

2019 TRAINING ON CRIMINAL TRIAL ADVOCACY IN TRIBAL COURT

Black Bear Casino

Fond Du Lac Reservation

Cloquet, MN

June 11-13th 2019

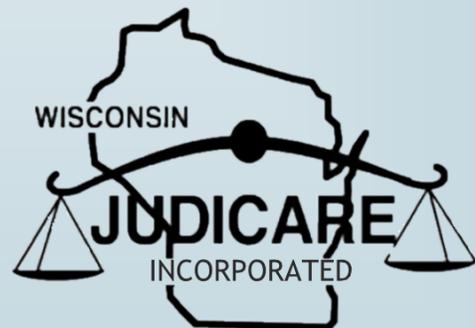


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**INDIAN COUNTRY CRIMINAL TRIAL ADVOCACY TRAINING
BLACK BEAR CASINO, FOND DU LAC RESERVATION**

June 11-13, 2019

AGENDA

Day 1: Tuesday, June 11, 2019

- 8:00 - 9:45 a.m. OPENING CEREMONY**
INTRODUCTION OF EVERYONE PRESENT; OVERVIEW OF TRAINING SCHEDULE/LOGISTICS AND CASE (FACTS)
- 9:45 - 10:00 a.m. BREAK**
- 10:00 - 12:00 p.m. PANEL DISCUSSION ON ETHICAL CONSIDERATIONS FOR CRIMINAL PRACTICE IN TRIBAL COURTS (EPR credit)**
Discussion on ethics and professional responsibility duties related to criminal prosecution and defense work in tribal courts.
PANELISTS: Celeste DeMars, Shauna Coons & Howard Bichler
- 12:00 - 1:15 p.m. LUNCH (on your own)**
- 1:15 - 2:30 p.m. SMALL GROUP EXERCISE: CASE FILE REVIEW**
Defense and prosecution small groups will read and discuss the case file; judge small group will engage in a discussion on courtroom management and ruling on evidentiary questions.
- 2:30 -2:45 p.m. BREAK**
- 2:45 - 3:45 p.m. PANEL DISCUSSION AND DEMONSTRATION: OPENING STATEMENTS**
Overview of opening statements. Discussion on preparing for, and delivering, effective opening statements.
PANELISTS: Diane Schlipper, Melvin Welch
- 3:45 - 5:00 p.m. PANEL DISCUSSION AND DEMONSTRATION: DIRECT EXAMINATION AND EXHIBITS**
Discussion of direct examination of witnesses and how to introduce exhibits into the record.
PANELISTS: Celeste DeMars, Hon. Jeffrey Bryan

Registration, opening ceremony, introductions and all panel discussions will be held in Fond du Lac Creek Hall, with coffee and continental breakfast starting at 7:30 a.m. Small group assignments and locations will be provided to each participant upon registration.

Homework for Day Two:

Prepare opening statement and direct examination.

Review *Trial Techniques*, Chapters 4, 5 & 6.

TRIBES TRAINING TRIBES

DOI/BIA/OJS/Tribal Justice Support

Day 2: Wednesday, June 12, 2019

8:00 - 8:30 a.m. PANEL DISCUSSION ON DIRECT EXAMINATION, cont.

8:45 - 10:15 p.m. SMALL GROUP EXERCISES: OPENING STATEMENT

Each student will present an opening statement on the case, as prosecutor or defender, with assigned trainers and judges giving feedback and suggestions.

10:15 - 10:30 a.m. BREAK

10:30 - 12:00 p.m. PANEL DISCUSSION AND DEMONSTRATION: CROSS-EXAMINATION

Discussion on effective use of cross-examination.

PANELISTS: Katherian Roe, Hon. Jeffrey Bryan

12:00 - 1:15 p.m. LUNCH (on your own)

1:15 - 3:45 p.m. SMALL GROUP EXERCISES: DIRECT EXAMINATION

Participants will conduct a direct examination of a witness, with assigned trainers and judges giving feedback and suggestions.

3:45 - 4:00 p.m. BREAK

4:00 - 5:00 p.m. PANEL DISCUSSION AND DEMONSTRATION: CLOSING STATEMENTS

Discussion on formulating and presenting closing statements.

Panelists: Melvin Welch, Deidre Aanstad

Coffee and continental breakfast in Fond du Lac Hall starting at 7:30 a.m. Panel discussions will be held at Fond du Lac Creek Hall, with small group assignments and locations provided to each participant upon registration. The second break-out room in the Stony Brook Creek Hall will be available for use by participants for self-care, conference calls, preparation for exercises, etc.

Homework for Day Three:

Prepare cross-examination and closing statements.

Review *Trial Techniques*, Chapters 7 & 9.

TRIBES TRAINING TRIBES

DOI/BIA/OJS/Tribal Justice Support

Day 3: Thursday, June 13, 2019

8:00 – 8:30 a.m. CONVENE ENTIRE GROUP FOR REFLECTIONS/BRIEF QUESTIONS FROM DAY TWO & HOMEWORK

8:30 – 10:45 a.m. SMALL GROUP EXERCISES: CROSS-EXAMINATION
Each participant will conduct at least one cross-examination, as a defender or prosecutor, with trainers and judges providing feedback and suggestions.

10:45 – 11:00 p.m. BREAK

11:00 – 12:00 p.m. LARGE GROUP EXERCISES: CLOSING ARGUMENT
Each participant will present their close before the entire group.

12:00 - 1:15 p.m. LUNCH (on your own)

1:15 - 2:45 p.m. LARGE GROUP EXERCISES: CLOSING ARGUMENT, cont.

2:45 - 3:00 p.m. BREAK

3:00 - 4:00 p.m. PANEL DISCUSSION: A VIEW FROM THE BENCH
Panel discussion of tribal court judges providing their perspective on trial practice and reflecting on the relationship of tribal courts to tribal sovereignty.

PANELISTS: Hon. Gwendolyn Topping, Hon. James Schlender, Hon. Jo Deen Lowe, Hon. Stephan M. Grochoski, Hon. JoAnn Jones

4:00 - 4:45 p.m. CLOSING CEREMONY WITH CERTIFICATES PRESENTED, TRAVELING SONG

Coffee and continental breakfast in Fond du Lac Hall starting at 7:30 a.m. Panel discussion, large group discussions, and exercises will be held at Fond du Lac Creek Hall, with small group cross-examination locations provided to each participant upon registration. The second break-out room in Stony Brook Creek Hall will be available for self-care, conference calls, preparation for exercises, etc.

CHARGING DECISIONS, DEFENSE CONSIDERATIONS, ETHICAL OBLIGATIONS

Shauna Coons

Celeste DeMars

Howard Bichler

DUE PROCESS & FAIRNESS

- Right to Counsel
- Right to a Fair Trial with Jury of Peers
- Right to Force Prosecutor to Meet its Burden of Proof – Beyond a Reasonable Doubt
- Right to Call Witnesses and Cross Examine Prosecution Witnesses
- Right to Testify or Choose Not to Testify
- Right to Confront Accusers
- Waivers of rights to counsel, trial, force prosecutor to meet its burden to prove beyond a doubt, right to call witnesses and cross examine prosecution witnesses, right to testify (or not)

RULE 3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR (MINNESOTA)

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by **probable cause**;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain **counsel**;
- (c) not seek to obtain from an unrepresented (**pro se**) accused a **waiver** of important pretrial rights, such as the right to a preliminary hearing;

RULE 3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR (MINNESOTA, CONT.)

(d) make **timely disclosure** to the defense of all evidence or information known to the prosecutor that tends to **negate the guilt** of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged **mitigating information** known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal

RULE 3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR (WISCONSIN)

- (a) A prosecutor *in a criminal case or a proceeding that could result in deprivation of liberty* shall not prosecute a charge that the prosecutor knows is not supported by probable cause.
- (b) When communicating with an unrepresented person in the context of an investigation or proceeding, a prosecutor shall inform the person of the prosecutor's role and interest in the matter.
- (c) When communicating with an unrepresented person who has a constitutional or statutory right to counsel, the prosecutor shall inform the person of the right to counsel and the procedures to obtain counsel and shall give that person a reasonable opportunity to obtain counsel.

RULE 3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR (WISCONSIN, CONT.)

(f) A prosecutor, other than a municipal prosecutor, in a criminal case or a proceeding that could result in deprivation of liberty shall:

(1) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(2) *exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under SCR 20:3.6.*

RULE 3.6: TRIAL PUBLICITY (WISCONSIN)

In the context of criminal cases (at all stages), this rule prohibits lawyers from making statements outside of the proceedings that he/she should reasonably know will be published and have a substantially likelihood of material prejudicing the case:

- character, credibility, criminal records, witness ID, anticipated testimony
- plea negotiations, confession, defendant/witness statement or refusal to make same
- tests or refusals and evidence expected to be presented
- opinion re: guilt or innocence
- Statement re: charges unless proviso re: presumption of innocence.
- See Rule 3.6 for exceptions

RULE 4.3 COMMUNICATING WITH AN UNREPRESENTED PERSON

- An attorney cannot state or imply that she is disinterested. (In both Wisconsin and Minnesota, lawyers have an affirmative duty of disclosure related to the lawyer's role and/or adverse interest).
- If the unrepresented person misunderstands, the lawyer must correct the misunderstanding.
- You can't give legal advice to an unrepresented party, except that he should obtain legal counsel, if the party's interests could be adverse to your client.
- In Wisconsin, parties who are unrepresented except through limited scope representation are considered unrepresented.

RULE 4.3 COMMUNICATING WITH AN UNREPRESENTED PERSON - CONTINUED

- This rule is intended to protect unrepresented persons,* whatever their interests, from being misled when communicating with a lawyer who is acting for a client.
- This rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person.* So long as the lawyer discloses that the lawyer represents an adverse party and not the person,* the lawyer may inform the person* of the terms on which the lawyer's client will enter into the agreement or settle the matter, prepare documents that require the person's* signature, and explain the lawyer's own view of the meaning of the document and the underlying legal obligations

ROLE OF A PROSECUTOR (WISCONSIN)

(d) When communicating with an unrepresented person a prosecutor may discuss the matter, provide information regarding settlement, and negotiate a resolution which may include a waiver of constitutional and statutory rights, but a prosecutor, other than a municipal prosecutor, shall not:

(1) otherwise provide legal advice to the person, including, but not limited to whether to obtain counsel, whether to accept or reject a settlement offer, whether to waive important procedural rights or how the tribunal is likely to rule in the case, or

(2) assist the person in the completion of (i) guilty plea forms (ii) forms for the waiver of a preliminary hearing or (iii) forms for the waiver of a jury trial.

MAKING A RECORD OF THE PLEA

- Voluntary, knowing, and intelligent (no side agreements, inducements, promises in exchange, no promises re: outcome predictions or collateral consequences such as no jail or immigration status)
- Waivers of rights to counsel, trial, force prosecutor to meet its burden to prove beyond a doubt, right to call witnesses and cross examine prosecution witnesses, right to testify (or not)
- If defendant has counsel, can be submitted by written plea agreement signed by Defendant (or on record). If defendant is *pro se*, must be on the record
- Factual Basis

DEFENSE CONSIDERATIONS

Client-Lawyer Relationship

- a lawyer shall abide by a client's decisions concerning the objectives of representation and, shall consult with the client as to the means by which they are to be pursued.
- A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.
- A lawyer *shall* abide by a client's decision whether to settle a matter.

OBLIGATIONS THAT ATTACH IN CRIMINAL PROCEEDINGS

The lawyer shall abide by the client's decision, after consultation with the lawyer, as to a *plea to be entered, whether to waive jury trial and whether the client will testify.*

EVIDENCE – CHARGING DECISIONS

Rule 3.1: Meritorious Claims & Contentions

(a) A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

THE RULES ALLOW FOR A RIGOROUS DEFENSE

Rule 3.1: Meritorious Claims & Contentions

- A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

EVIDENCE – ELEMENTAL – WHAT TO CHARGE? WHAT TO CHALLENGE?

- Case file review
- What are the elements of each charge?
- Is there sufficient admissible evidence to support each element?
- Burden of Proof on Prosecution

YOU HAVE MET THE ELEMENTS

Should you charge?

JOINT CHARGING DECISIONS

1. If incarceration is part of the sentence, where will the defendant be incarcerated?
2. Is there an advantage to having the defendant/respondent closer to his home community?
3. Does the Tribe have adult probation services? Juvenile?
4. Should substance abuse treatment be part of a sentence? If so, which sovereign might provide the best treatment for the defendant?
5. What type of sentence is the court likely to hand down?

JOINT CHARGING DECISIONS, CONTINUED . . .

6. In the event the tribal court exercises its sentencing flexibility, do robust tribal programs exist that can provide a more effective “punishment” than incarceration?
7. How old is the defendant/respondent? Has he or she previously disregarded tribal court sentences/orders?
8. What is the respondent’s history?
9. Does the tribe have the resources to deal with the concern at hand?
10. Which code provides the more appropriate charge?
11. Does this defendant pose an immediate danger? If so, which sovereign can act faster to get the defendant off the streets?

PROSECUTION MEMO

- Lays out the facts; witnesses; exhibits
- Take charge of charging documents
- See Report of Special Counsel Robert Mueller, III (*aka* Bobby Three Sticks)

<https://www.npr.org/2019/04/18/708850903/read-the-full-mueller-report-with-redactions>



CONSTITUTIONAL OBLIGATIONS

- **Brady Rule** – Exculpatory Evidence (*Brady v. Maryland*, 373 U.S. 38, 87 (1963)) & (*Giglio v. United States*, 405 U.S. 150 (1972))
- **Spreigl Statutes** – Evidence of Prior Bad Acts (*State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965))
- **Crawford** – Right to Confront Accuser (*Crawford v. Washington*, 541 U.S. 36 (2004))
- **Batson Rule** - Right to Impartial Jury (*Batson v. Kentucky* 476 U.S. 79 (1986))
(See https://www.washingtonpost.com/politics/courts_law/race-and-the-death-penalty-supreme-court-to-hear-case-of-curtis-flowers-tried-six-times-for-quadruple-murder/2019/03/15/ofodd8ae-45bd-11e9-8aab-95b8d80a1e4f_story.html?utm_term=.a3fe12659aaf and <https://www.npr.org/2019/03/19/704700561/supreme-court-to-hear-curtis-flowers-case-after-podcast-investigation>).
- **Miranda Warning** – Rights to Counsel & against Self Incrimination (*Miranda v. Arizona*, 384 US 436 (1966))
- **Victim Witness Rights**
- **Rape Shield Statutes**

INCORPORATION OF NORMATIVE FEDERAL PRACTICE IN TRIBAL COURTS

- Indian Civil Rights Act
- Sentencing
- *Habeas Corpus* claims
- Is it the right thing to do, or an affront to tribal sovereignty???

WHICH PROFESSIONAL RESPONSIBILITY RULES APPLY TO MY TRIBAL COURT PRACTICE?

Rule 8.5

(a) A lawyer admitted to (practice in this jurisdiction/the bar of this state) is subject to the disciplinary authority of this jurisdiction/state, regardless of where the lawyer's conduct occurs. A lawyer not admitted (in this jurisdiction/to the bar of this state) is also subject to the disciplinary authority of this jurisdiction/state if the lawyer provides or offers to provide any legal services in this jurisdiction/state. A lawyer may be subject to the disciplinary authority of both this jurisdiction/state and another jurisdiction for the same conduct.

ALL OF THEM (i.e. concurrent jurisdiction)

WHICH RULES WILL APPLY IF THERE'S A CONFLICT? (ACC'D MINNESOTA RULES)

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

WHICH RULES WILL APPLY IF THERE'S A CONFLICT? (ACC'D WISCONSIN RULES)

for any other conduct,

(i) if the lawyer is admitted to the bar of only this state, the rules to be applied shall be the rules of this state.

(ii) if the lawyer is admitted to the bars of this state and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices, except that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is admitted to the bar, the rules of that jurisdiction shall be applied to that conduct.

(iii) if the lawyer is admitted to the bar in another jurisdiction and is providing legal services in this state as allowed under these rules, the rules to be applied shall be the rules of this state.

BASICS & SUMMARY

- Know the rules (due process, criminal procedure, evidence, case law, statutes)
- Be prepared and on time, tell the truth
- Don't make frivolous arguments, act fairly toward opposing party & counsel, and respect attorney client privilege
- Only prosecute when have probable cause
- Follow rules of dealing with *pro se* defendants
- Protect the Integrity of courts and juries
- Be professional

The following are excerpts from the American Bar Association Model Rules of Professional Conduct on rules which may be pertinent to criminal trial advocacy in tribal courts. Where the Rules of Professional Responsibility applicable to attorneys licensed to practice in Wisconsin differs from the Model Rules, the Wisconsin-specific language is indicated by the navy blue text. Alternative language applicable to attorneys licensed to practice in Minnesota is indicated by brick red text.

The Model Rules are available in its entirety at:

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/. Along with each rule, commentary is also available to explain its significance and application to situations that you may encounter as an advocate.

If you are licensed to practice law in a certain jurisdiction, that jurisdiction may have adopted rules of professional conduct, available by contacting the clerk of courts. For Minnesota and Wisconsin, visit the following websites for an up-to-date version of the state's rules of professional conduct:

https://www.revisor.mn.gov/court_rules/rule/prcond-toh/

<https://docs.legis.wisconsin.gov/misc/scr/20>

Even if your jurisdiction has not adopted a specific set of rules regarding professional responsibility, the principles contained within the ABA Model Rules reflect universal norms in the practice of law and you may be expected to conduct your legal advocacy consistent with these standards.

Rule 1.1: Competence

Client-Lawyer Relationship

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2: Scope of Representation & Allocation of Authority Between Client & Lawyer

Client-Lawyer Relationship

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the

means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The client's informed consent must be in writing except as set forth in sub. (1).

(1) The client's informed consent need not be given in writing if:

a. the representation of the client consists solely of telephone consultation;

b. the representation is provided by a lawyer employed by or participating in a program sponsored by a nonprofit organization, a bar association, an accredited law school, or a court and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms;

c. the court appoints the lawyer for a limited purpose that is set forth in the appointment order;

d. the representation is provided by the state public defender pursuant to Ch. 977, stats., including representation provided by a private attorney pursuant to an appointment by the state public defender; or

e. the representation is provided to an existing client pursuant to an existing lawyer-client relationship.

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:

a. the representation is limited to the lawyer and the services described in the writing, and

b. the lawyer does not represent the client generally or in matters other than those identified in the writing.

(cm) A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that "This document was prepared with the assistance of a lawyer." A lawyer shall advise the client to whom the lawyer provides assistance in preparing pleadings, briefs, or other documents for filing with the court that the pleading, brief, or other document must contain a statement that it was prepared with the assistance of a lawyer.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer has been retained by an insurer to represent an insured pursuant to the terms of an agreement or policy requiring the insurer to retain counsel on the client's behalf, the representation may be limited to matters related to the defense of claims made against the insured. In such cases, the lawyer shall, within a reasonable time after being retained, inform the client in writing of the terms and scope of the representation the lawyer has been retained by the insurer to provide.

Rule 3.1: Meritorious Claims & Contentions

Advocate

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

(2) knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or

(3) file a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows or when it is obvious that such an action would serve merely to harass or maliciously injure another.

(am) A lawyer providing limited scope representation pursuant to SCR 20:1.2 (c) may rely on the otherwise self-represented person's representation of facts, unless the lawyer has reason to believe that such representations are false, or materially insufficient, in which instance the lawyer shall make an independent reasonable inquiry into the facts.

A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 3.3: Candor Toward the Tribunal

Advocate

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 3.4: Fairness to Opposing Party & Counsel

Advocate

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when

testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 3.5: Impartiality & Decorum of the Tribunal

Advocate

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order or for scheduling purposes if permitted by the court. If communication between a lawyer and judge has occurred in order to schedule the matter, the lawyer involved shall promptly notify the lawyer for the other party or the other party, if unrepresented, of such communication;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

(a) Before the trial of a case, a lawyer connected therewith shall not, except in the course of official proceedings, communicate with or cause another to communicate with anyone the lawyer knows to be a member of the venire from which the jury will be selected for the trial of the case.

(b) During the trial of the case:

(1) a lawyer connected therewith shall not, except in the course of official proceedings, communicate with or cause another to communicate with any member of the jury.

(2) a lawyer who is not connected therewith shall not, except in the course of official proceedings, communicate with or cause another to communicate with a juror concerning the case.

(c) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service.

(d) A lawyer shall not conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a juror or prospective juror.

(e) All restrictions imposed by this rule apply also to communications with or investigations of members of a family of a juror or prospective juror.

(f) A lawyer shall reveal promptly to the court improper conduct by, or by another toward, a juror or prospective juror or a member of the family thereof, of which the lawyer has knowledge.

(g) In an adversary proceeding a lawyer shall not communicate or cause another to communicate as to the merits of the case with the judge or an official before whom a proceeding is pending except:

(1) in the course of official proceedings;

(2) in writing, if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if the party is not represented by a lawyer;

(3) orally upon adequate notice to opposing counsel or to the adverse party if the adverse party is not represented by a lawyer; or

(4) as otherwise authorized by law.

(h) A lawyer shall not engage in conduct intended to disrupt a tribunal.

Rule 3.6: Trial Publicity

Advocate

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) A statement referred to in par. (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in deprivation of liberty, and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in deprivation of liberty, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in deprivation of liberty;

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(b/c) Notwithstanding paragraph (a) and (b) (1) through (5), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

- (i) the identity, residence, occupation and family status of the accused;
- (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
- (iii) the fact, time and place of arrest; and
- (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c/d) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d/e) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

(a) A lawyer who is participating or has participated in the investigation or litigation of a criminal matter shall not make an extrajudicial statement about the matter that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing a jury trial in a pending criminal matter.

(b) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(c) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Rule 3.8: Special Responsibilities of a Prosecutor

Advocate

The prosecutor in a criminal case shall:

(a) A prosecutor in a criminal case or a proceeding that could result in deprivation of liberty shall not prosecute a charge refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel; (Wisconsin Rules omit this language, and instead state: When communicating with an unrepresented person in the context of an investigation or proceeding, a prosecutor shall inform the person of the prosecutor's role and interest in the matter.)

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing; (Wisconsin Rules omit this language, and instead state: When communicating with an unrepresented person who has a constitutional or statutory right to counsel, the prosecutor shall inform the person of the right to counsel and the procedures to obtain counsel and shall give that person a reasonable opportunity to obtain counsel.)

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; (Wisconsin Rules omit this language, and instead state: When communicating with an unrepresented person a prosecutor may discuss the matter, provide information regarding settlement, and negotiate a resolution which may include a waiver of constitutional and statutory rights, but a prosecutor, other than a municipal prosecutor, shall not:

(1) otherwise provide legal advice to the person, including, but not limited to whether to obtain counsel, whether to accept or reject a settlement offer, whether to waive important procedural rights or how the tribunal is likely to rule in the case, or

(2) assist the person in the completion of (i) guilty plea forms (ii) forms for the waiver of a preliminary hearing or (iii) forms for the waiver of a jury trial.)

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information; (this subsection is omitted in Minnesota)

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of

the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule. (This subsection differs in the Minnesota and Wisconsin Rules: (f) exercise reasonable care to prevent employees or other persons assisting or associated with the prosecutor in a criminal case and over whom the prosecutor has direct control from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6. (f) A prosecutor, other than a municipal prosecutor, in a criminal case or a proceeding that could result in deprivation of liberty shall:

(1) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(2) exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under SCR 20:3.6.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall do all of the following:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit. (Wisconsin Rule alternative language: make reasonable efforts to undertake an investigation or cause an investigation to be undertaken, to determine whether the defendant was convicted of an offense that the defendant did not commit.)

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

(Subsections (g) and (h) do not appear in the Minnesota Rules.)

Rule 4.2: Communication with Person Represented by Counsel

Transactions With Persons Other Than Clients

(a) In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

(b) An otherwise unrepresented party to whom limited scope representation is being provided or has been provided in accordance with SCR 20:1.2 (c) is considered to be unrepresented for purposes of this rule unless the lawyer providing limited scope representation notifies the opposing lawyer otherwise.

Rule 4.3: Dealing with Unrepresented Person

Transactions With Persons Other Than Clients

In dealing on behalf of a client with a person who is not represented by counsel, (a) a lawyer shall not state or imply that the lawyer is disinterested. (Alternative in the Wisconsin Rules: In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall inform such person of the lawyer's role in the matter.) (b) a lawyer shall clearly disclose that the client's interests are adverse to the interests of the unrepresented person, if the lawyer knows or reasonably should know that the interests are adverse; (c) When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

(b) An otherwise unrepresented party to whom limited scope representation is being provided or has been provided in accordance with SCR 20:1.2 (c) is considered to be unrepresented for purposes of this rule unless the lawyer providing limited scope representation notifies the opposing lawyer otherwise.

Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law (Wisconsin/Minnesota version)

Law Firms and Associations

(a) A lawyer shall not:

- (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction except that a lawyer admitted to practice in Wisconsin/Minnesota does not violate this rule by conduct in another jurisdiction that is permitted in Wisconsin/Minnesota under SCR 20:5.5/Rule 5.5 (c) and (d) for lawyers not admitted in Wisconsin; or
- (2) assist another in practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction. (This subsection not included in the Minnesota Rules.)

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

- (1) except as authorized by this rule or other law, establish an office or maintain a systematic and continuous presence in this jurisdiction for the practice of law; or
- (2) hold out to the public or otherwise represent that the lawyer is admitted to the practice of law in this jurisdiction.

(c) Except as authorized by this rule, a lawyer who is not admitted to practice in this jurisdiction but who is admitted to practice in another jurisdiction of the United States and not disbarred or suspended from practice in any jurisdiction for disciplinary reasons or for medical incapacity, may not provide legal services in this jurisdiction except when providing services on an occasional basis in this jurisdiction that: (Alternative language for this subsection in the Minnesota Rules: **A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction which:**)

- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter; or
- (2) are in, or reasonably related to, a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; or

(3) are in, or reasonably related to, a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of, or are reasonably related to, the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within subsections (c) (2) or (c) (3) and arise out of, or are reasonably related to, the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted to practice in another United States jurisdiction or in a foreign jurisdiction, who is not disbarred or suspended from practice in any jurisdiction for disciplinary reasons or medical incapacity, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates after compliance with SCR 10.03(4)(f), and are not services for which the forum requires pro hac vice admission; or

(3) are services that the lawyer is authorized to provide by federal law or other law or other rule of this jurisdiction.

(The Minnesota Rules provide an alternative to subsection (d): **A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.**)

(e) A lawyer admitted to practice in another jurisdiction of the United States or a foreign jurisdiction who provides legal services in this jurisdiction pursuant to sub. (c) and (d) above shall consent to the appointment of the Clerk of the Wisconsin Supreme Court as agent upon whom service of process may be made for all actions against the lawyer or the lawyer's firm that may arise out of the lawyer's participation in legal matters in this jurisdiction. (This subsection does not appear in the Minnesota Rules.)

Rule 8.5 Disciplinary Authority; Choice of Law (Minnesota/Wisconsin version)

(a) Disciplinary Authority.

A lawyer admitted to (practice in this jurisdiction/the bar of this state) is subject to the disciplinary authority of this jurisdiction/state, regardless of where the lawyer's conduct occurs. A lawyer not admitted (in this jurisdiction/to the bar of this state) is also subject to the disciplinary authority of this jurisdiction/state if the lawyer provides or offers to provide any

legal services in this jurisdiction/state. A lawyer may be subject to the disciplinary authority of both this jurisdiction/state and another jurisdiction for the same conduct.

(b) Choice of Law.

In any exercise of the disciplinary authority of this jurisdiction/state, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Alternative subsection (2) in the Wisconsin Rules:

(2) for any other conduct,

(i) if the lawyer is admitted to the bar of only this state, the rules to be applied shall be the rules of this state.

(ii) if the lawyer is admitted to the bars of this state and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices, except that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is admitted to the bar, the rules of that jurisdiction shall be applied to that conduct.

(iii) if the lawyer is admitted to the bar in another jurisdiction and is providing legal services in this state as allowed under these rules, the rules to be applied shall be the rules of this state.

(c) A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

She Was Convicted of Killing Her Mother. Prosecutors Withheld the Evidence That Would Have Freed Her.

By the time Noura Jackson's conviction was overturned, she had spent nine years in prison. This type of prosecutorial error is almost never punished.

Noura Jackson

Harris Mizrahi for The New York Times

Noura Jackson called 911 at 5 a.m. on Sunday, June 5, 2005. "Please, I need, I need an ambulance, I need an ambulance right now!" she cried. "Someone broke into my house. My mom — my mom is bleeding." She panted as she waited a few long seconds for the operator to transfer her. "She's not breathing," Noura said, sounding desperate, when an emergency dispatcher came on the line. "She's not breathing. She's not breathing. Please help me. There's blood everywhere!"

When the police arrived, Jennifer Jackson's body lay on her bedroom floor in the brick home she owned in a well-kept Memphis neighborhood. Noura's mother, a 39-year-old successful investment banker, had been stabbed 50 times. The brutal violence on a quiet block made local headlines, generating shock and anxiety in the middle-class corners of the city.

The police began their investigation with few leads. Jackson lived alone with her only child, Noura, who was 18 at the time. She had divorced Noura's father when Noura was a baby. Investigators found broken glass on the kitchen floor, from a windowpane in the door that led from the garage to the kitchen. But the window seemed to have been broken from the inside, because the hole it made lined up with a door lock that could be seen only from the kitchen. And no one had seen an intruder. The police questioned Jackson's on-again-off-again boyfriend. He called her around midnight on the night she was killed but told the police that he hung up before she answered and then went to sleep at his home, more than an hour from Memphis.

The police also questioned Noura. She said she found her mother's body when she came home after being out all night. She had gone to a couple of parties with friends and then drove around by herself, stopping at a gas station and a Taco Bell.

With concern about the case mounting — "Mystery Stabbing Death Unsolved," local ABC news reported that August — the case went to Amy Weirich, who at 40 was a rising star in the Memphis prosecutor's office. A long-distance runner and the mother of four children, Weirich was a former chief of the gang-and-narcotics unit and the first woman to be named deputy district attorney in Shelby County. She was considered a highly skilled trial lawyer.

Studying the case, she developed a theory: Noura was bridling under her mother's rules and killed her for money that she could use to keep partying with her friends. Jackson's estate was valued at \$1.5 million, including a life insurance policy. Weirich also argued that Noura and her mother were struggling over whether to sell a few cars that Noura inherited from her father, Nazmi Hassanieh, a former Lebanese Army captain. After a long separation, Noura got back in touch with her father when she was 16, and he texted and called her often. Sixteen months before her mother was killed, Hassanieh was shot to death in a Memphis convenience store he owned. His murder was never solved.

The police came to arrest Noura that September as she was finishing up a babysitting job. She had no history of violence, and the case quickly became a local sensation. Weirich asked for a life sentence. The judge, Chris Craft, eventually set a bond of \$500,000. Unable to pay, Noura spent a total of three and a half years in jail awaiting trial, on a heavy regimen of anti-anxiety and antidepressant medication.

Noura's private lawyer, Valerie Corder, thought Weirich's case was weak. At the time of Noura's indictment, the police were waiting for the DNA results from samples taken from the blood spattered around Jackson's bedroom. When the results came back, they suggested that two or three people, whose identities were unknown to the police, had been in Jackson's bedroom. Noura's DNA was excluded as a match for any of the three DNA profiles. But Weirich dismissed the absence of Noura's DNA. The DNA results "didn't point to anything, as DNA often doesn't," she told me in an interview this past spring. No physical evidence ever linked Noura to the killing.

Noura's trial aired live on Court TV in February 2009. Over two weeks, Weirich called witness after witness to portray Noura as rebellious and angry. One neighbor said that in the weeks before the murder, she overheard Noura demanding money from her mother "in a rage." Noura's half uncle said he heard Noura and her mother arguing over the cars. An aunt said Noura grew sullen when Jackson talked about sending her to boarding school and testing her for drugs. At the time of the trial, two of Noura's aunts and the half uncle were suing her for the value of her mother's life insurance policy and the rest of her estate.

On Saturday June 5th close to 10:00
 He, Ian, Jason, and Marcus went to pick up back
 from his house and he didn't come out because he
 said he had the ACT in the morning. So we were
 up with R.G. at the parties after we left
 buckys. I then got in the car with Ryan
 we went to Matt Milners and then we
 to a party with Ryan. we were at the
 party and hours called Ryan's phone looking
 for because I left my phone with Ian and
 he told Noura that I was with Ryan. We
 were at this party for a while then we
 left because Ryan tried to start a fight. The
 we went back and met Ian, Marcus, and Ian
 which they were in my truck. I got in
 my truck Ian was driving Marcus I'm front
 Jason in the back seat so then Ian drove
 US back to the house when we got to
 the house we came inside Ci wanted to come home
 because I was rolling on the so we came home
 later on Graham called and asked if he could
 come over. We stay here for a while the Ads
 and Chelsea came over. By this time while was
 at 3:07 he and Ian wanted to go to the shop
 job, we went on school and we started at a gas station
 in we and Ian decided to go back home

EVIDENCE
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Image

A note that Andrew Hammack, Noura's friend, gave to the police in the early days of the murder investigation. The note, which raises questions about his credibility, was not provided to Noura's defense team. It turned out to be a crucial piece of evidence in her appeal. Credit Harris Mizrahi for The New York Times

Weirich and Stephen Jones, a second prosecutor who assisted at the trial, also introduced several witnesses who described Noura's partying, sex life and drug use (mostly alcohol, marijuana and the opioid Lortab, which she was prescribed when she was 16 for pain she experienced from endometriosis, a disorder of the uterine tissue). Much of the testimony was tangential to Jackson's death, but Judge Craft made the questionable decision to allow it, giving Weirich the chance to paint a picture of a teenager spinning out of control.

The prosecution presented a great deal of testimony about a small cut on Noura's left hand, covered with adhesive tape between her thumb and forefinger, on the morning Jackson was killed. Asked how she got the cut, Noura gave differing explanations to friends and her aunts and half uncle, they told the jury. The police testified that in her initial statement about where she was in the early morning hours when Jackson was killed, Noura did not mention a stop she made around 4 a.m. at Walgreens. The jury saw grainy video footage of her buying bandages and skin-care products.

Near the end of the trial, Weirich introduced the only witness who placed Noura at the scene of the crime in the crucial time before her mother's body was found. Andrew Hammack, a friend of Noura's, testified that she called him between about 4 a.m. and 5 a.m. and asked him to meet her at her house. Weirich asked Hammack if Noura had ever done that before and if he considered the request normal. He said no. "She needed a cover-up," Jones told the jury in his closing argument. "Someone to go inside with her so that they could say, 'Yeah, I was with her when she found her mother's body.'"

Corder, Noura's lawyer, was worried about the effect of the medication Noura was taking, and how she would hold up under cross-examination, and advised her not to testify. Corder called no witnesses, emphasizing instead to the jury that the DNA evidence pointed away from Noura to unknown suspects. In her final argument, Weirich stood facing Noura and raised the question the defense left unanswered by discouraging Noura from testifying. "Just tell us where you were!" she shouted, throwing up her hands in a gesture of impatience. "That's all we are asking, Noura!"

The jury deliberated for nine hours and then filed back into the courtroom. Noura, her thick dark hair falling to her shoulders, sat with her hands folded in her lap, wearing a blue and white flowered dress. She tried to make eye contact with some of the jurors, but they avoided her gaze. When she heard the words "guilty of second-degree murder," her head fell.

After the trial, Weirich spoke to the local news media. "It's a great verdict," she said. Noura was sentenced to a prison term of 20 years and nine months. Weirich's victory helped start her political career. In January 2011, she was appointed district attorney in Shelby County, after the elected district attorney left to join the administration of Gov. Bill Haslam. Weirich, a Republican, became the first woman to hold that post. She then won election in 2012 and 2014 with 65 percent of the vote, running on a law-and-order message against weak opponents. A friend said her husband, who is also a lawyer, began talking about moving the family into the Governor's Mansion one day.

Supreme Court To Hear Curtis Flowers Case After Podcast Investigation

The court will hear the case of a black man on death row in Mississippi, who's been tried six times for the same crime. David Greene talks to Madeleine Baran, host of the podcast: *In the Dark*.

DAVID GREENE, HOST:

We're going to hear now about the extraordinary case of Curtis Flowers. He's a black man on death row in Mississippi. Over the past two decades, he has been tried six times for the same crime - the 1996 murder of four employees in a Mississippi furniture store. After seeing three prior convictions overturned and two other trials end in mistrial, in 2010, Flowers was convicted again and sentenced to death.

Now his fate lies with the U.S. Supreme Court, which is taking up the case tomorrow. And the outcome rests on one question, whether potential jurors were excluded on the basis of race. American Public Media's investigative podcast "In The Dark" has been looking into that question. And in the latest episode, here is host Madeleine Baran.

(SOUNDBITE OF PODCAST "IN THE DARK")

MADELEINE BARAN: In the spring of 2010, a letter arrived at Diane Copper's house in Winona, Miss.

DIANE COPPER: I opened the letter and said wow.

BARAN: It was a jury summons, a letter asking Diane to appear at the courthouse in Winona a few weeks later. Diane said she knew right then what trial it had to be - the State of Mississippi v. Curtis Flowers, the sixth one.

COPPER: Curtis Flowers - a big trial.

BARAN: Hundreds of people in Montgomery County got letters like this one. Flencie Jones got a letter. And when it came time to go to court, she got all dressed up.

FLANCIE JONES: I wore my low-rider jeans. And I wore, you know, these little old shoes with - the heel was out. But I dressed my part.

BARAN: Flencie drove down to the courthouse.

JONES: There was so many of us. We was just like flies. It was so many that you couldn't park outside. You couldn't walk in that entryway. It was just a million people there.

BARAN: There were 600 prospective jurors, and that group of 600 had to be trimmed down to just 12 - 12 plus three alternates. To do that, Flencie, Diane and the others would have to go through jury selection, through the process that's supposed to help choose a jury of 12 people who can be fair and impartial.

And in the Curtis Flowers case, that process took five days - five days of being questioned, first by the judge, Joey Loper. A lot of prospective jurors were sent home after that. And then, the remaining prospective jurors were questioned by the lawyers. District Attorney Doug Evans asked the questions for the prosecution.

JONES: The DA just was - he pretty much was running the show.

BARAN: Doug Evans asked the prospective jurors - do you know where Tardy Furniture is, the store where the murders happened? Have you shopped there? Have you been sued by Tardy Furniture? He asked a lot of questions about whether the jurors knew Curtis or had lived near him or his family. This is prospective juror Alexander Robinson.

ALEXANDER ROBINSON: The lawyers, they grilled us. They asked a lot of questions, all kinds of questions.

BARAN: When those days of questioning were over, the prospective jurors were sent out of the courtroom. And they waited in the hallway while the judge met with Doug Evans and the defense team. And this is when the jury for Curtis Flowers' sixth trial was chosen.

Then the balliff came out and told everyone to go back into the courtroom, and Judge Loper called out the names of the people who'd been chosen to sit on the jury. One by one, Judge Loper called the names of one white juror, then another, then another. When the jury was finally all seated, there were 11 white jurors and one black juror, Alexander Robinson. Flancie, Diane and the other prospective black jurors were all dismissed. As to why they didn't end up on the jury...

JONES: Oh, I don't know. They don't say why. They don't say why. They just say, you can go.

BARAN: Flancie and Diane and the others didn't realize it. But in that meeting, when they were out in the hallway, Doug Evans had used his strikes to strike one white prospective juror and five black prospective jurors. When the trial began later that day, Curtis Flowers looked over at a jury box that was almost entirely white, this in a county that was almost 50 percent black. And that jury listened to seven days of testimony. And then, they deliberated for just 29 minutes.

They convicted Curtis Flowers, and they sentenced him to death.

(SOUNDBITE OF MUSIC)

GREENE: Listening to that excerpt from the podcast "In The Dark" - and I'm joined by the host Madeleine Baran, who's with me.

Hi, Madeleine.

BARAN: Hi. Thanks for having me.

GREENE: Wow, 11 white jurors, one black juror - not representative of the community at all. But tell me what makes this a case that's going before the U.S. Supreme Court.

BARAN: Well, as you heard in our excerpt, before trial, a prosecutor does have the right to strike a certain number of people from the jury pool. It's called a peremptory challenge. And a prosecutor can use their strikes for almost any reason. But what they can't do is they cannot strike someone because of their race. It's unconstitutional. So if Flowers' appeal is going to be successful, his attorneys are going to need to demonstrate that the prosecutor, Doug Evans, did just that. But that can be difficult to do.

GREENE: Yeah. How do you prove that that was the intent?

BARAN: Well, it's not easy. So in some cases, you might find a smoking gun, like documents that demonstrate a prosecutor actually had a strategy to strike black jurors. And there's an example, a case in 2016 called Foster. The defense got ahold of the prosecution's notes from jury selection. And in that case, the prosecutor had referred to the black prospective jurors as B1, B2, B3.

GREENE: Wow.

BARAN: And they even had an investigator compare the black prospective jurors against each other in case, it, quote, "comes down to having to put a black on the jury."

GREENE: So that was pretty clear.

BARAN: Right. But in Curtis Flowers' case, there's nothing like that. So the defense in this case is in part relying on the prosecutor's history, which, the defense says, shows a pattern of weeding out black jurors.

GREENE: A pattern, OK. So say more about that.

BARAN: If you look at the six Flowers trials, Curtis Flowers has always been tried by an all-white or mostly white jury. And this is in an area that has a large African-American population. And Doug Evans, who's been the prosecutor for all six trials, has actually been caught twice before violating the Constitution by striking black jurors because they were black in this very case. One of Curtis Flowers' previous convictions was actually overturned because of it. So that's the Flowers trials. So the defense is saying there's a pattern there.

But our team at APM Reports, we also looked at all the other cases Evans and his office have brought to trial since Evans became the DA in 1992. And we found that under Evans' tenure, his office struck black people from juries at nearly 4 1/2 times the rate it struck white people. And I should say that Doug Evans has denied striking prospective jurors because of their race. I did try to talk to him about our findings, but he declined to sit down and go through them with us.

But he did tell us that he is convinced that Curtis Flowers is guilty. We asked what he would do if the Supreme Court overturns Flowers' conviction, and he said, he'd have to look at it at that point. It's worth pointing out, though, that if the case is overturned by the court, this prosecutor, Doug Evans, would still have the option to try the case again, which would be a seventh trial.

GREENE: Amazing. Our guest, Madeleine Baran, who is host of the APM podcast "In The Dark," giving us the background on a big Supreme Court case that is happening tomorrow.

Madeleine, thanks a lot.

BARAN: Thanks for having me.

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Race and the death penalty: Supreme Court to hear case of Curtis Flowers, tried six times for quadruple murder



Curtis Flowers is led away from the Montgomery County Courthouse in Winona, Miss., in 2004. (Dale Gerstenslager/AP)

WINONA, Miss. — Early one hot July morning in 1996, four people were executed in Tardy Furniture Store, a mainstay of this town's compact business district. Months later, a man named Curtis Flowers, who had no criminal record but had very briefly worked at the store that summer, was arrested and charged.

Flowers was tried in 1997. And 1999. And also in 2004, 2007, 2008. And, most recently, in 2010.

Six times, District Attorney Doug Evans, who is white, has attempted to convict Flowers, who is black, in a prosecutorial pursuit that may be without parallel.

Two trials — as it happens, the only ones with more than one African American juror — have resulted in hung juries.

Three convictions were overturned by the Mississippi Supreme Court for prosecutorial misconduct and improper maneuvering by Evans to keep blacks off the jury.

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But the 2010 conviction was allowed to stand and Flowers was sentenced to death. Next week, the U.S. Supreme Court will consider whether the Mississippi court was correct in finding no constitutional violations in that trial, even though Evans used the challenges allotted him to keep five of six African American potential jurors from being seated.



The building in Winona, Miss., that once housed the Tardy Furniture Store. (Robert Barnes/The Washington Post)

The case has attracted national attention -- "Nobody gets tried six times but Curtis Flowers," said Robert Dunham, executive director of the Death Penalty Information Center. A bipartisan group of former Justice Department officials and a national civil rights group have filed friend-of-the-court briefs on Flowers's behalf.

"When there is reason to believe that a prosecutor is exploiting racial bias and division in an attempt to obtain a conviction, the courts must take strong action," former Obama administration solicitor general Donald B. Verrilli Jr. wrote on behalf of six former officials.

[Supreme Court to examine racial divide in jury selection]

The justices on Wednesday will examine the jury aspect of Flowers's conviction. But a separate team of lawyers is preparing a more direct attack, aided by the work of reporters who spent a year investigating the case for "In the Dark," a podcast that has raised considerable questions about Flowers's prosecution.

"Curtis Flowers is innocent of the Tardy Furniture Store murders," the lawyers write in a 321-page petition for post-conviction relief filed in the Mississippi courts. The dead were Bertha Tardy, 59, and store employees Carmen Rigby, 45, Robert Golden, 42, and 16-year-old Derrick "Bo Bo" Stewart, who had reported that morning for his first day of work at the first job of his life.



Clemmie Flemming points out to prosecutor Doug Evans, center, where she spotted Curtis Flowers on the morning of four slayings at Tardy Furniture Store in Winona, Miss., in 1996. The 2010 trial was the sixth time Flowers had been tried for the slayings. (Taylor Kuykendall/The Greenwood Commonwealth/AP)

Flowers's lawyers say "newly discovered evidence" shows previous convictions were obtained through "false testimony by key law enforcement witnesses and a jailhouse snitch, suppression of material evidence, egregious racial discrimination in jury selection, and reliance on false and discredited forensic evidence."

The series of reports by "the podcast people," as some refer to the reporters from American Public Media, have been unwelcome for some here. And so have the legal briefs reminding of Winona's history with racially motivated crimes .

Mississippi voting rights advocate Fannie Lou Hamer described the beating she received from Winona police in her famous speech to the Democratic National Convention in 1964, according to the brief filed by the NAACP Legal Defense and Educational Fund.

The train station across the street from Tardy Furniture is where Emmett Till ended his ill-fated trip from Chicago in 1955. The 14-year-old's murder in a town 30 miles away was a transitional moment for the civil rights movement.

The Ku Klux Klan has marched in Winona, and the Rev. Martin Luther King Jr. had rallied its black residents.

But the town's current leaders resist suggestions of a modern-day racial divide.

"There's never been an issue except to get to the truth," said Mayor Jerry Flowers, who is white and is not related to Curtis Flowers, he said, "as far as we know." He jokingly calls Curtis Flowers's brother "Cuz" when he sees him at the ballpark.

Winona Police Chief Tommy Bibbs, who is black, takes a similar view. "That was then and this is now," he said. He brings up the Confederate statue in front of the old courthouse – dedicated to "the Confederacy, President Jefferson Davis and the soldiers who fought for state rights" – only to dismiss its importance.

"That statue ain't done nothing to me," Bibbs said.

Bibbs, who was not involved in Flowers's arrest in 1996, said many of those who proclaim his innocence have not been to the trials or read the transcripts.

The one in 2010 lasted eight days, and the jury convicted in 30 minutes.

"As far as him being the culprit, no, I have no questions about that," said Frank Ballard, the son-in-law of Bertha Tardy. "I do not believe he was a choir boy."

Evans, the district attorney, did not return requests for interviews. When this reporter stopped by his office in nearby Grenada one morning this week, an assistant said he was already at lunch.

A questionable conviction

Bertha Tardy was more than a furniture saleswoman; she had been to interior design school, and people depended on her sense of style.

"Local businesses and banks would come in and say, 'We're putting a new lobby in,' or 'We're changing the boardroom,' " Ballard said. "She was the go-to person for that. In a small town you wear a lot of different hats."

Rigby was quiet, and could usually be found at the counter, in the center of the store. Golden, the only African American victim, did what needed to be done around the store. He worked two jobs to provide for his family, which included a special-needs child.

Stewart was a popular high school athlete, and at a game the night before, Alderman David Ware's son caught and Stewart pitched.

"He was a helluva pitcher, there's no telling what he could have done," Ware said.

Each of the victims was shot in the head. Stewart was the only one alive when a store employee came upon the horrible scene. "I'll never forget all of us going to the hospital," Ware said, although it was clear Stewart would not survive. The members of his summer league team signed a baseball and put it in his casket.

Tim Beeland, who at the time was editor and publisher of the Winona Times, said the shocking news was difficult for the town to process.

"It was just like small-town anywhere: I'd park my car behind the newspaper office and never even take the keys out of it for the rest of the day," Beeland said. "It's like all of that changed instantly that morning. You looked over your shoulder at everything."

Rumors were rampant, and Beeland had left to run another newspaper, the Scott County Times, before prosecutors turned to Flowers, then 27, who was indicted in March 1997.

Flowers had briefly worked at the store that past July. But he had improperly loaded some merchandise that was damaged as a result. Bertha Tardy told him she'd have to dock his pay. He didn't show up for work for several days, and when he checked in to see if he still had a job, she said no. His timecard and paycheck were found on a desk in the store; \$389 was missing.

Flowers maintained his innocence, and Evans had to build a case against him bit by bit. There was no physical evidence. No one saw him enter or leave the furniture store. Prosecutors say that Flowers stole the gun used in the shootings from his uncle's car that morning but that they've never found the weapon.

The testimony against him came from a string of witnesses who say they saw him at various points along a long walk across town before and after the shootings. There was a particle of gunpowder on one hand when

police questioned him that day, authorities said. Money was recovered from his girlfriend's house, and there was a bloody shoeprint similar to a pair of athletic shoes Flowers was alleged to have owned. A ballistics expert said the bullets found at the store matched those recovered by a fence post where Flowers's uncle practiced shooting.

Three jailhouse informants over the years said Flowers confessed to them. All three later recanted.

The most dramatic came from Odell Hallmon, now serving a life term for murder, who during the 2010 trial testified against Flowers. But speaking to the "In the Dark" podcast on a phone he had smuggled into prison, Hallmon said that was all made up, a deal he had reached with Evans.

A group called Friends of Justice highlighted Flowers's case. The Starz network series "Wrong Man" featured Flowers. The podcast brought even more attention and won a George Polk Award.

Nelson Forrest, a Methodist minister who is related to Curtis Flowers, says the podcast especially has made a difference in how people in Winona view the case.

"It shocked a lot of black folk," Forrest said. "People used to trust the law — they say if they've got him locked up, they must have something. But now people see that something has to be wrong with it. It just didn't add up."

A question of discrimination

When the U.S. Supreme Court takes up *Flowers v. Mississippi* on Wednesday, it won't be considering the evidence against him. Essentially, it will be Doug Evans's prosecutorial tactics that are on trial, and whether he discriminated against African Americans in keeping them off the jury in the 2010 trial.

When picking a jury, some are eliminated by the judge and lawyers for cause — that they are likely to be biased, for instance, or because they say in a capital case that they could not impose the death penalty.

Prosecutors and defense attorneys also receive what are known as peremptory challenges. They can strike potential jurors they simply don't want on the jury, and generally those choices cannot be second-guessed.

But in a 1986 case, *Batson v. Kentucky*, the Supreme Court said the challenges could not be used to strike a potential juror because of his or her race. (Gender was later added as a forbidden purpose.)

In a more recent decision, the court said judges should consider the "totality of the circumstances" when deciding whether a prosecutor was using the challenges as a pretext for barring jurors because of their race.

Flowers's lawyers said that means looking at Evans's work in previous trials, not just the most recent one.

"The first four times Evans prosecuted Flowers, he struck every black panelist that he could, 36 in all," they told the Supreme Court.

Generally, lawyers can come up with a race-neutral reason for striking a juror. But Evans's actions in one of those trials, the Mississippi Supreme Court ruled, presented "as strong a prima facie case of racial discrimination as we have ever seen in the context of a *Batson* challenge."

But deciding whether a potential juror was struck is a fact-specific inquiry. And the Mississippi high court in the 2010 case deferred to a judge's finding that Evans had nondiscriminatory reasons for striking the black jurors — because they had ties to Flowers or had been sued by Tardy Furniture, for instance.

Evans's past behavior is not relevant, Mississippi Attorney General Jim Hood told the Supreme Court in defending the conviction.

Flowers's request that the justices "automatically assume the district attorney violated *Batson* based upon his previous violation of *Batson* in Flowers' third trial is without precedential support and is thus devoid of legal merit," Hood wrote.

Flowers's lawyers and supporters say that argument overlooks the larger point. There have been 72 jurors in the six trials, 61 of them white. All have voted to find Flowers guilty. Six of the 11 African American jurors have found the opposite.

Reporters for the "In the Dark" podcast assembled a database of trials conducted by Evans's office. They found that in 225, in which full data was available from 1992 through 2017, Evans's office struck 50 percent of the eligible black jurors and 11 percent of white jurors.

Evans was more than four times more likely to strike a black potential juror as a white one. And Flowers's attorneys say he relentlessly questions black potential jurors to find what might pass as a race-neutral reason for dismissing them.

In the 2010 trial, Evans asked 145 questions of the black potential jurors he rejected. He made a total of 12 inquiries to the 11 white jurors he seated.

Evans has dismissed the reporters' study of his jury patterns.

"I don't know where that figure comes from," Evans told the Greenwood Commonwealth. "I haven't listened to (the podcast), and I don't intend to because I know what this is about."

The focus on race has been painful for some.

"There are racial problems everywhere, and anytime anyone in Mississippi tells there's not some type of racial problems, it's just a lie," said Beeland, the newspaper editor, who is white. "Winona is no different."

But he notes: "We also have African American elected officials, on the city and county [level], we worked together on schools. I think there were good relationships before, I think there are good relationships now."

OPENING STATEMENTS

Melvin Welch,
Diane Schlipper

OPENING STATEMENTS

*YOU ONLY GET ONE CHANCE TO MAKE A FIRST IMPRESSION**

WHAT IS AN OPENING STATEMENT?

Recitation of key evidence crafted by the advocate but done in a manner that is...

Concise

Factual

Thematic

Formal

WHAT ARE THE GOALS OF AN OPENING STATEMENT?

- Present your case (theory of defense or guilt)
- Establish credibility
- Set the tone

YOUR JURY



OPENING STATEMENT: THE FORMULA

Part One: A sentence or two that grabs attention and expresses belief in your position.

START STRONG



HOW NOT TO START STRONG

- Introduce yourself.
- Make introductions of your co-counsel/agent.
- Talk about how an opening is like a “Roadmap.”
- Talk about how an opening is like a “Coming Attractions.”

NO WINDUP, JUST PITCH



OPENING STATEMENT: THE FORMULA

Part Two: *A paragraph that explains
your case theory*

OPENING STATEMENT: THE FORMULA

Part Three: Discuss the facts that support your theory (and remember to “embrace” the worst evidence).

AFTER YOUR STRONG START...

- Think of a cocktail party story. Tell the story in simple, broad strokes.
 - DO NOT simply give a list of which witnesses will testify as to what facts
- You can provide a more detailed explanation of certain critical pieces of evidence, introduce critical witnesses, and discuss motive, IF relevant.

CONSIDER THE CONTEXT- SAVE DETAILS FOR CLOSING

- By the closing, jury has seen/heard the evidence
 - Use the Facts to persuade – they support your theme.
- Opening is broad brush strokes- Closing is guilty/not guilty by 1,000 details

EXHIBITS?

- If you can talk about the exhibit in your opening, you can use it in your opening.
 - Show the exhibit to defendant's counsel.
 - Clear it with the judge first.
- Use them if you believe they will have a positive effect on the jurors' view of your case.

OPENING STATEMENT: THE FORMULA

Part Four: Discuss the opposing
side's case

ADDRESS DEFENSE THEORY/BAD FACTS?

- Do not address what you “think” the defense theory will be -- this is just asking for trouble.
- Bad Facts: If you have to make some concessions, do it in the middle of the opening (primacy/recency)

OPENING STATEMENT: THE FORMULA

Part Five: A powerful conclusion that again states your theory and tells the jury what they need to do at the end of the trial.

FINISH STRONG



PUSHING THE ENVELOPE

BE WARY OF DEFENSIVE OPENINGS

WHAT NOT TO DO IN AN OPENING STATEMENT

- Never waive or reserve opening (open and say something)
- Never over-promise and under-deliver
- Don't read your opening
- Don't wing it
- Don't argue

OPENING STATEMENT: THE FORMULA (OUTLINE)

I. Theory of Your Case

II. Narrative of the Case

III. How you'll know he is guilty or innocent/liable
or not liable

A. Facts that support you

B. What doesn't make sense about opposition

IV. Charge to the Jury/Conclusion

PRESENTATION TIPS

Be confident

Be passionate

Speak deliberately

Use silence

Move with a purpose

PRESENTATION TIPS

Be the most professional attorney in the
courtroom

Be persuasive, but be accurate

Set up your closing to say, “I told you so.”

PRACTICE

DIRECT EXAMINATION

Judge Jeffrey M. Bryan

Celeste DeMars

Rules for Effective Direct Examinations

1. Develop your theme(s)
2. Use direct examination to further your theme(s)
3. Ask focused questions that follow a logical train of thought
4. Eliminate self-inflicted distractions
5. Good Form (Simple, Non-Leading Questions)

Rule 1: Develop your theme(s)

KNOW THE FACTS (!)

A well organized case consists of

- **a concise statement of the case, and**
- **cohesive themes that (a) support the statement, and (b) that are consistent with all the facts.**

Rule 2: Use direct examination to further your theme(s)

- **Effective direct examination furthers your theme(s)**
- **Effective direct examination does not distract from your theme(s)**
- **Make the facts argue, not the witnesses**

Rule 3: Ask Focused Questions that Follow a Logical Train of Thought

Focused questions use the tools of form, focus, and memory

Logical trains of thought involve chronology, subject matter, recency/primacy, or a combination

Advice when asking Memory Questions: Give Witnesses Elbow Room

In all fairness, can you remember word for word what Mr. Smith said to you six months ago?

But do you remember the substance of the conversation? In substance, what did he say to you?

Transitions

(Think Headings)

Now I'd like to turn your attention to . . .

I'd like to go back to . . .

Now I want to ask you about . . .

Transitions

Combine the tool of transitions with the rule of asking focused questions that follow a logical train of thought



Detail

How close were you to the robber when he pointed the gun at you?

Where on your body did he point the gun?

How close to your face was the gun?

What part of his body made contact with what part of yours?

Looping

(use last answer to form your next question)

When she pointed the gun, how far away was she standing?

After you asked him to leave you alone, did he leave you alone?

Get Out of the Way!

Effectiveness requires an authentic witness

- Use “Please tell the Court/jury . . .”
- Look at your audience not your witness

Handle the Difficult Witness/Bad Facts

Characteristics of Difficult Witnesses

Bad Character/Motive to Lie

Uncooperative

Nervous / Forgetful

How to Handle the Difficult Witness

It's easy: follow the rule—asked focused questions that follow a logical train of thought.

And be mindful to ask one fact per question.

Rule 4: Eliminate These Distractions

Reading questions

- **If you look at your notes, look up before speaking**

Checking off each question asked

Being glued to the lectern

Using cop talk/uncommon style (talk like a juror)

Um, okay, and . . . (false starts)

INTRODUCING EXHIBITS INTO EVIDENCE

- Mark exhibit for identification
- Show exhibit to opposing counsel
- Request permission to approach witness
- Show exhibit to witness
- Lay proper foundation for exhibit
- Offer exhibit into evidence

Rule 5: Good Form (non-leading)

General rule: use non-leading questions.

Leading questions should not be used on direct examination except as necessary to develop the witness's testimony.

Ordinarily, the court should allow leading questions:

- (1) to lay foundation;
- (2) on cross-examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

LEADING V. NON-LEADING QUESTIONS

A leading question is a question that suggests the answer(s).

- For example: “Isn’t it true that you saw Eric Nelson at Moon Lake prior to March 6?”

A non-leading question focuses attention on the witness’ knowledge.

- For example: “Did you see Eric Nelson at Moon Lake prior to March 6?” or “When was the first time you saw Eric Nelson at Moon Lake?”

HOW TO ASK A NON-LEADING QUESTION

Who

Why

What

How

When

Tell

Where

Describe

** What, if anything . . .

Narrow Questions

(one fact per question)

Where did you go when the defendant ran out of the bank?

How long did it take you to get to the front door?

Where was the defendant when you got to the front door?

What was the defendant doing when you got to the front door?

Choice Questions

(borderline leading, but probably OK)

Did the defendant have anything in his hand?

What was it?

Was it a big gun or a small gun?

Was the gun dark or light?

Choice Questions: Whether or Not

Tell me whether or not you heard the robber say anything to the teller.

Tell me whether or not you saw the robber get in the car.

QUESTIONS?

EFFECTIVE CROSS-EXAMINATION

PowerPoint prepared by: Stacy Leeds

Presentation by: Katherian Roe, Federal Defender Minnesota District

Hon. Jeffrey Bryan, Minnesota Second Judicial District

CROSS-EXAMINATION OF A LAY WITNESS



CROSS EXAMINATION

A GOOD CROSS INCLUDES:

1. Leading questions

- The question suggests the answer
- Does not have to be in question form
- Declarative statements are permissible
 - Q. Mr. Flores, Joseph Spotted Tail is your friend?
 - Q. He is a member of your tribe?
 - Q. You feel an obligation to protect tribal members?
 - Q. You don't want to be a "snitch"?

CROSS EXAMINATION
A GOOD CROSS INCLUDES:

2. Topical organization, where possible
3. Short Questions
4. Facts or Drawing Conclusions

FACTS

Q1. *You talked to Officer McAdams?*

A. Yes.

Q2. *You described the incident to him?*

A. Yes.

Q3. *You talked to him right after the incident?*

A. That's correct.

Q4. *You talked to him after you drank two beers?*

A. That's correct.

CONCLUSIONS

Q1. *You talked to Officer McAdams?*

A. Yes.

Q2. *You tried to tell him what you remembered?*

A. Yes.

Q3. *You talked to him after the small party at your house?*

A. That's correct.

Q4. *You talked to him after you had been drinking a few beers?*

A. That's correct.

**CROSS EXAMINATION
A GOOD CROSS INCLUDES:**

5. Just one fact per question
6. Avoiding arguments
7. Headlining – announcing
topic area transitions
8. Using declaratives, not “correct?”

THE “CORRECT?” CRUTCH

Q1. You were not intoxicated on that night, *were you?*

A. I was not.

Q2. *The Valenzuelas were at your party, correct?*

A. Yes.

Q3. Joseph Spotted Tail banged on the door, *didn't he?*

A. Yes.

DECLARATIVE STATEMENTS

Q1. You were not intoxicated?

A. No.

Q2. *The Valenzuelas were at your party?*

A. Yes.

Q3. *Joseph Spotted tail banged on the door?*

A. Yes.

CROSS EXAMINATION A GOOD CROSS INCLUDES:

9. Using repetition to drive home the point

Q. *Officer McAdams interviewed you after the incident?*

A. Yes.

Q. *After you had consumed two beers?*

A. That's true.

Q. *You told Officer McAdams what happened that night?*

A. Yes.

Q. *You told him you had been drinking a few beers?*

A. Yes.

Q. *You gave him complete and honest answers that night?*

A. That's correct.

Q. *You told him you had consumed only two beers?*

A. Yes.

CROSS EXAMINATION
A GOOD CROSS INCLUDES:

10. Controlling the unresponsive witness

A. Repeat the question – once or twice

Q. *Nurse Campbell you didn't see how Mr. Valenzuela was injured?*

A. *I was told how he was injured.*

Q. *You did not see how Mr. Valenzuela was injured?*

A. *******

Q. *You did not see how he was injured?*

CROSS EXAMINATION
A GOOD CROSS INCLUDES:

10. Controlling the unresponsive witness

B. Tell the witness the answer –

“Is the answer to my question ‘Yes’?”

Q. *You believed what he told you?*

A. *Well, it is what we used to determine treatment.*

Q. *You believed what he told you?*

A. *That it is the only thing we can use to make a diagnosis.*

Q. *Is the answer to my question “yes” you believed what he told you?*

A. *Yes.*

**CROSS EXAMINATION
A GOOD CROSS INCLUDES:**

10. Controlling the unresponsive witness

C. Get agreement from the witness

“Can we agree that ...”

D. The directive

E. The “we all see what you’re doing” strategy

**CROSS EXAMINATION
A GOOD CROSS INCLUDES:**

11. Avoiding characterizations

Q. *The sun was shining brightly?*

A. I wouldn't say the sun was bright, but it was shining.

Q. *When you left the bank, you ran very fast?*

A. I wasn't walking, you know....

Q. *The sun was shining?*

A. Yes.

Q. *When you left the bank, you ran?*

A. Yes.

CROSS EXAMINATION
A GOOD CROSS INCLUDES:

12. Avoiding the use of “why” questions

13. Avoiding “you testified” questions

14. Evoking your theme

15. No repeating of Direct Examination

CROSS EXAMINATION
A GOOD CROSS INCLUDES:

16. Only asking questions to which you know the answer

17. Not overdoing it

- outline the Cross
- be cognizant of the burden of boredom

18. Starting and ending strong

CROSS-EXAMINATION OF AN EXPERT WITNESS

KNOW THE TOPIC

1. Learn as much as you can about the topic the expert is going to be testifying about.
2. Don't let on how much you know.
3. Don't get into a technical argument with the witnesses.

CROSS EXAMINATION OF THE EXPERT WITNESS

4. Avoid qualifying ambiguous questions.

Q. Nurse Campbell, you gave Mr. Valenzuela several medications prior during the treatment at the hospital?

A. I wouldn't say that I gave him several medications. It is very ordinary to give a patient medication as ordered by the doctor, and I did so.

CROSS EXAMINATION OF THE EXPERT WITNESS

Q. Let's talk about what you didn't do.

The Headline

Announce next topic area

CROSS EXAMINATION OF EXPERT WITNESS

Q. Are you familiar with the book written by Professor Ken MacLeod of the Harvard University School of Nursing?

A. Yes, I am.

Q. Did I read that correctly?

A. Yes, you did.

Q. Thank you Ms. Campbell, no further questions.

Rule 803 (18) - Learned Treatise - Reliable authority...read but not admitted...control - Strong Ending

IMPEACHMENT DEMONSTRATION

IMPEACHMENT

1. Lock-in: the witness reiterates a statement (usually one just made on direct)
2. Build-up: the witness affirms the context of a second statement
3. Confront: The witness agrees to making the second statement

REFRESHING RECOLLECTION

1. Witness does not remember
2. Witness identifies a potential refreshing document
3. Witness states that the document will refresh
4. Witness reviews the document silently
5. Witness states that the document did refresh
6. Witness answers the question ²¹

IMPEACHMENT EXAMPLE ONE

On direct examination, the witness testified that she “had one or two drinks,” before getting into an argument with her boyfriend (the defendant) that lead to an alleged domestic assault.

In her statement to police, however, the witness said that she drank a bottle of wine.

IMPEACHMENT EXAMPLE TWO

Impeachment by omission.

The police officer's report included nothing about observations of any visible marks, but on direct examination, the police officer testified that she observed bruising on the alleged victim's neck.

REFRESHING RECOLLECTION EXAMPLE

1. Witness does not remember
2. Witness identifies a potential refreshing document
3. Witness states that the document will refresh
4. Witness reviews the document silently
5. Witness states that the document did refresh
6. Witness answers the question

QUESTIONS ?

**CLOSING
ARGUMENT
COMPLETING THE JOURNEY**

Deidre Aanstad

Melvin Welch

ARGUE YOUR THEORY

Use your theme

Be natural;
speak about reality

Use primacy/recency

Purpose is to make your final effect on what the jury is
thinking

Goal: Give the jury one and only one choice.

CLOSING ARGUMENT

- State your case – use your prosecution memo/trial note book
- Address the elements of the case
- Connect the evidence and testimony to the theory of the case
- Address burden of proof
- Tell the fact finder what you want them to do and ask them to do it

AVOID PROSECUTORIAL MISCONDUCT

•
All of us expect a prosecutor to fight hard and the case law is clear that a prosecutor "may prosecute with earnestness and vigor...But while he may strike hard blows, *he is not at liberty to strike foul ones*. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one..."quoting from *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L. Ed. 1314 (1935).

PROSECUTORIAL MISCONDUCT/MISCONDUCT

1. Intentionally misstating the evidence or misleading the jury regarding permissible inferences:

- Prosecutor's closing argument that the "defense seeks to do three things: to obscure the truth, to mock the truth, and to call the child a whore. That's their defense."

2. Expressing personal beliefs or opinions regarding the veracity of testimony or evidence or guilt of the defendant

- A prosecutor should not express his or her personal opinion about the credibility of the witnesses, unless the comments are ground upon evidence in the record.

PROSECUTORIAL MISCONDUCT/MISCONDUCT (CONT.)

3. Using arguments designed to inflame the passions or prejudices of the jury

- Prosecutor should refrain from engaging in any sort of personal name-calling or calling the Defendant derogatory names.

4. Using arguments which divert the jury from deciding case on the evidence, injecting issues broader than the question of guilt of the defendant under the controlling law, or making projections of consequences of the jury's verdict

- Prosecutor's comment that if you don't stop the Defendant he will take someone else away

PROSECUTORIAL MISCONDUCT/MISCONDUCT (CONT.)

5. Intentionally referring to or arguing facts not in evidence where the facts are not matters of common public knowledge.

- arguing that the state's witnesses houses were burned as a form of intimidation was improper in the absence of any evidence of the reasons that the house was burned

BRING STYLE TO YOUR CLOSE

- Speak with confidence
- Use the well and own the courtroom
- Look the jurors in the eye
- Be sincere
- Use the language you used through out the trial
- Remind them of what was said and seen

RETURN TO THE COMPLAINT

- Address/use the elements
- Raise any defenses
- Respond to any defenses

PROSECUTORS: LAY OUT EACH CHARGE

Count 1.

Diversion of surface waters for controlled substance manufacture.

- if the person plants, cultivates, harvests, dries, or processes any marijuana or any part thereof, and
- obstructs the natural flow of or substantially diverts the flow of any river, stream, or lake or diverts water from a Tribal water system within the Reservation.

ADDRESS DEFINITIONS

Intentionally, person acts with a conscious objective to cause the result or to engage in the conduct so described

- knowingly person acts with an awareness that the conduct of the person is of such a nature or that such circumstances exist, or
- recklessly person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exist

PROSECUTOR V. DEFENDER APPROACH

- Prosecutors must establish facts for each element
- Defenders need to bring attention to the weaknesses in the prosecution's case
 - Lack of evidence related to a charge or element of a charge
 - Bias or inconsistencies in witness testimony
 - Evidence presented fails to meet the applicable burden of proof

EMPOWER THE JURY

Permit them to argue for your point

Make them strong enough to judge

Focus your argument on what YOU have shown

Show them your argument is their idea

The only choice

IN CONCLUSION

Ask the fact finder for what you want

Complete the journey

Authentically

Passionately

Deliberately

Respectfully

BEST PRACTICES

Charging Decisions: *Deciding Which Charges And Why...*

Know your code!

What offenses does your code allow you to charge?

- Over charging and under charging...

Know your rules of evidence or what rules your court uses, ie. Federal rules of evidence

Avoid adding charges where you cannot meet each element (i.e. serious physical injury)

Detention/Bond Hearing: *How to Prepare and What to Anticipate*

Preparing your officer

Having defendant's criminal history summary ready and available -how are they dangerous to the community or themselves, and/or are they a flight risk? (outstanding warrants, failures to appear,etc.)

Trial Preparation: *It All Starts Well Before the Trial...*

Finding your style and what works best for you:

Trial Notebook vs. Outline

Script vs. Bullet Points

Common Objections to make and be prepared to respond to:

- Preserving your record

Motion Practice:

- Discovery
- Notice
- Expert Witnesses
- Motions *in limine*

Subpoenas:

- Get them done early and have return of service
- know what each agency requires that you subpoena so you can get your witness to trial to testify

Witness Preparation:

- who will testify and why? *What evidence are they getting in for your case? Do you need every witness to testify in your case?*
- witness preparation vs. witness coaching
- using preliminary hearing testimony when witnesses don't show up..... Like your victim witness or law enforcement officer
- preparing witnesses for defense questions

Exhibits:

- Marking them before trial if possible
- To use or not to use an exhibit notebook
- Having copies ready for all
- Moving into evidence
- Using media in the court room ...power points, elmos, television monitors, playing audio records (test everything first before trial and make sure all equipment works!)

Defenses: Involuntary Intoxication

- Know your code!
- How to react to them? And prepare?

Direct examination:

- Know how to correctly refresh recollection
- Impeach your witness if necessary
- Rehabilitate witness if prior inconsistencies are brought out by defense
- Lay appropriate foundation for exhibits (photographs, recordings, etc.)

Opening:

- Present a compelling theme to the jury highlighting the prosecution's theory of the case
- Don't argue in opening, simply outline what you anticipate the evidence to show
- Don't over-promise if you cannot deliver

Closing & Rebuttal:

- Closing is the time for *argument*
- Avoid causing a mistrial by commenting on witnesses' untruthfulness or vouching for witness credibility
- Return to your theme – What did the Defendant do that deserves punishment and why are his defenses not valid.

Basic Evidence Rules and Objections

**Objection:
Lacks
Relevance**

Evidence must be logically relevant to be admissible. Evidence is logically relevant when it tends to prove or disprove a material fact of the case. (Evid. Code, §§ 210, 350, and 351.)

**Objection: Evidence
will waste time or
cause an undue delay**

A trial judge has broad discretion to exclude relevant evidence if its probative value is substantially outweighed by its prejudicial effect. Evidence is prejudicial if it may bias the jury, confuse the jury, waste time, or unduly delay the proceeding. (Evid. Code, § 352.)

**Objection: Lacks
Foundation**

An attorney cannot ask the witness to answer a question for which he or she lacks foundation. (Evid. Code, § 400, et seq.)

**Objection:
Lacks Personal
Knowledge**

A witness may only testify to facts that are within his or her personal knowledge. (Evid. Code, § 403.)

**Objection: Calls
for a Narrative**

A question that is so broad and general that it permits the witness to narrate is impermissible. Proper questions should be specific enough to allow the witness to answer only on specific subjects.

**Objection:
Assumes Facts
Not in Evidence**

A question may not assume as true, any fact not yet introduced into evidence.

Basic Evidence Rules and Objections

Hearsay	Hearsay is an out-of-court statement offered for the truth of the matter asserted. It is generally inadmissible because the truthfulness of the witness at the time the statement was made cannot be tested. (Evid. Code, § 1200.) Consider that a statement may have non-hearsay purposes such as effect on person hearing the statement. In this instance, it is admissible.
Hearsay Excep.: Admission of a party	An out-of-court statement made by a party to the proceeding is admissible when used or offered against that person. (Evid. Code, § 1220, et seq.)
Hearsay Exception: Spontaneous Statement	Also known as an excited utterance, it is a statement made by a witness as the witness is perceiving or experiencing an exciting event. Excited utterances are admissible because the spontaneity and excitement of the statement leave little time for the witness to lie. (Evid. Code, § 1240.)
Hearsay Exception: Business Records	Under the business records exception, a business record that contains hearsay will be admitted if it was prepared by someone during the normal course of business by someone with personal knowledge of and a duty to report the matter contained therein. (Evid. Code, § 1270, et seq.)
Hearsay Exception: Official Records	Under the official records exception, a writing may be admitted into evidence if it was made by a public agency as: (1) made within the scope of the public employee's duties; (2) was made at or near the time of the act, condition or event; and (3) both the source of information and the method of preparation indicates trustworthiness. (Evid. Code, § 1280, et seq.)

Fact pattern

Count One: Aggravated assault with a dangerous instrument (knife)

Count Two: Possession of a narcotic drug (heroin)

Count Three: Disorderly conduct with a dangerous instrument (knife)

Defendant: Joseph Spotted Tail

Victims: Mark Valenzuela (Aggravated assault – stabbing)
Carlos Flores (Disorderly conduct)
Carmen Valenzuela (Disorderly conduct – wife of Mark Valenzuela)

Law enforcement witnesses:

First responders (written reports, photographs, but no recorded statements):

Officer McAdams (observed Mark Valenzuela, spoke with victims of disorderly conduct, has training on DUI's to identify people under the influence)

Officer Baltazar (spoke with Mark Valenzuela, took photographs of his injuries, called EMTs)

Officer Romo (spoke with Defendant, obtained admissions, search Defendant incident to arrest, locate heroin in his pant pocket)

Case detective:

Det. Lopez (took recorded statements from victims, obtained medical record release and hospital records for Mark Valenzuela, took heroin to crime lab and completed chain of custody)

Forensic scientist:

Michael Williams (works for state department of public safety crime lab, conducted chemical test to confirm the presence of heroin, produced report, has extensive c.v. and has previously testified as an expert)

EMT:

Fire Fighter Derek Johnson (treated stab wound, observed injuries, Mark Valenzuela told him that Joseph Spotted Tail had just stabbed him, observed Mark Valenzuela did not appear to be under the influence).

ER Doctor:

Dr. Herbert (treated Mark Valenzuela at the hospital, Mark Valenzuela told her that Joseph Spotted Tail had stabbed him, completed six stitches on stab wound, extensive c.v.)

Synopsis:

Mark Valenzuela and his wife Carmen Valenzuela were at a party at Carlos Flores (mutual friend)'s house. Joseph Spotted Tail showed up to the party and appeared intoxicated and was acting erratically. Carlos asked Joseph to leave and Joseph became combative. Mark, who is bigger than Carlos, stood up to block Joseph from lunging at Carlos. Joseph pulled a knife out of his boot and stabbed Mark in the abdomen. Carmen calls police from her cell phone. When first responders arrive, they immediately call EMTs. Fire Fighter Derek Johnson applies pressure to the wound to stop the bleeding and then transports Mark to the hospital where ER Doctor Herbert treats him and ultimately places six stitches to close the wound. Carmen, Carlos and Mark all give similar, although not identical, accounts of what happened. Carlos (the homeowner) had been drinking (2-3 drinks) but Carmen and Mark had not. Officers are still able to understand Carlos despite him having consumed alcohol (for the purposes of this we will stipulate that this is not a dry Reservation). Officer McAdams has training for DUI's and does not observe any signs/symptoms of intoxication. Officer Romo speaks with Defendant and he admits to stabbing Mark, but claims it was in self-defense. Officer Romo fails to Mirandize Defendant. Defendant provides the knife to Officer Romo. Search incident to arrest, Officer Romo finds a baggie of heroin in his pant pocket. Det. Lopez later gets a recorded statement from Defendant in the Tribal detention facility but this time, he does Mirandize him and he agrees to answer his questions. He again admits to stabbing Mark but claims it was in self-defense. The bloody knife is kept in evidence, but no DNA testing is completed due to the cost. We will assume that the crime lab is capable of doing DNA testing, but it is costly for the Tribal Police Department. Both Defendant and Mark have a prior felony conviction. Carmen and Carlos have no prior convictions. All four civilians are Tribal-enrolled.

What we need:

- Reports from each officer
- Transcripts of interviews of the three civilians and Defendant by Det. Lopez
- EMT report (can be just 1 page)
- Medical record (can be abbreviated from what it would actually look like to keep it relatively simple)
- Certificate Degree of Indian Blood for Defendant
- Photographs of stab wound
- Chain of Custody for heroin
- Chain of Custody for knife
- Crime lab report (just 1 page confirming it is heroin)
- C.V. for Dr. Herbert and Forensic Scientist Michael Williams
- Charging document (criminal complaint)

**TRIBAL COURT
INDIAN RESERVATION
IN CRIMINAL COURT**

TRIBAL NATION,

CR-18-51212

Plaintiff,

v.

JOSEPH SPOTTED TAIL,

Defendant.

CRIMINAL COMPLAINT

The Tribal Nation complains and alleges:

COUNT ONE: Aggravated Assault with a Dangerous Instrument, 5 TNTC § 4-509

On or about May 29, 2018, within the exterior boundaries of the Reservation, the defendant, **JOSEPH SPOTTED TAIL**, an Indian, did assault M.V. an Indian, by stabbing him with a dangerous instrument (knife) causing injury.

COUNT TWO: Disorderly Conduct With a Dangerous Instrument, 10 TNTC § 4-1001

On or about May 29, 2018, within the exterior boundaries of the Reservation, the defendant, **JOSEPH SPOTTED TAIL**, an Indian, did cause alarm to C.V., an Indian, by engaging in threatening behavior with a dangerous instrument, to wit: knife.

COUNT THREE: Disorderly Conduct With a Dangerous Instrument, 10 TNTC § 4-1001

On or about May 29, 2018, within the exterior boundaries of the Reservation, the defendant, **JOSEPH SPOTTED TAIL**, an Indian, did cause alarm to C.F., an Indian, by engaging in threatening behavior with a dangerous instrument, to wit: knife.

COUNT FOUR: Possession of a Narcotic Drug, 8 TNTC § 4-803

On or about May 29, 2018, within the exterior boundaries of the Reservation, the defendant **JOSEPH SPOTTED TAIL**, an Indian, did knowingly possess a narcotic drug, to wit: heroin.

RAY GATES
Tribal Prosecutor

ALBERT LENNON
Assistant Tribal Prosecutor

Tribal Nation Tribal Code

5 TNTC § 4-509 – Aggravated Assault

A person commits aggravated assault by intentionally, knowingly or recklessly causing physical injury to another person while using a deadly weapon or dangerous instrument.

5 TNTC § 4-510 – Deadly Weapon

Deadly weapon shall be construed to mean any and all kinds and classes of offensive weapons, such as guns, pistols, revolvers, knives with blades over four inches in length, and any and all classes and kinds of weapons and instruments by whatever name called, designed to or intended and used for the purpose of inflicting a dangerous wound.

5 TNTC § 4-511 – Dangerous Instrument

Dangerous Instrument means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.

10 TNTC § 4-1001 – Disorderly Conduct with a Dangerous Instrument

Whoever, with intent to harass, alarm or annoy another person, or in reckless disregard of the fact that another person is harassed, alarmed or annoyed by his or her behavior, recklessly handles, displays or discharges a dangerous instrument is guilty of disorderly conduct.

8 TNTC § 4-803 – Possession of a Narcotic Drug

- (A) It shall be unlawful for any person to plant, cultivate, possess, have under their control, dispense, use, transport, carry, sell, give away, prepare for sale, furnish, administer, or offer to sell, furnish, administer or give away any narcotic, hallucinatory or other dangerous drug except as pursuant to this chapter.
- (B) Narcotics regulated by this chapter include but are not limited to opium and opiates, including but are not limited to heroin, methadone, morphine, and codeine, coca leaves and their derivatives, including but not limited to cocaine, and those narcotics listed in Schedules I, II, III, IV, V of 21 U.S.C. § 812.



Pascua Yaqui Tribe
Enrollment Department
7474 S. Camino De Oeste
Tuscon, AZ 85757
Phone: (520) 879-6242
Fax: (520) 879-6227

CERTIFICATE DEGREE OF INDIAN BLOOD

Name	Date of Birth	Tribal Enrollment Number	Tribal Enrollment Date	Tribal Nation Blood Quantum
Joseph Spotted Tail	10/31/1998	111U222000	04/30/1999	4/4

The Enrollment Department hereby certifies that the above named individual is an enrolled member of the Pascua Yaqui Tribe. This information is true, exact and complete according to our official enrollment documents.

Issued date: 06/15/2018

Certified by:

Janice Elk

Janice Elk
Administrative Support Services Assistant



State of Arizona, County of Pima
Subscribed and Sworn before this 15 day of June, 2018
Notary Public Sara Eagle

Certificate may be subject to change upon approved of a Yaqui blood quantum modification.

Tribal Police Department

Case No. T18051212

Supplement by Officer Baltazar #582

On May 29, 2018, I was dispatched to a residence at 5942 W. Camino Benem, within the exterior boundaries of the Reservation, reference a stabbing. When I arrived, Officer McAdams had just arrived on scene and he directed my attention to Mark Valenzuela, (DOB 7/22/1981), who was bleeding from a wound to his abdomen. Carlos Flores was using a bath towel to apply pressure to the wound. I assisted him in doing so and immediately radioed for paramedics.

When paramedics arrived, EMT Derek Johnson attended to Mr. Valenzuela. Once he was stabilized, I spoke with him regarding the incident. I did not record this interview, as I do not have a department issued handheld recorder. Mark told me that he and his wife Carmen had been at a party at the residence, which belonged to their friend Carlos Flores. He said that he and his wife do not drink, but they had been dancing earlier in the evening. At approximately 9:30, the door bell rang and when Carlos answered the door, it was Joseph Spotted Tail, who he recognized from previous incidents. As voices were raised, Mark approached the door to see if Carlos needed any help. Mark then saw Joseph become enraged and appear to lunge toward Carlos. Mark jumped in between the two men, which angered Joseph even more. Joseph then pulled a 5-inch knife out of his left boot and stabbed Mark in the abdomen. Mark said it was very painful and he heard Carlos yell, "You motherfucker!" He began to feel dizzy and laid down on the front porch. He believed that Joseph ran off toward the west. At this time, EMTs wanted to transport Mark to the hospital for treatment. He agreed to be a victim of aggravated assault. I told him charges would be forwarded to the prosecutor's office. NFI.

Tribal Police Department

Case No. T18051212

Supplement by Det. Lopez #183

On May 29, 2018, I was called by Officer McAdams and informed of an aggravated assault. The victim had been transported by ambulance to University Medical Center, approximately 45 minutes away. The suspect was currently in Tribal detention, and suspected to be high on heroin. I planned to arrive early the next morning to begin interviewing witnesses.

On May 30, 2018, I first went to University Medical Center to interview victim Mark Valenzuela (DOB 7/22/1981). Nurses told me he had been stabilized and that I could speak with him. Mr. Valenzuela relayed to me that he had been stabbed by Joseph Spotted Tail in the abdomen and that the stabbing had not been provoked. He further relayed that he and his wife do not drink. See the recorded interview for further details.

Upon returning to the station, I interviewed Carlos Flores (DOB 6/18/1984). He corroborated Mark Valenzuela's account of events, and indicated that although he had been drinking, he felt sober by the time of the incident. See recorded interview for full details.

I next interviewed Carmen Valenzuela (DOB 9/16/1982), wife of Mark Valenzuela. Ms. Valenzuela was still very emotional after fearing that her husband might die. She wanted to complete the interview and relayed to me that she saw Joseph Spotted Tail stab her husband. See recorded interview for full details.

After interviewing all three witnesses, I proceeded to the Tribal detention center to interview suspect Joseph Spotted Tail. I read him his *Miranda* rights verbatim from my department-issued card. Joseph stated that he understood and he would speak with me. Joseph initially denied any involvement in a stabbing, but when pressed, he admitted to stabbing Mark Valenzuela. He further claimed that both Mark and Carlos were trying to "jump" him to steal his money. It should be noted that although when Joseph was booked he was suspected to be high on heroin, I did not interview him until the next morning and he did not appear to have any signs or symptoms of intoxication when I spoke with him. See recorded interview for full details. NFI.

Tribal Police Department

Case No. T18051212

Supplement by Officer McAdams #563

On May 29, 2018, I was dispatched to a residence at 5942 W. Camino Benem, within the exterior boundaries of the Reservation, reference a stabbing. When I arrived, I observed Mark Valenzuela (DOB 7/22/1981) who was actively bleeding from a wound to his abdomen as he was laying on his back on the front porch of the residence. Officer Baltazar, who arrived on scene shortly thereafter, spoke with Mr. Valenzuela as I began interviewing other witnesses at the scene.

I first spoke with Carlos Flores (DOB 6/18/1984), who is the homeowner. Carlos stated that he was hosting a small house party with his friends Mark and Carmen Valenzuela and several other guests. He had consumed about two beers, but said he was no longer feeling the effects of the alcohol. As I spoke with Carlos, I could smell a mild odor of intoxicants coming from his mouth, and slight redness to his eyes. However, I did not note any other signs or symptoms of intoxication.

Carlos stated that at approximately 9:30, Joseph Spotted Tail, who he recognized from previous incidents, showed up at his residence and began banging loudly on his front door. Carlos eventually answered the door and Joseph was acting erratically and appeared to be under the influence. Carlos asked Joseph to leave the residence and Joseph started yelling at the top of his lungs and refused to leave. At this time, Mark, who is larger than Carlos, came to the door. As Joseph continued to become belligerent, he appeared to lunge toward Carlos. At this time, Mark stood up and got in between Carlos and Joseph. Then, Joseph pulled a 6-inch knife out of his right boot and stabbed Mark in the abdomen. Mark immediately started bleeding and Joseph ran off toward the east. Carlos grabbed a kitchen towel and applied pressure to Mark's wound, while Carmen, Mark's wife, called 911 from her cell phone. Officers responded shortly thereafter.

I next spoke with Carmen Valenzuela (DOB 9/16/1982), spouse to Mark Valenzuela. Carmen had arrived at the party at approximately 6:30 with her husband Mark. Carmen had not been drinking alcohol because she does not drink. She believes around 9 pm, Joseph Spotted Tail, who she recognized from previous incidents, showed up at the door. She heard Carlos answer the door and an argument with raised voices. She initially ignored the commotion until her husband also went to the door. She heard Carlos yell, "You motherfucker!" and she ran to the door. Carmen saw her husband bleeding from his stomach area and immediately ran to call 911. While she was on the phone with 911, she recalls Carlos using a bath towel to apply pressure to Mark's stab wound. She said Joseph must have run away, but she did not know where. NFI.

Tribal Police Department

Case No. T18051212

Supplement by Officer Romo #594

On May 29, 2018, I was dispatched as backup to a residence at 5942 W. Camino Benem, within the exterior boundaries of the Reservation, reference a stabbing. When I arrived, Officers McAdams and Baltazar were already on scene. They both advised me that Joseph Spotted Tail (DOB 10/31/1988) had run off toward the west and was wanted for stabbing Mark Valenzuela.

I began to canvass the area to the west of the residence, searching for Joseph Spotted Tail. As I turned the corner onto Calle Tetakusim, I saw Joseph Spotted Tail, who I recognized from previous contacts, hiding behind a dumpster. I exited my vehicle and ordered Mr. Spotted Tail to freeze. He complied and I secured him in my department issued handcuffs. I asked Joseph if he had any weapons and he said yes. He told me he had a knife in his right boot, which I used gloves to retrieve. The knife appeared to have fresh blood on it. I placed the knife into a plastic bag for evidence. I proceeded to pat him down and located a baggie containing a dark powdery substance in his right front pant pocket. In my training and experience, I believed this baggie to contain heroin. I also placed the baggie and powdery substance into a plastic bag for evidence.

I placed Joseph in the back of my patrol car and proceeded to question him. He asked if he gets an attorney, but I directed him to answer my questions. Joseph admitted that he had stabbed Mark Valenzuela, but he claimed that Mark and Carlos Flores were trying to "jump" him and steal his money. When I asked him to elaborate, he would not. I observed that Joseph's pupils were like pinpoints, and I often had difficulty understanding him when he spoke. He would not stop swaying from side to side as he sat in my patrol car. I transported Joseph to the Tribal Detention Center, where he was booked for aggravated assault. After processing Joseph at detention, I placed the knife and baggie with the powdery substance into property and evidence. NFI.

1 TRIBAL POLICE DEPARTMENT

2 INTERVIEW

3 Tribe v. Joseph Spotted Tail

Dated: Unknown

4
5 Witness: Mark Valenzuela

Case No. T18051212

6
7 Location: Patient Room
8 University Medical Center

Interviewer: Det. Lopez

9
10 DL: = Detective Lopez
11 MV: = Mark Valenzuela

Uh-huh = Yes
Huh-uh = No

12 -----
13 DL: Okay. This is the case of the Tribe versus Joseph
14 Spotted Tail, case number T18051212. This is May 30,
15 2018 at approximately 7:30 am. Uh, this is Detective
16 Lopez with the Tribal Police Department and we are here
17 in at the hospital for a recorded interview. Could you
18 tell us your name?
19

20 MV: Mark Valenzuela.

21 DL: And your date of birth?

22 MV: July 22, 1981.

23 DL: And your address?

24 MV: 4744 South Calle Tetakusim.
25
26
27
28

1 DL: All right Mark, I know we are here at the hospital, so I
2 will try to keep this brief. I wanted to get a
3 statement from you about what happened last night at
4 Carlos Flores' party.
5

6 MV: Okay.

7 DL: Do you recall when you got to the party?

8
9 MV: My wife Carmen and I arrived about 6:30. It was still
10 light out.

11 DL: What was the occasion for the party?

12
13 MV: I don't think there was one. Carlos has been a friend
14 for years and we invite each other over for dinner. He
15 knows that Carmen and I like to dance, so he will
16 usually put on some music.
17

18 DL: Okay, so tell me what happened when Joseph Spotted Tail
19 came over.

20
21 MV: Joseph - he's been a problem on the Reservation for
22 years. He's always going around asking people for
23 money. I'll admit, I've helped him out before, but it
24 gets old, you know?

25
26 DL: Yeah.

27

28

1 MV: I heard someone banging on the door and Carlos got up to
2 answer it. I didn't think anything of it, but then I
3 heard some yelling. I recognized Joseph's voice. This
4 was crazier than usual for him, so I got up to see what
5 was going on.
6

7 DL: Okay.
8

9 MV: I saw Joseph start to lunge toward Carlos, so I got in
10 between them and told him he needed to leave and sleep
11 it off. He looked like he was on something. Then, all
12 of a sudden, he pulled a knife out of his boot and
13 stabbed me.
14

15 DL: Okay, just to clarify, do you remember which boot he
16 pulled the knife from?
17

18 MV: I think it was his left. I'm not sure, it all happened
19 so fast.
20

21 DL: And could you describe the knife?
22

23 MV: I didn't get that good of a look at it. It was probably
24 about five inches with a black handle. It looked kind
25 of like a hunting knife.
26

27 DL: Did you see where he stabbed you?
28

1 MV: Right in my gut. The doctors told me he just missed my
2 liver. It could have been worse.

3 DL: Speaking of the doctors, I see that you now have some
4 stitches?
5

6 MV: Yeah, it took six stitches to close it up. I should be
7 able to go home later today.
8

9 DL: After he stabbed you, what do you remember?

10 MV: Carlos yelled, "You motherfucker!" at Joseph and Joseph
11 ran off to the west. I started to feel lightheaded and
12 I kind of fell on my butt on the concrete porch just
13 outside the door. I remember the look on Carmen's face
14 when she saw me. I must have looked bad because she
15 looked like she thought she was going to lose me that
16 night. I could hear her on the phone with 911 trying
17 not to cry. Carlos came over with a bath towel and
18 tried to stop the bleeding.
19
20
21

22 DL: Okay, just to clarify, did you hit Joseph before he
23 stabbed you?

24 MV: No.
25

26 DL: Did you shove Joseph at any point that night?
27
28

1 MV: No, I just told him to leave.
2 DL: And, had you been drinking that night?
3
4 MV: No, Carmen and I don't drink, but we had been dancing.
5 DL: Do you happen to recall if Carlos was drinking that
6 night?
7
8 MV: He may have had one or two beers. He was dancing too,
9 so he was pretty sober by the time Joseph came over.
10 DL: Okay, is there anything else that you think is important
11 that I should know?
12
13 MV: I just hope you get him. I never knew he was capable of
14 something like this.
15 DL: Okay, well in that case, we can go ahead and go off the
16 record.
17

18 [END OF INTERVIEW]

19 [Transcriber's Certification Follows:]
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I certify that, to the best of my ability, the foregoing is a true and accurate transcription of the original tape recorded conversation in the case referenced on page 1 above.

Transcription Completed: May 31, 2019

CHRYSANNE McMURRAY
LEGAL TRANSCRIPTION SERVICE
TRANSCRIBED BY: CHRYSANNE McMURRAY

SIGNED BY: *Chrysanne McMurray*
CHRYSANNE McMURRAY

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TRIBAL POLICE DEPARTMENT

INTERVIEW

Tribe v. Joseph Spotted Tail

Dated: Unknown

Witness: Joseph Spotted Tail

Case No. T18051212

Location: Interview Room
Tribal Detention

Interviewer: Det. Lopez

DL: = Detective Lopez
JS: = Joseph Spotted Tail

Uh-huh = Yes
Huh-uh = No

DL: Okay. This is the case of the Tribe versus Joseph Spotted Tail, case number T18051212. This is May 30, 2018 at approximately 10:05 am. Uh, this is Detective Lopez with the Tribal Police Department and we are here in the interview room at the Tribal Detention Center. Could you tell us your name?

JS: Joseph Spotted Tail.

DL: And your date of birth?

JS: October 31st, 1998.

DL: Before we begin, I need to advise you of your rights. You have the right to remain silent, anything you say

1 can and will be used against you in a court of law. You
2 have the right to talk to a lawyer and have him or her
3 present with you while you are being questioned. If you
4 cannot afford to hire a lawyer, one will be appointed to
5 represent you before questioning if you wish. You can
6 decide at any time to exercise these rights and not
7 answer any questions or make any statements. Do you
8 understand each of these rights I have explained to you?
9

10
11 JS: Yes.

12
13 DL: Having these rights in mind, do you wish to talk to us
14 now?

15 JS: Yes.

16
17 DL: I want to talk with you about what happened last night
18 between you and Mark Valenzuela. Why were you at Carlos
19 Flores' house?

20
21 JS: Carlos is my friend, man, I thought he could help me
22 out. I needed a place to sleep for the night.

23 DL: Uh-huh.

24
25 JS: He's let me stay on his couch before. I was tired and
26 wanted to go to bed.
27
28

1 DL: Okay.

2 JS: And then Carlos just started going nuts. He was saying
3 I was interrupting a party he was having, he started
4 calling me a bitch. I think he was drunk and was taking
5 it out on me. I'm not a bitch, so when he raised his
6 voice at me, I yelled back at him. I realize I got a
7 little out of hand, but after that, I just left.

8
9

10 DL: So there was just yelling?

11 JS: Just yelling.

12

13 DL: Well, Joseph, we've got a problem with that, because I
14 have three people who say that you stabbed Mark, and he
15 went to the hospital last night with a stab wound.
16 That's a lot more than just yelling. Can you tell me
17 why all these people would say that you stabbed him?

18

19 JS: I think they were all drunk. It must have been one of
20 them who did it and they tried to blame it on me.

21

22 DL: Let me be honest with you, Joseph. We have your knife.
23 We're testing it for DNA as we speak. When Mark's DNA
24 comes back on the blade, you're done for. Now I'm
25 giving you a chance to tell me your side of the story.
26
27
28

1 If you were acting in self-defense, just tell me.

2 JS: Look, I was really scared. I had some cash in my pocket
3 because I had just pawned my X-box. When Carlos was
4 acting crazy drunk and then Mark came over, they were
5 about to jump me and take my money. I don't have extra
6 money, man. Even with them being drunk, they could
7 overpower me. I keep a knife in my right boot for
8 protection. In case somebody tries to jump me. When
9 Mark lunged at me, I grabbed my knife. I've never seen
10 that much blood before. Carlos yelled at me and I ran
11 away. I didn't want any trouble, I just wanted a place
12 to spend the night.

13 DL: So you admit that you stabbed him.

14 JS: I had to. It was two against one.

15 DL: Now when they arrested you, they found a baggie in your
16 pocket. Do you think it's going to come back as heroin.

17 JS: I don't know nothing about that. I just got these pants
18 at the Salvation Army. Whatever they found must have
19 been in there before.

20 DL: Well, in that case, I don't think I have any other
21
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1 questions. We'll go ahead and go off the record.

2
3 [END OF INTERVIEW]

4 [Transcriber's Certification Follows:]

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I certify that, to the best of my ability, the foregoing is a true and accurate transcription of the original tape recorded conversation in the case referenced on page 1 above.

Transcription Completed: May 31, 2019

CHRYSANNE McMURRAY
LEGAL TRANSCRIPTION SERVICE
TRANSCRIBED BY: CHRYSANNE McMURRAY

SIGNED BY: *Chrysanne McMurray*
CHRYSANNE McMURRAY

1
2 TRIBAL POLICE DEPARTMENT

3 INTERVIEW

4 Tribe v. Joseph Spotted Tail

Dated: Unknown

5 Witness: Carlos Flores

Case No. T18051212

6
7 Location: Interview Room
8 Tribal Police Department

Interviewer: Det. Lopez

9
10 DL: = Detective Lopez
11 CF: = Carlos Flores

Uh-huh = Yes
Huh-uh = No

12 -----
12 DL: Okay. This is the case of the Tribe versus Joseph
13 Spotted Tail, case number T18051212. This is May 30,
14 2018 at approximately 8:30 am. Uh, this is Detective
15 Lopez with the Tribal Police Department and we are here
16 in the interview room at the Tribal Police station.
17
18 Could you tell us your name?
19

20 CF: Carlos Flores.

21 DL: And your date of birth?

22 CF: June 18, 1984.

23 DL: And your address?

24 CF: 5942 West Camino Benem.
25
26
27
28

1 DL: All right Carlos, we're here to talk about what happened
2 last night at your house.
3
4 CF: Okay.
5 DL: Now, I understand you were having a house party?
6 CF: Yeah, I had a few friends over. Most people came about
7 6:30. We were playing some music. Mark and Carmen like
8 to dance.
9
10 DL: And this was Mark and Carmen Valenzuela?
11 CF: Yeah.
12
13 DL: Okay, had you been drinking?
14 CF: No, I hadn't been drinking.
15
16 DL: Not at all?
17
18 CF: Nope.
19
20 DL: Do you recall when Joseph Spotted Tail came over?
21 CF: Not really.
22
23 DL: Well, you told Officer McAdams that it was about 9:30.
24 CF: I guess.
25
26 DL: Can you tell me what happened with him?
27 CF: Nothing, really.
28
DL: Nothing?

1 CF: I don't remember.
2 DL: From just last night?
3
4 CF: I took some pills.
5 DL: Some pills?
6 CF: Yeah, to help me sleep.
7
8 DL: Do you recall telling Officer McAdams that Joseph
9 stabbed Mark Valenzuela?
10 CF: I was out of it, I don't know what I said.
11 DL: And you had said that Joseph has been a problem before?
12
13 CF: He's cool. I don't have a problem with him.
14 DL: Has anyone threatened you?
15 CF: No, I just don't want any trouble.
16
17 DL: Can you explain?
18 CF: I've lived in this neighborhood a long time, I'm not
19 going to snitch anyone out.
20 DL: I'm just trying to clarify what you saw.
21
22 CF: Well, it doesn't really matter, I'm not going to
23 testify. Am I free to go?
24
25 DL: You're not detained here, so yes, you can go.
26
27 CF: I'm outta here.
28

1 DL: And, we can go off the record.

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[END OF INTERVIEW]

[Transcriber's Certification Follows:]

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Transcription Completed: May 31, 2019

CHRYSANNE McMURRAY
LEGAL TRANSCRIPTION SERVICE
TRANSCRIBED BY: CHRYSANNE McMURRAY

SIGNED BY: *Chrysanne McMurray*
CHRYSANNE McMURRAY

1 TRIBAL POLICE DEPARTMENT

2 INTERVIEW

3 Tribe v. Joseph Spotted Tail

Dated: Unknown

4
5 Witness: Carmen Valenzuela

Case No. T18051212

6
7 Location: Interview Room
8 Tribal Police Department

Interviewer: Det. Lopez

9
10 DL: = Detective Lopez
11 CV: = Carmen Valenzuela

Uh-huh = Yes
Huh-uh = No

12 -----
12 DL: Okay. This is the case of the Tribe versus Joseph
13 Spotted Tail, case number T18051212. This is May 30,
14 2018 at approximately 9:00 am. Uh, this is Detective
15 Lopez with the Tribal Police Department and we are here
16 in the interview room at the Tribal Police station.
17
18 Could you tell us your name?
19

20 CV: Carmen Valenzuela.

21 DL: And your date of birth?

22 CV: September 16, 1982.

23 DL: And your address?

24 CV: 4744 South Calle Tetakusim.
25
26
27
28

1 DL: All right Carmen, we're here to talk about what happened
2 last night at Carlos Flores' party.
3
4 CV: Okay.
5 DL: Now, what is your relationship to Mark Valenzuela?
6 CV: He's my husband. Married for six years.
7
8 DL: And did you and Mark go the party together?
9
10 CV: Yes, we went together.
11
12 DL: Do you recall when you arrived?
13
14 CV: I think about 6:30.
15
16 DL: And what was the occasion?
17
18 CV: None really. Carlos just has us over sometimes. He had
19 made carne asada. He knows that Mark and I like to
20 dance, so he was playing some music.
21
22 DL: And had you been drinking?
23
24 CV: No, Mark and I don't drink.
25
26 DL: Okay, do you happen to recall if Carlos was drinking?
27
28 CV: He might have had a beer or two, I wasn't really paying
attention.

DL: Okay, do you remember when Joseph Spotted Tail got to
the house?

1 CV: It was around 9. Mark and I were actually planning to
2 leave in a few minutes, but then everything changed.
3
4 DL: What happened then?
5 CV: At first I wasn't really paying attention. Carlos
6 answered the door and then I could hear yelling. Mark
7 got up to see what was going on. He and Carlos have
8 been friends for years and Mark can be a little
9 protective of Carlos. Once he got up, I looked over at
10 the door and saw Joseph. He's always coming around
11 asking for money. I think Carlos was annoyed that he
12 showed up while he had people over. Then I hear Carlos
13 yell, "You motherfucker!" and I knew something bad had
14 happened. Carlos doesn't usually swear. I saw Mark
15 fall on the front porch just outside the door. I ran
16 over and saw Mark bleeding and - inaudible - I'm sorry,
17 this was just really scary.
18
19 DL: No no, that's fine. I'm sure this was really traumatic.
20
21 CV: It was.
22
23 DL: Do you need a minute?
24
25 CV: No, let's get this over with.
26
27
28

1 DL: Okay, could you see where Mark was bleeding from?

2 CV: His stomach, like, his belly.

3 DL: Was Joseph still there?

4 CV: No, he had already run away. I didn't get a chance to
5 see where.

6 DL: And what did you do?

7 CV: I called 911 on my phone. Police got there pretty soon
8 after. Carlos was using a bath towel to try to stop the
9 bleeding.

10 DL: Okay, I'm sorry to have to ask you about this so soon
11 after.

12 CV: It's okay, I'm just glad Mark is going to be okay.

13 DL: I'm sure you are. Okay, that's all that I have, so we
14 can go ahead and go off the record.

15 [END OF INTERVIEW]

16 [Transcriber's Certification Follows:]

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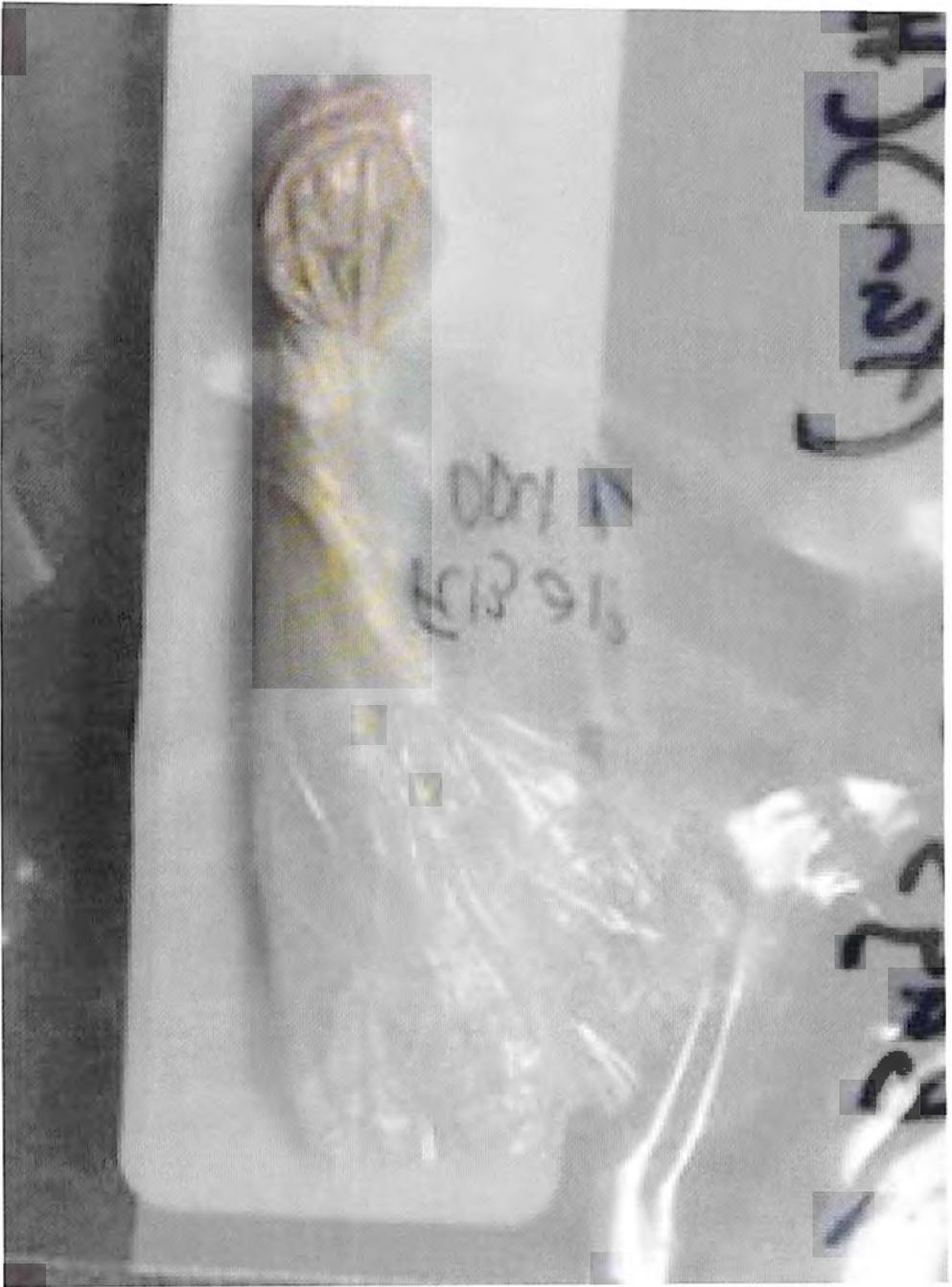
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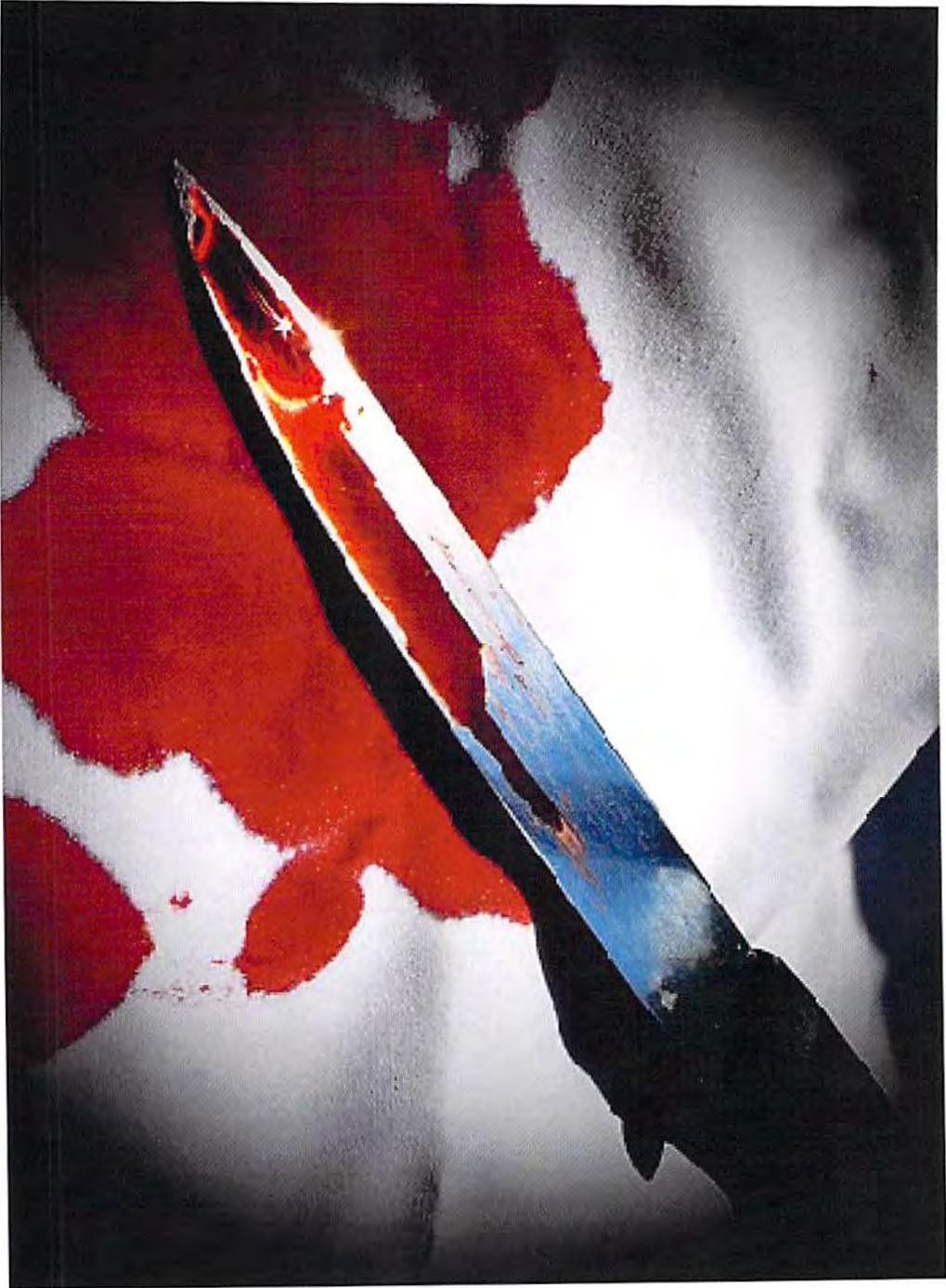
I certify that, to the best of my ability, the foregoing is a true and accurate transcription of the original tape recorded conversation in the case referenced on page 1 above.

Transcription Completed: May 31, 2019

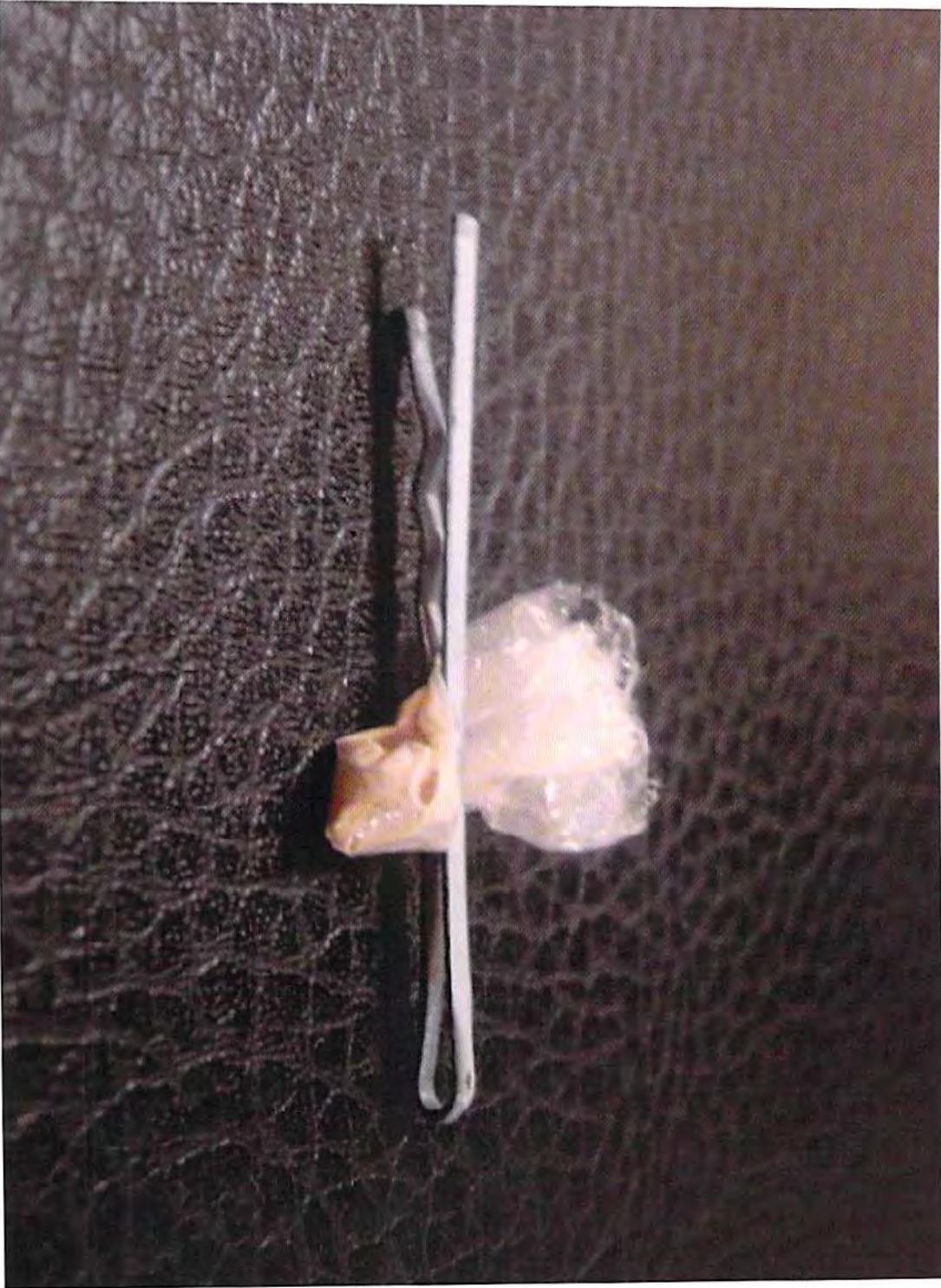
CHRYSANNE McMURRAY
LEGAL TRANSCRIPTION SERVICE
TRANSCRIBED BY: CHRYSANNE McMURRAY

SIGNED BY: *Chrysanne McMurray*
CHRYSANNE McMURRAY













STATE DEPT. OF PUBLIC SAFETY
Crime Laboratory Division
2641 East Main Avenue
Tucson, AZ 55501-5044

Tel. (801) 776-9012
(800) 226-3065
Fax. (801) 776-9013

DRUG LABORATORY REPORT

Case Number: CLD18-01583
Subject: Joseph Spotted Tail
Report Date: June 16, 2018
Report To: Detective Lopez
Submitting Agency: Tribal Police Department
Agency Case Number: T18051212
Submitted Date/Time: May 31, 2018 14:10
Delivery Method: Hand to Hand via Romo
Item(s) Submitted:
Item 1: One sealed plastic bag containing one plastic bag containing powder material.
Item 1A: One plastic bag containing powder material

Summary of Analysis:

Item	Submitted	Substance Found
Item 1	0.1 grams	Opioid (Heroin)

Disposition:

All items: Return to agency.

The undersigned forensic scientist is a designee of the Director of the State Department of Public Safety, Crime Laboratory Division. The scientist certifies and states this Standard Forensic Advantage Discovery Packet containing the laboratory report is a true and correct copy of the original on electronic file at the State Department of Public Safety, Crime Laboratory Divisions pursuant to Section 19-03.1-37 of the State Century Code. I am a public officer without a seal.

The results and conclusions to this report are the opinions and interpretations of the analyst.

Sincerely,

Crime Laboratory Division

Michael Williams

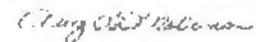
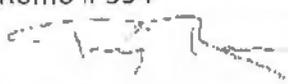
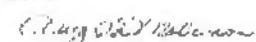
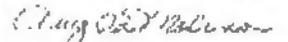
Michael Williams
Forensic Scientist

Property Record Number: _____

Tribal Police Department
EVIDENCE CHAIN OF CUSTODY TRACKING FORM

Case Number: T18051212 Offense: Aggravated Assault
Submitting Officer: (Name/ID#) Romo # 594
Victim: Mark Valenzuela
Suspect: Joseph Spotted Tail
Date/Time Seized: May 29, 2018 22:05
Location of Seizure: 5942 W. Camino Benem

Description of Evidence		
Item #	Quantity	Description of Item (Model, Serial #, Condition, Marks, Scratches)
1	1	Baggie of suspected heroin
2	1	Knife with blood

Chain of Custody				
Item #	Date/Time	Released by (Signature & ID#)	Received by (Signature & ID#)	Comments/Location
1	5/29/18 22:48	Romo # 594 	Molina – evidence tech 	Placed into evidence
2	5/29/18 22:48	Romo # 594 	Molina – evidence tech 	Placed into evidence
1	5/31/18 14:10	Molina – evidence tech 	Ruskin – state crime lab 	Taken to state crime lab for testing

EVIDENCE CHAIN-OF-CUSTODY TRACKING FORM (Continued)

Chain of Custody				
Item #	Date/Time	Released by (Signature & ID#)	Received by (Signature & ID#)	Comments/Location

Final Disposal Authority	
Authorization for Disposal	
Item(s) #: _____ on this document pertaining to (suspect): _____ is/are no longer needed as evidence and is/are authorized for disposal by (check appropriate disposal method)	
<input type="checkbox"/> Return to Owner <input type="checkbox"/> Auction/Destroy/Divert	
Name & ID# of Authorizing Officer: _____ Signature: _____ Date: _____	
Witness to Destruction of Evidence	
Item(s) #: _____ on this document were destroyed by Evidence Custodian _____ ID#: _____ in my presence on (date) _____. Name & ID# of Witness to destruction: _____ Signature: _____ Date: _____	
Release to Lawful Owner	
Item(s) #: _____ on this document was/were released by Evidence Custodian _____ ID#: _____ to Name _____ Address: _____ City: _____ State: _____ Zip Code: _____ Telephone Number: (____) _____ Under penalty of law, I certify that I am the lawful owner of the above item(s). Signature: _____ Date: _____	
Copy of Government-issued photo identification is attached. <input type="checkbox"/> Yes <input type="checkbox"/> No	
This Evidence Chain-of-Custody form is to be retained as a permanent record by the Anywhere Police Department.	

Technical Working Group on Biological Evidence Preservation. *The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers*. U.S. Department of Commerce, National Institute of Standards and Technology. 2013.

Name: Michael Williams

Title: Forensic Scientist

Education: Bachelor of Science Degree in Forensic Science

2015 – University of Michigan

2014 – Internship at the Michigan State Crime Laboratory with Maxine Moe under the Supervision of LaMonte Jackson; referred by Dr. Phoebe Staxx

Employment: 2015 – Present

Forensic Scientist,
Crime Laboratory Division,
State Department of Public Safety

Training: Trained regarding the standard operating procedures of the laboratory

Examined and analyzed at least 200 plants, herbs and spices

Completed training in the analysis of plant material, powders, tablets, solids, liquids, residues and methamphetamine quantitation

Conducted instrumental analysis on drugs standards using UV, GC/MS and FTIR methods

Completed competency tests in the analysis of plant material, powers, tablets, solids, liquids, residues and methamphetamine quantitation

Attended the 2016 DEA Forensic Chemist Seminar for training in the areas of:

- Instrumental operations and maintenance
- Drug synthesis procedures
- Clandestine lab safety
- New and emerging drug trends
- Various extraction techniques

Duties:

Examination and analysis of physical evidence submitted by Law Enforcement Agencies

SERVICE NAME: (PLEASE PRINT) Mark Valenzuela Patient Care Report

Service #: 18-143 Unit #: Incident #: 18-143 Pt. Record #: 1081 Crash #:

Date of Onset: 5/29/18 Date Unit Notified: 5/29/18 Run Report Date: 5/30/18 Trauma ID #:

Dispatched For: Stabbing

Dispatch Notified: 22:05:00 Time Left Scenario: 22:25:00 (Last Name) Valenzuela (First) Mark (MI) (M)

Unit Notified: 22:05:00 Arrived at Destination: 22:35:00 (Street Address) 4744 S. Calle Tetakusina (Apt. #)

Unit Enroute: 22:10:00 Back In Service: 22:55:00 (City) Resenation (State) USA (Zip Code)

Arrived at Scene: 22:13:00 Total Incident Time: 45:00 (Phone) (Date of Birth) 7-22-81 (Age yrs. mons) 3/0

Minutes For Response: 8:00 911 YES NO Time of Injury/Illness: (Gender) M F U S (SSN#)

Minutes At Scene: 12:00 21:45 Ethnicity 0 Other 1 White 2 Black 3 American Indian, Eskimo or Aleut 4 Asian U Undetermined

Minutes For Transport: 28:00 Chief Complaint: stab wound Injury/Illness Narrative: pt complains of stab wound to abdomen

Past Medical History: Depression, hypothyroidism Pertinent Findings on Physical Exam: laceration to right abdomen 5cm

Allergies: Penicillin Patient Medications: Paxil, levothyroxine

Emerg. Med. Care Given: stabilize - apply pressure to wound Patient Response to Emerg. Med. Care:

- Provider Impression - Select one
Abdominal Pain/Problems
Airway Obstruction
Alleged Sexual Assault
Allergic Reaction
Altered Level of Consciousness
Behavioral Disorder
Cardiac Arrest
Cardiac Rhythm Disturbance
Chest Pain/Discomfort
Diabetic Symptoms
Electrocution
Hypertension
Hypoglycemia
Hypothermia (Disease)
Hypothermia (Trauma)
Hypovolemia
Inhalation Injury (Toxic Gas)
Not Applicable
Obvious Death
Other
Poisoning/Drug Ingestion
Pregnancy/Ob Delivery
Psychiatric Disorder
Respiratory Arrest
Respiratory Distress
Seizure
Shock
Smoke Inhalation
Stings/Venomous Bites
Stroke/CVA
Syncope/Fainting
Traumatic Hypovolemia
Traumatic Injury
Vaginal Hemorrhage
Unknown

Mutual Aid EMS Tier Destination / Transferred To: University Med. Ctr. MODE OF TRANSPORT Road Wing Ground None Other Rotor Craft

DESTINATION DETERMINATION/OUT OF HOSPITAL TRIAGE CRITERIA
Closest Facility
Diversion
Family Choice
Law Enforcement Choice
Managed Care
Not Applicable
On-Line Medical Direction
Other
Patient Choice
Physician Choice
Protocol
Specialty Resource Center
Trauma Triage (Anatomy of Injury)
Trauma Triage (GCS, Vitals)
Trauma Triage (Mechanism of Injury)
Trauma Triage (Risk Factors)
Unknown

CLINICAL INFORMATION

Table with columns: Time, BP, PULSE, RESP, TEMP, Pulse O2, Glasgow Coma Scale (Eye, Verb, Motor, Total), Revised Trauma Score (Resp, BP, GCS, Total), Revised Trauma Score Pediatric, Respiratory Effort, Resp. Sounds, Skin Perfusion, Pupils.

Table with columns: Eye Opening, Verbal Component, Glasgow Coma Scale (GCS) Values, Motor Component, Revised Trauma Score (RTS) Values, Resp. Rate, Systemic BP, GCS Total.

Cardiac Arrest Information: Cardiac Arrest: Y N Bystander CPR: Y N Witnessed Arrest: Y N Pulse Restored: Y N Trauma Arrest: Y N Number of Shocks:
Cardio Pulmonary Arrest Time:
Min. <4 <8 <12 >12 Urk.
Arrest to CPR:
Arrest to DEFIB:
Arrest to Mds.

PLEASE NOTE: ANY CHANGES IN CARDIAC RHYTHM SHOULD BE NOTED BELOW BY (↑ TIME COLUMN)
Table with columns for Time rhythm observed and rows for AV Block, PEA (EMD), Atrial Fibrillation, ST Elevation/Abnormal, SVT, Vent. Fibrillation, Vent. Tachycardia, Other.

Date: 5-29-18 Signature: David Johnson, EMT

SERVICE NAME: Mark Valenzuela
 (PLEASE PRINT)

Service #: 18-43 Unit #: _____ Incident #: 18-43 Pt. Record #: 1086 Crash #: _____
 Date of Onset: 5/29/18 Date Unit Notified: 5/29/18 Run Report Date: 5/30/18 Trauma ID #: _____

INJURY

INJURY MATRIX
Select one

	Abrasion	Amputation	Burn Injury	Burn	Crushing Injury	Dislocation/Fracture	Gunshot Wound	Laceration	Pain	Puncture/Stab	Tissue Swelling
Head											
Face											
Neck											
Chest											
Back											
Abdomen											
Pelvic / Genitalia											
Upper Extremity											
Lower Extremity											

Cause of Injury - Select one

- Accidental Chemical Poisoning
- Accidental Drug Poisoning
- Accidental Falls
- Aircraft Related Accident
- Aligned Sexual Assault
- Bicycle
- Bicycle Accident
- Bites
- Child Battering
- Drowning
- Electroconvulsion (Non-lighting)
- Excessive Cold
- Excessive Heat
- Fire and Plasmas
- Firearm Assault
- Firearm Injury (Accidental)
- Firearm Self-inflicted (Intentional)
- Lightning
- Machinery Accidents
- Motor Vehicle Non-traffic Crash
- Mechanical Suffocation
- Vehicle
- Motorcycle
- Motorcycle/Vehicle
- Not Applicable
- Radiation Exposure
- Smoke Inhalation
- Snowmobile
- Stabbing Assault
- Vehicle/Bicycle
- Vehicle/Fixed Object
- Vehicle/Pedestrian
- Vehicle/Train
- Vehicle/Vehicle
- Venomous stings (plants, animals)
- Water transport accident
- Unknown

PROCEDURES

Time	# of Attempts	Staff ID	Staff ID SAU	Time	# of Attempts	Staff ID	Staff ID SAU	Time	# of Attempts	Staff ID	Staff ID SAU
5:29				External Cardiac Pacing				Needle Thoracotomy			
				External Defibrillation (includes auto)				Obstetrical Care (Delivery)			
				Glucometer				Oropharyngeal Airway Insertion			
				Intraosseous Catheter				Other			
				Intravenous Catheter				Oxygen by Cannula			
				Intravenous Fluids				Oxygen by Mask			
				Long Spineboard				Pulse/Oximeter			
				MAST (PASG)				Short Spine Board (KED)			
				Monitoring a Medication IV				Suction			
				Nasogastric Tube Insertion				Splint of Extremity			
				Nasopharyngeal Airway Insertion				Traction Splint			

MEDICATIONS

Medication	Time	Dosage	Route	Staff ID	Signature/Initials

SCENE INFORMATION

Scene Address: 5942 W. Camino Benem Apt #: _____
Reservation Scene State: USA Scene Zip: _____ Scene County: _____ Scene Township: _____

Location Type:

- Not Applicable
- Other
- Unknown
- Medical Facilities
- Doctor's Office/Clinic
- Hospital
- Nursing Home
- Other Medical Facility
- Residences
 - City Residence
 - Farm Residence
 - Other Residence

Road/Highway Areas:

- Freeway
- Gravel Road
- Highway (County)
- Highway (State)
- Interstate (55 mph)
- Interstate (65 mph)
- Other Roadway
- Street

Job/Construction Site:

- Construction Site
- Farm
- Manufacturing Facility
- Office Building
- Other Job Site

Water/Waterways:

- Lake/Pond
- Other Water Area
- Quarry/Pit
- River/Stream
- Swimming Pool

Public Places:

- Government Building
- Other Public Place
- Recreation Area
- Shopping Center
- Educational Institutions
 - College/University
 - Grade School
 - High School
 - Jr. High/Middle School
 - Other School
 - Preschool/Daycare

Factors Affecting EMS:

- Adverse Road Conditions
- Adverse Weather
- Crowd Control
- Hazardous Material
- Language Barrier
- Noise
- Not Applicable
- Other
- Prolonged Extrication (>20 min)
- Unsafe Scene
- Vehicle Problems

Lights & Siren:

- Initial non-emergent, upgraded to Lights or Siren
- Non-emergent, No Lights or Siren
- Emergent, with Lights or Siren
- Initial emergent, downgraded to no Lights or Siren
- Not Applicable

SERVICE NAME: (PLEASE PRINT) <u>Mark Valenzuela</u>				
Service #: <u>8-143</u>	Unit #:	Incident #: <u>8-143</u>	Pl. Record #: <u>1080</u>	Crash #:
Date of Onset: <u>5/29/18</u>	Date Unit Notified: <u>5/29/18</u>	Run Report Date: <u>5/30/18</u>	Trauma ID #:	
TREATMENT AUTHORIZATION		PRIOR AID		
<input type="checkbox"/> None <input type="checkbox"/> Not Applicable <input type="checkbox"/> On-Line Dispatch <input type="checkbox"/> On-Line Physician <input type="checkbox"/> Other <input type="checkbox"/> Physician at Scene <input type="checkbox"/> Protocols <input type="checkbox"/> Unable to Contact <input type="checkbox"/> Unknown <input type="checkbox"/> Written Orders	<input type="checkbox"/> None <input type="checkbox"/> Not Applicable <input type="checkbox"/> Other <input type="checkbox"/> Unknown Citizen/Bystander <input type="checkbox"/> Bystander <input type="checkbox"/> Family <input type="checkbox"/> Other Citizen <input type="checkbox"/> Patient	EMS Agency/Fire Dept <input type="checkbox"/> Ambulance Service <input type="checkbox"/> First Responder Service <input type="checkbox"/> Fixed Wing Service <input type="checkbox"/> Helicopter Service <input type="checkbox"/> Other Agency/Fire Dept <input type="checkbox"/> Rescue Service	Health Care Professional <input checked="" type="checkbox"/> EMT <input type="checkbox"/> First Responder <input type="checkbox"/> Other Medical Professional <input type="checkbox"/> Physician <input type="checkbox"/> RN/MLP	Medical Facility <input type="checkbox"/> Doctor's Office/Clinic <input checked="" type="checkbox"/> Hospital <input type="checkbox"/> Nursing Home <input type="checkbox"/> Other Medical Facility Law Enforcement <input type="checkbox"/> Local Police <input type="checkbox"/> Other Law Enforcement <input type="checkbox"/> Sheriff <input type="checkbox"/> State Patrol
SAFETY EQUIPMENT		HUMAN FACTORS	INJURY INTENT	
<input type="checkbox"/> Airbag, Child Safety Seat Used <input type="checkbox"/> Airbag Deployed, Lap Belt Used <input type="checkbox"/> Airbag Deployed, No Lap Belt <input type="checkbox"/> Airbag, Lap and Shoulder Belt Used <input type="checkbox"/> Child Safety Seat <input type="checkbox"/> Eye Protection <input type="checkbox"/> Helmet <input type="checkbox"/> Lap Belt Only		<input type="checkbox"/> None Used <input type="checkbox"/> Not Applicable <input type="checkbox"/> Personal Flotation Dev. <input type="checkbox"/> Protective Clothing <input type="checkbox"/> Protective Clothing/Gear <input type="checkbox"/> Shoulder and Lap Belt <input type="checkbox"/> Shoulder Belt Only <input type="checkbox"/> Unknown	<input type="checkbox"/> Asleep <input type="checkbox"/> Physically disabled <input type="checkbox"/> Physically restrained <input type="checkbox"/> Possibly impaired by alcohol <input type="checkbox"/> Possibly impaired by other drug or chemical <input type="checkbox"/> Possibly mentally disabled <input type="checkbox"/> Unattended or unsupervised person <input type="checkbox"/> Unconscious	<input type="checkbox"/> Intentional, Self <input type="checkbox"/> Intentional, Other <input type="checkbox"/> Unintentional <input type="checkbox"/> Not Applicable <input type="checkbox"/> Unknown
SIGNIFICANT EXPOSURE		EXPOSURE PRECAUTIONS		
<input type="checkbox"/> Airborne Exposure <input type="checkbox"/> Blood to Eyes <input type="checkbox"/> Blood to Mouth <input type="checkbox"/> Blood to Open Wound <input type="checkbox"/> Mouth to Mouth		<input type="checkbox"/> All Precautions <input type="checkbox"/> Goggles <input type="checkbox"/> Gloves/Mask <input type="checkbox"/> Gloves/Mask/Gown <input type="checkbox"/> Goggles		
<input type="checkbox"/> Multiple Exposures <input type="checkbox"/> Needlestick <input type="checkbox"/> Not Applicable <input type="checkbox"/> Other		<input type="checkbox"/> Goggles/Gown <input type="checkbox"/> Gown <input type="checkbox"/> Hepatitis <input type="checkbox"/> Mask <input type="checkbox"/> Mask/Goggles		
<input type="checkbox"/> Other Body Fluids <input type="checkbox"/> Saliva to Eyes <input type="checkbox"/> Saliva to Mouth <input type="checkbox"/> Unknown		<input type="checkbox"/> Mask/Goggles/Gown <input type="checkbox"/> None <input type="checkbox"/> Not Applicable <input type="checkbox"/> Other <input type="checkbox"/> Unknown		
BILLING INFORMATION			MILEAGE	INSURANCE TYPE
Insurance - Primary:	Number:	Insurance - Secondary:	Number:	Begin:
<u>Indian Health Service</u>		<u>806093421</u>		End:
Responsible Party:				Total:
(Last Name)	(First)	(MI)	(Phone)	
(Address)				
(City)				
(State)				
(Zip)				
PATIENT DISPOSITION				
<input type="checkbox"/> Allowed Treatment, Released Transport <input type="checkbox"/> Denied by Law Enforcement <input type="checkbox"/> Non-Emergency, Alternate Transport <input type="checkbox"/> Treated and Released <input type="checkbox"/> Treated, Transported by EMS, Worsened <input type="checkbox"/> Denied by EMS <input type="checkbox"/> Dead at Scene <input type="checkbox"/> Not Applicable <input type="checkbox"/> Treated, Transported Care <input type="checkbox"/> Treated, Transported by Private Vehicle <input type="checkbox"/> Denied by Fire Department <input type="checkbox"/> No Patient Found <input type="checkbox"/> Released Treatment, Allowed Transport <input type="checkbox"/> Treated, Transported by EMS, Improved <input type="checkbox"/> Unknown <input type="checkbox"/> Denied by First Response <input type="checkbox"/> No Treatment Requested <input type="checkbox"/> Released Treatment, Released Transport <input checked="" type="checkbox"/> Treated, Transported by EMS, No Change				
TIME	NARRATIVE			
<u>22:20</u>	<p>Pt. complained of stab wound in right abdomen on scene, civilian was applying pressure to wound Pt. claimed to have been assaulted by Joseph Spotted Tail - stabbed Pt. in abdomen with knife. Pt. agreed to be transported to University Medical Center, nearest trauma center. Stabilized pt. in ambulance then transport to hospital. Transferred to ER @ 22:53.</p>			
Turned care over to:				
CREW BOX				
Crew Memb 1:	<u>Deeek Johnson, EMT</u>	Staff ID	<u>578</u>	Driver
Crew Memb 2:				Y N
Crew Memb 3:				Y N
Crew Memb 4:				Y N
Date:	Signature _____			

Visit Details

Valenzuela, Mark MRN: 38850

5/29/2018

CLINIC: EMERGENCY DEPARTMENT

LOC. OF ENCOUNTER: UNIVERSITY MEDICAL CTR

VISIT/ADMIT DATE&TIME: 29-May-2018 22:53

ENCOUNTER PROVIDER (S): HERBERT, SAMANTHA MD

CAMPBELL, JENELLE RN(S)

LONEY, DENISE (S)

----- CHIEF COMPLAINT -----

PT ARRIVED @ 22:53 VIA EMT C/O STAB WOUND IN THE ABDOMINAL AREA. PT STD JOSEPH SPOTTED TAIL STABBED HIM WITH KNIFE. TRIAGED @ 22:53 ESI

----- HISTORY OF PRESENT ILLNESS-----

Pt. is an otherwise healthy 36 year old male with a substantial laceration to the right side of his abdomen. Pt. reports he was stabbed earlier in the evening by Joseph Spotted Tail with a knife. Wound appears to be superficial, although will require sutures to close. No visible organ damage.

----- VITAL MEASUREMENTS -----

DT/TIME	TYPE	VALUE	MODIFIERS
May 29, 2018 @ 23:00	TMP	98.6 F	
	PU	149/min	
	RS	28 /min	
	O2	97%	
	WT	171 lb	
	PA	0	
	BP	137/87	

----- NURSING -----

IV NS 100cc 24 gague right AC @ 23:03.

1st 100 NS completed @ 23:13 2nd 100 cc NS started @ 23:13

23:23 3rd 100 cc bag of NS infusing @ 100 cc/hr now per Dr. Herbert's orders.

23:28 Administered tramadol to patient; pt tolerated well.

/es/ CAMPBELL, JENELLE

Signed: May 29, 2018@23:32

----- EMERGENCY CARE -----

Stab wound was disinfected with hydrogen peroxide. Six sutures were applied to the stab wound. Wound was subsequently dressed using four-inch bandage.

-----DISCHARGE SUMMARY-----

Pt. was discharged with directions to clean and dress wound daily. Sutures should dissolve within 14 days. Pt. provided prescription for Tylenol 3 for pain. If substantial pain returns, Pt. should return to ER.

SAMANTHA HERBERT, M.D.

Samantha Herbert, MD, FACEP
University Medical Center
Emergency Department

1. Education

Georgetown University School of Medicine, Medical Doctor, 2001, Magna Cum Laude

University of Pennsylvania School of Medicine, Masters of Science in Clinical Epidemiology,
2007

2. Post-Graduate Training:

Internship and Residency in Emergency Medicine, University of Virginia Health Sciences Center,
2001-2004

Fellow, Center for Education and Research in Therapeutics (CERTs), Center for Clinical
Epidemiology and Biostatistics, University of Pennsylvania Perelman School of Medicine, 2004-
2006

3. Employment

Emergency Department Attending Physician, Children's Hospital of Philadelphia, 2008-2010

Emergency Department Attending Physician, University Medical Center, 2010-present

4. Professional Registrations, Licenses and Certifications

A. Specialty Certification

Diplomate, American Board of Emergency Medicine, 2008 – present

B. Other Certification

Advanced Cardiac Life Support, 2010 – present

Advanced Trauma Life Support, 2010 – present

C. Medical Licensure

Pennsylvania, 2008 – 2010

District of Columbia, 2010 – pres.

5. Societies and Honors

American Academy of Emergency Medicine, 2008 – pres.

American College of Emergency Physicians, 2008 – pres.