

The New Hampshire Bar Association  
*Law-Related Education Advisory Board*

Presents

**Alex Strusa v. New Concord School District**

Mock Trial Case Materials for 2001



Sponsored by the New Hampshire Bar Association

Funded in part by a grant from the New Hampshire Bar Foundation

and the

New Hampshire Department of Education

The Mock Trial Committee  
of the  
New Hampshire Bar Association's  
Law Related Education Advisory Board

gratefully acknowledges the efforts of the following  
people who helped develop the mock trial case materials for 2001:

Jay Liendecker, Admissions Director, Dean College, Franklin, Massachusetts  
Jim Desmarais, Executive Director, NHIAA, Concord, New Hampshire  
Dr. Carol Houde, Nashua, New Hampshire

The Mock Trial Committee

Martin J. Bender, Esq., Webster  
Lorne M. Fienberg, Esq. McLane, Graf, Raulerson & Middleton, Nashua  
David Goldsmith, Nashua High School  
Peter D. Goldsmith, Esq., Barker & Goldsmith, Nashua  
John Harwood, Esq., Mascoma Regional High School, Canaan  
Andrew A. Prolman, Esq., Chair, Prunier & Leonard, Nashua

November, 2000

## **New Hampshire Bar Association**

### **Mock Trial 2001**

#### **Alex Strusa v. New Concord School District**

Welcome to the New Hampshire Bar Association's Mock Trial and competition for 2001. Members of the Law-Related Education Advisory Board developed the enclosed case materials to assist students in grades 4 –12 in exploring constitutional concepts, courtroom procedure and jury instruction. The program assists students in their mastery of the New Hampshire Department of Education Curriculum Standards in Civics and Government.

The program is designed to build the following skills and attributes in participants:

- Critical thinking, reasoning and problem solving skills;
- Increased ease in public speaking/oral advocacy;
- A sense of teamwork among young people with various abilities and interests;
- A means of learning about the courts without getting into trouble.

The curriculum is also a natural means of:

- Incorporating resource people in the classroom;
- Implementing a positive, unusual field trip experience that extends learning about law beyond lawyers and judges;
- Offering a competitive event in an academic atmosphere.

The competition is a means of evaluating student preparation and performance, cumulatively by trial, against other teams. A trial is “won” based on the success of all team members' performance, not on the merits of the case or one dynamic presenter carrying the entire team. The activity is a fun, challenging experience where students also learn by observing their opponents. Over 100 Bar members also participate in the competition as scoring and presiding judges, and provide feedback on style and professionalism.

The New Hampshire Bar Association Law-Related Education Program can help teachers locate an attorney who can help students understand the New Hampshire court system; explain how to research legal issues; prepare a case for trial, and conduct the trial. Please call us at 224-6942 for more information.

Kirsten Hale  
LRE Coordinator

Angela Sepela  
LRE Program Assistant

# NH Bar Association

## Mock Trial 2001

There are no rule changes for this year. Along with the case materials is the Mock Trial 2001 Rules at a Glance information page, which should be followed. The Mock Trial Committee again emphasizes the following:

- ◆ **Absolutely no contact from behind the bar once the trial begins.** Students, *and especially teachers, coaches, and spectators* may not contact the team or address the court after the teams are set up to begin the case. Witnesses may sit in the first row of seats, but no contact should occur.  
  
**Any violation of this rule, however slight, will result in disqualification for the round.**
- ◆ Only the examining attorney may object and respond to objections.
- ◆ No voir dire, but any expert(s) must be qualified.
- ◆ Should teams have a timer, the timer may sit in front of the bar, to the side of the courtroom.

Best of luck to all competitors!

## NH Bar Association Mock Trial 2001 Rules At A Glance

### Teams:

- ◆ Teams that are not assembled at 9:00 a.m. will lose their first round by default.
- ◆ Teacher-coaches and lawyer-coaches are **NOT** allowed in front of the Bar after set-up. A Bar staff member will give a 1-minute warning at which time everyone will be seated. Teams will lose five points for non-compliance.
- ◆ Students, spectators and coaches may **NOT** signal one another from behind the bar at any time. The offending team **will be disqualified** for the round.
- ◆ Schools w/ multiple teams may compete against each other. Match-ups will be at random for the first round.
- ◆ At least six team members must participate in each round of competition.
- ◆ **NO BACKPACKS or other bags/ purses** with many zippered compartments- for students and adults. The Court does not use scanning machines, and manual searching delays entry into the courthouse for everyone.
- ◆ Overhead projectors, TV/ VCR's or other audio-visual equipment and furniture are **prohibited** from the competition. Spectators may videotape trials. Foam core and easel pads are allowed.
- ◆ Teams may **NOT** rearrange the courtroom; however, counsel may reasonably move the podium with the Presiding Judge's permission.
- ◆ For their personal safety, and to maintain decorum of the Court, please do not allow students to wander the halls. There will be court clients in the building who may be in crisis.

### Case Performance:

- ◆ Each witness statement is a signed, sworn statement, and may be submitted for rebuttal or to challenge the credibility of the witness.
- ◆ Witnesses will not be sequestered.
- ◆ *Voire dire* is **NOT** allowed.
- ◆ Pre-trial, written, or other motions (i.e. to suppress; directed verdict) will **NOT** be permitted.
- ◆ Reading into the record is not permitted.
- ◆ Bench conferences will be from counsel's table at the discretion of the Presiding Judge, in the educational interest of all participants.
- ◆ Teams may make one objection, to alert the Presiding Judge of the expiration of the opposing team's 45 minutes.
- ◆ **ONE**-minute break - at counsel's table- before closing arguments.

### Scoring:

- ◆ A line will be added to the score sheet to award points for overall team presentation and cohesiveness.
- ◆ Presiding judges will not confer privately with scoring judges during the trial.
- ◆ Five minutes **maximum** per judge for critique and comments.

**New Hampshire Bar Association**  
**2001 Mock Trial Competition**

Team Entry Form

Name of School \_\_\_\_\_ School Telephone \_\_\_\_\_

School Fax \_\_\_\_\_

If several teams from one school participate, please submit one entry form for each team and name each team accordingly. **Deadline to enter the Competition is January 31, 2001.** Any team registering after this date will be accepted at the discretion of the Mock Trial Chairperson, to avoid an odd number of teams in each division. Your entry triggers all future Mock Trial mailings, so don't delay!

Teacher Coach \_\_\_\_\_ Attorney Coach \_\_\_\_\_

Evening Telephone \_\_\_\_\_ Evening Telephone \_\_\_\_\_

E-mail Address \_\_\_\_\_ E-mail Address \_\_\_\_\_

The total number of students on a team **must** be between eight and sixteen.  
At least 6 team members must participate in each round.

- |          |           |
|----------|-----------|
| 1. _____ | 9. _____  |
| 2. _____ | 10. _____ |
| 3. _____ | 11. _____ |
| 4. _____ | 12. _____ |
| 5. _____ | 13. _____ |
| 6. _____ | 14. _____ |
| 7. _____ | 15. _____ |
| 8. _____ | 16. _____ |

Division of this team:     Elementary (grades 4-6)    First round is a video submission.  
                                   Middle School (grades 6-8)    First round is live competition.  
                                   High School (grades 9-12)    First round is live competition.

Middle school students in the sixth grade who competed at the elementary school level in a prior year may enter at the middle school level. If this is the team's first competition, the elementary school division is more appropriate. Please call 224-6942 if you have any questions, or e-mail khale@nhbar.org

\_\_\_\_\_ Enclosed is the non-refundable entry fee of \$50, payable to the NHBA LRE Program.  
Return this form with payment to:

**Mock Trial Competition**  
**NH Bar Association**  
112 Pleasant Street  
Concord, NH 03301

If you need assistance finding an attorney-coach, please notify the LRE Program no later than December 15, 2000.

Court ( )  
Jury (X)

MERRIMACK, SS. THE STATE OF NEW HAMPSHIRE SUPERIOR COURT

WRIT OF SUMMONS

Alex Strusa v. New Concord School District

*To the Sheriff of any County or his Deputy:*

**We Command You To Summon** the New Concord School District

if to be found in your precinct, to appear at the SUPERIOR COURT at Concord in said County of Merrimack, on the first Tuesday of October, 2000, to answer to

COUNT I

**IN A PLEA OF CASE:** for that plaintiff Alex Strusa was a student of the New Concord School District at New Concord High School; Principal Skinner is the principal at New Concord High School; Skinner is an agent of the defendant, New Concord School District; that plaintiff was an outstanding student and athlete, and had been accepted with full scholarships to six premier colleges and universities; that defendant and its agents had a duty not to communicate or publish defamatory statements about plaintiff to third persons; that in December, 1999, defendant wrongly and negligently slandered plaintiff by falsely accusing plaintiff of wrongfully possessing drugs, suspending plaintiff from school, and libelously issuing a notice of suspension upon plaintiff's official high school transcript; that as a direct result of defendant's wrongful and negligent conduct, the six colleges and universities all rescinded plaintiff's admission and scholarships; that as a direct result of defendant's wrongful and negligent conduct, plaintiff suffered severe lost earning potential for life; that as a direct result of defendant's wrongful and negligent conduct, plaintiff lost the value of the college scholarships; that as a direct result of defendant's wrongful and negligent conduct, plaintiff suffered and continues to suffer from the pain and suffering of depression requiring continuous medication and other medical costs; all to the damages of plaintiff in an amount within the jurisdictional limits of the court.

COUNT II

**IN A PLEA OF ASSUMPSIT:** plaintiff repeats and alleges the facts stated in Count I as if fully set forth herein; that plaintiff and the defendant entered into a Memorandum of Understanding, dated February 1, 2000; that said Memorandum of Understanding was entered into following

plaintiff's administrative appeal of the suspension wrongly handed down by Principal Skinner; that, among other things, the Memorandum of Understanding specifically required defendant, through its agent Principal Skinner, to remove from plaintiff's official transcript any reference of the December, 1999 disciplinary action issued by Principal Skinner; that defendant failed to remove any such reference in a timely and professional manner; that New Concord High School provided official transcripts to plaintiff's colleges and universities; that upon receipt of the transcript showing the improper disciplinary actions, plaintiff's colleges and universities rescinded their admission of plaintiff and withdrew the scholarship awards; that as a direct result of the defendant's breach of the Memorandum of Understanding, plaintiff suffered severe lost earning potential for life; that as a direct result of defendant's breach of Memorandum of Understanding, plaintiff lost the value of the college scholarships; that as a direct result of defendant's breach of the Memorandum of Understanding, plaintiff suffered and continues to suffer from the pain and suffering of depression requiring continuous medication and other medical costs; all to the damages of plaintiff in an amount within the jurisdictional limits of the court.

To the damage of the plaintiff, as he Say , the sum of dollars,  
and make return of this writ with your doings therein.

Witness, JOSEPH P. NADEAU, ESQUIRE, the first day of September, 2000, A.D.

...../S/.Alex Strusa..... Indorser

..../S/... Plaintiff's Counsel.....

Attorney

William S. McGraw, Clerk



STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Alex Strusa

vs.

New Concord School District

00-C-1234

**PRETRIAL STATEMENT OF ALEX STRUSA**

NOW COMES Alex Strusa by and through plaintiff's counsel and submits the following Pretrial Statement.

**I. Uncontested Facts.**

Alex Strusa was a student of New Concord High School. New Concord High School is one of the schools in the defendant New Concord School District. Principal Skinner is an agent of defendant.

Strusa graduated with a 3.257 grade point average. Strusa was a nationally ranked high school track competitor, who holds state records in the 400 and 800 meters. By December, 1999, six premier colleges and universities offered admission with full financial scholarship to Strusa.

In January, 2000, Principal Skinner suspended Strusa for five days. Strusa appealed the suspension, and in February, 2000, the parties entered into a Memorandum of Understanding, which required both Strusa and the defendant to take certain actions. Strusa complied with the Memorandum of Understanding, the District did not. As a direct result, all six

colleges and universities rescinded their offers of admission and scholarships. Plaintiff continues to suffer economic and mental harm.

**II. Contested Issues.**

All other facts other than those stated above are expected to be contested.

**III. Applicable Law.**

The common law of New Hampshire applies to this matter.

**IV. Specific Legal Issues.**

Defamation: libel, slander

Breach of Contract

**V. Plaintiffs Specific Claims.**

1. Defendant defamed plaintiff by negligently allowing certain statements to remain on plaintiff's high school transcript.

2. Defendant breached a confidential Memorandum of Understanding by failing to remove certain statements from plaintiff's high school transcript.

**VI. Defenses.**

See Defendant's pretrial statement.

**VII. Statement of Special Damages.**

1. Loss of college scholarship: \$40,000 per year.

2. Loss of earning potential: \$25,000 average annual starting salary difference from high school graduates.

3. Depression with medical costs.

**VIII. Specification of Injuries.**

See special damages.

**IX. Settlement.**

Demand: \$1,500,000

Offer: \$0

**X. Plaintiff's List of Trial Exhibits.**

Memorandum of Understanding

Franklin University Rescission Letter

New Concord High School Transcript

New Concord High School Disciplinary Policy, Class I

**XI. Depositions.**

Principal Skinner

Cameron Desrosiers

**XII. Waiver of Defenses**

See Defendant's pretrial statement.

**XIII. List of Trial Witnesses.**

Alex Strusa

J. Liendecker

Dr. R. Jo Nsing

The plaintiff reserves the right to add to the trial witnesses as may be required

by continued discovery in this matter.

**IX. View.**

Inapplicable.

**X. Trial Attorneys:**

Plaintiff's Counsel  
Fienberg & Goldsmith, P.A.  
Noble Drive  
Concord, New Hampshire 03301

Defendant's Counsel  
Harwood, Hale & Bender, P.C.  
464 Greens Pond Road  
Merrimack, New Hampshire 03054

Respectfully submitted,  
Alex Strusa,  
By counsel,

        /S/          
Plaintiff's Counsel

**Certificate of Service**

On this 1st day of March, 2001, I certify that a copy of the within Pretrial Statement was mailed to opposing counsel.

        /S/          
Plaintiff's Counsel

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Alex Strusa

vs.

New Concord School District

00-C-1234

**PRETRIAL STATEMENT OF NEW CONCORD SCHOOL DISTRICT**

NOW COMES the New Concord School District by and through defense counsel and submits the following Pretrial Statement.

**I. Uncontested Facts.**

Principal Skinner is an employee of the New Concord School District. On December 27, 1999, Principal Skinner searched plaintiff's unlocked school locker and found a small bottle containing 47 tablets of Epogen. Epogen is used to treat chronic anemia in patients with kidney disease. Plaintiff has no such medical condition. Epogen is also widely abused as an athletic performance enhancing drug, because it provides an oxygen boost to the blood stream and improves athletic endurance. Skinner used his discretionary authority as Principal to suspend Strusa for five days for violating the spirit and intent of New Concord High School's zero tolerance drug policy.

Strusa appealed the suspension. Strusa and the New Concord School District entered into a Memorandum of Understanding. Defendant complied with the Memorandum of

Understanding. Defendant acknowledges that plaintiff has been diagnosed with clinical depression, but defendant denies any causation.

**II. Contested Issues.**

Defendant denies plaintiff's claims. Other than those facts stated above, all other facts will be contested.

**III. Applicable Law.**

The common law of New Hampshire applies to this matter.

**IV. Specific Legal Issues.**

Defamation: libel, slander, defenses thereto

Breach of Contract

Speculative damages

**V. Plaintiff's Specific Claims.**

See Plaintiff's pretrial statement.

**VI. Defenses.**

1. Defendant denies any and all alleged negligence toward plaintiff.

2. Defendant fully complied with the Memorandum of Understanding and denies any alleged breach thereof.

3. Any alleged damages were caused by plaintiff's own conduct.

4. Plaintiff's clinical depression was caused by his parents' divorce trial, which occurred in June, 2000.

5. Plaintiff's claimed damages are extremely speculative, and unawardable under New Hampshire Law.

**VII. Statement of Special Damages.**

See Plaintiff's pretrial statement.

**VIII. Specification of Injuries.**

See Plaintiff's pretrial statement.

**IX. Settlement.**

Unlikely. Plaintiff's demand is unreasonable; defendant denies responsibility.

**X. Defendant's List of Trial Exhibits.**

Memorandum of Understanding

New Concord High School Drug Policy

NHIAA Drug Policy

**XI. Depositions.**

Principal Skinner

Cameron Desrosiers

**XII. Waiver of Defenses**

The defendant does not waive any defenses.

**XIII. List of Trial Witnesses.**

Principal Skinner

Dud Fazzino, NHIAA

Cameron Desrosiers

The defendant reserves the right to add to the trial witnesses as may be required by

continued discovery in this matter.

**IX. View.**

Not requested.

**X. Trial Attorneys:**

Defendant's Counsel  
Harwood, Hale & Bender, P.C.  
464 Greens Pond Road  
Merrimack, New Hampshire 03054

Plaintiff's Counsel  
Fienberg & Goldsmith, P.A.  
Noble Drive  
Concord, New Hampshire 03301

Respectfully submitted,  
Principal Skinner,  
By counsel,

        /S/          
Defendant's Counsel

**Certificate of Service**

On this 1st day of March, 2001, I certify that a copy of the within Pretrial Statement was mailed to opposing counsel.

        /S/          
Defendant's Counsel



STATE OF NEW HAMPSHIRE

MERRIMACK,SS

SUPERIOR COURT

Alex Strusa

vs.

New Concord School District

00-C-1234

AFFIDAVIT OF ALEX STRUSA

I, Alex Strusa, being duly sworn, do hereby depose and say:

1. I was a student at New Concord High School. I graduated with a 3.257 grade point average. I was active in student government, participated in mock trial, and ran track and cross country. In the fall, 1999, I was ranked number two (2) in the country for high school track for the 400 and 800. My state records for these distances still stand. My parents keep all the stories from the papers and videos from the news. I was profiled in Running and Sports Illustrated.

2. By fall, 1999, I narrowed my college search to five schools. Two were Ivy League schools, three were prestigious schools with outstanding track programs. All five schools advised I would be accepted, and all five offered full financial scholarships. My family and I needed the scholarships for me to go to college.

3. I absolutely deny ever having taken Epogen. I do not know how the Epogen got into my locker. I generally keep it locked.

4. Following the Memorandum of Understanding, I served my suspension over February vacation, and continued through high school to graduation. I was having a great summer until I started hearing back from the colleges that didn't want me because of my transcript.

5. I have been diagnosed with depression. My weight has almost doubled because of my condition and current medication. I am currently employed in customer service at Target.

Respectfully submitted,

/S/  
Alex Strusa

State of New Hampshire  
County of Merrimack

On this \_\_\_\_ - \_\_\_\_ day of \_\_\_\_\_, 2001, personally appeared before me, the undersigned officer, Alex Strusa, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes herein contained.

\_\_\_\_\_  
/S/  
Notary Public/Justice of the Peace

# FRANKLIN UNIVERSITY

February 9, 2001

Plaintiff's Counsel  
Fienberg & Goldsmith, P.A.  
Noble Drive  
Concord, New Hampshire 03301

Re: Alex Strusa

Dear Counsel:

I am Director of Admissions of Franklin University. Franklin accepted Alex Strusa early on in our admission process. Alex appeared to be a great kid - someone we wanted at Franklin. I know other schools wanted Alex so we went after this student.

We offered a full athletic scholarship, for one year renewable up to four years depending on athletic performance and academic advancement. Franklin's room, board, and tuition for a full year is currently \$39,987.

Part of our admissions directive is to document to potential students the financial advantages of attending college, and Franklin in particular. Our studies show that our graduates earn approximately \$25,000 more in starting annual salary than high school graduates at age 22.

I understand New Concord High School's drug policy; we have a similar policy at Franklin. Alex showed a lot of potential and could have been a great student and athlete. From what I now understand, Alex should have appealed the August 1, 2000 rescission.

If I can be of any further assistance, please call.

Sincerely,

J. Liendecker

**Franklin University 36 Bow Street Franklin, Michigan 33940 517-232-7439**

Dr. R. Jo Nsing  
Psychologist  
Concord, New Hampshire

February 14, 2001

Fienberg & Goldsmith, P.A.  
Noble Drive  
Concord, New Hampshire 03301

Re: Alex Strusa

Dear Counsel:

This letter is in response to your request for a statement about my patient Alex Strusa. Alex has been a patient since September, 2000. At that time, Alex was having great difficulty controlling the frustration resulting from many colleges withdrawing their admissions and an inability to pursue what looked like a possibly stellar track career. Alex told me the 2004 summer olympics in Athens was an attainable goal.

After a few sessions and clinical testing, I formally diagnosed that Alex suffers from moderate depression (DSM IV, §296.22). I have enclosed a copy of the Criteria for your reference. Alex suffers from a reactive type depression; there are no signs of endogenous depression. Through referral to a psychiatrist, Alex is regularly taking SSRI's to assist with therapy. The unfortunate side effect of the medication, especially for Alex, is dramatic weight gain. I continue to see Alex to this day.

My fees to date are \$11,610 at \$150 per one hour session. I understand Alex's prescription costs are very expensive.

It is my professional opinion that Alex Strusa's moderate depression was caused by the precipitating events of the high school transcript issue and colleges subsequently rescinding their admissions and scholarships.

Respectfully,

Dr. R. Jo Nsing

Enclosure  
RJN/aap  
DICTATED BUT NOT READ

### ■ Criteria for Major Depressive Episode

- A. Five (or more) of the following symptoms have been present during the same 2-week period and represent a change from previous functioning; at least one of the symptoms is either (1) depressed mood or (2) loss of interest or pleasure.

**Note:** Do not include symptoms that are clearly due to a general medical condition, or mood-incongruent delusions or hallucinations.

- (1) depressed mood most of the day, nearly every day, as indicated by either subjective report (e.g., feels sad or empty) or observation made by others (e.g., appears tearful). **Note:** In children and adolescents can be irritable mood.
- (2) markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day (as indicated by either subjective account or observation made by others)
- (3) significant weight loss when not dieting or weight gain (e.g., a change of more than 5% of body weight in a month), or decrease or increase in appetite nearly every day. **Note:** In children, consider failure to make expected weight gains.
- (4) insomnia or hypersomnia nearly every day
- (5) psychomotor agitation or retardation nearly every day (observable by others, not merely subjective feelings of restlessness or being slowed down)
- (6) fatigue or loss of energy nearly every day
- (7) feelings of worthlessness or excessive or inappropriate guilt (which may be delusional) nearly every day (not merely self-reproach or guilt about being sick)
- (8) diminished ability to think or concentrate, or indecisiveness, nearly every day (either by subjective account or as observed by others)
- (9) recurrent thoughts of death (not just fear of dying), recurrent suicidal ideation without a specific plan, or a suicide attempt or a specific plan for committing suicide

- B. The symptoms do not meet criteria for a Mixed Episode (see p. 335).
- C. The symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- D. The symptoms are not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication) or a general medical condition (e.g., hypothyroidism).
- E. The symptoms are not better accounted for by Bereavement, i.e., after the loss of a loved one, the symptoms persist for longer than 2 months or are characterized by, marked functional impairment, morbid preoccupation with worthlessness, suicidal ideation, psychotic symptoms, or psychomotor retardation.

STATE OF NEW HAMPSHIRE

MERRIMACK,SS

SUPERIOR COURT

Alex Strusa

vs.

New Concord School District

00-C-1234

DEPOSITION OF PRINCIPAL SKINNER

Q: And how long have you been principal at New Concord High School?

A: Thirteen years.

Q: When did the zero tolerance drug policy come into effect?

A: About eight years ago. With counsel and a committee of administrators, teachers, parents, and students, we developed the policy that New Concord High School was simply not going to tolerate any improper drug use of any nature.

Q: When did your search my client's locker?

A: December 27, 1999.

Q: What prompted you to search Strusa's locker?

A: I had a good reason to believe Strusa was violating our zero tolerance drug policy.

Q: What exactly gave you that belief?

A: I received an anonymous tip there may be drugs in there.

Q: From whom?

A: I'm not going to say.

Q: This is not a criminal case and I'm asking you to answer this question: Who told you to search Strusa's locker?

*Defendant's Counsel:* Objection - don't harass my client.

A: None of your business.

*Plaintiff's Counsel:* Was it Desrosier?

*Defendant's Counsel:* Don't answer that.

Q: Is epogen illegal?

A: No.

Q: Is epogen a controlled substance?

A: No, well I'm not sure exactly.

Q: Is sudafed illegal?

A: No.

Q: Would a student's possession of sudafed violate the drug policy?

A: Probably not.

Q: Do you feel you made a mistake in this case?

A: Absolutely not. To this day I believe I made the right decision. I hate to see the effect on Alex, but the students have to understand the reason for our zero tolerance policy is to rescue at-risk kids.

Q: The Memorandum of Understanding required you to remove any references of this matter from Strusa's transcript, correct?

A: Yes, well not exactly.

Q: Did you do that?

A: Yes.

Q: When?

A: Soon after we all signed the document.

Q: What precisely did you do?

A: I told my staff to remove the suspension from Alex's student file.

Q: Who did you ask to do that?

A: I don't recall.

Q: Did you follow up? Did you see a copy of the corrected transcript?

A: I thought so. The end of the year gets very busy.

Q: Thank you sir.

A: You're welcome.

*Deposition ended.*



# NHIAA

New Hampshire Interscholastic Athletic Association, Inc  
Concord, New Hampshire

*A Tradition Of Excellence...*

January 18, 2001

Principal Skinner  
New Concord High School  
New Concord, New Hampshire 03303

Dear Principal Skinner:

At your request, I provide you with this letter of support relative to your recent suspension of Alex Strusa, and Strusa's appeal of that disciplinary action. As you know, I am Executive Director of NHIAA. Prior to this position I was a high school football coach for 18 years. I have seen all facets of high school drug use, prevention methods, and treatment. The latest use of performance enhancing drugs are these new bio-tech drugs like Oxyglobin, Protopin, Natropin AQ. Epogen is one of these. These are legitimate drugs for specific illnesses, but can cause significant vascular damage when abused.

NHIAA does not govern New Hampshire schools on athletic drug use or performance enhancing drugs. Each school sets its own policy. NHIAA's philosophy, however, is right in line with New Concord High School's zero tolerance policy, and your specific actions toward Alex Strusa. I have enclosed a copy of NHIAA's statement for your information.

I applaud your efforts with Alex Strusa, as long as a component of your disciplinary action requires counseling and parental participation. I must say, Principal Skinner, it is a shame we have to recommend counseling at all. Back in my high school days, when I played defensive center for the Cougars (three time state champs), we didn't need any of this stuff. Just a lot of hard work and long practices. The kids these days are just looking for shortcuts. I can still hear Coach Eason yelling 'No pain, no gain!' It seems we've lost the American way of life.

Yours truly,

Dud Fazzino, Executive Director  
NHIAA

Enclosure

# **NHIAA**

# **HANDBOOK**



**A tradition of excellence...**  
**54 years of service to**  
**New Hampshire's Youth**

**46th Edition**  
**2000-2001**

## **RESOLUTION:**

### **MODEL TO SET STANDARDS FOR MOOD-ALTERING CHEMICALS**

**STATEMENT OF PHILOSOPHY** It is the philosophy of the NHIAA and its member schools that students should be encouraged and supported in their efforts to develop and maintain a chemical-free lifestyle.

The NHIAA and its member schools recognize the use of mood-altering chemicals as a significant health problem for many students, resulting in negative effects on behavior, learning and the total development of each individual.

The NHIAA and its member schools believe the close contact of coaches, advisors and students in the classroom or activities provides a unique opportunity to observe, confront and assist one another.

#### **STATEMENT OF PURPOSE**

1. Emphasize concerns for the health of students in areas of safety while participating in activities and the long-term physical and emotional effects of chemical use on their health.
2. Promote a sense of order and discipline among students.
3. Confirm and support existing state laws, which restrict the use of such mood-altering chemicals.
4. Establish standards of conduct for those students who are leaders and standard-bearers, among their peers.
5. Assist students who desire to resist peer pressure, which directs them toward the use of mood-altering chemicals.
6. Assist students who should be referred for assistance or evaluation regarding their use of mood-altering chemicals.

**A CODE OF CONDUCT** Recognizing the diversity of its member schools, the NHIAA recommends that a Code of Conduct incorporate the following:

1. Philosophy: Specify the philosophy and basis for recommending a code of conduct.
2. Purpose for Establishing Rules: State the reasons for setting standards and the educational rationale for assisting students through such standards.
3. Defining the Rule: Incorporate the mood-altering chemicals to be included; the time during which the students are responsible for the rules.
4. Specifying the Consequences for Violations of the Rule: Define the activities for which the student is ineligible, the length of time and events which apply to each violation, and the responsibilities of the student during those periods.
5. Develop the Procedures for Due Process: Specify the procedures by which the school (officials will investigate reported violations of the rules and apply the consequences confirmed violations.
6. A Code of Conduct would define the time during which the rule is in effect, include parameters of use, possession, intent to buy or sell, transmit, etc., and the consequences of a violation.

**SAMPLE RULE FOR A MODEL CODE OF CONDUCT** A sample of a rule which incorporates the standards cited above could read:

"Regardless of the quantity, a student shall not: (1) use a beverage containing alcohol, (2) use tobacco; or (3) use or consume, have in possession, buy, sell or give away any other controlled substance".

**SAMPLE OF CONSEQUENCES FOR VIOLATIONS OF THE RULE** consequences for rule violations should incorporate the following standards:

1. A Standard of Certainty: An expectation by those to be affected by the rule that it will be applied with a measure of consistency and uniformity to all involved.
2. A Standard of Severity: An expectation that the consequences for the violation are fair for the act committed and that those affected will be encouraged to follow through with the consequences, including coaches, students, and parents.

A Standard of Promptness: An expectation that the due process will promptly be applied following

STATE OF NEW HAMPSHIRE

MERRIMACK,SS

SUPERIOR COURT

Alex Strusa

vs.

New Concord School District

00-C-1234

DEPOSITION OF CAMERON DESROSIERS

Q: How old are you?

A: Nineteen

Q: How long have you known Alex Strusa?

A: Six years. We ran track together since middle school. We came up to varsity together.

Q: My client tells me you've always been jealous because you have never beaten Strusa in any race. Is this true?

A: Absolutely not. We're best friends.

Q: Have you ever beaten Strusa in a race?

A: No.

Q: Did you get any scholarship offers?

A: Not yet.

Q: In fact, your significant other broke up with you to go out with Strusa just before your senior year, correct?

A: I did the breaking up.

Q: Have you ever taken Epogen?

A: No.

Q: Have you ever taken any performance enhancing drugs?

A: Yes, everyone does.

Q: Would that everyone include Strusa?

A: Absolutely. Alex supplied the team.

Q: Did you tell Skinner to search Strusa's locker?

A: I can't believe you're asking me that.

Q: Did you tell Skinner to search Strusa's locker, yes or no?

A: I'm not going to acknowledge your question with an answer.

Q: Did you tell Skinner to search Strusa's locker, yes or no?

A: I've answered the question.

*Defendant's Counsel:* Move on.

Q: Did you plant Epogen in Strusa's locker and tell Skinner?

*Defendant's Counsel:* Objection - don't answer that.

A: No.

Q: Cameron, do you mind if I call you Cameron?

A: No.

Q: What are you doing now?

A: I'm in a deposition.

Q: No, I mean for college.

A: I've decided to take some time off before pursuing my collegiate career.

Q: Where were you accepted?

A: Well, I'd been wait - listed to a few schools.

Q: Why?

A: I don't know. Maybe my grades.

Q: Thank you. That's all I have.

*Defendant's Counsel:* [clears throat] Cam, just one thing - ah - you've been good friends with Strusa for years right?

A: Yep.

Q: You'd see Alex almost every day?

A: Yep.

Q: Did you notice any changes in Alex during his senior year?

A: Not really, except for the Spring.

Q: What do you mean except for the Spring?

A: We helped Alex's dad move out of their house during April vacation. It really sucked. Alex was really down, didn't talk much after that.

Q: Thank you.

*Deposition ended.*

*Struble Stenographers  
Portsmouth, New Hampshire*

# FRANKLIN UNIVERSITY

August 1, 2000

Alex Strusa  
31 Chasebrook Circle  
New Concord, New Hampshire 03303

Re: Rescission of Acceptance, Scholarship

Dear Alex:

I regret to inform you that Franklin University's Offer of Admission is rescinded. Further, the full financial athletic scholarship offered through our athletic department is withdrawn.

Your Offer of Admission was contingent upon satisfactory completion of high school. Through our normal procedures of verifying this condition, we received a copy of your final official transcript from New Concord High School on July 17, 2000. Based upon the Admission Committee's review of your transcript, we determined your completion of high school was not satisfactory to Franklin University. Enclosed is your \$1,000 deposit.

You may appeal this decision. If you choose to do so, please submit your appeal in writing, directed to the Admissions Committee, no later than August 14, 2000.

Best regards.

Sincerely,

J. Liendecker  
Director of Admissions

Enclosure

**Franklin University 36 Bow Street Franklin, Michigan 33940 517-232-7439**

MEMORANDUM OF UNDERSTANDING

Entered into this 1st day of February, 2000, Alex Strusa (“Strusa”), the New Concord School District (“NCSD”), and Principal Skinner (“Skinner”), agree as follows:

WHEREAS, Skinner, as Principal of the New Concord High School, suspended Strusa on January 3, 2000 for violating the NCHS zero tolerance drug policy (“disciplinary action”);

WHEREAS, Strusa appealed the disciplinary action, and has consistently denied any and all violations of said drug policy;

WHEREAS, the parties desires to resolve this matter without further appeal or conflict; and the parties therefore agree as follows:

1. Strusa shall serve the suspension from Monday, February 28, 2000, through Friday, March 3, 2000.
2. Skinner is specifically directed to remove references of this disciplinary action from Strusa’s student file.
3. This Memorandum of Understanding is a compromise of a disputed issue, intended to resolve this matter. No party to this Memorandum of Understanding admits any wrong doing or liability.
4. The terms of Strusa’s disciplinary action and this Memorandum of Understanding shall remain confidential.
5. All parties have had the opportunity to review this Memorandum of Understanding with legal counsel.

\_\_\_\_\_/S/  
Witness

\_\_\_\_\_/S/  
Assistant Superintendent  
New Concord School District

\_\_\_\_\_/S/  
Witness

\_\_\_\_\_/S/  
Principal Skinner

\_\_\_\_\_/S/  
Witness

\_\_\_\_\_/S/  
Alex Strusa



## CLASS I OFFENSES ( Major)

Violence, weapons, and crime will not be tolerated on School District property or at any School District sponsored event. These acts are the most severe violations of the behavior code. Offenses at this level usually go beyond the school discipline system and almost always draw upon law enforcement authorities. All studies involved in Class I offenses will be removed from school immediately.

STUDENT OFFENSES	ELEMENTARY RESPONSE	MIDDLE SCHOOL RESPONSE	HIGH SCHOOL RESPONSE
Bringing or possessing a firearm, as defined in Section 921 of Title XVIII of the U.S. Code, on school grounds or within the "Safe School Zone" without the written authorization from the Superintendent			<ul style="list-style-type: none"> <li>• Contact with parent/guardian</li> <li>• Contact with police department</li> <li>• Five-day (5) out-of-school suspension from principal</li> <li>• Fifteen-day (15) out-of-school suspension from the Superintendent's office with a recommendation for expulsion</li> <li>• Expulsion from school by Board of Education for a minimum of twelve (12) months</li> <li>• When applicable, restitution for damages</li> </ul>
<p>Possession of a pellet, BB gun or BB rifle on school grounds or within the "Safe School Zone"</p> <p>Distribution, exchange, or selling of drugs</p> <p>Starting or attempting to start a fire on school property</p>			<ul style="list-style-type: none"> <li>• Contact with parent/guardian</li> <li>• Contact with police department</li> <li>• Five-day (5) out-of-school suspension from principal</li> <li>• Fifteen-day (15) out-of-school suspension from the Superintendent's office with a recommendation for expulsion</li> <li>• Expulsion from school by Board of Education for a minimum of twelve (12) months</li> <li>• When applicable, restitution for damages</li> <li>• Expulsion from school may be a determination by the Board of Education</li> <li>• When applicable, restitution for damages</li> </ul>
Using or threatening to use any dangerous object, weapon, destructive devices, or any instrument which might be capable of inflicting bodily injury; and/or assaulting, attacking or threatening to cause physical injury with or without any dangerous object to any adult or student			<ul style="list-style-type: none"> <li>• Contact with parent/guardian</li> <li>• Contact with police department</li> <li>• Five-day (5) out-of-school suspension from principal</li> <li>• Fifteen-day (15) out-of-school suspension from the Superintendent's office</li> <li>• Optional request of expulsion to the Board of Education</li> <li>• Expulsion from school may be a determination by Board of Education</li> <li>• When applicable, restitution for damages</li> </ul>
Possession of alcohol, illegal drugs or drug paraphernalia or being under the influence of alcohol, illegal drugs or any substance purported to be an illegal drug			<ul style="list-style-type: none"> <li>• Contact with parent/guardian</li> <li>• Contact with police department</li> <li>• Five-day (5) out-of-school suspension from principal</li> <li>• Fifteen-day (15) out-of-school suspension from the Superintendent's office with a fifteen-day (15) suspension held in abeyance if drug assessment with a certified alcohol/drug counselor is conducted and assessment recommendations followed</li> </ul>

**CLASS I OFFENSES ( Major)  
(Continued)**

STUDENT OFFENSES	ELEMENTARY RESPONSE	MIDDLE SCHOOL RESPONSE	HIGH SCHOOL RESPONSE
Causing a false fire alarm or a bomb scare	<p align="center"><b>PROCEDURAL RESPONSES TO CLASS I OFFENSES (AS LISTED TO THE LEFT)</b></p> <p>Discipline Responses for any Class I Offense in any School District Building, "School Safety Zone," or at any school function shall be as follows:</p> <ul style="list-style-type: none"> <li>• Contact with parents</li> <li>• Five-day (5) out-of-school suspension</li> <li>• Optional request of up to fifteen (15) days additional out-of-school suspension to the Assistant Superintendent</li> <li>• Optional request of expulsion to the Board of Education</li> <li>• Contact with law enforcement authorities</li> </ul>		
Any act of sexual violence			
Possession of any dangerous object, weapon, fireworks, destructive devices or any other instruments which may be capable of inflicting bodily injury			
Unlawful entry			

**CLASS II OFFENSES (Intermediary)  
(Continued)**

STUDENT OFFENSES	ELEMENTARY RESPONSE	MIDDLE SCHOOL RESPONSE	HIGH SCHOOL RESPONSE
Sharing, distributing or having for sale any demeaning publication including, but not limited to, the following areas: race, color, ethnic origin, religion, sex, sexual orientation and disability status.	<p align="center"><b>SEE: RESPONSES TO CLASS II OFFENSES AS LISTED ON PREVIOUS PAGE</b></p>		
Repeated Class III Offenses			
Any other violation which the school principal considers reasonable to fall with the category due to its severity			
Extorting or maliciously threatening another student in order to gain money or objects belonging to that student	Class II Response	See Class II Response	See Class I * Response
Possession of a toy gun	Class II Response	See Class I * Response	See Class I * Response

\* Possible Responses to Class I Offenses are found Page 14.

## **STUDENT SERVICES**

### **Announcements/Bulletins**

Each day during the last three minutes of Period 2, announcements will be made. Officers of student organizations should inform the Main Office of messages to be communicated over the PA system. In addition, teachers may also relay any pertinent information from the Principal's Bulletin to their students.

### **Cafeteria**

The cafeteria offers a breakfast selection from 6:45 to 7:15 AM. During lunch times, the cafeteria offers hot, cold, a la Carte and salad bar selections. Students should inquire about the free/reduced cost food programs through the Cafeteria Director or their Guidance Counselor. **FOOD FROM THE CAFETERIA OR VENDING MACHINES MAY NOT BE BROUGHT BACK TO THE CLASSROOM.**

### **Career Center**

The Career Center located in B-220, assists students in their plans for the future. Interested students may stop in to make an appointment to learn more about career opportunities, job availability, occupational interests, and aptitude for particular careers. In addition, students may research post-secondary opportunities, experience various career fields, and investigate entry-level opportunities.

### **Financial Assistance**

Students with a legitimate financial need may get help in order to receive meal and transportation services, and/or field trip fees. Students should contact their Guidance Counselor for more information.

### **Insurance**

Students participating in school sponsored sports activities are strongly advised to secure school insurance.

### **Lockers**

Lockers are school property and use of them is granted to students for securing books, school materials, and personal belongings. The school retains ownership of the lockers and the right to inspect them or to reclaim them. General or specific searches of school property may be conducted at any time.

Lockers will be assigned to sophomores through the Purple House Office. Sophomores having a problem with their locker should contact that office. If you

are a Junior or Senior and would like to receive a locker please notify your 1<sup>st</sup> period teacher after September 13, 2000.

### **Auditing a Course**

Under very special circumstances and with recommendation of the student's guidance counselor, an auditing request may be submitted to the Associate Principal at the time of scheduling. Contact Guidance Department for further information

### **Student Records/Transcripts**

High School will not release any information in a student's record without proper written authorization from the student, parent or guardian. All records and transcripts will be processed through the guidance office.

### **Early Graduation**

If a student has met the requirements for graduation at the end of the first semester of his/her senior year, he/she may then submit an application to the Principal for early release from school. These requests are examined judiciously and are granted or denied with the student's best interest in mind. Early graduation from school does not preclude students from participating in graduation ceremonies in June.

### **Scholarships**

The Guidance Office maintains an updated list of local, regional, and national scholarships available to eligible graduates. Seniors are encouraged to contact their counselors for more information.

### **Withdrawals/Transfers/Re-entries**

To withdraw or transfer from school, contact your house officer. To re-enter, the student must first meet with the Associate Principal who may include the chat team in the re-entry process.

**New Concord High School**  
**New Concord, New Hampshire**  
**OFFICIAL TRANSCRIPT**

Name: Alex Strusa ID# 123456789  
 Exact: XX  
 Approx. \_\_\_\_\_ Cumulative GPA **3.257** Class Rank **170** Out of **682** Based on **7** Semesters

Birthdate: 9/02/82  
 Graduated: 6/11/00

	1st Qtr	2nd Qtr	1st Sem	3rd Qtr	4th Qtr	2nd Sem	Credits
<b>Courses taken in Grade 9</b>							
1 Algebra 1	B-	C	B-	C	B-	C+	1.000
1 Biology	B-	B-	B-	C	C-	C-	1.000
1 Man and World	B	B+	B				0.500
1 Man Roman Medieval				B-	B+	B+	0.500
1 Spanish 1	A-	B+	A-	B+	B+	B+	1.000
2 Econ For Everyone				A-	A-	A-	0.500
2 English 1	B-	B-	B-	B	A-	B+	1.000
*G Phys Education				A	A	A	0.500
<b>Courses taken in Grade 10</b>							
1 Chemistry (Soph Only)	B	C+	B-	C+	B	B-	1.000
1 Geometry	B-	B-	B-	B	B	B	1.000
1 Spanish 2	B-	A-	B	B+	B+	B	1.000
2 English 2	A-	B-	B	B+	A+	A	1.000
*Elements of Art	A-	A-	A-				0.500
*Health	B+	A-	B+				0.500
*Physical Education			A	A	A		0.500
*Understanding Computer				A	A	A	0.500
<b>Courses taken in Grade 11</b>							
1 English 3	C+						0.000
1 Physics	B-	B-	B-	B	B	B-	1.000
1 Spanish 3	A	B	B	B	B-	C	1.000
1 US History	A-	B	B-	B+	B-	B+	1.000
2 Algebra 2	B	B-	B-	B	B	B	1.000
2 English 3	C+	A-	B+	A-	B+	A-	1.000
* Art 2				A-	A-	A-	0.500
* Photography 1	A	B+	A-				0.500
<b>Courses taken in Grade 12</b>							
1 Environmental Science	B	B	B-				0.500
1 Law/Ethics	C+	B	B-				0.500
1 Woman as Hero	C	C	C+				0.500
2 Business Law				B	B	B	0.500
2 Intro Public Speaking				B	B+	B	0.500
2 Pre-Calculus	B-	D	C	C-	D+	D+	1.000
5 AP American Government				C	C	C	0.500
5 AP Economics	B+	C-	C	D	C-	D+	1.000
*Adv Computer Applicatn				B	A+	A-	0.500
* Business Management	A-	B-	B+				0.500

47 MINUTE PERIODS  
 5 TIMES / WEEK  
 180 DAYS / YEAR

HONOR ROLL GRADES  
 ARE B- AND ABOVE

A+	98 - 100
A	95 - 97
A-	92 - 94
B+	89 - 91
B	86 - 88
B-	83 - 85
C+	80 - 82
C	77 - 79
C-	74 - 76
D+	71 - 73
D	68 - 70
D-	65 - 67
F	0 - 64

Extracurricular

Honors  
 Varsity Track  
 Varsity Cross Country  
 Varsity Indoor Track  
 Student Government  
 Mock Trial Team

Disciplinary Action

Grade 9 - none  
 Grade 10 - none  
 Grade 11 - none  
 Grade 12 - 5 day suspension; Class I offense

All students who enter New Concord High School prior to their senior year are ranked.  
 Rank is based on weighted grades in academic subject areas only.

# **NH Bar Association**

## **Mock Trial 2001**

### Jury Instructions

The following jury instructions are taken directly from the NH Civil Jury Instructions manual. These instructions are **only intended to guide students** in some of the issues presented in this case.

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Students may also want to consider *State v. Tinkham*, 143 NH 73 (1996), and *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985).

## **24.1 Private Plaintiff v. Private Defendant - Common Law Strict Liability**

In order for the plaintiff to recover for defamation (libel per se, slander per se), the plaintiff must prove that it is more probable than not that the defendant intentionally or without reasonable care,<sup>1</sup> communicated or published a defamatory statement, of or concerning the plaintiff, to a third party who understood its defamatory meaning.<sup>2</sup> In other words, to establish defamation, the defendant must have failed to exercise reasonable care in publishing, without, a valid privilege, a false and defamatory statement of fact about the plaintiff to a third party.<sup>3</sup>

## **24.2 Public Official/Figure v. Defendant - Speech of Public Concern**

The plaintiff must prove that it is more probable than not that:

1. The defendant intentionally or without reasonable care<sup>1</sup> communicated or published a defamatory statement, of or concerning the plaintiff, to a third party who understood its defamatory meaning.<sup>2</sup>

2. The statement was false.<sup>3</sup>

3. The plaintiff must also prove by clear and convincing evidence that the defendant made the defamatory statement with actual malice, that is, with knowledge that it was false or with reckless disregard of whether it was false or not.<sup>4</sup>

## **24.4 Defamatory Statement**

The statement complained of must be defamatory, that is, it must tend to lower, the plaintiff in the esteem of any substantial and respectable group, even though it may be quite a small minority.

## **24.5 Publication**

Publication requires that the defamatory statement be made to a third person who understands its defamatory meaning and its applications to the plaintiff.

## 24.7 Public Figure

The only issue before you is to determine whether or not the plaintiff is a private person or a public figure.

A person is deemed to be a public figure on one of two grounds:

1. Where the person has achieved such pervasive fame or notoriety that that he/she becomes a public figure for all purposes, and all contexts. An example of this might be a sports celebrity; or
2. Where a person voluntarily injects himself/herself or is drawn into a particular public controversy and thereby becomes a public figure for that limited range of issues.

Public figures are thus those persons who are involved in issues in which the public has a justified and important interest.

Under the first criterion, where one achieves pervasive fame or notoriety, the question is whether the plaintiff enjoys sufficient general notoriety, such as a household name, to be a public figure for all purposes.

Under the second criterion, that is, the voluntary injecting of one's self, or of being drawn into a particular public controversy, there must be a voluntary involvement in a public issue by the plaintiff. In other words, did the plaintiff intentionally engage the attention of the media in an attempt to influence the outcome of the event with which he/she is involved? An individual would be a public figure if he/she thrust himself/herself into the vortex of public issues, or if he/she engaged the public's attention in an attempt to influence the outcome of a public issue. Public figures include not only persons who, by reason of their fame, shape events in areas of concern to society at large or to such a degree as to be of a household stature, but also those who are intentionally involved on the resolution of important public questions. In short, those who attain the status of a public figure have assumed roles of a special prominence in the affairs of society or have thrust themselves in the forefront of particular public controversies in order to influence the resolution of the issues involved.

So if the plaintiff does not have the status of a household name, then he/she is a private person, unless he/she has intentionally sought media exposure by voluntarily thrusting himself/herself into public attention or otherwise distinguished himself/herself with respect to the subject matter of the alleged defamatory statement.



## **24.8 Actual Malice**

If you determine that the plaintiff is a (public official, public figure), the plaintiff may not recover unless you find that the plaintiff has proven by clear and convincing evidence that the defamatory statement was made with actual malice, that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

## **24.10 Truth - Private Figure**

Justification is established if the facts alleged were substantially true and published with justifiable motive.

## **24.12 General Damages - Defamation Per Se**

When a defamatory statement charges the plaintiff with a crime or with activities which would tend to injure him/her in his/her trade or business, no proof of specific damages is required. The plaintiff is entitled to recover all damages which would normally result from such a defamation, such as harm to reputation.

### **14.13 Special Damages**

You may award to the plaintiff those damages proven to have resulted and that will result in the future as the natural and direct consequence of defendant's defamatory act. These damages include harm to personal reputation, harm to business reputation, credit reputation, loss of business and any other damage proven to have resulted as the normal and direct consequence of the defamation.

Defamation

§ 24.14

### **24.14 Liberal Compensatory Damages**

If you find that the defendant acted with ill will, hatred, hostility, or evil motive in publishing the defamatory statement, plaintiff is entitled to recover more liberal damages. Such damages include compensation for mental distress, insult, degradation and injured feelings and pride.

### **24.15 Actual Damages - Private Plaintiff v. Defendant - Speech of Public Concern**

The plaintiff must prove that it is more probable than not that as a result of the defendant's action, the plaintiff has suffered actual harm or injury such as impairment of reputation and standing in the community, personal humiliation and mental anguish and suffering.

### **32.35 Damages - General**

The purpose of any damages awarded in this case is to put the plaintiff in the same position it would have been in if the defendant had fully performed its promises under the contract. You should compare the position of the plaintiff as a result of the defendant's violation of the agreement, to the position the plaintiff would have been in had the defendant fully performed its promises.

You may award to the plaintiff only those damages which the defendant, at the time the contract was made, had reason to foresee as a probable result of its violation of the agreement.

Contracts

§ 32.36

### **32.36 Damages - Computation**

The law does not require mathematical certainty in computing damages. However, your computation of the damage award must be supported by the evidence; it cannot be based on speculation.

### **32.37 Damages - Consequential**

Damages suffered by the plaintiff as a consequence of the defendant's violation of the contract can be awarded by you if those damages were reasonably foreseeable by the parties at the time the contract was made. You may conclude in either of two ways that certain damages were foreseeable:

(1) They were foreseeable if they resulted in the ordinary course of events from the violation of the contract.

(2) They were foreseeable if the defendant had reason to know the relevant facts and to foresee that this loss would occur.

**32.40 Damages - Emotional Distress**

You may not award to the plaintiff any damages representing compensation for any mental or emotional distress which the plaintiff claims resulted from the violation of the contract by the defendant. Recovery of such damages in contract actions is not permitted.

**32.41 Damages - Mitigation**

The plaintiff has the obligation to minimize his/her damages to the extent possible and practical. In assessing the damages recoverable by the plaintiff, you may not give to the plaintiff any award for harm resulting from the plaintiff's failure to make reasonable efforts to minimize his/her own losses. The plaintiff may not recover for any damages which could have been avoided by his/her own reasonable efforts, without undue risk, expense or humiliation.

**32-42 Damages - No Multiple Recovery**

The plaintiff cannot recover more than once for the same loss even if he or she alleges different theories of legal fault on the part of the defendant(s). Therefore, if the plaintiff's claims arise out of a common core of facts, only a single recovery will be made even if you find for the plaintiff on more than one of his or her claims or if you find against more than one defendant.