be considered a violation of the Tournament Rules.
- c. Advancement will be governed by the following criteria:
 - i) Win/Loss Record – equals the number of rounds won or lost by a team;
 - ii) Total Number of Ballots – equals the number of scoring judges' votes a team earned;
 - iii) Total Number of Points Accumulated;
 - iv) Point Spread Against Opponents – The point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.
- d. Sides (prosecution or defense) and pairings for the Regional Tournaments will be determined in advance by random drawing. In the State Final Tournament, teams will be paired depending on their Regional totals.

- e. Sides and pairings in the first two rounds of the State Final Tournament will be determined by the teams' Regional totals. With the ten finalist teams ranked 1 to 10, the pairings for the two rounds will be:

First Round	Second Round
10 v. 1	1 v. 6
9 v. 2	2 v. 7
8 v. 3	3 v. 9
7 v. 4	4 v. 8
6 v. 5	5 v. 10

- f. Pairings in the semi-final round of the State Final Tournament will be determined by the totals from the first two rounds. With the four top teams ranked 1- 4, the pairings for the semi-final round will be: 1 v. 4, and 2 v. 3.
- g. In determining sides in the semi-final round of the State Final Tournament, the following procedure shall be used:
- i.) If paired teams represented opposite sides in the previous round, sides will be flipped for the semi-final round.
 - ii.) If paired teams represented the same side in the previous round, the following procedure will be used:
 - a. The team with the numerical code (not ranking) which comes first numerically will be considered the "Designated Team."
 - b. A coin will be tossed by the tournament director or a designee.
 - c. If the coin comes up heads, the Designated Team shall represent the prosecution. If the coin comes up tails, the Designated Team shall represent the defendant.
 - iii.) If either method above creates a rematch (pairing and sides) from an earlier round (including regional tournaments), sides will be flipped.
 - iv.) At the discretion of the tournament director, this process may be altered to accommodate special circumstances.
- h. The same procedure as described above will be used for determining sides in the championship round of the State Final Tournament.
- i. A "bye" becomes necessary when an odd number of teams are present for any given round of the tournament. In the event of a circumstance resulting in an odd number of competing teams, the following procedure will apply:
- i.) The team drawing the "bye" will, by default, receive a win and three ballots for that round.
 - ii.) For the purpose of determining the rankings at the State Finals, the team drawing the "bye" will be given points equal to the average of its own points earned in its other trials

5. Tournament Logistics

- a. Coaches must report to the registration table to register their team between 7:45 and 8:15 a.m. on the day of the Tournament.

- b. A Tournament Headquarters location will be announced at each courthouse. Observation of the Tournament is open to all.
- c. We are visitors in these courthouses and all participants should be especially careful to observe appropriate standards of behavior. Among other things, the Code of Proper Conduct provides that participants should not go anywhere in the building other than courtrooms, eating areas, and restrooms and that food or beverages not be brought into the courtrooms or anywhere other than designated eating areas. See Code of Proper Conduct, p. 28-29, and Rule 8, p. 12.

B. Rules of Procedure for Trials

1. Competitors

- a. Each participating high school team shall be composed of from 6 to 10 students from that school. During a single trial/round six students from that team must participate, three as attorneys and three as witnesses. No more than six students from a team may participate in a single trial/round.
- b. Where possible, all witnesses are gender neutral and may be played by either male or female students. If a witness must be male or female, the role may still be played by a male or a female student.

2. Timekeepers

- a. Each team is responsible for providing an official timekeeper or timekeepers. The timekeeper may be a member of the team, or a student or adult who is not part of the team. Coaches may not be timekeepers. Stopwatches will be provided by the tournament director.
- b. In the event that a courtroom does not have a bailiff assigned, both team's official timekeeper will be called forward by the presiding judge and seated in view of each team. The only bailiff duty that timekeepers will assume in the absence of a bailiff is that of keeping time. All other bailiff duties will be performed by the judges.
- c. Each team's official timekeeper is required to attend the scheduled on-site timekeeper orientation. If a team does not send an official timekeeper to the required orientation meeting, that team will defer to its opponents' official timekeeper(s) in all rounds of the competition where there is not a bailiff present.
- d. If a team chooses to assign more than one student to the timekeeper role, then all students who will be assigned to the timekeeper role must attend the timekeeper orientation. The team's official timekeeper will keep time for both sides during all competition rounds.

3. Judges and Bailiffs

- a. A single Tournament judge shall preside at the trial. Two other judges shall be present at all times to judge the performance of the competing teams; however, they shall not participate in conducting the trial. The non-presiding judges shall sit in the jury box and the participants shall address them as though they were the jury. All three judges shall score the competitors.

- b. Every attempt will be made to recruit a bailiff for each courtroom. The bailiff will swear the witnesses, keep time, act as liaison to the Tournament Director and generally assist and advise the judges. In the event that a courtroom is without a bailiff, each team in the courtroom will be asked to provide a trained timekeeper to perform those duties. All other bailiff duties will be assumed by the presiding judge and tournament staff. Coaches may not serve as timekeepers.
- c. Each judge and bailiff will be supplied with a full Tournament packet and will attend an Orientation Meeting. Each Team's designated timekeeper will attend a short training session immediately preceding the first round of the tournament.

4. Identification of Teams

A team's identity shall not be revealed to any judge. Team numbers (or letters) will be randomly drawn in advance. Team members shall not wear or carry any item that identifies the school the team members represent.

5. Ban on Coaching During Trial

- a. Once the trial begins no coaching is permitted by anyone for the duration of the trial. Student attorneys may consult with one another and with their witnesses.
- b. To avoid even the appearance of impropriety, the three attorneys trying the case and the three witnesses may not engage in conversation with other team members, coaches, or observers until after closing arguments.
- c. Any team member (including team members not participating in the trial and coaches) who observes any violation of this rule shall report it immediately to the presiding judge. The judge shall order the clock stopped and shall inquire into the circumstances of the accusation. Where a violation is found, the judges shall deduct 10 points from a team's total score on the scoring summary sheet.
- d. These rules on coaching during trial remain in force during any emergency recess that may occur.

6. Ban on Scouting

No team members, alternates, teachers or attorney coaches or any other persons associated with the team's preparation shall view other teams in competition, other than those paired against them, so long as they remain in competition themselves.

7. Videotaping

A team may videotape its trials. The opposing team and the presiding judge should be notified prior to the calling of the case. The bailiff should be consulted at the time of courtroom check in. See Code of Conduct, page 28, for further information regarding videotaping.

8. Code of Proper Conduct; Signatures of Participants

- a. The Code of Proper Conduct governs all team members, coaches, and supporters, such as fellow students and parents who are present during the Tournament.
- b. A copy of the Code must be signed by all team members and coaches and submitted to the Tournament registration table between 7:45 and 8:15 a.m. on the day of the Tournament.

Teams are responsible for making invited guests and parents aware of the Code and its rules regarding conduct during the Tournament.

9. Claims of Rule Violations

- a. Any claim of a violation of a Tournament rule should be immediately called to the attention of the presiding judge. A claimed violation of the ban on coaching during a trial may be raised by any team member. Only the attorneys trying the case may raise violations of all other rules.
- b. If, immediately after closing arguments, a team has serious reason to believe that a material rules violation has occurred, and the team was unable (as opposed to unprepared) to raise the issue at the time the violation occurred, a *student member* of the team must indicate that the team intends to file a dispute. The judges will proceed with their scoring uninterrupted, and the bailiff will provide the student attorney with a dispute form. In the absence of a bailiff, a dispute form can be taken from the tournament rules packet. The student may communicate with counsel and/or student witnesses before preparing the form. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure.
- c. The bailiff will show the dispute form to the judges, who will determine whether the dispute should be heard or denied. In the absence of a bailiff, the presiding judge will collect the form. If the dispute is denied, the presiding judge will record the reasons for this, and announce the decision during the judges' critique. If the judges feel the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After this, each team will designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare, the presiding judge will conduct a hearing on the dispute, providing each spokesperson three minutes for a presentation. The judge may question the spokespersons. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. The judges' decision will be recorded in writing on the dispute form and attached to the scoresheets, with no further announcement.
- e. The judges will consider the dispute before making their final scoring decisions. The dispute may or may not affect the final decision or scores, but the matter will be left to the discretion of the scoring judges.
- f. The above procedure is only intended to be used in the most unusual of circumstances. Routine rule violations, such as the wrong attorney objecting, must be brought to the attention of the presiding judge when the violation occurs. Similarly, any question regarding the application of tournament rules by the presiding judge must be raised prior to closing arguments.

10. Commencement of Trial

- a. A team's six students who will try the case and an adult coach shall report to the bailiff in their assigned courtroom prior to the time set for trial. In the absence of a bailiff, teams should present themselves to the presiding judge.
- b. The bailiff, or presiding judge, shall inquire whether anyone present is connected with any school in the tournament other than the schools competing in that courtroom. Note that the

judges should not know the identities of the schools (Rule 4) so this inquiry should be done without revealing the identity of any team to the judges. Anyone in the wrong courtroom should be directed to the correct courtroom or to Tournament Headquarters.

- c. The bailiff, or presiding judge, will call the courtroom to order to commence the trial. The Presiding Judge shall ask counsel to state their appearances for the record and thereafter the trial shall proceed as in Rule 12.
- d. Each team will prepare a typed team roster and will deliver four copies of that roster before each trial. Three copies will be presented to the bailiff, and one copy will be given to the opposing team. In the absence of a bailiff, rosters will be given to the presiding judge. The roster must include (1) the name of each attorney and the names of each witness that attorney will examine; and (2) the name of each student who is portraying a witness, which witness that student will portray and the gender of that witness. (Sample Roster on page 30)
Each team should bring 12 copies of the roster with them on tournament day.

11. Governing Law; Motions, Pre-trial Agreements

- a. All trials will be governed by the Tournament Rules, and may rely on the case law included in the Tournament Materials. No reference to other legal authorities (except for the ones provided in the case materials) should be made.
- b. No motions may be made by either party, nor entertained by the Court. In the event of an emergency, a recess may be called. Should a recess be called, teams are not to communicate with any observers, coaches, or instructors.
- c. Attorneys are encouraged to call the court's attention to particular parts of the case materials, as well as these Rules, in support of points being urged upon the Court.
- d. Pre-trial agreements between teams (such as agreements to not pursue certain lines of questioning) are not permitted. Agreements between parties are stipulated in the tournament packet. Teams are allowed to confer before trial to determine the gender of witnesses.

12. Order of Trial, Time Limits, etc.

- a. Each party is required to call all three of its witnesses, but may do so in any order. Witnesses shall not be ordered sequestered.
- b. The order of the trial and the time limits are as follows:
 - 1. Opening Statement *.....5 minutes per side
 - 2. Direct and Redirect (optional) Examination.....25 minutes per side
 - 3. Cross and Recross (optional) Examination.....20 minutes per side
 - 4. Closing Argument.....5 minutes per side

* Defense may reserve Opening Statement until after the Prosecution Case-in-Chief.
- c. The bailiff, or timekeepers, will be provided with a stopwatch and one-minute warning signs. The bailiff, or timekeepers, shall keep track of time on a time sheet, which shall be available for inspection by either side at any time. The bailiff, or timekeepers shall inform the appropriate participants and the judge whenever a party has one minute left in any portion of its allotted time, by holding up a one-minute warning sign. When time is up, the bailiff, or timekeepers, will announce "Time." A side may not continue beyond the time limits unless the presiding judge, for good cause shown, grants additional time.

- d. Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements. Time does not stop for introduction of exhibits.
- e. Attorneys are not required to use the entire time allotted to each part of the trial. However, time left over in one part of the trial cannot be carried over to another part.
- f. Requests for additional time at any point in the trial are not permitted.
- g. Voir dire examination of a witness is not permitted.

13. Attorneys

- a. Of the three attorneys on a team, one shall give the opening statement, and another shall give the closing statement. The same attorney may not give both the opening and the closing statement. Each of the three attorneys shall also conduct all direct examination and objections as to one witness for the attorney's side and all cross examination and objections as to one witness for the opposing side. Attorneys may consult with one another and with the witnesses, but with no one else. See Rule 5, Ban on Coaching, p. 11.
- b. The attorney shall stand whenever addressing the court, a witness or the jury. When arguing a point, attorneys should direct their remarks to the court, not to opposing counsel.

14. Opening Statements

- a. Each side shall have up to five minutes to present its opening statement. The Prosecution gives the opening statement first. The Defense may present its opening statement immediately after the Prosecution's opening statement or may reserve it until after the close of the Prosecution's evidence.
- b. An opening statement should tell the jury and the court what that party intends to prove and should explain that party's theory of the case. Argument is improper in opening statements.

15. Evidence

- a. No evidence other than the testimony (not affidavits) of the six witnesses, and the exhibits included in the case materials, may be offered.
- b. Stipulations shall be considered part of the record and already admitted into evidence. Stipulations, charges, or the jury instructions will not be read into the record.
- c. No other exhibits or enlargements of exhibits may be offered. No demonstrative evidence should be offered or admitted.

16. Witnesses, Witness Statements; Extrapolation

- a. Witnesses may not refer to notes when testifying. Witnesses may not be recalled.
- b. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories (such as glasses), and make-up which are case-specific. Nor may witnesses adopt false accents.

- c. Each witness must admit that his or her witness statement is a true copy of a statement that he or she made and signed. The statement may be used to impeach the witness where appropriate, but is not itself admissible into evidence.
- d. Each witness is bound by the facts contained in his/her own witness statement. A witness is not bound by facts contained in other witness statements. A witness may not be cross-examined about facts or information contained in other witness statements.
- e. If a witness is non-responsive, the witness may be instructed by the judge to answer “yes” or “no” on a question by question basis. However, a witness is not bound to answer all questions “yes” or “no.”
- f. Minor extrapolations of facts not in the record are allowed, provided they may be reasonably inferred from the case materials and are neutral toward both sides. A fair extrapolation would be background information such as date or place of birth. This would be a minor extrapolation and would be allowed to amplify or humanize the case, assuming those facts are relevant. An unfair extrapolation would be one that adds material support to the party who called the witness or weakens the case of the other party.
- g. A party may object to testimony on the ground that it is “beyond the scope of the witness statement” or is an “unfair extrapolation.” Refer to Section G: Unfair Extrapolation for more on this objection. Attorneys are encouraged to refer presiding judges to Section G for instructions on handling the Unfair Extrapolation objection.
- h. If the objection is sustained, the court should strike the improper testimony. The Judges must also take account of unfair extrapolation in scoring the witness and opposing counsel.
- i. The decision of the presiding judge in ruling on this objection, as with other objections, is final. If the objection is overruled, it may be renewed as to further questions or answers.
- j. Attorneys should also recognize that unfair extrapolation can also be challenged through cross examination demonstrating the absence of the extrapolation in the witness’ statement.
- k. Publishing to the jury is not permitted. The only documents that teams may present to the court are the individual exhibits as they are introduced into evidence and the team roster form.
- l. Exhibit notebooks are not to be provided to the judges. Exhibits are to be shown to opposing counsel and handed to the bailiff.
- m. Rosters are to be provided to the opposing team and the bailiff before the trial commences. In the absence of a bailiff, rosters will be collected by one of the judges.

17. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce exhibits:

- a. All evidence will be pre-marked as exhibits.
- b. Ask for permission to approach the bench. Show the presiding judge the marked exhibit.

“Your honor, May I approach the bench to show you what has been marked as Exhibit ___?”

- c. Show the exhibit to opposing counsel.
- d. Ask for permission to approach the witness. Give the exhibit to the witness.
- e. “I now hand you what has been marked as Exhibit No. ___ for identification.”
- f. Ask the witness to identify the exhibit. “Would you identify it please?”
- g. Witness answers with identification only.
- h. Offer the exhibit into evidence. “Your Honor, we offer Exhibit No. ___ into evidence at this time. The authenticity of this exhibit has been stipulated.”
- i. Court: “Is there objection?” (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
- j. Opposing Counsel: “No, your Honor,” or “Yes, your Honor.” If the response is “yes,” the objection will be stated on the record. Court: “Is there any response to the objection?”
- k. Court: “Exhibit No. ___ is/is not admitted.”

18. Closing Arguments

- a. Each side shall have five minutes for closing argument. Prosecution may reserve time for rebuttal.
- b. Closing argument should be directed at persuading the jury to render a decision for that attorney’s side, relying on argument and the testimony of the witnesses and any exhibit that was admitted.
- c. It is improper closing argument to: (a) refer to facts where there was no evidence of them; (b) state a personal opinion as to the credibility of a witness; or (c) present arguments designed to inflame passion or prejudice.

19. Scoring; Announcement of Results

- a. Each judge should mark his or her performance rating sheet during the trial, at the end of each segment.
- b. After closing arguments, the Judges will retire to deliberate. Each judge shall complete his or her rating sheet. The Judge shall give the completed sheets to the bailiff who shall double-check the scores. In the absence of a bailiff, the presiding judge will collect the three rating sheets and hold them until they are collected by tournament staff.
- c. The bailiff must deliver all copies of the rating sheets to Tournament Headquarters at the end of each trial.
- d. After the final round is complete, the identities of the advancing teams will be announced. Within two weeks after each tournament, coaches will receive Performance Summary Sheets for their school.

20. Judges' Comments

- a. After the judges have completed the Performance Rating Sheets and have discussed the comments they will make, the presiding judge will reconvene the proceedings.
- b. The judges will not announce the winning team.
- c. The judges are encouraged to make brief comments regarding the performances of the attorneys and witnesses. The judges should not indicate how they would rule on the merits of the case.
- d. In any round where the total time used for the trial meets or exceeds two hours, the judging panel is limited to 10 minutes for comments to the teams. The bailiff, or timekeepers, will monitor the time spent on comments. Presiding judges are to limit the session to a combined total of ten minutes.
- e. The length of a trial may require the tournament director to exclude the comment session altogether.

C. Rules of Evidence

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

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

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

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope

These Rules of Evidence govern the trial proceedings of the Michigan High School Mock Trial Tournament.

Rule 102. Purpose and Construction

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

ARTICLE II. JUDICIAL NOTICE -- Not Applicable

ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS -- Not Applicable

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. Definition of “Relevant Evidence”

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

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by these Rules. Evidence which is not relevant is not admissible.

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

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes

(a) **Character evidence generally.** Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

- (1) **Character of accused** - In a criminal case, evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404 (a)(2), evidence of the same trait of character of the accused offered by the prosecution;
- (2) **Character of alleged victim** - In a criminal case, and subject to the limitations imposed by Rule 412, evidence of a pertinent trait of character of the alleged victim

of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor;

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

(b) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Rule 405. Methods of Proving Character

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

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

Rule 406. Habit, Routine Practice

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

Rule 407. Subsequent Remedial Measures

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise

(a) **Prohibited uses.** Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:

(1) furnishing or offering or promising to furnish--or accepting or offering or promising to accept--a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

(b) **Permitted uses.** This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Payment of Medical or Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

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

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

(1) a plea of guilty which was later withdrawn;
(2) a plea of *nolo contendere*;
(3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state proceeding regarding either of the foregoing pleas;
or

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

However, such a statement is admissible (1) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (2) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Rule 411. Liability Insurance (*civil case only*)

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

ARTICLE V. PRIVILEGES

Rule 501. General Rule

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

- (1) communications between husband and wife;*
- (2) communications between attorney and client;*
- (3) communications among grand jurors;*

- (4) *secrets of state; and*
- (5) *communications between psychiatrist and patient.*

ARTICLE VI. WITNESSES

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

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

Rule 607. Who May Impeach

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

Rule 608. Evidence of Character and Conduct of Witness

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

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

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) **General rule.** For the purpose of attacking the character for truthfulness of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.

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

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

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

(e) **Not Applicable**

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

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

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

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

(c) **Leading questions.** - Leading questions should not be used on direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions

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.

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

Rule 612. Writing Used to Refresh Memory

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

Rule 613. Prior Statements of Witnesses

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

(b) **Extrinsic Evidence of Prior Inconsistent Statement of Witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

ARTICLE VII.OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

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 or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on Ultimate Issue

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

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

ARTICLE VIII. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

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

(b) **Declarant.** - A “declarant” is a person who makes a statement.

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

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

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

motive, or (C) one of identification of a person made after perceiving the person;
or

- (2) **Admission by party-opponent.** The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these Rules.

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

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

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

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

(5) **Recorded recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

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

(18) **Learned treatises.** - To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

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

(22) **Judgment of previous conviction.** - Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

Rule 804. Hearsay Exceptions, Declarant Unavailable

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

- (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or
- (2) persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so; or
- (3) testifies to a lack of memory of the subject matter of the declarant’s statement; or
- (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
- (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant’s attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant’s attendance or testimony) by process or other reasonable means. A Declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

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

- (1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
- (2) Statement under belief or impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.
- (3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
- (4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as likely to have accurate information concerning the matter declared.
- (5) Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Rule 805. Hearsay within Hearsay

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

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION – Not Applicable

ARTICLE X. CONTENTS OF WRITING, RECORDINGS AND PHOTOGRAPHS – Not Applicable

ARTICLE XI. OTHER – Not Applicable

D. Code of Proper Conduct

1. Students promise to compete with the highest standards of deportment, showing respect for their fellow-students, opponents, Judges, coaches, and tournament personnel. Competitors should focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Students will avoid all tactics they know are wrong or in violation of the Rules, including the use of unfair extrapolations. Students will not willfully violate the Rules of the competition in spirit or in practice.
2. Teacher-Sponsors agree to focus attention on the educational value of the Mock Trial Tournament. They shall discourage willful violations of the Rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the tournament's Rules and this Code of Conduct.
3. Attorney-Coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the Tournament's Rules and this Code of Conduct. Attorney-Coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.
4. Trial Viewing/Scouting. No team members, alternates, attorney-coaches, teacher-sponsors, or any other persons associated with the team's preparation shall view other teams in competition so long as they remain in competition themselves.
5. Coaching during Trial. Once the trial begins no coaching is permitted by anyone for the duration of the trial. Student attorneys may consult with one another and with their witnesses. To avoid even the appearance of impropriety, the three attorneys trying the case and the three witnesses should not engage in conversation with other team members, coaches or observers until after closing arguments.
6. Teams and observers may not go anywhere in the building other than the assigned courtrooms, the cafeteria/designated eating areas, and the restrooms.
7. Food or beverages may not be brought into the courtrooms or anywhere other than the cafeteria/designated eating areas.
8. For the first morning and afternoon trials, teams and observers may not enter the courtrooms until given permission to do so by the bailiff.
9. Teams and observers may not: a) touch any equipment, papers, exhibits, etc. that are not associated with the Tournament, b) erase anything written on a chalkboard unless written during a previous Tournament round, c) move anything in an assigned courtroom (including podium and chairs) without permission from the bailiff or judge, d) move anything that does not belong to a team member or observer from one courtroom to another.
10. If a team videotapes any of its trials, that videotape is the sole property of the team and may not be made available to any other schools for any reason, especially for the purposes of scouting, etc.

Code of Proper Conduct continued

Signature Form

2012 Michigan High School Mock Trial Tournament

A copy of the Code must be signed by all team members and coaches and submitted by a team coach when s/he registers the team at the registration table between 7:45 and 8:15 a.m. on the day of the Tournament.

(Name of School)

We, the undersigned, have read the Code of Proper Conduct and agree to uphold it throughout our participation in the 2012 Michigan High School Mock Trial Tournament:

Students: *Type or print names clearly; sign name next to it.*

Coaches:

Date: _____

E. Sample Official Team Roster

OFFICIAL TEAM ROSTER

TEAM ID _____

Prosecution Case

Attorney 1

Student name: _____ . Name of witness s/he will examine: _____ .

Attorney 2

Student name: _____ . Name of witness s/he will examine: _____ .

Attorney 3

Student name: _____ . Name of witness s/he will examine: _____ .

Pat Nugent Siriusz will be portrayed by _____ (Student Name).

Male or Female. Circle one.

Det. Steven/Stephanie Tyler will be portrayed by _____ (Student Name).

Male or Female. Circle one.

Dr. Aaron/Erin Dre will be portrayed by _____ (Student Name).

Male or Female. Circle one.

Defense Case

Attorney 1

Student name: _____ . Name of witness s/he will examine: _____ .

Attorney 2

Student name: _____ . Name of witness s/he will examine: _____ .

Attorney 3

Student name: _____ . Name of witness s/he will examine: _____ .

Thomas Osiski will be portrayed by _____ (Student Name).

Note: Character Must be Male, but may be played by a Male or Female

Dr. Lee Vaughan Helm will be portrayed by _____ (Student Name).

Male or Female. Circle one.

Alex Rose will be portrayed by _____ (Student Name).

Male or Female. Circle one.

F. Judge's Instructions

- 1. Materials.** Every judge should have the Rules and Case Materials and the Judges Scoring Packet.
- 2. Judges roles and Location.** The Presiding Judge (as designated by the Tournament Director) should sit alone behind the bench and act as a judge presiding at a common law trial. Rulings should be made according to the Tournament Rules and the Case Materials. Rules of Evidence are adapted from the Federal Rules of Evidence. The two other Judges should sit in the jury box throughout the trial as the jury. They should not participate in rulings by the Presiding Judge in conducting the trial.
- 3. Opening Court.** The trial should commence in accordance with Rule 10.
- 4. Role of Presiding Judge.** The Presiding Judge has a delicate task and restraint is required. A trial is an adversarial proceeding and this Tournament is a competition as well. The central goal is to give the participating young people a positive educational experience. But it would be unfair and contrary to the idea of law if one side or the other was given an unfair advantage. Obviously the judge must be evenhanded. Moreover, the judge should avoid injecting him or her self into the examination of witnesses even though in a real case that would be appropriate. Otherwise one side will gain an advantage they have not earned. In addition, the judge should take special care to avoid intimidating the student lawyers and witnesses, so they feel comfortable and free to act at the true level of their capacity. The judge should be encouraging to both sides and still maintain the essential form of a trial.
- 5. Scoring Student's Performances.** All of the Judges should score the teams according to the instructions in the Guidelines for Performance Rating Sheet. All Judges should familiarize themselves with that sheet in advance of the Tournament.
- 6. Bailiff.** Every attempt will be made to have a bailiff present in each courtroom to swear in witnesses, keep time, act as liaison to the Tournament Director, and generally assist and advise the Judges. In the event that a courtroom is without a bailiff, each team in the courtroom will be asked to provide a trained timekeeper to perform those duties. All other bailiff duties will be assumed by the presiding judge and tournament staff. Coaches may not serve as timekeepers.
- 7. Questions Regarding Tournament Rules.** If questions arise regarding application of the Tournament Rules, the Presiding Judge should entertain arguments by the attorneys regarding construction of the Rules and should encourage the attorneys to make reference to the Rule in question. The Presiding Judge has the sole authority to make decisions about the conduct of the trial.
- 8. Procedure at End of Trial.** The bailiff, or presiding judge, will clear the courtroom (Unless chambers are available) and the Judges should total the scores for each side. After all Judges have completed their Rating Sheets, the Presiding Judge will reconvene the proceedings. The bailiff will take all of the Rating Sheets to Tournament Headquarters. In the absence of a bailiff, the presiding judge will collect the three rating sheets and hold them until they are collected by tournament staff. There is a limit of 10 minutes for the Judges to complete the score sheets and 10 minutes for oral comments. Judges are encouraged to offer positive and constructive comments to the teams after the bailiff has left with the sheets. Judges are not to announce the scores or the winner or rule on the merits of the case.

G. Unfair Extrapolation

Background

Each team competing in the Michigan High School Mock Trial Tournament has been provided with the same materials for this year's problem. Since there are strict time limitations for the examination of witnesses, opening statements and closing arguments, and so that all teams are trying the same case, the trial is limited to the materials provided to each team. Information from outside of the materials provided (known in the Tournament as "unfair extrapolation") is not permitted unless it is a minor detail used to humanize the case.

Thus a minor extrapolation of a fact not in the materials is permitted so long as it may be reasonably inferred from the case materials and is **neutral to both sides**. For example, a *fair* extrapolation would be background information such as the witness's date of birth or place of birth. An *unfair* extrapolation is one that *strengthens* the case of the party attempting to extrapolate or which *weakens* the case of the other party.

A suggested procedure for dealing with this objection is as follows.

Dealing With an Unfair Extrapolation

When an opposing attorney objects on the basis of unfair extrapolation, the Presiding Judge should ask the questioning Attorney if the information sought is in the materials provided for the Tournament competition. If the Attorney says it is, he should be asked to point it out. If he can point it out, it is not unfair extrapolation and the objection should be overruled.

If the Attorney admits that the information is not in the materials provided, or if he cannot point it out, the Presiding Judge should then ask the questioning Attorney if the information sought is neutral to both sides. (Practice Pointer: If the Attorney is fighting to get the information in, it is probably not neutral to both sides or he/she wouldn't be wasting his/her time.)

If the Attorney claims it is neutral to both sides, yet it does not involve something innocuous like a date or place of birth, then the Presiding Judge should sustain the objection since information that is neutral to both sides is not going to help a court decide a case.

If the Attorney admits that the information sought is not neutral to both sides, then the objection should be sustained as being unfair extrapolation.

H. Guidelines for Performance Rating

You are rating team performance, not the legal merits of the case presented. In deciding which team (Attorneys and Witnesses) has made the better overall presentation in the case you are judging, please use the following criteria. It is recommended that you use the “5–6” range as an indication of an average performance, and adjust higher or lower for stronger or weaker performances. **Rating must be on a whole point basis (partial points not allowed).**

<u>Points</u>	<u>Performance</u>	<u>Criteria for Rating Performance</u>
1–2	Not Effective (Poor)	Disorganized, unsure of self, illogical, uninformed, demonstrates lack of preparation and understanding of task, simply ineffective in communications.
3–4	Fair	Minimal performance and preparation; performance is passable but lacks depth in terms of knowledge of task and materials; communication lacks clarity and conviction.
5–6	Good (Average)	Good, but less than spectacular performance; has fundamental understanding of task and can perform outside the “script” but with less confidence that when using the “script”; grasps major aspects of the case but does not convey a mastery of the case; communications are clear and understandable but could be more persuasive; acceptable but uninspired performance.
7–8	Excellent	Presentation is fluent, persuasive, clear and understandable; organized materials and thoughts well and exhibits a mastery of the case and of the materials provided; presentation was both believable and skillful.
9–10	Outstanding	Thinks well on feet, is logical, keeps poise under duress; performance was resourceful, original and innovative; can sort out the essential from the non-essential and uses time effectively to accomplish major objectives; knows how to emphasize vital points of trial.

Judges should consider the following criteria when rating each of the following segments of the trial:

Opening Statement	In the opening statement, the attorney presented a clear description of their theory of the case, setting forth what their proofs expected to show and why the court should find in their favor.
Direct Examination	On direct examination of the witnesses, the attorney used non-leading, non-speculative and non-hearsay questions that brought out key information for their side of the case. The attorney exhibited a clear understanding of trial procedures and responded to objections appropriately.

Cross Examination	On the cross-examination of the witnesses, the attorney effectively impeached the witness or discredited the testimony. The attorney obtained favorable testimony although the other side called the witness. The attorney controlled the witness by asking good leading questions, demanding a “yes” or “no” answer where appropriate. The attorney exhibited a clear understanding of trial procedures and argued objections appropriately.
Witnesses	The witnesses were believable in their characterizations and convincing in their testimony. The witnesses were well prepared for answering the questions posed under direct examination. The witnesses responded well to questions posed under cross-examination.
Closing Argument	In the closing argument, the attorney effectively showed the reasons for their side prevailing and pointed out the flaws in the other side’s case. The attorney exhibited a clear understanding of the facts and the law. The attorney effectively responded to unexpected testimony or rulings.
Team Performance	Team Members were courteous, observed general courtroom decorum, and spoke clearly and distinctly. Team members worked together well. Team members had a coherent theory of the case. Team members exhibited a clear understanding of the facts, issues, and the law.

I. Performance Rating Sheet

Judge: _____

Round: A.M. 1 A.M. 2 P.M. 1 (circle one)

Prosecution: Team Number _____ Defense: Team Number _____

Points: Poor (1-2); Fair (3-4); Average (5-6); Good (7-8); Outstanding (9-10)

{Please consult Performance Rating Guidelines for explanation of rating criteria}

		PROSECUTION	DEFENSE
Opening Statements:			
Prosecution First Witness Name:	Direct examination by attorney		
	Cross examination by attorney		
	Witness's Performance		
Prosecution Second Witness Name:	Direct examination by attorney		
	Cross examination by attorney		
	Witness's Performance		
Prosecution Third Witness Name:	Direct examination by attorney		
	Cross examination by attorney		
	Witness's Performance		
Defense First Witness Name:	Direct examination by attorney		
	Cross examination by attorney		
	Witness's Performance		
Defense Second Witness Name:	Direct examination by attorney		
	Cross examination by attorney		
	Witness's Performance		
Defense Third Witness Name:	Direct examination by attorney		
	Cross examination by attorney		
	Witness's Performance		
CLOSING STATEMENTS (and rebuttal, if any):			
Overall team performance (award 1-10 points):			
TOTAL POINTS:			

J. Bailiffs' Instructions

- 1. Materials.** Every bailiff should have the Tournament Packet and a Judges Scoring Folder.
- 2. Orientation.** All bailiffs must attend the bailiffs' orientation. Bailiffs will receive two stopwatches for timekeeping and will be given time to practice using the stopwatches.
- 3. Procedure Before Trial.** Bailiffs should check in the teams and turn on the microphone in the witness box.

When everyone is ready, the Bailiff should ask the judges to leave the courtroom so they can make an "entrance." As the judges enter the courtroom, the bailiff should stand and say, "All rise. The court is now in session." The bailiff should then sit at the clerk's desk in front of the bench.

- 4. Procedure During Trial.** Bailiffs should meet with their panels of Judges prior to the beginning of each trial. It is important that all parties understand their responsibilities during the trial.

As each witness is called, the bailiff should see that they come forward and stand before the bailiff, who shall tell them to raise their right hand and shall use the following "oath" for each witness: "Do you promise that the testimony you are about to give will faithfully conform to the rules of this mock trial tournament?"

Accurate timekeeping is very important. It is essential that bailiffs study the time limits (See Rule 12 and the Time Sheet prior to the trial.)

Bailiffs should insure that all participants and observers adhere to items 7 through 9 of the Code of Proper Conduct.

- 5. Procedure After Closing Arguments.** The Judges have 10 minutes to complete their Performance Rating Sheets. It is the bailiff's responsibility to enforce this time limit. The bailiff should ask everyone to leave the courtroom or have the Judges retire to an office or jury room, if available. If the teams must wait in the hall while the Judges are deliberating, the bailiff should remind team members to not disturb other courtrooms with noise. When the Judges have completed their Performance Rating Sheets, the bailiff will call the court back to order. The bailiff will take all copies of the Performance Rating Sheets to Tournament Headquarters. The teams are not to be told their scores or the winner of the trial. After turning in the Performance Rating Sheets, the bailiff will return to the courtroom and watch the clock. If the judges' comments threaten to delay the teams' departure for their next round, or lunch, the bailiff should firmly but politely tell the Judges that time has expired.

6. Dispute Settlement

Bailiffs shall be familiar with the Rule 9, Claims of Rule Violations, as they have a role to play in distributing and transporting the Dispute Form.

K. Time Sheet

Courtroom # _____	A.M. - 1 st _____	A.M. - 2 nd _____	P.M. _____
Prosecution – Team # _____		Defense - Team # _____	

Prosecution	Time	Defense	Time
Opening Statement (max 5 min) Give 1 min warning at 4 minutes		Opening Statement (max 5 min) Give 1 min warning at 4 min	
Prosecution team has 25 min for this entire section, give one minute warning at 24 minutes		Defense team has 20 min for this entire section, give one minute warning at 19mins	
	<i>S</i> <i>T</i> <i>A</i> <i>R</i> <i>T</i>		
1 st Witness Direct Exam		1 st Witness Cross Exam	
1 st Witness Redirect (optional)		1 st Witness Re-cross (optional)	
2 nd Witness Direct Exam		2 nd Witness Cross Exam	
2 nd Witness Redirect (optional)		2 nd Witness Re-cross Exam	
3 rd Witness Direct Exam		3 rd Witness Cross Exam	
3 rd Witness Redirect (optional)		3 rd Witness Re-cross Exam	
Prosecution team has 20 min for this entire section, give one minute warning at 19mins		Defense team has 25 min for this entire section, give one minute warning at 24 minutes	
			<i>S</i> <i>T</i> <i>A</i> <i>R</i> <i>T</i>
1 st Witness Cross Exam		1 st Witness Direct Exam	
1 st Witness Re-cross Exam		1 st Witness Redirect Exam	
2 nd Witness Cross Exam		2 nd Witness Direct Exam	
2 nd Witness Re-cross Exam		2 nd Witness Redirect Exam	
3 rd Witness Cross Exam		3 rd Witness Direct Exam	
3 rd Witness Re-cross Exam		3 rd Witness Redirect Exam	
Each team is allowed 5 min for their closing arguments, Prosecution is allowed to use part of the time to follow the Defense with a rebuttal.			
	<i>S</i> <i>T</i> <i>A</i> <i>R</i> <i>T</i>		
Closing		Closing	
Rebuttal			

L. Dispute Form

MICHIGAN HIGH SCHOOL MOCK TRIAL COMPETITION

DISPUTE FORM

(Please Print)

Round Number _____

Prosecution Team Number _____ Defense Team Number _____

Number of Team Lodging Dispute _____

Grounds for Dispute:

Initials of Team Spokesperson: _____

Decision of Presiding Judge (**CIRCLE ONE**) Hearing Granted Hearing Denied

If hearing granted, response of opposing
team: _____

Initials of Opposing Team Spokesperson: _____

Decision of presiding Judge (**DO NOT ANNOUNCE**)

_____ A substantial Rules Violation has occurred (report to panel).

_____ No substantial Rules Violation has occurred (do not report to panel).

Reasons (s) for presiding judge's
decision: _____

Signature of Presiding Judge

M. Basic Trial Techniques

The following trial tips are being provided to acquaint students with basic trial techniques as they prepare to be witnesses and attorneys in Mock Trials. These tips are adapted and modified in part from the Wisconsin High School Mock Trial Tournament. These tips are an introduction to the trial process and should be used to assist students understand that process. They are not intended to be a substitute for the advice of Teacher and Attorney Coaches.

I. General Suggestions

- A. Always be courteous to witnesses, other attorneys and judges.
- B. Rise when addressing the judge.
- C. Never address remarks to opposing counsel.
- D. While natural movement of attorneys during trial is encouraged, do not approach the bench, jury box or witness without permission from the judge.
- E. Avoid making objections unless you are relatively sure that the judge will agree with you.
- F. If the judge rules against you on a point or in the case, take the defeat gracefully and act cordially toward the judge and jury and the opposing team.

II. Attorneys

A. Opening Statements

- 1. Objective: to acquaint the judge and jury with the case and to outline what you are going to prove through witness testimony and the admission of evidence.
- 2. What should be included:
 - a. Introduction of you and your client.
 - b. A short summary of the facts.
 - c. The burden of proof (amount of evidence needed to prove a fact) and who has it.

- d. A clear and concise overview of the witnesses and physical evidence that you will present and how each will contribute to proving your case.
 - e. What relief you are seeking.
3. Advice in presenting an opening statement
- a. Appear confident.
 - b. Use eye contact when speaking to the judge and jury.
 - c. Use the future tense in describing what you will do, i.e. "The facts will show," or "Our witness testimony will prove that..."
 - d. Outline the case from your point of view.
 - e. Try not to read. Look up at the judge/jury occasionally.
 - f. Learn your case thoroughly including the facts, law and burden of proof.
 - g. Do not exaggerate or offer facts that will not be proven.
 - h. Do not argue the law.

B. Direct Examination

1. Objective: to obtain information from favorable witnesses you call in order to prove the facts of your case, to present your witness to the greatest advantage, to establish your witness' credibility and to present enough evidence to get a favorable verdict.
2. What should be included:
 - a. Isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information.
 - b. Be sure all items you need to prove your case will be presented through your witness.
 - c. Use clear, simple questions.
 - d. Never ask a question to which you do not know the answer.

3. Advice in presenting

- a. Try to keep to the questions that you've practiced with your witnesses and ask a limited number.
- b. Be relaxed and clear in the presentation of your questions.
- c. Listen to the answers.
- d. Do not rush yourself or your witness so that the judge and jury cannot hear or understand the question or answer.
- e. Be sure to have all documents marked for identification before you refer to them at trial. Then refer to it by its name/number (i.e. Exhibit 1 or Exhibit A).
- f. Avoid leading questions. These are questions that suggest the answer desired by the questioning attorney to the witness and often only require a "yes" or "no" answer.
- g. Avoid complex and verbose questions.
- h. Avoid redundant, monotonous questioning.
- i. When your facts are in evidence, cease questioning.

C. Cross-examination

1. Objective: to obtain favorable information from witnesses called by the opposing counsel, and if a witness has no testimony favorable to your case, to make that witness less believable.
2. Some of the types of questions to ask:
 - a. Impeachment: These are questions that reflect on a witness' credibility by showing that s/he has given a contrary statement at another time. Counsel may impeach a witness by use of the witness statement. If counsel chooses to proceed in this manner because a witness testifies inconsistently with his statement, wait until cross-examination. First, show opposing counsel the passage in the statement and then, having obtained the Judge's permission to approach the witness, hand the witness the statement. Counsel should ask questions of that witness that establish the witness made the statement. Then the attorney can read aloud, or ask the witness to read aloud, the part of the statement the attorney claims is

inconsistent with the witness' testimony. The attorney may then further question the witness about the inconsistency or leave the matter for closing arguments.

- b. Questions that indicate bias or prejudice or that the witness has a personal interest in the outcome of the case (i.e. tenant testifying against former landlord on trial for shoplifting who evicted tenant a month earlier).
- c. Questions that weaken the testimony of the witness by showing that his or her opinion is questionable (i.e. a person with poor eyesight claims to have observed all of the details of a fight that took place over 50 yards away).
- d. Admissions or other testimony that is helpful to your case.

3. Advice in Presenting

- a. Anticipate each witness' testimony and write your questions accordingly, but be ready to adapt your questions at trial depending on the actual testimony elicited during direct exam.
- b. In general, only ask leading questions.
- c. Always listen to the witness' answer.
- d. Avoid giving the witness an opportunity to re-emphasize the points made against your case during direct exam.
- e. Do not give the witness an opportunity to explain anything. Keep to the "yes" or "no" answers whenever possible.
- f. Do not harass or attempt to intimidate the witness or quarrel with the witness.

D. Objections

- 1. Objections are a normal, natural part of any trial. Their purpose is to present to the judge a rule of evidence that will bar an answer to the question asked (or result in striking an answer from the record if already given). In mock trials, they may also be used to bring a procedural problem to the judge's attention, such as an unfair extrapolation or continuing past the expiration of time.
- 2. If you are asking questions either on direct exam or cross-exam and an attorney from the other side objects to your questions remember:

- a. Do not panic, objections are normal.
 - b. Think about why you decided to ask the particular question in the first place (i.e. if on direct, is it a question that is relevant to proving your case? If on cross, is it asked to impeach the witness by showing bias?)
3. If you are the objecting party remember:
- a. If you are going to object, try to do so before the witness answers the question.
 - b. Have the specific objection in mind when you do so. For example, you may say, "Objection Your Honor, the witness is being asked to provide hearsay testimony."
 - c. Be prepared to explain to the judge why the question is objectionable and why the witness cannot or should not be permitted to answer it.

E. Redirect/Recross (Optional)

1. Objective: to rehabilitate a witness or repair damage done by your opponent.
2. Advice
 - a. If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask more questions.
 - b. Try to keep questions at a minimum and ask only those necessary to save the witness' truth-telling image in the eyes of the judge and jury.
 - c. Limit questions to issues raised on cross-examination.

F. Closing Arguments

1. Objective: to provide a clear and persuasive summary of the evidence you presented to prove the case, along with the weaknesses of the other side's case, and to argue for your position.
2. What should be included:

- a. This is your opportunity to put the pieces together for the jury and judge.
 - b. Isolate the issues and describe briefly how your presentation addresses these issues.
 - c. Review the witnesses' testimony and physical evidence. Outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses (i.e. bias, credibility or self-interest). Indicate why the physical evidence admitted into evidence supports your case or weakens your opponent's case. You may use these exhibits during your argument.
 - d. This is your opportunity to be an advocate. Forcefully argue your point of view. Argue your case by stating how the law applies to the facts as you have proven them.
 - e. This is also an opportunity to correct any misunderstandings that the judge or jury may have.
 - f. Remind the judge and jury of the required burden of proof. If you have the burden, tell how you have met it. If you don't, tell how the other side failed to meet its burden.
 - g. Try not to read. Maintain eye contact or at least look up occasionally.
 - h. Be careful to adapt your closing argument at the end of the trial to reflect what the witnesses actually said and what the physical evidence actually showed.
 - i. Avoid using ridicule. Avoid illogical or confusing arguments.
3. Prosecution may reserve time for rebuttal. This is limited to the scope of Defense's closing argument.
 - a. Listen to Defense's argument carefully.
 - b. Pick one or two main points to rebut that can be summarized in several sentences.

III. Witnesses

A. General Suggestions

1. Familiarize yourself with your witness statement.

2. If you are going to be testifying about records or documents, familiarize yourself with them before coming to trial.
3. Listen carefully to the questions. Before you answer, make sure you understood what has been asked. If you don't understand, ask that the question be repeated or clarified.
4. When answering questions, speak clearly, don't mumble or mutter.
5. If the judge interrupts your answer or an attorney objects while you are answering, stop talking. If an attorney objects to a question you are asked, do not begin your answer until the judge tells you to do so.

B. Direct Examination

1. Advice in preparing and presenting
 - a. Learn the case thoroughly, especially your witness statement.
 - b. Review your testimony with your attorney. Know the questions that your attorney will ask and prepare clear and convincing answers that contain the information the attorney is trying to get you to say.
 - c. Be relaxed as possible on the witness stand.
 - d. Make sure that if you paraphrase or put any of the witness statement in your own words, it is not inconsistent with or a material departure from the case materials.

C. Cross-examination

1. Advice in preparing or presenting
 - a. Think about all the possible weaknesses, inconsistencies or problems in your statement and be prepared to answer questions about them as best as you can.
 - b. Practice with your attorney, asking him/her to act as opposing counsel.
 - c. Be as relaxed and in control as possible.
 - d. Listen to the question carefully and make sure you understand what is being asked before you answer it. If you don't understand

the question ask for it to be clarified. If you didn't hear the question, ask that it be repeated.

- e. Do not panic if the judge or an attorney asks you a question you haven't rehearsed. Think about your statement and the case materials and answer the question when you are ready.
- f. Be sure your testimony is never inconsistent with, nor a material departure from the case materials.

N. Case Materials

INDICTMENT:

**In the Circuit Court for the
6th Circuit of New Michigan**

**The People of the State of New
Michigan**

Indictment # 86753-09

V.

Thomas D. Osiski, Defendant

The Grand Jury in and for the 6th Circuit of New Michigan hereby accuses the defendant, Thomas D. Osiski of the crime of Second Degree Murder (NMCL 750.317) in that:

the said Thomas D. Osiski, on or about May 31, 2009, in Rockford, New Michigan, intentionally caused the death of Martin Lewis Siriusz by shooting him in the head with a 9.mm handgun.

E.L. Harris Prosecutor-in-Chief
in and for the 6th Circuit of New Michigan

dated: June 30, 2009

WITNESS AND EXHIBIT LIST

The following witnesses must be called by the parties.*	
FOR THE PLAINTIFF	FOR THE DEFENSE
Detective Steven/Stephanie Tyler	Thomas “Duke” Osiski
Dr. Erin/Aaron Dre	Dr. Lee Vaughn Helm
Pat Nugent Siriusz	Alex Rose
The following exhibits may be used by teams in trial. They are pre-marked and are referred to by number as follows	
EXHIBIT NUMBER	EXHIBIT DESCRIPTION
Substantive Exhibits	
1	Autopsy of Martin Lewis Siriusz
2	Death Certificate of Martin Lewis Siriusz
3	CPS Laboratory Report
4	M.L. Siriusz Application for Life Insurance
5	M.L. Siriusz Life Insurance Policy with Provisions and Limitations
6	Last Will and Testament of M.L. Siriusz
7**	Audio Recording of “Death’s Door”**
Demonstrative Exhibits	
8	Overhead Photograph of Victim
9	Side Photograph of Victim
10	Photograph of Victim’s Right Leg and Gun
11	Close-Up Photograph of Gun
12	Overhead Photograph of Piano, Computer, and Alcohol Bottle
13	Medical Examiner’s Diagram

* Note that all witnesses are gender neutral with the exception of the Defendant, Thomas Osiski, who must be a male character. The Osiski character, however, may be played by a female witness where necessary. Also, where the text refers to “he,” “his,” or “son,” teams may substitute “she,” “her,” or “daughter” where appropriate.

**Note Stipulations 14, 15, and 16 below on pages 50-51 regarding the availability of the audio recording and the procedures for admitting it during trial.

Trial Stipulations:

1. The autopsy report of Ravi Shankar MD, the toxicology report of J. Garcia, the ME's addendum, and the death certificate are admissible.
2. Thomas Osiski's statement to the police, given on June 1, 2009, is not available. The parties have stipulated that the statement contained the same information that is available in his Grand Jury testimony.
3. The application for life insurance and the policy and provisions are admissible as business records upon a proper showing of relevance.
4. The last will and testament of Martin Lewis Siriusz is admissible upon a proper showing of relevance.
5. In mid-March 2009, Martin Lewis Siriusz began to experience severe headaches. A few weeks later, in April 2009, he saw his physician, Doctor Robert Seger, who took blood samples and sent him for X-rays of the lungs and a CT scan of the brain. On April 17, 2009, Dr. Seger informed Siriusz that he had advanced lung cancer that had spread to his brain. He recommended an aggressive course of radiation therapy and told him that he would have to cancel his upcoming tour. He opined that without treatment, Siriusz would have anywhere from nine months to one year to live. With treatment, he could extend his life two years or more.
6. Martin Lewis Siriusz performed a free, private "mini-concert" for Hanna Hartfeldt, the daughter of the CEO of Hartfeldt Insurance, on February 14, 2006, for her birthday.
7. In late April 2009, Siriusz obtained a second opinion from an oncologist, who confirmed Dr. Seger's diagnosis but recommended an holistic/homeopathic/herbal approach to treatment, which she had used successfully with other patients. Siriusz did not pursue either course of treatment, choosing instead to self-medicate with Jack Daniels and Nitrazepam.
8. Although described by friends and acquaintances as a depressive type personality, Martin Lewis Siriusz was never formally diagnosed or medically treated for clinical depression. From 1985 to 1989, he overdosed on alcohol and barbiturates three times and had been taken to the hospital for emergency treatment. In each instance, he publicly stated that the OD was accidental. He has had no hospitalizations since then.
9. The defendant filed for bankruptcy, which has stayed the foreclosure proceedings on his home. He continues to reside on Tawny Kitaen Lane. For his part, Pat Nugent Siriusz continues to reside at 77 Rockaway Road pending disposition of his late father's estate, which has been delayed due to litigation over Martin Siriusz's last will and testament.
10. The parties stipulate that on July 2, 2009, Pat Nugent Siriusz, presented a certified copy of the death certificate to the Hartfeldt Insurance Company and demanded payment under

the policy and Hartfeldt denied payment on August 5, 2009, citing the suicide exclusion. The next day, Siriusz retained counsel to file suit against Hartfeldt but was served with Hartfeldt's complaint.

11. In February 2009, Sir Osis signed a 20-concert reunion-tour contract for one million dollars. Harvey Productions, the tour company, held an option to extend the tour to 20 more dates based on the success of the first 20 dates.
12. All motions to dismiss the indictment and to suppress statements have been denied.
13. The physical evidence in the case (gun, pill bottle, pills, whiskey bottle, ballistic evidence, and swabs) are not available, and no team may comment on their absence from the trial.
14. One of the items of evidence collected from 77 Rockaway Road on May 31, 2009, was the tape of "Hanging at Death's Door." Detective Tyler put the tape in a jacket pocket and forgot to hand it over to the evidence detective at the scene. After concluding the interviews at the station, Detective Tyler delivered the tape to the CPS Lab Evidence depository. Unfortunately, the following day, the lab technician misread Detective Tyler's handwriting on the submittal form and misfiled the tape with another case file containing numerous tapes of recorded calls in an unrelated undercover narcotics investigation. Attempts to locate the tape, until recently, were unsuccessful. One month before trial, Detective Tyler personally went to the Lab and sorted through every tape in that other case file and, as luck would have it, found the missing tape. Surprisingly, there was more on the tape than expected. It included introductory remarks by Martin Lewis Siriusz, the song "Hanging at Death's Door" and an interrupting phone call picked up by Siriusz. A conversation ensues between Siriusz and the caller. During the conversation, Siriusz is startled by someone eavesdropping on him. Detective Tyler immediately instructed the lab technicians to test the tape for DNA and fingerprints but no such evidence could be identified. Detective Tyler also notified the prosecuting attorneys who, in turn, supplied a copy to the defense. Upon being played the tape by prosecutors before trial, Pat Nugent Siriusz confirmed that it is his father's voice on the recording. Based on his father's side of the conversation, he said it was obvious to him that his father was speaking to Thomas D. Osiski. When asked if he was present and eavesdropping on that conversation, he said no. When asked what he was doing on Saturday, May 30, 2009, Pat explained that after his father had told him earlier that night that he was leaving his house and instruments to the "Save the Music" foundation, he (Pat) left the house and went out drinking. He said he was so upset that he probably forgot to lock the door or close it properly. He said he returned home at around 4:30am and was so intoxicated that he went straight to bed where he remained until waking up around noon on Sunday. He said that his activities for the rest of the day were as previously stated. When asked why he didn't mention this before, he said he was never asked about what he did on Saturday night after speaking with his father about going back on tour without Duke Osiski. He repeated that he was not home when his father was recording and speaking on the phone. The prosecution was not able to discuss this

matter with the defendant because he is represented by counsel on this pending indictment.

15. A copy of the recording is available at <http://www.miciviced.org>.
16. A defense motion to preclude the tape was denied. The court has ruled that the tape is admissible at trial upon a proper showing of relevance and admissibility otherwise. **There is no issue as to authenticity or chain of custody.** If admitted, the tape may be played “constructively” for the jury. That is, in the interest of time, once admitted, the court will assume that the tape has been played in full for the jury. Tournament judges will listen to the tape before the trials begin.
17. Lee Vaughan Helm listened to the tape and determined that, in both content and tone, it reinforces the opinion that Martin Lewis Siriusz committed suicide.
18. The court has ruled after a pre-trial hearing that Detective Stephen Tyler, Dr. Erin Dre, and Dr. Lee Vaughn Helm will be permitted under FRE 702 to testify as experts and offer opinion testimony consistent with their prior testimony/reports.
19. Lee Vaughan Helm is being paid \$2,500.00 (flat rate) by the defendant, Thomas Osiski, in connection with his/her trial testimony in the criminal case. Helm is being paid \$2,500.00 (flat rate) by the plaintiff, Hartfeldt Insurance in connection with his/her trial testimony in the civil lawsuit against Pat Nugent Siriusz. Helm was initially retained by the Hartfeldt Insurance Company to review the file in connection with the civil suit. He spent eight (8) hours reviewing the file for Hartfeldt at a rate of \$450.00 per hour, which Hartfeldt has paid. Helm has spent an additional ninety (90) minutes reviewing the entire file at a rate of \$450.00 per hour in preparation for his/her testimony in the criminal trial. The defendant has paid this bill prior to trial.

Jury Instructions

Function of the Jury

You the jury are the sole and exclusive judges of the facts. No one, not counsel, not the court, may presume to tell you how the issues of fact should be decided.

The credibility, that is, the believability of each witness is itself an issue of fact solely and exclusively within the province of the jury.

With respect to witnesses you must determine to what extent you find their testimony credible and acceptable. With respect to any individual witness, you may accept in whole or in part such testimony you find credible and worth of belief, and reject in whole or in part such testimony you find unworthy of credit or belief.

In resolving each and every issue of fact, you must do so solely on the evidence in the case and that evidence alone. You may not consider or speculate on matters not in evidence or matters outside the case.

If, in your minds during your final deliberations you are satisfied from all the evidence that the People have borne the burden of proof and that the presumption of innocence has been overcome by evidence which convinces you of the defendant's guilt beyond a reasonable doubt, then you must of course, find the defendant guilty of the crime charged.

Presumption of Innocence

We now turn to the fundamental principles of our law that apply in all criminal trials—the presumption of innocence. The burden of proof, and the requirement of proof beyond a reasonable doubt.

Throughout these proceedings, the defendant is presumed to be innocent. As a result, you must find the defendant not guilty, unless, on the evidence presented at this trial, you conclude that the People have proven the defendant guilty beyond a reasonable doubt.

In determining whether the People have satisfied their burden of providing the defendant guilty beyond a reasonable doubt, you may consider all the evidence presented, whether by the People or by the defendant. In doing so, however, remember, even though the defendant introduced evidence, the burden of proof remains on the People.

Burden of Proof

The defendant is not required to prove that he is not guilty. In fact, the defendant is not required to prove or disprove anything. Rather, the People have the burden of proving the defendant guilty beyond a reasonable doubt. That means, before you can find the defendant guilty of the crime of murder in the second degree, the People must prove beyond a reasonable doubt every element of the crime including that that the defendant is the person who committed that crime. The burden of proof never shifts from the People to the defendant. If the People fail to satisfy

their burden of proof you must find the defendant not guilty. If the People satisfy their burden of proof, you must find the defendant guilty of the crime of murder in the second degree.

Reasonable Doubt

What does our law mean when it requires proof of guilt beyond a reasonable doubt?

The law uses the term, proof beyond a reasonable doubt, to tell you how convincing the evidence of guilt must be to permit a verdict of guilty. The law recognizes that, in dealing with human affairs, there are very few things in this world that we know with absolute certainty. Therefore, the law does not require the People to prove a defendant guilty beyond all possible doubt. On the other hand, it is not sufficient to prove that the defendant is probably guilty. In a criminal case, the proof of guilt must be stronger than that. It must be beyond a reasonable doubt.

A reasonable doubt is an honest doubt of the defendant's guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary doubt. It is a doubt that a reasonable person, acting in a matter of this importance, would be likely to entertain because of the evidence that was presented or because of the lack of convincing evidence.

Proof of guilt beyond a reasonable doubt is proof that leaves you so firmly convinced of the defendant's guilt that you have no reasonable doubt of the existence of any element of the crime or of the defendant's identity as the person who committed the crime.

In determining whether or not the People have proven the defendant's guilt beyond a reasonable doubt, you should be guided solely by a full and fair evaluation of the evidence. After carefully evaluating the evidence, each of you must decide whether or not that evidence convinces you beyond a reasonable doubt of the defendant's guilt.

Whatever your verdict may be, it must not rest upon baseless speculations. Nor may it be influenced in any way by bias, prejudice, sympathy, or a desire to bring an end to your deliberations or to avoid an unpleasant duty.

If you are not convinced beyond a reasonable doubt that the defendant is guilty of the crime of murder in the second degree, you must find the defendant not guilty of that crime. If you are convinced beyond a reasonable doubt that the defendant is guilty of a charged crime, you must find the defendant guilty of that crime.

Credibility of Witnesses

As judges of the facts, you alone determine the truthfulness and accuracy of the testimony of each witness. You must decide whether a witness told the truth and was accurate, or instead, testified falsely or was mistaken. You must also decide what importance to give to the testimony you accept as truthful and accurate. It is the quality of the testimony that is controlling, and not the number of witnesses who testify.

If you find that any witness has intentionally testified falsely as to any material fact you are free to disregard that witness's entire testimony. However, you may disregard so much of it as you find was untruthful, and accept so much of it as you find to have been truthful and accurate.

There is no particular formula for evaluating the truthfulness and accuracy of another person's statements or testimony. You bring to this process all of your varied experiences. In life, you frequently decide the truthfulness and accuracy of statements made to you by other people. The same factors used to make those decisions, should be used in this case when evaluating the testimony.

Some of the factors that you may wish to consider in evaluating the testimony of a witness are as follows.

Did the witness have an opportunity to see or hear the events about which he or she testified?
Did the witness have the ability to recall the events accurately?

Was the testimony of the witness plausible and likely to be true or was it implausible and not likely to be true?

Was the testimony of the witness consistent or inconsistent with other testimony in the case?

Did the manner in which the witness testified reflect upon the truthfulness of that witness's testimony?

Did the witness have a bias, hostility or some other attitude that affected the truthfulness of the witness's testimony?

Did the witness have a motive or reason to lie?

If the witness had a motive to lie, you may consider whether and to what extent, if any that motive affected the truthfulness of that witness's testimony.

You may consider whether a witness has any interest in the outcome of the case, or instead, whether the witness has no such interest.

The defendant chose to testify in his own behalf. He is a person who has an interest in the outcome of the case.

You are not required to reject the testimony of the defendant or any other interested witness nor are you required to accept the testimony of a witness who has no interest in the outcome of the case. You may, however, consider whether an interest in the outcome, or lack of such interest, affected the truthfulness of the witness's testimony.

You may consider whether any witness has any bias or prejudice for or against any other party in this case. In determining the credibility and weight to be given to the testimony of any witness, you may take into account any such bias or prejudice.

You may consider whether a witness made statements at this trial that are inconsistent with each other. You may also consider whether a witness made previous statements that are inconsistent with the witness's testimony at trial. You may also consider whether a witness testified to a fact in this trial but that on a prior occasion omitted to state that fact when it would have been reasonable and logical for the witness to have stated the fact if true.

If you find that a witness has made inconsistent statements or omissions you may consider whether and to what extent they affect the truthfulness or accuracy of that witness's testimony here in this trial. The contents of a prior inconsistent statement are not proof of the facts stated and are to be considered by you only to evaluate the truthfulness or accuracy of the witness's testimony at trial.

Exhibits

During the course of this trial, the judge has received and marked into evidence a number of exhibits. These exhibits, together with all of the testimony you have heard in this trial constitutes the evidence.

Stipulations

The parties have entered into a number of stipulations which the court or counsel have read to you. A stipulated fact is binding on the parties and you are required to accept a stipulated fact as true.

Expert Witness

You will recall that certain witness(es) testified concerning their qualifications as [an] expert(s) opinion concerning issues in this case. When a case involves a matter of science or art or requires special knowledge or skill not ordinarily possessed by the average person, an expert is permitted to state (his, her) opinion for the information of the court and jury. The opinion(s) stated by any expert who testified before you (was, were) based on particular facts, as the expert obtained knowledge of them and testified to them before you, or as the attorney(s) who questioned the expert asked the expert to assume. You may reject an expert's opinion if you find the facts to be different from those which formed the basis for the opinion. You may also reject the opinion if, after careful consideration of all the evidence in the case, expert and other, you disagree with the opinion. In other words, you are not required to accept an expert's opinion to the exclusion of the facts and circumstances disclosed by any other witness. It is given to assist you in reaching a proper conclusion; it is entitled to such weight as you find the expert's qualifications in the field warrant and must be considered by you, but it is not controlling upon your judgment.

The Charge

The People of the District of Rockford have accused the defendant of Murder in the Second Degree in violation of NMCL 750.317.

In order to find the defendant the defendant guilty of the charge of Murder in the Second Degree you must be satisfied that the People have proven each of the following elements beyond a reasonable doubt.

- 1) that on May 31, 2009, in this District the defendant intended to cause the death of Martin Lewis Siriusz and
- 2) that while harboring such intent, the defendant caused the death of Martin Lewis Siriusz by shooting him in the head with a .9 mm pistol.

A person acts intentionally with respect to a result or to conduct defining an offense when his conscious objective is to cause such result or to engage in such conduct. What a defendant intends is, of course, an operation of his mind. A jury, even if present at the time of the commission of the act cannot examine the invisible operation of the defendant's mind. Therefore, in order to determine what the defendant intended at the time of the commission of the crime, the law permits you to consider what the defendant said verbally either, before, during or even after the commission of the offense.

The law also permits you to consider the acts and conduct of the defendant before, during or after the commission of the crime. As jurors, you may therefore consider the nature and the manner of the defendant's acts and conduct.

You may also consider what motive, if any, there was for the act committed. Motive, however, is not an element of the crime charged. Therefore, the People are not required to prove a motive for the commission of the charged crime(s).

Nevertheless, evidence of a motive, or evidence of the lack of a motive, may be considered by the jury. For example, if you find from the evidence that the defendant had a motive to commit the crime charged, that is a circumstance you may wish to consider as tending to support a finding of guilt.

On the other hand, if the proof established that the defendant had no motive to commit the crime charged, that is a circumstance you may wish to consider as tending to establish that the defendant is not guilty of the crime charged.

Finally, premeditation is not a prerequisite in determining intent. Intent may be formed in seconds, actually in a brief instant before the commission of an act. However, it is necessary for the intent to be formed prior to or during the commission of the act or acts resulting in the commission of the crime.

If you find, considering all the credible evidence in this case, that the People have proven beyond a reasonable doubt that the defendant had the intent to cause the death of Martin Lewis Siriusz, then you must also determine if the People have proven the second element of the crime beyond a reasonable doubt; that is that the defendant did indeed cause Martin Lewis Siriusz' death by shooting him in the head with a .9 mm pistol.

If you find after reviewing all of the credible evidence, that the People have proven beyond a reasonable doubt that on or about May 31, 2009 the defendant intended to cause the death of Martin Lewis Siriusz, and that the defendant caused the death of Martin Lewis Siriusz by shooting him in the head with a .9 mm pistol, then you must find the defendant guilty of the crime of murder in the second degree.

On the other hand, if after reviewing all the evidence, you find that the People have failed to prove beyond a reasonable doubt either or both of the elements of the crime of second degree murder as I have charged you, then you must find the defendant not guilty of the crime of second degree murder.

When you retire, you should first select a foreperson.

1. Transcript of Interview of Pat Nugent Siriusz by Detective Vincent Fornier

2. (June 1, 2009 at 1:30am):

3.

4. Pat, my name is Detective Fornier of the Rockford Police Department, Homice Bureau. I'm
5. going to ask you a few questions about the death of your father, Martin Siriusz. First, let's get
6. some information about you.

7.

8. Q: What is your date of birth?

9. A: Uh, I'm a little nervous. It's April 8, 1986.

10.

11. Q: Where do you reside?

12. A: Since January of this year, I've been living at 77 Rockaway Lane in Rockford, but I don't
13. know how long that's going to last.

14.

15. Q: Why is that?

16. A: Well, I recently found out that my father changed his will to leave the house to the Save the
17. Music Foundation.

18.

19. Q: So your father discussed his will with you?

20. A: Not really, no. I just remember him saying was that he was worth a lot more dead than alive
21. and that I would be taken care of a million ways if the reaper ever showed up at his door.

22.

23. Q: So how do you know who's getting the house?

24. A: Well, I jokingly said, "so do I get the house and the instruments," and he said, "No, that's all
25. going to Save the Music."

26.

27. Q: Well, that had to be pretty upsetting?

28. A: I first thought to myself, "I'm your Own flesh and blood, and you want to give everything to
29. people you don't even know?" But I figured, he's gonna do what he's gonna do, so I let it go.

30.

31. Q: OK, we'll get back to that later; Who do you live with?

32. A: Just me and Marty.

33.

34. Q: Marty?

35. A: You know, my old man, I mean my father. We were really just getting to know each other, so
36. we were on a first-name basis.

37.

38. Q: And who is your mother?

39. A: My mother was Cindy Nugent.

40.

41. Q: So how do you know that Martin Lewis Siriusz was your father?

42. A: Well, when I was growing up in a trailer park in Lompoc, California, my mother always used
43. to tell me that Martin Siriusz was my father. She had all kinds of pictures of the band Sir Osis
44. including photos of her and the band taken backstage at one of their concerts. She told me she
45. was their biggest fan and that she and Marty "got together" after the show in the summer of 1985
46. and the result was me. She called me their "love child."

1. Q: Did he acknowledge that you were his child?
2. A: When I was growing up, he didn't even know who I was. It wasn't until 2008 after he had a
3. paternity test that he finally stepped up and acknowledged my existence.
- 4.
5. Q: So how did that come about?
6. A: It goes back to 2004 actually. I ran into Marty at a concert, and when I told him I was his kid,
7. he gave me his number. He didn't seem to believe me, so I just kind of wrote it off. But in
8. 2008, I was back in Royal Oak playing a gig, and I got busted after the show for felony
9. possession of cocaine. I got one phone call, so I dialed the number that Marty gave me when we
10. met in 2004. To my surprise, he answered the phone, and after I reminded him who I was, he
11. actually showed up and bailed me out the next morning.
- 12.
13. Q: Did he ever tell you why he bailed you out?
14. A: He said that he had felt bad about blowing me off, and this was his way of making it up, I
15. guess. Anyway, he said he really did remember my mom, and that for all he knew, I could be his
16. kid. As we drove to his house, he talked about how he's lost his wife and kids in a car crash in
17. 2003 and that he'd been lonely and depressed ever since.
- 18.
19. Q: So what happened after that?
20. A: It was unbelievable really. First, he hires a big-time lawyer to represent me who got my
21. charges reduced to an ACDC or something like that. Then, Marty invited me to stay with him at
22. his place, and shortly afterward, he volunteered to take a paternity test. Next thing you know,
23. he's calling me a "chip of the old rocker."
- 24.
25. Q: So you two had a good relationship after that?
26. A: Well, it was a little awkward at first but we gradually got to know each other. He and I
27. jammed a lot together, and before long, we were writing some stuff and starting to lay down
28. some tracks. I wrote and recorded a song, "Chip off the Old Rocker" in his studio and it was
29. starting to get airplay in January, 2009. Next thing you know, Marty and I started making
30. arrangements to go on tour together for the summer.
- 31.
32. Q: Let's talk about the what happened earlier last night with your father. How did you learn
33. about his death?
34. A: Well, around 9:30pm I was in the back yard pool cooling off when Duke Osiski came running
35. from the kitchen onto the back patio all nervous. I said "what are you doing here?" He really
36. had no reason to be there cuz my father had told him a week ago that the tour was off and Duke
37. had stormed off all angry. Given his persistence though, I was not surprised that he returned. In
38. fact, I half expected it.
- 39.
40. Q: Wait, I thought you said you were going on tour with your father?
41. A: It's kind of a long story, but when Duke caught wind of the tour in February, he told Marty
42. he was in serious financial trouble and would lose everything including his house if he didn't get
43. some serious money real soon. He then suggested that Sir Osis do another reunion tour and
44. Marty said, "been there, done that, not interested."

1. Q: But you just said that they were going on tour?
2. A: Yeah, it was pathetic, really. He starts blubbing and begging Marty “for old time’s sake,”
3. to help him out. He said, “we can bring the kid along to sing back up.”
- 4.
5. Q: I’m assuming you didn’t like that idea?
6. A: I told Marty that we should go ahead as planned. This would be his opportunity to connect
7. with a new generation rather than play the same old songs to the same old crowd. But Duke
8. wouldn’t let up, so I went along with it. And really, what choice did I have? My old band had
9. broken up, and it’s not like I had any other gigs lined up.
- 10.
11. Q: So what happened from there?
12. A: Sir Osiris booked a bunch of concerts for the summer and we started rehearsing. Marty and
13. Duke argued constantly about one thing or another from the set list to lighting, guitar riffs, you
14. name it. But from what Marty told me, that was their dynamic even when they were all the rage
15. in the mid 1980’s.
- 16.
17. Q: Now, you said that your father changed his mind about the tour?
18. A: Yeah, in the early part of May, we were in the recording studio practicing when Marty comes
19. in and says, “I can’t do this, it’s over.” Duke was stunned. He said, “What are you talking
20. about? The contracts are signed, the shows are booked, you can’t back out now!”
- 21.
22. Q: What did Marty say?
23. A: He said, “I just did.” At that point, Duke got all upset and said, “this is crazy man. If we
24. don’t do this tour, I’m done.” He pleaded with Marty but Marty wasn’t having any of it. That’s
25. when Duke said, “After all we’ve been through, I’m not gonna let you screw me like this.”
- 26.
27. Q: How did you feel about it?
28. A: I was surprised but I really didn’t care for Osiris. So while I was disappointed about the tour
29. being cancelled, I wasn’t offended to see him upset because Marty told me that he was a real
30. coattailer who tried to take credit for the band’s success and for songs he didn’t even write.
- 31.
32. Q: What do you mean?
33. A: In particular, “It’s So Schizo,” their signature song. Marty told me the only thing Duke ever
34. contributed to that song was the title, but Marty gave him a credit as co-writer. That was an on
35. going source of contention between them because Duke told everybody that he wrote the lyrics.
- 36.
37. Q: So what happened after the tour was cancelled?
38. A: Well, for the next few weeks after he cancelled the tour, Marty was in a deep funk.
39. Sometimes he didn’t get out of bed. And when he did, he’d just go into the recording studio with
40. a bottle of Jack and hole up in there for hours on end. I’d go in there and sometimes he’d be
41. playing his guitar or just listening to playbacks. Other times, he’d pass out from the whiskey. I
42. think he was also taking sleeping pills cuz he was a real insomniac. Anyway, Duke kept bugging
43. him to reconsider, and finally on Memorial Day, he comes over and literally begs Marty to do
44. him this one last favor for old time’s sake. Unfortunately, Marty was trashed from drinking all
45. day. He said to Duke, “you’re just a parasite. All the good stuff we ever did, I wrote. If you

1. wanna go on tour, do it yourself.” Then Duke said, “you and I both know it’s Sir Osis or
2. nothing.”
- 3.
4. Q: So what happened?
5. A: Well, Marty pulls out his .9 mm from under his robe and starts waving it around, pointing at
6. Duke, me, and then he put it up to his own head miming the word "pow" like Travis Bickle in the
7. end of Taxi Driver. At that point, Duke wrestled the gun away from him and said, “you’re outta
8. your mind. You’re a dead man walking.” At that point he stormed out of the house with the gun
9. and that was the last I saw him til he appeared out of nowhere on May 31st.
- 10.
11. Q: Did you ever have the gun in your possession?
12. A: On Memorial day, no, but I had handled it in past when Marty passed out with the gun in his
13. hand, which he always had with him. He told me that one time back in the eighties, a crazed fan
14. had gotten in to his hotel room after a concert and tried to stab him in the heart cuz Sir Osis
15. hadn’t played a song the guy wanted to hear. I remember him telling me “just because you’re
16. paranoid doesn’t mean they’re not trying to kill you.”
- 17.
18. Q: Ok, we got side-tracked a bit there. Tell me what you did during the day yesterday?
19. A: I got up around noon, had breakfast, or lunch I should say, then I went out to the Guitar
20. Factory to check out some instruments.
- 21.
22. Q: Did you see Marty before you left?
23. A: No, I assumed he was still in bed. He usually stayed up all night and crashed sometime in the
24. morning.
- 25.
26. Q: Had you had any run-ins with Marty lately?
27. A: Not really. Saturday night, I told him we should go on tour without Duke because he was
28. yesterday’s news, but Marty said he wasn’t interested in touring at all.
- 29.
30. Q: Were you ok with that?
31. A: I was a little upset because just a few months earlier, he and I were going to tour together and
32. then Duke butts in with his sob story. So then, it’s the Sir Osis and Son reunion tour, and I’m the
33. third wheel. And then it’s no tour at all. The whole thing was just frustrating.
- 34.
35. Q: What time did you get home that night?
36. A: After hitting a couple of bars with Alex, I returned about 4:30 a.m. and went straight to bed.
- 37.
38. Q: Before we go there, who is Alex?
39. A: Alex Rose, my old bandmate from TPT. We hang out from time to time.
- 40.
41. Q: What did you and Alex do that night?
42. A: You know, just hung out, had a few beers, and reminisced about old times.
- 43.
44. Q: How can I get a hold of Alex?
45. A: I’ll give you his number.

1. Q: So when you came home, did you close the front door?
2. A: I think so. But I was a little buzzed, so I may have forgot to lock it.
- 3.
4. Q: Did you see Marty when you returned?
5. A: No, but I saw the light on indicating the studio was occupied. I figured he was recording.
- 6.
7. Q: You said you were out for the day on Sunday; what time did you get home?
8. A: Around 9:00 p.m. I was tired and kind of sweaty from bouncing around all day, so I decided
9. to cool off in the pool. Then, at about 9:30 p.m. or so, I'm taking a dip when all of a sudden,
10. Duke Osiski barges into the pool area.
- 11.
12. Q: Were you bathing in the pool with soap?
13. A: Yeah. Soap and shampoo. What's the big deal? I do it all the time. Pool's got a filter, right?
14. Plus it was a nice night.
- 15.
16. Q: Ok, so what happened next?
17. A: That's when Duke showed, up, and he seemed surprised to see me and he was all panicky.
18. He said, "I think your father shot himself. He's in the studio." But then I notice he's got blood
19. on his hands, and I'm thinking, "he shot Marty." So, I grabbed my robe and went with him to
20. the studio and found my father slumped over the piano. I saw blood on his head and shirt. I
21. looked down and saw his .9 mm on the floor beside him—the same gun that Duke walked off
22. with a week earlier. That's when I put two and two together and thought to myself, "Duke
23. capped him cuz he cancelled the tour."
- 24.
25. Q: So what did you do?
26. A: I played it cool so Duke wouldn't think I suspected him. I told him to call 911 and he did.
27. And then you guys showed up.
- 28.
29. Q: Did you kill your father?
30. A: Absolutely not. He had just brought me into his life, I had a real father for the first time ever
31. and I was living better than I had ever lived before. Why would I kill him?
- 32.
33. Q: Do you think your father overdosed?
34. A: If he did, it wasn't intentional. He drank whiskey and popped sleeping pills like Pez but that
35. was so he could get some sleep not to off himself.
- 36.
37. Q: So you believe Duke Osiski shot your father?
38. A: He was the one who had the gun.
- 39.
40. Q: All right, we'll end here. Will you cooperate with further questioning if necessary?
41. A: Sure. Can I go back to the house now?
- 42.
43. Once the evidence unit is done, I don't see why not.
- 44.
45. End of Transcript

1. **Grand Jury Testimony of Detective Stephen/Stephanie Tyler; June 20, 2009**
- 2.
3. Questions by Assistant District Attorney (ADA) Peter N. Gordon:
- 4.
5. Q: Detective Tyler, by whom are you employed?
6. A: The Rockford Police Department
- 7.
8. Q: For how long have you been so employed?
9. A: Twenty years as a detective. I was a patrol officer for five years before that.
- 10.
11. Q: What is your current title?
12. A: Senior detective assigned to the Homicide Division – for the past 10 years.
- 13.
14. Q: How many crime scenes have you investigated in your career?
15. A: Thousands. Everything from street fatalities, both alcohol and non-alcohol related, to in-
16. home crimes of violence including assault, rape, robbery and murder.
- 17.
18. Q: How many homicides have you investigated?
19. A: Several hundred.
- 20.
21. Q: Directing your attention now to the evening of May 31, 2009, at around 9:45 p.m. Did you
22. have occasion to respond to a call of a shooting at 77 Rockaway Road here in Rockford?
23. A: Yes, I did. I received word from dispatch that there had been a shooting at the home of
24. Martin Lewis Siriusz, so I responded immediately.
- 25.
26. Q: Did you know who that was?
27. A: Who around here doesn't? Other than maybe Kid Rock and Eminem, Mr. Siriusz is one of
28. the most successful musicians to come out of Rockford and maintain a connection to this area.
- 29.
30. Q: I gather that in addition to being an experienced detective, you're a bit of a music buff?
31. A: You might say that. In particular, I've always been a big fan of Sir Osis even though they
32. hadn't done anything in quite some time.
- 33.
34. Q: Anyway, getting back to the night of May 31, 2009, what time did you arrive at the scene?
35. A: I'd say about 9:55 p.m. since I was coming from downtown.
- 36.
37. Q: What happened when you arrived?
38. A: Well, I got there at the same time that patrol arrived so I said I'd take the lead. I knocked on
39. the front door, which was ajar and said, "hello" and upon receiving no response, I drew my
40. sidearm and walked through the kitchen into the backyard by the pool.
- 41.
42. Q: What did you see when you got there?
43. A: Two people who appeared to be conversing with each other.

1. Q: Who were they?
2. A: Patrol separated them and I learned that they were Pat Nugent Siriusz, who said he was
3. Martin Lewis Siriusz's kid, and Thomas Duke Osiski, who I recognized on sight.
- 4.
5. Q: What did they say?
6. A: When I asked what happened, Osiski said, "I think Marty's shot himself," and Pat just stood
7. there. He didn't say anything at that point. He seemed pretty unfazed by the whole thing.
- 8.
9. Q: What did you observe about their appearance?
10. A: The kid was dressed only in a robe. I approached Osiski and noticed what appeared to be
11. blood on his right hand? When I asked him what was on his hand, he said "Oh, it's not what you
12. think."
- 13.
14. Q: Did you notice anything else about him?
15. A: Yes. He had a strong smell of alcohol on his breath. I thought he might be intoxicated.
- 16.
17. Q: Why do you say that?
18. A: His eyes were bloodshot and he was very nervous and fidgety.
- 19.
20. Q: What did you do then?
21. A: I asked him where Siriusz was and he said, "in his music studio." At that point, I had an
22. officer stay with Osiski and I proceeded to the studio at the other end of the house.
- 23.
24. Q: What did you observe when you got there?
25. A: First, that it was kind of dark. When I got acclimated, I saw Siriusz seated on a stool,
26. slumped over a piano with his head against some sheet music and his right arm hanging down
27. beside him next to some recording equipment. He appeared to be dead. As I came up close
28. behind him, I observed a lot of blood in his hair behind his right ear. It appeared to have flowed
29. down the right side of his neck, onto the upper right shoulder area of his shirt down his right
30. jawline onto the front of his shirt and a couple of drops fell onto the piano keys.
- 31.
32. Q: What else was he wearing?
33. A: He had a black cap, which was on backwards with the bill flipped up. There was a little bit of
34. blood on the right side above his right ear and a little blood in the right ear as well. I also noticed
35. that he had a small earpiece in his left ear but the right one was not connected to his right ear.
- 36.
37. Q: Did you observe anything else of interest to you?
38. A: Yes. I noticed that there was blood on the top of his right hand and between his ring finger
39. and pinkie. I also observed what appeared to be a smudged, bloody fingerprint on the outside of
40. his wrist. Also, below his hand, on the floor, was a black handgun.
- 41.
42. Q: What did you observe about the gun?
43. A: It had drops of blood on the barrel. There was also blood on the floor.

1. Q: Anything else about the immediate scene that caught your attention?
2. A: Yes. There was a partially empty and open bottle of Jack Daniels whiskey on top of the piano
3. and an open pill bottle with some loose pills on the piano ledge above the keyboard. I also
4. noticed some sheet music and what appeared to be handwritten lyrics in a notebook. The song
5. title was "Hanging at Death's Door" by M.L.Siriusz. His forehead was resting against the music.
- 6.
7. Q: Was there music playing?
8. A: Yes there was. I could hear a song playing through the loose earpiece, and I observed that the
9. computer and audio set-up were still on.
- 10.
11. Q: What did you do then?
12. A: I called in the evidence collection unit to photograph the scene inside and out to collect the
13. evidence. We also summoned the morgue to send someone to collect the body and take it to the
14. Medical Examiner's Office for an autopsy.
- 15.
16. Q: What did you do then?
17. A: We transported Thomas Osiski and Pat Nugent Siriusz to headquarters in separate cars to be
18. interviewed by me and my partner, Detective Fournier who met us there.
- 19.
20. Q: Who did you interview?
21. A: Mr. Osiski [at which time Detective Tyler read into evidence the contents of his interview
22. with Thomas Osiski].
- 23.
24. Q: What did you do after you interviewed him?
25. A: I conferred with Detective Fournier and compared notes, so to speak. We decided that we'd
26. await the results of the autopsy and ballistics analysis before charging anyone. So we let Osiski
27. and Siriusz leave when the interviews were over.
- 28.
29. Q: Before letting them go, did you obtain any evidence from them?
30. A: Oh yes. I swabbed Osiski's hands for blood samples and gun powder residue, but there was
31. nothing to swab from Siriusz since he had apparently been swimming when Osiski arrived on the
32. scene. I also took inked fingerprint impressions from both of them.
- 33.
34. Q: What part of the Mr. Osiski's hands did you swab?
35. A: The palm and the anterior and posterior sides and web between the thumb and the index
36. finger.
- 37.
38. Q: Did you attend the autopsy?
39. A: Not personally, no. But I reviewed the Dr. Shankar's report. [at which time Detective Tyler
40. Read Dr. Shankar's report into evidence]
- 41.
42. Q: Did you later come to learn that Mr. Siriusz had cancer?
43. A: Yes. Our office subpoenaed his medical records, and we learned that the deceased had cancer
44. of the lungs and brain. Toxicology tests confirmed that as well. Apparently, Mr. Siriusz was in
45. pretty rough shape as it was. As it turned out, his liver also had pretty serious damage from
46. alcohol abuse.

1. Q: Speaking of alcohol, you said you observed a bottle of Jack Daniel's at the scene?
2. A: Yes. It was right on top of the piano. It was one-third empty and uncapped. I also saw some
3. loose pills and a prescription bottle of Nitrazepam on the piano.
- 4.
5. Q: Why are there four pills in the overhead photo and only three in the side angle shot?
6. A: After the overhead shot was taken, the Evidence officer removed one of the pills to field test
7. it for controlled substance. It tested positive and was later determined by the CPS Lab to be
8. Nitrazepam.
- 9.
10. Q: But with the cancer diagnosis, the combination of the booze and pills, the song that was
11. playing, the tour cancellation, doesn't that all suggest suicide?
12. A: Well, I'm not a behavioral scientist but it seems that's for a jury to decide. All I can say is
13. that from what I know, the drugs and alcohol didn't kill him and we don't know for sure if they
14. would have. What killed him was a bullet fired at close range to the back of his head while he
15. was doing what he apparently loved to do which was writing and recording music. Over the
16. course of his career, as I understand, Martin Siriusz abused drugs and alcohol, suffered a severe
17. tragedy involving his family that didn't do him in, and he recently was reunited with his long lost
18. son. On the other hand, we came to learn through our investigation that Thomas Osiski was in a
19. deep financial hole and had the ticket out when their reunion concert was scheduled and then all
20. of a sudden, Siriusz pulls the rug out from under him when he cancels the tour. Then according
21. to the son, on Memorial Day, Osiski left with the gun that our ballistics tests show fired the fatal
22. shot. When you consider that he had the motive, means and opportunity, not to mention the
23. blood on his hands, it all seems to add up, doesn't it?
- 24.
25. By the Prosecutor: Members of the Jury, as your legal advisor, I caution you that any conclusion
26. whether this death was a suicide or homicide committed by a particular person is ultimately for
27. you to determine based on all the evidence.
- 28.
29. Q: What about Pat Nugent Siriusz, did you consider that he could have done it what with the fact
30. that he was the only one home with Siriusz before Osiski arrived, his taking a bath in the
31. backyard pool, the fact that Osiski called 911 not him, and his fingerprints on the piano.
32. A: I'm not unmindful of those facts, but all things considered, Osiski had the means, motive and
33. opportunity.
- 34.
35. Q: What investigation did you conduct on Pat Nugent Siriusz?
36. A: He's a bit of a mystery. It seems he was born to some groupie in California in the mid-1980's
37. who kept telling him that Siriusz was his father. According to Lompac police records, the mother
38. died of a drug overdose, the kid was taken in by a foster family, but he eventually ran away
39. because he was supposedly being abused by the stepfather. We've also come to learn that
40. shortly before Pat ran off, the stepfather, Leonard Skinnerd, I think his name was, died under
41. suspicious circumstances. It seems that he and Pat were on a camping trip and he stepped off the
42. trail and fell down into a ravine and broke his neck. I tracked down the retired detective who
43. investigated the case and he told me that Skinnerd was familiar with that trail but had a BAC of
44. .06. All they had to go on was Pat's account and they closed the case as an accident. He did say
45. though that he had a bad feeling about the kid because he seemed so unaffected by the death and

1. the father was an experienced outdoorsman. Anyway, as best we could tell, after running off, the
2. kid played in some bands and met Martin Siriusz at a concert in Royal Oak. Pat claimed to be
3. Siriusz's kid, but Siriusz laughed it off. A few years later though, Pat re-entered Siriusz' life and
4. Siriusz agreed to take a paternity test. As it turned out, he was the kid's father after all.
- 5.
6. Q: So what happened?
7. A: The kid moved in with his new-found father and, as I understand it, they were going to go out
8. on a kind of father-son tour until Thomas Osiski entered the picture and literally begged Siriusz
9. to do one more reunion tour to help him get out of his financial mess. When I interviewed Pat, it
10. was obvious that he was none too happy with Osiski and even less happy with that Siriusz
11. decided to do a reunion tour, thereby making him kind of a third wheel. Then, as it turns out, he
12. cancelled the tour altogether.
- 13.
14. Q: What about Pat's financial situation?
15. A: He told me that his father had told him that he would be very well taken care of. He said
16. something about a million-dollar life insurance policy.
- 17.
18. Q: What about Siriusz's will?
19. A: He was less clear about that but he did make reference to the "f'ing Save the Music
20. foundation" which I didn't quite understand. Those are his words, not mine.
- 21.
22. Q: Did you ask him what he meant?
23. A: No. I was satisfied that after a troubled life with no father and then an abusive one, the kid
24. had finally found his real father and was now living the life of a rich rock star. He also knew that
25. he'd be well taken care of when his father passed away which, I understand, was not too far off
26. anyway.
- 27.
28. Q: Did Pat know this?
29. A: Apparently nobody did until after Siriusz died. So anyway, compared to Osiski, I didn't see
30. Pat as having a particularly strong motive to off his own father.
- 31.
32. By the Prosecution. Okay. Thank you Detective Tyler. That's all the questions I have.
- 33.
34. End of Testimony.

1. **Grand Jury Testimony of Dr. Erin/Aaron Dre; June 20, 2009.**
- 2.
3. Questions by Assistant District Attorney (ADA) Peter N. Gordon:
- 4.
5. Q: Dr. Dre, by whom are you employed?
6. A: The Rockford Police Department.
- 7.
8. Q: For how long have you been so employed?
9. A: Twenty five years.
- 10.
11. Q: What is your current title?
12. A: I'm the Chief Forensic Analyst for the Rockford CPS Laboratory
- 13.
14. Q: And what exactly does the Chief Forensic Analyst do?
15. A: I analyze the evidence collected from crime scenes and autopsies to assist the police
16. department with its investigations.
- 17.
18. Q: How many cases have you worked on in your career?
19. A: Thousands—too many to count, really.
- 20.
21. Q: How many homicides have you investigated?
22. A: Hundreds.
- 23.
24. Q: Do you have any specialized training?
25. A: Yes. I've attended numerous seminars and classes sponsored by the FBI, Secret Service,
26. DEA, State Police Agencies and local departments on crime scene investigation, homicide
27. investigation, evidence collection, firearms identification, ballistics analysis, blood spatter
28. analysis, drug detection, those kinds of things.
- 29.
30. Q: Do you have any teaching experience?
31. A: I teach crime scene preservation and analysis to detectives across the country ,and I teach a
32. course specifically on homicide scene investigation and blood spatter analysis for police and
33. prosecutors every year at the Police and Prosecutors Symposium in Houston, Texas.
- 34.
35. Q: Have you testified as an expert in court on these topics over the years?
36. A: Yes, over 50 times in Federal and State courts.
- 37.
38. Q: Directing your attention now to morning of June 1, 2009, did you have occasion to work on
39. the case surrounding the death of Martin Lewis Siriusz?
40. A: Yes, I did. When I came to work that morning, I went to the Rockford County Medical
41. Examiner's office where Dr. Ravi Shankar, the Associate Medical Examiner, performed the
42. autopsy.
- 43.
44. Q: What did you observe?
45. A: Well, the first thing we looked at was the back of the deceased's head as the body lay face
46. down. Dr. Shankar noted the copious amount of clotted blood in the hair above and behind the

1. right ear. Based on the significant accumulation of blood and flow down the neck, face and shirt,
2. Dr. Shankar concluded that the heart was still pumping when the shot was fired.
- 3.
4. Q: What did he do then?
5. A: He passed through the hair and identified a small, somewhat irregular but circular hole toward
6. the back of the head above and behind the deceased's right ear.
- 7.
8. Q: Was the area swabbed?
9. A: Yes, he stuck a Q-tip in and around the entry hole swabbing it for blood and gun powder
10. residue for ballistics.
- 11.
12. Q: Did you observe the interior of the skull?
13. A: Yes. Dr. Shankar traced the path of the bullet from the right rear portion of the skull above
14. and behind the right ear to its resting point behind the left eye.
- 15.
16. Q: Was anything removed from the brain?
17. A: Yes. The doctor removed a deformed lead bullet fragment that was later to be compared to
18. test bullets fired from the gun found at the scene.
- 19.
20. Q: What happened next?
21. A: After removing the brain for further examination and analysis, Dr. Shankar opened up the
22. abdomen and examined and removed various organs including the heart, lungs and liver. When
23. he examined the lungs, he said, "heavy smoker."
- 24.
25. Q: Was a toxicology test every performed?
26. A: Yes, I received the results a few days later.
- 27.
28. Q: What did the toxicology reports reveal?
29. A: That Mr. Siriusz' BAC was .17 and he had concentrations of Nitrazepam in his system.
30. According to Dr. Shankar, that combination could be fatal in that alcohol is a depressant and
31. Nitrazepam is designed to make you sleep. So, you go into a deep sleep and if you throw up, you
32. can't wake up to expel the vomit and it can fill your throat and lungs. Consequently, you can
33. drown in your own vomit, kind of like Jimi Hendrix or Jim Morrison, God rest their souls.
- 34.
35. Q: Did Dr. Shankar detect or point out the presence of any vomit in Mr. Siriusz' throat or lungs?
36. A: No.
- 37.
38. Q: Now, you said that you took gunpowder samples for ballistics, why were those samples
39. important?
40. A: To help us determine whether the gun shot was fired from close range. I know from ballistics
41. training and experience that the closer the muzzle of the gun is to the target, the higher
42. concentration of gunpowder grains there will be at or around the entry site. The greater the
43. distance, the more diffuse the grain pattern will be.
- 44.
45. Q: What about blood flow from the wound, can that affect the presence of any powder grains?
46. A: Sure. As blood flows out from the wound it can transport the grains away from the entry site.

1. Q: Speaking of the gun. What kind is it?
2. A: It was a .9 mm semi-automatic pistol.
- 3.
4. Q: What does that mean?
5. A: It means that it fires a projectile or cartridge that is transported from the magazine contained in
6. the handgrip when the slide is pulled back and the hammer is cocked and the trigger is pulled.
- 7.
8. Q: What happens at that point?
9. A: The trigger causes the hammer to strike the firing pin at the back of the cartridge, there is an
10. explosion which propels the bullet along with gasses through the barrel and the cartridge casing is
11. ejected from the ejection port on the right side of the barrel. Subsequent pulls of the trigger
12. would result in the same thing until all the rounds are expended from the magazine.
- 13.
14. Q: Is there a recoil when the gun is fired?
15. A: Absolutely. The explosion of the gasses as the hammer strikes the firing pin causes the gun to
16. recoil or jerk backward as the bullet is propelled through the barrel and the shell casings are
17. ejected from the gun.
- 18.
19. Q: And did you test the shell casings for anything?
20. A: Strangely enough, no. I was told that no shell casings were found at the scene.
- 21.
22. Q: Oh. So you tested the blood that was found on the gun and the deceased's right hand?
23. A: Yes, I did.
- 24.
25. Q: Dr. Dre, can you tell us what blow back is?
26. A: Yes. If a bullet strikes an object such as someone's head at close range, say from contact to a
27. few inches away, the gasses and force of impact can cause what's inside, in this case, blood, skull
28. fragments and brain tissue and sometimes hair to literally blow back such that you can see fine
29. particles of these materials on the muzzle or barrel of the gun and, in cases of self-inflicted
30. wounds, on the shooter's hands.
- 31.
32. Q: Did you see that here?
33. A: Let me put it this way, I saw blood on the barrel but it didn't appear to be indicative of blow
34. back. Similarly, the blood on Siriusz' hand appeared to be drops from above rather than from
35. high speed, high volume blow back on impact. I also noticed that some of the blood had been
36. smudged as if from contact by someone else.
- 37.
38. Q: Any idea how that could have occurred?
39. A: Well, Thomas Osiski said that he grabbed Mr. Siriusz's wrist to check his pulse.
- 40.
41. Q: Detective Tyler told us that Mr. Osiski's hands were swabbed for blood and gun powder
42. residue. What did the lab find?
43. A: That the deceased's blood was on the defendant's hand, and there were gunpowder grains on
44. his hand as well. But I can't say for sure whether that was from firing the gun himself or from
45. having grabbed the deceased's wrist, in which case it could have been transferred.

1. Q: Were there gun powder grains on the deceased's hand?
2. A: Gunpowder grains were detected in the swabbings of the deceased's right wrist area but I
3. can't say for sure whether they were from firing the gun himself or from having been transferred
4. from Mr. Osiski's hand. Given the location, I would say it's probably the latter scenario.
- 5.
6. Q: Why do you say that?
7. A: Because if he'd fired the gun himself, you'd expect to find gunpowder grains on the top of his
8. hand, and we didn't find any.
- 9.
10. Q: What about the possibility that Osiski put the gun in Siriusz' hand, held it up to his head,
11. pulled the trigger, lowered his arm and then put down the gun?
12. A: That's a plausible possibility but it would probably require that Siriusz was unconscious or in
13. a deep sleep. Otherwise, he would probably resist.
- 14.
15. Q: So, did you form an opinion within a reasonable degree of certainty as to whether this was a
16. self-inflicted wound?
17. A: Yes.
- 18.
19. Q: What is that opinion?
20. A: That it was most likely not self-inflicted.
- 21.
22. Q: What do you base that on?
23. A: First, the location of the entry wound above and behind the right ear. Although it's not
24. entirely unheard of, in virtually all the head shot suicides I've investigated or read about, the fatal
25. wound was delivered directly to the temple, the forehead or upward in the mouth. The further
26. you go back on the head, the less control you have over the gun. Especially when you consider
27. the recoil factor. Plus, the presence of only a few powder grains in the deceased's hair around the
28. wound site tells me that the fatal shot could well have been fired from several inches away.
29. Again, if you're trying to kill yourself, the farther away the muzzle is from the target, the lesser
30. become your chances of success or, I should say, the lesser the chances of accomplishing your
31. objective.
- 32.
33. Q: Could this have been a contact shot?
34. A: I can't rule that out entirely because of the shape of the wound and the fact that the blood flow
35. could've displaced the powder grains.
- 36.
37. Q: Did anyone swab the blood on the deceased's neck or shirt for powder grains?
38. A: Yes, and some grains were found but not a high concentration, which suggests that the muzzle
39. was some distance from the head when the shot was fired.
- 40.
41. Q: How far?
42. A: Within one to six inches maybe.
- 43.
44. By the Prosecution. Okay. Thank you Dr. That's all the questions I have.
- 45.
46. End of Testimony.

1. **Grand Jury Testimony of Thomas D. Osiski, June 25, 2009**

2.

3. By the prosecutor, Les Paul, ADA:

4.

5. Q: First of all, Mr. Osiski, do you acknowledge under oath before this grand jury and in the presence of your attorney, Christine McVie, that you waive immunity?

7. A: Yes.

8.

9. Q: What is your date of birth?

10. A: September 15, 1957.

11.

12. Q: Are you currently under the influence of drugs or alcohol?

13. A: Uh, no.

14.

15. Q: Turning now to the death of Martin Lewis Siriusz, do you wish to make a statement before I ask you some questions?

17. A: Yes. I know that Marty and I had our differences over the years but I want you to know that I did not kill him. He was like a brother to me. For seven years, we had the best times of our lives in one of the most popular and successful bands of the 1980's, and although we went our separate ways after that, we did get together for a couple of reunion tours in 1997 and again 2003. We were also set to do it again this summer.

22.

23. Q: Do you think Marty killed himself?

24. A: I don't know. I mean, Marty's been a dark person as long as I've known him. I mean, he was always preoccupied with death and dying. Then when his wife and kids were killed in that horrible car wreck on Route 66 back in 2003, that really put him over the edge. But he didn't kill himself over it. Then again, this May, I have to say that he was more down and depressed than I'd ever seen him before. One day, we're doing a reunion concert tour and next day, it's all over. So it's definitely possible. But you should be looking at that long-lost kid of his.

30.

31. Q: How do you mean?

32. A: Well I gave Pat the gun the week before and said to hide it, so he was the only one who knew where it was. Plus, when I ran out the back of the house to call 911, there's Pat, naked in the pool washing off with a bar of soap. I mean, who the hell does that? It's not like that house didn't have bathrooms all over the place. On top of that, this kid comes out of nowhere a few months ago, moves in, and next thing you know he's going on tour with Sir Osis. I remember him trying to convince Marty to cut me out of it all together, but he's just some garage band punk. Besides, who's going to pay good money to see half of Sir Osis and kid? Anyway, Marty agreed with me, and the kid got real angry like I'm horning in on his action.

40.

41. Q: What did you know about him?

42. A: Not a lot. I do remember the night before we did our 2004 reunion concert, Marty said some pissant punk rocker tried to say he was Marty's kid. I said, "yeah, and I'm Elvis' nephew." We both had a laugh, but I remember talking to Marty in the Fall in 2008 and he told me that he took a paternity test and he was the kid's father after all. Next thing you know the kid's moving in

1. and acting like rock and roll royalty or something. As far as I can tell, the kid is a little gold
2. digger who didn't give a rat's ass about anything but Marty's money.
- 3.
4. Q: Turning back to Marty, hadn't he told you in May that he wasn't going to do the reunion tour?
5. A: Yes, but you have to understand how Marty operated. Back in 1997 and 2002, he did the
6. same thing. He's in, he's out, but the bottom line was that he always gave in because we both
7. knew that the money was too good to pass up, even if it meant we were playing hits we'd written
8. 20 years ago. So, I had every expectation that Marty would get back on the band wagon with a
9. little more persuasion, which is why I went to his house on the night of May 31, 2009.
- 10.
11. Q: Speaking of money, how much did you stand to gain from the reunion tour?
12. A: The band's take for the summers tour was a million. My cut was half of that. But when you
13. figure in taxes, it was substantially less than a half million.
- 14.
15. Q: Wasn't there talk of an extended tour for another million?
16. A: Yes but that was an if-come. If the summer tour didn't fare well, that would have been it.
17. You can never be sure of anything in this business; too many forces beyond your control.
- 18.
19. Q: What is your financial situation?
20. A: I'm kind of strapped.
- 21.
22. Q: Kind of strapped? Haven't you been served with a foreclosure notice on your home?
23. A: Yes but my attorney is working on a settlement agreement with the bank. I just needed to
24. make it until we got paid for the tour. Now, I'll probably have to file for bankruptcy.
- 25.
26. Q: So this tour was essential to you keeping your house?
27. A: Unless something gets worked out with the bank. The remaining mortgage balance is
28. \$225,000.00, but I am about three months behind in monthly payments. But the bank has
29. accelerated the debt. If it was just a matter of bringing the payments current, that would be one
30. thing, but they want me to pay all kinds of penalties.
- 31.
32. Q: Aren't you also maxed out on your credit cards?
33. A: My lawyers are working on that too. I owe about \$150,000 between two cards.
- 34.
35. Q: Where is your income coming from?
36. A: Well, I do a weekly gig at the Hard Rock for about a grand a night; I occasionally produce
37. music for other bands, which brings in about fifty grand a year; I get writer's residuals for "It's
38. so Schizo;" and I got a nice check for a hundred grand when "Wild and Willing" was covered by
39. Fifty Cent.
- 40.
41. Q: So why then are you in this financial situation?
42. A: It's not easy living the rock star's life, especially when your big money days are behind you.
43. Plus I have to pay child support to two different women I met once in my life back in the 1990's.
- 44.
45. Q: Speaking of your relationships with women, you've had some serious problems, right?
46. A: If you're referring to my record, my ex-girlfriend and I have had our share of domestics.

1. Q: In fact, you're currently on probation for violating an order of protection are you not?
2. A: I pled to Misdemeanor Contempt, but yes, I am.
- 3.
4. Q: And you had a Harassment before that?
5. A: That was ACDC'D. It wasn't like I was just beating her up or something. These were
6. domestic arguments that got out of hand, that's all.
- 7.
8. Q: And you were convicted of DWI in 2002?
9. A: CheektaVegas. Everybody knows that's a tough town for drunk drivers.
- 10.
11. Q: And what about the Larceny conviction in 2000?
12. A: That was a big misunderstanding. I was relying on my accountant to properly report my
13. income. I got audited and it turned out that my income was under-reported by about ten
14. thousand. I paid restitution and that was the end of it.
- 15.
16. Q: Let's talk about your relationship with Martin Lewis Siriusz. How did you two meet?
17. A: I was in high school, Marty was a few years older and he played in a local rock band called
18. Siriusz. I used to watch them play whenever and wherever I could. I played bass guitar and as
19. luck would have it, the Siriusz bass player got hepatitis, and I auditioned and got the job. I knew
20. all their stuff already so it was an easy fit. Anyway, we were playing all over the area and
21. eventually we started getting jobs all over the country. Bars and clubs mostly, but eventually we
22. were playing larger venues. Marty wrote all of the band's material at first, but his material
23. tended to be dark and heavy. So, we worked on some upbeat material and changed the band's
24. name to "Sir Osis." After that, it was the full-on Rock Star life with sex, drugs ,rock and roll,
25. months on the road, wild nights in hotels, adoring crowds, groupies, you name it. We also knew
26. the darker side of it, loneliness, depression, long hang-overs, crazy, irrational fans. I remember
27. one night after a show, we're in our hotel room, there's a knock on the door and the guy says
28. "room service." Marty opens the door and the guy bursts in and stabs him in the chest. We
29. came to find out he was pissed that we didn't play a song he wanted to hear. Anyway, I came to
30. realize how fleeting and mercurial it all was, so I wrote "It's so Schizo." The chorus goes: One
31. day you're sittin' on top of the world, everybody loves you, crazy boys, pretty girls. Next day
32. you wake up wondering where it all went, you're all alone and you can't pay the rent. One day
33. high, next day low, ask me why, baby, I don't know. Ain't no two ways about it, Get up, stand
34. up and shout it, baby "IT'S SO SCHIZO!" I remember at every encore, when we got to the last
35. line, the whole crowd, thousands and thousands of screaming kids would sing in one voice, "It's
36. so schizo." You had to be there to feel it. It was surreal.
- 37.
38. Q: Are you saying you wrote that song? I thought that you only came up with the title?
39. A: Not true. I wrote it but gave Marty co-writing credit because he tweaked some of the lyrics
40. and after all, we were a band.
- 41.
42. Q: Let's talk now about the reunion tour of 2009, How did that come about?
43. A: I had heard on the radio that Marty and Pat were making plans to go on tour, so I dropped by
44. to ask Marty if we could do a tour on the strength of "Wild and Willing." At first, he didn't
45. seem that interested, but I told him that I had spoken to Harvy Productions and they could line up
46. a twenty city east coast tour that could bring us a million. He said "sounds like a plan."

1. Q: How did Pat react?
2. A: Not at all happy. I remember Pat saying, “why do you want to go back in time when you and
3. I have an opportunity to do something new together?” Marty said, “there’s time for that. We’ll
4. bring you along and you sing back up.” The kid was pissed.
- 5.
6. Q: What happened after that?
7. A: We arranged the deal through Harvy Productions and it was full steam ahead with rehearsals.
- 8.
9. Q: What did you observe about Marty’s behavior?
10. A: Temperamental as always, but he was fine at first. I did notice that he was boozing and
11. taking pills, but that’s how it always had been with him. We had three or four scares back in the
12. day when he’d OD’d, but that was an occupational hazard.
- 13.
14. Q: What about Marty’s drinking?
15. A: That was a constant. He always had a bottle of Jack. Honestly, I don’t know how he
16. survived as long as he did. Back in the day we took just about everything. But I had to stop
17. altogether after my liver transplant in 1999. These days, for Marty, it was mostly Jack and
18. sleeping pills. He said he couldn’t sleep.
- 19.
20. Q: Weren’t you doing drugs during rehearsals?
21. A: A couple times. Old habits die hard when you’re back in the old groove.
- 22.
23. Q: What did you observe about Pat’s behavior toward Marty?
24. A: Sullen, disrespectful. I mean, Marty had taken Pat into his home, embraced him, was taking
25. him on tour with one of the greatest rock bands of all time, and he acts like some pissant punk. I
26. think Pat resented me and was angry with Marty. It’s a generational thing, I imagine.
- 27.
28. Q: Speaking of changing his mind, what about Marty’s pronouncement that the tour was off?
29. A: All of a sudden, in May, Marty says he doesn’t think he can do the tour. I said “what are you
30. talking about, you can’t back out now, that’s a million down the drain and another million where
31. that came from.” I asked him why, and he really didn’t give an answer. So I figured he was just
32. being his usual difficult self and that, eventually, he would change his mind just like he did back
33. in 1997 and 2002 when we did the Eighties Hair Band reunion tours that Clairol sponsored. But
34. this time, I will say that he looked like he’d seen a ghost. He was much more reserved and
35. withdrawn than ever before. It was like he knew something. I mean, this guy had always been
36. Dr. Darkness, but there was something even darker about him this time.
- 37.
38. Q: What happened on Memorial Day?
39. A: That was the last time I saw my old band mate alive, and it wasn’t pretty. I went over to
40. remind Marty that we only had a month before the tour started, but there was no talking to him
41. cuz he was so wasted. Plus, he was waving that fool gun around, which scared the hell out of
42. me. I tried to talk some sense into him, but it was pointless. He fell back on the couch and I
43. managed to grab the gun out of his hand. I gave it to Pat, which, in hindsight, was a big mistake
44. and said, “hide this thing somewhere he won’t find it when he wakes up?”
- 45.
46. Q: Pat says you left with the gun?

1. A: I'm not surprised. But I hate guns. They scare me. No, he had the gun, not me.
- 2.
3. Q: Wait a second, weren't you convicted of weapons possession back in 1995?
4. A: If I may, a bunch of us, we're in a car that was pulled over by the police. They found some
5. drugs under the driver's seat and a loaded pistol. I was a backseat passenger, and it wasn't my
6. car. We all pled to misdemeanors, and I got a fine. That's another reason I hate guns.
- 7.
8. Q: Didn't you tell Marty that he was a dead man walking?
9. A: Yes, but I meant he was killing himself with the booze and pills, not that I was gonna kill him
- 10.
11. Q: Turning now to May 31st, what time did you arrive?
12. A: 9:30 or so; I knocked on the door and noticed it was ajar. I walked in, said "hello," but there
13. was no response. I figured Marty might be in the studio, so I went that way.
- 14.
15. Q: What happened when you went in?
16. A: I saw Marty slumped over the piano, and I figured he had passed out or something. I knew
17. he'd been drinking a lot, and I saw the sleeping pills and the bottle of Jack Daniels' on the piano.
18. His right arm was dangling by his side. He had an ear plug in one ear, and I could hear the low
19. sound of music playing. So I touched his shoulder and said, "wake up Sleeping Beauty." I can't
20. tell you how many times I'd done this in the past in our playing days, so this was deja vu all over
21. again. But this time I noticed he was limp. I then felt and saw the blood and said "Marty, what
22. have you done?" Instinctively, I grabbed his right wrist to feel for a pulse, but there wasn't any.
23. I then looked down and saw his gun on the floor. I looked up toward the piano and read the
24. lyrics to Hanging at Death's Door and thought, "Omigod, he's offed himself." But then I
25. wondered how he got the gun back or if he'd gotten it back at all. At that point I ran out the back
26. and stumbled upon Pat washing off in the pool. That's when I thought, "the kid killed his father
27. and tried to make it look like a suicide."
- 28.
29. Q: How did you know it was his gun?
30. A: Cuz he always carried it, and I took it away from him on Memorial Day.
- 31.
32. Q: What happened then?
33. A: We went to the studio, and I watched Pat as he saw his father's lifeless body. No reaction. It
34. was like he knew what he'd find. I then called 911 and the police came. They took us
35. downtown for questioning and I got the distinct impression they thought I did it. I admit, I had
36. Marty's blood on my hands, but I explained that I had touched his shoulder and grabbed his wrist
37. to take his pulse.
- 38.
39. Q: Had you been drinking that night?
40. A: No.
- 41.
42. Q: Would you say you were on good terms with Marty at the time of his death?
43. A: Yes. Well, Memorial Day wasn't good, but he was wasted. Although he'd pulled out of the
44. tour, that was deja vu. I knew I'd get him back. Like I said, we were like brothers. We were Sir
45. Osiris, for God's sake. We toured together, wrote music together. We loved each other.

1. Q: Speaking of writing music, I'm now showing you Marty's last will and testament and I'm
2. directing your attention to paragraph 3. Would you read that please?
3. A: "I hereby give, devise and bequeath my share of any/all royalties to be earned from the song
4. "It's so Schizo" to my former bandmate" . . . (whereupon the witness reads the remainder to
5. himself in a barely audible voice and then states) You're kidding right? He wants me to say that
6. he wrote the music and lyrics? Not a chance. He must have been wasted when he wrote that.
7. He and I both know that I wrote that song and gave him co-writing credit. If I had known that
8. he'd do this, I would not have given him any credit at all. I guess it just shows that you never
9. really know people do you? It's like the song says "It's so Schizo."
- 10.
11. By the prosecutor: I suppose so. That's all I have.
- 12.
13. End of examination.

CRIMINAL HISTORY REPORT

Name: Thomas D. Osiski
DOB: 9/15/57
Alias: Duke
SS#: 156 51 9516
Address: 13 Tawny Kitaen Lane
Rokford, New Michigan

Arrest: 5/15/08

Charges: Assault 3d degree (A Misdemeanor)
Harassment (Violation)
Criminal Contempt 1st degree (E Felony)

Disposition: Criminal Contempt 2nd degree (A Misdemeanor)
Harassment (Violation)
By guilty plea in Rockford City Court, July 9, 2008

Sentence: September 1, 2008
Three Years Probation
No Contact Order of Protection

Arrest: 12/24/07

Charges: Harassment (Violation)

Disposition: Adjudgment in Contemplation of Dismissal (ACD)
in Rockford City Court, February 9, 2008
No Contact Order of Protection

Arrest: 4/1/03

Charges: Driving While Intoxicated (Misdemeanor)
Unsafe Lane Change (Violation)

Disposition: Guilty as Charged after Non-Jury Trial in
Cheektowaga Town Court 8/5/03

Sentence: \$1000.00 Fine
Conditional Discharge
Six Month License Revocation

Arrest: 6/7/2001

Charges: Grand Larceny 4th degree (E Felony)
Offering a False Instrument for Filing (E Felony)
First Degree

Disposition: 4/01/2002 - Petit Larceny (A Misdemeanor) by Guilty Plea
in County Court Pursuant to Superior Court Information

Sentence: 4/30/2002 - Conditional Discharge upon payment of full restitution
to the New Michigan State Department of Taxation.

Arrest: 10/7/94:

Charges: Criminal Possession of a Controlled Substance 5' degree (Felony)
Criminal Possession of a Weapon 3 degree (Felony)

Disposition: 1/5/95 - Criminal Possession of a Controlled Substance 7' degree (Misdemeanor)
Criminal Possession of a Weapon 4th degree (Misdemeanor)

Sentence: \$1,000.00 fine.

1. Transcript of Interview of Alex Rose by Detective Vincent Fornier

2. (June 2, 2009 at 4:00pm):

3.

4. Alex, my name is Detective Fornier of the Rockford Police Department, Homicide Bureau. I'm
5. going to ask you a few questions about Pat Nugent Siriusz. First, let's get some information
6. about you.

7.

8. Q: What is your name?

9. A: Alex Rose—hey, you still haven't told me what this is all about.

10.

11. Q: Pat's father was found dead last night, and we're trying to figure out what happened, that's all

12. A: No way! Marty's dead? You don't think Pat had anything to do with it, do you?

13.

14. Q: Is there any reason you can think of that I should?

15. A: Na. Pat's a good kid. And Marty was the best thing to happy to him in a long time. Pat
16. wouldn't do anything to hurt his meal ticket.

17.

18. Q: Why do you put it that way?

19. A: Come on. Marty was loaded, and Pat grew up in a trailer park. Ever since Marty took that
20. paternity test, Pat's been living like a real rock star.

21.

22. Q: How long have you known Pat?

23. A: Since we were about 13—well, since I was 13. Pat is a couple years younger than I am.

24.

25. Q: When did you two first meet?

26. A: We were friends in junior high; we started a band together.

27.

28. Q: You said that Pat grew up in a trailer park; what do you know about Pat's family life before
29. Marty?

30. A: Well, first, it's a stretch to call it a "family life." When Pat was about 9 years old, he was
31. placed through Family Court with a foster family. It was a Disaster. The mother, Elsie Skinnerd,
32. was a born again religious nut. There were three other kids, the twins Ronnie and Lonnie, and a
33. girl, Jewel, each one more screwed up than the next. And then the husband, Leonard, he was a
34. nightmare.

35.

36. Q: How so?

37. A: Let's see, alcoholic, physically abusive to his wife and his own children . . . and he did stuff to
38. Pat that messed that kid up for life.

39.

40. Q: Such as?

41. A: Let's just say, there were things that I'd rather not get into.

42.

43. Q: Alright, I think I get it. Well, how did Pat deal with it?

44. A: He avoided the family as much as he could—he told me that's why he spent so much time
45. retreating into music. But he had a good singing voice, and when we met, we started writing
46. music and formed a garage band. Then in high school, we started getting some jobs at dances
47. and parties and things like that.

1. Q: Do you know how long Pat lived with the Skinnerd family?
2. A: In 2002, when I was 19, after Leonard passed away, we all took off in a van and started
3. playing clubs all over California. We got Pat a fake ID that said he was 19, too.
- 4.
5. Q: Do you know how did Leonard Skinnerd died?
6. A: Yeah, actually, it was an accident. He had taken Pat on a camping trip in some state park for
7. his sixteenth birthday. Pat told me that he didn't want to go, but Leonard insisted. Anyway,
8. apparently they were walking along a steep trail above a gorge. Leonard was drunk and fell off a
9. ledge down about a hundred feet onto the rocks below. That was all she wrote. Anyway, Mrs.
10. Skinnerd and her kids blamed Pat, and he felt that he was no longer welcome, not that they ever
11. made him feel welcome to begin with. So as soon as he had a chance, he packed up and left with
12. us. But he was probably going to leave anyway.
- 13.
14. Q: So what did you all do for the next few years?
15. A: We lived mostly on the road as we toured the country playing the club circuit. When we
16. weren't on tour, Pat would crash at one of our places, but mostly we stayed in motels and trailer
17. parks along the way. Eventually, we got good enough that we started playing bigger gigs and
18. venues. In late 2003, a song that Pat wrote, "Bad Daddy," started getting good national airplay so
19. we toured off that into 2004. That's when he met Martin Siriusz in Royal Oak.
- 20.
21. Q: Yeah, can you tell me a little more about that meeting?
22. A: Sure. That summer, TPT, that's short for Trailer Park Trash, was playing a gig at the Royal
23. Oak Music Theatre. After the show, one of our roadies told Pat, "there's somebody who wants to
24. talk to you." We walked out to the hall, and there is Marty Siriusz. He started complimenting
25. Pat on his vocals and invited us to a Sir Osis reunion show the following night. Then Pat goes
26. and says, "I got it from you." Marty asked what he was talking about, and Pat says, "my mother
27. told me that you're my old man."
- 28.
29. Q: How did Marty react?
30. A: He laughed and said, "oh yeah, who's your mother?" Pat said, "Cindy Nugent from Lompoc,
31. the Wild and Willing tour in the summer of 1985." Marty looked a little stunned and then he
32. said, "if I had a dollar for ever star struck groupie I got it on with that summer alone, I wouldn't
33. have to be doing reunion concerts." Pat was not happy.
- 34.
35. Q: How so?
36. A: Pat starts telling him that his mother was his biggest fan back in the day and that he had no
37. cause to be trashing her memory like that. He's always protecting her like that. When Pat told
38. him that she had passed away from cervical cancer in 1995, he shut right up. Needless to say, we
39. didn't go to the Sir Osis concert the next night.
- 40.
41. Q: Have you spent any time with Pat and Marty?
42. A: Yeah. I'd hang out at Marty's place while they rehearsed for the upcoming tour. Man, those
43. were some interesting rehearsals.

1. Q: What do you mean?
2. A: Marty's mood was kind of like a roller coaster. He'd go from manic to down and depressed.
3. But Duke told us that's how he was back in the old days. You just had to tread lightly and go
4. with the flow cuz you didn't know which Marty you were going to get. Plus, the drinking and the
5. drugs.
- 6.
7. Q: So you saw Marty drinking a lot?
8. A: He always had a bottle of Jack within arm's reach. It was hard to distinguish drunk from
9. sober because he was drinking all the time.
- 10.
11. Q: And what about drugs?
12. A: Everyone at the rehearsals did some, but Marty complained a lot about being unable to sleep.
13. I believe he had a prescription for sleeping pills, which I don't think did much good because Pat
14. would always tell me about seeing the light on in the recording studio at all hours.
- 15.
16. Q: Ok, let's talk about Saturday night. Pat told me that you two were hanging out at the bar?
17. A: Yeah. It was sometime late Saturday evening and Pat calls me up all pissed off and mumbling
18. something about the "Save the Music" foundation and tells me to head downtown. We hooked
19. up at our usual hangout, had a few beers, and talked until the bar closed.
- 20.
21. Q: What did you two talk about?
22. A: Apparently Pat and Marty had an argument about the tour. In early May, Marty had cancelled
23. the tour, and Pat was pretty upset by it. But I do know that Pat hoped that it would be an
24. opportunity to tour with Marty and leave Duke behind. Marty wasn't changing his mind, though.
- 25.
26. Q: What do you mean?
27. A: Well, the reason Pat was so upset was that Marty had told Pat that he left all of his instruments
28. and the house to the "Save the Music" foundation. I told Pat not to worry about it because life
29. was easy at Marty's house. If Pat just stayed in Marty's life, maybe Marty would eventually
30. change his mind and change his will.
- 31.
32. Q: So Marty had a will?
33. A: Honestly, I'm not sure, but it sure seemed like it. I mean, how else would you leave stuff to a
34. charity? But a will wouldn't have mattered anyway. Pat was going to collect a million dollars on
35. an insurance policy if anything ever happened to Marty?
- 36.
37. Q: How do you know that?
38. A: Pat told me about it a few weeks ago. I thought that was really generous of Marty,
39. considering he only knew Pat for a few months.
- 40.
41. Q: So what time did you guys head home that night?
42. A: We left the bar around 2:00. I went home; I'm not sure what Pat did.
- 43.
44. Q: Ok, while I've got you here, let me ask you a few questions about Thomas Osiski.
45. A: Duke? Man, that guy is a piece of work.

1. Q: How well do you know him?
2. A: Not all that well, but from what I do know, I'm happy to keep my distance.
- 3.
4. Q: Why is that?
5. A: According to Pat, Duke has spent his whole career riding on Marty's coattails. You could tell
6. from being around him that he was all about the money.
- 7.
8. Q: What do you mean?
9. A: Well, he and Marty were supposedly life-long friends, right? But as soon as Marty cancelled
10. the tour, Duke was all over him. He was flipping out, like it was the end of the world or
11. something. He never even asked Marty why he cancelled. It was all about Duke.
- 12.
13. Q: Were you at Marty's place on memorial day?
14. A: I think I know what you're talking about—the thing with the gun, right?
- 15.
16. Q: Yeah, did you see what happened?
17. A: No, I got there a little later and Pat told me about it. Apparently Duke and Marty got in some
18. big argument and Marty pulled out his gun. Gotta say, I'm glad I missed it, but I didn't miss it by
19. much.
- 20.
21. Q: What do you mean?
22. A: Duke was walking out of the house as I was heading in.
- 23.
24. Q: Did you see him carrying anything with him?
25. A: No, but Pat told me he took the gun. He must have put it in his pocket or something.
- 26.
27. Q: Do you think Mr. Osiski could have killed Marty?
28. A: Na. He's a self-centered egomaniac, but I don't think he has it in him to kill anyone; he's not
29. the type.
- 30.
31. Q: What do you mean, "not the type."
32. A: He's all show. I've been in the music business for over a decade now. Some guys have an
33. edge, some guys don't. Duke can talk the talk, but if it came down to it, he would never be able
34. to pull the trigger. If Marty is dead, he probably did it to himself.
- 35.
36. Q: What makes you say that?
37. A: I'm not saying he killed himself or anything—although it's not out of the realm of possibility.
38. But with all the pills and whisky . . . man, I've seen some guys drink a lot over the years, but
39. Marty takes the cake.
- 40.
41. Q: Alright, I think we're all set for now. If I have any other questions, can I follow up with you?
42. A: Sure, always happy to help.
- 43.
44. End of Transcript

Lee Vaughan Helm, PhD.
Licensed Psychologist
1400 Abbey Road
Rockford, New Michigan

1. July 25, 2010

2.

3. Dear Counsel:

4.

5. This is to acknowledge retainer by the Hartfeldt Insurance Company Inc. at a rate of
6. \$450.00 an hour to review the file pertaining to the death of Martin Lewis Siriusz and to offer an
7. expert opinion on the cause of death. At your request, I have reviewed the application for
8. insurance, the insurance policy and provisions, the last will and testament of Martin Lewis
9. Siriusz, the autopsy report, the toxicology report, the CPS Lab Firearms, Ballistic, DNA, and
10. Fingerprint Analysis Reports, photographs of the deceased, the grand jury testimony of Pat
11. Nugent Siriusz and Thomas D. Osiski and of Detective Stephen Tyler, and the death certificate.

12.

13. It is my understanding from reviewing the aforementioned materials that the insured,
14. Martin Lewis Siriusz was found by his former band mate, Thomas D. Osiski with an apparent
15. gunshot wound to the head, which was subsequently determined at autopsy to be the point of
16. entry. Notably, there was an open bottle of alcohol and an open prescription bottle for
17. Nitrazepam (which will be discussed presently), along with some loose pills on the piano. The
18. toxicology report confirmed the presence of alcohol (BAC .17%) and traces of Nitrazepam,
19. which in combination, were deemed by the ME to be potentially fatal. Also present on the piano
20. were the lyrics to a recently penned song, entitled "Hanging at Death's Door," the music to
21. which, I understand, was playing back at the time of the insured's demise. The lyrics, which I
22. will also address presently, are also notable and significant. I understand that both Pat Nugent
23. Siriusz and Thomas D. Osiski have denied shooting Martin Lewis Siriusz. The purpose of my
24. review, as per your request, is to determine whether there are sufficient grounds to deny paying
25. out the benefits under the life insurance policy as being excluded under the suicide provision.
26. For the reasons set forth below, it is my opinion that there are solid grounds upon which to deny
27. coverage.

28.

29. Although Hartfeldt is well familiar with my credentials based upon the 50 or so cases that
30. I have reviewed for them and concluded that the manner of death was suicidal (in five others, my
31. conclusion was "inconclusive") over the past 20 years, let me give you a brief overview. I
32. obtained my PhD in Abnormal Psychology in 1982 from the University of New Michigan, and I
33. am Board Certified in my field. I am an adjunct professor of Psychology at UNM where I teach
34. Clinical Psychology to graduate students. I have written and published a number of articles in the
35. American Journal of Psychology on Death and Dying with an emphasis on suicide. I'm currently
36. working on a book entitled, "I Wasn't Kidding When I Said Life Sucks," which is designed to
37. help people identify the signs of suicidal tendencies and ideations in their loved ones before it's
38. too late. It should be on the market in late 2010, early 2011.

39.

40. I have also consulted with law enforcement agencies across the country to help them
41. determine whether suspicious deaths were suicidal or homicidal. As you may know, I have not

1. worked with the Rockford PD since 1999 when my opinion on a high-profile homicide
2. investigation involving a prominent public official led to a no-bill of indictment against the chief
3. suspect, after which the suspect admitted poisoning the deceased and then committed suicide.
4.

5. I also have an active practice where I treat patients for all kinds of psychological maladies
6. including, depression, alcohol and drug abuse, PTSD, ADD, ADHD, OCD, anxiety disorder and
7. general neuroses. My focus is on depression as it relates to identifying the signs and symptoms
8. of potential suicide.
9.

10. In this regard, depression is a clinical condition that involves, at least in part, an
11. imbalance in the amount and activity of brain chemicals (known as serotonin). This can be
12. triggered by any number of factors, including a person's genetics (i.e., predisposition toward
13. depression); disappointments and failures in life from the seemingly minor to the traumatic, for
14. example the break up of a relationship; denial of a promotion; loss of employment; tragedy; death
15. of a loved one; bad news regarding one's health, for example diagnosis of major or life
16. threatening illness; being rejected by one's peers or colleagues; or major life or career changes.
17. The triggering events can be as varied as the individuals who experience them. Symptoms of
18. depression include ennui, lethargy, malaise, loss of appetite, aches and pains, withdrawal and
19. isolation, anger, despair, and some cases involve reckless and/or self destructive behavior
20. including alcohol and drug use, which can increase the depression and suicidal inclination (this is
21. especially so with younger people who can become even more depressed after taking
22. antidepressants). When combined with alcohol, antidepressants can be fatal.
23.

24. After reviewing this case file, it is evident that Martin Lewis Siriusz had all the earmarks
25. of a suicide waiting to happen. First of all, his life from the 1980's until his death in May 2009
26. was a roller-coaster ride of fame, fortune, drug and alcohol abuse, tragedy (death of wife and
27. children), major transition from wild popularity in the band Sir Osis in the mid 1980's to relative
28. anonymity (except perhaps locally), in the last two decades, a tumultuous on-again/off again
29. relationship with his band mate, Thomas D. Osiski, and the recent entry into his life of Pat
30. Nugent Siriusz, which while a seemingly positive development on the surface, had the potential
31. to instill intense feelings of guilt over not acknowledging and taking responsibility during Pat's
32. formative years. Plus, I understand that he and Pat had a strong disagreement over the father's
33. decision to tour with Osiski as Sir Osis instead of just touring with Pat as originally planned.
34. Then, of course, came the devastating news of the terminal-cancer diagnosis. Instead of taking
35. aggressive steps to fight it either through traditional or even alternative means, he did nothing
36. except to withdraw from reality in a dark purple haze of drug and alcohol abuse. As noted above,
37. the combination of alcohol and a sedative like Nitrazepam not only interferes with restful sleep
38. but can amplify depression. Then one must consider the manic, paranoid, and reckless behavior
39. of pointing a loaded gun at his child, his former band mate, and at himself. Those are the actions
40. of someone crying out, "I don't care about anyone or anything anymore." He was also well
41. aware that death was imminent as evidenced by the taking out of a life insurance policy and the
42. writing of a will. In his will, one can see his lingering hostility toward his former band mate,
43. which he obviously took to his grave.

1. The most telling factor, however, is the insured's final words, i.e. the title and lyrics to
2. "Hanging at Death's Door," which, in my opinion, is tantamount to a suicide note:

3.
4. "Shadows fall while voices call me to the other side." The shadows and voices
5. relate to the cancer that is descending upon him and calling him to the hereafter.

6.
7. "Should I stay or should I go and take that lonesome ride?" Here, he's pondering
8. whether to end it all.

9.
10. "If you find me lying here, don't pick me off the floor." He appears to have made
11. up his mind.

12.
13. "Too much drinking's got me thinking (self explanatory) I could be hanging at
14. death's door (the place he's decided to go).

15.
16. Based on my experience and evaluation of all the relevant factors in this case, it is my
17. conclusion within a reasonable certainty that although never diagnosed as such, Martin Lewis
18. Siriusz was clinically depressed and suicidal, a condition that was exacerbated by years of drug
19. and alcohol abuse. It is also my opinion that his death on May 31, 2009, was in all reasonable
20. likelihood, a suicide.

21.
22. To date, I have spent eight hours reviewing this case. If needed to testify, my flat rate will
23. be \$2,500.00 per day. Please provide at least one month's advanced notice so that I may adjust
24. my schedule accordingly.

Thank you,

Lee Vaughan Helm
PhD Licensed Psychologist

ROCKFORD NEW MICHIGAN MEDICAL EXAMINER'S OFFICE

AUTOPSY REPORT

DATE: June 1, 2009

TIME: 10:45 am

EXAMINER: Ravi Shankar, MD

WITNESS: Dr. Erin Dre, Chief Forensic Analyst, Rockford CPS Laboratory

DECEASED: Martin L. Siriusz

DOB: 7/10/53

HEIGHT: 5.7

WEIGHT: 147 lbs

OBSERVATIONS: The deceased presents with an apparent gunshot entry wound to the right rear quadrant of the head just above and behind the right ear. A significant accumulation of blood is observed in the hair around and below the wound site. There is evidence of blood flow from the wound sight down the neck onto the right jaw line and onto the right forearm, wrist, hand and ring finger. Based on the amount and pattern of blood flow, it is evident that the victim was alive (i.e. the heart was pumping blood), at the time the fatal shot was delivered.

The wound was examined and swabbed for the presence of gun powder residue. Several small gun powder grains were observed and removed and turned over to Dr. Dre. Small bone fragments were also observed at the wound site. The entry wound itself is small and generally circular in shape but with some abrasion and jagged tearing around the periphery on the right side.

After removing the back of the skull with a circular saw, the brain is observed and examined in detail. There is significant hemorrhaging at the wound site. Upon further examination, a small deformed lead bullet fragment is found lodged just behind the left eye. The path of the projectile is from back to front, right to left and slightly upward. The fragment is removed and handed over to Dr. Dre.

Inspection of the brain also reveals several small tumors in the occipital, temporal and parietal regions. They will be analyzed to determine whether they are cancerous. Examination of the lungs shows significant damage to the cilia and alveoli indicative of emphysema and lung cancer. The liver also reveals some damage indicative of cirrhosis consistent with alcohol abuse. I will await the results of toxicology reports to confirm these presumptive diagnoses.

CAUSE OF DEATH: Gunshot wound (GWS) to the brain.

MANNER OF DEATH: Homicide.

TOXICOLOGY REPORT: June 16, 2009

FINDINGS: 1) Alcohol BAC .17%
2) Nitrazepam - trace amounts
3) Cancer of lungs and brain
4) Cirrhosis of liver

J. Garcia
Chief Toxicologist
Rockford, New MI Medical Center

MEDICAL EXAMINER'S ADDENDUM: June 18, 2009

The combination of alcohol and Nitrazepam could possibly have been fatal but for the intervening GSW to the brain. Alcohol is a depressant which can induce deep sleep. In combination with Nitrazepam (a sedative), it can cause vomiting which can accumulate in the lungs (which in this case, were already compromised) and cause death by drowning if the victim is not awake and alert enough to dispel it by aspiration. There is no evidence of vomit in the throat or lungs.

It cannot be determined whether the victim was awake, asleep or unconscious at the time the fatal shot was delivered. A review of

the medical record of Dr. John Hook also confirms that the deceased had cancer of the lungs and brain.

Respectfully Submitted This 18th day of June, 2009.

 /s RS

Ravi Shankar, MD

Associate Medical Examiner Rockford, New Michigan

Medical Examiner's Office

CERTIFICATE OF DEATH
DISTRICT OF ROCKFORD, NEW MICHIGAN

Name of Deceased: Martin Lewis Siriusz
Date and Time of Death: May 31, 2009 at approximately 9:30pm
Primary Cause of Death: Gun Shot Wound to the Brain
Survivors: Pat Nugent Siriusz

I hereby certify that the foregoing is true and correct.

 /s RS
Ravi Shankar, MD
Associate Medical Examiner,
Medical Center of Rockford, New Michigan

June 18, 2009

ROCKFORD, NEW MICHIGAN

CENTRAL POLICE SERVICES (CPS) LABORATORY REPORT

**FIREARMS AND
BALLISTICS:**

The submitted firearm is a .9 mm semiautomatic pistol.

The magazine contains eight live .9 mm rounds.

The firearm was tested with submitted ammunition and found to be operable

Microscopic examination of the deformed bullet fragment removed from the deceased, Martin Lewis Siriusz (per Det. S. Tyler), revealed lands and Grooves that are consistent with those found on test bullets fired from the submitted firearm.

Microscopic examination of the grains removed from the deceased's wound site, neck and shirt collar area (per Det. S. Tyler) confirmed that they are gun-powder residue. Gun powder grains were detected on the deceased's right wrist area.

Gun powder grains were also detected in the swabbings of the right hand of Thomas Osiski.

**FINGERPRINT
ANALYSIS:**

Forensic examination of the firearm reveals smudged fingerprints and possibly palm prints on the gun grip and barrel. Due to extensive smudging, however, there are insufficient whorls, loops and ridges for any meaningful comparison and conclusion. Six latent fingerprints were lifted by Det. Tyler from the piano keys in the recording studio at 77 Rockaway Road. They were compared with known fingerprints of Martin Lewis Siriusz (MLS) obtained at autopsy by Detective Tyler. Three of the latent prints compared positively with the right thumb, index and right fingers of MLS. Two of the latent prints lifted from the keys compared positively with the known fingerprints (right thumb and ring finger) of Pat Nugent Siriusz (PNS) obtained by Detective Tyler on June 1, 2009, at Police Headquarters. These prints were lifted from the same two keys from which MLS's prints were lifted (i.e. the sixth and eighth keys from the blood droppings). A sixth latent print, lifted from the eighth key from the blood droppings was too smudged for meaningful comparison.

The latent prints were not compared with known prints of Thomas D. Osiski obtained by Det. Tyler because, as noted above, five of the latent prints described matched those of either MLS and PNS and the sixth print was too smudged for comparison.

An apparent bloody fingerprint also appears in the photograph of the deceased's right wrist. This examiner did not examine the deceased's body and the photograph does not allow for meaningful comparison.

**BLOOD
ANALYSIS:**

The DNA found in swabbings of the blood from the piano keys, the gun barrel and the right hand of Thomas D. Osiski matches the DNA of Martin Lewis Siriusz.

DNA ANALYSIS:

DNA analysis of swabbings of the handle grip of the .9 mm handgun reveals the presence of DNA from three different sources. The DNA from the swabbings matches the DNA of Martin Lewis Siriusz and of Thomas D. Osiski. The origin of the third source of DNA is inconclusive.

**CHEMICAL
ANALYSIS:**

Pills recovered from the crime scene (piano) were tested and found to contain Nitrazepam, a controlled substance.

/s AD

Dr. Aaron/Erin Dre.
Chief Forensic Analyst
Rockford CPS Laboratory

APPLICATION FOR LIFE INSURANCE POLICY

1. Applicant's name: Martin Lewis Siriusz
2. Address 77 Rockaway Road
Rockford, New Michigan
3. Amount of Coverage Sought: \$1,000,000.00
4. Beneficiary Pat Nugent Siriusz
5. Applicant's Date of Birth: July 10, 1953
6. Place of Birth: Rockford, New Michigan
7. Sex: Male
8. Has applicant ever engaged in aviation activity other than as commercial passenger? No
9. Occupation Musician
10. Hours worked per week: 80 hrs when writing/recording
24/7 when on tour.
11. Is this policy intended to replace any other policy currently in force? No
12. Are you now ill or taking any medication prescribed by a doctor? Yes. Nitrazepam.
13. Are you contemplating any medical attention or surgical procedure? No
14. Have you ever had heart or circulatory disease, high blood pressure, ulcers, tumors, cancer, diabetes, tuberculosis, blood or sugar in urine, other physical illness, disease, or injury? Broken arm from fall from stage in 1988

15. Have you ever been diagnosed or treated by a medical professional for a mental disease or nervous disorder? No, but I suffer from insomnia.
16. In the past five years, have you been confined to any hospital, sanitarium, or clinic for other than routine examinations? No
17. When was your last medical examination (physician's name)? 2007 (Marvin Gaye, M.D.)
18. Purpose of examination? Routine Checkup; Insomnia
19. Result of examination? Clean Bill of Health. Nitrazepam prescribed for sleep.
20. Current state of health? Good

I declare that to the best of my knowledge and belief, I am eligible for the policy applied for and the statements I have made are true and correct. I understand that the Hartfeldt Insurance Company will rely on statements made by me in this application and may request additional information and medical examination. I authorize disclosure of the medical information about me from any physician or medical professional, hospital, or medical facility.

I understand that any knowing false statements made by me can result in rejection of this application by the Hartfeldt Insurance Company, or if discovered after this application is granted, in denial of payment under the policy.

I further understand that any knowing false statement made by me could constitute a fraudulent insurance and that could result in criminal prosecution.

/s/MLS
Martin Lewis Siriusz

Sworn to on this 5th day of January, 2009

s/Mary Wells
Notary Public

INSURANCE POLICY

- 1: Insurance Provider: The Hartfeldt Insurance Company

- 2: Insured/Owner: Martin Lewis Siriusz

- 3: Policy Number: 1234-5-6789-10-11-12

- 4: Policy Date: January 28, 2009

- 5: Beneficiary: Pat Nugent Siriusz

- 6: Premium Due Dates: The Policy Date and the 28th day of January every year thereafter

- 7: Premium Payment Period: Annually

INSURANCE PROVISIONS

DEATH BENEFIT: The Hartfeldt Insurance Company will pay the insurance proceeds to the beneficiary promptly after receiving proof that the insured died while the policy was in effect. The amount of the proceeds is one million dollars payable to the beneficiary if the insured is 55 years of age or younger at the time of death. If the insured is over 55 years old at the time of death, payment will be made according to the following schedule:

Age 56:	\$920,000.00
Age 57:	\$850,000.00
Age 58:	\$780,000.00
Age 59:	\$720,000.00
Age 60:	\$670,000.00
Age 61:	\$620,000.00
Age 62:	\$570,000.00
Age 63:	\$520,000.00
Age 64:	\$480,000.00
Age 65:	\$440,000.00

The policy will terminate when the insured attains the age of 66. It will terminate sooner if the insured fails to pay any premium within 30 days after any premium becomes due.

Suicide Limitation: If the insured commits suicide within one year of the policy date, the only amount payable will be a return of the premium paid for the policy.

Homicide Limitation: If the insured's death is due to an act of homicide committed by the beneficiary, no benefit will be paid under this policy.

LAST WILL AND TESTAMENT OF MARTIN LEWIS SIRIUSZ

I, Martin Lewis Siriusz, being of sound mind and memory, do hereby make, publish and declare this to be my Last Will and Testament in the manner hereinafter following:

1. I direct that all my legal debts and funeral expenses be paid by my executor, Don Kirshner, as soon as practicable.
2. I hereby give, devise and bequeath the residue of my estate both real and personal and wherever situated to the Save the Music Foundation of Michigan (hereinafter Save the Music) for use in a manner consistent with Save the Music's stated mission of providing musical education, facilities, instruments, and equipment to underprivileged students pursuing an education or career in the field of music.
3. I hereby give devise and bequeath my share of any/all royalties to be earned from the song, "It's So Schizo" to my former band mate, Thomas "Duke" Osiski, if and only if he publicly acknowledges in writing and under oath that I, Martin Lewis Siriusz, wrote all of the music and lyrics to "It's so Schizo," the biggest-selling hit of Sir Osis. If Thomas "Duke" Osiski does not so acknowledge within six months of my demise, my royalties will be bequeathed to Save the Music. Any/all other royalties to be earned from all of my other songs are hereby bequeathed to Save the Music.
4. I hereby bequeath nothing via this will to my son, Pat Nugent Siriusz, since he has been amply provided for in a policy of life insurance in which he is the named beneficiary.
5. I hereby revoke any/all will(s), codicil(s), at any time heretofore made.

In witness hereof, I have hereunto subscribed my name this 2nd day of May, 2009.

 /s MLS
Martin Lewis Siriusz

witnessed by:

 /s AEL
Anne E. Lennox

 /s MCG
Maye C. Gray

EX. 8





EX. 10

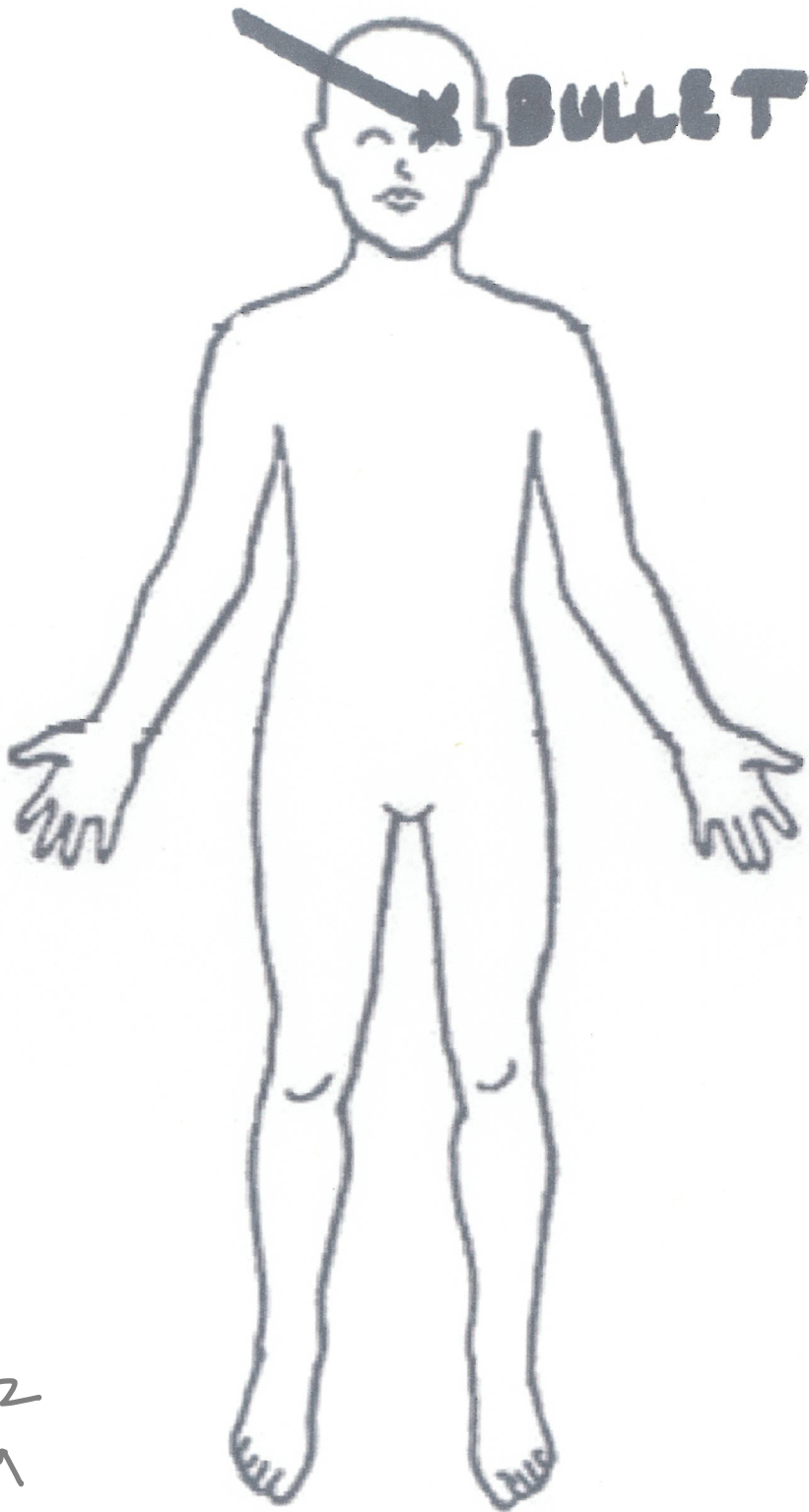


EX. 11

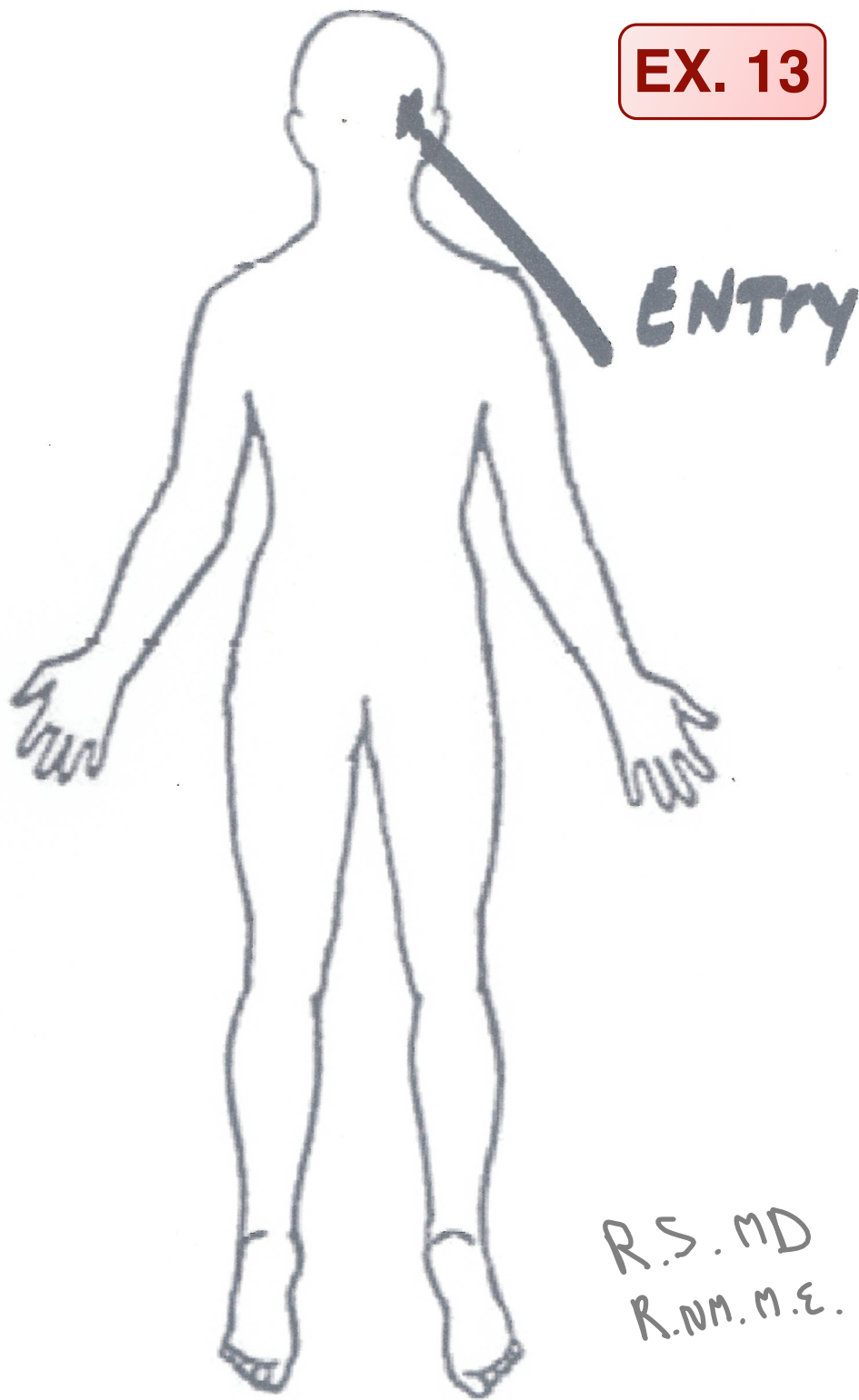


EX. 12





EX. 13



M.L.
SiriusZ
6/1/09

R.S. MD
R.N.M.M.E.

O. Questions and Answers

From time to time, coaches and teachers will raise questions regarding the tournament. When such questions arise, the MHSMTT Director attempts to send clarifications and responses to all of the coaches. Below is a list of this year's questions and answers.

Q: Will the photographs be in color for trial?

A: The photographs will be in the same condition as they are in the packet. That is, all of the photographs will be in black and white.

Q: Can you please explain how the demonstrative exhibits/blow-ups will work?

A: We will provide demonstrative (blow-up) copies of the photos in each courtroom for teams to "publish to the jury." I will be contacting all of you to see which photographs your team would like to have enlarged for the trial. Essentially, you will be voting to see which photos we will enlarge. We will select the top two photos and enlarge them for all of the competition rooms. Most likely, the photos will be laminated so that they can be posted for display to the "jury." And, again, these enlargements will be used for demonstrative purposes only. Each team must still bring the original photos from the packet to introduce as evidence before the team can use the demonstrative photos. If you have questions on this process, please discuss it with your attorney/coach and let me know if you still have any questions. Our goal is to provide you with the blow-ups that you may need without incurring an exorbitant cost. This helps us can keep the registration fees reasonable every year.

Q: Can you provide a copy of the case packet with line numbers?

A: Yes. An updated version of the packet was provided on December 8, 2011.

Q: Will the audio recording be played at trial?

A: Per stipulation 16 on page 51 of this case packet, IF the recording is admitted (over any objections that may arise), it will be played "constructively." That is, in the interest of time, the tape won't actually be played, but we will pretend that it has been played. This also means that you do not have to bring an audio device with you. All of the judges will have heard the tape, so the attorneys may reference the tape in argument and the judges will understand what they are discussing.

Q: "In the trial stipulations [#14 on page 50] it says that Pat came home at 4:30am and then in Pat's statement she says that she was home about 9pm [on page 60]. Is one of them a typo or is this suppose to be a contradiction?"

A: This is an unintentional contradiction. Pat has been consistent that he returned home at 4:30 a.m. on Saturday night and at 9:00 p.m. on Sunday evening. Additionally, Pat did NOT use the pool Saturday night. Thus, per the stipulation, when asked what he

was doing the night of Saturday, May 30, Pat told the police that he was out until 4:30 a.m. and went straight to bed upon arriving home, and Pat's answer during his questioning on page 60 should, consistently, read as follows:

36. A: After hitting a couple of bars with Alex, I returned about 4:30 a.m. and went straight to bed."

ADDITIONALLY, to further clarify, lines 7-10 on page 61 should read as follows:

7. Q: You said you were out for the day on Sunday; what time did you get home?
8. A: Around 9:00 p.m. I was tired and kind of sweaty from bouncing around all day, so I decided
9. to cool off in the pool. Then, at about 9:30 p.m. or so, I'm taking a dip when all of a sudden,
10. Duke Osiski barges into the pool area.

Updated pages were released to teams on December 16, 2011.

Q: On pages 2 and 51 of the case packet, the name "Zak Nugent Siriusz" was used. Was this intentional?

A: No. In the original case, Marty Siriusz's son was named "Zak." We changed the name to "Pat" to make it gender neutral for our competition. Thus:

1. The name "Zak" on page two is correct because the case was originally titled *The Hartfeldt Insurance Co., Inc. v. Zak Nugent Siriusz*. To give proper credit to the author, we will leave the original name.
2. On page 51, in stipulation 19, please change "Zak" to "Pat." A copy of the updated page was sent on December 30, 2011.

Q: On page 86 of the case packet, the Exhibit lists Detective Tyler as attending Mr. Siriusz's autopsy; should this have been Dr. Dre?

A: Yes. The updated page was sent on January 9, 2012.

Q: On page 84, lines 1 through 3, the doctor goes into their last case with the Rockford Police in which a "prominent public official" was murdered. Would it be possible to give this official a title? Judge? Mayor? City Hall Rep?

A: Although the Dr.'s testimony may be a bit ambiguous, no additional information will be provided. On Direct Examination, the Dr. can simply reference the "prominent public official." If, however, the Dr. is pushed on Cross Examination to "remember" who the official was, teams may draw a reasonable inference about his title under the Unfair Extrapolation Rule (in section G of this case packet).

Q: Thomas Osiski's Grand Jury testimony with respect to his DUI, etc. appears to be inconsistent with his criminal history. Is this intentional or an error in the case materials?

A: The Grand Jury Testimony Transcripts with regard to this information are an accurate transcription of Mr. Osiski's statements to the Grand Jury. Additionally, the Criminal History Report is authentic.

Q: Dr. Dre testified that she was present at the autopsy, and she performed the ballistics tests, but Dr. Shankar's report says that the evidence was turned over to Detective Tyler. Is this correct?

A: No. The Autopsy Report (on Page 86) should read that the two pieces of evidence were turned over to Dr. Dre, not Detective Tyler.

Q: It appears that the diagram on the left side of Exhibit 13 is incorrect. Should this be corrected?

A: The diagram in Exhibit 13 is the diagram that Dr. Ravi Shankar provided to the police following M.L. Siriusz's autopsy. It has not been modified and is in the same condition that it was in when Dr. Shankar drew it.