
2018

ALASKA HIGH SCHOOL

MOCK TRIAL COMPETITION

Anchorage, April 5-7, 2018

State v. Calhoun

Case No. 5AK-17-99999 CR

OFFICIAL CASE MATERIALS & COMPETITION RULES

TEAM MEMBER'S PACKET

Including all evidence, applicable law, competition rules, and team registration forms

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Young Lawyers Section**

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2018 Alaska High School Mock Trial Problem

State v. Calhoun – Author’s Note

This year’s case materials address what is, unfortunately, an increasing problem among teenagers in Alaska and elsewhere – bullying and cyberbullying. Bullying between teenagers has no doubt been going on as long as teenagers have come into regular contact with each other. But the increase in social media has resulted in more pervasive ways to spread this bullying. Whereas family may in the past have been a respite from the bullying that occurred in school, Facebook, texting, and other forms of contact make bullying seem to its victims in many ways inescapable.

As of the drafting of this problem, there is no law in Alaska directly addressing either bullying or cyberbullying. There are laws against physical harm and threats of physical harm, but not against the more psychological elements of bullying. This posed a bit of a problem when drafting the case materials. The authors decided we wanted to address this issue, but stumbled a bit when trying to figure out a legal charge around which the case could be built. Our initial inclination was to bring an assault charge, but we could not find a way to do that without a direct threat of harm, which would make the case far too easy and not interesting to prosecute. All we could come up with was inducement to commit suicide. As extreme as this may be, that is the status of the law today. Indeed, one of our hopes with this problem is that it will encourage a discussion of whether a (cyber)bullying law needs to be enacted in Alaska. The pros and cons of such a law are beyond the scope of this note, but it is a discussion worth having.

One other hope the authors have is to raise awareness of the prevalence of (cyber)bullying. If you or someone you know is a victim, please seek help. Talk to your parents or school officials. There are other resources you can consult as well. You can access resources through the Alaska Mental Health Board website at <http://dhss.alaska.gov/amhb/Pages/bullying.aspx>. The U.S government also provides a very helpful website with tips for spotting and stopping bullying at <https://www.stopbullying.gov/>. If you or anyone you know is considering suicide or mentions considering suicide, please seek help immediately. Joking about suicide is not a joke, but is often a cry for help. Call the National Suicide Prevention Lifeline at 1-800-273-8255 (also <https://suicidepreventionlifeline.org/>) or the Alaska CARELINE at 1-877-266-HELP. Other resources can be found on the Alaska Statewide Suicide Prevention Council website at <http://dhss.alaska.gov/suicideprevention/Pages/default.aspx>, the Suicide Prevention website of the Alaska Native Tribal Health Consortium (<https://anthc.org/what-we-do/behavioral-health/suicide-prevention/>), stopsuicidealaska.org, or at the website for the Alaska chapter of the American Foundation for Suicide Prevention (<https://afsp.org/chapter/afsp-alaska/>).

Despite the depressing subject matter, though, we also hope that students find the case materials engaging and a fresh way to confront learning about the law and trial practices. The Alaska High School Mock Trial Competition is a wonderful way to build student confidence and public speaking and critical thinking skills. We look forward to seeing what you do with the materials.

Ryan Fortson/Lars Johnson/Sarah Park/Michael Rose

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
FIFTH DISTRICT AT ANCHORAGE

STATE OF ALASKA)
)
 Plaintiff,)
)
 vs.)
)
 MAX CALHOUN)
 DOB: 11/12/1999)
 APSIN ID: 9876543)
 SSN: 555-00-1212)
 ATN: 105-678-999)
)
 Defendant.)
)

Court No. 3AK-17-99999 CR

INDICTMENT

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

The following counts charge a crime involving DOMESTIC VIOLENCE as defined in AS 18.66.990: NONE.

THE GRAND JURY CHARGES:

Count I – AS 11.41.120(a)(2) & AS 11.31.100(a)
Attempted Manslaughter
Max Calhoun – 001

That on or about August 12, 2017, at or near Bearclaw in the Third Judicial District, State of Alaska, MAX CALHOUN, intending to cause Jordan Pacheo to commit suicide, engaged in conduct that constitutes a substantial step toward inducing Jordan to attempt suicide.

All of which is a Class B felony offense in violation of AS 11.41.120(a)(2) and AS 11.31.100(a) and against the peace and dignity of the State of Alaska.

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
FIFTH DISTRICT AT ANCHORAGE

STATE OF ALASKA)
)
 Plaintiff,)
)
 vs.)
)
 MAX CALHOUN)
 DOB: 11/12/1999)
 APSIN ID: 9876543)
 SSN: 555-00-1212)
 ATN: 105-678-999)
)
 Defendant.)
 _____)
 Court No. 3AK-17-99999 CR

STIPULATIONS

It is stipulated for purposes of this [Mock] Trial that the following facts have been properly introduced into evidence and may be relied upon by the parties in the presentation of their case:

I.

All exhibits included in these case materials are authentic and are accurate in all respects; no objections to the authenticity of the exhibits will be entertained. All affidavits are considered part of the case materials and may be used during trial as would any sworn statement. The signatures on the affidavits are to be considered authentic.

II.

The witnesses for the State are:

1. Jordan Pacheo
2. Jamie Polt
3. Sam Pacheo
4. Alex Smith

III.

The witnesses for the Defendant are:

1. Max Calhoun
2. Chris Santana
3. Pat Landing
4. Andy Billings

ATTORNEYS FOR
STATE OF ALASKA

By: _____ /s/ _____

ATTORNEYS FOR
MAX CALHOUN

By: _____ /s/ _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS

STATE OF ALASKA,)	
)	
Plaintiff,)	JURY INSTRUCTIONS
vs.)	
)	
MAX CALHOUN,)	
)	Case No. 5AK-17-99999 CR
Defendant.)	
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FOUNDATIONAL INSTRUCTIONS

Introduction

Members of the jury, you have now heard and seen all of the evidence in the case and you have heard argument about the meaning of the evidence. We have reached the stage of the trial where I instruct you about the law to be applied.

It is important that each of you listen carefully to the instructions. Your duty as jurors does not end with your fair and impartial consideration of the evidence. Your duty also includes paying careful attention to the instructions so that the law will properly and justly be applied in this case. You will have a copy of my instructions with you when you go into the jury room to deliberate and to reach your verdict. But it is still absolutely necessary for you to pay careful attention to the instructions now. Sometimes the spoken word is clearer than the written word, and you should not miss the chance to hear the instructions. I will give them to you as clearly as I can in order to assist you as much as possible.

The order in which the instructions are given has no relation to their importance. The length of instructions also has no relation to their importance. Some concepts require more explanation than others, but this does not make longer instructions more important than shorter ones. All of the instructions are important and all should be carefully considered. You should understand each instruction and see how it relates to the others given.

Presumption of Innocence, Burden of Proof, Proof Beyond a Reasonable Doubt

The distinguishing features of a criminal trial are what are known in the language of the law as the presumption of innocence and the burden of proof beyond a reasonable doubt. The law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a clean slate – with no evidence favoring conviction. The presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

This last-mentioned requirement, that you be satisfied beyond a reasonable doubt of the defendant's guilt, is what is called the burden of proof. It is not required that the prosecution prove guilt beyond all possible doubt, for it is rarely possible to prove anything to an absolute certainty. Rather, the test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense. Proof beyond a reasonable doubt must be proof of such a convincing character that, after consideration, you would be willing to rely and act upon it without hesitation in your important affairs. A defendant is never to be convicted on mere suspicion or conjecture.

The burden of proving the defendant guilty beyond a reasonable doubt always rests upon the prosecution. This burden never shifts throughout the trial, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant has the absolute right not to testify, and you must not draw any inference against the defendant for not testifying. Thus a reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove every essential element of the crime charged beyond a reasonable doubt, a defendant has the right to rely upon the failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution.

Evaluation of Evidence

The weight to be given the evidence is for you to determine. You must examine the evidence carefully and decide how to evaluate it in light of the law that I have given you in these instructions. In your deliberations, you must not be governed by mere sentiment, unsupported conjecture, sympathy, passion, prejudice, public opinion, or public feeling. You should consider the evidence in light of your own common sense and observations and experiences in everyday life. But you may not consider other sources of information not presented to you in this court.

Your consideration of this case should be based solely on the evidence presented and the instructions I have given. The parties to this action are entitled to have a calm, careful, conscientious appraisal of the issues presented to you. Sympathy, bias or prejudice should not have the slightest influence upon you in reaching your verdict.

Direct and Circumstantial Evidence

Evidence is either direct or circumstantial. Direct evidence, if you accept it as true, proves a fact. Circumstantial evidence, if you accept it as true, proves a fact from which you may infer that another fact is also true.

Let me give you an example. Let us pretend that as a juror you are asked to decide the following question: Did snow fall during a particular night? Direct evidence would be a witness testifying that the witness awoke during that night, went to the window, and saw the snow falling. From this evidence you could conclude that snow fell during the night.

Circumstantial evidence would be a witness testifying that the ground was bare when the witness went to sleep at 10:00 p.m., but the next morning when the witness awoke and looked out the window, the witness saw that the ground was covered with snow. From this evidence you could also conclude that snow fell during the night.

Facts may be proved by either direct or circumstantial evidence. The law accepts each as a reasonable method of proof.

Witness Credibility

You have heard a number of witnesses testify in this case. You must decide how much weight to give the testimony of each witness.

In deciding whether to believe a witness and how much weight to give a witness's testimony, you may consider anything that reasonably helps you to evaluate the testimony. Among the things that you should consider are the following:

- (1) the witness's appearance, attitude, and behavior on the stand and the way the witness testified;
- (2) the witness's age, intelligence, and experience;
- (3) the witness's opportunity and ability to see or hear the things the witness testified about;

- (4) the accuracy of the witness's memory;
- (5) any motive of the witness not to tell the truth;
- (6) any interest that the witness has in the outcome of the case;
- (7) any bias of the witness;
- (8) any opinion or reputation evidence about the witness's truthfulness;
- (9) any prior criminal convictions of the witness that relate to honesty or veracity;
- (10) the consistency of the witness's testimony and whether it was supported or contradicted by other evidence.

You should bear in mind that inconsistencies and contradictions in a witness' testimony, or between a witness's testimony and that of others, do not necessarily mean that you should disbelieve the witness. It is not uncommon for people to forget or to remember things incorrectly and this may explain some inconsistencies and contradictions. It is also not uncommon for two honest people to witness the same event and see or hear things differently. It may be helpful when you evaluate inconsistencies and contradictions to consider whether they relate to important or unimportant facts.

If you believe that part of a witness's testimony is false, you may also choose to distrust other parts of that witness's testimony, but you are not required to do so. You may believe all, part, or none of the testimony of any witness. You need not believe a witness even if the witness's testimony is uncontradicted. However, you should act reasonably in deciding whether you believe a witness and how much weight to give to the witness's testimony.

You are not required to accept testimony as true simply because a number of witnesses agree with each other. You may decide that even the unanimous testimony of witnesses is erroneous. However, you should act reasonably in deciding whether to reject uncontradicted testimony.

When witnesses are in conflict, you need not accept the testimony of a majority of witnesses. You may find the testimony of one witness or of a few witnesses more persuasive than the testimony of a larger number.

Expert Witnesses

A witness who has scientific, technical or other specialized knowledge or experience may be qualified as an expert and may express an opinion in addition to giving testimony as to facts.

In determining whether to believe an expert witness and the weight to be given to his or her opinion, you may consider the expert's qualifications and knowledge, the reasons given for the opinion, how the expert got the information he or she testified about, and the factors given you for evaluating the testimony of any other witness.

As with other witnesses, you must decide whether or not to believe an expert witness and how much weight to give his or her testimony. You may believe all, part or none of the testimony of an expert witness.

Opinion Testimony of Non-Experts

A non-expert witness may testify to his or her opinion if it is rationally based on the witness' perceptions and helpful to a clear understanding of the testimony or the determination of a fact in issue.

In determining the weight to be given to an opinion expressed by a non-expert witness, you should consider the witness's credibility, the extent of the witness's opportunity to perceive the matters upon which the opinion is based and the reasons, if any, given for it. You are not required to accept such an opinion but should give it the weight, if any, to which you find it entitled.

You are not to decide any issue by the simple process of counting the number of witnesses who have testified on the opposing sides. The final test is not number of witnesses, but whether, considering all the evidence, the state has proved every element of each charge beyond a reasonable doubt.

Objections

There are rules of law that control what evidence you can consider. When a lawyer asks a question or offers an exhibit into evidence, and the lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, or the exhibit be received. Whenever I sustain an objection to a question addressed to a witness, you must disregard the question entirely, and must not draw any inference from the wording of it, nor speculate as to what the witness would have said if permitted to answer the question. If I sustain an objection to a question after an answer has been given, then you must disregard the question and the answer.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. In that case, you must not consider the evidence which I told you to disregard. You may wonder why some evidence must be excluded or disregarded when it appears to be of some interest to you. The rules that govern what evidence can be received are designed to do two things. First, they try to help you focus on important and reliable evidence by keeping out interesting but not very important or reliable information. Second, the rules help you decide the case objectively without being swayed by information that might cause you to respond emotionally.

You should not be influenced by the fact that objections are made or that requests are made that I take certain actions; nor should you be influenced by the number of objections or requests that are made. Objections or requests are not evidence. Please remember that my rulings that exclude evidence or that bar questions are designed to help you decide the case fairly. When I allow testimony or other evidence to be introduced over the objection of a lawyer, I do not mean to suggest any opinion as to the weight or effect of such evidence.

State of Mind

State of mind may be shown by circumstantial evidence. It can rarely be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what another person does or fails to do, no one can see or hear the state of mind with which another person's acts were done or omitted. But what a person does or fails to do may indicate that person's state of mind.

In determining issues of state of mind, the jury is entitled to consider any statements made and acts done or omitted by the person, and all facts and circumstances in evidence that may aid determination of state of mind.

Arriving at a Verdict

If you find that the state has proved each element of this offense beyond a reasonable doubt, then you must find the defendant guilty. If, however, you find that the state has not proven each element of this offense beyond a reasonable doubt, then you must find the defendant not guilty. To return a verdict of guilty or not guilty, each of you must agree with that verdict.

SUBSTANTIVE INSTRUCTIONS

Attempted Manslaughter

The State of Alaska alleges that Max Calhoun committed the crime of Attempted Manslaughter. To prove that s/he committed this crime, the State of Alaska must prove beyond a reasonable doubt that:

- (1) Max Calhoun intentionally aided Jordan Pacheo in committing or attempting to commit suicide; and
- (2) Max Calhoun took a substantial step toward causing Jordan Pacheo to commit or attempt to commit suicide.

Causation

The defendant's conduct "causes" or "results in" another person's attempted suicide if the defendant's act is a "substantial factor" in bringing about that result. The defendant's conduct need not be the sole factor causing the attempted suicide.

The defendant's conduct is a "substantial factor" if

- (1) The attempted suicide would not have occurred without the defendant's conduct; and
- (2) the defendant's conduct must be significant enough in causing the attempted suicide that a reasonable person would hold the defendant responsible; the defendant's conduct must be more than a remote or trivial factor.

Several factors may operate at the same time, either independently or together, to cause harm. In such a case, each may be a substantial factor in causing the result. Even if another condition, event, or other person's acts contributed in a substantial degree to the attempted suicide, the defendant will still be responsible if his/her conduct was a substantial factor in causing the result.

Definitions (AS 11.81.900)

A person acts "**intentionally**" with respect to a result or circumstance described by a provision of law defining an offense when the person's conscious objective is to cause that result.

When intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective.

A person acts "**knowingly**" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists. When knowledge of the existence of a particular fact is an element of the offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist.

A person acts "**recklessly**" with respect to a result or a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in that situation.

AFFIDAVIT OF JORDAN PACHEO

1. My name is Jordan Pacheo. I am 18 years old and a senior at Crimson High in Bearclaw, Alaska. I was 17 back in August of 2017 when I attempted suicide due to relentless bullying by Max Calhoun. I am glad that I did not succeed in killing myself when I jumped from the roof of the main academic building at Crimson High. I guess maybe it was a cry for help as much as anything. At the time, I just didn't know what to do to escape Max's constant bullying. I should have gone to see a counselor, but I got too wrapped up in the negativity and lack of self-worth.

2. Max and I used to be best friends. I guess that is what made her/his betrayal so painful. Bearclaw is a pretty small town, only about fifteen thousand people. So everyone sort of knows everyone. Max and I went to the same daycare as toddlers – my mother ran it, actually – then the same elementary school, same middle school, and finally Crimson High. I mean, there are only two elementary schools and one middle and one high school in Bearclaw, so this is not overly surprising, but we really were close friends throughout. We hung out together after school, attended the same summer camps, went to each other's birthday parties . . . you know, just best of friends. I felt like I could tell Max anything, and often did.

3. When we were younger, we would make up plays and magic shows together. As we got older, we played video games a lot, especially ones where we could compete directly against each other. Sure, there would be some teasing between us when one of us won and the other lost, but no big deal. I mean, neither of us were all that good at video games, despite the large amount of time we spent playing them. Both of us were only children, and we fought like siblings do, so that was kind of fun. I really enjoyed my time hanging out with Max.

4. I had somewhat of an unstable home life, so it was really helpful to have such a good friend as Max. My father is an alcoholic and would sometimes disappear for weeks at a time. This has been going on as long as I can remember. He works odd jobs here and there, but mostly it is my mother who supports the family. I really admire my mother. You can tell that all the stuff going on with my dad and having to work so hard really stresses her out, but she always tries to keep a positive attitude around me. And I felt really lucky to have Max as my friend, especially because it gave me someone to be with after school while my mother was still at work.

5. Things started to change when we started high school. Max and I just sort of drifted apart. We developed different interests and started hanging out with different groups of friends. I played in the school band and acted in a couple of school plays, and Max concentrated mostly on basketball. We were still friendly toward each other, would chat occasionally in the halls, that kind of thing. We just didn't hang out much. I was a little disappointed about that, but it wasn't that big a deal. It's not like either of us were lonely; we each had our own group of friends.

6. If all that happened was that Max and I stopped spending so much time together I could have handled that. However, starting in junior year Max began being really mean to me. I don't know what brought it on, but looking back I think it may have had to do with Max being insecure and feeling the need to prove s/he was the best student at Crimson High. And Max was, like, really smart. No question Max was going to go to a good college and be a success. Max even talked about wanting to go to law school and becoming a lawyer. I knew I was not as smart as Max. I still figured I would go to college and get a degree and come back to Bearclaw for a comfortable life.

I didn't have any grand ambitions, but I was fine with that. Max, though, seized on this as if it were some kind of personal weakness. I never bothered Max, and I don't know why s/he had to bother me.

7. At first, when we passed each other in the hallway, Max would say things like "Hey, dummy" or "Hi, idiot." Max didn't yell this, speaking just loudly enough to make sure I heard her/him. I don't think anyone else heard. I didn't really keep track, but it seemed like Max did this almost every day. Crimson High is a small enough school that everyone runs into everyone else at some point in the day. At first I tried to ignore it, but after a while it is hard not to feel bad about yourself after hearing negative things said about you day after day after day. Especially from someone who used to be your best friend.

8. After about a month of that, Max spread this rumor that my dad was having an affair with some other woman in town. I say "rumor," but it was probably true. I learned over the years to try not to think too much about what my dad was doing. My dad had always been untrustworthy, but my junior year his drinking got even worse. I knew it, Max knew it, everyone in town knew it. He got into a couple of fights in bars, and he had never been violent before. At the time, I wished my dad would just go away and leave me and my mom alone. But even still, I didn't like Max talking about my dad behind my back and trying to embarrass me in front of everyone at school. Max should have known better. Max knew how I felt about my dad, and I have no doubt at all in my mind that s/he was saying all of this just to hurt me.

9. By the middle of the semester, Max also started bullying my new best friend, Jamie Polt. Jamie and I both played trumpet in the school band. We hung out together a lot. Really, Jamie took over the role that Max had once played in my life. Maybe that is what bothered Max so much about Jamie. Jamie had a slight limp, a birth defect where one leg was shorter than the other, nothing Jamie could do about this. Jamie could still get around and all, didn't need a cane or anything like that. Just, you know, wasn't good at athletics like Max. Max really seized on this and made fun of Jamie for it. Jamie of course had this all his/her life, so I don't know why Max started making fun of her/him in junior year. Every time Max would see me and Jamie together, though, s/he'd say something like, "Well look at this. The moron and the cripple are friends. You two deserve each other."

10. The teasing sort of died down toward the end of the fall semester. Maybe Max was busy studying for finals or whatever. The week after Christmas Max called me up to apologize for how s/he had treated me. "Sorry I was kind of rough on you last semester." Max asked if I wanted to get together to play video games like old times. Max had gotten a new Xbox One for Christmas, and I didn't have one, so I said sure I'd come over. I was a bit reluctant, but deep down I still really wanted Max to like me.

11. When I got to Max's place, things went fine at first. He had a bowl of potato chips out and some sodas. Her/His parents were at work, so it was just the two of us. Max did not say anything more to apologize for how badly s/he had treated me. I guess I was just sort of supposed to pretend that none of it ever happened. We were playing Halo on a splitscreen, both of us on the same team. I liked that we were playing a game on the same team, not against each other. I hadn't played Halo much before. A few times at Jamie's place, but not much. It wasn't one of my favorites. But I guess Max had been playing it pretty much non-stop since Christmas. So, it was not a surprise that

s/he was much better at it than me. We were doing this one mission where I was supposed to provide cover for Max while s/he went to retrieve a special weapon. I couldn't really figure out how to maneuver and shoot well with the controls, and there were some aliens I wasn't able to kill and Max got killed. Max got all angry and was, like, "You're such an idiot. You will always be an idiot!" I responded, "Chill, Max, it's just a stupid video game. We can play the mission again. I promise I'll get the aliens this time." But Max wouldn't have any of it. S/He yelled at me to "just get out" and that s/e "didn't need me anymore" and would "find someone better to play video games with." So, I left.

12. Whatever mild restraint Max had shown toward me disappeared on that day. But I also decided on that day that I needed to start sticking up for myself. I knew it would be bad once the semester started up again. Max and I were in the same English and U.S Government classes. Max was better than me in math and science, so s/he was in advanced classes for those and I was in the regular track. We were seated alphabetically for U.S. Government, meaning that I was seated pretty far away from Max and could mostly ignore him/her. But in English Max was seated right behind me. My uncle/aunt, Sam Pacheo, taught the English class. I think maybe Sam thought Max and I were still friends. I never told Sam about all the mean stuff Max had done to me. I never really told anyone other than Jamie. I figured it was no one's business. The first day of class, Max said to me as we were sitting down, "How am I going to learn this semester if I have to look at the back of your stupid head?" "Don't worry about it," I shot back, "I'm sure you won't go blind." Not the best response, but I couldn't think of anything else to say. And it did seem to have some effect. Max seemed surprised that I would actually talk back to her/him.

13. Most days English class was not too bad. Max would usually call me "stupid" or "dummy" or "loser" when I sat down, but I was kind of used to it by then. No one time was piercing, but each time Max did this was a brick in my wall of depression. Sometimes Max would say things like "Did you see me make the game winning shot last night? Too bad you suck at sports." Or tell me about a party I wasn't invited to. Really just anything Max could think of to make me feel bad. I usually just ignored it. One day in late February, though, I turned around to Max – I can't remember what exactly s/he had said to me – and told him to "shut up" and that I had never done anything to her/him, so s/he should just leave me alone. Max responded "whatever, loser." Then about halfway through class Max starts flicking small spitballs of wadded up paper at me. After about three or four of them, I jumped out of my seat and pushed Max really hard, so hard Max fell on the floor. Max just sort of looked up at me smiling. "Whatever, loser," Max smirked at me. The teacher sent us both to the principal. I got suspended for the next day. I think Max got off with a warning. Makes me mad that I would be the one punished when Max was the one who started everything.

14. This certainly was not the only time Max taunted me during English class. Several times the teacher had to shush Max for talking too much in class. Usually the teacher did not hear what Max was saying, but of course it was usually him/her insulting me for some reason or another. A lot of times, other students would laugh at whatever it was Max said. This is what would draw the teacher's attention. But sometimes it was pretty clear what Max was doing. Like if the teacher asked a question and I gave the wrong answer, Max might say loud enough for the whole class to hear how stupid I was. My uncle/aunt is very non-confrontational and would usually try to diffuse the situation by finding a way to explain the way my answer might make some sense even if it was

ultimately incorrect. I wish Aunt/Uncle Sam had done more to stop Max from openly bullying me. I don't know why s/he didn't.

15. By the end of the semester, Max and I would occasionally basically start yelling at each other either before or during class. With about a month left in the semester, the teacher finally moved Max to a different seat across the room. This reduced the constant subtle teasing, but it emboldened Max to be more open in mocking me. Usually this happened before class and before the teacher walked in. Max was smart enough to know when s/he would get caught. But sometimes Max would not care and kept talking even as class was just about to begin and after Ms./Mr. Pacheo walked in. And Max would almost always jump into the conversation in class whenever I said anything to try to talk me down. I mean, it's English class, so there are not even always correct or incorrect answers. And still Max would find ways to insult me. One time toward the end of April I yelled at Max to just leave me alone and that I was only expressing my opinion about the book. Max retorted "What are you going to do about it." I told Max if s/he wanted to fight I would be happy to fight after school. I didn't really want to fight Max, but I couldn't take it anymore. We both got sent to the principal's office again.

16. I thought things would get better when school let out, but in some ways they got worse. You would think that if Max and I were not together in the same school that I would just be left alone. But instead Max turned to text messages. Max would text me the same kind of stuff s/he would say in class. Every few days. Just so I wouldn't forget her/him I guess. Sometimes I responded, sometimes I didn't. I didn't want to let it get to me, but it did. That is why I responded. I began to insult Max back, hoping this would shut her/him down. It only caused the situation to escalate. And the more I responded and the more Max escalated the fights, the more emotionally wrapped up I became in the abuse by my former best friend. Max never physically hurt me, but I almost wished s/he did. Physical wounds can heal; emotional ones do not.

17. I talked to Jamie about some of this. That was when Jamie confided in me that s/he had experienced similar bullying by Max in math class. Jamie said Max would whisper things like "Oh, the cripple got the right answer" or "I bet s/he cheated. No way Jamie knows how to solve that equation." Max even once called Jamie a "future waste of a handicapped space" to her/his face. I guess Max was more careful in math class than with me and never said anything the teachers could overhear. But Jamie was really hurt by all of it. S/He showed me some scars on his/her left wrist and admitted to cutting himself/herself in response to Max's taunting. Jamie said s/he only did it a couple of times before realizing how self-destructive it was. Jamie started writing a diary after that and told me it helped her/him get over Max's bullying. Just a different way of expressing her feelings. But it also sounds like Max left Jamie alone over the summer, so I had it worse than Jamie in that regard. However, I did take Jamie's advice and started keeping a diary. I didn't write in it every day, mostly just when something was really bothering me. I don't know if it helped or not. I mean, I did attempt suicide at the end of the summer, so I guess it was not that effective.

18. So, yeah, a bunch of stuff happened to me in the summer. Things really spiraled out of control with my dad. On August 6, he beat up my mom. Like real bad. I didn't see it myself. I was on a hike with Jamie when it happened. But when I came home that evening, my mom was sitting on the floor crying and with big bruises to her face and a bloody nose. Fortunately my dad had left the house after doing this. Turns out my mom found out about my dad cheating on her and confronted him about it. After talking to her for almost half an hour, I finally convinced mom to

call the police. They arrested my dad on domestic violence assault. He was convicted and is still in jail for another couple of years. I'm glad he is gone, but it is still really stressful for me. I can't get the image of my mom on the floor there out of my head. We have also had some financial troubles from this. We were sort of living on the edge before, and even though my father was unreliable, he did provide enough income to help us get through. Mom had to start working two jobs after my dad got arrested. I hated seeing her worn out like that.

19. Of course, everyone in town knew about what happened. You would think that Max would have enough common sense to leave things alone or maybe even send me a kind word. But instead Max threw fuel on the fire. I had kind of forgotten to unfriend Max on Facebook from back when we actually were friends. Just before the start of the new school year, Max posted on my Facebook page that I was nothing but a loser and that I would end up just like my father. Max added that I should be sure to "enjoy" my last year of high school because I was "too dumb" to go to college and that I should just end my life before I became even more of an embarrassment to my mother and everyone else. All of my friends saw this. Some of them, like Jamie and even Chris Santana, even stood up for me and posted in response to Max. But all I could see was another year at school of being tormented by Max. I couldn't take it anymore. I didn't want to take it anymore.

20. So on Sunday, August 13 – the day before school started – I climbed up the fire escape to the top of high school. The building is two stories high. As I was climbing up, I kept thinking about my mother and how traumatized she would be if I jumped. And then I would think about how I simply could not make it through another whole year of Max. I don't know if I really thought I would die when I jumped from the roof onto the concrete slab below. I jumped feet first. I fractured my left leg in several places and have had multiple surgeries to get to the point where I will be able to walk some day. I will always have a limp, though, just like Jamie. My head also hit the pavement when I fell. I got a pretty bad concussion and still sometimes have piercing headaches. The doctors say those will go away eventually, though. Probably. But yeah, I survived.

21. And I am glad that I did. I am receiving professional counseling now and building back my self-esteem. I am also learning techniques for how to withstand bullying. Speaking out and getting help from adults is one of the big things. I never should have kept Max's bullying to myself. I am also glad that Max is being prosecuted. Someone needs to stand up to Max for what s/he did to me and to Jamie and probably to many others. Max used to be a really good friend of mine, so this does pain me some, but I feel I have no other choice.

AFFIDAVIT OF JAMIE POLT

1. My name is Jamie Polt and I am 17 years old. I am in my senior year at Crimson High in Bearclaw, Alaska. I was born here in Bearclaw and have spent my whole life here. I have been accepted to Princeton University to study mathematics. I can't wait to get out of Bearclaw; especially with all this stuff that has been going on.

2. I was born with a birth defect called "Limb Length Discrepancy." It's pretty much what it sounds like; one of my limbs is a different length than the other. If we're being specific – it is my legs. My right leg is shorter than my left by 2 inches. It might not sound like a lot, but it is enough to give me a limp. It was hard to deal with when I was younger. I sucked at PE, and I was always picked last in sports. But, I've gotten used to it. The corrective surgery would have cost too much to have done when I was younger. I guess I'm stuck with it now. But you know, they say everything happens for a reason. I may not be an athletic star, but I'm really good at math and playing the trumpet.

3. I've known Jordan and Max since we were kids. Bearclaw is a small town – much smaller than Alaskapolis – so everyone knows everyone. Growing up, everyone knew that Jordan and Max were BFFs. They were always hanging out. I wasn't really friends with either of them until high school. I tried to hang out with them, but they always left me out. Max's parents always bought her/him the newest Xboxes and PlayStations and s/he always had the best games. They never cared about ratings so he'd have cool games like Grand Theft Auto and Call of Duty. My parents never let me play those.

4. I started to hang out with Jordan in middle school. We both played the trumpet in the middle school band and I started helping her/him with her/his math homework. Jordan struggled in school, but s/he really tried her/his hardest! By high school, Jordan and I were really close. S/he even started calling me her/his best friend! It was hard growing up with a physical disability, and a lot of kids shunned me. I was so happy to have Jordan as a friend. I don't think Max liked it, though. Maybe Max was jealous. Maybe that is why s/he started bullying me.

5. Max would make fun of my limp. S/he started calling me cripple and saying things like I was a "waste of handicapped space." We had math class together and s/he would always accuse me of cheating when I got the answer right. It might not seem like a lot, but it really affected me. It might not seem like it to adults, but high school is tough – you're trying to find yourself, you're trying to fit in and be cool, you're trying to impress members of the opposite sex. It didn't help that I had a limp and it definitely didn't help that Max kept pointing it out. I mean, it's not like I could forget it.

6. The worst of the taunting from Max occurred at the beginning of junior year. Usually Max did not bother me much in school. I guess Max didn't want to seem like too much of a jerk to her/his friends by making fun of someone with a physical disability. But that did not stop Max from texting me. Mostly this took the form of Max asking me to join him/her and Chris Santana in sports such as Frisbee golf or basketball. And then saying it was only a joke. I don't know why I fell for it in the first place. I can be really gullible sometimes. Growing up in a small town with a limp and being made fun of so much, I guess I just really am desperate to be accepted.

7. The only time Max really bothered me in school was in math class. Max was clearly jealous of how good I was in math. Max liked to think of herself/himself as the smartest kid in school. For the most part this was true. But I could hold my own, and was definitely better than Max at math, which is my best subject. Max seemed shocked that I could solve equations and math problems that s/he couldn't. Max tried to intimidate me by whispering that "the cripple must have cheated" or other things to that effect. Of course, I never did cheat. But Max still fed into my insecurities.

8. I started to engage in "self-harm", also known as "cutting" myself. I didn't know how to deal with the pain Max was causing me inside and it seemed like an escape. I could replace the pain Max was causing me with pain that I could control. Fortunately, I quickly realized it wasn't helping and it was self-destructive. I Googled it online and learned I needed better coping mechanisms. I started a diary and I wrote in it all the time. That really helped me process my emotions and it felt like I was letting go of my troubles when the ink hit the paper.

9. By the time spring semester rolled around, I had learned just to ignore Max. And when I ignored Max, Max ignored me. Unfortunately, Max started directing more of her/his bullying toward Jordan. I felt really bad for Jordan. Max would always call Jordan stupid, idiot, moron, loser. . . you know, things like that. When s/he saw us in the halls s/he'd always say "oh look at the moron and the cripple." People in the hall would laugh at point at us. It was embarrassing. I was afraid Jordan would drop me as a friend to try to get away from Max's bullying. I am so glad that did not happen. Jordan and I both needed each other.

10. Jordan and Max had U.S. Government and English together. I didn't have either class with them, but Jordan would tell me about all the mean things Max did. It seemed really mean, but if I am being honest... I heard from other students that Jordan would get really aggressive with Max in English. For example, Chris Santana said that Jordan would yell at Max and that it seemed like Jordan was trying to start a fistfight with Max. I can kind of see it. When Jordan would tell me about the things Max did s/he'd get so worked up. I could tell her/his anger was about to boil over.

11. Of course, I could totally identify with this, having gone through it myself. I would tell Jordan just to let it pass and to ignore Max, but Jordan did not really seem able to do that. Jordan never started self-harm like I did, but instead just internalized the pain. I tried to be supportive of Jordan as best I could. I offered moral support where I could. I told Jordan how much it helped me to keep a diary and encouraged her/him to do the same. But, I was not in Jordan's head and could not tell how much pain s/he was really in.

12. Jordan's home life sucked. Everyone in town knew about it. Her/His dad was a drunk. Jordan and I hung out a lot last summer because s/he needed an escape from what was going on at home. No one else would really hang out with me, so I was happy to have Jordan's company. There were plenty of things to explore around Bearclaw. I couldn't run all that fast, but I could still go on hikes. In early August, I dropped Jordan off after a hike, and s/he called me a few hours later to tell me about her/his dad beating his/her mom up. It was really scary and really sad. We all knew about it, but no one really said anything to Jordan's face. Well, except Max. Max posted about it on Jordan's Facebook wall! I couldn't just ignore this assault on my best friend and shot back a reply. I mean, Max's post was so out of line that even Max's friend Chris replied and defended Jordan.

13. Shortly after Max's post, Jordan jumped from the roof of the high school. I can and can't believe my best friend tried to kill himself/herself. I wish that there was more I could have done. Had I known that it had gotten so bad, I would have tried to do more. I would have told someone. Or encouraged Jordan to get professional help. I'm just glad s/he's going to be okay. S/He limps now on her/his left leg. We joke that we even each other out. It is going to be hard leaving Jordan in Bearclaw when I leave for college.

AFFIDAVIT OF SAM PACHEO

1. My name is Sam Pacheo, and I am an English teacher at Crimson High. I am also Jordan's aunt/uncle; Jordan's mother is my sister. My sister and I are close, and I often spent time at their home, helping my sister with Jordan, at least while Jordan was young. I do not have any children of my own, so I have always considered Jordan like my own child. While Jordan was younger, I lived only three blocks away, so it was very easy to stay in contact. Jordan's dad was always unreliable and only intermittently employed. As a result, Jordan's mom did not have much money to give Jordan some of the things that children are used to having growing up. So, I would host birthday parties for Jordan at my house and take her/him to the movies, things like that. I just wanted what was best for Jordan

2. About four years ago, I had a house fire, so I had to move, and now I live on the other side of town. This has made commuting to work a little more difficult, but fortunately Bearclaw isn't a huge city, so it's not that bad. My biggest regret about moving, though, is that probably over the last two or three years I haven't been spending as much time with my sister. Our relationship is still close and we still talk regularly on the phone, but I don't spend nearly as much time with her. I never liked Jordan's dad much and am not surprised with what transpired last summer. To be honest, I am a little surprised that he did not become physically violent earlier. No child should have to witness domestic violence. Jordan's mother is not the only victim. I know how tough everything that happened was on Jordan and have no doubt that it contributed to Jordan's fragile psychological state.

3. I know Max Calhoun because s/he grew up with Jordan, and also because Max was a student in one of the classes I taught last year – English Literature. Jordan and Max have always been quite close. When they were younger, they would often spend time at each other's homes and sometimes at my home. Those birthday parties I mentioned? Max was always there, and it was a joy to see her/him and Jordan play together. I thought they would be best friends forever, as the kids put it. But, unfortunately, this did not happen. Through my relationship with Jordan, I knew that s/he and Max were no longer the close friends they once were. I had no idea, however, that Jordan had become Max's enemy. I never would have thought this possible.

4. Max is a bright student, but s/he also seemed to have trouble engaging with other students' perspectives on topics when we had class discussions. I believe one of the wonderful things about English Literature is that the books we read can be interpreted different ways, and what one reader gets out of the books might be different than what another gets out of it. I try very hard to instill in my students a love for learning and an acceptance for differing viewpoints or perspectives. Max, however, seems to only want to get to the "right" answer. I understand s/he is advanced in math and science; but literature and social science classes don't always have "right" answers. When the discussion starts to go away from what he wants to talk about, s/he would interrupt, and in a nasty tone deride the other students. Max almost always acted as if s/he was the smartest person in the room. That was basically true, but it does not mean it was appropriate for Max to act this way.

5. Max was sometimes disruptive in class. S/He interrupted students when s/he disagreed with them or when it took the student too much time to express his or her answer. In contrast, Jordan was always kind to his/her classmates. For example, Jamie Polt is another student at Crimson High. Jamie is picked on by some students for his/her limp, which is because of a birth defect. Rather

than pick on Jamie, Jordan and Jamie became close friends and sit together at lunch all the time. Jordan is just accepting of others that way. I can't see how anyone can't like Jordan.

6. Jordan is a good student, too, but I think his/her home life, and that good-for-nothing father of his/hers, prevents him/her from doing all of his/her homework and coming to class prepared. I prefer not to embarrass students in front of the class like some other teachers, and I try to guide my students when they are answering questions in class, even if it is obvious that they didn't do the homework. I know Jordan always tried hard, but s/he had a good excuse for not doing well in class. I consider Jordan courageous for coming to school every day, not only because of what was going on at home but because of the bullying I now know s/he was experiencing from Max.

7. In last year's English class, Jordan and Max sat near the back of the room. The class is not especially large, but it was right after lunch hour, and students are always a little rowdy right after lunch. Students think that when teachers have their back turned that they are completely unaware of what goes on behind us. But we know. We just do not always choose to act on it. I could hear Max teasing Jordan, calling her/him a "loser" and "stupid", things like that. Jordan never said anything back from what I could tell. I probably should have said something, but my feeling is that when teachers get involved it usually just makes things worse. Plus, sometimes other students like Chris Santana would tell Max to be quiet, so I figured it was being taken care of by the students themselves. I deeply regret now not doing more to step in and stop what was going on.

8. One incident in particular that stands out was around the middle of spring semester. I had my back turned to the class while I was writing on the whiteboard, and I heard some shouting behind me, and a crash. When I turned around, I saw that Max had fallen out of his/her chair, and several students, including Jordan, were standing over him/her. Max shouted that Jordan pushed him/her down. I do not believe that is what happened. Jordan has always been such a sweet boy/girl, and would not do anything violent, but I could not risk looking biased, so I sent both of them to the principal's office. When I found out that the principal suspended Jordan but only gave Max a warning, I confronted the principal. After all, I know, based on the personalities of Jordan and Max, that Max had to have instigated the fight. I was shocked to find out that the principal didn't want to suspend Max because he thought Max was more believable!

9. Throughout the rest of the semester, it became pretty clear Max and Jordan weren't getting along. I tried to talk to Jordan about it, but s/he would not open up to me. When Jordan didn't want to talk to me, I suggested s/he speak with a counselor. Jordan met with Pat Landing, the school counselor, although I don't think that title fits him/her well. Because our school is small, Pat, who was a nurse before s/he got fired from the hospital, does double duty as the counselor. I'm pretty sure Pat was never trained in counseling, though, and I don't think it is appropriate that someone without the proper background should be counseling students. This is especially true in Pat's case, because the talk of the town is that s/he was fired from the hospital when s/he wrote down the wrong allergies for a patient and got the patient killed. But, I suppose some counseling is better than none, and Crimson High does not have the budget to have a dedicated trained counselor.

10. In any case, I decided to separate Max and Jordan in my class with about a month left in the semester, so that at least they were not sitting next to each other. This helped with Max's petty insults of Jordan as class was getting ready to start. But there were still some times during class discussions when Max would find ways to be critical of Jordan. As the semester went on, Jordan

kept falling further and further behind. Jordan still tried to participate in class discussions of the readings, but even for someone as accepting of different opinions as myself, I have to admit that some of Jordan's interpretations were not supportable by the material. This bothered Max to no end. I particularly remember one exchange that happened toward the end of April as the class was discussing the classic *Moby Dick*. While Jordan was floundering, Max blurted out, "Just shut up, Jordan! No one wants to hear your inane interpretations of *Moby Dick*! You are just proving to everyone how worthless you are!" Jordan stood up and yelled back at Max that s/he was just saying what s/he got out of the book and to leave him/her alone. I was surprised to hear such an outburst from Jordan, even if there was some justification for it. But still I had no choice but to send both of them to the principal. I think both of them were just given a warning about behavior; neither were suspended.

11. Whatever the principal said to Jordan and Max must have worked. There were no outbursts between the two of them for the remainder of the semester. Perhaps Max was afraid of a disciplinary record hurting his/her chances of getting into a good college. I wish this had been the end of it between the two of them. I needed to earn extra money and worked as a tour guide in Alaskapolis over the summer, so I was not around Bearclaw much when Jordan needed me most.

AFFIDAVIT OF ALEX SMITH

1. My name is Alex Smith. I received my undergraduate degree in 1984 from the University of Seattle. I majored in psychology. After working for a couple of years, I began a graduate program that was a joint program between the University of Washington and the University of Alaska Anchorage. I completed that program, receiving a Ph.D. in child psychology in 1992.

2. I am from Anchorage, so getting to spend part of my graduate program in Anchorage was important to me. During my program I worked counseling Alaskan youth with mental health concerns. I focused on youth suffering from drug and/or alcohol abuse and those contemplating suicide. I did not specialize in one particular issue, partly because it is impossible to do so. Mental health issues, substance abuse concerns, and suicide are all related to each other — trying to distinguish one from another is a fool's errand.

3. I have been a professor at the Seattle University since completing my Ph.D. program. I spend time teaching in Alaska too, sometimes during the academic year, sometimes during the summer. I still live up here a lot of the time, so I love getting to work up here too. I have actually written a book about suicide among Alaskan youth — *Our Dying Young: Suicide Among Alaska Youth*. It focuses on the unusually high rate of suicide among Alaskans and how to address it. I spend a lot of time working with Alaska youth.

4. I have worked as an expert before. I have only testified as an expert 10-20 times — either in Alaska or in Washington. I don't like being in court. It just feels impersonal to me. I like to be able to connect with people, and courtrooms are too formal for my taste. I often work on cases but do not testify in court, either because the case settles or because I provide background work for the attorneys or assist another witness who will testify. Primarily, I testify about child psychology or about mental health, substance abuse, or suicide. Those are the things I feel most comfortable talking about. I charge \$150 per hour for preparation work and \$350 per hour to testify.

5. I think, when discussing suicide, it is important to differentiate suicide from a mental health problem. It is too easy because it writes suicide off as a mental health problem. They are related, obviously, but suicide is its own issue. It is important to understand that. We have to understand suicide as something related to but separate from mental health or substance abuse.

6. Trying to understand why people attempt and commit suicide is critical to my work and the work of others. We want to help people. It is hard to say what causes someone to attempt suicide. Sometimes, it is one single event. A catastrophic health event, for example, or a sudden death of a close family member or romantic partner. Usually, it is a multitude of factors, and identifying the proverbial straw that breaks the camel's back is hard. Even if a single event precipitates a suicide attempt, it is simplistic to identify that event as the "cause."

7. However, it is also foolish to not pretend that someone cannot be the critical contribution to someone's decision to commit suicide. It really is like a camel, if we return to our metaphor. Imagine someone loads a camel with piles of stuff, and someone else is watching it happen. All sorts of stuff – potatoes, books, old socks, I don't know what camels carry. And the person watching sees that the camel is carrying a lot of stuff. Now, instead of loading a literal piece of

straw that pushes the camel over the edge, this person decides to pile on some bricks. And the bricks don't weigh more than all of the other stuff on the camel's back, but still, they're bloody bricks. And that breaks the camel's back. That person can point at all the other stuff and say, "No, that stuff broke the camel's back!" But that person saw it all being loaded, knew the camel was under a lot of pressure, and tossed on some bricks. It's naïve for that person to pretend like they did not critically overload the camel.

8. As part of my preparation for this case, I reviewed all the materials I could. This includes witness affidavits, Facebook postings, Jordan's diary, everything I could get my hands on. That's how I work. And based on all of that, I think Max Calhoun was the proverbial person loading the bricks onto a camel. It is naïve at best for him/her to act as if Jordan was a teenager with so many problems that just a minor push was enough to send Jordan into a suicidal spiral.

9. Bullying is a large part of suicide among youth. As adults, I think we sometimes forget how important our peers are when we are young. But really, I bet most of us never forget. We still crave approval from our friends and family even as adults. But for kids, that approval is critical. Kids and teens are learning who they are, and they want to do that surrounded by friends. For those who struggle to fit in, it is very difficult to develop a positive self-image. And when our peers turn on us that can be devastating. Bullying is one of the major contributors to youth mental health issues. It is harder to pin down its role in suicide in particular, but there are many examples of youth for whom bullying was a huge factor in their decision to attempt suicide. Bullying is often a thoughtless behavior on the part of the bullies, meaning the bully does not consider the consequences, but that does not discount the role it plays in teen suicide.

10. I have read Andy Billings' work, and I largely agree with him/her. Bullying has always existed. However, I think Andy underestimates the effect that social media has had on how bullying operates now. In the past, I could just physically avoid people who teased me in school. (And that did happen, as I was kind of nerdy.) Now, people cannot do that. Jordan certainly could not. Max was texting, using Facebook. I am glad they did not have Twitter accounts, as that would have just made things worse. It is too easy to send mean messages when you do not have to look the person in the face. I think that made it easier for Max to tease and bully Jordan. I am honestly not sure how much Max cared about seeing Jordan be sad, but I find it hard to believe that even someone as callous as Max would have said the Facebook post to Jordan's face. It is hard to tell someone to kill themselves face to face.

11. I think the fact Jordan and Max used to be friends only made Max's bullying harder on Jordan. The fact that Max seems to genuinely believe s/he is more intelligent than Jordan, and that Jordan will never amount to much, only makes that fact worse. Imagine if your close friend honestly, truly believed that you were just not that smart. It would be devastating. It is similar to Jordan's relationship with her/his father. Max was in and out of Jordan's life in the same way. After being such a close friend as a child, Max drew away, then came back with the gesture of playing Xbox together, then turned even meaner after that did not go well. Just another example of someone who had been important to Jordan turning away and becoming a negative influence.

12. The tale of the summer of text message taunts culminating in Max's Facebook post was the load of bricks in this story. Max was aware of what was going on in Jordan's life, of the

difficulties happening in Jordan's family. And yet, Max continued taunting Jordan. It shows a level of deliberate cruelty for Max to continue teasing and bullying Jordan over the summer while being aware of what Jordan was going through.

13. The text message exchanges between Max and Jordan are interesting for a few reasons. First, Max is clearly unwilling to let the abuse of Jordan go. The constant pestering of Max's taunts are part of what made his/her bullying so effective. Taunting Jordan, then backing off, then resuming the taunting. Jordan really got no break from the situation despite her/his requests to Max to back off.

14. The other aspect of the text messages that I find interesting is the way Max introduces the idea of Jordan dying. It's not in the context of suicide, but Max suggests that everyone would be lucky if Jordan drowned while swimming at the lake. This is not a direct command that Jordan commit suicide, nor is it even a suicidal ideation, but by bringing up Jordan's death and suggesting that it would make other people happy (generally people consider being lucky a good thing that makes them happy), Max is planting a seed, intentional or not, that Jordan's death would benefit others. This is often part of what drives people to suicide, the thought that they would be less of a burden to others if they kill themselves.

15. And the Facebook post. I struggle to understand the vindictiveness of our youth sometimes. I guess it's not just youth, but this post is hard to fathom. Max's message is clear — Jordan should kill himself/herself. It's in capital letters after all.

16. For me, looking at this from the outside, it is naïve to think that Max was unaware of how Jordan would take the Facebook post. Max knew that Jordan had strong feelings about his/her father. Max knew that Jordan had just gone through a traumatic experience in finding that her/his father had assaulted his/her mother. Max knew all of this. So then Max draws it out, puts it on public display, and tells Jordan to kill herself/himself. If Max wants to pretend this was just teasing, that probably just reflects Max's attempt to salvage her/his personal and public image. Max saw a loaded camel, struggling already, and put a load of bricks on top. And then told the camel to collapse.

17. I recognize that things get weird, so to speak, on the internet. People say things on there that they would not say in person. But we live in a world where people have discussed high profile bullying cases, many of which resulted in the victim committing suicide, in the public sphere for years. I think it is an excuse of Max's responsibility to say that Max can pretend like s/he did not want Jordan to commit suicide. I find it hard to believe that Max, who claims to be highly intelligent and on his/her way to a good college, is somehow unaware of the many examples of bullied teens choosing suicide when they get pushed just a little bit. Max told Jordan to commit suicide. That is a huge deal.

18. I guess I cannot say for sure what Max intended to happen with the Facebook post. That's not for me to say as I am not in Max's head (nor have I had the opportunity to interview her/him). One would have to ask Max about it. But for Max to pretend that s/he did not know of the strong emotional damage this would do to Jordan is simply not credible.

AFFIDAVIT OF MAX CALHOUN

1. I am Max Calhoun. I am 18 years old and should be a senior at Crimson High in Bearclaw, but instead I am being unfairly detained in jail. If I am guilty of anything, it is of being a typical teenager. Maybe I said a few things that could be construed as mean, but it is not my fault if Jordan Pacheo cannot take a little teasing. It is unfortunate that Jordan tried to commit suicide – and I am glad s/he did not succeed – but Jordan had a lot of problems and a lot of things going on in her/his life, and I do not feel I should be blamed for what happened. This is a waste of a year for me when I should be preparing to go to college. The real injustice is that this might negatively impact my ability to get into the institution of higher learning that I deserve.

2. Jordan and I used to be really good friends. I mean, we did everything together from a very early age, starting when I went to Jordan's mom's daycare. We would, like, tell each other secrets that were not really secrets, put on stupid plays for our parents, always sit together during lunch and play together during recess at school, hang out and play video games as we got a little older, that sort of stuff. When we were young, we thought we would be friends forever. Sort of silly, I guess, but that is how kids think. Then you grow up.

3. It was fine being friends with Jordan in elementary and middle school. Everyone is learning at more or less the same level. But as I started excelling in high school, Jordan started being left behind. It's not that I started disliking Jordan, I just wanted to be around other students with comparable intellectual capabilities. Or at least somewhat close – I'm still by far the best student in my graduating class. I knew by tenth grade that I would be able to go to a top college nationally. Why risk slowing my development by hanging out with someone such as Jordan? I figured Jordan could be happy with whatever meager life s/he could make for himself/herself, but I wanted more.

4. Jordan and I would still say hello to each other in the hallways at school, occasionally make small chat. It didn't really bother me at first. By junior year, though, Jordan was getting annoying. We were just completely different people by then. Jordan would try to talk to me between classes, but I was through with him/her. I'm busy, and I don't have time to have conversations with Jordan just because we used to be friends or because s/he was lonely or whatever. I wanted Jordan to leave me alone, so I would occasionally call him/her a "dummy" or a "moron," hoping s/he would get the message. But s/he didn't. Kept trying to take up more of my precious time. Whatever. I guess that was my burden to bear.

5. After a couple of months, I decided that maybe the best approach would be just to ignore Jordan. So, I stopped saying anything at all to Jordan and it more or less worked. I didn't talk to Jordan and Jordan didn't talk to me. I mean, I did tell some of my friends about Jordan's dad having an affair, but that was just fun town gossip, not really anything meant to hurt Jordan. And besides, everyone in town knew about it. I did know from back when we were friends that Jordan could be sort of sensitive about her/his dad, but Jordan should be used to bad stuff being said about his/her dad by now.

6. I found it funny and a bit pathetic that Jordan became such good friends with Jamie Polt. I mean, I know it was not Jamie's fault to be born with a bum leg, but sometimes life sucks. Doesn't mean that you have to be friends with someone like that out of an overgrown sense of

sympathy. But whatever. If Jordan and Jamie wanted to be best friends, more power to them. Neither of them are going to amount to anything, but that is not really my problem.

7. When I received a new Xbox One for Christmas, it made me nostalgic for the many afternoons Jordan and I used to spend playing video games. About a week or so after Christmas, I decided to give Jordan another chance at being friends. I also realized that maybe insulting Jordan was not the best way of creating separation between the two of us. So, when I called Jordan to invite her/him over, I apologized for some of the things I said. And I meant it. I was being a bit of a bully and that was not cool. I was ready to try to turn over a new leaf and make our friendship work again.

8. Things were fine initially when Jordan came over. I decided to play Halo, as we could both play that together. It was also one of my favorite games – I had been playing it in nearly all my free time ever since I opened up the Xbox One on Christmas. It would also allow me and Jordan to play cooperatively, meaning we wouldn't have to compete against each other like we used to do. It took a little bit to get Jordan used to the controls, but soon we were off on some fun adventures. Little did I know that Jordan would soon ruin the game by being so inept at it. All I asked Jordan to do was provide cover to me – shoot down any incoming aliens that might kill me – so that I could retrieve a special weapon that would be a great help for future missions. I really needed help on this, and Jordan couldn't come through! Jordan kept screwing up the mission! Maybe I got a little too wrapped up in things, but I am a very competitive person, and Jordan knew that. Jordan knew how good I am at academics and at basketball and that I expect excellence from all of my friends. Of course I am going to yell at Jordan when s/he screws up. And what really made me angry was when Jordan tried to pass it off as if this were just a game, telling me to “chill out.” Ok, maybe other people don't care much about doing well at video games, but it is important to me. If that is the attitude that Jordan was going to take, I didn't want to play the game anymore with him/her. I told Jordan to leave and s/he did.

9. I really found it kind of insulting that I was forced to sit next to Jordan in English class. I mean, yeah, I guess Jordan is a decent writer and all that. I was just tired of Jordan and wanted to be with students I could actually be friends with. I had given things one more chance and it didn't work out. Fine. I needed to move on, and constantly having to stare at Jordan wasn't going to help matters. I'm sure I said some things to Jordan early in the semester that I shouldn't have. I don't really remember what I said. If anything I was just frustrated. I didn't hate Jordan, I just didn't want to be around her/him. I probably should have asked Mr./Ms. Pacheco to move me to another seat, but since s/he is Jordan's uncle/aunt I was afraid that would be awkward and make me look bad.

10. I would sometimes taunt Jordan at the beginning of class before things got started, but it was always just simple teen teasing. Nothing serious. My friends say the same kind of things to me all the time. You know, talk about things we did in last night's game or parties we went to or who was dating (or not dating) whom. Is it mean spirited? Maybe a little. But like I said, all my friends did it. And to be honest, Jordan should feel a bit honored that I would include her/him in such banter. The people I really don't care about I completely ignore. Just ask Chris Santana. S/He is a mutual friend of me and Jordan, but I don't hold that against him/her. I tease Chris all the time; it is just part of our friendship. If Jordan could take my ribbing a little better maybe there is even a chance that we could be friends again.

11. I remember one time before English class – I think it was late February – I asked Jordan what idiotic thing s/he was going to say in class that day. I was just kidding around, but rather than joke back with me, Jordan decided to escalate the situation by telling me to “shut up” and asking me to leave him/her alone. Well, I couldn’t just sit there and take that. So, after class began, whenever the teacher turned around I would flick a small spitball at Jordan. Nothing serious. Just reminding Jordan who was boss. Before I knew it, Jordan goes ballistic, jumps out of the desk, and shoved me hard out of my desk onto the floor. I have never touched Jordan. S/He was the aggressor here. I think I smiled a bit and called Jordan a “loser”. But to be honest I kind of liked Jordan sticking up for himself/herself.

12. Jordan and I got into it a few times in English class after that as well, especially as the semester wore on, but it was always Jordan’s fault. I mean, not like Jordan would intentionally take me on, but s/he just kept saying such stupid things in class that I couldn’t help but respond. I don’t want my time wasted in class, and that is what Jordan was doing by giving such obviously wrong responses to the teacher’s questions. I mean, if you don’t know, keep quiet. I would sometime have to talk over Jordan to get the class back on track. I didn’t want to have to do it, but I also didn’t want the class to go down so many useless paths in our discussions. By the end of the semester sometimes Jordan would start yelling at me for no apparent reason. I was simply taking part in class discussions, but Jordan could not handle that I was a better student than s/he was. At least it finally caused the teacher to separate us so that I didn’t have to look at Jordan anymore. We’d still argue from time to time. And during one particular argument toward the end of April Jordan even challenged me to a fight. To Jordan’s credit, though, s/he backed down once s/he realized I would be happy to fight him/her. Like I said, Jordan was always the aggressor.

13. After school let out, Jordan and I of course did not see each other nearly as much. Occasionally we would run into each other around town – Bearclaw is fairly small that way – but for the most part we could ignore each other. I would occasionally send Jordan text messages. Same kind of stuff I would say in class. Not really sure why I did it. Maybe I was bored. More I just didn’t want Jordan to think I had forgotten about her/him. I probably should have just let things be, but I was fairly ticked off at Jordan by the end of the semester and that sort of carried over into the summer. And it’s not like I texted Jordan every day. More like once every few weeks or whatever. Usually Jordan just ignored me, so it couldn’t have been that big a deal.

14. Everyone in town heard about Jordan’s father being arrested for domestic violence for assaulting Jordan’s mother. I can’t say anyone was really surprised. Like I said earlier, it was common knowledge that Jordan’s father was having an affair and was a drunk. This all happened just as school was about to start. I’m sure this was all really tough for Jordan. Jordan’s father had been an alcoholic ever since we were friends, and Jordan often told me in private how much this hurt her/him. I can only imagine how much worse it was now with Jordan’s father being arrested and jailed, probably for a long time. At least it got the dude out of the house, so I suppose that was some small blessing.

15. The weekend before school started I posted a message on Jordan’s Facebook page about her/his father. In retrospect, I probably should not have done it. I can see now how much of a bully I was being. I had gotten sort of ticked off at Jordan for some of the texts s/he had responded to me with over the summer. I had this brainstorm where the beginning of the school year, corresponding with the arrest of Jordan’s father, just seemed like the perfect time to send a message

to Jordan – literally and figuratively – not to mess with me during the upcoming school year. I really needed to concentrate on my studies and couldn't risk having Jordan interfere with that. That Jordan's friends would also see the post would get across to them as well that Crimson High was *my* school, not theirs. So I did it. I was being a bully. I mean, I know I am better than Jordan and all of her/his friends, but I didn't need to tell them that.

16. And yes, I told Jordan in the post that s/he should kill himself/herself. I never in a million years thought that Jordan would take me seriously and actually try to do it. I didn't really want Jordan to commit suicide. I was just being mean by rubbing in all of the bad stuff that had been happening to Jordan and reminding her/him that s/he would never amount to anything. It is not my fault if Jordan always takes everything the wrong way. If I had known that reading my Facebook post would cause Jordan to jump from the roof of the school, I would not have put in the part about trying to kill herself/himself. Maybe I underestimated how messed up Jordan already was about his/her family situation. Regardless, it was just one Facebook post, and Jordan needs to learn to let it go.

17. There is a part of me that still cares for Jordan. Even without Jordan's suicide attempt, I doubt we could ever become friends again. We are just very different people now. I guess Jordan is sort of getting revenge against me with all of these legal proceedings. I was going to have my choice of top colleges to go to, and now I am afraid that none of them will be able to look past the charges that have been wrongfully brought against me. Now Jordan is a cripple just like Jamie. Good thing they are friends; Jamie can help Jordan adjust. Jordan almost wasted her/his life, and now s/he is wasting mine.

AFFIDAVIT OF CHRIS SANTANA

1. My name is Chris Santana, and I live in Bearclaw, Alaska with my mom, dad, and two younger sisters. We moved there when I was in 4th grade. My parents thought Alaskapolis was getting “out of control” so they moved us out to Bearclaw. I’ll be graduating this year and attending Alaska State University in Alaskapolis. I think I want to major in Biology. I am fascinated by how animals live and function.

2. I met Max and Jordan when I moved to Bearclaw. We had Ms. Rogers as our teacher. I was friends with Max and Jordan, but everyone knew they were best friends. I could never expect to be as close to them as they were to each other. They did everything together. That is, until high school. It seemed like they grew apart in high school. They did not hang out together as much. Max got really into sports (and was pretty proud of himself for it) while Jordan got more into music. They started running in different circles so to speak. But I always thought they were still friends.

3. For as long as I’ve known them, Max and Jordan have always had a “teasing” relationship, especially when it came to video games. If you didn’t know them, you would have thought the two hated each other! When Max won, s/he’d always yell “WHO’S THE LOOOOSERRRR NOW BABY?!!!!” When Jordan won, s/he’d do this little victory dance and rub it in Max’s face. The other never seemed to mind. They both seemed to understand that it was good-natured.

4. During junior year, Max liked to pick on Jordan. Max would call Jordan things like “stupid” or “idiot”, but Jordan didn’t seem depressed because of it. Mostly, Jordan seemed angry or annoyed with Max. For example, I was in English class with Jordan and Max. Jordan would get really angry with Max and yell at him/her. Sometimes, Jordan would stand up and yell in Max’s face. It seemed like Jordan was going to start a fistfight with Max! I thought Jordan was overreacting, personally. Max was being dumb, but s/he was just teasing a bit.

5. A friend of mine had U.S. Government with Max and Jordan. She told me that Max picked on everyone. I mean, not just Jordan, but everyone. It was her/his way of being a class clown. Max would make jokes about the other students, and they all had a good laugh. My friend said the only person who would get upset was Jordan.

6. Max and I played Frisbee golf (or frolf) a lot. During junior year, I’d tell Max to invite Jordan, and s/he’d show me texts where he invited Jordan. If Max really hated Jordan, I don’t think s/he’d invite her/him to join us. Their teasing was just their usual jesting. Jordan usually would not come. Sometimes s/he would send snarky responses to Max, kind of dish out anything Max was serving in his/her texts. Often the texts that Max showed me were pretty benign, just normal “Hey, want to come over?” kind of stuff. Other times Max would tease Jordan a little more but usually nothing that was too big a deal.

7. Everyone in town knew that Jordan’s dad had some problems. It was too small of a town for people not to. I heard all sorts of things, and I’m sure Max did too. That Jordan’s dad was out drinking again, that he was hitting on someone at a bar, that he was caught fooling around with people, that he got fired again for missing work or showing up hungover or even intoxicated. It

was pretty sad, frankly. I'm sure Jordan knew not only about all of what her/his dad was doing but that everyone in town was gossiping about it. I never really saw Jordan talk about it, but I'm positive s/he knew about it. I knew about it, and I wasn't seeking the information out or anything!

8. Word about Jordan's dad assaulting Jordan's mother in August 2017 spread fast in Bearclaw. Even though we weren't in school yet, we all heard about the cops being called to Jordan's house. I felt bad for Jordan and his/her mom. She was always a really nice lady. It was around this time that Max posted a cruel comment on Jordan's Facebook about the whole situation. I had to say something about it. I like Max and all, but the Facebook message was a little much.

9. Max is a nice person. S/He can give people a hard time, but deep down s/he is a good person. S/He'd never actually hurt anyone. I have seen Max be very nice to other people. For example, playing basketball or other sports, if someone gets hurt, Max is often the first person to see if the other player is okay. I once heard about Max helping an injured player off the field in the middle of a play during some basketball game or something. I'm not sure of all of the details, but it sounded like Max was doing whatever s/he could to help the other player.

10. That's why the Facebook post stood out to me as so out of character. I mean, it was pretty mean. I usually don't get involved in Facebook stuff because the drama is too much for me, but this was over the line. If I had seen Max say something like that in person I would have said something too. So, I just responded. I don't remember exactly what I said, but I just wanted to make sure Max knew that was over the line.

11. I was very surprised when I heard the State was charging Max for what happened to Jordan. Max isn't the only person to blame. Sure Max teased Jordan, but Jordan had a lot going on in her/his personal life – you know with her/his dad and all that drama. Jordan made her/his own choice. Max shouldn't have to be punished for it.

AFFIDAVIT OF PAT LANDING

1. My name is Pat Landing. I am the school nurse and counselor at Crimson High. Before working at Crimson High, I was a nurse at Bearclaw Regional Hospital for twelve years. After my employment at the hospital ended, I was hired by the school as a nurse. This is now my fourth year at Crimson High. Three years ago, the principal asked if I could also serve as the school's counselor. Because Bearclaw is a small town, the school is also small, and there isn't need for a full-time counselor. I had thought about majoring in social work while I was in college, and I read several studies and books about teen suicide, so I have always been interested in being a counselor. I do not have any formal training in counseling, but since being asked to fill this role I have read several books on the topic and attended a workshop on student counseling in Alaskapolis a couple of summers ago.

2. I know Jordan Pacheo as s/he is a student at Crimson High. S/He has a troubled family life, mostly centered around his/her father. S/He also suffers from feelings of isolation and being bullied, but I can't really say how much worse for him/her compared to the average high school student. Jordan is a very nice young adult. But also very meek and prone to self-blame. It is clear from talking to Jordan that s/he has substantial problems with self-confidence. This is likely a direct outgrowth of the unsupportive home environment in which Jordan was raised.

3. Jordan has been seeing me for counseling since just about the time I started serving as the school's counselor. I did not have a regular schedule with Jordan. S/He would come in whenever s/he felt the need. At first it was only once every couple of months, but the visits increased dramatically in the year leading up to Jordan's suicide attempt. I would say this probably happened every two or three weeks or so during Jordan's junior year. Sometimes it was tough during these sessions to get Jordan to start talking, even though s/he was always the one to initiate the visits.

4. During most of the visits Jordan would talk primarily about her/his father. Indeed, it seemed that most often some negative action by his/her father is what prompted Jordan to visit me. Usually these incidents consisted of Jordan's father yelling at either Jordan or his/her mother, usually while drunk. Jordan would relate to me all of the names that her/his father called her/him – "worthless", "stupid", "failure" and so on. Jordan would tell me how much s/he still loved his/her father and how much s/he wanted his love in return. Jordan broke down crying multiple times relating how hurtful it was that s/he could not live up to her/his father's expectations.

5. There were some times when Jordan also told me about bullying by Max Calhoun. It was almost as if Max's actions at school repeated the betrayal and negativity Jordan felt from her/his father. For example, Jordan came to me just as the spring semester was starting last year to tell me about a fight s/he had with Max. It seems Max invited Jordan to her/his house to play video games. Things didn't go well, and Max ended up kicking Jordan out. It didn't sound to me like anything serious. Teenagers get into arguments all the time. But to hear Jordan tell it, s/he was really hurt by it because of the long friendship s/he previously had with Max. I remember Jordan saying, "I'll never get my father to accept me. And now I'll never get Max to accept me either. I guess I am just not the type of person to have lifelong friends." I tried to assure Jordan that this was not the case, but there was only so much that I could do.

6. There was one other incident with Max that stood out to me. In late February of junior year, a couple months after the video game incident, Jordan got into a fight with Max in English class. And this time I mean a physical fight – Jordan pushed Max to the ground. It really surprised me that Jordan would do something like that. I don't care how angry you get, there is no excuse for physical violence. Jordan was rightly suspended for this. But Jordan came to me and tried to blame Max for what happened. I saw this as Jordan not taking responsibility for her/his own actions.

7. But while there were a few times that Jordan talked about Max, predominantly our conversations focused on Jordan's relationship with his/her father. With the benefit of hindsight, Jordan was definitely depressed these last couple years, possibly even longer. Jordan's recent attempted suicide has encouraged me to restart studying teen suicide. I know now that there were several red flags that, had I realized then, would have led me to intervene more dramatically.

8. One of those red flags was that Jordan would appear especially introverted whenever his/her father returned home for a weekend or between jobs. Jordan's father is an alcoholic, and I had always suspected might also be physically abusive to Jordan and to his/her mother, or at least would become abusive eventually. Growing up in that home, it really is no wonder Jordan was so depressed. I read in the news that right before school started this year, Jordan's father was arrested for assaulting Jordan's mother. Jordan attempted suicide shortly afterwards. I believe the domestic violence incident triggered Jordan's suicide attempt.

9. Based on what I've read and studied since Jordan's suicide attempt, having a troubled home life, and especially having an abusive parent, is one of the most significant risk factors for teen suicide. This is not to say that bullying by Max Calhoun and perhaps others did not contribute to Jordan's psychological state, but they were not the driving force. Rather, they were piling on an already fragile individual. I think that if Jordan had a better home environment and consequently more self-confidence that s/he would not have been so susceptible to bullying.

10. I don't see Jordan for counseling anymore. After his/her suicide attempt, he/she hired a private licensed profession counselor. I think that is the right route for Jordan to take, because it is important Jordan have a long-term counselor to help with his/her depression from his/her home life. Establishing a relationship with a private counselor now will help that growth in the future.

AFFIDAVIT OF ANDY BILLINGS

1. My name is Andy Billings. I was born in 1957 and finished college in 1982. I worked after high school to save money for school, so I didn't start immediately. I think that experience was important to me, always a reminder that I have to work hard to get what I want. I attended the University of Maryland and graduated with a degree in psychology. After completing undergrad, I spent 3 years working before I started graduate school. During that time, and throughout graduate school, I worked for a suicide prevention line in Boston. I am from the East Coast and attended Boston University for graduate school, so it was logistically easy to keep doing that. It was also important to me.

2. For graduate school, I studied child psychology. My dissertation was on preventing suicide in urban youth. I focused primarily on school youth. As social media has grown, I have shifted my study to the effects of bullying. This overlaps with suicide, as bullying is often involved in teen suicide attempts. It has been interesting to work on the subject, as I have to not only stay on top of psychological developments, but I also have to stay on top of technology. Fortunately, my grandkids are great for letting me know about the newest social media apps — Twitter, Snapchat, Facebook, there are all sorts of things out there. A new one was probably created while I was drafting this affidavit today! I have written multiple articles on the subject of teenager bullying and suicide. Sometimes I delve pretty deep into a specific instance, interview people involved. Other times I discuss the subject more generally. I am publishing a book sometime in 2018 about teen suicide and bullying. Its working title is "Our Bullying Problem."

3. I have not visited Alaska before, but I have worked as an expert witness numerous times. I have testified as an expert in 35 trials. Several of those were on the east coast, but I have also testified in Texas, Washington, and California. I even testified once in Mexico. I have worked on many more cases than that, mostly civil matters. They often do not go to trial because the parties settle, but I will prepare for in-court testimony or sometimes just help lawyers prepare. I charge \$200/hour for my preparation work and \$400/hour for testimony. In my experience, these rates are standard for someone with my education and experience.

4. I think this is a very sad case. In many ways, I think it is typical of suicide attempts among teens. Jordan clearly was suffering from a lot of things going on in his/her life. Most difficult for Jordan is his/her relationship with her/his father. I think it can be more difficult to have a father who is in and out of a child's life than it is to have a father who is just gone. A father who is just gone creates certainty. That can be difficult, obviously, but at least the child knows their father is not going to return. A father who is in and out creates false hope that he might stay permanently. Combining that with the substance abuse Jordan has reported and the possibility Jordan's father was having an affair just makes it worse. And of course, in a small town that is really embarrassing because Jordan knew that everyone was probably aware of what his/her father was doing. The assault on Jordan's mother was probably the worst part of Jordan's relationship with her/his father. Jordan clearly holds his/her mother in high esteem, which makes sense. Jordan's mother has worked hard to provide for Jordan. To have his/her father assault Jordan's mother must have been very hard on Jordan.

5. I have not had the opportunity to speak with Jordan about this, but I would be shocked if any child could grow up with some of the issues Jordan has faced and not see an effect from them. Many cases of teen suicide have rough background stories like Jordan does. And it is this background that is of primary importance in determining a susceptibility to suicidal thoughts. This is not to say that all teens who attempt suicide have bad parents. Some have very good parents. Rather, there has to be a sense of hopelessness before someone will consider suicide. Jordan's upbringing and the constant negative presence of his/her father could very easily result in a sense of hopelessness.

6. I agree that Max was bullying Jordan. Defining bullying precisely can be difficult, but roughly I characterize it as mistreating someone for amusement/to cause them suffering. If it is done for a different purpose, such as to protect oneself (teasing someone to defuse a situation/prevent a physical altercation, for example), then I do not classify it as bullying. What Max did was bullying. S/He was taunting and teasing Jordan for no purpose other than Max's own satisfaction and need to make herself/himself feel more intelligent or accomplished. I think that is what underlay a lot of Max's behavior – a genuine lack of confidence in his/her own abilities. Examining Max's affidavit, it is clearly important to Max that people see him/her as very intelligent.

7. However, it is simplistic to say that because Max bullied Jordan, and Jordan identifies that as the cause of his/her suicide attempt, that it is therefore Max's fault. Jordan is hardly the person who can evaluate the situation. Jordan has a lot going on emotionally. Jordan, I think, cannot understand his/her own motivations at this point. With distance, and counseling, I think Jordan can do that. But not now.

8. It is common for teenagers who attempt suicide to have bullying going on in their lives. However, many teens experience bullying. Teens who attempt suicide often have other things going on in their lives. Bullying is getting a lot of attention these days. And this is a good thing. But it has existed for generations. I think the attention it gets makes people think that bullying is significantly more common than it used to be. Social media and cell phones and the almost constant connection between people has changed it certainly. Now, people can bully each other almost constantly unless the recipient makes a conscious effort to unplug. This can make focused bullying more impactful than the human-to-human bullying of my youth. That does not change the fact that bullying is common enough that nearly everyone has suffered some form of it at some point. Most often, this is minor teasing. Sometimes it becomes more pronounced, sure. But that does not mean that bullying is inherently the cause of someone's suicide attempt. That is simplistic.

9. Part of growing up is learning to deal with negative encounters with others. I am not saying that bullying is okay or that kids should just deal with it, but we should not treat bullying as something that kids are not going to have to face. Kids often learn how to address their problems themselves. I think this is important. As much as we want teachers and adults to step in when necessary, kids also need to figure out how to address these things themselves. I think this is an important part of my research, both figuring out what works for kids to end bullying and how different kids respond to bullying.

10. You can see that starting to happen here. It was not the best response, but Jordan reacted both physically and verbally to Max. Jordan made some efforts to get Max to stop sending the text messages, but really, Jordan showed an inability to deal with Max. My guess is this was true of the many stressors in Jordan's life. Jordan should have blocked Max's cell number. I understand that may have been difficult for Jordan because she/he and Max had been friends, but that would have been a smarter decision.

11. Also, Jordan's friends stepped in when Max left the unfortunate Facebook post on Jordan's page. This is the best way to deal with bullying is to have peers get involved and show a healthy response. This does not excuse Max's conduct, and I think the Facebook posting was egregious, but it also recognizes that Jordan knew how he/she could respond. Jordan could have deleted Max's post, blocked Max, unfriended Max, done any number of things to shut Max down. Jordan could have joined his/her friends who came to Jordan's aid in verbally countering Max's bullying.

12. One interesting point about Jordan's account is that, as he/she was climbing to the top of the school, Jordan was thinking about her/his mother as well as Max. Clearly, Max was not the only thing going on in Jordan's head. The timing is also critical. While Jordan's suicide attempt followed Max's Facebook post, it also followed almost directly on the heels of Jordan's father assaulting Jordan's mother. This was a really hard thing for Jordan I assume. Jordan's father, despite being a rough influence on Jordan's life, is now in jail in part because of what Jordan did in insisting that his/her mother contact the police. Jordan likely carries a lot of feelings of responsibility for basically sending her/his father to prison. It is also difficult to see someone with whom Jordan had such a difficult relationship harm someone Jordan cares about so much, his/her mother. Regardless of what Max said or did, Jordan was under an enormous amount of grief, sadness, guilt, shame, and any other number of emotions that would weigh on anyone, much less a teenager.

13. That is something else that is important to understand. We all remember being teenagers probably. Even if life is good, it's a difficult time. It's a physically, hormonally, emotionally difficult time. People are trying to figure out who they are at that age, and, well, everything seems more critical than it might to someone who is older. A mentally healthy adult dealing with traumatic events like Jordan's relationship with her/his father and his/her father's assault of Jordan's mother would struggle; a teenager would really struggle with that.

14. Jordan's relationship with his/her father is what makes it truly difficult to say that Max caused Jordan to attempt suicide. It certainly would be highly unlikely that Max actually wanted Jordan to attempt suicide. On that second point, I have interviewed and talked with bullies for decades now. For most of them, at some point it becomes less about the other person and more about themselves. As I touched on earlier, I think Max is a very insecure person. Teasing Jordan was probably not about hurting Jordan as much as it was about Max making her/himself feel better. Most bullies are like this. Max probably wasn't thinking about how the bullying affected Jordan, certainly not on the level one thinks about when discussing legal intent. I certainly see little to say that Max really thought about what it would mean to tell Jordan to kill him/herself.

15. As an example, it is common on internet posting boards for people to make comments like, "You should just kill yourself" or "You are a worthless human being who should die". I am not

going to pretend these things are okay. They are not. However, it is important to consider the meaning behind those comments. I doubt that the commenters want the recipient to commit suicide. That would be shocking. Instead, it is just so easy to make a negative comment. It's also the nature of the internet. If you want your comment to stand out, you have to top whatever someone else has said. So, if someone else said, "You suck!" the next commenter has to take it up a notch, say "You really suck!" for example. Then the next round of commenters go past just derogatory comments to saying, "You should delete your account" then someone takes that up a notch to "You should jump off a building" and then someone starts saying "You should kill yourself." It is the strange world of the internet where people escalate what they say to make it stand out. It's a strange, strange world where decency is not just forgotten, it is denigrated.

16. Of course, those comments can have a significant effect on the recipients. I am not pretending otherwise. However, when we are thinking about the mindset of the person making the comments, I think we have to remember the context in which they are making those comments. It is why internet bullying can seem so harsh, and may be harsh, but when you contact the people doing the bullying, they do not see it as significant. In a world where you start at an elevated level, it is very easy to take things up a notch to the point where people are saying really offensive things but do not think they are significant.

17. Considering Max's Facebook post in that context, it actually makes a sort of sense (a cruel sort perhaps) that Max would take things up a notch and say Jordan should kill herself/himself. Max had been teasing Jordan for some time. When Max moved to doing that via text, this added a layer of insulation to how Max perceived his/her actions. It also brought Max into that social media world where things escalate so easily. So then going to Facebook, Max had to take it up a level and made a comment about suicide. I doubt that Max actually wanted Jordan to commit suicide. It's just the unfortunate nature of social media that it is easy to type out words that one would never say to someone's face.

18. Going back to life as a teenager, they often do not consider their actions, especially how their actions affect others. Just because Max typed out that Jordan should kill himself/herself does not mean that Max wanted Jordan to follow through, no more than commentators on other sites (even things as non-serious as sports websites) who type out things like "you should kill yourself" or "I hope you die" want the recipients of those comments to actually kill themselves.

19. Ultimately, I think Max's treatment of Jordan was deplorable. Max should be ashamed of himself/herself. However, to say that Max wanted Jordan to commit suicide shows a fundamental misunderstanding of how bullying works, how the internet works, and how teenagers perceive and react to the world.



JORDAN PACHECO

Wall

Info

Photos

Boxes

Write something...

Share

View photos of Jordan (5)

Send Jordan a message

Poke message

Information

Lives in: Bearclaw, Alaska
Birthdays: January 24, 2000
Goes to: Crimson High School
Relationship: Unmarried
Occupation: Student

Friends

-  Max
-  J amie
-  Chris
-  Bobby
-  Jace
-  Sydney



MAX CALHOUN Hey Jordan! About time your old man got put away. Too bad you couldn't do more to protect your poor (and I mean that in the \$\$\$\$ sense as well) mother, but I wouldn't expect that out of a complete loser like you! Your father is a complete loser too. Come to think of it, you really take after your father! Enjoy your last year of high school, because your life is over after it. You are too dumb to ever get into a good college and will never amount to anything but another unemployed loser like your father. Come to think of it (again), there is really no point in even bothering to finish senior year. You should probably just KILL YOURSELF now so that you don't grow up to become even more like your father! And more of an embarrassment to your mother and anyone else who pretends to care about you. Save society the trouble! I am tired of having you around, and everyone else is too. You know what to do, Jordan! It's about time you find the guts to actually do it!
 August 12, 2017

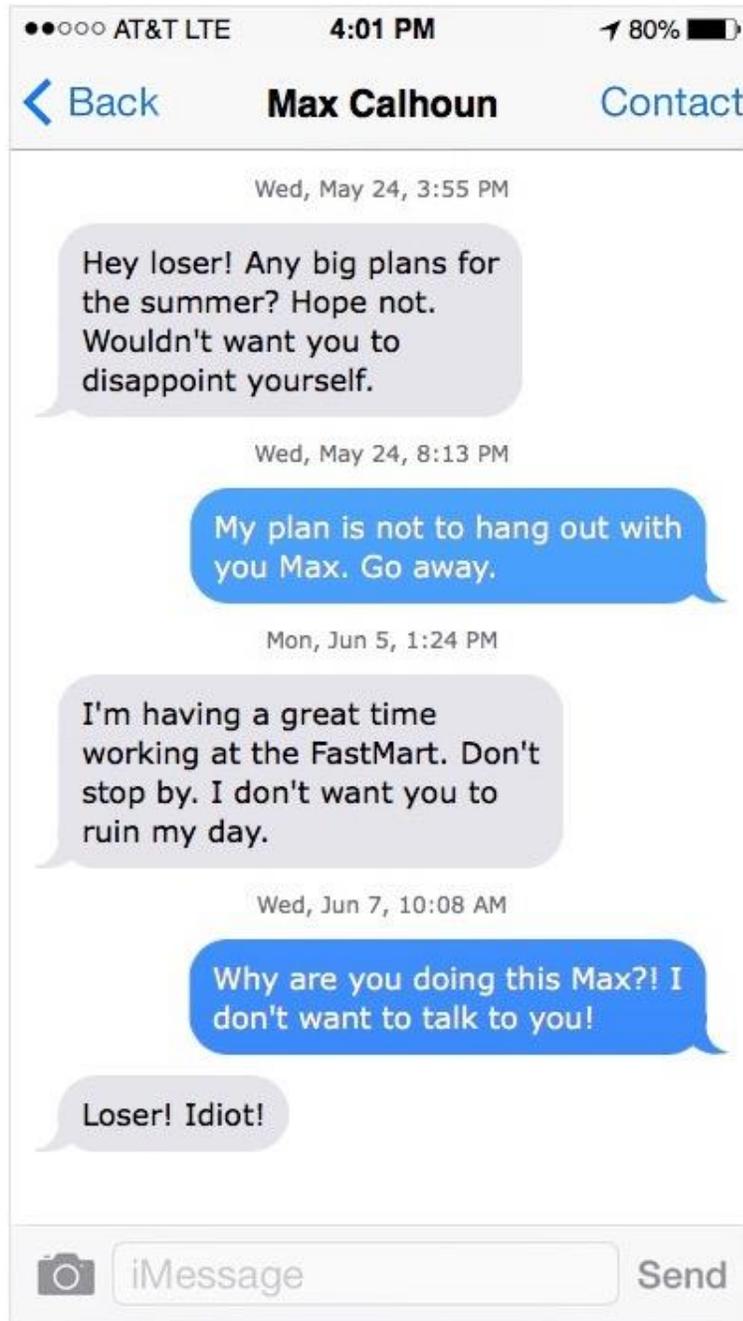


JAMIE POLT Stop it Max! You are such a bully and always have been! You think you are the most popular kid on campus, but the reality is that everyone hates you! Jordan has never done anything bad to you! Leave Jordan alone!
 August 12, 2017



CHRIS SANTANA Max, my friend. I know you have your differences with Jordan, but your post really crosses the line. If you don't like Jordan, just let Jordan be. No need to antagonize the situation. And telling someone to kill themselves is totally uncool! This is not the Max I am friends with.
 August 13, 2017

Text Messages between Max Calhoun and Jordan Pacheo, from Jordan Pacheo's iPhone:



Sat, Jun 24, 10:34 AM

Weirdo!

Sat, Jul 1, 3:22 PM

Happy July, moron

Wed, Jul 12, 10:52 AM

Nice day for a swim at the lake. Maybe everyone will get lucky and you'll drown.

Thu, Jul 13, 12:04 AM

Leave me alone! I am getting tired of this! You are really **STRESSING ME OUT! STOP IT!!!**

Thu, Jul 13, 3:04 AM

I am sorry if my mere existence offends you. What have I ever done to you! Please stop texting me!!!!

Please stop texting me!!!!

Thu, Jul 13, 2:13 PM

Ha! You know I'm not even close to being done with you! But, ok, I'll give you a couple of weeks off.

Fri, Aug 4, 3:36 PM

School's about to start! Ready or not, here I come!

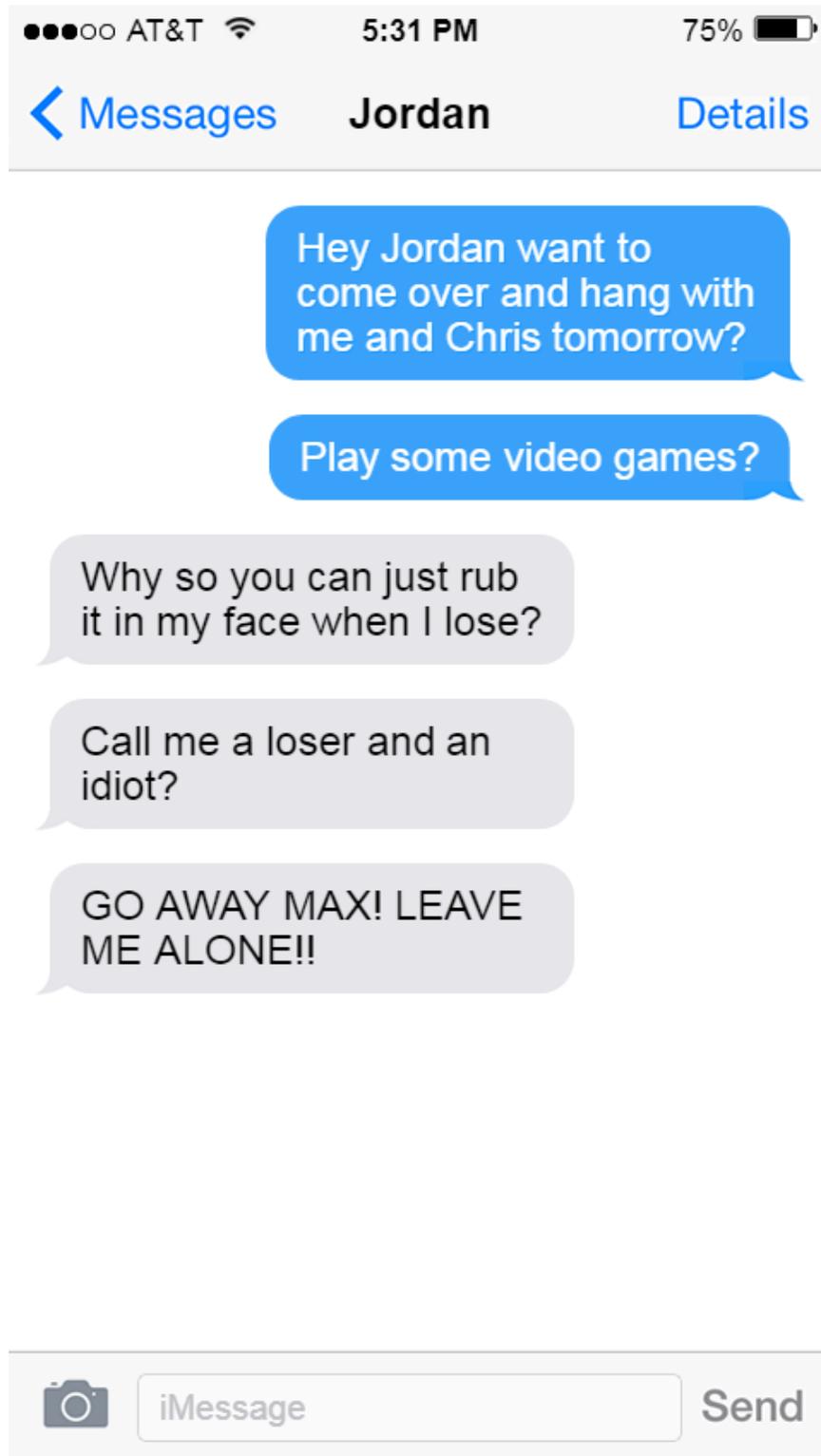
Fri, Aug 4, 5:43 PM

Please Max, no. I won't bother you at school. I promise! Just leave me alone.

Mon, Aug 7, 9:07 AM

I'm going through some really bad stuff, Max. I need you to promise me you will stop texting. Please, for the friends we used to be?

Text Messages between Max Calhoun and Jordan Pacheo, from Max Calhoun's iPhone:



Diary of Jordan Pacheo

May 12, 2017: So, last day of school. I suppose I'm looking forward to summer. I actually liked most of my classes this year and will kind of miss learning. I have my job back at McDonald's. No real learning there. At least with school out I will be away from Max. We used to be such good friends, but this past year s/he's really turned on me. I don't understand it. I've never done anything to hurt Max. I don't even really fight back much.

May 23: Dad got really drunk tonight and started screaming at Mom about what a terrible wife she was and how he wouldn't have to drink if she was a better wife. I hate seeing Dad like this. I was afraid he was going to hit Mom, but fortunately he didn't. I don't know why Mom doesn't just kick Dad out of the house. I wish she would.

May 24: Max texted me today. I was really hoping to be rid of Max for the summer. I don't know if I'll be able to take it if I keep having to deal with Max. It is like a dark cloud descends over me every time I think of Max. S/He is just such a horrible person and was horrible to me for absolutely no reason. I told Max to leave me alone. Never worked before.

May 29: Had a nice Memorial Day today. Dad was sober for once. We had a barbecue, hamburgers and all. Dad can be kind of fun when he's not drinking. I wish he'd be this way more often. I wish I just had a normal family.

June 5: No! Max texted me again. It doesn't really matter what Max says. They are just texts, after all. I just can't stand the thought of Max intruding into my life. It is one thing when we are in school, in public. But this is my private life. I can't take having Max in my life any more. I am going to try to ignore Max and hope he goes away.

June 7: I should have just let things be. I texted back to Max. Just to say that I didn't want to be texted any more. Of course Max responded immediately. Insulting me. I have never insulted Max, I don't know why s/he feels the need to treat me this way! All I want is to be left alone! My life is hard enough as it is with my Dad and all. Maybe I should fight back more against Max, but that is just not who I am.

June 11: Went on a nice hike today with Jamie. Just up Vista Hill and back. I'm lucky to have such a good friend as Jamie. I really don't know what I'd do without her/him. And I know that Jamie will never betray me like Max did. Do I sound a little obsessed with Max? Forget Max! I need more good days like today with good friends like Jamie.

June 18: Father's Day. I dread this day. I wish I had a real dad. But no. My Dad was drunk again today. And insisted that I spend time with him. So that he could berate me and tell me how he wished *he* had a good kid. The feeling is mutual.

June 24: Max again. Called me a weirdo. I don't think I'm weird. And why should I care if Max does. Whatever.

July 1: Max texted to wish me a happy July. And to call me a moron. I suppose I should feel a bit honored that Max takes the time to think of me. I mean, Max can't be texting every kid in school, right? I can't be a nobody to Max, then. I only wish I were a nobody to Max. I am a nobody to everyone else.

July 4: Just what I need, another excuse for a barbecue where Dad can drink. And then he wants to play with fireworks! I enjoyed fireworks with Dad back when I was younger and he was better. But I feel very unsafe around Dad right now. And not just because of the fireworks.

July 12: Max says I should kill myself. Maybe s/he's right. I'm not sure drowning is the way I want to go, though. Too much panic and thrashing. I have been practically in tears all day after receiving Max's text this morning. I guess I should respond. Maybe I will just let it be. No, I should respond. Tell Max one more time to leave me alone. What's the use, though, Max has never listened to me and never will.

July 13: I couldn't sleep last night. I can't get Max out of my head. I really don't want to spend another school year with Max. I just don't think I can take it! I have never been so stressed in my life, and it is still over a month before school starts again! I know I am over-reacting and should just ignore Max, but I just can't. Every time Max texts me it brings back a rush of all of the negativity Max has thrust upon me for the last year.

July 15: I wonder if maybe Max has a point. Maybe I really am an idiot. A loser. A moron. I don't do particularly well at school, no matter how hard I try. I'm certainly not popular. My only real friend is Jamie. Sure, other people are nice to me, but it is just passing pleasantries. And they say that high school is supposed to be the best time of your life.

July 23: Dad has been gone for the past week or so. No one really knows where he's gone. To be honest, it is probably for the best that he is gone. I still love Dad. That is what makes this so hard. I know he is capable of being a good person. I know he loves me. I just wish he could openly and honestly express it.

July 25: Dad finally returned. Everyone knows he went on a road trip with Annie Carson. I hate my Dad! Mom is such a wonderful person and deserves someone that loves her. I don't know why Mom stays with Dad. Deep down she must know what is going on. Maybe she is in denial. Maybe I am in denial that things will ever get better.

August 4: It has been a great couple of weeks without Max in my life. But that is all over! And now it looks like I have another year of torture at school to look forward to. I begged Max to leave me alone. I promised not to interact with Max. Crimson High is a small school, but if I try maybe I can keep far away from Max as much as possible. Change classes if I need to. I'll go down a level if I have to. I have no future anyway, so why not? I'd rather die than be forced to spend an entire school year with Max.

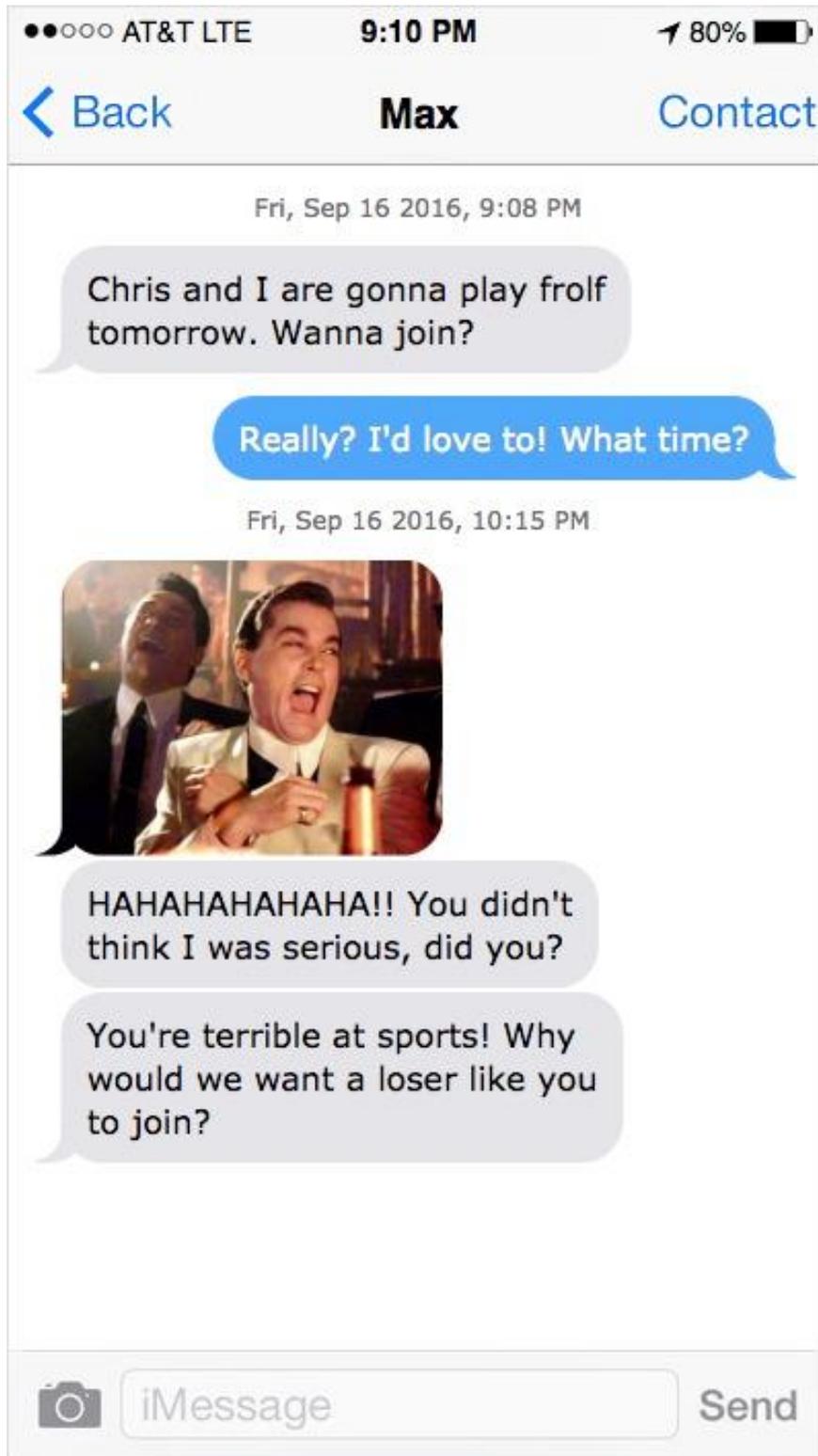
August 6: Dad finally did it. He beat up Mom. I came back from a hike with Jamie and found her on the floor, crying and with bruises all over her face and a bloody nose. Fortunately, Dad left in a rage. I talked with Mom for over an hour to try to get her to finally call the police. I hate having

to be the adult in this family! But at least Mom listened to me. I'm sure Dad will go to jail for this. At least, I hope so. It would probably be for the best. Mom and I might actually be safe for the first time in years. But I love Dad and don't want him to see incarcerated. It is a no-win situation. Just like the rest of my life. I really don't want to deal with school starting in a week. I really, really don't want to deal with Max again! I think I'll text her/him to ask to be left alone. Everyone in town will soon know what Dad did. If there is any shred of human decency left in Max at all, s/he will lay off me until I have had time to heal from this.

August 10: I am still extremely stressed with the situation with my Dad. I don't know if I should try to go down to jail to see him. I don't know if he wants to see me. I don't know if I want to see him. Mom is healing up well. Physically, that is. It is going to take a long, long time for both of us to heal emotionally. At least Max has finally listened to me and not contacted me about Dad. I'm sort of surprised, but it is a great relief. Perhaps there is hope for the coming school year yet.

August 12: Nope, not going to do it. I'll kill myself before I let Max make me a victim for another school year! It's what Max wants, after all. Max may think s/he's won, but when I'm dead everyone will blame Max. If I'm going down, I am definitely taking Max down with me!

Text Messages between Max Calhoun and Jamie Polt, from Jamie Polt's iPhone:



●○○○○ AT&T LTE

12:46 AM

49% 

 Messages

Max

Details

Hey Jamie want to go
play Basketball with us
tmrw?

seriously?

yeah, seriously...

Ok! Sure I'd love to!

HAH! JK! You didn't think
I was serious did you?!
come on cripple! you
cant play any sports!

You're a jerk Max

but at least I'm not a
CRIPPLE LIKE YOU!!!!!!



iMessage



[← Back](#)

Max

[Contact](#)

Thu, Dec 24 2016, 1:14 PM

What do you think: Limpy McLimperson or Janky Jamie? I'm not sure what to save you as in my phone.

Oh come on Jamie. You ignoring me?

You and Jordan really are best friends, huh? You're both big babies.

Fri, Dec 25 2016, 6:50 AM

Merry Christmas Max. Hope you have a better way to spend your day than bugging me.

Fri, Dec 25 2016, 8:10 AM

LOSER!!!! HAH!



iMessage

Send

●○○○○ AT&T LTE

9:25 PM

📶 29% 🔋

⏪ Back

Max

Contact

Wed, Feb 8, 11:17 AM



Look it's you!

Go away Max, I'm trying to focus

Yeah... you should probably do that. Your moron friend, Jordan, will need help with homework tonight.



iMessage

Send

Alex Smith
Curriculum Vitae (6/13/17)

Biographical Information:

DOB: 3/13/61

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e-mail: asmith@useattlex.edu

Education:

B.A. University of Oregon, Psychology, 1984

Ph.D. University of Washington/University of Alaska Anchorage, Child Psychology, 1992

Employment:

Assistant, Associate, Full Professor, University of Seattle, 1993-present

Visiting Professor, University of Alaska at Anchorage, 1999-present

Awards & Honors:

Alaska Council on Suicide Prevention Leadership Award - 2005

National Institute of Health MERIT Award - 1995-2000

Research Grants:

National Institute of Mental Health – Suicide in Teens - 2007

University of Alaska – Youth Suicide Prevention – 2003

University of Seattle Graduate Research Fund – 1989

Professional Memberships:

American Association for the Advancement of Science (Fellow)

Apolitical Science Foundation (Member)

National Youth Suicide Prevention Council (Fellow)

West Coast Academy of Sciences

Consulting Work:

Qualified as expert witness on child psychology, suicide psychology/prevention, and teen suicide behavior in approximately 20 civil and criminal cases (1995-present). This has included courts in Alaska and Washington.

Have also worked as an expert consultant in numerous cases in Washington, Oregon, California, and Alaska.

Publications:

Book – Author, *Our Dying Young: Suicide Among Alaska Youth*, Seattle, WA, Newmaker Publications (2005)

Book – Author, *A Look at Our Forgotten: Mental Health Among Seattle's Homeless Population*, Seattle, WA, Newmaker Publications (1999)

Book – Editor, *Mental Health Stories as Told by Patients*, Seattle, WA, Newmaker Publications (1996)

Article – Smith, Alex & Atkinson, Ross (2008) – *A Comprehensive Analysis of Research Strategies Related to Mental Health Treatment*, FUNDAMENTALS OF PSYCHOLOGY, 6, 588-613

Article – Smith, Alex & Fellner, Laura (2005) – *Comparison and Recognition of Mental Health Among Family Members*, SEATTLE UNIVERSITY JOURNAL OF PSYCHOLOGY, 29, 300-317

Article – Willis, Max & Smith, Alex (2001) – *Acquisition of Learned Behaviors in Children*, NEW PSYCHOLOGY JOURNAL, 2, 120-145

Andy Billings
Curriculum Vitae (4/11/17)

Biographical Information:

DOB: 6/1/57

Address: University of Connecticut
Smith Hall, Room 141
Storrs, CT 06269

Phone: (860) 555-2001

Fax: (860) 555-1457

e-mail: abillings@uconnx.edu

Education:

B.A. University of Maryland, Psychology, 1982

Ph.D. Boston University, Child Psychology, 1991

Employment:

Assistant, Associate, Full Professor, University of Connecticut, 1997-present

Assistant Professor, University of Maryland, 1992-1996

Awards & Honors:

New York State Suicide Prevention Leadership Award - 2014

Connecticut Governor's Council on Mental Health Fitness Award – 2012

Maryland Psychology and Technology Foundation Excellence in Research Award - 2009

Alaska Council on Suicide Prevention Leadership Award - 2005

National Institute of Health MERIT Award - 1997-2004

Research Grants:

National Institute of Mental Health – Bullying and Technology – 2015

University of Connecticut Psychology Leadership in Research - 2010

Maryland Psychology and Technology Foundation – 2007

Boston University Graduate Research Fund – 1989

Professional Memberships:

Mental Health Fitness Association (Vice President)

Connecticut Association of Psychologists (Fellow)

American Association for the Advancement of Science (Fellow)

Apolitical Science Foundation (Member)

Maryland Council on Suicide Prevention (President)

Presidents Mental Health Research Group (Member)
National Youth Suicide Prevention Council (Fellow)

Consulting Work:

Qualified as expert witness on child psychology, suicide psychology/prevention, and teen suicide behavior in approximately 35 civil and criminal cases (1995-present). This has included courts in Connecticut, Maryland, New York, Massachusetts, Texas, Washington, California, and Mexico.

Have also worked as an expert consultant in numerous cases in Connecticut, Maryland, New York, Massachusetts, Texas, Wisconsin, and Illinois.

Publications:

- Book – Author, *Our Bullying Problem*, Hartford, CT, Piaget Books (forthcoming)
- Book – Author, *Mental Health in the United States: A Look at the State of Our Union*, Hartford, CN, Piaget Books (2009)
- Book – Editor, *Vignettes of Suicide*, Hartford, CT, Piaget Books (1996)
- Book – Editor, *Researching Mental Health: Collecting Our Stories*, Hartford, CN, Piaget Books (1995)
- Book – Author, *Preventing Suicide in Urban Youth*, Boston, MA, Boston University Press (1993)
- Article – Billings, Andy & Fishing, Rudy (2016) – *Bullying in the Age of Facebook: How Technology Has Changed Youth Relationships*, FUNDAMENTALS OF PSYCHOLOGY, 10, 333-353
- Article – Billings, Andy (2014) – *Best Practices in Researching Teen Mental Health*, BOSTON UNIVERSITY JOURNAL OF PSYCHOLOGY, 41, 225-264
- Article – Mayhan, June & Billings, Andy (2010) – *Childhood Resistance Strategies*, MODERN PSYCHOLOGY, 5, 106-124
- Article – Billings, Andy & Roberts, Laura (2008) – *Physical Exhibition of Suicidal Ideations*, PSYCHOLOGY TIMES, 13, 451-479
- Article – Fitzpatrick, Erik & Billings, Andy (2005) – *Understanding the Signs of Suicide*, MODERN PSYCHOLOGY, 2, 87-111
- Article – Phyllis, Laura & Billings, Andy (2004) – *A Suicide in Detail: Analyzing the Vairmont High School Suicide Case*, UNIVERSITY OF MARYLAND JOURNAL OF CHILD PSYCHOLOGY, 21, 111-134
- Article – Billings, Andy (2001) – *Calling Suicide: My Work for a Boston Suicide Prevention Line*, TODAY'S PSYCHOLOGY, 3, 1-27

IV. RULES GOVERNING THE ALASKA HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP COMPETITION

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I. COMPETITION RULES AND RULES OF PROCEDURE

A. GOVERNING RULES

Rule 1. Competition Coordinators

The Alaska High School Mock Trial Championship is sponsored by the Anchorage Bar Association, Young Lawyers Section. A committee comprised of interested members of that organization and other persons, as appropriate, shall organize and oversee all aspects of the competition, and shall be referenced as the competition coordinators. All written correspondence with the competition coordinators should be addressed to:

ANCHORAGE BAR ASSOCIATION
YOUNG LAWYERS SECTION
c/o PROF. RYAN FORTSON
JUSTICE CENTER
UNIVERSITY OF ALASKA ANCHORAGE
3211 PROVIDENCE DRIVE, LIB 213
ANCHORAGE, AK 99508-4614
Attn: MOCK TRIAL

Competition organizers may also communicate via electronic means with teams and offer alternate addresses to which to send or fax registration and other forms. Email communication can be sent through mocktrial.alaska@gmail.com or through another email address provided by competition organizers.

Rule 2. Interpretation of the Rules

All trials will be governed by the current Alaska High School Mock Trial Championship's Rules of Competition and Rules of Procedure and by the Federal Rules of Evidence (Mock Trial Version). Interpretation of the rules is within the discretion of the competition coordinators, whose decisions are final. Any clarification of rules will be issued in writing to all participating teams. Teams who believe that clarification is needed should request clarification in writing.

Rule 3. Code of Conduct

The Competition rules, as well as proper rules of courthouse and courtroom decorum and security must be followed. The Competition Coordinators will have discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations, or breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program.

Rule 4. Emergencies

During a trial, the presiding judge or the competition coordinators shall have discretion to declare an emergency and adjourn the trial for the period of time necessary to address the emergency. If an emergency arises which would cause a team to be unable to continue a trial, or require it to participate with less than six members, the competition coordinators

Rule 4.5. Food and Beverages in the Courthouse

Food and beverages – including water – are NOT ALLOWED in the courtroom at any time. After receiving a warning, teams that fail to follow this rule are subject to forfeiture of rounds and/or disqualification. Water will be available during the trial for the participating lawyers and witnesses.

B. THE PROBLEM

Rule 5. Case Materials

The problem will be 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.

Teams who believe that errors exist in the case materials should bring such errors to the attention of the competition coordinators in writing. Any clarification of case materials will be issued in writing to all participating teams. In preparing and participating in the Competition, students are limited to the supplied case materials, the Governing Rules and the Modified Rules of Evidence.

Rule 6. Witness Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 7, outside the scope of the problem.

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

A witness is not bound by the facts contained in other witness statements.

Rule 7. Unfair Extrapolation

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

If a witness is asked information not contained in the witness' statement, the answer must be consistent with the statement and may not materially affect the witness' testimony or any substantive issue of the case.

Consistent with the obligation to attack unfair extrapolations through impeachment and closing arguments, attorneys for the opposing team may refer to Rule 7 in a special objection, such as "unfair extrapolation" or "This information is beyond the scope of the statement of facts."

Possible rulings by a judge include:

- a. No extrapolation has occurred;
- b. An unfair extrapolation has occurred;
- c. The extrapolation was fair; or
- d. Ruling is taken under advisement.

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

Rule 8. Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any team member may portray the role of any witness of either gender. Please try to be mindful of the genders of the witnesses portrayed by the opposing team.

Rule 9. Voir Dire

Voir dire examination of a witness, including experts, is not permitted.

C. THE TRIAL

Rule 10. Team Eligibility

Any Alaska high school may assemble one or more teams and become eligible to compete in the Alaska High School Mock Trial Championship Competition. Two or more Alaska high schools may jointly form a team if each school participating in the formation of a joint team would otherwise be unable to participate in the Alaska High School Mock Trial Championship Competition. Educational and civic organizations which are 1) independent of any Alaska high school, 2) not formed primarily for the purpose of competing in the Alaska High School Mock Trial Championship Competition, and 3) comprised of high school students residing in Alaska, may assemble one or more teams and become eligible to compete in the Competition. Alaska high schools wishing to form a team but not qualifying under this Rule may timely request that an exception to this Rule be granted by the competition coordinators. A decision by the competition coordinators as to eligibility under this Rule or an exception to this Rule shall be final. Any team wishing to participate in the Alaska High School Mock Trial Championship Competition must properly register with the competition coordinators in advance of the competition. The competition coordinators will attempt to accommodate all registrants. Any school or other organization wishing to enter multiple teams must designate a “first” team. In the unlikely event that registration must be limited as a result of too many teams attempting to participate, priority will be given to the “first” team over other teams from the same school or organization. In all other aspects, registration will be permitted on a first come, first served basis. The team that wins the Alaska High School Mock Trial Championship Competition will be deemed the current Alaska State Mock Trial Championship Team and is eligible to participate and compete in the National High School Mock Trial Championship. Any team representing Alaska in the National High School Mock Trial Championship must be comprised of students who participated on the current Alaska State Mock Trial Championship team. The Alaska State

Mock Trial Championship Team is responsible for its own expenses in attending the National High School Mock Trial Championship Competition. Registration fees (estimated at \$300) incurred by the Alaska State Mock Trial Championship Team in conjunction with participation in the National High School Mock Trial Championship Competition may be paid by the competition sponsors to the extent that budgetary constraints will permit. The Anchorage Bar Association, Young Lawyers Section, may be prohibited from contributing any funds for travel and related expenses.

Rule 11. Team Competition

Teams consist of no less than **six** members and no more than **nine** members, including alternates. Team members are assigned to roles representing the Prosecution/Plaintiff and Defense/Defendant sides in each round of the competition. Student timekeepers may be provided by the teams; however, these persons are not considered “official timekeepers” in the tournament.

Rule 12. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members. Different sides will be assigned to teams for different rounds. Only in the case of an emergency occurring during a round of competition may a team participate with less than six members. In such a case, a team may continue in the competition by making substitutions to achieve a two attorney/three witness composition. If an emergency causes a team to use less than three attorneys, the team may be penalized by a reduction of points for that round or may be caused to forfeit the round, depending on the nature of the emergency. Final determinations of emergency, forfeiture, or scoring record will be made by the competition coordinators.

Rule 13. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct and one cross; in addition, one will present the opening statement and another will present a closing argument. The principal attorney duties for each team will be as follows:

1. Opening Statement
3. Direct Examination of Witness #1
4. Direct Examination of Witness #2
5. Direct Examination of Witness #3
6. Cross Examination of Opposing Witness #1
7. Cross Examination of Opposing Witness #2
8. Cross Examination of Opposing Witness #3
9. Closing Argument

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

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

Each team must call three witnesses. Witnesses must be called only by their own team and examined by both sides. Although re-direct and re-cross are permissible, witnesses may not be recalled to the stand after their testimony is complete. Thus, once a witness is excused and steps down, neither team may recall the witness for further questioning even if no re-direct or re-cross was previously conducted.

Rule 14. Swearing of Witnesses

The following oath, or a similar oath permitted by the presiding judge, may be used before questioning begins:

“Do you promise that the testimony you are about to give faithfully and truthfully conforms to the facts and rules of the mock trial competition?”

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate that all witnesses are assumed to be sworn, or the above oath will be conducted by a) the presiding judge, b) a bailiff or clerk provided by the competition coordinators, or c) the examining attorney. The presiding judge shall indicate which method will be used during any given round of the Mock Trial Competition. Witnesses may stand or sit during the oath.

Rule 15. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
3. Direct and (optional) Redirect Exam (25 minutes total per side)
4. Cross and (optional) Recross Exam (15 minutes total per side)
5. Closing Argument (5 minutes per side)

The Prosecution/Plaintiff is the first to present the opening statement and give the closing argument. The Prosecution/Plaintiff may reserve a portion of the time allotted for closing argument to present a rebuttal. Rebuttal is limited to the scope of the opposing side’s argument.

Rule 16. Timekeeping

Time limits are mandatory and will be enforced. Each team is permitted to have its own timekeeper and timekeeping aids; however, an official timekeeper will be assigned to each trial. Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements. Time does not stop for the introduction of exhibits.

Rule 17. 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 Court, the scoring judges may determine individually whether or not to discount points in a category because of over-runs in time.

Rule 18. Prohibited Motions

Except as provided in these Rules, no motions may be made. (A motion for directed verdict, acquittal, or dismissal of the case at the end of the Prosecution’s case, for example, may

not be used.) A motion for a recess may be used in the event of an emergency (i.e., health emergency). To the greatest extent possible, team members are to remain in place. Should a recess be called by the court, teams are not to communicate with any observers, timekeepers, coaches, or instructors during the recess.

Rule 19. Sequestration

Teams may not invoke the rule of sequestration.

Rule 20. Bench Conferences

Bench conferences may be granted at the discretion of the presiding judge, but should normally be conducted in such a manner that all participants, scoring judges, instructors, alternates, and other courtroom observers can hear the arguments and discussions in their entirety. This Rule is designed to further the educational interests of the Alaska High School Mock Trial Competition. Bench conference time shall not be counted against the time allotted to either team.

Rule 21. Supplemental Materials/Illustrative Aids

Teams may refer only to the materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials.

Rule 22. Trial Communication

Instructors, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This Rule remains in force during any recess time that may occur during the course of the trial. Team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' own timekeepers shall not be considered a violation of this Rule. Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in a round may sit inside the bar during that round.

Rule 23. Viewing a Trial

Each team is responsible for the conduct of its members and persons associated with the team throughout the duration of the mock trial competition. Team members, alternates, attorney-coaches, teacher-sponsors, and any other persons directly associated with a mock trial team may view their team competition, but otherwise, except when specifically authorized by the competition coordinators, are not allowed to view other teams in competition, so long as their team remains in the competition.

Nothing may be brought into the courtroom which would tend to reveal the identity of the participating teams. Spectators should be cautioned that they may not wear school insignias. School owned equipment should have all identifying marks covered.

Rule 24. Videotaping/Photography/Audiotaping

Any team may videotape or audiotape a competition round in which it participates for its own educational purposes only. With the consent of an opposing team, any team may videotape or audiotape a competition round for any other purpose. Bright camera lights, flash bulbs and

equipment tending to distract the competitors may be barred in the discretion of the presiding judge. Disruptive conduct in the course of taping, filming, or taking photographs is prohibited, and may result in a penalty against the team responsible for the conduct of the offending photographer.

If school owned equipment is employed for video or audiotaping, identifying information must not be visible on such equipment that might be seen by a judge.

Media coverage will be allowed in accordance with the policies of the competition coordinators.

D. JUDGING

Rule 25. Decisions

All decisions of the judges are FINAL.

Rule 26. Composition of the Judging Panel

The judging panel will consist of individuals determined to be eligible by the competition coordinators. Generally, the competition judges are members of the Alaska judiciary or attorneys practicing in Alaska. Qualified educators and other persons may also be invited by the competition coordinators to participate as Mock Trial judges. The composition of the judging panel and the role of the presiding judge will be at the discretion of the competition coordinators. For preliminary rounds, one presiding judge and at least one additional scoring judge will be appointed by the competition coordinators to judge the round. The final (championship) round may have a larger judging panel than preliminary rounds, at the discretion of the competition coordinators.

All presiding and scoring judges receive the mock trial manual, a memorandum outlining the case, orientation materials, and a briefing as to the case, the role of judges, and the standards to be applied.

Rule 27. Score Sheets/Ballots

The presiding judge and each additional scoring judge shall complete a “score sheet” or “ballot” for each trial conducted in each round of the competition. Judges’ ballots will be substantially like the sample provided by the competition coordinators to each team. When evaluating the teams that each judge observes in the competition, the judges will reference the teams only by their assigned identification codes.

Score sheets are to be completed individually by the judges and without consultation with the other judges. Scoring judges are not bound by the rulings of the presiding judge. While the judging panel may confer within guidelines established by the competition coordinators, the judging panel should not deliberate on individual scores.

Rule 28. Completion of Score Sheets

Score sheets are completed by the judges as follows:

1. Trial Points:

Each judge will award and record a number of points for each aspect of the trial. Points will be awarded from a scale of 1 to 9, with 9 being the highest. Judges are required to complete the ballots in their entirety.

2. **Final Point Total:**

A team is determined to be the winner of a round when that team wins a majority of the points cast by the judges scoring a given trial. If the opposing teams for a given round each receive the same number of points for that trial, the competition coordinators shall consider the judges' determinations of tiebreaker points, as provided in the tiebreaker box at the bottom of each scoresheet.

A forfeiting team will receive a loss for purposes of ranking. If a trial cannot continue due to forfeiture, the non-forfeiting team shall be considered to have won by default. A non-forfeiting team will not be penalized in ranking by any inability to receive points from scoring judges.

Rule 29. Team Advancement

Teams will be ranked based on the total number of points received for all rounds. The two teams emerging with the strongest record from the preliminary rounds will advance to the final round. Ballots from the championship round will determine the current Alaska State Mock Trial Championship Team only.

Rule 30. Selection of Opponents for Each Round

A random lottery will be conducted prior to the competition for the purpose of assigning team identification designations. The assignment of opponents for all rounds will be governed by a fixed schedule which will be made available for review by team coaches prior to the time of conducting the lottery. As a result, all opponent selections for all preliminary rounds will become manifest through the random process of assigning team identification designations.

The schedule governing the assignment of opponents will designate which team is to present the Prosecution/Plaintiff's case and which is to present the Defense/Defendant's in each round. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. Every effort will be made to ensure that each team will present each side twice, but all teams will be scheduled to present each side of the case at least once.

Rule 31. Merit Decisions

Judges will make a ruling on the legal merits of the trial, after deliberating. During the debriefing process, judges may inform students of the verdict on the merits of the case. Judges may not inform the students of score sheet results.

Rule 32. Effect of Bye

A "bye" becomes necessary when an odd number of teams are present for the tournament. If an odd number of teams are competing, an additional round will be scheduled, during which those teams receiving a bye will compete against each other. Any team receiving a bye must not observe other teams competing during the round in which the bye was drawn.

E. DISPUTE SETTLEMENT

Rule 33. Reporting a Rules Violation/Inside the Bar

Disputes which (a) involve students competing in a competition round and (b) occur during the course of a trial must be filed immediately upon conclusion of the trial. Disputes must be brought to the attention of the presiding judge at the conclusion of the trial. If any team

believes that a substantial rules violation has occurred, one of its student attorneys must indicate that the team intends to file a dispute. The presiding judge will instruct the student attorney to prepare a notice of dispute, in which the student will record in writing the nature of the dispute. The student may communicate with counsel and/or student witnesses before lodging the notice of dispute or in preparing the form. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure permitted under this Rule.

Rule 34. Dispute Resolution Procedure

Upon receipt of a Rule 33 notice of dispute, the presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce his/her decision to the Court, retire to complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the 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 representative. After the designated representatives 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 designated representative three minutes for a presentation. The judge may question the designated representatives. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider his/her ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 35. Effect of Violation on Score

If any judge, whether presiding or scoring, observes independently that a substantial rules violation has occurred, or if the presiding judge makes such a determination in accordance with Rule 34, the judge will inform each of the other judges for that trial. The presiding judge shall inform all other judges who score a trial in which a notice of dispute is submitted of the nature and existence of the dispute, and in the event that some or all of the scoring judges are not present for resolution of the dispute, the presiding judge shall provide a summary of each team's argument and any decision rendered as to the dispute. Each scoring judge will consider the dispute before reaching his or her 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 36. Reporting of Rules Violation/Outside the Bar

Disputes which arise from matters not governed by Rule 33 may be brought exclusively by a team's official faculty advisor or attorney-coach. Such disputes must be made promptly to the competition coordinators, who may ask the complaining party to state the complaint in writing. The competition coordinators will select and appoint a dispute resolution panel which will (a) notify all pertinent parties; (b) allow time for a response, if deemed by the dispute resolution panel to be appropriate; (c) investigate, if deemed by the dispute resolution panel to be appropriate; (d) conduct an informal hearing, if deemed by the dispute resolution panel to be appropriate; and (e) rule on the charge. The dispute resolution panel may notify the judging panel of the affected courtroom of the ruling on the charge.

RULES OF PROCEDURE

A. BEFORE THE TRIAL

Rule 37. Team Roster

Copies of the team roster must be completed and duplicated by each team prior to arrival for trial. Teams must be identified ONLY by the code assigned at registration. No information identifying a team's city or school of origin should appear on the form or any materials brought into the courtroom or on any clothing worn by the team members or audience. Before beginning a trial, the teams must exchange copies of the Team Roster Form. Copies of the Team Roster Form should also be made available to the judging panel before each round.

Rule 38. Stipulations

When the Court asks the Plaintiff if it is ready to proceed with opening statements, the attorney assigned the opening statement should offer the stipulations into evidence.

Rule 39. The Record

The stipulations, indictment, and charge to the jury, if any, will not be read into the record.

B. BEGINNING THE TRIAL

Rule 40. Jury Trial

The case will be tried to a jury unless the presiding judge determines otherwise; arguments are to be made to the judge and jury. Teams may address the scoring judges and any other persons permitted by the presiding judge to sit in the jury box as the jury.

Rule 41. Standing During Trial

Unless excused by the presiding judge, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections.

Rule 41. Objection During Opening Statement/Closing Argument

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

If a team believes an objection would have been necessary during the opposing team's closing argument, a student-attorney, following the closing arguments, may seek to be recognized by the presiding judge and may say "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that _____." The presiding judge need not rule on this "objection." Presiding and scoring judges will weigh the "objection" individually. No rebuttal by the opposing team will be heard.

C. PRESENTING EVIDENCE

Rule 43. Argumentative Questions

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

Rule 44. 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 45. Procedure for Introduction of Exhibits

The following steps are *examples* by which evidence may be effectively introduced:

1. All evidence will 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.
5. “I now hand you what has been marked as Exhibit No. ____ for identification.”
6. Ask the witness to identify the exhibit. “Would you identify it please?”
7. Witness answers with identification only.
8. Offer the exhibit into evidence.
9. Court: “Is there an objection?” (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
10. Opposing Counsel: “No, your Honor,” or “Yes, your Honor.” If the response is “yes”, the objection will be stated on the record. Court: “Is there any response to the objection?”
11. Court: “Exhibit No. ____ is/is not admitted.”

Rule 46. 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 47. Redirect/Recross

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

D. CLOSING ARGUMENTS

Rule 48. Scope of Closing Arguments

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

E. CRITIQUE

Rule 49. The Critique

The judging panel is allowed time for debriefing. Judges will not reveal the scores attributed by them to individual performances, nor will they reveal which team was the ballot winner. The judges may announce the winner of the case on the merits and may discuss or comment upon the presentations in furtherance of the educational interests of the Alaska High School Mock Trial Competition.

II. MODIFIED RULES OF EVIDENCE

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the mock trial team to know the Federal Rules of Evidence (Mock Trial Version) and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses. For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence and its numbering system. When rule numbers or letters are skipped, those rules were deemed not applicable to mock trial procedure. Text in italics 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.

Article I. General Provisions

Rule 101. Scope

These Rules of Evidence (Mock Trial Version) govern the trial proceedings of the Alaska High School Mock Trial Competition.

Rule 102. Purpose and Construction

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

ARTICLE II. Judicial Notice – Not Applicable

ARTICLE III. Presumptions in Civil Actions and Proceedings – Not Applicable

ARTICLE IV. Relevancy and its Limits

Rule 401. Definition of “Relevant Evidence”

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

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

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

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

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

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

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

- (1) Character of Accused – Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
- (2) Character of Victim – Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut 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 aggressor;
- (3) Character of witness – Evidence of the character of a witness as provided in Rules 607, 608, and 609.

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

Rule 405. Methods of Proving Character

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

(b) Specific instances of conduct – In cases in which 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 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 410. Inadmissibility of Pleas, Pleas Discussions, and Related Statements

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

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of *nolo contendere*;
- (3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
- (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in presence of counsel.

Rule 411. Liability Insurance (civil case only)

Evidence that a person was or was not insured against liability is not admissible upon the issue of 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 between grand jurors;*
- (4) *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).

Rule 607. Who may Impeach

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

Rule 608. Evidence of Character and Conduct of Witness

- (a) Opinion and reputation evidence of character – The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.
- (b) Specific instances of conduct – Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

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

Rule 609. Impeachment by Evidence of Conviction of Crime (this rule applies only to witnesses with prior convictions)

- (a) General Rule – For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused had been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.
- (b) Time Limit – Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.
- (c) Effect of pardon, annulment, or certificate of rehabilitation – Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the

person convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

- (d) *Not applicable.*
- (e) *Not applicable.*

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

- (a) Control by Court – The Court shall exercise reasonable control over *questioning* of witnesses and presenting evidence so as to (1) make the *questioning* and presentation effective for ascertaining the truth, (2) to avoid needless use of time, and (3) protect witnesses from harassment or undue embarrassment.
- (b) Scope of cross-examination – *The scope of cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.*
- (c) Leading Questions – Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.
- (d) Redirect/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 which relate to the testimony of the witness.

Rule 613. Prior Statement 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 prior inconsistent statement by a witness is not admissible unless the witness is afforded 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, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rule 703. Bases of Opinion Testimony by Experts

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

Rule 704. Opinion on Ultimate Issue

- (a) *Opinion or inference testimony* otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.
- (b) In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

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

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

- (a) **Statement** – A “statement” is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) **Declarant** – A “declarant” is a person who makes a statement.
- (c) **Hearsay** – “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- (d) **Statements which are not hearsay** – A statement is not hearsay if:
 - (1) **Prior statement by witness** – The declarant testifies at the trial or hearing and

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

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

Rule 802. Hearsay Rule

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 purpose 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) Business Records – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this

paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

- (18) Learned treatises – To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.
- (21) Reputation as to character – Reputation of a person’s character among associates or in the community.
- (22) Judgment of previous conviction – Evidence of a judgment *finding* a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

Rule 804. Hearsay Exceptions—Declarant Unavailable.

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

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

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

(3) establishes a lack of memory of the subject matter of his 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 his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), (4), or (5), of this rule, his attendance or testimony) by reasonable means including process.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his 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 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.* 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 his 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, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (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.

(5) *Other Exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 805. Hearsay within Hearsay

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

Article X. Contents of Writing, Recordings and Photographs – Not applicable.

EVALUATION GUIDELINES

The competition judges are given instructions on how to evaluate the performance of participating teams and individuals. The following guidelines, as well as additional instructions that are not included here, are included in the material provided to the competition judges. Participating teams may assume that the winning team will excel in the following ways:

ATTORNEYS:

DEMONSTRATED SPONTANEITY:

- in response to witnesses and/or the court;
- in the overall presentation of the case; and
- in making and responding to objections, capitalizing on opportunities which arise during trial.

DEMONSTRATED COMMAND OF THE FACTS AND ISSUES

in the case and attorney's understanding of the relevant points of law.

When examining witnesses, attorney **PHRASED QUESTIONS PROPERLY** and demonstrated a clear understanding of trial procedure and the simplified rules of evidence used for the mock trial competition.

The attorney's questions:

- were clearly stated, concise, and to the point;
- resulted in straightforward answers from the witness;
- brought out information important to the case; and
- brought out contradictions in testimony.

Opening statements and closing arguments were **ORGANIZED AND WELL-REASONED** presentations, with the closing argument emphasizing the strengths of the attorney's own side and addressing the flaws exposed by the opposing attorneys during trial.

WITNESSES:

Testimony was **CONVINCING** and characterizations were **BELIEVABLE** and **CONSISTENT** with the affidavits. **PREPARATION** and **SPONTANEITY** were evident in the manner witnesses handled questions posed to them by the attorneys.

TEAMS:

Courtroom **DECORUM AND COURTESY** by all team members and coaches were observed. Affiliated observers were not disruptive. All participants were **ACTIVE** in the presentation of the case.

2018 ALASKA HIGH SCHOOL
MOCK TRIAL CHAMPIONSHIP COMPETITION
(Anchorage, April 5-7, 2018)

TEAM REGISTRATION FORM
(Please CLEARLY print name and contact information)

School (Organization) Name: _____

Team Mailing Address: _____

Teacher or other School Advisor: _____ T-Shirt Size: _____

Advisor Contact Phone: _____ Message Phone: _____

Advisor FAX Number: _____ **E-Mail:** _____

Attorney Coach: _____ T-Shirt Size: _____

Coach Contact Phone: _____ Message Phone: _____

Coach FAX Number: _____ **E-Mail:** _____

Student Team Members (Please print names in block lettering)

(T-Shirt Size)	(T-Shirt Size)
()	()
()	()
()	()
()	()
()	()
()	()

THIS IS TEAM NUMBER _____

Each team must have a minimum of six students members. No team may have more than nine members, including alternates. The assistance of attorney coaches is recommended, but not mandatory. Schools wishing to register more than one team may designate the same teacher or other school sponsor as the official school advisor. Any school wishing to register multiple teams MUST indicate which team is the "First Team," "Second Team," etc. **All teams must be registered no later than March 30, 2018.**

TO REGISTER A TEAM, PLEASE RETURN THIS FORM WITH THE REGISTRATION FEE OF \$150 PER TEAM TO:

ANCHORAGE BAR ASSOCIATION
YOUNG LAWYERS SECTION
c/o PROF. RYAN FORTSON
JUSTICE CENTER
UNIVERSITY OF ALASKA ANCHORAGE
3211 PROVIDENCE DRIVE, LIB 213
ANCHORAGE, AK 99508-4614
Attn: MOCK TRIAL