

Mock Trial

Chris Moss v. New Columbia Public School District and Dr. Terry Preece

The mother of a graduating high school senior sues the Metro City School District for educational malpractice.

**Developed by the D.C. Street Law Clinic
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**IN THE SUPERIOR COURT OF THE STATE OF NEW COLUMBIA
IN AND FOR NEW COLUMBIA COUNTY**

Chris Moss	)	
	)	
Plaintiff	)	Civil Case No.: CV01-192008
	)	
v.	)	
	)	
The New Columbia Public School District	)	
and;	)	
Dr. Terry Preece, as an agent/employee	)	
of the NCPSD	)	

Case Summary¹

Chris Moss lives at 2300 14th Street in Metro City, in the state of New Columbia, and is a senior at New Columbia Senior High School. New Columbia Senior High School is a public school within the New Columbia Public School District. Chris has been enrolled in New Columbia public schools since entering kindergarten at the age of five. Chris has progressed from grade to grade and has always at least minimally passed all classes. Chris has never been tested for any learning disabilities, and the standardized test scores indicate Chris is an average student. Chris is scheduled to graduate on time and receive a high school diploma at the end of the school year.

Chris' basic skills in reading, writing and arithmetic are extremely weak. The basic skills Chris possesses are so poor that Chris finds it difficult to function adequately in society. Chris has difficulty reading simple books, the newspaper, a menu in a restaurant, writing a simple letter or making sure correct change is given by a store clerk.

¹ The foregoing summary of the case is provided solely for the convenience of the participants in the Mock Trial Tournament. This overview itself does not constitute evidence and may not be introduced at trial or used as impeachment.

Chris has applied for several jobs during the past year and a half and has been unsuccessful in finding and holding a job. Chris has had difficulty in filling out job applications due to poor reading and writing skills. Prospective employers feel Chris cannot handle minimal responsibilities in a job. Chris has also been looking for a full-time job to begin after graduation and has not been able to find one. Chris believes the inability to find employment is directly related to a lack of basic academic skills.

Claims and Defenses

Chris is suing the New Columbia Public School District and Dr. Terry Preece for educational malpractice, which is classified as a tort. Educational malpractice is not widely recognized, but is emerging as a new cause of action in many jurisdictions. Chris claims the school district, and Dr. Preece as the implementer of the district's educational policies, have negligently failed in their statutory duty, under New Columbia Education Code Sections 2097, 2098, 2099, and, 2101, to educate Chris in the basic academic skills. Chris claims the defendants have a statutory duty to educate students and to meet the individual needs of students in the school district and that they have failed to do so in this case. Since Chris has not acquired the basic skills necessary to succeed in society, Chris is unable to find employment and will be unable to provide for basic needs in the future.

The defendants claim they have met their duty, which they describe as providing educational opportunities for students enrolled in the schools. Chris had the opportunity to attend school and was exposed to the same educational opportunities as other students who were able to learn and master basic academic skills and more. In addition, the defendants assert that there is no proof that the schools or their agents are responsible for Chris' failure to learn, as there are many outside factors that contribute to a student's inability to learn.

Relief Requested

Chris is asking the court to make a finding of educational malpractice and grant injunctive relief. The school district should be ordered to develop a program and policies that meet the needs of individual students so all students graduate from senior high school with at least the ability to perform basic academic skills. In addition, the plaintiff is requesting the sum of \$20,000 to pay for an individual tutor, who would help bring Chris' academic skills up to par, plus attorney fees and court costs.

The defendants are asking the court to find there was no educational malpractice on the part of the defendants and to deny the injunctive or monetary relief sought by the plaintiff.

Witnesses

Plaintiff Witnesses

1. Chris Moss, Plaintiff
2. Dr. Gerry Stein, Education Testing Specialist
3. Sydney Payne, Office Manager, Bowers & Jenkins law firm

Defense Witnesses

1. Dr. Terry Preece, School Superintendent
2. Leslie Brown, teacher, New Columbia Senior High School
3. Alex Lloyd, student, New Columbia Senior High School

Stipulations

The parties stipulate to the authenticity and admissibility of all of the official exhibits.

Brief History on Education Reform and the Tort of Educational Malpractice

The first reported cases of educational malpractice hailed from Louisiana (in 1973), California (in 1976) and New York (in 1979). However, the idea of educators being held responsible for education of their students did not take hold of the courts until 1980. Between 1980 and 2001, there was a barrage of cases dealing with the tort of educational malpractice, also referred to as “failure to teach” or “failure to educate” torts. Parents and students sought relief from school systems which they viewed as inadequate in their ability to properly educate.

A monumental event in the educational movement came in January 2002, when President George W. Bush signed into law the *No Child Left Behind Act of 2001*. The new law was an open acknowledgement and acceptance of the need for vast educational reform. It was enacted to improve the performance of students in lower performing schools and provide safeguards to ensure educational accountability. The Act also required states to implement measures for schools to assess student performance.

Although there is much debate on as to the success of the No Child Left Behind Act, it is undeniable that the issue of educational accountability is of major importance.

Mock Pretrial Motion

This section of the mock trial packet contains materials and procedures for the preparation of a pretrial motion on an important issue. The judge's ruling on the pretrial motion will have a direct bearing on the admissibility of certain pieces of evidence and the possible outcome of the trial. All pretrial information can be used in each side's case in chief. The pretrial motion is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies, distinguish a variety of factual situations and analyze and debate constitutional issues. In the case at hand, the parties will be arguing the following issue: What duty does a school have to educate and assess its students, particularly when certifying them as high school graduates?

Plaintiff may consider the following in preparation for their pretrial motion presentation:

1. What should schools realistically be required to do to advance student learning?
2. What responsibility does a school have to inform students of their educational progress or lack of progress?
3. Courts routinely set a standard of care for physicians and surgeons. Should the court set similar standards for educational institutions and their representatives?
4. Will a failure to allow this case to proceed result in permitting the defendants to maintain deficient standards?

The defense may consider the following in preparation for their pretrial motion presentation:

1. Can schools be required to make students learn, or don't the students bear a major portion of the responsibility for learning?

2. How can educational damage to students be measured, proved, and remedied by courts?
3. Wouldn't allowing this case to proceed open a floodgate for cases by other dissatisfied students?
4. How can students show that schools cause their educational deficiencies?

The Mock Trial Pretrial Motion Hearing

Procedural Information

The prosecution and defense may have only one pretrial attorney each, presenting the arguments and the rebuttal for their team. We encourage judges to challenge the attorneys with questions, including about the case law, during pretrial arguments. All of the materials in the mock trial packet can be used for the purposes of the pretrial motion. No objections are allowed during pretrial arguments.

In order to present a position in the most persuasive manner, students should carefully review and become familiar with the materials provided in this packet. Additional background research may supplement their understanding of the constitutional issues at hand, but such supplemental materials may not be cited in arguments. The pretrial motion will be made orally. No written pretrial memorandum may be submitted to the judge.

The timeline of the Pretrial Motion Hearing is as follows:

1. The hearing is called to order
2. The judge asks the plaintiff's pretrial motion attorney to summarize the arguments made in the motion.
3. The plaintiff has a total of 10 minutes to present its argument. The first three minutes will consist of an uninterrupted presentation of its argument. During the next five minutes, the judge may ask clarifying questions. The judge must cease asking questions once a total of 8 minutes have elapsed and the argument must end. The final two minutes will be reserved for any rebuttal of the opposing side's arguments.

4. The judge asks the defense's pretrial motion attorney to summarize arguments made in its opposition motion. The defense will have 10 minutes for its presentation. The first three minutes will consist of uninterrupted time, which the defense may use to counter any of the plaintiff's arguments, after which the judge may ask clarifying questions during the remaining seven minutes. There will be no time reserved for rebuttal.
5. Arguments raised in the pretrial motion may be reused during the closing arguments.
6. The judge will postpone ruling on the motion until the conclusion of the trial, when he or she announces their decision on the case.
7. Beyond having a direct effect on the outcome of the trial on the merits, scores for the pretrial motion presentations will be added to each team's total scores in determining the winner of the trial in terms of team performance.

LEGAL AUTHORITIES

I. Statutes

New Columbia Educ. Code Section 2097: Proficiency Standards for Students

Each school district shall develop proficiency standards which shall include, but need not be limited to, reading comprehension, writing and computation skills in the English language, necessary for success in school and life experience, and shall be such as will enable individual achievement to be ascertained and evaluated. The standards shall be directly related to the district's instructional program.

New Columbia Educ. Code Section 2098: Analysis of Individual Needs and Potential

The competent educator shall use or promote the use of appropriate diagnostic techniques to analyze the needs and potential of individuals. Among the techniques to be considered are personal observation, analysis of individual performance and achievement, and specific performance testing.

The competent educator shall use the results of evaluations for planning and program modification, and share the results of evaluation with affected parties.

New Columbia Educ. Code Section 2099: Instructional Procedures

Each competent educator shall create an atmosphere that encourages learning, use procedures appropriate to the designated task, and encourage expression of ideas, opinions and feelings.

Each competent educator shall create interest through the use of appropriate materials and consider the individual interests and abilities of students.

New Columbia Educ. Code Section 2100: Administrative Duties

Each competent school administrator shall support the process of learning by providing appropriate and reasonable materials and equipment and by making reasonable assignments of tasks.

Each competent school administrator shall enforce the statutory requirements to the best of their ability.

II. Case Law^{*}

Jane Smith v. Charlotte School District, 65 A.2d 54 (NC, 1988)

Student sued the school district for failing to educate her in the basic academic skills. She graduated from high school with the inability to fill out a job application or do simple mathematical computations. Statutes in the state required school districts to provide analysis of students' individual needs and to develop learning programs which meet these needs. In addition, the state provided for certification of teachers and viewed them as professionals.

The court made a finding of educational malpractice based on the school district's failure to meet the requirements of the statutes. The court stated "... public educators are professionals. They hold themselves out as possessing certain skill and knowledge with some minimum degree of competence. In addition, like other professionals, they must often make educated judgments in applying their knowledge to specific individual needs. As professionals, they owe a professional duty of care to children who receive their services and a standard of care based

^{*} These are cases which may be used in the mock trial. It should be assumed they are not from New Columbia and not binding on this Court.

upon customary conduct is appropriate. There can be no question that negligent conduct on the part of a public educator may damage a child by inflicting psychological damage and emotional distress. Moreover, since public educators purport to teach, it follows that some causal relationship may exist between the conduct of a teacher and the failure of a child to learn. Thus, it is possible to maintain a viable tort action against such professionals for educational malpractice."

John W. v Broad School District, 54 Cal. App.3d 822 (CA, 1988)

The student sued the school district for failing to educate him because he graduated from high school reading and writing on only a sixth grade level. The court would not entertain any action for educational malpractice, stating "the achievement of literacy in the schools, or its failure, is influenced by a host of factors which affect the pupil subjectively, from outside the formal teaching process and beyond the control of its ministers. These may be physical, neurological, emotional, cultural or environmental. They may be present but not perceived. School authorities may not be able to recognize them nor can schools be held responsible for the failure of parents or the students themselves."

Affidavit of Chris Moss

Plaintiff

1. My name is Chris Moss. I am eighteen (18) years old and a senior at New Columbia Senior High School. I live at 2300 14th Street, apartment number 2, in Metro City, New Columbia. I live with my mother and younger brother in a one bedroom apartment. My mother has always worked full-time for an office cleaning company in order to support us.
2. When I was younger, I would stay with a neighbor, Mrs. Jones, after I came home from school until my mother returned from work. Mrs. Jones has seven children of her own, so it was no big deal for her to have me over at her house. When I turned eleven my mother let me stay by myself. I didn't need anyone looking after me. Lots of nights my mother doesn't get home until late. She tries to put in a lot of overtime because we need the money.
3. I've always gone to public schools in New Columbia. I don't particularly mind going to school. My attendance at school was very good in elementary school. I did miss some school in junior high and high school, like all kids do, but it didn't have any impact on my grades. I still passed all my classes.
4. Sometimes the assignments don't make much sense to me. Once when I asked for help the teacher was too busy. I don't like to ask my mother for help. She's usually tired when she comes home from work and doesn't have the energy to look at my schoolwork.
5. Most of my classes have been pretty boring. My teachers don't seem very competent. Usually they just lecture to us. They keep giving us a lot of information, but don't really get us involved or check to see if we understand.

Sometimes they'll have a student read something from the book and then ask us questions about it. Even though I can't read, that never bothered me. If I got called on to read, I would just say, "I'd rather not." I could always answer the questions when someone else read the paragraph. Before an exam the teachers usually hold a review session. This would be really helpful because I could memorize exactly what they wanted me to know the night before the test and then forget it right away. I even memorized key words so I would know what answers to put where. I never understood the written material but the review sessions helped me pass the tests.

6. I heard there was a new reading program being offered at the high school a couple of years ago, but I figured there was no point in going. It was early in the morning and I don't like to get up too early. Also, I had trouble reading, so what was the point in going to school and sitting in a room with a lot of other students and trying to read a book? I spoke to a couple of friends about the program and it sounded dumb and boring.
7. In math class I learned how to add, subtract, multiply and divide, but I never had to use the skills in real situations. I didn't learn any practical skills like giving change or balancing a checkbook. In lots of math classes we were allowed to use calculators, so I didn't even have to memorize basic math facts.
8. I know I'm not the brightest student in school, but I do try to do my work. I enjoyed my social studies class with Leslie Brown last year, especially the mock trial. I learned a lot in her class.
9. My mother always looked at my report card and since I have always passed all my classes, she was pretty happy with the way I was performing in school. I

- wasn't planning to go on to college, but I thought I would get a job, save some money and then get a place of my own. It always feels crowded in our apartment and I would like some space to call my own.
10. I started looking for a part-time job last year. Before that I had to watch my younger brother and couldn't work after school. I went to some of the fast-food stores, the supermarkets, department stores, and other neighborhood stores to see about a job. I thought I could work in one of those places because I have friends with jobs there. The first place I went I had a lot of trouble filling out the job application. I couldn't read all the questions they asked and ended up answering the questions wrong. I felt like a real dummy. After that, when I was applying to other places, I tried to take the application home with me so I could have a friend help me fill it out and then send it back.
11. I did get hired by Hamburger King last year. I worked there for about a month. For some reason, while I was working there the new computer cash registers kept going out. We had to figure out the amount of change each person should get from their purchase. I couldn't figure out the right amount of change. People would get impatient while I was trying to figure it out. A couple of people took advantage of me and demanded more money than they were supposed to get. I ended up being short a number of nights. The manager caught me giving too much money back and got really angry and fired me. I can't blame him for firing me. I know the store can't afford to lose money all the time.
12. A couple of employers I talked to seemed to really like me. They said if I could improve my reading and writing skills they would hire me. I really wanted the job at Bowers and Jenkins and tried hard to do well on the application. It

seems to me since I always tried in school and passed all my classes I should be able to get a job. I went to school most of the time and did my homework sometimes. No one does their homework all the time. There are too many other things to do like parties, movies, and football games.

13. My mother is really upset. She had no idea I couldn't read. My grades in school were always okay (mostly Cs) so she figured I must have been doing fine. The school should have made sure I could read and write before they passed me on from grade to grade. Now I don't even have the skills needed to get a lousy job. How am I going to be able to support myself later on? I can't count on my mother to support me forever.

This I swear under penalty of perjury.

Chris Moss

Chris Moss

Affidavit of Dr. Gerry Stein

Education Specialist

Witness for the Plaintiff

1. My name is Dr. Gerry Stein. I have a B.A. degree in elementary education, a Masters degree in supervision in education, and a Doctorate in education, specializing in curriculum development. I was a teacher for 10 years, a principal for four years and superintendent for curriculum development for two years in Lake City, New Columbia. I moved to Metro City two years ago and applied for a similar job, but Dr. Preece didn't hire me for the position, so I have been doing private consultation with individuals and school districts since that time. The plaintiff is paying me \$1,000 for my testimony.
2. I spent about four hours interviewing and testing Chris' basic skills. Although the test scores indicate Chris is below grade level at this time, Chris is intelligent and could have learned if Chris was taught properly in school. A curriculum must meet the needs of all the students and help them reach their potential.
3. I also spent a great deal of time reviewing written policies and procedures of the school district and have found them lacking. The district is not meeting the needs of individual students and their families and is not following all of its policies. The district has a policy in regard to attendance. If a student is out, the parent is supposed to be called in the morning to find out why the student is not in school. The student is supposed to return to school with a note from the parent or a doctor. When Chris' attendance started to decline in junior high school, the school should have checked the situation out. No one from the school contacted

Chris' mother to find out why Chris was missing school. There is no record of anyone calling Chris' mother to find out the reasons for Chris' nonattendance.

4. In addition, when Chris missed the eighth grade standardized tests, the school should have arranged for Chris to make them up. If the school district believes in giving standardized tests as one means of evaluating students, then the schools should be sure all students take the tests. Perhaps if the school had given Chris the test in eighth grade they might have noticed Chris' reading ability had dropped.
5. Although Chris passed all classes, it should have been clear that the basic academic skills needed to be successful were beyond Chris' ability. Evaluation techniques should be supportive of the goals the school district is trying to accomplish. Since all students should graduate from high school with a proficiency in the English language, any evaluation program that does not pick up a student lacking these skills is not meeting its purpose. Several teachers in the school district informed me they had been instructed by the principal of the school to pass students who had questionable grades. They were told the students needed to be moved on so they could get an education. Students don't get much of an education if they don't have a foundation to build on.
6. New Columbia School District needs to change its curriculum and policies. It should develop a curriculum that has input from teachers, parents and students. If everyone participates in the planning of the curriculum, it is more likely to meet the needs of the students and the parties will have a larger stake in making sure it will work. Individual evaluations should be done for each student, and based on the evaluation, an individual learning plan should be developed that meets the

needs and learning styles of the individual students. The student's progress in that individual plan should be examined regularly and any problems or progresses should be provided to both parents and students. The current evaluation system in the New Columbia schools consists of standardized tests in fifth and eighth grades and report cards issued four times a year. As far as I can tell, there is no mechanism in place to make sure all students are given the standardized tests. Also, there is no guarantee that students or parents pay attention to the report cards. Follow-up should be done with parents whose children are in trouble in school.

7. I have been told that the current reading program is a class before school where the teachers read a book with the students. To my knowledge, there is no accounting for the varying reading levels of the students or a proper mechanism to measure the students reading progress.
8. The reading program should be redesigned to include these elements: (1) developmental reading - systematic, sequential instruction that begins in the preschool years and continues through high school; (2) functional reading - practice using reading to solve problems in widely diverse school and other life areas; (3) independent/recreational reading - time and materials to foster lifetime reading habits ; and (4) corrective/remedial reading - help for children who need it for either poor skills, habits or attitudes.
9. There is no good reason Chris could not learn. Chris is an intelligent, personable and verbal student and has the capability to learn. The school system just failed to educate Chris and should be held accountable.

This I swear under penalty of perjury.

Dr. Gerry Stein

Dr. Gerry Stein

Affidavit of Sydney Payne

Office Manager, Bowers & Jenkins

Witness for the Plaintiff

1. My name is Sydney Payne and I live at 4433 Foxhall Drive, Metro City.
I've lived in Metro City since I got married 20 years ago. I have two children:
Bobby who is 15 years old and Janie who is 11 years old.
2. When we bought our house we looked for a house in a neighborhood with a
lot of kids and schools in the area. The elementary school is one block away and
the junior and senior high schools are less than ten blocks away.
3. I think education is really important, but I didn't realize at that time that
public schools just aren't that good. That's why I've sent both of my kids to
private school. I went to public school and when I compare the education I
received with the type of education my friends got who went to private school, I
know I missed out. I make good money in my job and decided to have my
children go to private school. I want them to get the best education possible.
4. I am the office manager for Bowers & Jenkins, a law firm in Metro City,
New Columbia. I am responsible for interviewing, hiring and training all new
personnel.
5. Right now we are getting ready to expand our operation from twenty to
thirty people. We are now taking on a great number of part-time people, and in
about six months we will be having many of them on full-time.
6. Chris Moss came and applied for a mailroom position when news got out
about our expansion. I really like Chris a lot. Chris has a great personality and is
the type of individual who would get along great with the other employees. I was

disappointed when I looked at Chris' job application. It was clear Chris had difficulty filling it out. Chris' writing and reading skills are not that good, and Chris could not adequately deal with our important mail functions.

7. I also found out Chris was fired from Hamburger King because Chris kept messing up the change being given to customers. I need someone who has at least basic academic skills. Applicants don't need to be college material, but they do need some basic smarts. Lots of our employees move up the ranks to supervisory positions. Chris wouldn't be able to do that. I doubt Chris would even be able to do the basic operations required for the mailroom job.

8. We don't have any employees currently working at Bowers & Jenkins who have gone to New Columbia public schools. When I first started working for Bowers & Jenkins, I hired three people who had graduated from New Columbia Senior High School. All three were also weak in reading and writing skills.

9. One person quit working after two months on the job. He got tired of the commute. It's no fun having to train someone who leaves the job so soon. I had to fire one of the other workers because she couldn't handle the job responsibilities. The other person moved to another law firm where he is paid more money. He's been working out fine.

This I swear under penalty of perjury.

Sydney Payne

Sydney Payne

Affidavit of Dr. Terry Preece

School Superintendent, New Columbia School District

Witness for the Defense

1. My name is Dr. Terry Preece and I am the Superintendent of Schools for New Columbia School District. I have a Ph.D. in Education and Supervision and have been superintendent for the district for the past 12 years. Prior to that time I was assistant superintendent for 7 years, a curriculum specialist for 3 years, a principal of the senior high school for 4 years and an English teacher for 5 years. All my work experience has been with the New Columbia School District.
2. I'm very proud of our school district. We have a good, traditional educational system. Most of our teachers have been with the school district for over 15 years and they know their job very well. From kindergarten through twelfth grade, the students are exposed to a well-rounded curriculum. The basics, such as reading, writing and arithmetic, are taught. We also have strong social studies, science and vocational training programs.
3. Three years ago we implemented a program in which all students in the district read for the first hour of every school day because we feel reading is so important. In elementary school the students read from the basal reader series.
4. In junior and senior high school, they do independent reading, since by that time, they have the basic skills for reading and we are concentrating on comprehension and increasing their joy of reading. In junior and senior high school, the students don't get a grade for the reading class and several of the schools offer the class the hour before school officially begins. However, there are enough teachers available for all the students who want to participate in the

program.

5. Maybe if Chris had not been so lazy and had participated in the reading program, Chris' skills would be better. Alex Lloyd is also a student in the twelfth grade and has been attending New Columbia schools since kindergarten. Alex did participate in the program and doesn't have any difficulty with reading skills. The program has been successful, as demonstrated by the fact that the reading test scores have gone up for those students who have participated in the program. The average increase for students was a whole grade level.
6. We have a set curriculum in all subject areas that is used district-wide. Each school has some flexibility in adding to the curriculum, but it does act as a guideline and must be followed at a minimum. I'm proud to say that when I was the curriculum specialist for the district, I designed the English (which included reading) curriculum we are still using.
7. Our math curriculum includes the basic skills students need. They learn how to add, subtract, multiply and divide. In the more advanced classes they also learn algebra, geometry and trigonometry. We may not teach things like how to make change, but that's something the students should be learning at home from their parents.
8. We do offer a one-semester course in the high school called Life Skills. In this class, students learn how to fill out a job application, go on job interviews, balance a checkbook and maintain a family budget. Chris took this class, but received a D. Chris was absent from the class quite a bit. Maybe if Chris had attended the class every day there wouldn't have been this problem with filling out job applications.

9. Evaluations of students are done in several ways. Report cards are distributed four times a year and deficiency notices are sent to all parents mid-quarter if their child is failing a class. Report cards in elementary and junior high school must be returned to school signed by the parent(s).
10. In the senior high we mail the report cards to the home. Parent/teacher conferences are held twice a year. We close the schools for a day and parents can sign up for a conference with the teacher during the school day. We also have an open house at all the schools within six weeks of the opening of school. This is held in the afternoon and parents get to see what their children's classes are actually like.
11. Parents are encouraged to visit the school and talk to the teachers at any time. Of course, we can't pull teachers from the classroom to talk to parents, but we do take messages and teachers will call parents back.
12. We feel it's important for the family to take some of the responsibility for their child's education, so we encourage parents to be actively involved in the schools. We use parent volunteers and they do fundraising for the schools. We don't have much patience for these parents who just send their kids to school without checking what's going on. They are just so irresponsible.
13. We also evaluate the students with standardized tests that we administer in the fifth and eighth grades. Chris' scores in fifth grade were barely at grade level. In eighth grade Chris missed the exams due to declining attendance and the tests were never made up. Chris and Chris' mother, through a written notice, knew it was Chris' responsibility to make up the test after school within 30 days, but they did nothing.

14. Chris Moss has a fairly decent record in school. Chris received satisfactory grades in elementary school and Chris' attendance was good. In junior and senior high school Chris started to miss quite a bit of school and Chris' grades seemed to reflect this fact. Although Chris passed all classes, it was with low grades. A concerned parent should have been at the school questioning what was happening. Chris' mother never came to the school.
15. Alex's attendance has been good all through school. Alex has barely missed any classes. If Alex was absent there was always a note from home upon return to school. This way it was an excused absence. In elementary school, Alex received satisfactory grades and passed all classes in junior and senior high school. Alex has been present for all standardized tests and has continuously performed at grade level.
16. We clearly cannot do the job of educating our youth on our own. It has to be a team effort. Students need to work hard in school and parents need to participate in their child's education or the system won't work. It is not the school's job to get Chris a job. The best we can do is to provide each student the opportunity to learn. You can't say the schools have failed Chris, but rather that Chris and Chris' mother must take responsibility for low grades and the lack of academic ability.

This I swear under penalty of perjury.

Dr. Terry Preece

Dr. Terry Preece

Affidavit of Leslie Brown
Teacher, New Columbia Senior High School

Witness for the Defense

1. My name is Leslie Brown. I have a B.A. degree in secondary education and I am certified to teach English and Social Studies in the state of New Columbia. I have been a teacher in the New Columbia School District for the past four years. I teach social studies at New Columbia Senior High School. Chris Moss was in one of my social studies classes last year.
2. In my classes, I try to meet the individual needs of students. I like to see students reach their potential. For that reason my classroom activities are designed to help students succeed. We do a lot of small group activities, role-plays, mock trials, discussions and debates. I have students in the class at various levels. Some have difficulties with reading, others with writing, and others lack verbal skills. I try to set up the activities so all students can participate regardless of what level they are on. For example, before we do a role-play, I'll have a good student read parts out loud. This way, if students aren't capable of reading the material, they can still know what is going on.

I do the same things with evaluations.
3. There are several components to a student's grade. Attendance, class participation, homework, test scores and alternative grade activities all make up the grade. I give homework assignments on a regular basis. Students receive credit for just handing the homework in. A good job on the homework gets extra credit. I don't penalize those students who do not do their homework correctly. I want to encourage them to at least try and do their homework.

4. Tests are made up of multiple choice, fill in the blank, true/false, short answer and essay questions. Before each test, I review the material that will be covered by the test. In addition, I read the questions from the test out loud so I can be sure all the students understand the questions. A student can pass the test if he or she gets all the multiple choice, true/false, fill in the blank and short answer questions right.
5. Sometimes I don't give a regular exam for student grades. I use alternative grading methods. For example, often the students get to participate in a mock trial. They have to prepare for it and I grade them on their preparation and their actual participation. I give the students a sheet that indicates how I will grade them on each aspect and what skills I am looking for in their work. This gives students an opportunity to pull up their grades if they don't do well on tests.
6. The school's policy is to pass students whenever possible. The principal gives a pep talk at the beginning of each school year. We are told all students should be helped to meet their potential. Our learning program and evaluation system should be designed to help students progress to the best of their ability.
7. Chris is a very personable and likeable student. Chris often participates in class and offers good ideas in class discussions. I would have liked to see Chris do more homework, but at least Chris was usually in class and participated. Chris has opinions about everything and never hesitates to voice them. It adds a lot to the class.
8. Chris isn't a very good test taker; his written work was poor and the test grades reflected this. Most of the grades were Ds and there were a couple of Cs. However, Chris did do well on special projects. Last year Chris was a witness in

our mock trial and won an award for best witness in the citywide competition. If the work is interesting and someone works with Chris, the level of work produced is very good.

This I swear under penalty of perjury.

Leslie Brown

Leslie Brown

Affidavit of Alex Lloyd

Student, New Columbia Senior High School

Witness for the Defense

1. My name is Alex Lloyd and I am 17 years old. I am a senior at New Columbia High School and have been attending New Columbia public schools since I was five. I live with my mother and stepfather in a two-bedroom apartment at 2300 14th Street, apartment number 5, Metro City. I live in the same apartment building as Chris. My mother and stepfather both work. They do take time to check my schoolwork and usually at least one of them goes to the school for parent teacher conferences and open houses.
2. My attendance at school is very good. My mother doesn't let me stay home from school. Sometimes I don't feel like going, especially when it's snowing or something, but I know I would be in a lot of trouble if I didn't go to school.
3. My school average is about a C. I could probably do better but I only work hard in those classes I really like. I have been going to the reading program that was started three years ago. I was encouraged to do so by Ms. Gomez, the school counselor. She said my reading scores on my eighth grade standardized tests were low. It seems to have helped my reading ability. My reading level has increased and schoolwork has become a little easier.
4. I started working on the weekends and after school last year. I wanted to get some work experience so it would be easier for me to get a job after I graduated from school. I've been working in a department store that offered me a full-time job when I graduate. I didn't have any problems getting a job. I took my time and carefully filled out the job application at several places. When I took the Life

Skills course at school, I learned how to handle myself in an interview. That made it easier when I went to apply for real jobs.

5. Chris and I used to be good friends. We've known each other for a long time but we hang out with different crowds. Chris likes to party a lot and doesn't always go to school. If I stayed out of school as much as Chris or didn't do my homework like Chris, my mother and stepfather would kill me. They would never let me get away with stuff like that.
6. It's important to go to school. You get a chance to do extra stuff when you're at school all the time. For example, there's a trip coming up this spring to Williamsburg, Virginia, and I was one of ten students selected because of good attendance. We're going to visit historical landmarks, go to an amusement park, visit a college campus and get to go to a big party. It really sounds like fun.

This I swear under penalty of perjury.

Alex Lloyd_____

Alex Lloyd

Chris M. v. NCPD

OFFICIAL EXHIBITS

- A. Chris Moss Application for Bowers and Jenkins
- B. New Columbia New Columbia Senior High School, Progress Report For Chris Moss, Grade 5
- C. New Columbia New Columbia Senior High School, Progress Report For Chris Moss, Grade 8
- D. New Columbia New Columbia Senior High School, Progress Report For Chris Moss, Grade 11

BOWERS & JENKINS
6430 Placida Boulevard
Suite 300
Metro City, New Columbia, 019881

JOB APPLICATION

PART I: Personal Information

FULL NAME: Chris Moss		
ADDRESS: 2300 14 th Street		
CITY: Metro City	STATE: New Columbia	ZIP: 01920
SOC. SEC#: 105-85-9738	DATE OF BIRTH: 03/20/82	
TELEPHONE: 546-1082	POSITION DESIRED: Mail Clerk	

List highest educational level you have attained and list all schools that you have attended:

Highest Educational Level Attained: 12th Grade

Schools Attended: New Columbia Hi School
New Columbia Jr. Hi School
New Columbia Grade School

What was your grade point average at each of the schools you listed?

C-
C
C+

List your previous four jobs:

Hamburger King, Cashier

What special skills do you possess?

What days and what hours are you available to work?

Mon too Fri
9 too 5

How did you find out about his position?

Newspaper

PART II: Skills Evaluation

Alphabetize the following by last name:

James Ingram, Sally Rodant, Graham Chapman, Loretta Rodriguez, Trevor Roe,
Dwayne McIntosh, Terrell Ford, Justin Brooks, Alexander Mars, Marc Elias,
Garland Chapman, Corey Lawton, Regina Howell, Mike Montana, Yvonne
Alexander

James Ingram	Dwayne McIntosh	Garland Chapman
Sally Rodant	Terrell Ford	Corey Lawton
Graham Chapman	Justin Brooks	Regina Howell
Brenda Rodriguez	Alexander Mars	Mike Montana
Trevor Roe	Marc Elias	Yvonne Alexander

Organize the following zip codes numerically:

02210, 14211, 20001, 92069, 01224, 10012, 13323, 14321, 13598, 48201, 96065,
22201, 20036, 12350, 14222, 22301

02210	13323	14222	48201
01224	14321	20001	92069
14211	13598	22201	96065
10012	12350	22301	

Please solve the following problem.

Imagine that you are responsible for placing a postage stamp on each piece of mail that goes out of the mail room. You receive: three letters from Mr. Hundleby's office, four from Mr. Thompson, seventeen from Mr. Jareau, six from Ms. Harrison, and one from Mrs. Jones.

Before you have stamped these letters, Mr. Jarreau rushes into the mail room to say that he did not want to send four of his letters and takes these letters back to his office.

How many stamps do you need?

28

31

30

I represent and warrant that I have read and fully understand the foregoing and seek employment under these conditions:

APPLICANT: Chris Moss

NEW COLUMBIA PUBLIC SCHOOL DISTRICT
New Columbia Senior High School
 REPORT OF PUPIL PROGRESS
 GRADE SUMMARY

Pupil: Chris Moss	School: New Columbia Elementary School
I.D. Number: 186-4546-21	Grade: 5
School Year: 2000 - 2001	Teacher: Walker

Dear Parent,

You are encouraged to confer regularly and maintain close contact with your child's teacher.

GRADING SCALE: A	B	C	D	U
100-93	92-85	84-78	77-70	Below 70

SUBJECT	Advisory One	Advisory Two	Advisory Three	Advisory Four	Final Grade
SCIENCE	B-	B-	B	C+	B-
MATHEMATICS	C+	C+	C	C	C
SOCIAL STUDIES	B-	B	B	B+	B
ENGLISH	B-	C	C-	C	C
READING	B-	C+	C+	C+	C+
HEALTH/PHYS. ED.	B-	B-	B	B-	B-
ART	A	B	B	A	B+
MUSIC	C+	C+	C+	C+	C+
ATTENDANCE RECORD	Advisory One	Advisory Two	Advisory Three	Advisory Four	Final Grade
TIMES TARDY	1	1	0	1	3
DAYS ABSENT	0	1	0	0	1
Teacher Comments: (Advisory 1):			Teacher Comments: (Advisory 2):		
Teacher Comments: (Advisory 3):			Teacher Comments: (Advisory 4): <i>Chris has been doing very well in school but seems to have difficulty with reading.</i>		

STANDARDIZED TEST SCORES

IOWA TESTS: 5th Grade 4.0 8th Grade INCOMPLETE

Pupil: Chris Moss	School: New Columbia Junior High
I.D. Number: 186-4546-21	Grade: 8
School Year: 2003 - 2004	Teacher: Jenkins

SUBJECT	Advisory One	Advisory Two	Advisory Three	Advisory Four	Final Grade
SCIENCE	C-	C+	C	C+	C
MATHEMATICS	C	C	C	C	C
SOCIAL STUDIES	C+	C	C+	C	C+
ENGLISH	D	D	C	C	C-
READING	C+	C+	C	C-	C
HEALTH/PHYS. ED.	B	C+	C	B	B-
ART	B	B	B+	B	B-
MUSIC	C	C-	C	C+	C
ATTENDANCE RECORD	Advisory One	Advisory Two	Advisory Three	Advisory Four	Final Grade
	1	1	2	1	5
DAYS ABSENT	2	4	5	10	21
Teacher Comments: (Advisory 1):			Teacher Comments: (Advisory 2):		
Teacher Comments: (Advisory 3): <i>Chris did not appear for the standardized test and needs to make it up within 30 days</i>			Teacher Comments: (Advisory 4):		

Pupil: Chris Moss	School: New Columbia Senior High
I.D. Number: 186-4546-21	Grade: 11
School Year: 2006 - 2007	Teacher: Brown

You are encouraged to confer regularly and maintain close contact with your child's teacher.

GRADING SCALE: A

100-93

B

92-85

C

84-78

D

77-70

U

Below
70

SUBJECT	Advisory One	Advisory Two	Advisory Three	Advisory Four	Final Grade
SCIENCE	D+	D	C-	D+	D+
MATHEMATICS	C-	D+	D	D+	D+
SOCIAL STUDIES	C	C	A	C	C+
ENGLISH	D+	D	D	D+	D+
READING	C	C+	C+	C	C+
HEALTH/PHYS. ED.	B	B	C+	C+	C+
ART	B	B	B-	B	B
MUSIC	C	C	C-	C	C+
ATTENDANCE RECORD	Advisory One	Advisory Two	Advisory Three	Advisory Four	Final Grade
TIMES TARDY	10	3	7	3	23
DAYS ABSENT	7	7	10	12	36
Teacher Comments: (Advisory 1): <i>Chris was absent too many times this semester. The grades suffered as a result.</i>			Teacher Comments: (Advisory 2): <i>Chris has trouble completing reading assignments.</i>		
Teacher Comments: (Advisory 3):			Teacher Comments: (Advisory 4):		

STANDARDIZED TEST SCORES

IOWA TESTS: 5th Grade 4.0 8th Grade INCOMPLETE

2008 MOCK TRIAL TOURNAMENT RULES

The annual Mock Trial Tournament is governed by the rules set forth below. These rules are designed to ensure excellence in presentation and fairness in judging all trials.

TEAM PRESENTATIONS

1. The official mock trial materials, consisting of the Statement of Stipulated Facts, Witness Statements, Relevant Statutes and Case Law, and Pieces of Evidence, comprise the sole source of information for testimony. The Stipulated Facts and any additional stipulations may not be disputed at trial.
2. Each witness is bound by the facts in the given witness statement. All participants agree that the witness statements are signed and sworn affidavits. Witness Statements may not be introduced as evidence, but may be used for impeachment.

Fair additions which (a) are consistent with facts contained in the witness affidavits and (b) do not materially give an advantage to the testifying party are permitted. If a witness is asked a question on cross-examination which is not dealt with in the witness's statement, the witness may invent an answer favorable to that witness's position.

Students may read other cases, materials, or articles in preparation for the mock trial. However, they may only cite the materials given, and they may only introduce into evidence those documents given in the official mock trial packet.

3. If a witness testifies in contradiction of a fact in the witness statement during direct examination, there is no objection for “violating the rules of the mock trial.” The opposition must show the contradiction on cross-examination through correct use of the affidavit for impeachment. If a witness testifies in contradiction of a fact on cross-examination, the cross examining attorney should show the contradiction through impeachment also. This procedure is spelled out in the Simplified Rules of Evidence.
4. If on direct examination witness invents an answer which is likely to affect the outcome of the trial, the opposition should show this on cross-examination through correct use of the affidavit for impeachment. This procedure is spelled out in the Simplified Rules of Evidence. The scorers should consider such inventions of facts in scoring the witness’ presentation.
5. Witnesses are not permitted to use notes in testifying during the trial.
6. All participants are expected to display proper courtroom decorum and collegial sportsmanlike conduct. The decisions of the judges with regard to rules challenges and all other decisions are final.
7. The trial proceedings are governed by the Simplified Rules of Evidence. Other more complex rules may not be raised in the trial.

8. During the actual trial, teachers, attorneys, other coaches, affiliated non-participating team members, parents and all other observers may not talk to, signal, or otherwise communicate with or coach their teams. Team members may communicate with each other during the trial. Instructors from opposing teams are advised to sit next to one another, if possible, and be reasonable. The purpose of this rule is to prevent last minute coaching; it is not intended as a device to disqualify an opposing team.
9. Neither team may introduce surprise witnesses nor call witnesses from the other side. All witnesses (three for each side) must take the stand, in whatever order or sequence determined by the party calling them.
10. Witnesses will not be excluded from the courtroom during the trial.
11. All teams in the tournament must consist of from three to eight attorneys, and three witnesses. Exceptions may be made by the D.C. Street Law Clinic after consultation.
12. Only students registered in their high school for the Street Law class as of February 07, 2008 will be eligible to participate in the Mock Trial Tournament unless otherwise approved by the Director.
13. Teams are expected to be present at the Superior Court for the District of Columbia by 5:30 p.m. the days of the trials. Trials will begin at 6 p.m.
14. The starting time of any trial will not be delayed for longer than 15 minutes. Incomplete teams will have to begin without their other members, or with alternates.

JUDGING

1. Presiding judges for the mock trials may include Judges and Commissioners of the District of Columbia, law school faculty, members of the D.C. Bar, other attorneys, or others approved by the Director.
2. All judges receive the Guidelines for Judges, Judge's Score Sheet, the Simplified Rules of Evidence, and the Mock Trial Packet.
3. Presiding judges are asked to make a legal decision on the merits of the case, but this does not affect a team's score. The decision on team scores is made by a scoring panel, consisting of two or more scorers selected by the Street Law Staff and, in some instances, the presiding judge. The criteria for scoring are discussed in the Guidelines for Scorers and the Score Sheet.
4. All decisions of the judges are final.

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SIMPLIFIED RULES OF EVIDENCE

To assure each side a fair trial, certain rules have been developed to govern the types of evidence that may be introduced, as well as the manner in which evidence may be presented. These rules are called the "rules of evidence." The attorneys and the judge are responsible for enforcing these rules. Before the judge can apply a rule of evidence, an attorney must ask the judge to do so. Attorneys do this by making "objections" to the evidence or procedure employed by the opposing side. When an objection is raised, the attorney who asked the question that is being challenged will usually be asked by the judge why the question was not in violation of the rules of evidence.

The rules of evidence used in real trials can be very complicated. A few of the most important rules of evidence have been adapted for mock trial purposes, and these are presented below.

Rule 1. Leading Questions:

A "leading" question is one that suggests the answer desired by the questioner, usually by stating some facts not previously discussed and then asking the witness to give a yes or no answer.

Example: "So, Mr. Smith, you took Ms. Jones to a movie that night, didn't you?"

Leading questions may not be asked on direct or redirect examination. Leading questions may be used on cross-examination.

Objection: "Objection, Your Honor, counsel is leading the witness."

Possible Response: "Your Honor, leading is permissible on cross-examination," or "I'll rephrase the question." For example, the question can be rephrased: "Mr. Smith, where did you go that night? With whom did you go to the movies?" (This would not suggest the answer the attorney desires.)

Rule 2. Narration:

Narration occurs when the witness provides more information than the question called for.

Example: Question - "What did you do when you reached the front door of the house?"

Witness - "I opened the door and walked into the kitchen. I was afraid that he was in the house -- you know, he had been acting quite strangely the day before."

Witnesses' answers must respond to the questions. A narrative answer is objectionable.

Objection: "Objection, Your Honor, the witness is narrating."

Response: "Your Honor, the witness is telling us a complete sequence of events."

Rule 3. Relevance:

Questions and answers must relate to the subject matter of the case; this is called "relevance." Questions or answers that do not relate to the case are "irrelevant."

Example: (In a traffic accident case) "Mrs. Smith, how many times have you been married?"

Irrelevant questions or answers are objectionable.

Objection: "Your Honor, this question is irrelevant to this case."

Response: "Your Honor, this series of questions will show that Mrs. Smith's first husband was killed in an auto accident, and this fact has increased her mental suffering in this case."

Rule 4. Hearsay:

"Hearsay" is something the witness has heard someone say outside the courtroom. Also, any written statement made outside the courtroom is hearsay.

Example: "Harry told me that he was going to visit Mr. Brown."

Hearsay evidence is objectionable. However, there are two exceptions to the hearsay rule for purposes of the mock trial. If an exception applies, the court will allow hearsay evidence to be introduced. **Exception: In a mock trial, hearsay evidence is allowed when the witness is repeating a statement made directly to the witness by one of the witnesses in the case. Hearsay is also allowed if one of the witnesses is repeating a statement made by an individual who is no longer alive.**

Note that this exception to the hearsay rule does not extend to witness testimony about what another person heard a witness say. This is "double hearsay."

Example: Mary, the plaintiff, told me that Harry, the defendant was drunk the night of the accident.

Objection: "Objection, Your Honor, this is double hearsay."

Response: "Your Honor, since Harry is the defendant, the witness can testify to a statement he heard Harry make."

For mock trials, other exceptions to the hearsay rule are not used.

Rule 5. Firsthand Knowledge:

Witnesses must have directly seen, heard, or experienced whatever it is they are testifying about. **A lack of firsthand knowledge is objectionable.**

Example: "I saw Harry drink two beers that night. I know Harry well enough to know that two beers usually make him drunk, and he seemed drunk that night, too."

Objection: "Your Honor, the witness has no firsthand knowledge of Harry's condition that night."

Response: "The witness is just generally describing her usual and actual experience with Harry."

Rule 6. Opinions:

Unless a witness is qualified as an expert in the appropriate field, such as medicine or ballistics, the witness may not give an opinion about matters relating to that field. **Opinions are objectionable unless given by an expert qualified in the appropriate field.**

Example: (Said by a witness who is not a doctor) "The doctor put my cast on wrong. That's why I have a limp now."

Objection: "Objection, Your Honor, the witness is giving an opinion."

Response: "Your Honor, the witness may answer the question because ordinary persons can judge whether a cast was put on correctly."

Ruling: A judge will likely sustain this objection because it may not be within an ordinary person's knowledge to know whether an incorrectly placed cast will cause a limp.

As an exception to this rule, a lay witness may give an opinion based on common experience.

Example: "It looked to me like Harry was drunk that night. I've seen him drunk and have seen other drunks before."

Objection: "Objection, Your Honor, the witness is giving an opinion."

Response: "Your Honor, the witness may answer the question because ordinary persons may judge whether or not a person appeared drunk based on the witness' experience."

Rule 7. Opinions on the Ultimate Issue:

Witnesses, including experts, cannot give opinions on the ultimate issue of the case: the guilt or innocence of the defendant or the liability of the parties. These are matters for the trier of fact to decide.

Example: "I believe that Mr. Smith was negligent in driving too fast in this case."

Opinions on the ultimate issue in a case are objectionable.

Objection: "Your Honor, the witness is giving an opinion on the ultimate issue – the negligence of Mr. Smith."

Response: "The witness is commenting that the driver was speeding. This is not the ultimate issue in this case."

Rule 8. Additional Rules of Evidence:

1. Objections during the testimony of a witness must be made only by the direct examining and cross-examining attorneys for that witness.
2. Cross-examination is not limited to the scope of direct questioning.
3. A short redirect examination, limited to no more than two questions, will be allowed following cross-examination, if an attorney desires. Questions on redirection are limited to the scope of the cross-examination.
4. If an attorney (on direct or cross-examination) repeatedly asks a witness to discuss the exact same matter, opposing counsel may object to the question as being "asked and answered." It is in the court's interest to have the trial move along in a timely manner.
5. Witnesses must be treated with respect by opposing counsel. If an attorney continuously, and for no valid trial or evidentiary purpose, takes a disrespectful tone with the witness, the opposing counsel may object that the questioning attorney is "badgering the witness."

Rule 9. Special Procedures:

Procedure 1. Introduction of Documents or Physical Evidence:

Sometimes the parties wish to offer as evidence letters, affidavits, contracts, or other documents, or even physical evidence such as a murder weapon, broken consumer goods, etc. Special procedures must be followed before these items can be used in trial.

Step 1: Introducing the Item for Identification

- a. An attorney says to the judge, "Your Honor, I wish to have this (letter, document, item) marked for identification as (Plaintiff's Exhibit A, Defense Exhibit 1, etc.)."
- b. The attorney takes the item to the clerk, who marks it appropriately.
- c. The attorney shows the item to the opposing counsel.
- d. The attorney shows the item to the witness and says, "Do you recognize this item marked as Plaintiff's Exhibit A?"

Witness: "Yes."

Attorney: "Can you please identify this item?"

Witness: "This is a letter I wrote to John Doe on September 1." (Or witness gives other appropriate identification.)

- e. The attorney may then proceed to ask the witness questions about the document or item.

Step 2. Moving the Document or Item into Evidence.

If the attorney wishes the judge or jury to consider the document or item itself as part of the evidence and not just as testimony about it, the attorney must ask to move the item into evidence at the end of the witness examination. The attorney proceeds as follows:

- a. The attorney says, "Your Honor, I offer this (document/item) into evidence as Plaintiff's Exhibit A, and ask that the court so admit it."
- b. Opposing counsel may look at the evidence and make objections at this time.
- c. The judge rules on whether the item may be admitted into evidence.

Procedure 2. Impeachment

On cross-examination, an attorney wants to show that the witness should not be believed. This is best accomplished through a process called "impeachment," which may use one of the following tactics: (1) asking questions about prior conduct of the witness that makes the witness' truthfulness doubtful (e.g., "Isn't it true that you once lost a job because you falsified expense reports?"); (2) asking about evidence of certain types of criminal convictions (e.g., "You were convicted of shoplifting, weren't you?"); or (3) showing that the witness has contradicted a prior statement, particularly one made by the witness in an affidavit. Witness statements in the Mock Trials Materials are considered to be affidavits.

In order to impeach the witness by comparing information in the affidavit to the witness' testimony, attorneys should use this procedure:

- Step 1:** Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit.

Example: "Now, Mrs. Burke, on direct examination you testified that you were out of town on the night in question, didn't you?" (Witness responds, "Yes.")

- Step 2:** Introduce the affidavit for identification, using the procedure described in Procedure 1.

- Step 3:** Ask the witness to read from his or her affidavit the part that contradicts the statement made on direct examination.

Example: "All right, Mrs. Burke, will you read paragraph three?" (Witness reads, "Harry and I decided to stay in town and go to the theater.")

Step 4: Dramatize the conflict in the statements. (Remember, the point of this line of questioning is to demonstrate the contradiction in the statements, not to determine whether Mrs. Burke was in town or out of town.)

Example: "So, Mrs. Burke, you testified that you were out of town on the night in question, didn't you?" "Yes." "Yet, in your affidavit you said you were in town, didn't you?" "Yes."

Note: For an impeachment for a contradictory prior statement, the point is that because the witness has made two contradictory statements about a matter, the witness may not be believable on that matter. The contradiction also may cast doubt on the witness' truthfulness, generally. Impeachment does NOT disprove a statement; it only casts doubt on either statement.

Procedure 3. Qualifying an Expert

Only a witness who is qualified as an expert may give an opinion as to scientific, technical, or other specialized knowledge in the area of his/her expertise. (Note: A lay witness may give an opinion about something related to one's common experience

(see Rule 6) Experts **cannot** give opinions on the **ultimate issue** of the case.

Before an expert gives his/her expert opinion on a matter, the lawyer must first **qualify** the expert. There are two steps to qualify an expert. First, the lawyer must **lay a foundation** that shows the expert is qualified to testify on issues related to that expert's field of expertise. To lay a foundation, the lawyer asks the expert to describe factors such as schooling, professional training, work experience and books he/she has written that make a person an expert regarding a particular field. Second, once the witness has testified about his/her qualifications, the lawyer **asks the judge to qualify the witness as an expert in a particular field.**

Example: The wife of Harold Hart is suing Dr. Smith and General Hospital for malpractice. She claims they did not treat Mr. Hart for an obvious heart attack when he was brought to the hospital. Mrs. Hart's lawyer is examining his expert witness, Dr. Jones:

Q: Dr. Jones, what is your occupation?

A: I am a heart surgeon. I am Chief of Staff at the Howard University Medical Center.

Q: What medical school did you attend?

A: I graduated from Georgetown Medical School in 1978.

Q: Where did you do your internship?

A: I did a two-year internship in cardiology at John Hopkins University from 1978-1980.

Q: Did you afterwards specialize in any particular field of medicine?

A: Yes, I specialized in heart attack treatment and heart surgery.

Q: Have you published any articles or books?

A: I wrote a chapter in a medical text on heart surgery procedures after heart attacks.

Q: Describe the chapter.

A: I set out the steps for identifying heart attacks and doing open heart surgery.

Q: What professional licenses do you have?

A: I am certified by the D.C. Board of Medical Examiners to practice medicine in D.C.

Attorney #1: Your Honor, I ask that Dr. Jones be qualified as an expert in the field of medicine.

Judge: Any objection?

Attorney #2: We object. No foundation has been laid regarding Dr. Jones's ability to render an opinion as to all fields of medicine.

Judge: Objection sustained. Dr. Jones's expertise seems to be limited to certain areas of medicine.

Attorney #1: Thank you, your Honor. We ask that Dr. Jones be qualified as an expert in the field of heart surgery.

Judge: Any objections?

Attorney #2: No, your Honor.

Judge: Let the record reflect that Dr. Jones is qualified to testify as an expert in the field of heart surgery.

Once qualified, an expert may give opinions relating only to the expert's area of expertise. That is, an expert cannot give an opinion in an area outside his/her expertise.

Example: (Dr. Jones has been qualified as an expert on heart surgery.)

Q: Dr. Jones, what is your opinion as to Mr. Hart's cause of death?

A: The patient suffered a massive heart attack caused by clogged arteries.

Q: Dr. Jones, in your opinion, is it true as the defense contends that the patient also suffering from a rare lung disease transmitted through contact with the North American mongoose as the defense contends?

Objection: The witness is testifying outside her area of expertise.

Judge: Sustained. Please confine your opinion to matters related to care and treatment of the heart.

Q: Dr. Jones, in your opinion, how should the patient's doctors have treated him?

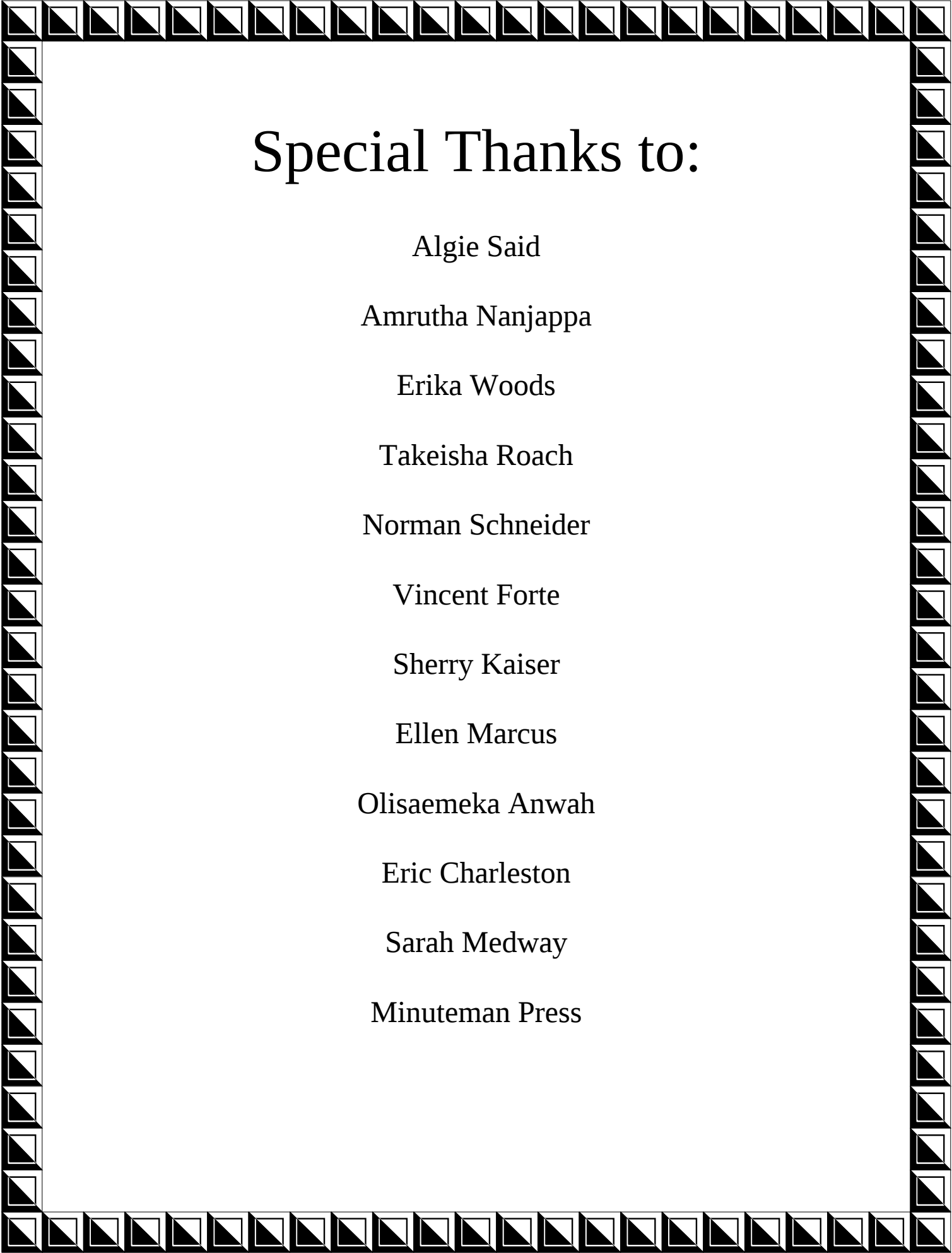
A: They should have recognized that the patient was having a heart attack based on his chest pains, purple face, difficulty breathing, and numbness in his left arm. They should have given him the proper medication and treated him in the emergency room right away.

Q: Who was at fault in this matter?

A: Dr. Smith and General Hospital were definitely negligent.

Objection: The witness is testifying to the ultimate issue of the case, which is whether Dr. Smith and General Hospital are liable for malpractice. That is a question of fact for the judge (or jury, when the case is tried before a jury) to decide.

Judge: Sustained.



Special Thanks to:

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