

HANDOUTS

GLOSSARY

affidavit A written statement of facts sworn to or made under oath before someone authorized to administer an oath.

affirmative defense The defendant's response to the complaint that sets out new facts and arguments that might win for the defendant.

allegation A criminal accusation that has not been proven.

attorney A lawyer admitted to practice law in at least one jurisdiction and authorized to perform criminal and civil legal functions on behalf of clients.

beyond a reasonable doubt The level of proof required to convict a person of a crime. It does not mean "convinced 100%," but does mean there are no reasonable doubts as to guilt.

breach The violation of a law, duty, or other form of obligation, including obligations formed through contracts or warranties, either by engaging in an action or failing to act.

causation That which produces the harm to someone or something.

charge The formal accusation of a crime.

civil case A non-criminal lawsuit, brought to enforce a right or redress a wrong.

comparative negligence In a tort suit, a finding that the plaintiff was partly at fault and, therefore, does not deserve full compensation for his or her injuries. For example, if an accident was 40 percent the

plaintiff's fault, the plaintiff's damages are reduced by 40 percent.

complaint (1) The first legal document filed in a civil lawsuit. It includes a statement of the wrong or harm done to the plaintiff by the defendant and a request for a specific remedy from the court. (2) A complaint in a criminal case is a sworn statement regarding the defendant's actions that constitute the crime charged.

contributory negligence A legal defense in which it is determined that the plaintiff and defendant share the fault for a negligence tort. If proven, the plaintiff cannot recover damages.

criminal case A lawsuit brought by a prosecutor employed by the federal, state or local government that charges a person with the commission of a crime.

damages (1) The injuries or losses suffered by one person due to the fault of another. (2) Money asked for or paid by court order to a plaintiff for injuries or losses suffered.

due process The idea that every person involved in a legal dispute is entitled to a fair hearing or trial. The requirements of due process vary with the situation, but they basically require notice of the charges and an opportunity to be heard.

duty A legal obligation.

evidence Proof; Witnesses' statements or physical objects presented at a trial to prove something is true or happened.

examination The questioning of a witness by a lawyer at a trial or deposition. When the lawyer who called the witness to the

stand questions the witness, the examination is *direct*. When the opposing lawyer is questioning, it is *cross examination*.

fact Something that really exists, a known event or thing.

hearsay Evidence that a witness has heard from someone else.

impeach Show that a witness is untruthful.

indictment A formal accusation of a crime made by the judge in a Croatian court or the grand jury in a US court.

innocent Not guilty or responsible for an action or event.

jury In a legal proceeding, a body of men and women selected to hear and examine certain facts and determine the truth.

liability Legal responsibility; The obligation to do or not do something. The defendant in a tort case incurs liability for failing to use reasonable care, resulting in harm to the plaintiff.

negligence The failure to exercise a reasonable amount of care in either doing or not doing something, resulting in harm or injury to another person.

not guilty The decision in a criminal case that the prosecution has not been able to prove the defendant is guilty.

plaintiff In a civil case, the injured party who brings legal action against the alleged wrongdoer.

prosecution The attorney who files a lawsuit on behalf of the state against a defendant in a criminal trial.

proximate cause In a negligence law, this concept limits damages the defendant must pay to only those harms that are reasonably predictable consequences of the defendant's wrongful acts.

rebut Present information that disputes or takes away the effect of the argument.

rebuttal The presentation of facts to a court, demonstrating that the testimony of a witness or evidence presented by the opposing party is not true.

stipulation of facts (1) An agreement between parties to a dispute or court action that a certain fact is true or uncontested. (2) An agreement between parties to a specific procedure or action such as a stipulation to extend time to answer a complaint.

testimony Evidence given by a witness under oath.

witness A person who has knowledge of facts having to do with a case being tried and who gives testimony.

wrongful death action A lawsuit brought by family members of a dead person against the person who caused the death.

LIST OF TRANSLATED TRIALS

State v. Beck Martin

A criminal case involving cheating at school and the death of a fellow student at Ballena beach.

State v. Campbell

A criminal case where the bullying victim is charged with planting a bomb at school.

State v. Randall

A criminal case involving assault and battery.

State of Oregon v. Cindy Ballard

A criminal hit and run case.

State v. Syd Price

A criminal case where a student is charged with arson when a fire nearly destroys a ski resort and eco-terrorism is suspected.

Thomas Jackson v. The Great American Tobacco Company

A civil case questioning whether the defendant, a cigarette manufacturer, was negligent or fraudulent with respect to the plaintiff, a minor, who is dying of lung cancer.

STEPS IN A U.S. CIVIL TRIAL

1. Call to order by bailiff and naming the case
2. Swearing in of jury
3. Opening statement by Plaintiff
4. Opening statement by Defendant
5. Swearing in of witness (occurs with each new witness)
6. Direct examination of Plaintiff Witness #1
7. Cross examination of Plaintiff Witness #1
8. Direct examination of Plaintiff Witness #2
9. Cross examination of Plaintiff Witness #2
10. Direct examination of Plaintiff Witness #3
11. Cross examination of Plaintiff Witness #3
12. Direct examination of Defense Witness #1
13. Cross examination of Defense Witness #1
14. Direct examination of Defense Witness #2
15. Cross examination of Defense Witness #2
16. Direct examination of Defense Witness #3
17. Cross examination of Defense Witness #3
18. Closing argument by Plaintiff
19. Closing argument by Defendant
20. Rebuttal by plaintiff
21. Judge's instructions to jury (this takes place in "jury room")
22. Choosing jury foreperson
23. Jury deliberations
24. Jury announces decision
25. If verdict is responsible, damages are to be decided later
26. If verdict is not responsible, case dismissed
27. Judge announces decision at the end of the trial or at a later date.

STEPS IN A CROATIAN CIVIL TRIAL

1. A Civil case is initiated when a plaintiff lodges a motion to the court
2. The Case (file) is delivered to the judge,
3. The Judge determines whether the motion is formally ready to start the proceedings
4. Judge (Court) sends the motion and all additional documents to the defender,
5. The Defender is ordered to deliver a written response to the motion in 15 days. If the defender does not answer the motion or in his/her response admits all the facts stated in the motion, the judge will deliver a judgment without a hearing,
6. The Defender responds to the motion opposing it.
7. Judge schedules a preliminary hearing inviting only plaintiff and defendant or their legal representatives
8. Court administrative officer announces the case and invites parties to the court room,
9. Opening statement by Plaintiff explaining the motion and his/her request and proposal for the judgment that should be delivered by the court.
10. Opening statement by Defendant
11. Judge tries to reach a peaceful settlement to the dispute if possible.
12. If no settlement is possible, the parties propose what evidence should be examined during the trial (documents, witnesses, expert witnesses)
13. Judge decides what proposals for evidence will be accepted and examined during the trial. It is also decided when the next hearing will take place and what evidence will be examined at that hearing (preferably all at once if possible).
14. At the second hearing the judge asks the parties if they intend to amend their statements and requests.
15. Judge poses the questions to the witnesses followed by questions by the Plaintiff and Defense attorney. The Plaintiff attorney will have the first opportunity to question the witness they have proposed. The Defense attorney questions the witness. The Defense will question their witnesses first and then the Plaintiff.

Judge questions witness 1
 Plaintiff questions witness 1
 Defense questions witness 1

Judge questions witness 2
 Plaintiff questions witness 2
 Defense questions witness 2

Judge questions witness 3
 Plaintiff questions witness 3
 Defense questions witness 3

Judge questions witness 4
 Defense questions witness 4
 Plaintiff questions witness 4

Judge questions witness 5
Defense questions witness 5
Plaintiff questions witness 5

Judge questions witness 6
Defense questions witness 6
Plaintiff questions witness 6

16. When the questioning of each witness is completed, the judge dismisses the witness.
17. The judge asks both sides if there are any changes they wish to make in their motions or statements. In most instances the response is No. If the response is yes, then the attorneys would present the changes to the judge.
18. The Judge then announces that the hearing is closed when all the evidence proposed by the parties and approved by the judge is examined.
19. Judge delivers a public decision to the parties and audience. If case is complicated, the judge can schedule a later hearing in order to announce the judgment.
20. Announcement of a judgment and a short verbal explanation of the reasons for the judgment as pronounced.

Steps One through 13 are considered preliminary hearings in the U.S. For purposes of a mock trial in Croatia, it will be assumed that the judge is unable to help the parties reach a peaceful settlement in step 11 and the second hearing will follow with no breaks.

STEPS IN A U.S. CRIMINAL TRIAL

Steps before the trial:

1. Violation of criminal law
2. The Indictment
3. Plea is entered
4. Lawyers prepare for trial

Steps in the courtroom before the trial:

5. Call to order by bailiff and reading of the charges
6. Jury selection
7. Swearing in of jury

The trial begins:

8. Opening statement by Prosecution
9. Opening statement by Defendant
10. Swearing in of witness (occurs with each new witness)
11. Direct examination of Prosecution Witness #1
12. Cross examination of Prosecution Witness #1
13. Direct examination of Prosecution Witness #2
14. Cross examination of Prosecution Witness #2
15. Direct examination of Prosecution Witness #3
16. Cross examination of Prosecution Witness #3
17. Direct examination of Defense Witness #1
18. Cross examination of Defense Witness #1
19. Direct examination of Defense Witness #2
20. Cross examination of Defense Witness #2
21. Direct examination of Defense Witness #3
22. Cross examination of Defense Witness #3
23. Closing argument by Prosecution
24. Closing argument by Defendant
25. Rebuttal by Prosecution

If you have a jury:

26. Judge's instructions to jury
27. Choosing jury foreperson
28. Jury deliberations
29. Jury announces verdict
30. If verdict is guilty, punishment is decided later
31. If verdict is not guilty, case dismissed

STEPS IN A CROATIAN CRIMINAL TRIAL

1. Announce case and introduce panel of judges. The presiding judge will ask the attorneys if there are any objections to the composition of the bench.
2. Representatives for Prosecution and Defense verified by the presiding judge
3. Defendant identified and asked identification questions: name, name of father and mother, date of birth, address, nationality, occupation, assets, marital status, children, educational background, military service,
4. Prosecution reads the indictment while the Defendant stands.
5. Judge asks the defendant if they understand the charge and then reminds defendant of rights and cautions (no obligation to tell the truth)
6. Judge explains the plea options of not guilty, no answer or guilty to the Defendant and asks the Defendant to enter a plea
7. Prosecution proposes what evidence he or she will present and for what purpose (what he will prove with the evidence/facts elements of the crime).
8. Defendant's lawyer proposes what evidence he or she will present and for what purpose (what he will prove with the evidence/facts elements of the crime).
9. Presiding Judge asks each attorney if they agree or object to the evidence that is offered. Then the panel decides what evidence will be heard and in what order. In principle, the panel listens to the prosecutorial evidence first. The presiding judge calls the first witness
10. Witness responds to questions posed by Presiding Judge: name, father's name, date, month and year of birth, occupation, residence and relation to the Defendant.
11. Presiding Judge swears in the witness "You shall be heard as a witness and you have a duty to tell the truth and to present everything known to you relating to the case. Making a false testimony is a criminal offense. You are not under duty to answer particular questions if it is likely that the answer would expose you or your close relatives to serious disgrace, considerable damage or criminal prosecution. Do you understand that?"
12. Prosecution asks questions of the witness.
13. Defense asks questions of the witness. No leading questions are permitted.
14. Presiding Judge, Professional judges and Lay judges ask questions for clarification or filling the gaps in the witness's statement.

15. Presiding judge asks the witness if they have anything else to add.
16. Steps 9-16 are followed for all of the Prosecution witnesses
17. The presiding judge calls the defense witnesses (after all prosecutorial evidence is presented). Steps 9-16 are followed again for all of the Defense witnesses.
18. Evidence is read into the record following the testimony of each witness
19. Defendant takes the stand. The Presiding judge asks the defendant to explain in his or her own words what happened.
20. The Defense attorney may question the Defendant and then the Prosecutor may question.
21. The Presiding Judge asks final questions of the Defendant for clarification or filling the gaps in the defendant's statement
22. Presiding Judge asks if there is a proposal to supplement the presentation of the evidence, and the panel makes the decision if there is any proposal for additional evidence.
23. Closing Argument Prosecution
24. Closing Argument Defense
25. Presiding Judge asks the Defendant to stand and asks if they have anything else to add and asks if anyone else would like to give an additional statement.
26. Judges deliberate and announce decision (in separate room but, for this trial, in front of the group)

AT A GLANCE 18 DAY CALENDAR

<p>Day 1 ★ What is a mock trial? Why do a mock trial? Constitutional principles: justice Intro: Tell story of the trial. . Walk through mock trial materials Keep a MT journal every day</p>	<p>Day 2 ★ Courtrooms and court personnel Scripted mock trial for practice. MT vocabulary</p>	<p>Day 3 ★ Ask student friendly questions that relate to the trial Facts /summary of the case Study basic facts of the trial and legal issues: complaint or charges</p>	<p>Day 4 Identify burden of proof Begin oral reading through witness statements. Analyze statements for strengths and weaknesses.</p>	<p>Day 5 Continue to read through witness statements. Witness statements & look at evidence (exhibits) Direct examination and cross examination questions</p>	<p>Day 6 ★ Continue to read & re-read witness statements. Theory of the case for plaintiff & defense. Review steps in a mock trial: US and HR</p>	<p>Day 7 Review witness statements in pairs. Begin preparing questions for witnesses. Read through exhibits again and relate them to witnesses</p>
<p>Day 8 ★ Strategies to understand facts of the case. Who said what and timeline.</p>	<p>Day 9 ★ Courtroom courtesy. Go over objections and their value in court proceedings. Venn diagram to think about themes for both sides.</p>	<p>Day 10 ★ Fill out applications for roles in mock trial. Write and practice giving opening and closing arguments.</p>	<p>Day 11 Announce Roles. Clarify job responsibilities. Cooperative learning skills. Time limits. Work groups</p>	<p>Day 12 Work groups</p>	<p>Day 13 Work groups</p>	<p>Day 14 ★ Rehearse trial with entire class.</p>
<p>Day 15 Run through trial with entire class. Problem solve any questions or concerns</p>	<p>Day 16 ★ Mock Trial Day! With guest judges.</p>	<p>Day 17 Mock Trial Day! With guest judges.</p>	<p>Day 18 ★ Debrief with class. Celebrate! Additional activities relating to the issues in the trial.</p>	<p>Notes ★ Symbolizes an activity which must be done</p>		

INTRODUCTORY QUESTIONS FROM *SIMON CASE*

1. What responsibility do schools have for their students? Why?
2. What responsibilities do parents have for their children? Why?
3. Have you known a student who needed a scholarship in order to stay in school?
4. Should scholarships include both academic and athletic successes? Why or why not?
5. Should a coach be responsible for the behavior of members of his sports team? Why or why not?
6. How important to an athlete is the opinion and advice of his/her coach?
7. Who has the most influence on a 17 year old? His parent? His coach? His principal? His friends? Role models? Who else?
8. Have you known someone who would take risks to his/her health to win a competition? Why would those risks be ignored? What does it take to be a winning competitor?
9. Do most athletes use drugs to enhance their performance? If so, why? If not, why not?
10. How much do signed contracts influence a student's actions?
11. If you wanted to prevent substance abuse in a high school setting, what actions would you take?
12. How much should a parent know about the dangers of drug use to her/his child? How much should the student know? Why?
13. Does availability of money encourage students to make bad choices? Why or why not?
14. Do high school students believe that they are invincible (not in danger of dying) because they are young and bad events only occur to others? If so, why? If not, why not?
15. Are school administrators responsible for the action or lack of action of coaches/teachers who work at the school? Why or why not?

16. Do private schools have more, less or the same responsibility to their students as public school? Why or why not?
17. Can a 17 year old make judgments about what is best for himself without advice from a parent or coach? Why would a student ignore advice from an adult?
18. Should coaches use pressure to encourage students to “do their best”? Why or why not?

SAMPLE CROATIAN INDICTMENT



THE REPUBLIC OF CROATIA COUNTY STATE ATTORNEY

THE INDICTMENT

v.

THE DEFENDENT: BECK MARTIN

a seventeen-year old student, residing at 789 Fortuna Road in Driftwood City

who on June 8, between 8:00 p.m. and 9:00 p.m., on the ridge above a little cove south of Ballena Beach near Driftwood City, after an argument with the injured person Anne Marcus during which the injured person persisted in telling on him for cheating on the exam, acceding to kill her, hit Anne Marcus with a palm-sized rock on the head, i.e. above the left temple from which blow the injured person sustained a five centimetre laceration and skull fracture, lost consciousness, stumbled into the waves where she subsequently drowned,

and therefore, killed another person,

with which he committed a criminal offence against life and limb – murder – as referred to and punishable under Article 90 of the Croatian Criminal Code (The Official Gazette, number 110/97, 27/98, 50/00, 129/00 and 51/01).

BURDEN OF PROOF

The burden of proof is the amount of evidence the person bringing a lawsuit needs to prove in order to succeed in winning his or her case. It is the responsibility of the prosecution in a criminal case or the plaintiff in a civil case to prove the facts at a certain level of certainty in order to find the defendant guilty in a criminal case or responsible in a civil case.

In a criminal case the prosecution must prove its case “beyond a reasonable doubt” in order to find the defendant guilty. This is not 100% certainty but it is close. There should be no reasonable doubt in the judge or jurors’ mind in order to find the defendant guilty. Note that the defendant does not have to prove his or her innocence. The entire burden is on the prosecution representing the State to prove the guilt of the defendant.

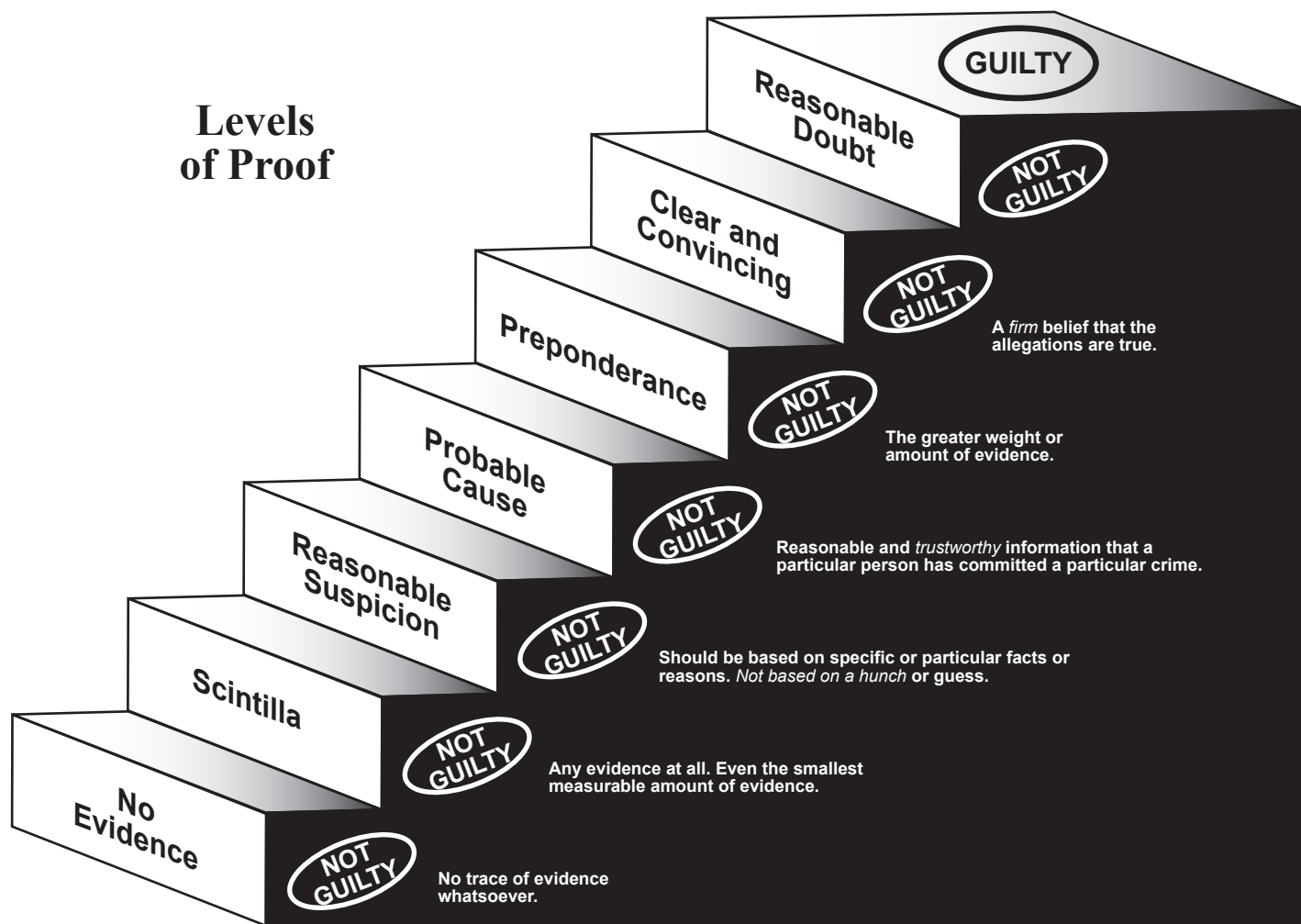
In the US the defendant also does not have to testify or present any witnesses. The attorney for the defendant at the end of the prosecution’s last witness could simply tell the judge “we have no witnesses.” Closing arguments would follow and the defense attorney would highlight all the faults in the prosecution case creating as much doubt as possible. In Croatia, the judge or judges ask questions of the witnesses they decide to call including the defendant. Based on all the information the judges collect, they determine whether they are convinced with certainty that the defendant is guilty.

In a civil case the plaintiff has the burden to prove the facts by a preponderance of the evidence. This is less than a criminal case. A civil case usually results in a request for money, return of property, or an order to do something. If a defendant in a criminal case is found guilty, the consequences of losing personal freedom by being sent to prison, fined and ordered to perform community service under court supervision is much more serious.

Preponderance of the evidence means that it is more likely than not that the defendant is at fault or responsible for the alleged harm. The burden is still on the plaintiff to prove its case since it is complaining of the harm. The defendant in a civil case will often attempt to show that the plaintiff is at least partially at fault for the harm or damages.

If the judge or jury decides that the defendant is at **fault** they will then determine how much money should be paid to the plaintiff. The term **guilt** is only used in a criminal case.

BURDEN OF PROOF



BURDEN OF PROOF (U.S. CIVIL CASE)



DEFENDANT WINS
Plaintiff doesn't have enough
evidence to support his case.



DEFENDANT WINS
Defendant's evidence outweighs
Plaintiff's evidence.



PLAINTIFF WINS
Plaintiff's evidence outweighs
Defendant's evidence.

TIMELINE FOR *SIMON V SWIFT AND EASTSIDE HIGH SCHOOL*

- 1985** EPO was produced synthetically for the first time. LR
- 1990** Jordan Simon: Date of Birth:8/02/1990
- 1991** Paradise Valley High School officials reported that “very few” athletes have tested positive for steroids since the program was implemented in 1991, and no athlete has tested positive in the last five years. AB
- 1994** My favorite nephew Scott died of a heart attack. LR
I’ll never forget the fall afternoon in 1994 when I received a call from my sister, Scott’s mother. LR
I decided that I needed to learn more about steroids, and I vowed to do whatever I could to hold accountable those who are responsible for encouraging steroid abuse. LR
- 1996** Jordan ran a 2-mile race at only six years old and finished before a lot of adults.
- 1999** The World Anti-Doping Agency (“WADA”) was established in 1999 to promote and coordinate the international fight against doping in competitive sports.
- 2000** I accepted a position as the executive director of the Midwest Institute for Exercise Physiology in Michigan. LR
- 2002** By 6th grade, Jordan could often beat me in sprints. TS
Terry Swift from Eastside High School, one of the top track coaches in the state, was at Jordan’s middle school for a meeting during one of Jordan’s track meets
In middle school, Jordan set numerous school records.
- 2003** A report published in August 2003 by the National Federation of State High School Associations (“NFSHSA”), the National Interscholastic Athletic Administrators Association (“NIAAA”) and the National Center for Drug Free Sport, Inc. indicated that approximately 13% of the nation’s high schools have a drug-testing policy in place. Of those schools, only 29% test for steroids. AB
- 2004** By 8th grade, Jordan met numerous high school track coaches.

- 2004-2005** Jordan started breaking records during the 2004-05 season TS
I first met Jordan Simon during tryouts. MP
Our first two years were pretty normal for track runners I guess MP
- 2006-2007** Back when Jordan was a sophomore and a junior, things weren't going so well. TS
When Jordan was 15, he told me that Terry was applying a lot of pressure for Jordan to take it to the next level KS
- 2007** Our junior year Jordan changed a little MP
Jordan's times started to dip towards the end of the season MP
Jordan started to skip morning workouts with me. Jordan's running suffered MP
When Jordan was 16, more college recruiters started coming to the track meets and practices. Jordan was getting more and more nervous. KS
When Jordan turned 16 years old, Jordan could access the money and withdraw funds without my consent. I never even thought to check the balance after Jordan turned 16. KS
In Jordan's senior year, things were coming together
When our senior year started, things began to change MP
- 12/17/2007** Withdrawal of \$8,500.00 dollars by Jordan Simon
- 2008** Three high schools in the Mountain Unified School District, which (according to an October 21, 2008 article) announced a random drug testing program to commence in January 2008 for all students participating in athletic and non-athletic programs sponsored by the Oregon Interscholastic Association (the "OIA"). AB
During Jordan's senior year, Jordan was sick a lot.
Then Jordan started missing school.
I was amazed when track season finally started in February 2008
- 2/11/2008** Withdrawal of \$8,500.00 by Jordan Simon
- 3/18/2008** Withdrawal of \$8,500.00 by Jordan Simon
- April 2008** I decided to buy Jordan a car as an early graduation gift TS
I remember one day back in April 2008, Kelly came running into the gym
Jordan pointed at me and yelled something like, "You know how I'm getting so good – you explain it." TS

- 4/10/08** Internet printing summary report by Jordan Simon
- 4/11/08** I received a visit from Mrs. Andrews, our school librarian. She had a printout that she was about to file, which is marked as Exhibit 10, and thought I should see it. JH
It appeared on the beginnertriathlete.com website on April 10, 2008.
- 4/12/2008 - PM** I gave a copy of the article to Terry. JH
Coach said: "Then my hands are tied. Besides, whatever you are worried about can't be that bad, just look at Jordan's times." That must have been toward the end of April, maybe the beginning of May. MP
- 4/19/2008** Coach saw Jordan and me in the hall and told us to be at the end of the year banquet early so we could talk. MP
- 5/6/2008 – AM** Jordan's school called and asked why Jordan wasn't there. KS
- 5/6/2008** Jordan dies. He said it happened sometime in the middle of the night
I quit the team the next day. MP
- 5/11/2008** Date of Toxicology Report
- ??** About a month ago, I found the strength to go through some of Jordan's stuff. KS

Note: initials indicate witness with that knowledge

SAMPLE OF A WITNESS ANALYSIS FOR STRENGTHS AND WEAKNESSES

This is an example of how to take witness testimony and examine it in detail to begin to prepare for questions which lawyers (on both sides) may ask and to think about the themes which will be important in presenting the case.

- The + **column** indicates testimony which will help the plaintiff
- the – **column** indicates testimony which might hurt the plaintiff or help the defense

This is a good thinking activity for students and another way to learn what is in the witness statements. After roles have been assigned, it helps the witness get “in role”.

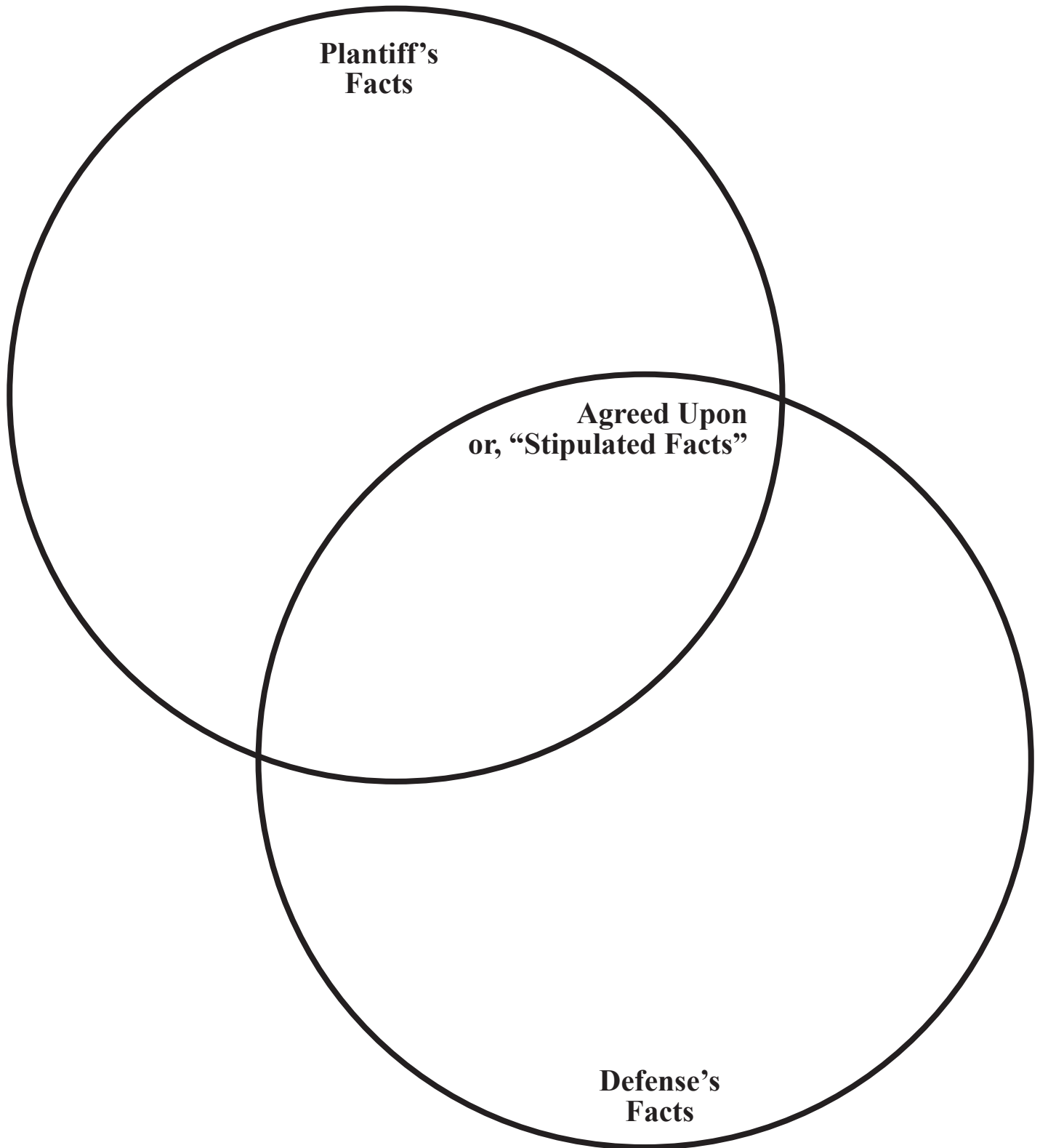
Morgan Pearce is a friend of the deceased, Jordan Simon, who testifies for the plaintiff in <i>Simon v Swift and Eastside High School</i> .			
Testimony	Main points	+ Plaintiff	- Plaintiff
1. Coach noticed Jordan was slacking too, and was not happy. It wasn't just Jordan's track	J slacking & Coach unhappy	Coach unhappy	J slacking
2. performance--it was Jordan's school performance as well. Coach started riding Jordan pretty	School work Coach riding J	Coach riding J	J poor school work
3. hard. It got worse at the end of that year. One of the seniors received a full-ride scholarship to	More pressure from Coach	More pressure from Coach	
4. ASU. It's not that this was unusual or anything, I mean, Eastside almost always finishes in the	ASU scholarship Eastside competitive	Eastside competitive	Competition pays off
5. top five in state, and every year it seems like someone gets a scholarship. That scholarship came	Focus on college scholarship		

<p>6. at a bad time for Jordan. Like I said, Coach already was riding Jordan pretty hard, and we found</p>	<p>Coach riding J</p>	<p>Coach riding J</p>	<p>Stress on J</p>
<p>7. out about the scholarship just as Jordan's times hit their lowest of the year. Coach pretty much</p>	<p>J times lowest of year</p>		<p>J times lowest of year: J fault</p>
<p>8. blew a gasket. I remember one day in the locker room I heard yelling coming from Coach's</p>	<p>Coach yelling at Jordan</p>	<p>Coach yelling at Jordan</p>	
<p>9. office. I looked in the window and could see Coach standing over Jordan screaming and yelling.</p>	<p>Eyewitness to Coach behavior</p>	<p>Bad behavior by Coach</p>	
<p>10. I heard Coach tell Jordan "forget about a college scholarship, if you don't straighten up, I am</p>	<p>Coach threatens J</p>	<p>Coach threatens J Morgan can testify</p>	
<p>11. going to yank your Eastside scholarship!" Right then, Coach looked up and saw me through the</p>	<p>Threats to yank ES scholarship</p>	<p>Threats to yank ES scholarship</p>	
<p>12. window. Coach pointed at me and hollered, "I hope you heard that, because the same goes for</p>	<p>Threat to Morgan as well</p>	<p>Corroborates J's situation</p>	<p>Coach cares about J: shows this by pushing him</p>
<p>13. you!" Then Coach slammed the door and went back to yelling at Jordan.</p>	<p>Coach yelling again</p>	<p>Coach yelling again: care of students?</p>	

NOTABLE DIFFERENCES BETWEEN U.S. AND CROATIAN LEGAL SYSTEMS

- The judge in a criminal case is looking for closer to 100% certainty for the burden of proof versus the U.S. standard of beyond a reasonable doubt.
- In the Criminal court there is a Judge and two citizen judges.
- In Croatian trials the prosecution sits on the right at a table facing the judge, the defense on the left and the witness when h/she testifies sits at a table facing the panel of judges.
- Although the Defendant is called to answer some questions, the Croatian system does not consider the defendant an actual witness. Thus the Defendant is not obligated to tell the truth!

VENN DIAGRAM



SCRIPTED OPENING STATEMENT

“Thank you, your honor.”

“This is a case about...”

- *taking chances.”*
- *success at whatever cost is at the heart of our tragic story”* (for the plaintiff).
- *the pounding of feet, the rush of breaking the tape at the finish line, this is what Jordan Simon lived for and he chose to win at any cost.”* (for the defense)

> Start and end with a phrase that summarizes your theme and makes a strong first impression. Reference that theme at the end of your opening statement as well, to leave a lasting picture in the jurors’ minds.

“May it please the court, my name is _____ and I will give the opening statement for my client _____.”

“This case involves (summary or overview of key facts that are important to your side of the case in an organized, simple, chronological way).”

> Retell the story in a way that will be simple to remember and interesting to the listeners. You are a story teller with a message!

“We will call three witnesses to support our position that _____. Our first witness will be _____, who will tell you that _____. He/she will (explain, summarize, describe) _____. This testimony will support our position that _____ by (make the connection of the witness to the theory of the case and what you intend to show during the trial). The next witness we will call is _____. (continue to describe witnesses). Through these witnesses we will show that (describe the elements of the law and how it applies to your case). At the end of the trial we are certain that you will decide that (state what you want the judge and/or jury to consider in deciding in your favor).

> State the elements of the law which you will prove. Separate the elements if there are several of them and define them in clear language or give examples.

> Remember to:

- Demonstrate your enthusiasm, confidence and integrity through your tone of voice, demeanor and delivery
- Be a storyteller, describing actions vividly, and using emotions and drama where appropriate
- Describe your client to the jury in a way that creates empathy for his/her situation
- Avoid arguing or stating personal opinions
- Anticipate and explain potential weaknesses in your case
- Try to avoid using any notes when you deliver your opening statement. NEVER read the entire opening statement. At most, take one sheet listing the major points you want to cover. The more eye contact you make with the jurors, the more compelling and persuasive your opening statement will be.

SCRIPTED CLOSING

PLANTIFF

- > In their drive to win at whatever the cost, the defendants did not uphold their duty to keep their star track athlete safe.

“Your Honor my name is _____ and I will present the closing argument for the plaintiff. You have heard testimony from Kelly Simon that as a single parent she did all she could to support Jordan. She explained that she went to Coach Swift when she discovered that her son had withdrawn large sums of money from his trust account was assured by the Coach that he would talk with Jordan.”

- > List other witnesses and the key points of their testimony such as:

“Jordan looked to the coach as a role model and substitute father. Morgan Pearce testified that he observed changes in Jordan’s behavior and physical appearance. Morgan was aware that Jordan was using steroids. Why did the coach not know? Morgan also testified that there was immense pressure on Jordan to win.”

“Kelly Simon testified that she was a single parent and she relied on the coach and the school to protect her son.”

“The expert witness testified that it was the school’s responsibility to detect steroid use and to take measures to prevent that use.”

- > Legal requirements satisfied to find the coach and the high school responsible and negligent:

- Duty
- Burden
- Cause harm

- > Highlight the testimony for the defense that supports your side:

- Coach was negligent when he failed to inquire about the changes he observed in Jordan.
- Coach did not discuss the EPO report from the library with Jordan.
- Coach made it clear that in order to get a college scholarship some of the competitors were using supplements and one year is a small price to pay for a scholarship as Morgan Pearce testified.
- The School and Coach breached their duty to Jordan and thus are at fault for his death.
- Coach pressured Jordan, he described how successful college athletes use EPO and thus is liable for Jordan’s death.

“Given the loss and injury Kelly Simon has sustained from the death of her son, we ask that you find the defendant negligent for the wrongful death of Jordan Simon. Thank you your honor.”

DEFENSE

- > The runner's thirst to be the fastest was the key to college and reason Jordan Simon picked up a syringe and injected himself with EPO. This was his choice. We understand Kelly Simon's tragic loss but the school and coach did all they could.

"Your Honor: my name is _____ and I will present the closing argument for the defendant. You have heard the testimony of Coach Swift, Jamie Hagar and Aubrey Brady. The school taught lessons on the dangers of using drugs, the coach coached the student athletes making certain they understood the consequences of using steroids but the parent did not parent in this case. Kelly Simon told you how important Jordan's athletic career was to her. She pushed Jordan. She knew of his consistent absences from school, she saw the changes in Jordan but ignored the signs of drug use. Jordan knew of the dangers of using EPO but choose success at any price."

- > Add additional information from the witness testimony.

"In conclusion your honor, we have proved that the defendants were not at fault and thus should not be held responsible for Jordan Simon's death."

- > Additional suggestions are in the mock trial case in the closing argument section.

WITNESS QUIZ – SIMON CASE

Who said what?

- | | |
|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Kelly Simon (KS) • Morgan Pearce (MP) • Lynn Roper (LR) | <ul style="list-style-type: none"> • Terry Swift (TS) • Jamie Hagar (JH) • Aubrey Brady (AB) |
|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|

- _____ Jordan’s body was cold.
- _____ I also was the head track coach at the school.
- _____ To be effective, the education for students, parents, coaches and administrators cannot be a one-time event.
- _____ It’s all about the repeat engagements.
- _____ Terry was a district finalist two years ago for teacher-coach of the year.
- _____ Jordan was a good kid.
- _____ Coach started riding Jordan pretty hard. It got worse at the end of that year.
- _____ Coach never said anything about steroids.
- _____ I don’t know how I can get through the rest of my life
- _____ I do know that Jordan has signed the form in the past.
- _____ So, as much as I enjoyed my job, I had to find a way to make more money.
- _____ I think the drugs let some of my classmates get into schools with great track programs.
- _____ High school athletes are vulnerable and under a lot of pressure.
- _____ I never suspected Jordan would use steroids.
- _____ Jordan was an incredible sprinter for a middle school student.
- _____ Education is the key to detecting and eliminating the use of steroids by high school athletes.
- _____ Accordingly, I believe that random testing of high school athletes should be mandatory
- _____ I know I put a lot of pressure on Jordan.
- _____ Jordan had started to get some pretty bad body acne.
- _____ Terry was a district finalist two years ago for teacher-coach of the year.
- _____ First, I have a deep personal interest in the subject.
- _____ Terry said, “I’ll take care of it.”
- _____ I know that winning isn’t everything for Terry.
- _____ I think all the extra work was a little much and wore Jordan out.
- _____ I think it is irresponsible not to tell the kids about the realities of sports.
- _____ I do know that Jordan has signed the form in the past.
- _____ It is much more difficult to detect the use of a glycoprotein hormone like EPO
- _____ I never got to do the extra training with Jordan.
- _____ I was starting to panic.

WITNESS QUIZ KEY – SIMON CASE

Who said what?

- Kelly Simon (KS)
- Morgan Pearce (MP)
- Lynn Roper (LR)
- Terry Swift (TS)
- Jamie Hagar (JH)
- Aubrey Brady (AB)

KS Jordan's body was cold.

LR I also was the head track coach at the school.

AB To be effective, the education for students, parents, coaches and administrators cannot be a one-time event.

AB It's all about the repeat engagements.

JH Terry was a district finalist two years ago for teacher-coach of the year.

TS Jordan was a good kid.

MP Coach started riding Jordan pretty hard. It got worse at the end of that year.

MP Coach never said anything about steroids.

KS I don't know how I can get through the rest of my life

JH I do know that Jordan has signed the form in the past.

AB So, as much as I enjoyed my job, I had to find a way to make more money.

TS I think the drugs let some of my classmates get into schools with great track programs.

LR High school athletes are vulnerable and under a lot of pressure.

JH I never suspected Jordan would use steroids.

TS Jordan was an incredible sprinter for a middle school student.

AB Education is the key to detecting and eliminating the use of steroids by high school athletes.

LR Accordingly, I believe that random testing of high school athletes should be mandatory

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JH I do know that Jordan has signed the form in the past.

AB It is much more difficult to detect the use of a glycoprotein hormone like EPO

KS I never got to do the extra training with Jordan.

MP I was starting to panic.

ROLES IN MOCK TRIAL

Please rank your top 3 choices from “1” to “3”. A “1” indicates your greatest preference.
Please write on the back of this sheet the reason for your choices.

NAME: _____ DATE: _____

My top three choices are:

Lawyers for the Plaintiff (4)

- _____ 1. Opening Statement and Closing Argument
- _____ 2. Direct Examination of Kelly Simon and Cross Examination of Terry Swift
- _____ 3. Direct Examination of Morgan Pearce and Cross Examination of Aubrey Brady
- _____ 4. Direct Examination of Lynn Roper and Cross Examination of Jamie Hagar

Lawyers for the Defendant (4)

- _____ 1. Opening Statement and Closing Argument
- _____ 2. Direct Examination of Terry Swift and Cross Examination of Kelly Simon
- _____ 3. Direct Examination of Aubrey Brady and Cross Examination of Morgan Pearce
- _____ 4. Direct Examination of Jamie Hagar and Cross Examination of Lynn Roper

Witnesses (6)

_____ Kelly Simon	_____ Morgan Pearce	_____ Lynn Roper
_____ Terry Swift	_____ Aubrey Brady	_____ Jamie Hagar

_____ **Judge (2)**

_____ **Clerk (2)**

DEBRIEF MOCK TRIAL

My name is: _____

I played this part in the mock trial: _____

My role was important because:

I needed these skills to play my part:

If I had the chance to play my role again, I would or would not because...

The best thing I did in the mock trial was...

The hardest part of the mock trial for me was...

While we were doing the mock trial, I learned....

HOW A RESOURCE PERSON CAN HELP

- Assist with the coordination and support activities necessary to implement a mock trial
- Recruit attorneys, law students, and a judge to serve as trial participants and/or resource persons.
- Make arrangements to use actual courtrooms
- Explain the law and the burden of proof
- Clarify any special legal issues in the trial (for example: comparative negligence in the *Simon v Swift and Eastside High School* case)
- Make certain that students are familiar with mock trial procedures and their roles
- Assist students in developing their roles or testimony when help is needed
- Oversee the presentation of the trial itself
- Conduct the debriefing session
- Arrange the classroom in a way that suggests a courtroom

MEDIATION VERSUS TRIAL

Mediation	Trial
Focus on future relationship between the parties	Focuses on correcting a past wrong or injury
Goal to seek common ground	Goal to show differences in positions
Parties develop a solution they both can agree to; not constrained by precedent	The judge or jury determines guilt or fault and imposes the penalty
Informal	Formal
One or two days	Depending on number of witnesses, can take a long time
Can be scheduled at a time convenient for both parties	Trial set by docket at the courthouse
Both parties pick the mediator	Judge is assigned
The agreement may happen close to the time of the issue	It can take months to years to get a trial date
<u>Private</u> , no observers	<u>Public</u> hearing of trials
No attorney present only an unbiased 3 rd person, the mediator (quicker, costs less, more flexible)	Cost of attorneys
Process is one where each side has time to tell their story and then listen to the other party	Trial is adversarial, each side puts on their best case and tries to show why the opposing side is wrong
Parties keep ownership of the problem and come up with their own solution	The attorneys, witnesses, and judge or jury control the issue at trial
Mediator helps keep both parties on an equal playing field	Nothing judge can do if one side is considerably stronger or more clever