

## Mock Trial 2018-19 Clarifications and Corrections

### NEW CORRECTION (1/10/2019)

Note: On page 26, line 18 (Norbury affidavit) - should be to *Exhibit 5 found on page 35, EXHIBIT 5 SCHOOL INVESTIGATION FORM, BULLYING, HARRASSMENT, OR INTIMIDATION INCIDENT SCHOOL INVESTIGATION FORM*, instead Exhibit 2, page 30.

### OTHER

- The lack of Instagram likes was not an intentional omission, please see the corrected evidence to replace pages 27-29.
- A Instagram "dictionary" of acronyms/slang is provided below (for the judges/coaches/anyone born before 1990)

Fr-for real

lkr- I know right

Kys- kill your self

Smh- shaking my head

Sus- suspect

The new verbiage for Rule 302 does not read the same as what is in the case book on page 8 and seems to be in conflict with rule 305. Could you clarify that? Is there a reason the new verbiage is not in Rule 302?

- It is stipulated that all witnesses have reviewed all affidavits and exhibits.
- Please see the webpage below for the definition of "going viral" as it is used in the case;  
<https://www.collinsdictionary.com/dictionary/english/go-viral>
- p.12 Named Complainant under "Statement of Charge" should be Lorraine Baines McFly.
- p.12 Statement of Charges should be dated 11/26/2018.
- All jury instructions are stipulated to.
- p.16, last sentence of Paragraph 11 states that "Marty looked upset" but should read Biff.
- p.16, paragraph 16 refers to "open fists" what is the meaning of that term?

- p.20 paragraph 3 should read “difference between Conflict, compared to Harassment, Intimidation, and Bullying (HIB)”
- On page 20, Dr. Emme(tt) Brown is identified that she has a MD in Psychiatry (in the bolded above the affidavit), however ze received their doctorate in Psychology from Loyola. PhD does not make one an MD and Psychology is not Psychiatry.
- p.40-42 are for informational purposes only, they are not part of any exhibit.
- Question - a close reading of the Stipulated Jury Instruction on Page 15 in combination with the Statute CR Section 3-805(b)(1) on Page 47 suggests that "Electronic Communication" includes only communication “sent to a person” (such as emails) - not posts on Instagram. CR Section 3-805(b)(2) - which is not included in the charge- would cover “interactive computer service” which could include Instagram. If this was not the intention of the drafters, perhaps they could stipulate that Instagram posts are considered Electronic Communication.

Question-

At this point I am hoping that someone can clarify "Opinion of Ultimate Issue" on page 15, possibly by using an example. Am I correct in assuming that this only concerns expert witnesses or is it for all witnesses?

Suggested Response\_

The Statement of Charges (page 12) state that the statutory basis for Count 1 is CR 3-805(b)(1).

The version of that statue provided in the case materials (page 47) provides as follows:

(1) A person may not maliciously engage in a course of conduct, through the use of electronic communication, that alarms or seriously annoys another:

(i) with the intent to harass, alarm, or annoy the other;

(ii) after receiving a reasonable warning or request to stop by or on behalf of the other; and

(iii) without a legal purpose.

The elements of this crime do not include proof of damages sustained by the victim. Stated another way-transmission of the prohibited electronic communications is a crime whether it hurts someone or not. All the communication must do is “alarm or seriously annoy.”

In our case, the McFly affidavit contains dramatic testimony regarding the emotional and psychological damages sustained by McFly as a result of defendant Tannen’s post. I fear, as it sits right now, none of that testimony can be elicited because, under CR 3-805 (b)(1) it is legally irrelevant.

I can’t believe the drafters of the problem wished to have the evidence so limited. One of the joys of mock trial is seeing good student witnesses presenting damage testimony. Without this aspect of the case, this year’s problem becomes significantly less interesting-both as a legal problem and as a performance.

Moreover, I don't think this problem is resolved by inclusion of the assault claim. The damages attributable to the assault claim are separate from those attributable to viewing the post.

I think there is an easy "fix" for this issue.

Instead of charging McFly only with CR 3-805(b)(1)-the State can charge the defendant with CR 3-805(b)(1) and CR 3-805(b)(2). Section (b)(2)-which is already provided to the students in the case book at page 47-provides:

(2) A person may not use an interactive computer service to maliciously engage in a course of conduct that inflicts serious emotional distress on a minor or places a minor in reasonable fear of death or serious bodily injury with the intent:

(i) to kill, injure, harass, or cause serious emotional distress to the minor; or

(ii) to place the minor in reasonable fear of death or serious bodily injury.

Proof of this crime requires proof that the defendant's actions inflicted "serious emotional distress on a minor". That would permit evidence of McFly's emotional damages to be presented and argued. The Statement of Charges (page 12) state that the statutory basis for Count 1 is CR 3-805(b)(1).

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