

2007-2008 NEBRASKA HIGH SCHOOL
MOCK TRIAL CASE

A&M Records, Inc., et al.

vs.

K.C. Jones



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

2007-2008 NEBRASKA MOCK TRIAL

Table of Contents

MEMO TO PARTICIPANTS	iii
ACKNOWLEDGEMENTS	iv
GOALS & MOCK TRIAL OATH.....	v
CODE OF ETHICAL CONDUCT	vi
COMPETITION TIMELINE AND DATES	vii
THE PROBLEM	
Complaint for Copyright Infringement	1-2
Exhibit A	3
Defendant's Answer	4
Witnesses, Exhibits, Stipulations and Legal Authorities	5-9
WITNESS STATEMENTS	
<u>For the Plaintiffs</u>	
Sal Hofmann.....	10-13
Melvin/Melanie Miller.....	14-17
Beck Celestial.....	18-21
<u>For the Defendant</u>	
K.C. Jones.....	22-26
George/ette E. Kelley.....	27-29
Aaron/Erin Cratz.....	30-32
EXHIBITS	
Exhibit 1 - Investigation of K.C. Jones's Computer Hard Drive Contents	33
Exhibit 2 - Filesharing Network Report	34
Exhibit 3 - Notification of Copyright Infringement Claims	35-37
Exhibit 4 - Report of Findings on K.C. Jones's Computer	38-45
Exhibit 5 - Time Card of Beck Celestial	46
Exhibit 6 - Campus Television Schedule - Eagles University.....	47
Exhibit 7 - Pages from K.C. Jones's Calendar	48-49
Exhibit 8 - Kelley Computer Calls.....	50
Exhibit 9 - Help Desk Trouble Ticket.....	51
Exhibit 10 - Digital Copyright Guidelines at Eagles University	52-53
SUPPLEMENTAL ONLINE RESOURCES	54
RULES	
Index to Rules	55-57
Rules of the Competition.....	58-64
Rules of Procedure.....	64-66
Federal Rules of Evidence (Mock Trial Version).....	66-77

FORMS

Official Team Roster Form..... 78
Trial Scoring & Deduction of Points 79
Presiding Judge's Score Sheet 80
Performance Judge's Score Sheet..... 81
Suggestions for Scoring and Constructive Critiques..... 82-83
Dispute Resolution Form -- Inside the Bar 84-85
Dispute Resolution Form -- Outside the Bar 86
COORDINATORS 87-91
OFFICERS, DIRECTORS AND STAFF..... 92

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

MEMO

TO: ALL MOCK TRIAL PARTICIPANTS

FROM: DORIS J. HUFFMAN, EXECUTIVE DIRECTOR

RE: 2007-2008 NEBRASKA HIGH SCHOOL MOCK TRIAL COMPETITION

DATE: AUGUST 27, 2007

On behalf of the Nebraska State Bar Foundation, we welcome your participation in the 2007-2008 Mock Trial competition. This year's civil case is a copyright infringement suit brought by several recording companies against a college student for allegedly downloading and sharing music.

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

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

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

Good luck and have fun!

ACKNOWLEDGEMENTS

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

The Nebraska State Bar Foundation is a nonprofit corporation that was established in 1963. Its mission is

to serve the citizens of Nebraska and the legal profession through the administration and funding of innovative and creative programs directed toward the improvement of justice and the fulfillment of the American vision of equal justice for all.

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

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

Chair Thomas E. Keefe, Lincoln

Kristi Egger-Brown, Lincoln

Michael D. Gooch, Omaha

Stephanie Hupp, Lincoln

Joel Nelson, Lincoln

Lory Ann Pasold, Lincoln

In addition, the Foundation would like to acknowledge and thank Zac Reimer, Network Security Analyst with the University of Nebraska – Lincoln, who provided invaluable assistance to the Case Writing Committee.

The Bar Foundation thanks the Winthrop and Frances Lane Foundation for a grant in the amount of \$3,000 in support of rural students' participation in the State Championship.

A special thank you is extended to the Nebraska Council of School Attorneys. This statewide organization has given \$1,000 annually to the winning State Champion for the last 14 years.

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

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

NEBRASKA MOCK TRIAL GOALS

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

MOCK TRIAL OATH

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

Nebraska Mock Trial Competition

Code of Ethical Conduct

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

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

1. Team members promise to compete with the highest standards of deportment, showing respect for their fellow team members, opponents, judges, evaluators, attorney coaches, teacher coaches and Mock Trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know are wrong or in violation of the Rules, including the use of Invention of Facts. Members will not willfully violate the Rules of the competition in spirit or in practice.
2. Teacher Coaches agree to focus attention on the educational value of the Mock Trial Tournament. They shall discourage willful violations of the Rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition Rules and this Code of Ethical Conduct.
3. Attorney Coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition Rules and this Code of Ethical Conduct. Attorney coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.
4. All participants (including observers) are bound by all sections of this Code and agree to abide by the provisions. Teams are responsible for ensuring that all observers are aware of the Code.

2007-2008 Mock Trial Competition Dates

Entry deadline	September 10, 2007
Local and Regional Competition (8-week period in 12 regions)	October 1 - November 21, 2007
Regional winners selected and entered in State Championship	November 26, 2007
State Competition Omaha, Nebraska	December 4-5, 2007
Annual Banquet Omaha, Nebraska	December 4, 2007
State Finals Omaha, Nebraska	December 5, 2007
National Championship Wilmington, Delaware	May 8-11, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

A&M Records, Inc., a Delaware corporation;)
 American Recordings, a California corporation;)
 Columbia Records, LLC, a Delaware limited)
 liability company; ECM Recordings, Inc., a)
 Delaware corporation; EMI Music, a New)
 New York general partnership; Geffen)
 Recording Company, a California joint venture;)
 Interscope Music, a California corporation;)
 Island Records, a California limited liability)
 company; Mobile Fidelity Records Inc., a)
 Delaware corporation; Rhino Flashback Music)
 Entertainment, a Delaware general partner-)
 ship; Rounder Records, a Massachusetts)
 corporation; and Universal Music Group, a)
 Delaware corporation,)
)
 Plaintiffs,)
)
 vs.)
)
 K.C. Jones,)
)
 Defendant.)

7:07CV number 9

Complaint for
Copyright Infringement

1. Plaintiffs are the copyright owners of exclusive rights under United States copyright law with respect to certain copyrighted sound recordings, including those listed in Exhibit A attached hereto. **It is stipulated for the purposes of this Mock Trial** that each of the sound recordings listed in Exhibit A is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights.

2. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce and to distribute the copyrighted sound recordings to the public.

3. Plaintiffs are informed and believe that Defendant K.C. Jones, without the permission or consent of Plaintiffs, has used an online media distribution system (SlimeWire) to download and to distribute the copyrighted sound recordings to the public. **It is stipulated for the purposes of this Mock Trial** that making these copyrighted sound recordings available for distribution to others through SlimeWire is a violation of 17 USC § 106. This statute grants exclusive rights to Plaintiffs to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of

ownership, or by rental, lease, or lending.

4. Plaintiffs are informed and believe that Defendant K.C. Jones is a third year student at Eagles University.

5. Plaintiff will call an expert witness, Sal Hofmann, who will testify that numerous copyrighted songs were on defendant's computer and made available for distribution to other Internet users through SlimeWire. Plaintiff's forensic expert will testify that SlimeWire software was downloaded onto Defendant's computer on March 19, 2007. In addition, the Defendant had on her/his computer Plaintiff's copyrighted sound recordings on April 4 and April 16, 2007.

6. Plaintiffs are informed and believe that these acts of infringement were willful and intentional, in disregard of and with indifference to the rights of Plaintiffs.

7. As a result of Defendant's infringement of Plaintiff's copyrights, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Defendant's infringement of each of the copyrighted sound recordings. Plaintiffs further are entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

8. The conduct of Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot be fully compensated or measured in money. Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing Plaintiffs' copyrights, and ordering Defendant to destroy all copies of sound recordings made in violation of Plaintiffs' exclusive rights.

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. For an injunction providing that Defendant is required to stop downloading Plaintiffs' copyrighted sound recordings; stop using SlimeWire or any other "free music" website; Defendant must destroy all copies of Plaintiffs' copyrighted sound recordings that Defendant has downloaded; and Defendant must delete the SlimeWire software from her/his computer.
2. For damages in the amount of \$750.00 for each infringement of Plaintiffs' copyrighted sound recordings.
3. For Plaintiffs' costs and reasonable attorney fees.
4. For any other relief that this Court sees just and proper to grant.

Dated June 1, 2007

James Page
For the Firm Page, Plant, Bonham & Jones, LLP
Plaintiffs' Attorney

EXHIBIT A

CASE ID# 8675309

IP Address: 172.18.37.129 2007-0

P2P Network: GnutellaUS (SlimeWire)

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Universal Motown Records Group	The Velvet Underground	Femme Fatale	The Velvet Underground and Nico	31-337
ECM	Pat Metheny & Lyle Mays	September Fifteenth	As Falls Wichita, So Falls Wichita Falls	21-017
Geffen	Steely Dan	Deacon Blues	Aja	48-291
Columbia	David Bromberg	The Main Street Moan	Wanted Dead or Alive	47-250
Columbia	Johnny Cash	Ring of Fire	The Essential Johnny Cash	12-226
American Recordings	Johnny Cash	Hurt	The Man Comes Around	24-856
Rhino Flashback	Don Ho	Tiny Bubbles	Tiny Bubbles and Other Hits	20-467
Mobile Fidelity	Supertramp	Bloody Well Right	Crime of the Century	21-310
Rounder Records	Brave Combo	Chicken Dance	Group Dance Epidemic	17-327
EMI	Nat King Cole	Unforgettable	Love Songs	18-782
Interscope	Gwen Stefani	The Sweet Escape	The Sweet Escape	27-401
Island Records	U2	Red Hill Mining Town	The Joshua Tree	53-173
A&M	Sting	If You Love Somebody Set Them Free	The Dream of the Blue Turtles	30-565

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

A&M Records, Inc., a Delaware corporation;)
American Recordings, a California corporation;)
Columbia Records, LLC, a Delaware limited)
liability company; ECM Recordings, Inc., a)
Delaware corporation; EMI Music, a New)
New York general partnership; Geffen)
Recording Company, a California joint venture;)
Interscope Music, a California corporation;)
Island Records, a California limited liability)
company; Mobile Fidelity Records Inc., a)
Delaware corporation; Rhino Flashback Music)
Entertainment, a Delaware general partner-)
ship; Rounder Records, a Massachusetts)
corporation; and Universal Music Group, a)
Delaware corporation,)

Plaintiffs,)

vs.)

K.C. Jones,)

Defendant.)

7:07CV number 9

Defendant's Answer

1. Defendant K.C. Jones denies infringement of any of Plaintiffs' copyrighted songs.
2. Defendant K.C. Jones alleges that any alleged copyrighted songs appearing on Defendant's computer are the results of someone spoofing Defendant's computer or are the results of Mel Miller's illegal downloading music onto Defendant's computer without Defendant's knowledge.

Dated June 28, 2007

David Gilmour
For Eagles University Student Legal Services
Defendant's Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

A&M Records, Inc., a Delaware corporation;)
American Recordings, a California corporation;)
Columbia Records, LLC, a Delaware limited)
liability company; ECM Recordings, Inc., a)
Delaware corporation; EMI Music, a New)
New York general partnership; Geffen)
Recording Company, a California joint venture;)
Interscope Music, a California corporation;)
Island Records, a California limited liability)
company; Mobile Fidelity Records Inc., a)
Delaware corporation; Rhino Flashback Music)
Entertainment, a Delaware general partner-)
ship; Rounder Records, a Massachusetts)
corporation; and Universal Music Group, a)
Delaware corporation,)
)
Plaintiffs,)
)
vs.)
)
K.C. Jones,)
)
Defendant.)

7:07CV number 9

Witnesses, Exhibits,
Stipulations and Legal
Authorities

Witnesses for the Plaintiffs

Sal Hofmann - Expert witness
Melvin/Melanie Miller - Roommate of K.C. Jones
Beck Celestial - Internet café employee

Witnesses for the Defense

K.C. Jones - Defendant and student
George/ette E. Kelley - Student and computer guru
Aaron/Erin Cratz - Student and friend of K.C. Jones

Exhibits

1. Investigation of K.C. Jones's computer hard drive contents
2. Filesharing network report
3. Notification of copyright infringement claims

4. Report of Findings on K.C. Jones's computer
5. Time card of Beck Celestial
6. Campus television schedule - Eagles University
7. Pages from K.C. Jones's calendar
8. Kelley computer calls
9. Help desk trouble ticket
10. Digital copyright guidelines at Eagles University

Stipulations

Both sides stipulate to the following facts:

1. All exhibits included in the case are authentic and accurate in all respects. No objections to the authenticity of the exhibits will be entertained.
2. The signatures on the witness statements are omitted due to the electronic delivery of the case.
3. The requirements for venue have been met.
4. Whenever a rule of evidence requires that reasonable notice be given, it has been given.
5. Normally in a case like this there would be discussion of damages. However, for purposes of this Mock Trial there will be no discussion or argument regarding damages. All parties are to assume that if the jury decides in favor of Plaintiff that Plaintiff is entitled to damages in the amount of \$750.00 per copyrighted song.

Legal Authorities

17 U.S.C.A. § 505

United States Code Annotated [Currentness](#)

Title 17. Copyrights ([Refs & Annos](#))

☞[Chapter 5](#). Copyright Infringement and Remedies ([Refs & Annos](#))

➔[§ 505](#). Remedies for infringement: Costs and attorney's fees

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

CREDIT(S)

([Pub.L. 94-553, Title I, § 101](#), Oct. 19, 1976, 90 Stat. 2586.)

United States Code Annotated [Currentness](#)

Title 17. Copyrights ([Refs & Annos](#))

☞[Chapter 1](#). Subject Matter and Scope of Copyright ([Refs & Annos](#))

➡§ 106. Exclusive rights in copyrighted works

Subject to [sections 107](#) through [122](#), the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

CREDIT(S)

([Pub.L. 94-553, Title I, § 101](#), Oct. 19, 1976, 90 Stat. 2546; [Pub.L. 101-318, § 3\(d\)](#), July 3, 1990, 104 Stat. 288; [Pub.L. 101-650, Title VII, § 704\(b\)\(2\)](#), Dec. 1, 1990, 104 Stat. 5134; [Pub.L. 104-39, § 2](#), Nov. 1, 1995, 109 Stat. 336; [Pub.L. 106-44, § 1\(g\)\(2\)](#), Aug. 5, 1999, 113 Stat. 222; [Pub.L. 107-273](#), Div. C, Title III, § 13210(4)(A), Nov. 2, 2002, 116 Stat. 1909.)

United States Code Annotated [Currentness](#)

Title 17. Copyrights ([Refs & Annos](#))

⌘[Chapter 5](#). Copyright Infringement and Remedies ([Refs & Annos](#))

➡§ 504. Remedies for infringement: Damages and profits

(a) **In General.**--Except as otherwise provided by this title, an infringer of copyright is liable for either--

- (1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or
- (2) statutory damages, as provided by subsection (c).

(b) **Actual Damages and Profits.**--The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) Statutory Damages. --

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under [section 107](#), if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in [subsection \(g\) of section 118](#)) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

(3) (A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

(C) For purposes of this paragraph, the term "domain name" has the meaning given that term in section 45 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes" approved July 5, 1946 (commonly referred to as the "Trademark Act of 1946"; [15 U.S.C. 1127](#)).

(d) Additional damages in certain cases.--In any case in which the court finds that a defendant proprietor of an establishment who claims as a defense that its activities were exempt under [section 110\(5\)](#) did not have reasonable grounds to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, in addition to any award of damages under this section, an additional award of two times the amount of the license fee that the proprietor of the establishment concerned should have paid the plaintiff for such use during the preceding period of up to 3 years.

CREDIT(S)

([Pub.L. 94-553, Title I, § 101](#), Oct. 19, 1976, 90 Stat. 2585; [Pub.L. 100-568, § 10\(b\)](#), Oct. 31, 1988, 102 Stat. 2860; [Pub.L. 105-80, § 12\(a\)\(13\)](#), Nov. 13, 1997, 111 Stat. 1535; [Pub.L. 105-298, Title II, § 204](#), Oct. 27, 1998, 112 Stat. 2833; [Pub.L. 106-160, § 2](#), Dec. 9, 1999, 113 Stat. 1774; [Pub.L. 108-482, Title II, § 203](#), Dec. 23, 2004, 118 Stat. 3916.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

A&M Records, Inc., a Delaware corporation;)
 American Recordings, a California corporation;)
 Columbia Records, LLC, a Delaware limited)
 liability company; ECM Recordings, Inc., a)
 Delaware corporation; EMI Music, a New)
 New York general partnership; Geffen)
 Recording Company, a California joint venture;)
 Interscope Music, a California corporation;)
 Island Records, a California limited liability)
 company; Mobile Fidelity Records Inc., a)
 Delaware corporation; Rhino Flashback Music)
 Entertainment, a Delaware general partner-)
 ship; Rounder Records, a Massachusetts)
 corporation; and Universal Music Group, a)
 Delaware corporation,)

7:07CV number 9

Plaintiffs,)

vs.)

K.C. Jones,)

Defendant.)

Deposition of
Sal Hofmann

1 My name is Sal Hofmann. I have been hired by the music industry to catch copyright
 2 infringers. I am 24 years old and live at 3401 Timberlake Lane in Goldenrod, Nebraska. After
 3 growing up in Kimball, Nebraska, I migrated east for college. I have a white and chocolate brown
 4 Deutsch Drahthaar dog named Yoda, who keeps me on the go. Yoda is such a friendly dog plus she is
 5 great to take on hikes in the Wildcat Hills when I go back to visit family.

6 My educational background is that I attended Meadowlark University in Nemaha, Nebraska,
 7 for almost three complete years from 2001-2003. During that time, I acquired quite a reputation as
 8 a world class hacker. I only got caught by a fluke of bad luck. They offered me a choice, help them
 9 or get prosecuted. Easy choice. RIAA, we love you. Now I am making six figures sharding the epics
 10 of newbees. I work hard for the money.

11 I find myself on the road again having to testify against kids who do not seem to get it. In
 12 the past, I have had to provide a deposition when we sued Abraham, Martin and John. They settled.
 13 I was deposed in other cases, too, such as Eleanor Rigby, Peggy Sue, Sam Stone, who was a
 14 paperback writer and should have known to protect copyrights, and Pamela Brown. I guess I owe it

15 all to her, she was the first, and Georgia Brown, who was really sweet. I have been here, there and
16 everywhere. They eventually all settled too. I like it like that. For once in my life, I will testify at
17 a trial.

18 The computer process is so simple I can use my program while I am sitting on the dock of the
19 bay with an RC® cola and a Moonpie®. It is a variation of the enders game program. The music
20 industry provides me with a list of copyrighted works and a certificate that the copyright is current
21 on the songs. Then I scan the Internet for files which match the copyrighted songs. Mostly I look
22 for music I can stand to hear over and over since I see so many copies of any work I look for. When
23 my peer to peer file sharing program sees a file with the correct song title or other identifier, I
24 verify that the hash values match. I use the MD5 algorithm to assign a hash value to the files I
25 locate. For example, in Exhibit #1 I prepared an Excel® spreadsheet listing the song titles I was
26 looking for and the results I obtained. The spreadsheet has been redacted to just include
27 information about the computer belonging to K. C. Jones. I have reviewed the exhibit and it is a
28 true and correct copy of the original which is on my computer at work. Exhibit #2 is the second
29 report generated by me to locate copyrighted music being peer to peer shared. Again the report is
30 a true and accurate copy. The report has been redacted to limit the disclosure of private
31 information. These results give me reason to believe that the defendant's computer was making
32 files available for sharing over the Internet. The logic is simply irresistible.

33 With the information I obtain, I identify the Internet service provider (ISP) where the
34 sharing computer is interacting with the Internet and an IP address for each shared file. A
35 reasonable layperson's analogy to an IP address would be a return address and a send address on a
36 letter. Next, the RIAA's attorneys contact the ISP and require that they cooperate with the
37 investigation and with the collection of the damages being caused through abuse of their system. If
38 they do not cooperate, the attorneys sue the ISPs. Federal law provides a safe harbor for ISPs who
39 help get the file sharers. Most universities and other large scale IPSs cave quickly as did Eagles
40 University.

41 RIAA's attorneys dispatch a letter, signed, sealed and delivered to the ISP, in this case
42 Eagles University, requiring them to forward a letter to the low-life to pay up or risk being sued.
43 The University forwards the letter to the computer owner who was using the IP address at the
44 specific date and specific time. We have to work quickly since IP addresses are generally assigned
45 dynamically and change frequently and because most ISPs delete this information within a month or
46 so. I have reviewed Exhibit #3 and it is a true and accurate copy of the letter the University sent
47 to the defendant.

48 Did you ever have to make up your mind? If they don't rock the boat, fine. If they want to
49 be a day dream believer and not pay, we sue. That's the way you do the things you do. Eagles
50 University provided me with the MAC address, which is a unique identifier, of the computer which
51 was making the file available in this case. Of course, the MAC address belonged to the defendant's
52 computer. The University also disclosed to me her/his name and address. The very first thing we
53 do is subpoena the hard drive of any suspect computer. The Court assigns a computer expert to
54 make two mirror images of the hard drive. I get one of the copies and the Court keeps the second
55 copy. The original is then returned to the defendant.

56 I carefully examined the mirror image of defendant's hard drive which was provided to me by
57 the Court. I have reviewed Exhibit #4 which is the report I created showing matters of interest
58 which I found on defendant's computer. The report includes some screen shots of some of the more
59 important matters, such as the software installation date and the configuration page. The exhibit is
60 a true and accurate printout of the report I prepared.

61 The peer to peer file sharing program, SlimeWire, is on defendant's computer. It was
62 installed on March 19, 2007. Many secret sharers do not realize that the software is configured to
63 share content by default. What these peer to peer file sharing users often do not know is that they
64 may be sharing their tax records, financial records, health records, business records, e-mail and
65 other personal and private material along with their music files. Defendant's program is configured
66 in a somewhat unusual way. This doesn't impress me much, though. It is set so it is automatically
67 active whenever the computer is interacting with the Internet. However, there is no desktop icon.
68 I cannot really understand why anyone would want to configure their program in this way. I guess it
69 could be that the defendant was trying to be cute about hiding the presence of the program. Hey, I
70 know how to carve that possum.

71 I suppose that someone could have installed the file sharing program without the defendant
72 knowing it, although that is pretty unlikely. No one is allowed to have such intimate contact with MY
73 computer. It would be a violation of personal space. I am aware that there are hackers who invade
74 unprotected personal computers. However, peer to peer file sharing is hardly worth the effort.
75 Consequently, it is more likely than not that the defendant knew about the peer to peer file sharing
76 program. It would take 5-10 minutes for an ordinary computer person to install and configure the
77 file sharing program. It would take me 2-3 minutes.

78 Yes, people can hack into other people's computer. Yes, I teach a class about hacking. Yes, I
79 teach students how to crack passwords. And yes, I teach about spoofing, which is pretending to be
80 somebody you are not on the computer. For once in my life, don't let me be misunderstood. Nobody
81 does it better. That'll be the day. I fought the law and the law won. Que sera sera.

82 Back to defendant's computer, it was interesting. I found that not all of the files could be
83 accounted for on defendant's computer. "Tiny Bubbles" is on defendant's computer; as are
84 "September Fifteenth" and "The Sweet Escape" and more.

85 It is correct that if someone was logged on under a particular computer name and the
86 computer was kept on and another individual sat down and started using the computer, I could not
87 know who that was, except it is likely that the second person had permission from the defendant and
88 so defendant is still responsible. Could it be magic? No. We are back where we started from.

89 Present technology does not permit me to testify that on a particular day, at a particular
90 time, a particular file was shared; I cannot identify a particular computer which came to the
91 defendant's computer over the Internet and downloaded a particular music file. Making the file
92 available is the same thing as sharing it. As to whether defendant actually shared a particular song
93 or not, the songs at issue in this case were made available and therefore, more likely than not,
94 shared. And for the philosophers, I have heard that nonsense about whether sharing electronic
95 information is not the same as sharing a corporeal thing. Epistemological debates aside, those files
96 have value or these kids would not be sharing them. That value belongs to the Music Industry and to
97 the artists. This is plain and simple theft. It was when I did it and it still is.

98 What do you mean, do I have any idea why this case has not been dropped by now? Because,
99 I guess, Defendant had not paid the money. Look, it doesn't matter to me. I dig rock and roll music,
100 it's the air that I breathe. If we do not protect capitalism, we will have less music to listen to.
101 There is no need to destroy all lawyers, the defendant has nowhere to run in this case.

WITNESS ADDENDUM

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

Signed,

Sal Hofmann

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2007-2008 Nebraska State High School Mock Trial Competition.

Zac Thomas, Notary Public

My Commission Expires: December 31, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

A&M Records, Inc., a Delaware corporation;)
American Recordings, a California corporation;)
Columbia Records, LLC, a Delaware limited)
liability company; ECM Recordings, Inc., a)
Delaware corporation; EMI Music, a New)
New York general partnership; Geffen)
Recording Company, a California joint venture;)
Interscope Music, a California corporation;)
Island Records, a California limited liability)
company; Mobile Fidelity Records Inc., a)
Delaware corporation; Rhino Flashback Music)
Entertainment, a Delaware general partner-)
ship; Rounder Records, a Massachusetts)
corporation; and Universal Music Group, a)
Delaware corporation,)

Plaintiffs,)

vs.)

K.C. Jones,)

Defendant.)

7:07CV number 9

Deposition of
Melvin/Melanie Miller

1 My name is Melvin/Melanie Miller and I'm a third year student at Eagles University majoring
2 in advertising in the College of Journalism and Mass Communications. My friends and family call me
3 Mel. I live with 2 other roommates in Frankie-Johnny dorm, 635 South 14th Street in Goldenrod,
4 Nebraska. I've got two younger brothers and three older sisters. Mom's a hospital administrator at
5 the Fillmore County Hospital in Geneva and dad's a real estate agent at Jack's Real Estate &
6 Appraisal. They give all of us kids everything we need. But there's just not much left in the family
7 budget for extras. You know what I mean?

8 I started out paying for college with student loans and income from my summer lifeguard job
9 at (Splish Splash) Matthew Sweet Pool in Goldenrod. I don't make a lot of dough lifeguarding, but I
10 love being outdoors. This year I was forced to find a part-time job to help pay the bills. I can't
11 handle all these bills and payments. This stuff is overstressing me, but I still gotta do it. So I
12 started as a bartender at The Right Place in January. There's live music every weekend and DJs
13 every Thursday. I used to go in there all of the time with K.C. and sometimes we'd see Aaron/Erin

14 Cratz there, especially if K.C. was DJ. Most times K.C. had me help haul her/his DJ equipment to the
15 venue. I liked helping out when I could. K.C. was a good friend.

16 I've known K.C. since our junior year of high school at Omaha North High School. We were
17 close. Graduation Day was a blast. K.C. did her/his thing as the DJ and we all partied down. We
18 were dancing in the street. K.C. was always the kinda friend who would never let you down. That's
19 why this lawsuit stuff stinks so much. I don't wanna hurt K.C., but s/he's blaming me for putting
20 that file-sharing program on her/his computer and I didn't do it. I wish I could grow some wings and
21 get up out of this situation. I'd do it with no hesitation. But I'm stuck with it now. And K.C. and I
22 were just gettin' along again as friends, after I blew it by trying to force K.C. to help pay for half of
23 my settlement with the RIAA.

24 You see, I had to borrow from my parents, who really don't have that kind of money, to pay
25 the RIAA their \$3,000 extortion fee last November. I begged K.C. to pay for half. I was only
26 puttin' some of that funky music on my laptop so K.C. could hear it and maybe use it in her/his shows.
27 K.C. just told me, "Don't worry so much about it. Fight back. They can't prove you did it." Yeah,
28 right, like I can afford to hire some fancy, expensive lawyer to fight the big music companies. I
29 never heard of Student Legal Services (SLS). I don't know why K.C. didn't tell me about them.
30 S/he's using SLS as her/his attorneys. I went to see a private attorney and she wanted \$2,500 up
31 front, and I could still lose the suit. My parents told me that the best thing was to settle and stop
32 getting free music off the Internet. Man, what a bummer. I can't afford CDs! What am I supposed
33 to do for music? I had to delete everything off my laptop because of the settlement agreement.

34 You know, that's also why I lost my Internet privileges through the University. They have
35 some sadistic policy (Exhibit #10) that says because I was downloading music illegally, I am now
36 banned for one academic year, then one year of probationary status. They say they sent two prior
37 warnings, but I never got them.

38 Before all this happened K.C. and I were having a great time. We were taking that History of
39 Rock and Roll class together. That's where we met Aaron/Erin. Turns out Aaron/Erin lives in the
40 same dorm - Frankie-Johnny. We don't live on the same floor, but we meet in Coffee Ka's to just
41 hang. Sometimes I would use K.C.'s computer while we were at the snack bar, but so did Aaron/Erin.
42 And I never downloaded any illegal music or programs onto K.C.'s computer. On that Monday of
43 Spring Break I was working on research for Advanced Communications Graphics & Electronics
44 Design. I'm just trying to get through school so I can get a job to finally make some money. You
45 know, K.C. borrowed my laptop all the time too. So what? I'd borrow K.C.'s car, laptop, CDs,
46 whatever. We were best friends.

47 You know, when I started school I couldn't just make money by any means. Maybe K.C. could,
48 but for me it ain't easy to make money. I had to buy my own laptop when I started college and the
49 dang thing is now over two years old. Sometimes I'd have problems with it and it would need repairs.
50 Too many times I've had to call that Kelley character at tech support. You'd see her/him
51 everywhere on campus. I had her/his number on speed dial on my cell phone. Kind of a spook
52 though, if you know what I mean. Anyway, I did call Kelley on that Monday of Spring Break. I
53 remember because I was hoping to use this time off to finish my class project since I had no money
54 to go anywhere. I'd tried to borrow from my best friend K.C., but s/he turned me down flat. So
55 after I'd eaten and tried to use the computer, I had to call the help desk - again. I asked the tech
56 to meet me at Coffee Ka's. When I went down there I saw K.C. and Aaron/Erin getting all worked up
57 about "Freebird" and "Stairway to Heaven". I asked if I could use K.C.'s computer for a while until
58 mine could be repaired. I couldn't have been on K.C.'s laptop more than fifteen minutes before
59 Kelley showed up. I don't know what s/he did but it was magic. Had my laptop going in no time. So I

60 left the snack bar with my working computer to continue my research project. I was not using K.C.'s
61 laptop for any music downloading or distributing or anything illegal.

62 I know all about K.C.'s family history. And I know that K.C. is much more into money than
63 her/his parents. K.C. is like money, it's a gas, grab that cash with both hands and make a stash.
64 K.C.'s parents are like pure Deadheads, but K.C. is into any kind of music. K.C. really knows her/his
65 stuff. I mean s/he has to for her/his DJ business. S/he is always doing gigs. Even done some at
66 The Right Place at times. You can't tell me K.C. bought all that music for her/his DJ work- way too
67 much money. I mean s/he has a lot of CDs, but not that many. I like a variety of music styles, but
68 hip-hop, classic rock and the Man In Black are my favorites. What would I be doing with Don Ho?
69 It was K.C. who was doing the DJ thing for the end of year dorm luau. Besides, after I paid all that
70 money and got shut off by Eagles U, I walk the line. I don't need no more trouble.

71 It was the classic rock stuff that got me busted in the first place. I received the RIAA
72 demand letter back in October by an email from the University. Attached was a list of songs they
73 said were on my laptop. They accused me of making the songs available for distribution. I didn't
74 even know what they were talking about. And not all of those songs were mine. K.C. must've put
75 some of those songs on my laptop. That's why in February I asked her/him to pay me \$1,500 - half
76 of the settlement. I was given twenty days to settle by paying \$3,000 or be sued for \$750 per
77 song. I had to delete 78 songs. This whole RIAA stuff is a rip-off. Everybody downloads music
78 from SlimeWire. But just because I don't like what the music business guys are doing doesn't mean
79 that I want to be the only scapegoat here. I'm not the only one who ever put any music on a
80 computer. I know people who have hundreds, even thousands, of songs on their computers. Why
81 aren't they being punished?

82 And I know that K.C. was pretty loose about loaning out her/his laptop. I've seen Aaron/Erin
83 use it several times, including that Monday of Spring Break. K.C. and Aaron/Erin were working
84 together on something. We all used each other's stuff, except for about a month early this past
85 semester. That's when K.C. would barely speak to me. I pushed the half of the settlement payment
86 too far. But I apologized and K.C. had always been my good friend, so s/he forgave me and let me
87 use her/his computer just like old times. And like I said, sometimes my laptop has been in the repair
88 shop, so I borrowed somebody's computer to do my work. And since the University shut off my
89 Internet access because of my trouble with the RIAA, I have had to rely on friend's computers for
90 my research projects. I pay for Internet access through RCA.com, but my time of use is limited, so
91 I borrow friends' computers when I can.

92 I learned the hard way that there are lots of places you can get music without stealing it -
93 Amazon.com AOL Music, Apple iTunes Music Store, Yahoo Music Unlimited, and lots more. I've never
94 seen K.C. take any stuff for free, but who doesn't? I mean, s/he's a DJ and needs lots of music for
95 her/his business. I mean, come on.

96 Yeah, I remember that Monday of our Spring Break. I was bummed because I had nowhere
97 to go and no money to do anything. I was trying to get K.C. to help me out. Mostly I was just ticking
98 away the moments that make up a dull day. I really had to register on-line for Fall semester, but my
99 computer was on the blink again. I saw K.C. and Aaron/Erin hanging at Coffee Ka's that Monday and
100 I asked K.C. if I could borrow her/his computer for some research I needed to do. K.C. said, "No
101 problem, as soon as Aaron/Erin is done using it, you can have it." I don't remember the time.
102 Sometime in the afternoon because I had just eaten something and I didn't get out of bed until
103 about noon. When I was done with the laptop I left it on the table where K.C. was sitting. S/he said
104 not to turn it off because s/he had something s/he needed to do.

105 Now the music people are calling me as a witness to testify against K.C. I gotta tell the truth
106 with my right hand up. I just know that I didn't put SlimeWire on K.C.'s laptop. I learned my lesson
107 about that stuff. What I do remember is using K.C.'s laptop while Kelley worked on mine. When
108 mine was repaired I took my memory stick and left the snack bar. K.C. never said anything to me
109 about any music or anything else. In fact, I used K.C.'s laptop several times after that day to do
110 research for other classes. My last final was not until May 2, so I probably used K.C.'s laptop several
111 times in April and again a few times in early May. K.C. needed it for finals too, so that time was a
112 little hectic.

113 Then K.C. got that letter from the RIAA and came to me screaming, "So this is the way you
114 repay your friends?" I tried to reason with her/him, but s/he was totally freaking out on me. S/he
115 said that s/he would never use any of those songs by Johnny Cash and that he was my favorite so it
116 must be me. Hey, I'll admit that I love the Man In Black. I've seen *Walk The Line* three times. But
117 I didn't do this. I've been away all summer doing a summer internship in Nashville. When I came
118 back I found I had been subpoenaed by the record companies to testify in this case against K.C.

119 If I'd known all this was gonna happen I woulda asked for a different dorm for this year.

WITNESS ADDENDUM

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

Signed,

Melvin/Melanie Miller

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the
2007-2008 Nebraska State High School Mock Trial Competition.

Zac Thomas, Notary Public

My Commission Expires: December 31, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

A&M Records, Inc., a Delaware corporation;)
American Recordings, a California corporation;)
Columbia Records, LLC, a Delaware limited)
liability company; ECM Recordings, Inc., a)
Delaware corporation; EMI Music, a New)
New York general partnership; Geffen)
Recording Company, a California joint venture;)
Interscope Music, a California corporation;)
Island Records, a California limited liability)
company; Mobile Fidelity Records Inc., a)
Delaware corporation; Rhino Flashback Music)
Entertainment, a Delaware general partner-)
ship; Rounder Records, a Massachusetts)
corporation; and Universal Music Group, a)
Delaware corporation,)
)
Plaintiffs,)
)
vs.)
)
K.C. Jones,)
)
Defendant.)

7:07CV number 9

Deposition of
Beck Celestial

1 Hi, my name is Beck Celestial. I'm a 6th year senior here at Eagles U, majoring in criminal
2 justice with minors in anthropology and business management, and I've been a Resident Assistant
3 (R.A.) at Frankie-Johnny dorm, 3rd floor, for 2 years. My address is 635 South 14th Street,
4 Goldenrod, Nebraska. I have 2 older sisters who excel at everything they do.
5 I've been working at Coffee Ka's Mochamorphosis for three years now, Monday through
6 Saturday, 6 a.m. to 10 a.m. and 8 p.m. to 10 p.m. Before that I was working at the car wash. Coffee
7 Ka's is way better. What can I say, I like coffee and I need the bucks. One of the perks is the
8 "perks", so to speak. I mean free coffee, duh. We have snacks, too, you know, the single-serving
9 expensive kinds, but it's the caffeine and the ability to know all the "specialty" names we all crave.
10 My favorites are mochaiatos, espressos, skinny frappuccinos with a little whip, and, of course, your
11 good old strong cup of joe. I love the java jive, and it loves me. O. K. Back to business. Coffee Ka's
12 is pretty much an Internet café (with snacks) (and you can't forget the coffee), allowing students to
13 access wireless Internet provided by the University. The range for services is about 250 feet

14 outside the actual café, which I think is a major business faux pas. I mean, don't you want to MAKE
15 the user be in the area so they buy more java? Whatever. I'm not the boss - yet - but I mentioned
16 the overly wide service availability and the U didn't seem to care. Said something about free access
17 and an open atmosphere. Whatever. I think the bottom line is that they really can't control the
18 waves so they just, to quote The Beatles "let it be." (Is that a copyright violation for me to say
19 that? Don't know. Better watch what I say, I guess. I sure can't afford to pay some honking big
20 penalty fee or whatever.)

21 So, where was I? Oh yeah, management. The only time the management gets ticked off is
22 when they have to waste their time sending out lists with names and photos of the irresponsible
23 ones who've gotten themselves restricted from Internet use, and Mel Miller was on that list. They
24 call it a "takedown notice," and we keep a copy behind the counter by the cash register so we can
25 look at it. Personally, I think I should be allowed to "take down" the violators myself. Make a
26 citizen's arrest whenever I see them within the Internet space by the café, but the U said I
27 couldn't. Can't even call the cops on them, but I can give them the what for. Kicked them out
28 several times. I know I kicked Mel Miller out a couple weeks before Spring Break. It looked to me
29 like Mel Miller was using her/his laptop computer to get on the Internet. When I confronted Mel
30 Miller, s/he told me that s/he "was working on a term paper." Yeah, sure - with headphones on and
31 humming some tune? I could HEAR music from her/his laptop, I tell you. I didn't buy the sob story,
32 so I kicked Mel Miller out that day.

33 Well, this whole case is about K.C. and illegal activities. I can say with absolute certainty
34 that I saw K. C. Jones at the café quite a bit. I recall K.C. pretty much living there during Spring
35 Break. It was a Monday, March 19, 2007, right at the start of the break. I checked my work
36 schedule just to refresh my memory. See Exhibit #5, my time card, showing when I clocked in and
37 out. I had to work extra hours then, which was kind of O.K. I made some extra money, but I would
38 have rather been on a beach somewhere. Well, maybe not. Too many snooty, spoiled rich kids,
39 wasting away again in Margaritaville. Anyway, on March 19, 2007, I worked 6 a.m. to 6 p.m. A long
40 shift, but, hey, if you drink enough coffee you can weather just about anything. It just makes me a
41 little jittery if I have more than ten. I splurged during Spring break - got lattes WITH whip every
42 day. Hey, what's Spring break for anyway if you can't live a little? So, on March 19, 2007, I was
43 there at the café all day. No one else was working with me. I only left my "post" so to speak for
44 seconds at a time - just to re-stock the shelves from the pantry behind the counter, and, of course,
45 to use the facilities. You know - coffee does that to you. So O.K.

46 I saw K.C. and Mel Miller there at the café that afternoon during my shift. I don't know if
47 Cratz and Kelley were there with K.C. and Miller. They could have been. I know that all four were
48 there off and on during the afternoon. I'm just not sure about the times for Cratz and Kelley. I do
49 know I saw K.C. and Miller together, and they seemed to be getting along fine. I even saw Mel Miller
50 use K.C.'s computer, and I thought that laptop was attached to the end of K.C.'s fingers, kind of like
51 a mechanical Siamese twin. Whatever. You know what I mean. Only RARELY would Mel Miller use
52 K.C.'s laptop, and that was only after I heard from Kelley that Mel's computer was broken. Probably
53 just as well. Then Mel Miller couldn't get in any more trouble. I also heard talk around the café
54 that K.C. said that s/he was watching the Discovery Channel on Monday, March 19, 2007. Oh, huh.
55 Get real. What - right after K.C. watched Animal Planet? There are several television sets in the
56 café area, and I didn't see a one tuned into that. And I should know, because I control the remotes.
57 I keep them right on the front counter by the biscotti jar. That's where they're supposed to stay,
58 anyway, plus I have a copy of the listings for the television shows that afternoon, Exhibit #6, and
59 it's a true and accurate copy of a well-known reliable document. And besides, I know K.C. well

60 enough - probably watching the money channel or something. K.C. and K.C.'s money are not easily
61 parted - just like the laptop. Doesn't even give me a tip for my great latte's. What goes around,
62 comes around, I always say. Well, I guess I can't say K.C. was totally cheap. I did hear Mel Miller
63 tell K.C. about a week before Spring Break that s/he would "pay back" K.C.. I assumed that meant
64 some loan of money, as they were both standing at the counter at the café. That was around the
65 same time I heard Mel Miller saying, in kind of a low, sing-song voice, "your name is poo, how do you
66 do?" Kept saying that over and over to K.C. I thought they were just being stupid, just messing with
67 each other. It sounded kind of familiar to me. Still can't figure out where I heard something like
68 that before. Anyway, after K.C. got sued by the RIAA, K.C. came to me, whining about wanting me to
69 be an alibi witness for her/him. Well, you know I'm a criminal justice major, so I know what alibi
70 means, and I'm sure as heck not sticking my neck out for K.C. I can't say what K.C. did or didn't do
71 with their computer when they were in the café. I can only say that K.C. and Mel Miller and Kelley
72 and Cratz were there at the cafe March 19, 2007. Hey, maybe they're all in cahoots. I know I saw
73 K.C. and Mel Miller wearing headphones while using K.C.'s laptop. That's suspicious in and of itself,
74 isn't it?

75 I heard from K.C. that one of the songs K.C. was getting sued for was one by Don Ho. Like
76 K.C. needed that for class! Not! I took the History of Rock and Roll class two years ago (there were
77 a lot of football players in there, which is why I remember the timing so well - the football team
78 didn't have anybody sitting on the bench because of bad grades that year). Anyway, I can tell you
79 that we didn't listen to any dumb Don Ho songs. And I would remember. I wouldn't be caught dead
80 listening to that stuff. All that ukulele kind of stuff. Sick. That is NOT rock and roll.

81 I do remember seeing K.C. in the café one time after March 19 acting kind of spastic. K.C.
82 was with Cratz, and they were both acting weird. At the time, I thought they just drank their
83 macholattefrapuchinno too fast or it was too hot, because they were both were kind of waving their
84 arms around and clapping. Didn't think anything of it then - besides the potential for a lawsuit if the
85 coffee was too hot - but now that I think about it, it sure did look like that thing that they make you
86 do at weddings. You know "nana nana nana na, nana nana nana na, nana nana nana na, clap clap clap
87 clap."

88 Well that's about all I know. Anyway, it's just dumb, in my expert opinion, having taken the
89 History of Rock and Roll and just having common sense, for anyone to think it's O.K. to steal songs.
90 To quote from one of my favorite movies, "It's such a fine line between clever and stupid" and K.C.
91 crossed the line. (As if you didn't already know, that's from *This is Spinal Tap* one of the greatest
92 movies of all time. I love that band.) People work hard to write, record, and sell music. Personally, I
93 mostly just listen to the radio and save my laptop for homework. Call me old fashioned, but, hey, I'm
94 not getting sued. So there you have it.

WITNESS ADDENDUM

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

Signed,

Beck Celestial

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the
2007-2008 Nebraska State High School Mock Trial Competition.

Zac Thomas, Notary Public

My Commission Expires: December 31, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

A&M Records, Inc., a Delaware corporation;)
American Recordings, a California corporation;)
Columbia Records, LLC, a Delaware limited)
liability company; ECM Recordings, Inc., a)
Delaware corporation; EMI Music, a New)
New York general partnership; Geffen)
Recording Company, a California joint venture;)
Interscope Music, a California corporation;)
Island Records, a California limited liability)
company; Mobile Fidelity Records Inc., a)
Delaware corporation; Rhino Flashback Music)
Entertainment, a Delaware general partner-)
ship; Rounder Records, a Massachusetts)
corporation; and Universal Music Group, a)
Delaware corporation,)

Plaintiffs,)

vs.)

K.C. Jones,)

Defendant.)

7:07CV number 9

Deposition of
K.C. Jones

1 My name is K.C. Jones and I'm a junior at the Eagles University. I live on the 5th floor of
2 Frankie-Johnnie dorm, room 512. The address for Frankie-Johnnie dorm is 635 South 14th Street,
3 Goldenrod, Nebraska. I have a younger brother Jerry and we grew up close to Westerville,
4 Nebraska when we weren't traveling around. My cousins have a big ranch there where I would
5 practice my barrel racing for the rodeo. My horse, Lucky, was just that. I was always winning at the
6 rodeo and thought about going pro at one time. However, even though I'm into the rodeo, my music
7 taste is opposite of the old country songs!

8 I'm the one who's been sued by that recording industry trade association. Let me tell you
9 right away that I didn't do what they say I did. I never illegally downloaded or distributed anything
10 on March 19, April 4, April 16 or any other day. I believe 100% in private property rights and
11 getting paid for your work, so I wouldn't do that.

12 Now I admit that the idea of sharing music for free -- sharing everything for that matter --
13 is something I was raised with. See, my parents followed the Grateful Dead in the Dead's waning

14 years. In fact, I'm named after a Dead song. When my family wasn't on the road in our old orange
15 VW Microbus following the Dead we lived in communes. Shared food. Shared houses. Shared tapes
16 of Dead shows. You know those guys would let anyone tape their shows. They encouraged it. They
17 had a separate area at each show for the people making recordings. What a different time that
18 was, huh?

19 My father was good with cars, so when we were on the road he would swap a few hours of his
20 time fixing other peoples' vehicles for whatever we needed at the time. My mother was an amazing
21 seamstress and she made our clothes and would trade or barter at shows with whatever else she
22 made.

23 Living in communes was a good experience for the most part. I mean, most of those people
24 had the best of intentions even if they were more than a little naive. But I'll never forget the first
25 moment when I realized that kind of life wasn't for me. It's one of my first memories. I was maybe
26 5 years old and my grandparents from Omaha had given me a kite for my birthday. It was yellow
27 with a plastic blue ribbon hanging from the bottom corner. So one day I saw another little kid
28 walking through the commons area of the commune with my kite under his arm. I jumped and ran
29 over and grabbed him and asked for the kite back. The kid didn't say anything, but all of a sudden 3
30 or 4 of the adults were telling me that I needed to share, and wasn't the kite as important to all the
31 other kids as it was to me, and then I remember them nagging my mom about what was she teaching
32 her child.

33 So these adults are surrounding me, scolding me and debating with each other in these loud
34 voices as though I'd just violated some sort of international treaty, and meanwhile the kid wanders
35 off with my kite. I just remember feeling very empty and let down by the adults, even my mom. So
36 I guess that was the first sign that I'm wired differently than my folks. It was my kite, for crying
37 out loud, and no one seemed to get that.

38 I won't bore you with all the details. Suffice it to say that my teenage rebellion was reading
39 books by people like Friedrich Hayek and Ayn Rand -- libertarian thinkers who believed in free
40 markets and free people. *Atlas Shrugged* is still my favorite book. I told my parents I wanted to
41 live in one place, somewhere I could put down some roots, go to a regular school and get a part-time
42 job to make my own money. I cut my hair short with an old electric clipper that I bought at a garage
43 sale in Tacoma and got a tattoo of the Mercedes-Benz logo on my left upper arm. You know, kind of
44 like the peace sign, but with my own capitalistic twist. Guess I went a little overboard with that one,
45 just like when I got busted for counterfeiting hall passes at one of my high schools. I thought
46 making money was radical, just because it was so new and different for me, and it took me a while to
47 realize that you have to check yourself and, so to speak, watch your speed.

48 It bothered my parents that I questioned their way of life, but they've always been cool
49 about letting us kids do our thing. So they let me move in with my grandparents in Omaha. My
50 younger brother and sister stayed on the road with my parents and right now they're all living and
51 working on an organic farm in Vermont. My parents own the farm collectively with two other
52 families. I see them a couple times a year and keep in touch by e-mail pretty regularly.

53 So I wound up at Omaha North for my last couple years of high school. That's where Mel and
54 I became friends. We both love music and going to shows. I've got real eclectic taste in music. I'll
55 listen to rootsy stuff like Lucinda Williams, some older stuff like Parliament/Funkadelic, and some
56 good mainstream stuff like the Killers. Don Ho? Sorry, not interested. That's one of the things
57 that makes me laugh about this whole case. They say that one of the songs I downloaded was "Tiny
58 Bubbles." I wouldn't listen to that in a million years. And isn't a little suspicious that one of the

59 other songs they found was that Johnny Cash cover of "Hurt"? I mean, I think Johnny was okay,
60 but Mel absolutely worships Johnny. Hmmmmm.

61 I started my own DJ business in high school. Mel helped me haul the equipment around in my
62 Civic hatchback. I earned the money to start buying the DJ equipment and lights by delivering
63 pizzas, and throughout high school and now college I've done both jobs: deliver pizza weeknights and
64 then on the weekend DJ for parties, dances, wedding receptions and whatever else. In fact, I was
65 all set to DJ at an end-of-the-year dorm luau party before all this music piracy stuff came up, and I
66 DJ'd down at this bar -- The Right Place -- a couple times a month.

67 Between DJ'ing and delivering pizzas I work 25 or 30 hours a week, on top of full-time school,
68 but it's worth it. I'm able to pay for my tuition, board and books, upgrade my sound system every
69 few years, and buy tunes -- LEGALLY, that is -- for my DJ'ing and for listening while I'm delivering
70 pizzas. I have iTunes installed on my laptop for that.

71 After all my overhead is paid, I still manage to put about \$4,000 a year into savings or the
72 market. I've got about \$15,000 plowed into mutual funds. It's a start. Someday I'd like to be an
73 investment banker or a stock broker and work with real money. Guess I'll have to get my grades up a
74 little to get taken seriously by a big brokerage or banking firm. I get Bs and Cs for the most part,
75 but within my biz admin major it's more like a B or B-plus.

76 Mel and I hung out a lot until this whole thing happened. Come to find out Mel got a letter
77 from the University about file-sharing way back during first semester and made a deal with the
78 RIAA. Didn't say a thing to me about it back then. Looking back on it, maybe I should have guessed
79 something was up. Because starting in maybe November, Mel was always wanting to use my laptop to
80 get music. I just assumed s/he was doing it legally. I mean, we were friends and there's a certain
81 level of trust. Mel borrowed stuff from me all the time -- like my car, my laptop, my CD's -- and vice
82 versa, so I guess it didn't seem like a big deal.

83 Then all of sudden Mel comes into my dorm room one night in like late February and starts
84 talking about being short on cash and not being able to go to Padre Island for Spring Break. Then
85 the story turns into how s/he had to pay off the recording industry lawyers to make them go away
86 and how I should pay half of that \$3,000 to her/him. I said, "What are you talking about?" and Mel
87 says something like, "You know that you used my laptop to get some of those songs." I must admit
88 that at that point I went off. Sure I'd borrowed Mel's laptop when mine would have a virus or
89 something, but I never used SlimeWire or any other program to put songs on it. I've never used
90 SlimeWire at all.

91 So pretty soon Mel and I were yelling and I basically accused her/him of trying to blackmail
92 me to get gas and liquor money for Spring Break. Now I just don't know. Maybe it was some weird
93 attempt at blackmail, or maybe Mel is a little paranoid. You think you know people, and then
94 something bizarre like this happens. Anyway, after that blow-up we pretty much started getting
95 along again and hanging out quite a bit. Now I wonder if Mel just pretended to be sorry about the
96 fight so that s/he could start borrowing my laptop again. Call me a sucker if you will, but I let Mel
97 use it.

98 So Spring Break of this year is when they say I was wrongfully distributing music files. The
99 first Monday of Spring Break -- March 19. That's just nonsense. Sure, I used the university-issue
100 laptop to download music sometimes, but I remember that Monday, and their allegations won't hold
101 water. I spent most of that day watching t.v. in the dorm lounge, right next to the Snack Bar. Just
102 ask Erin/Aaron -- s/he sat in there with me and we watched some shows on the Discovery channel and
103 then most of the movie *Tommy*. Most of the kids were gone for Spring Break and I didn't have to
104 work until like 7 that night, so I just spent a lot of time watching t.v. and napping. Erin/Aaron is a

105 little tightly wound and would keep talking while I was trying sleep on the couch in the lounge. But I
106 didn't mind that much. S/he is all right once you spend a little time with her/him; I'm guessing s/he
107 had the kind of parents who made her/him get up at 4 a.m. to practice the violin and play chess --
108 you know what I mean?

109 I did spend some time in the snack bar that Monday afternoon -- maybe an hour and a half --
110 and probably did have the laptop with me, but as far as I remember I was just checking e-mails and
111 drinking a couple Cokes. E-mail is how I communicate with my family in Vermont and my friends back
112 in Omaha, so I'm online a lot. I also check my mutual funds pretty much every day.

113 Mel was in the snack bar that afternoon and even borrowed my laptop for about 45 minutes;
114 draw your own conclusion about that. I think Mel took the laptop to another table in the snack bar
115 to use, or maybe we were even at the same table. I just don't remember that part. Aaron/Erin also
116 stopped in for a little while, and George/ette may have been there too for a little bit, talking to Mel.
117 Aaron/Erin and I spent a little while talking about our History of Rock and Roll class. We're both in
118 that class, and Mel too, and I was trying to explain to Aaron/Erin my theory on the true meaning of
119 "Stairway to Heaven." My final paper in that class was on epic songs from the 1970s, which is why
120 they also found songs like "Freebird" on my laptop, but that was downloaded legally. Aaron/Erin had
121 never even heard "Stairway to Heaven" before I cued it up one night in my room, and the idea of
122 taking a class on rock and roll was like living in the fast lane for her/him. Did I mention that I
123 suspect Aaron's/Erin's parents were a little too gung-ho about achievement?

124 Hey, here's one other thing that might be important. I remember some weird stuff
125 happening over Spring Break in the dorms, and on that Monday in particular. I went upstairs to my
126 room at one point that afternoon to change my shirt because I had been laughing really hard at
127 something Aaron/Erin said and blew Coke out my nose onto my shirt. Anyway, as I was heading back
128 downstairs to the lounge and snack bar area I went past George/ette's room and the door was open.
129 I think this was after I'd seen her/him down in the snack bar talking to Mel.

130 Anyway, George/ette was on the computer, just frantically typing away, and there were about
131 five cans of Pringles lying on the desk along with the computer. George/ette looked over toward the
132 door as I walked by and nearly jumped out of her/his chair, like it was a big shock that someone
133 would be walking down the hall. I said hey, but s/he didn't say anything -- just stared at me like a
134 deer caught in the headlights.

135 I just kept walking and chuckled to myself at the time, but now I wonder if George/ette
136 wasn't using those Pringle cans as homemade antennas to spoof off other peoples' computers. You
137 know, that notion just crossed my mind. I've since heard that you can use them that way. I've
138 learned a lot about spoofing since this lawsuit came up, and there would have been lots of times
139 people could have spoofed off my laptop. Even during that Spring Break, there were people coming
140 in and out of the dorm, messing with their laptops in the lounge, in the snack bar, in the hallways. I
141 almost said something to George/ette about spoofing when I saw her/him a couple weeks later. This
142 weird error message popped up on my laptop and I called her/him for help. S/he came to my room,
143 hit a few buttons and got it going again. Said something about access or remote or something.

144 Another thing: check out my calendar pages for April 4 and 16, Exhibit #7 I keep a calendar
145 in my dorm room desk drawer to remind me of when I need to do stuff and keep organized. Figure
146 it's good practice for when I'm out in the real world. As you can see, I worked on both April 4 and
147 April 16, and had some other stuff going on those days. So it's not like I had a bunch of time to sit
148 around on the computer. I haven't changed, added, erased or done anything else to those calendar
149 pages in hindsight; the last time I would have written something on the page for April 4 was April 4,
150 and the same goes for April 16.

151 Later in April, or maybe it was in early May, I got the letter from the University, doing the
152 bidding of that RIAA recording industry group, saying I'd been unlawfully distributing music and
153 needed to contact them about settling, or they'd sue me. I wrote them a letter right away saying I
154 didn't do it and please call me and I'd explain that to them. Think they called? Ha! No, instead they
155 sued me.

156 Thank goodness the student legal services people are helping defend me, because there's no
157 way I could pay an attorney to fight them. I know a lot of students are just paying them the \$3,000
158 to make them go away, but I'm not going to admit to something I didn't do. This whole thing reminds
159 me of that story *The Trial* by Kafka. You know, the one where the person is standing trial but they
160 won't even tell him what he's charged with. I mean, I'm being accused of something just because
161 some songs supposedly showed up on my laptop, even though it easily could have been Mel or some
162 spoofer in the dorm who put the songs there. I still believe that the jury will do the right thing and
163 that the truth will set me free. But man, what a long strange trip it's been.

WITNESS ADDENDUM

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

Signed,

K.C. Jones

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the
2007-2008 Nebraska State High School Mock Trial Competition.

Zac Thomas, Notary Public

My Commission Expires: December 31, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

A&M Records, Inc., a Delaware corporation;)
American Recordings, a California corporation;)
Columbia Records, LLC, a Delaware limited)
liability company; ECM Recordings, Inc., a)
Delaware corporation; EMI Music, a New)
New York general partnership; Geffen)
Recording Company, a California joint venture;)
Interscope Music, a California corporation;)
Island Records, a California limited liability)
company; Mobile Fidelity Records Inc., a)
Delaware corporation; Rhino Flashback Music)
Entertainment, a Delaware general partner-)
ship; Rounder Records, a Massachusetts)
corporation; and Universal Music Group, a)
Delaware corporation,)

Plaintiffs,)

vs.)

K.C. Jones,)

Defendant.)

7:07CV number 9

Deposition of
George/ette E. Kelley

1 My name is George/ette E. Kelley. I'm 20 and a junior majoring in Computer Science at Eagles
2 University in Goldenrod, Nebraska. I got a 34 on my A.C.T.. After I get my Bachelor's Degree, I am
3 probably not going to continue to get my Master's Degree. I am already smarter than all my
4 teachers. Oh, yes, I live on campus in Frankie-Johnny dorm. The address is 635 South 14th Street,
5 Goldenrod, Nebraska. I have one roommate who is never around and I have a pet hamster named
6 Whiskers.

7 I'm an only child. When I was still at home, I didn't see my parents much. My dad traveled a
8 lot. He's a computer engineer at the Goldenrod Medical Center, which is number 2 in the nation. My
9 mom is a lawyer at the big firm of Huffman, Lilleoien, Weber & Grieser in Goldenrod. She worked a
10 lot and won a lot of lawsuits. I spent a lot of time by myself. But, it was cool because I just played
11 on the computer all day. I could get through the parental controls. I can't believe they didn't think
12 I was smart enough to figure the password out! I didn't have any supervision on what I was doing.
13 My senior year of high school, I got in trouble with my parents. They were mad that I was refusing

14 to do my chores around the house, because I was playing my computer games; so they took away my
15 Internet service. That lasted about a day until I figured out how to spoof Internet access off
16 someone else – you know, get my computer to appear to be someone else's computer. Mom and Dad
17 never knew that, so don't tell them. I don't have to spoof any more to get access. I actually kind of
18 enjoyed the spoofing. It's a thriller! Using other people's computers without them even knowing and
19 trying not to get caught in the act. Anyway, I'm not the only one that has done spoofing. I see
20 people at the dorm spoofing all the time. Sometimes, students call with error messages that
21 indicate they are being spoofed. You can tell too if there are people hanging around with their
22 laptops that shouldn't be there. With all the wireless access in the dorms, spoofers can gain access
23 to the network by simply changing the hardware address of their network cards to be the same as a
24 student's computer. Like I said, it's easy. Computers are so easy to figure out.

25 I have known K.C. Jones and Mel Miller since Freshman year. We are all in the same dorm,
26 Frankie-Johnny. They aren't friends of mine. I do see them a lot though because they always seem
27 to need some kind of help with their computers. You see, I work for the University as a computer
28 tech assistant to help other students within the dorm complex, Jack-Diane Complex. If they need
29 help, my cell number is posted, 402-GEK-RULZ, so they just call me. If I am nearby, I come to
30 them. It is easier than trying to explain it to them over the phone. Sometimes, if students have a
31 computer problem, and I'm not scheduled to work, or it is to do something special, like install
32 programs, or erase hard drives, they pay me on the side to fix their computers. Like I said, I think
33 it's easy, and sometimes it is good extra cash.

34 I know K.C. Jones and Mel Miller have gotten into trouble with downloading music illegally.
35 I'm not surprised. Every time I went to help either one of them they were listening to their music.
36 In fact, one time Mel Miller's problem was that the music files were corrupted. I tried to help
37 her/him fix the corrupted music, but there was nothing I could do.

38 I just met Aaron/Erin Cratz this year. I don't see Aaron/Erin Cratz much, but I did help set
39 her/him up for on-line gaming.

40 K.C. Jones and Mel Miller aren't friends of mine. My friends are all on-line gamers and in my
41 guild in World of Warcraft. I don't really know where they are, but they are all over the world. I
42 have a set of headphones and communicate with them. My on-line gaming name is GEKRULZ. My
43 best friends are SQKR926 and PI XIE04. I spend all my extra time on-line gaming.

44 This year I stayed behind in the dorms over Spring Break. I was excited to be able to stay
45 and play World of Warcraft all week long, without any interruptions. I had just got a bulk case of
46 Pringles potato chips. They are my favorite. I love them all! I got an assorted case and I couldn't
47 wait.

48 K.C. Jones and Mel Miller are always having some kind of computer problem. I don't really like
49 helping them, because they are not very smart. I know they are just two American kids doing the
50 best they can, but I bet I have told them the same things over and over again. In fact, over Spring
51 Break, I was in the middle of World of Warcraft and Mel Miller bugged me with another computer
52 problem. I was in my 12th hour of playing World of Warcraft, and into my favorite barbeque
53 flavored Pringles, and didn't want to leave the game. I went down to the snack bar to meet Mel
54 Miller. S/he was having trouble registering for classes on-line for the Fall Semester. When I got to
55 the snack bar, Mel Miller was on K.C. Jones's computer. K.C. Jones wasn't there when I first got
56 there, but came back to the table after awhile. The snack bar was dead. I mean, no one was there.
57 Beck Celestial was there and bored to death. Either s/he was reading a book/magazine or off in the
58 back room. I told Beck that I didn't need any Pringles because I had just got a sweetheart deal on a
59 case. Pringles are kind of expensive in the Snack Bar.

60 I keep track of my computer assistance calls on a spreadsheet. I have pages and pages, but I
61 just sorted my spreadsheet to the dates and people involved in this case, and that is Exhibit #8. If
62 I go somewhere in the complex to directly help a student, I usually do a trouble ticket. If I just
63 help them out over the phone, then I do not write a trouble ticket. I did write a trouble ticket for
64 Mel Miller for March 19th. That's Exhibit #9.

WITNESS ADDENDUM

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

Signed,

George/ette E. Kelley

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2007-2008 Nebraska State High School Mock Trial Competition.

Zac Thomas, Notary Public

My Commission Expires: December 31, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

A&M Records, Inc., a Delaware corporation;)
American Recordings, a California corporation;)
Columbia Records, LLC, a Delaware limited)
liability company; ECM Recordings, Inc., a)
Delaware corporation; EMI Music, a New)
New York general partnership; Geffen)
Recording Company, a California joint venture;)
Interscope Music, a California corporation;)
Island Records, a California limited liability)
company; Mobile Fidelity Records Inc., a)
Delaware corporation; Rhino Flashback Music)
Entertainment, a Delaware general partner-)
ship; Rounder Records, a Massachusetts)
corporation; and Universal Music Group, a)
Delaware corporation,)

Plaintiffs,)

vs.)

K.C. Jones,)

Defendant.)

7:07CV number 9

Deposition of
Aaron/Erin Cratz

1 My name is Aaron/Erin Cratz. I am 18 years old and a junior at Eagles University in
2 Goldenrod, Nebraska. I live in Frankie-Johnny dorm. That address is 635 South 14th Street. My
3 roommate Robin is planning on going to Law School.

4 I have a double major in Biochemistry and Music. I plan on going to Medical School when I
5 graduate. I want to find a cure for autism. My cousin, Joey, suffers from autism and I see how
6 hard it has been on him and my family.

7 I also want to work with Doctors Without Borders/Médecins Sans Frontieres. That is an
8 independent international medical humanitarian organization that delivers emergency aid to people
9 affected by armed conflict, epidemics, natural or man-made disasters, or exclusion from health care
10 in more than 70 countries. Check out their website at www.doctorswithoutborders.org. I have been
11 studying Spanish since I was in second grade and would like to go to a South American Country to
12 help people in need.

13 My background is somewhat different than most of the students here at the U. My parents

14 home schooled me beginning in second grade. I went to public schools for Kindergarten and First
15 Grade, but I got really bored. I knew more than my teachers even back then. I guess I just have a
16 knack for learning.

17 I am an only child so my mom made sure that I had activities outside of the home. I play the
18 cello and was a member of the Star City Student Talent Orchestra for five years. I also tried
19 soccer with a YMCA team, but that didn't go so well. I had many friends growing up, so I am not a
20 complete nerd!

21 My claim to fame is that I came in second place at the National Spelling Bee when I was 12. I
22 misspelled SERREFINE in the last round. The definition is a "small spring forceps used for
23 approximating the edges of a wound, or for temporarily closing an artery during surgery." Ironic
24 that I would miss a medical term, huh? Oh well, I guess you can't be the best at everything.

25 I started studying at Eagles University when I was 16. This is my first year of living in the
26 dorms. I like it a lot. I met K.C. Jones and her/his friend Mel Miller when I moved in the dorms.
27 K.C. has always been friendly and sometimes invites me to the events s/he DJs. I think sometimes
28 s/he forgets that I'm only 18, but it's nice to be invited.

29 Mel on the other hand is kind of a jerk, especially since Mel was sued by the recording
30 industry. Mel acted like it was a big surprise that it was illegal to download and share music on-line.
31 You would have to be living under a rock not to have heard something about it on the news. We even
32 talked about it in the History of Rock and Roll class I had with K.C. and Mel. I had to take the class
33 because it is a requirement for my major. I think K.C. and Mel took it because it looked like easy
34 credits. We had a big debate with our professor about whether it should be illegal to download and
35 share music without paying for it. I can understand the artists' point-of-view since I have written
36 some songs myself. Maybe Mel skipped class that day. Mel was always asking me for my notes from
37 class.

38 I guess you want to know what happened over Spring Break. I decided to stay at school for
39 Spring Break to study for the MCATs. I want to get an early acceptance to medical school.

40 On Monday of Spring Break, I was studying in the Snack Bar at the dorm. It was pretty quiet
41 because most of the people had left for the week. At one point I took a break and watched part of
42 the *Deadliest Catch* marathon on the Discovery Channel with KC. K.C. said s/he needed a break. I
43 remember Mel showed up while we were watching t.v. and borrowed K.C.'s computer. I got really
44 annoyed because Mel kept humming that annoying song - "Ring of Fire" -- over and over. I finally had
45 to tell Mel to stop it. Now I find out that K.C. is accused of illegally downloading that song. What a
46 crock! It had to have been Mel that did it. We all know what kind of trouble Mel got into.

47 I have also heard that Mel is saying I borrowed KC.'s computer at the snack bar that day.
48 That is a lie! Why would I used K.C.'s computer when I have my own? Anyway, I would never illegally
49 download music - I respect musicians and their art.

50 I think Mel had it out for K.C. Mel acted like s/he was K.C.'s friend, but s/he sure didn't act
51 like it behind K.C.'s back. I overheard Mel telling one of her/his cronies that s/he was going to pay
52 K.C. back for refusing to pay her/his share of the settlement. They even got into a big fight about
53 it. K.C. said s/he didn't do anything wrong, so why pay? K.C. told me they had worked out their
54 problems, but I'm not so sure.

WITNESS ADDENDUM

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

Signed,

Aaron/Erin Cratz

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2007-2008 Nebraska State High School Mock Trial Competition.

Zac Thomas, Notary Public

My Commission Expires: December 31, 2007

EXHIBIT #1

Investigation of KC Jones computer hard drive contents
Date: 4/4/2007
Files found in path C:\Documents and Settings\KC\Shared

Copyright Owner	Artist	Recording Title	SR#	Filename	File Size (bytes)	MD5 Hash
Universal Motown Records	The Velvet Underground	Femme Fatale	31-337	NOT FOUND	NOT FOUND	NOT FOUND
ECM	Pat Metheny & Lyle Mays	September Fifteenth	21-017	sept15th.mp3	3491207	affaaf6cb5fc9a212c2f5ecd9a90b89f
Geffen	Steely Dan	Deacon Blues	48-291	NOT FOUND	NOT FOUND	NOT FOUND
Columbia	David Bromberg	Main Street Moan	47-250	main_street_moan.mp3	3831838	cce587928c7448cd06f52c5d0c06929b
Columbia	Johnny Cash	Ring of Fire	12-226	ringoffire.mp3	3992655	add929447g6266jc77269a6g8b25763c
American Recordings	Johnny Cash	Hurt	24-856	hurt.mp3	4000068	ihc529691d41788cc8725aa69777243v
Rhino Flashback	Don Ho	Tiny Bubbles	20-467	tinybubbles.mp3	4014906	eb00b483393f23e1b7c73cc50314864b
Mobile Fidelity	Supertramp	Bloody Well Right	21-310	NOT FOUND	NOT FOUND	NOT FOUND
Rounder Records	Brave Combo	Chicken Dance	17-327	chickendance.mp3	4787300	ed3ac12b51ffd5e478cce7fac4ea6b6d
EMI	Nat King Cole	Unforgettable	18-782	Unforgettable.mp3	4917283	909abf5466493a1629ee177e59a65485
Universal/Interscope	Gwen Stefani	The Sweet Escape	27-401	sweet_escape.mp3	5061473	8b504690ea80b7134e3ebb5ac15d8c1e
Island Records	U2	Red Hill Mining Town	53-173	Red_Hill_Mining_Town(U2).mp3	5835958	ef8e82d018e41ddb5a5c64bf4de57169
A&M	Sting	If You Love Somebody Set Them Free	30-565	set-them-free.mp3	7201726	e42944d070cf35418360edab05d3f6d8

EXHIBIT #2

Filesharing network report

Date: 4/16/2007

IP Address: 172.18.37.129
ISP: Eagles University

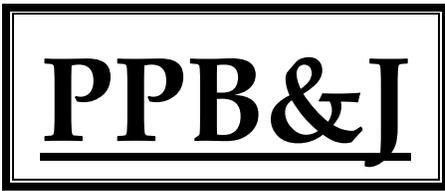
Copyright Owner	Artist	Recording Title	Album Title	SR#	Filename	File Size (bytes)	MD5 Hash
Rounder Records	Brave Combo	Chicken Dance	Group Dance Epidemic	17-327	chickendance.mp3	4787300	ed3ac12b51ffd5e478cce7fac4ea6b6d
Rhino Flashback	Don Ho	Tiny Bubbles	Tiny Bubbles and Other Hits	20-467	tinybubbles.mp3	4014906	eb00b483393f23e1b7c73cc50314864b
Columbia	David Bromberg	Main Street Moan	Wanted Dead or Alive	47-250	main_street_moan.mp3	3831838	cce587928c7448cd06f52c5d0c06929b
ECM	Pat Metheny & Lyle Mays	September Fifteenth	As Falls Wichita, So Falls Wichita Falls	21-017	sept15th.mp3	3491207	affaaf6cb5fc9a212c2f5ecd9a90b89f
Island Records	U2	Red Hill Mining Town	The Joshua Tree	53-173	Red_Hill_Mining_Town(U2).mp3	5835958	ef8e82d018e41ddb5a5c64bf4de57169
Universal/Interscope	Gwen Stefani	The Sweet Escape	The Sweet Escape	27-401	sweet_escape.mp3	5061473	8b504690ea80b7134e3ebb5ac15d8c1e
A&M	Sting	If You Love Somebody Set Them Free	The Dream of the Blue Turtles	30-565	set-them-free.mp3	7201726	e42944d070cf35418360edab05d3f6d8

Filesharing network report

Date: 4/16/2007

IP Address: 172.18.42.203
ISP: Eagles University

Copyright Owner	Artist	Recording Title	Album Title	SR#	Filename	File Size (bytes)	MD5 Hash
Universal/Interscope	Gwen Stefani	The Sweet Escape	The Sweet Escape	27-401	sweet_escape.mp3	5061473	8b504690ea80b7134e3ebb5ac15d8c1e
A&M	Sting	If You Love Somebody Set Them Free	The Dream of the Blue Turtles	30-565	set-them-free.mp3	7201726	e42944d070cf35418360edab05d3f6d8
EMI	Nat King Cole	Unforgettable	Love Songs	18-782	Unforgettable.mp3	4917283	909abf5466493a1629ee177e59a65485
Island Records	U2	Red Hill Mining Town	The Joshua Tree	53-173	Red_Hill_Mining_Town(U2).mp3	5835958	ef8e82d018e41ddb5a5c64bf4de57169
Mobile Fidelity	Supertramp	Bloody Well Right	Crime of the Century	21-310	bloodywellright.mp3	4022977	baa03889fba492608539605c90e3b69
Universal Motown Records	The Velvet Underground	Femme Fatale	The Velvet Underground and Nico	31-337	femme_fatale.mp3	3383916	1722161b89703783c348f6cd2a1aa6d9
Geffen	Steely Dan	Deacon Blues	Aja	48-291	Steely_Dan-deacon_blues.mp3	3701438	c31d17f74265041e09f1a4d418d584d1



Page Plant Bonham & Jones, LLP
Attorneys at Law

May 4, 2007

Re: Notification of Copyright Infringement Claims

CASE ID# 8675309

Dear Sir/Madam:

We have asked your Internet Service Provider to forward this letter to you in advance of our filing a lawsuit against you in federal court for copyright infringement. We represent a number of large record companies, including EMI Recorded Music, Sony BMG Music Entertainment, Universal Music Group and Warner Music Group, as well as all of their subsidiaries and affiliates ("Record Companies"), in pursuing claims of copyright infringement against individuals who have illegally uploaded and downloaded sound recordings on peer-to-peer networks.

We have gathered evidence that you have been infringing copyrights owned by the Record Companies. We are attaching to this letter a sample of the sound recordings you were found distributing via the GnutellaUS (SlimeWire) peer-to-peer network. In total, you were found distributing 13 audio files, a substantial number of which are sound recordings controlled by the Record Companies.

The reason we are sending this letter to you in advance of filing suit is to give you the opportunity to settle these claims as early as possible. If you contact us within the next twenty (20) calendar days, we will offer to settle the claims for a significantly reduced amount compared to what we will offer to settle them for after we file suit or compared to the judgment amount a court may enter against you. If you are interested in resolving this matter now, please contact our Settlement Information Line at 555-555-5555 or, alternatively, you may settle this matter immediately online at www.p2plawsuits.com, using the CASE ID# that appears at the top of this letter.

In deciding whether you wish to settle this matter, here are some things you should consider:

- The Copyright Act imposes a range of statutory damages for copyright infringement. The minimum damages under the law is \$750 for *each*

Page 2

copyrighted recording that has been infringed (“shared”). The maximum damage award can be substantially more. In addition to damages, you may also be responsible for paying the legal fees we incur in order to pursue these claims, and are subject to having an injunction entered against you prohibiting you from further infringing activity.

- Now that you are aware that a lawsuit may be filed against you, there is an obligation for you to preserve evidence that relates to the claims against you. In this case, that means, at a minimum, the entire library of recordings that you have made available for distribution as well as any recordings you have downloaded, need to be maintained as evidence. Further, you should not attempt to delete the peer-to-peer programs from your system – though you must stop them from operating. For information on how to do this, you may visit www.musicunited.org.

This is a serious matter and to the extent you have any questions, we strongly encourage you to contact us to ask those questions. Finally, if you would like more information regarding music downloading/file sharing and peer-to-peer networks, please visit www.p2lawsuits.com.

**IF WE DO NOT HEAR FROM YOU WITHIN TWENTY (20)
CALENDAR DAYS FROM THE DATE OF THIS LETTER, THEN WE
WILL FILE SUIT AGAINST YOU IN FEDERAL COURT.**

We are not your lawyers, nor are we giving you legal advice. We urge you to consult with an attorney immediately to advise you on your rights and responsibilities.

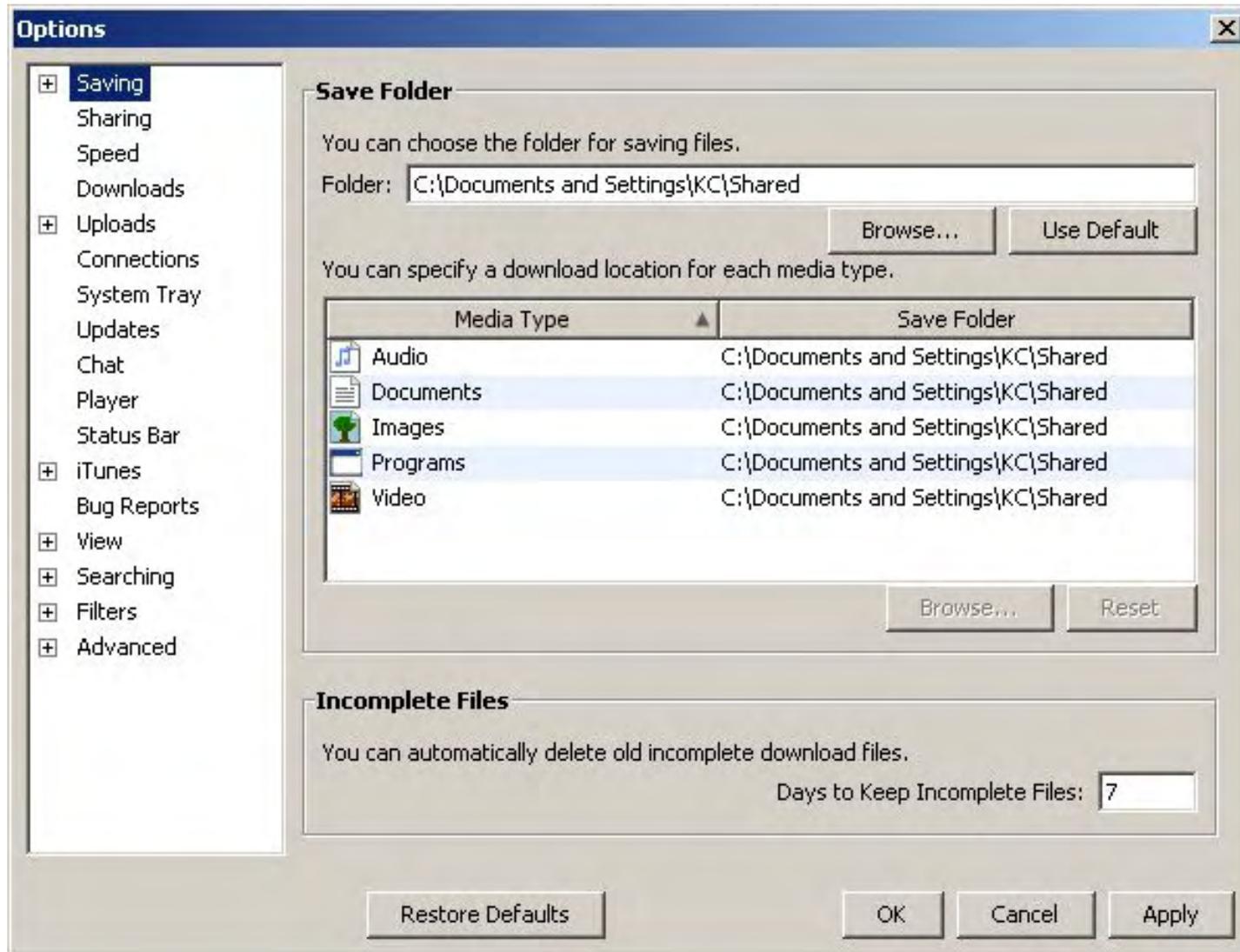
Sincerely,

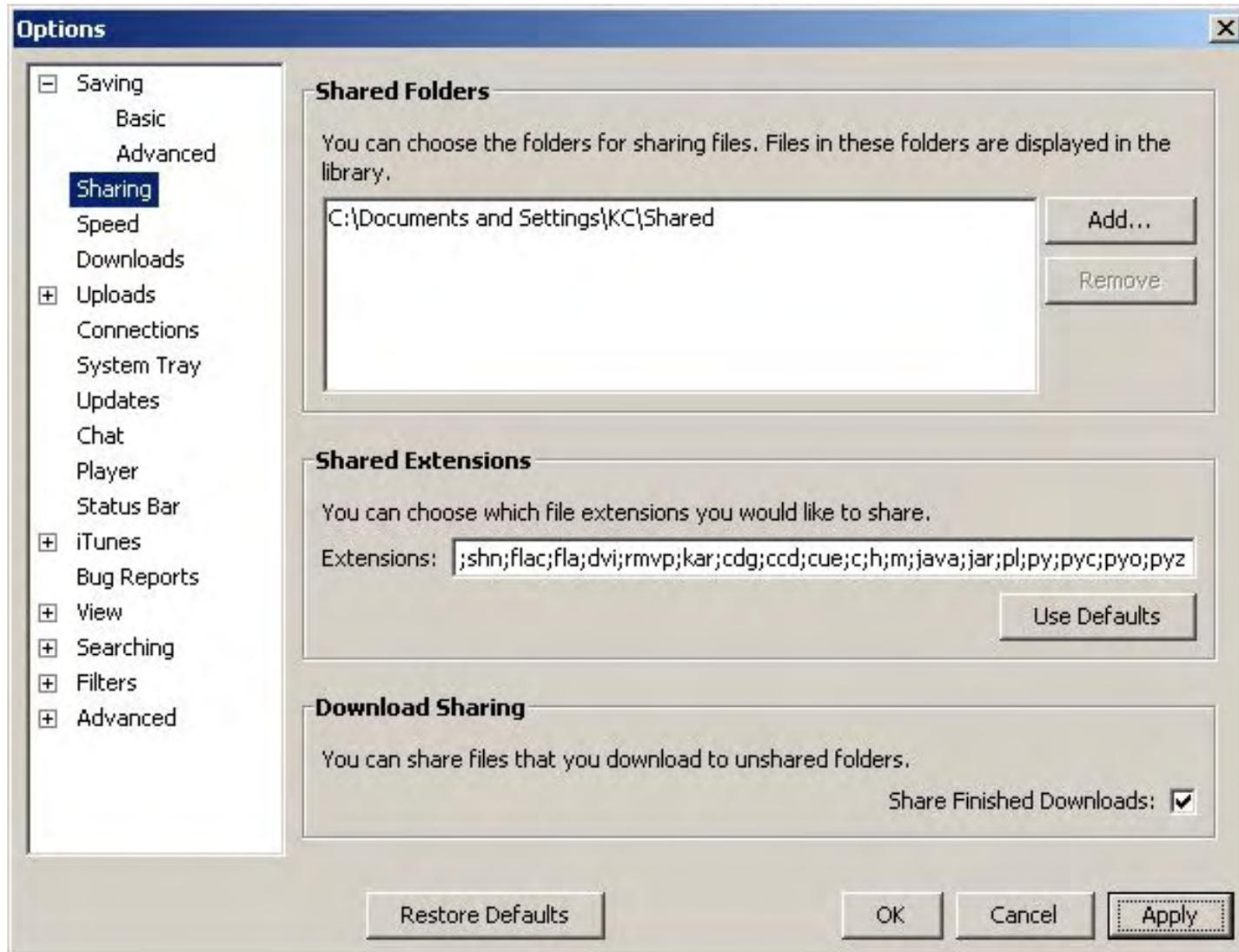
James Page

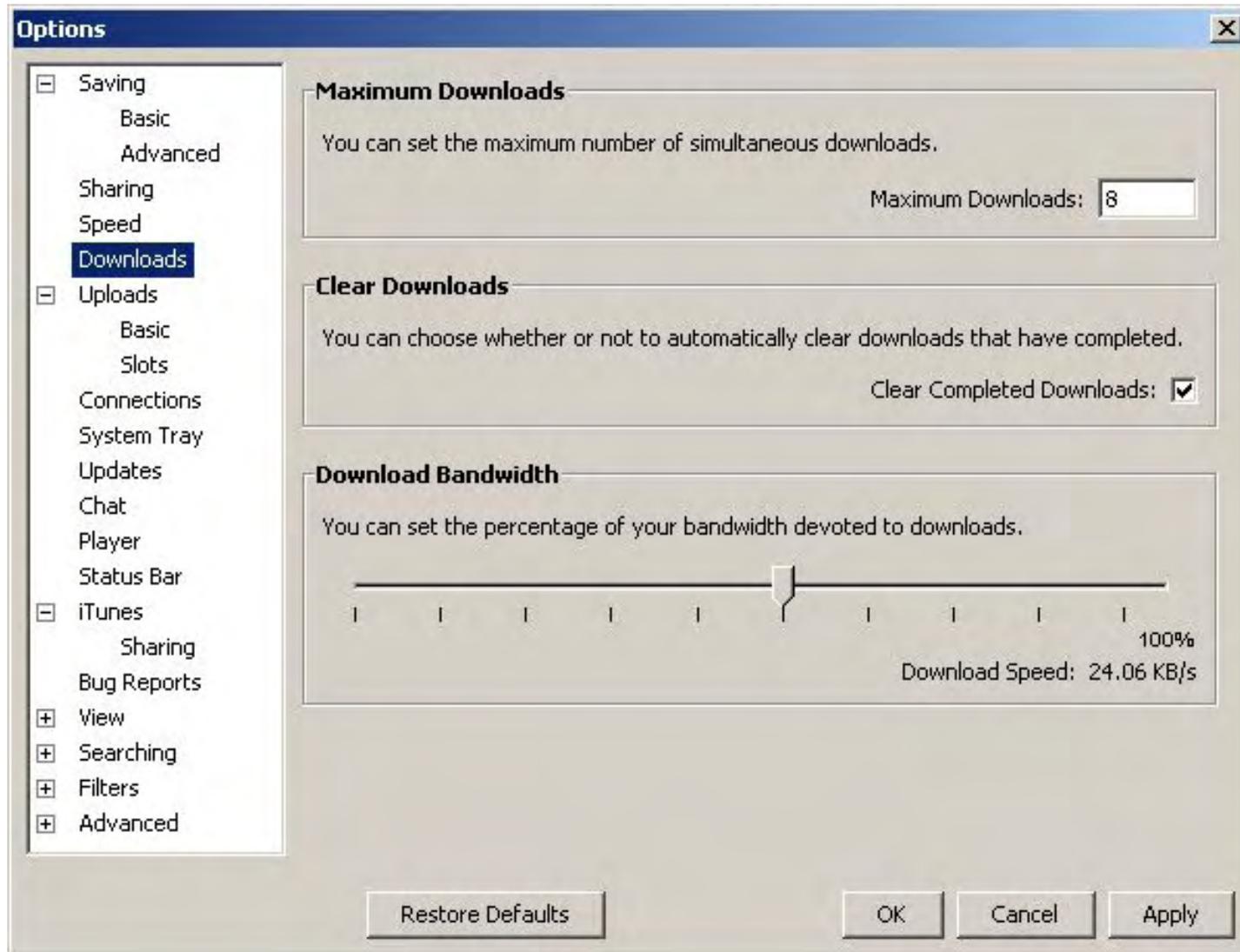
EXHIBIT A**CASE ID# 8675309****IP Address: 172.18.37.129 2007-0****P2P Network: GnutellaUS (SlimeWire)**

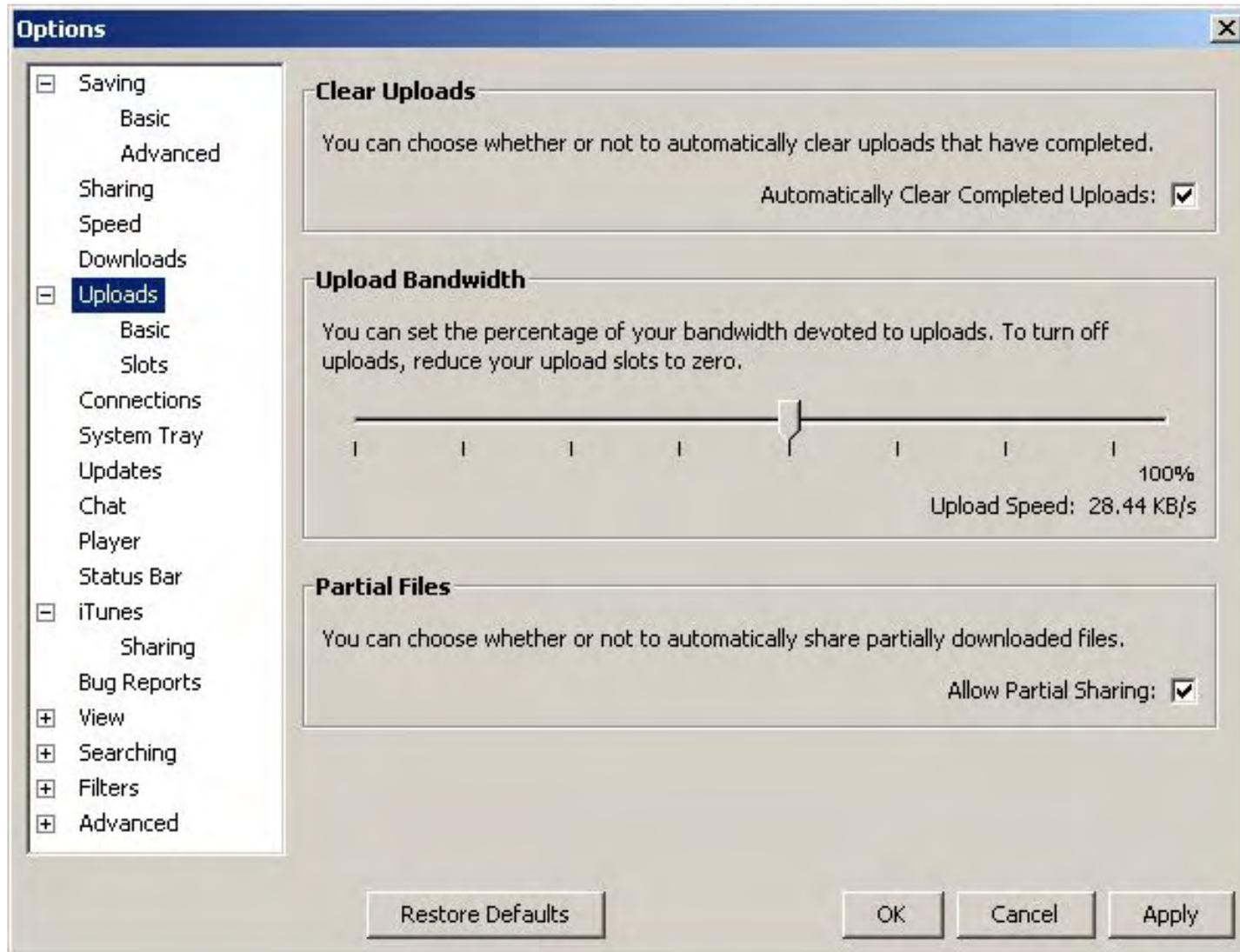
<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Universal Motown Records Group	The Velvet Underground	Femme Fatale	The Velvet Underground and Nico	31-337
ECM	Pat Metheny & Lyle Mays	September Fifteenth	As Falls Wichita, So Falls Wichita Falls	21-017
Geffen	Steely Dan	Deacon Blues	Aja	48-291
Columbia	David Bromberg	The Main Street Moan	Wanted Dead or Alive	47-250
Columbia	Johnny Cash	Ring of Fire	The Essential Johnny Cash	12-226
American Recordings	Johnny Cash	Hurt	The Man Comes Around	24-856
Rhino Flashback	Don Ho	Tiny Bubbles	Tiny Bubbles and Other Hits	20-467
Mobile Fidelity	Supertramp	Bloody Well Right	Crime of the Century	21-310
Rounder Records	Brave Combo	Chicken Dance	Group Dance Epidemic	17-327
EMI	Nat King Cole	Unforgettable	Love Songs	18-782
Interscope	Gwen Stefani	The Sweet Escape	The Sweet Escape	27-401
Island Records	U2	Red Hill Mining Town	The Joshua Tree	53-173
A&M	Sting	If You Love Somebody Set Them Free	The Dream of the Blue Turtles	30-565

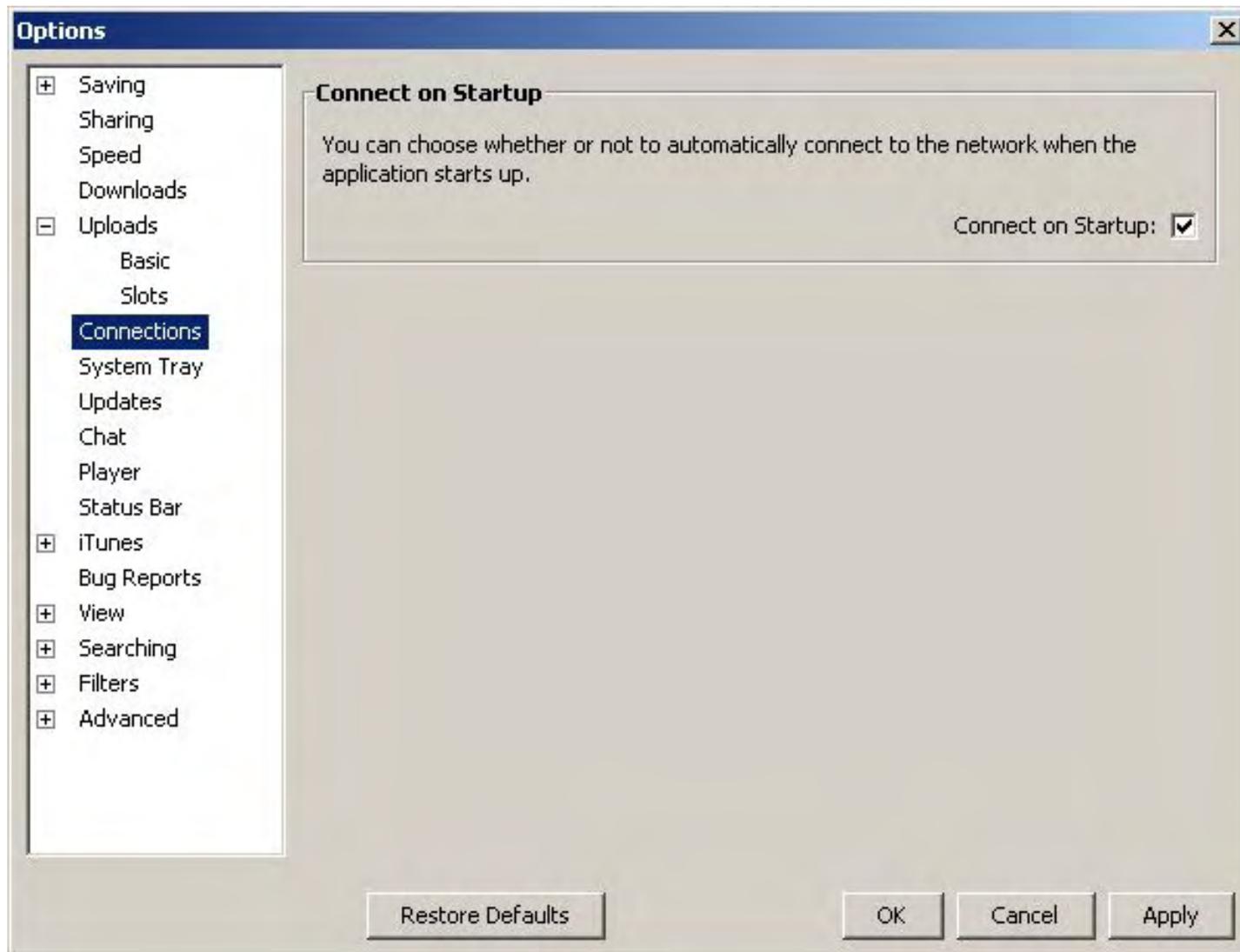
```
/media/hda1/Program Files/SlimeWire
total 17960
dr-xr-xr-x 1 root root 12288 Mar 19 14:32 .
dr-xr-xr-x 1 root root 8192 Jul 19 10:54 ..
dr-xr-xr-x 1 root root 0 Mar 19 14:32 .NetworkShare
-r-xr-xr-x 1 root root 18349 Jul 2 13:07 COPYI NG
-r-xr-xr-x 2 root root 12279 Jul 2 13:07 Generi cWi ndowsUti ls. dl l
-r-xr-xr-x 2 root root 1540 Mar 19 14:32 SlimeWi re On Startup. l nk
-r-xr-xr-x 1 root root 122880 Jul 2 13:07 SlimeWi re. exe
-r-xr-xr-x 1 root root 92854 Jul 2 13:07 SlimeWi re. i co
-r-xr-xr-x 1 root root 7243978 Mar 19 14:32 SlimeWi re. jar
-r-xr-xr-x 2 root root 40960 Jul 2 13:07 SlimeWi re20. dl l
-r-xr-xr-x 2 root root 114566 Jul 2 13:06 MessagesBundl e. properti es
-r-xr-xr-x 2 root root 2951044 Mar 19 14:32 MessagesBundl es. jar
-r-xr-xr-x 2 root root 5786 Mar 19 14:32 ProgressTabs. jar
-r-xr-xr-x 1 root root 271 Jul 2 13:07 SOURCE
-r-xr-xr-x 2 root root 61440 Jul 2 13:07 Wi ndowsFi rewal l. dl l
-r-xr-xr-x 2 root root 12808 Jul 2 13:07 Wi ndowsV5Pl usUti ls. dl l
-r-xr-xr-x 1 root root 307949 Mar 19 14:32 cl i nk. jar
-r-xr-xr-x 2 root root 459988 Mar 19 14:32 commons-ht t pcl i ent. jar
-r-xr-xr-x 2 root root 59154 Mar 19 14:32 commons-l oggi ng. jar
-r-xr-xr-x 2 root root 355370 Mar 19 14:32 commons-net. jar
-r-xr-xr-x 1 root root 388504 Mar 19 14:32 daap. jar
-r-xr-xr-x 1 root root 358 Jul 2 13:07 data. ser
-r-xr-xr-x 2 root root 0 Jul 2 13:07 donotremove. htm
-r-xr-xr-x 1 root root 298 Jul 2 13:09 hashes
-r-xr-xr-x 1 root root 25678 Mar 19 14:32 i 18n. jar
-r-xr-xr-x 1 root root 741440 Mar 19 14:32 i cu4j . jar
-r-xr-xr-x 1 root root 94430 Mar 19 14:32 i d3v2. jar
-r-xr-xr-x 1 root root 2098 Mar 19 14:32 i nstal l . l og
-r-xr-xr-x 1 root root 136693 Mar 19 14:32 j craft. jar
-r-xr-xr-x 1 root root 255016 Mar 19 14:32 j l 011. jar
-r-xr-xr-x 1 root root 69306 Mar 19 14:32 j mdns. jar
-r-xr-xr-x 2 root root 4 Mar 19 14:32 l anguage. prop
-r-xr-xr-x 1 root root 677952 Mar 19 14:32 l og4j . jar
-r-xr-xr-x 2 root root 7171 Jul 2 13:07 l og4j . properti es
-r-xr-xr-x 1 root root 630634 Mar 19 14:32 l ooks. jar
-r-xr-xr-x 1 root root 40064 Mar 19 14:32 mp3sp14. jar
-r-xr-xr-x 1 root root 3262 Jul 2 13:07 pmf. i co
dr-xr-xr-x 1 root root 0 Mar 19 14:32 root
-r-xr-xr-x 1 root root 49 Jul 2 13:07 spacer. gi f
-r-xr-xr-x 1 root root 620179 Mar 19 14:32 themes. jar
-r-xr-xr-x 1 root root 152711 Mar 19 14:32 tri tonus. jar
-r-xr-xr-x 2 root root 186042 Mar 19 14:32 uni nstal l . exe
-r-xr-xr-x 1 root root 12766 Mar 19 14:32 unpack. l og
-r-xr-xr-x 1 root root 3810 Jul 2 13:07 update. ver
-r-xr-xr-x 1 root root 27215 Mar 19 14:32 vorbi s. jar
-r-xr-xr-x 1 root root 2147687 Mar 19 14:32 xerces. jar
-r-xr-xr-x 1 root root 207655 Mar 19 14:32 xml -api s. jar
-r-xr-xr-x 1 root root 8423 Jul 2 13:07 xml . war
```

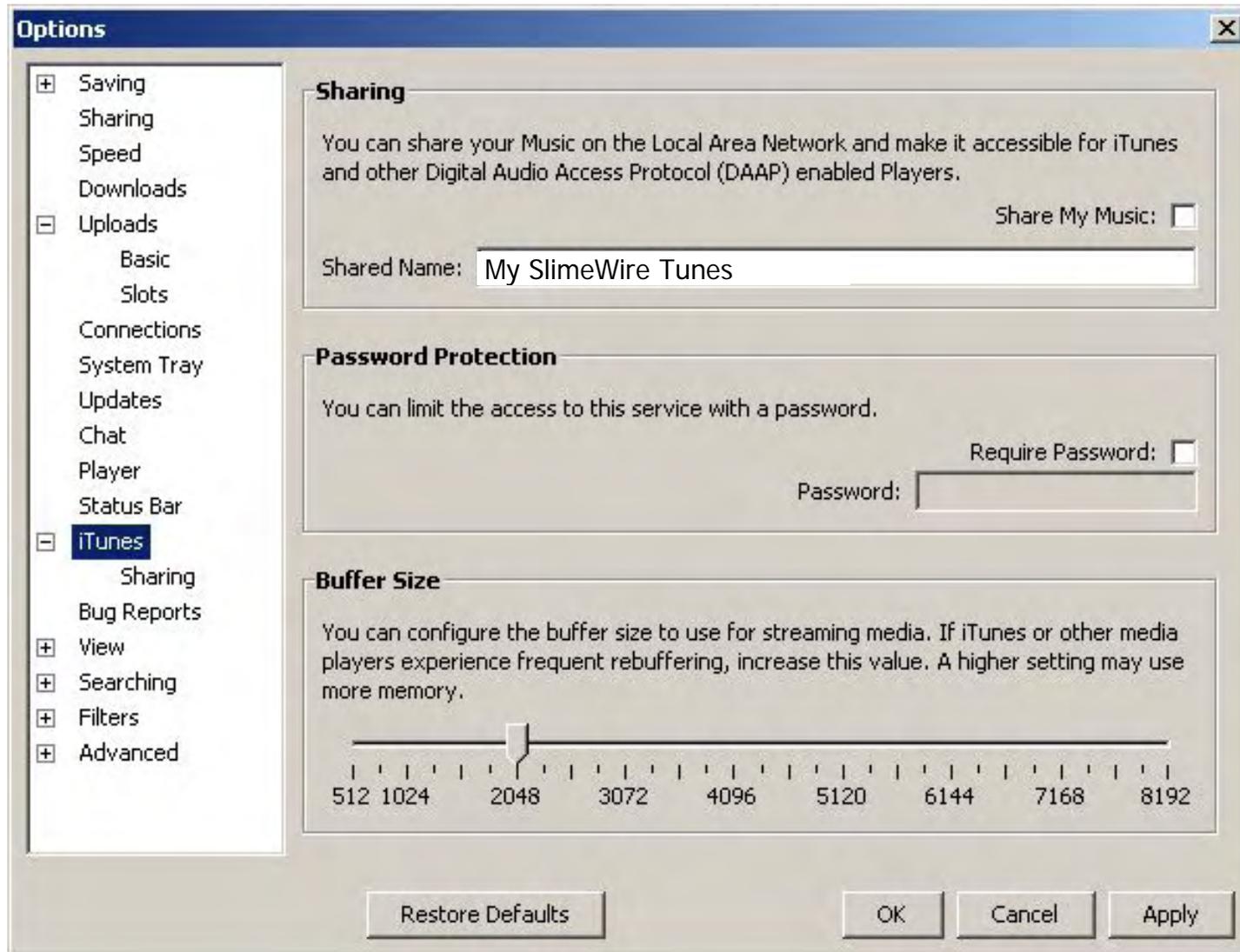


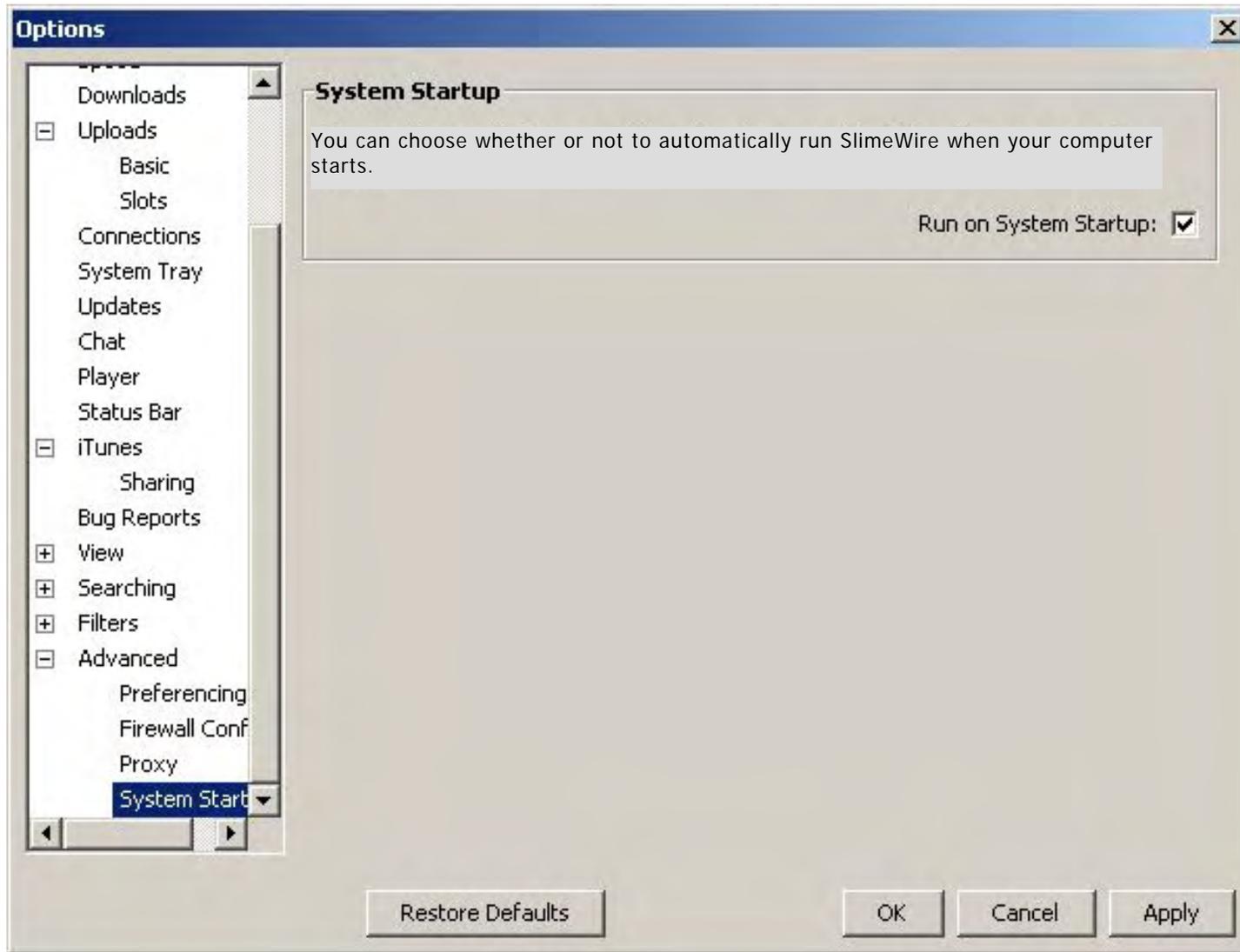












Time Card

NAME Beck Celestial

DATE 3/19/07 NO. 005

	MONDAY	IN	6:01 AM
		OUT	5:45 PM
		IN	
		OUT	
	TUESDAY	IN	5:59 AM
		OUT	11:59 AM
		IN	12:16 PM
		OUT	5:50 PM
THIS	WEDNESDAY	IN	5:55 AM
		OUT	12:15 PM
		IN	1:46 PM
		OUT	6:00 PM
SIDE	THURSDAY	IN	6:02 AM
		OUT	1:15 PM
		IN	1:45 PM
		OUT	6:05 PM
OUT	FRIDAY	IN	6:00 AM
		OUT	6:01 PM
		IN	
		OUT	
	SATURDAY	IN	8:05 AM
		OUT	12:02 PM
		IN	
		OUT	
	SUNDAY	IN	
		OUT	
		IN	
		OUT	
TOTAL			

EXHIBIT #6

Eagles Daily News

March 19, 2007

CAMPUS TELEVISION SCHEDULE

MON., MARCH 19, 2007	12:00 PM	12:30 PM	1:00 PM	1:30 PM	2:00 PM	2:30 PM	3:00 PM	3:30 PM	4:00 PM	4:30 PM	5:00 PM	5:30 PM	
 3 NBC	Days of Our Lives		Passions		Inside Edition	Insider	Ellen DeGeneres		First News Live at Four	Jeopardy!	News at Five	NBC Nightly News >>	
 4 ABC	All My Children		One Life to Live		General Hospital		Montel Williams		Judge Judy	Judge Judy	NewsWatch	ABC World News >>	
 5 CBS	News at Noon	Bold and the Beautiful	As the World Turns		Guiding Light		Oprah Winfrey		Inside Edition	Jeopardy!	Local News	CBS Evening News >>	
 7 CNN	CNN Newsroom						Situation Room			Lou Dobbs Tonight			
 8 TWC	Weather Center						Weather: PM Edition						
 10 DSC	Deadliest Catch Marathon												
 12 MOVIE	MOVIE: Walk The Line						MOVIE: Coal Miner's Daughter					MOVIE: The Doors >>	
 13 CMDY	MOVIE: Almost Famous						MOVIE: This is Spinal Tap				Daily Show With John Stewart	Colbert Report	
 14 CNBC	Morning Call		Power Lunch			Closing Bell			On the Money		Mad Money		
 15 COURT	Courtside				Closing Arguments		Arrest & Trial	Arrest & Trial	Forensic Files	Forensic Files	Cops	Cops	
 16 EGLU	University Information												

JUNE 2007							JULY 2007							AUGUST 2007							SEPTEMBER 2007						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
				1	2		1	2	3	4	5	6	7	5	6	7	8	9	10	11	2	3	4	5	6	7	8
3	4	5	6	7	8	9	8	9	10	11	12	13	14	12	13	14	15	16	17	18	9	10	11	12	13	14	15
10	11	12	13	14	15	16	15	16	17	18	19	20	21	19	20	21	22	23	24	25	16	17	18	19	20	21	22
17	18	19	20	21	22	23	22	23	24	25	26	27	28	26	27	28	29	30	31	23	24	25	26	27	28	29	
24	25	26	27	28	29	30	29	30	31										30								

WEDNESDAY
APRIL 4

094/271

Notes

cell
back ---->
interview?

MU. MOJO
Rising
#(402) 843-
3667

- 1 wash socks?
- 2 HALO tourn. ✓
- 3 Start on Econ paper

"If you choose
not to decide,
you still have
made a choice"
- G. Leva

Fill in
(RSH+P?) ---

12:00 AM	0000
1:00	0100
2:00	0200
3:00	0300
4:00	0400
5:00	0500
6:00	0600
7:00	0700
8:00	0800
9:00	0900
10:00	1000
11:00	1100
12:00 PM	1200
1:00	1300
2:00	1400
3:00	1500
4:00	1600
5:00	1700
6:00	1800
7:00	1900
8:00	2000
9:00	2100
10:00	2200
11:00	2300

Class

Mtg. - Proj.

WORK

JUNE 2007							JULY 2007							AUGUST 2007							SEPTEMBER 2007													
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S							
				1	2		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
3	4	5	6	7	8	9	8	9	10	11	12	13	14	5	6	7	8	9	10	11	2	3	4	5	6	7	8							
10	11	12	13	14	15	16	15	16	17	18	19	20	21	12	13	14	15	16	17	18	9	10	11	12	13	14	15							
17	18	19	20	21	22	23	22	23	24	25	26	27	28	19	20	21	22	23	24	25	16	17	18	19	20	21	22							
24	25	26	27	28	29	30	29	30	31					26	27	28	29	30	31	23	24	25	26	27	28	29								
																					30													

MONDAY
APRIL 16

can't trust
that day

106/259

Notes

PAPER DUE!!!
(Econ)



///

- ✓ 1 ~~biday card~~ - Uncle John (band)
- ✓ 2 ~~tunes~~ ~~Lucas~~ - start
- 3 buy newsacks

"Don't surround yourself
with yourself"



12:00 AM	0000
1:00	0100
2:00	0200
3:00	0300
4:00	0400
5:00	0500
6:00	0600
7:00	0700
8:00	0800
9:00	0900
10:00	1000
11:00	1100
12:00 PM	1200
1:00	1300
2:00	1400
3:00	1500
4:00	1600
5:00	1700
6:00	1800
7:00	1900
8:00	2000
9:00	2100
10:00	2200
11:00	2300

Web. Procol - Harlem
mtg. - b'fast

Lab

really finish paper (really)

work (late)

EXHIBIT #8

KELLEY COMPUTER CALLS

DATE	TIME	NAME	NATURE OF CALL	LOCATION	TROUBLE TICKET?
March 19	1330	Mel Miller	Internet Access	Snack Bar	Yes
April 4	2015	KC Jones	Internet Access	Phone call	No
April 4	2030	Mel Miller	Printing error	Phone call	No
April 16	1900	Mel Miller	Printing error	Phone call	No

Help Desk Case

Case ID : HD0000000031337

Requester's Name: Mel Miller

Case Type: Incident

Category: Wireless Network Access

Type: Impaired Service

Summary: Wireless access problems

Description: Wireless connection occasionally stops working, even though the computer shows that it is connected and has a good signal strength. If restarted, the wireless works again.

Assigned to Group: Security

Status: Pending

Work Log: 3/19/07 1:30 PM gkelley

Problem could be either due to a network driver problem or someone spoofing the user's MAC address. Suggested reinstalling the network driver and if it continues to call back. Also reporting to networking group.

◆◆ Eagles University ◆◆

Digital Copyright Guidelines at Eagles University

The Lowdown on Downloads

Illegal downloading? Not on our network. Illegal behavior such as unauthorized sharing of copyrighted music, movies, videos, games or software is strictly prohibited.

Use of the EU network, which is a shared resource, is a privilege that may be revoked if it is abused. By registering your computer, you accept personal responsibility for abiding by University Computer Use Policies.

Learn how to download legally.

So what happens if I get caught downloading illegally?

Organizations that represent the interests of artists and other copyright holders in the U.S. actively search the Internet for evidence of copyright violations. If they find it, they typically send a written complaint to the University. If we receive a complaint about you, we will first verify that the complaint is against a computer that is connected to the campus network. One of the following consequences will then ensue:

Strike One

You will receive an e-mail notification including a copy of the complaint. The incident will be entered into a database. If there is no way to contact you, your connection to the network may be disabled until we can establish contact.

Strike Two

You will receive a second warning, including the new complaint and the date of the first warning. The database will be updated to register the second incident. In addition, if you are a student in the Residence Halls, you will be required to state in writing within seven days that the illegal behavior will be stopped or else network access will be disabled until you do so. If you are using a computer elsewhere on campus, your department will receive a copy of the second warning.

Strike Three

Your network access will be disabled indefinitely. The database will be updated to register the third incident. In addition, if you are a student in the Residence Halls, notice will be sent to the Office of Student Affairs. If you are using a computer elsewhere on campus, appropriate management will be notified. You may also be subject to additional disciplinary action and enforcement of state and federal law.

What is a copyright?

The United States Copyright Office defines copyright as the following: Copyright is a form of protection provided by the laws of the United States (title 17, U. S. Code) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following: To reproduce the work in copies or phonorecords; To prepare derivative works based upon the work; To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending; To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works,

pantomimes, and motion pictures and other audiovisual works; To display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and In the case of sound recordings*, to perform the work publicly by means of a digital audio transmission.

What is copyright infringement?

As a general matter, copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner.

What is peer-to-peer (P2P) networking?

A type of network where computers communicate directly with each other, rather than through a central server. Often referred to simply as peer-to-peer, or abbreviated P2P, a type of network in which each workstation has equivalent capabilities and responsibilities in contrast to client/server architectures, in which some computers are dedicated to serving the other computers. A "network" is a group of two or more computer systems linked together by various methods. In recent usage, peer-to-peer has come to describe applications in which users can use the Internet to exchange files with each other directly or through a mediating server.

"Under U.S. law, stealing intellectual property is just that-stealing. It hurts artists, the music industry, the movie industry, and others involved in creative work. And it is unfortunate that the software being used-called 'file sharing,' as if it were simply enabling friends to share recipes, is helping create a generation of Americans who don't see the harm.

"The Internet and related technologies, if used properly, have the potential to expose millions of people to creative work that would otherwise not be seen or heard. The question is whether their potential will be realized at the expense of artists, authors, software developers, scientists, and others who rely on copyright protection to earn a living.

"The issue we will be struggling with today is what to do about what I hope is acknowledged to be a problem. How do we instill in people that downloading a song or a movie off the Internet, without permission, is like stealing a CD from a store?"

-- Senator Carl Levin, Michigan.

Excerpted from "Privacy and Piracy: The Paradox of Illegal File Sharing on Peer-to-Peer Networks and the Impact of Technology on the Entertainment Industry" (Public Domain)

Supplemental Online Resources

Articles

"Practice Safe Surfing with Public Wi-Fi Signals," *Windows Secrets Newsletter*, Issue 111, June 14, 2007

<http://windowssecrets.com/comp/070614/#story1>

"When Sharing Music Is Illegal," *Consumer Reports*, December 2003

<http://www.consumerreports.org/cro/electronics-computers/music-piracy-1203/overview/index.htm>

"How to Avoid Being an Online Music Pirate," *Consumer Reports*, October 2003

<http://www.consumerreports.org/cro/electronics-computers/music-piracy-1203/avoiding-music-piracy/index.htm>

Legal Online Music Sources

RIAA

http://www.riaa.com/toolsforparents.php?content_selector=legal_music_sites

Recording industry vs. The People

"Liberated Music"

http://recordingindustryvspeople.blogspot.com/#liberated_music

Other RIAA Links

For Students Doing Reports

<http://www.riaa.com/faq.php>

For Parents and Educators

<http://www.riaa.com/toolsforparents.php>

RIAA Litigation

Recording Industry vs. The People

A blog maintained by New York City lawyers Ty Rogers and Ray Beckerman at the law firm of Vanderberg & Feliu, LLP. These lawyers represent people sued by the RIAA for peer-to-peer file sharing.

<http://recordingindustryvspeople.blogspot.com/>

Classroom Resource

Constitutional Rights Foundation

http://www.crf-usa.org/bria/bria19_2c.htm

NEBRASKA HIGH SCHOOL MOCK TRIAL RULES

I. RULES OF THE COMPETITION

A. THE PROBLEM

- 1 Rules
- 2 The Problem
- 3 Witness Bound by Statements
- 4 Invention of Facts
- 5 Gender of Witnesses
- 6 Voir Dire

B. THE TRIAL

- 7 Team Eligibility
- 8 Team Composition
- 9 Team Presentation
- 10 Team Duties
- 11 Swearing of Witnesses
- 12 Trial Sequence and Time Limits
- 13 Timekeeping
- 14 Time Extensions and Scoring
- 15 Prohibited Motions
- 16 Sequestration
- 17 Bench Conferences
- 18 Supplemental Material/ Illustrative Aids
- 19 Trial Communication
- 20 Viewing a Trial
- 21 Videotaping/Photography

C. JUDGING

- 22 Decisions
- 23 Composition of Panel
- 24 Score Sheets/Ballots
- 25 Courtroom Decorum
- 26 Pre-Trial Conferences
- 27-29 Reserved for future use

D. DISPUTE RESOLUTION

- 30 Reporting a Rule Violation/Inside the Bar
- 31 Dispute Resolution Procedure
- 32 Effect of Violation on Score
- 33 Reporting a Rule Violation/Outside the Bar

II. RULES OF PROCEDURE

A. BEFORE THE TRIAL

- 34 Team Roster
- 35 Stipulations
- 36 The Record

B. BEGINNING THE TRIAL

- 37 Jury Trial
- 38 Standing during Trial
- 39 Objection during Opening Statement/Closing Argument

C. PRESENTING EVIDENCE

- 40 Argumentative Questions
- 41 Lack of Proper Predicate/Foundation
- 42 Procedure for Introduction of Exhibits
- 43 Use of Notes
- 44 Redirect/Recross

D. CLOSING ARGUMENTS

- 45 Scope of Closing Arguments

E. DEBRIEFING/CRITIQUE

- 46 The Debriefing/Critique

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

ARTICLE I. GENERAL PROVISIONS

- 101 Scope
- 102 Purpose and Construction

ARTICLE II. JUDICIAL NOTICE

- 201 Judicial Notice

ARTICLE IV. RELEVANCY AND ITS LIMITS

- 401 Definition of "Relevant Evidence"
- 402 Relevant Evidence Generally Admissible;
Irrelevant Evidence Inadmissible
- 403 Exclusion of Relevant Evidence on Grounds
of Prejudice, Confusion, or Waste of Time
- 404 Character Evidence Not Admissible to Prove Conduct;
Exceptions; Other Crimes
- 405 Methods of Proving Character
- 406 Habit; Routine Practice
- 408-409 Reserved for future use
- 410 Inadmissibility of Pleas, Plea Discussions, and Related Statements

ARTICLE V. PRIVILEGES

- 501 General Rule

ARTICLE VI. WITNESSES

- 601 General Rule of Competency
- 602 Lack of Personal Knowledge
- 607 Who May Impeach
- 608 Evidence of Character and Conduct of Witness
- 609 Impeachment by Evidence of Conviction of Crime
- 610 Religious Beliefs or Opinions
- 611 Mode and Order of Interrogation and Presentation
- 612 Writing Used to Refresh Memory
- 613 Prior Statements of Witnesses

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

- 701 Opinion Testimony by Lay Witness
- 702 Testimony by Experts
- 703 Bases of Opinion Testimony by Experts
- 704 Opinion on Ultimate Issue
- 705 Disclosure of Facts or Data Underlying Expert Opinion

ARTICLE VIII. HEARSAY

- 801 Definitions
- 802 Hearsay Rule
- 803 Hearsay Exceptions, Availability of Declarant Immaterial
- 804 Hearsay Exceptions; Declarant Unavailable
- 805 Hearsay within Hearsay

ARTICLE X. CONTENTS OF WRITING, RECORDINGS AND PHOTOGRAPHS

ARTICLE XI. OTHER

- 1103 Title

I. RULES OF THE COMPETITION

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

THE PROBLEM

Rule 1. Rules

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

Rule 2. The Problem

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

Rule 3. Witness Bound by Statements

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

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

Rule 4. Invention of Facts

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

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

Direct and Redirect Examination

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

Cross and Recross Examination

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

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

Rule 5. Gender of Witnesses

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

Rule 6. Voir Dire

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

THE TRIAL

Rule 7. Team Eligibility

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

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

To be a part of the competition, schools must register their teams by completing and mailing the Official Mock Trial Entry Form to the State Coordinator, along with a check for **\$35 PER TEAM** (made payable to the Nebraska State Bar Foundation) no later than September 10, 2007. Also, by September 21, 2007, each school should forward to the Regional Coordinator, a school activities calendar for September, October and November.

Rule 8. Team Composition

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

Rule 9. Team Presentation

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

In the event of an emergency that would cause a team to participate with less than six members, the team must notify their Regional Coordinator as soon as possible. If the Regional Coordinator agrees that an emergency exists, he or she will decide whether the team will forfeit a trial or take appropriate measures to continue a trial round with less than six members. Trials may be rescheduled at the discretion of the Regional Coordinator. If the Regional Coordinator is

unavailable, the presiding judge will make these decisions. A team proceeding with fewer than six team members may have points deducted from their point totals at the discretion of the scoring judges.

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

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

Rule 10. Team Duties

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

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

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

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

Rule 11. Swearing of Witnesses

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

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

Rule 12. Trial Sequence and Time Limits

The trial sequence shall be as follows:

1. Plaintiff's opening statement
2. Defense's opening statement
3. Plaintiff's direct examination and Defense's cross-examination of Plaintiff's three witnesses
4. Defense's direct examination and Plaintiff's cross-examination of Defense's three witnesses
5. Plaintiff's closing argument
6. Defense's closing argument
7. Plaintiff may reserve a portion of its closing argument time for rebuttal if it does so at the beginning of its closing argument. The Plaintiff's rebuttal, if any, is limited to the scope of the Defense's closing argument.

Time Limits

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

3. Each team shall have a total of 20 minutes for Cross and Recross Examination.

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

Rule 13. Timekeeping

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

Rule 14. Time Extensions and Scoring

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

Rule 15. Prohibited Motions

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

Rule 16. Sequestration

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

Rule 17. Bench Conferences

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

Rule 18. Supplemental Material/Illustrative Aids

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

Rule 19. Trial Communication

Teacher sponsors, attorney coaches, non-participating team members, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any recess time that may occur. Team members participating in the trial may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

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

Rule 20. Viewing a Trial

Local and Regional Trials

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

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

State and National Championships

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

Rule 21. Videotaping/Photography

Local and Regional Trials -- See Rule 20.

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

JUDGING

Rule 22. Decisions

All decisions of the judging panel are FINAL.

Rule 23. Composition of Panel

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

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

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

Rule 24. Score Sheets/Ballots

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

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

Rule 25. Courtroom Decorum

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

Rule 26. Pre-trial Conferences

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

DISPUTE RESOLUTION

Rule 30. Reporting a Rule Violation Occurring During The Trial

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

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

Rule 31. Dispute Resolution Procedure

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

Rule 32. Effect of Violation on Score

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

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

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

II. RULES OF PROCEDURE

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

A. BEFORE THE TRIAL

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

Rule 34. Team Roster

Before beginning a trial the teams must exchange copies of the Team Rosters. The form shall identify the gender of each witness so that references to such parties shall be made in the proper gender. Copies of the Team Rosters shall be made available to all three judges during the pretrial conference.

Rule 35. Stipulations

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

Rule 36. The Record

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

B. BEGINNING THE TRIAL

Rule 37. Jury Trial

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

Rule 38. Standing During Trial

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

Rule 39. Objection During Opening Statement/Closing Argument

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

If a team believes an objection would have been proper during the opposing team's closing argument, one of its attorneys may, following the closing argument, raise her/his hand to be recognized by the judge and say, "If I had been permitted to object during closing arguments I

would have objected to the opposing team's statement that _____.\" The presiding judge shall not rule on this \"objection.\" Judges shall weigh the \"objection\" individually for purposes of determining their scores. No rebuttal by opposing team shall be heard.

C. PRESENTING EVIDENCE

Rule 40. Argumentative Questions

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

Rule 41. Lack of Proper Predicate/Foundation

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

Rule 42. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence.

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

Rule 43. Use of Notes

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

Rule 44. Redirect/Recross

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

D. CLOSING ARGUMENTS

Rule 45. Scope of Closing Arguments

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

E. DEBRIEFING/CRITIQUE

Rule 46. Debriefing/Critique

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

III. FEDERAL RULES OF EVIDENCE (Mock Trial Version)

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

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

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

Article I. General Provisions

Rule 101. Scope

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

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

RULE 201. Judicial Notice of Adjudicative Facts

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either

(1) generally known within the territorial jurisdiction of the trial court or

(2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing Jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

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 *in these Rules. Irrelevant evidence is not admissible.*

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

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

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

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

(2) Character of Victim. Evidence of a pertinent trait of character of the 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 victim offered by the prosecution in a homicide case to rebut evidence that the 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 measures are taken after an event which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of 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

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as providing bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct 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 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 *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 3.0.)

Rule 607. Who may Impeach

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

Comment: One way to impeach a witness through the use of a prior inconsistent statement is to first ask the witness whether s/he has ever given a prior statement, indicating the time, place and circumstances of the statement. If the witness does not unqualifiedly admit the prior inconsistent statement, the witness can be impeached. If the prior statement was a signed and sworn statement of the witness, the attorney should introduce the statement and ask the witness whether that is his/her statement and whether the statement was made under oath, at a time much closer to the events in controversy, and contained all that the witness could then remember. The

attorney may then want to (1) leave the matter and point out on closing argument the contradiction between the statement and the witness' testimony (both of which were under oath); (2) ask the witness why his/her testimony is different today under oath than it was when it was under oath and much nearer in time to the events; or (3) ask the witness whether s/he was lying under oath when s/he gave his/her statement or lying under oath today.

Rule 608. Evidence of Character and Conduct of Witness

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

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

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

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General Rule. For the purpose of attacking the credibility 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 if it involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, 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 which 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 Adjudications. Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by Court. -- The Court shall exercise reasonable control over *questioning* of witnesses and presenting evidence so as to (1) make the *questioning* and presentation effective for ascertaining the truth, (2) to avoid needless *use* of time, and (3) protect witnesses from harassment or undue embarrassment.

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

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

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

Rule 612. Writing Used to Refresh Memory

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

Rule 613. Prior Statements of Witnesses

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

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

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

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

Rule 702. Testimony by Experts

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

Rule 703. Bases of Opinion Testimony by Experts

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

Rule 704. Opinion on Ultimate Issue

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

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

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert

may in any event be required to disclose the underlying facts or data on cross-examination.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

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

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

(c) Hearsay. -- "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. *An example of hearsay is a witness testifying that s/he heard another person saying something relating to the facts of the case. The reason that hearsay is untrustworthy is because the opposing side has no way of testing the credibility of the person who allegedly made the out of court statement. For example, Smith testifies, "Some of the other tenants told me that Jones often failed to keep his apartments in good repair." This would not be admissible to prove that Jones often failed to keep his apartments in good repair, which was the matter asserted in the out of court statement. However, it might be admissible to prove that Smith had some warning that Jones did not keep his apartments in good repair, if that were an issue in the case, since it would not then be offered for the truth of the matter asserted.*

Why should the condition be added that the out of court statement is only hearsay when "offered for the truth of the matter asserted"? The answer is clear when we look to the primary reasons for the exclusion of hearsay, which are the absence in hearsay testimony of the normal safeguards of oath, confrontation, and cross-examination, all of which test the credibility and accuracy of the out of court speaker.

For example, if Jones testified in court, "My best friend Smith told me that Bill was driving a car 80 miles per hour," and that out-of-court statement was offered to prove the truth of the matter asserted (i.e., that Bill was driving 80 miles per hour), we would be interested in the credibility of Smith, his/her opportunity and capacity to observe Bill, the accuracy of her reporting, and his/her tendency to lie or tell the truth. The lack of an oath, confrontation, and cross-examination would make the admission into evidence of Smith's assertion about Bill unfair to the opposing party. If the statement was offered, however, to show that Smith could speak English, then its value would hinge on Jones' credibility (who is under oath, present and subject to cross-examination) rather than Smith's, and it would not be hearsay.

Another example: While on the stand, the witness says, "the salesman told me that the car had never been involved in an accident." This statement would not be hearsay if offered to prove that the salesman made such a representation to the witness. (The statement is not offered to prove the truth of the matter asserted.) However, if offered to prove that the car had never been in an accident, it would not be allowed because it would be hearsay.

Possible Objection: "Objection, Your Honor. The question calls for hearsay."

Response to Objection: "Your Honor, the testimony is not offered to prove the truth of the matter

asserted, but only to show. . ."

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

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

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

Rule 802. Hearsay Rule

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

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

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

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

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

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

(6) Records of regularly conducted activity. A memorandum, report, record, or data

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

(7) Records, reports, statements, or data compilations made by a public official or agency of facts required to be observed and recorded pursuant to a duty imposed by law, unless the sources of information or the method or circumstances of the investigation are shown by the opposing party to indicate a lack of trustworthiness.

(8) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth

(A) the activities of the office or agency, or

(B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or

(C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of Vital Statistics. Records or data compilations, in any form of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(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. The pendency of an appeal may be shown but does not affect admissibility.

Rule 804. Hearsay Exceptions; Declarant Unavailable

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

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

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

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

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

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

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

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

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

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

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

(4) **Statement of personal or family history.** (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the

declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

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

Rule 805. Hearsay within Hearsay

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

ARTICLE IX - Other

ARTICLE X - Contents of Writing, Recordings and Photographs - Not applicable.

ARTICLE XI - Other

Rule 1103. Title

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

OFFICIAL TEAM ROSTER FORM

Before beginning a trial the teams must exchange copies of the Team Rosters. The form shall identify the gender of each witness so that references to such parties shall be made in the proper gender. Copies of the Team Rosters shall also be made available to all three judges during the pretrial conference. At the conclusion of each trial, the presiding judge shall forward a copy of each team's roster to the local coordinator. **No changes in a team's roster should be made after the first round of local competition.** Contact your local coordinator with questions.

NAME OF SCHOOL: _____

Name of Team (if school has more than one team): _____

During this trial our team will be representing the: Plaintiff (Circle One) Defense

STUDENT ATTORNEYS

<u>Name</u>	<u>Direct Examination</u>	<u>Cross Examination</u>	<u>Other</u>
1. _____			
2. _____			
3. _____			

WITNESSES

<u>Name</u>	<u>(Circle One)</u>	<u>Trial Name</u>
1. _____	Male/Female	_____
2. _____	Male/Female	_____
3. _____	Male/Female	_____

NAMES OF ALTERNATES

1. _____ 2. _____

Attorney-Coach: _____

Signature of Teacher: _____

TRIAL SCORING & DEDUCTION OF POINTS

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

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

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

Example A:

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

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

Example B:

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

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

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

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

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

PRESIDING JUDGE'S SCORE SHEET

Date: _____ Round: _____

Plaintiff: _____

Defense: _____

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

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

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

PERFORMANCE EVALUATION

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

CIRCLE ONE: Plaintiff OR Defense

COMMENTS (optional):

Judge's Signature

Date

PERFORMANCE JUDGE'S SCORE SHEET

Date: _____ Round: _____

Plaintiff: _____

Defense: _____

Name of School

Name of School

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

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

Ballot		Plaintiff	Defense
Opening statements		()	()
Plaintiffs' first witness	Direct Examination	()	
	Cross Examination		()
	Witness Performance	()	
Plaintiffs' second witness	Direct Examination	()	
	Cross Examination		()
	Witness Performance	()	
Plaintiffs' third witness	Direct Examination	()	
	Cross Examination		()
	Witness Performance	()	
Defense first witness	Direct Examination		()
	Cross Examination	()	
	Witness Performance		()
Defense second witness	Direct Examination		()
	Cross Examination	()	
	Witness Performance		()
Defense third witness	Direct Examination		()
	Cross Examination	()	
	Witness Performance		()
CLOSING ARGUMENTS		()	()
TEAM TOTALS (add scores in each column)		()	()

Please deliver ballot to coordinator before critique.

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

 (Signature of Judge)

SUGGESTIONS FOR SCORING MOCK TRIALS
Nebraska High School Mock Competition

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

Factors to Consider in Scoring

OPENING STATEMENTS

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

DIRECT EXAMINATION

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

CROSS EXAMINATION

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

WITNESSES

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

CLOSING ARGUMENTS

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

CONSTRUCTIVE CRITIQUES

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

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

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

Humor is a welcome tension reliever during the critique.

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

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

Encourage questions during the critique.

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

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

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

Maintain eye contact.

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

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

POSITIVE APPROACHES FOR SUGGESTIONS TO STUDENTS

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

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

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

DO NOT:

Criticize students for their dress.

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

Talk down to students.

DISPUTE RESOLUTION FORM -- INSIDE THE BAR

(See Rules 30 & 33)

DATE _____ PLACE OF TRIAL _____

SCHOOLS COMPETING _____

NAME OF STUDENT ATTORNEY FILING DISPUTE _____

SCHOOL OF STUDENT ATTORNEY FILING DISPUTE _____

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

PRESIDING JUDGE

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

My reasons for denying this dispute are _____

OR

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

SIGNATURE OF PRESIDING JUDGE _____

DATE & TIME _____

DISPUTE RESOLUTION FORM -- INSIDE THE BAR

(Page Two)

Opposing sides' RESPONSE TO DISPUTE.

NAME OF STUDENT ATTORNEY RESPONDING _____

SCHOOL OF STUDENT ATTORNEY _____

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

PRESIDING JUDGE (please print): _____

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

SIGNATURE OF PRESIDING JUDGE _____

DATE AND TIME _____

DISPUTE RESOLUTION FORM -- OUTSIDE THE BAR

(See Rule 33)

Date _____ Place of trial _____

Schools Competing _____

Name of TEACHER OR ATTORNEY COACH filing dispute _____

School of Teacher or Attorney Coach filing dispute _____

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

COORDINATOR (please print)

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

If received, the response is attached to this form.

My decision in the dispute is

I have notified all pertinent parties of my decision.

REGIONAL COORDINATOR'S SIGNATURE _____

DATE & TIME _____

2007-2008 MOCK TRIAL COORDINATORS & REGIONS

REGION 1

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

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

REGION 2

Coordinators:	Angela R. Shute P.O. Box 1669 North Platte, NE 69103-1669 (308) 532-7110 Fax: (308) 534-0248 ksb@nponline.net	Tim W. Thompson P.O. Box 1669 North Platte, NE 69103-1669 (308) 532-7110 Fax: (308) 534-0248 ksb@nponline.net
----------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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

REGION 3

Coordinators:	Honorable David W. Urbom P.O. Box 477 Arapahoe, NE 68922-0477 (308) 345-4539 Fax: (308) 345-7907 dave.urbom@courts.ne.gov	Honorable Anne Paine P.O. Box 199 McCook, NE 69001 (308) 345-1904 Fax: (308) 345-1904 anne.paine@courts.ne.gov
----------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Deborah League
Clerk Magistrate
P.O. Box 378
Benkelman, NE 69021
(308) 423-2374
Fax: (308) 423-2325
deb.league@courts.ne.gov

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

REGION 4

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

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

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

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

REGION 5

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

Justin Herrmann
P.O. Box 1060
Kearney, NE 68848-1060
(308) 234-5579
Fax: (308) 234-9305
jherrmann@jonlaw.com

Counties: Buffalo & Hall

Coordinator: **Bradley J. White**
P.O. Box 1048
Hastings, NE 68902-1048
(402) 461-2608
Fax: (402) 463-8280
bradley.j.white@wellsfargo.com

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

REGION 6

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

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

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

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

REGION 7

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

Counties: Boone, Colfax, Merrick, Nance, and Platte

Coordinators: **Honorable Michael J. Owens**
Box 201
Aurora, NE 68818-0201
(402) 694-6334
Fax: (402) 694-6619
judgeowens@hamilton.net

Honorable Linda C. Senff
P.O. Box 27
Central City, NE 68826
(402) 946-2812
Fax: (402) 946-3838
lcslaw@hamilton.net

Counties: Butler, Hamilton and Polk

REGION 8

Coordinator: **Honorable Robert O'Neal**
1210 Golden Gate Drive, Suite 2165
Papillion, NE 68046-2890
(402) 593-5920
Fax: (402) 593-2221
boneal@sarpy.com

Counties: Cass, Otoe, and Sarpy

REGION 9

Coordinators:	Honorable Daniel E. Bryan, Jr. 1824 "N" Street Auburn, NE 68305 (402) 274-5559 Fax: (402) 274-5559 danbryan@alltel.net	Honorable Vicky L. Johnson P.O. Box 865 Wilber, NE 68465-0865 (402) 821-2823 Fax: (402) 821-3179 judgevjohnson@hotmail.com
----------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Counties: Fillmore, Gage, Jefferson, Johnson, Nemaha, Pawnee, Richardson, Saline and Thayer

REGION 10

Coordinators:	Honorable John A. Colborn 575 South 10 th Street Lincoln, NE 68508 (402) 441-7303 Fax: (402) 441-6190 jcolborn@ci.lincoln.ne.us	Honorable Laurie J. Yardley 575 South 10 th Street Lincoln, NE 68508 (402) 441-7275 Fax: (402) 441-6055
----------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------

Counties: Lancaster, Saunders, Seward and York

REGIONS 11 & 12

Coordinator: **Honorable Elizabeth G. Crnkovich**
1701 Farnam Street, #600
Omaha, NE 68183-0001
(402) 444-7888
Fax: (402) 444-3960
[Jo -- jmeinders@co.douglas.ne.us]

County: Douglas

NEBRASKA STATE BAR FOUNDATION

Officers

Dean G. Kratz, Omaha, President
Robert H. Berkshire, Omaha, Vice President
Gary W. Radil, Omaha, Secretary
Kile W. Johnson, Lincoln, Treasurer
Stanley C. Goodwin, McCook, Assistant Treasurer

Board of Directors

Hon. C. Arlen Beam, Lincoln	William J. Lindsay, Jr., Omaha
Patricia J. Bramhall, Papillion	Wayne J. Mark, Omaha
Joel M. Carney, Omaha	William J. Mueller, Lincoln
Charlotte J. Conner, Valley	Michael G. Mullin, Omaha
Dale C. Crandall, Burwell	William R. Reinsch, Plattsmouth
Linda R. Crump, Lincoln	Jane L. Schoenike, Lincoln, Ex-Officio
*Thomas M. Davies, Lincoln	Hon. Richard D. Sievers, Lincoln
Thomas B. Fischer, Omaha	Robert A. Skochdopole, Omaha
Richard G. Folda, Schuyler	Bruce I. Smith, Grand Island
Nancy S. Freburg, Kearney	Galen E. Stehlik, Grand Island
*Keith I. Frederick, Papillion	Hon. Lyle E. Strom, Omaha
Charles F. Gotch, Omaha	*George E. Svoboda, Fremont
*Deryl F. Hamann, Omaha	Nancy A. Svoboda, Omaha
*Harold W. Kay, North Platte	*Charles Thone, Lincoln
*Richard A. Knudsen, Lincoln	Charles E. Wright, Lincoln

*Past Presidents

Staff Members and Contact Information

Doris J. Huffman, Executive Director
Cindy Lilleoien, Law-Related Education Consultant
Verna Weber, Program Assistant
Mary Grieser, Law-Related Education Administrative Assistant

P.O. Box 95103
Lincoln, NE 68509-5103
Phone: (402) 475-1042
Fax: (402) 475-7106
Email: doris@nebarfnd.org
Website: www.nebarfnd.org