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NOTICE:

This tryout packet was assembled for the sole purpose of providing aspiring USC Mock Trial Team members with a dynamic tryout opportunity.

Nothing is to be inferred, interpreted or gleaned from these characters or the issues covered. These materials are not intended to communicate or advance any member (coaches & students, alike) of the Team's political, religious or socio-economic beliefs. Please prepare carefully and completely. Good luck!

** Jeff Skinner, an alumnus of the USC Dornsife Trial Advocacy Program and Columbia Law originally created this tryout packet for our 2014 tryouts. His hard work and creativity continue to benefit us!*

TRYOUT INSTRUCTIONS

(mandatory attorney AND witness)

ATTORNEY & WITNESS TRYOUT DIRECTIONS:

BASED UPON THE INSTRUCTIONS AND FACT PATTERN, you will be responsible for preparing ALL of the following:

1. ATTORNEY - Prepare a 3 to 5 minute oral argument/statement in defense of London La Quinta (closing or opening, it doesn't matter -- just be passionate!).
2. ATTORNEY - Prepare a 3 to 5 minute cross examination of the *defendant* in this case, journalist **London La Quinta**. Your cross-x of the defendant should make GOOD points to benefit the plaintiff's case.
3. WITNESS - **Play the plaintiff, Tony/i Williams**, in whichever manner you wish to portray him/her . You can play Williams in a serious, emotional, and/or comedic way -- or some other *creative* way. **YOU ARE TONY/I/I WILLIAMS** - for 3 to 5 minutes. Make them count.
4. YOU - Be prepared to answer questions about yourself/intentions following your performances.

When performing these exercises, please exhibit the most skill you can muster. We are looking for poise, intensity, oral dynamics and mental acuity. Remember, first impressions last longest.

SPECIAL CONSIDERATIONS FOR THE WITNESS:

Create a character for this witness and be prepared to perform as the character would when questioned on direct examination at trial. You will have 3 to 5 minutes to answer

1 questions based in part on the facts in this packet -- BUT MORE-SO ON STUFF YOU
2 MAKE UP (we want to see how your imagination works). Feel free to use your favorite
3 movie character, someone from your family, your imaginary friend, a real friend --
4 whomever. During those minutes, do the best you can to make us believe that you are
5 the character you have created. Make use of whatever creative attire or props you
6 choose. WHEN YOU ARE THE CHARACTER, WE WANT TO FEEL IT!!! BE
7 CREATIVE!!! BE PASSIONATE!!! BE GREAT!!!

8
9 **Make this GREAT! Mediocrity will not get you far!**

10 THE CASE

11 INTRODUCTION

12 This is a defamation case involving celebrities and popular blogger. Forgive us for the
13 lack of political depth. But -- HEY -- this *is* HOLLYWOOD!!!

14 UNCONTESTED FACTS

15 *(Each witness has sworn to the accuracy of these facts and each witness must and will*
16 *admit any fact herein attributable to (words said by, or actions by) that witness, if*
17 *confronted with this statement of facts -- with which the witness will also admit*
18 *familiarity. If using these facts to impeach, refer to them as “the uncontested facts.”)*

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29 Tony/i Williams is a 27 year old entertainer. Williams began his/her career as a
30 child actor in a mid 1990’s hit TV show called “Kicking it with Cooper” where
31 Williams played Cooper’s 12 year old adorable, spunky and outgoing nephew/niece.
32 Williams played this role for 6 years.

1 When Williams turns 17, life changes for the worst. S/he begins hanging out with
2 the wrong crowd. Long time best friend and other child star Charles Hancock begins to
3 have a negative influence over Williams getting Tony/i into drugs cocaine and
4 prescription cough syrup containing codeine and promethazine.

5 Williams’ life takes a downward spiral when s/he is arrested and convicted for
6 breaking and entering and possession of cocaine. S/he is found wandering inside her
7 neighbor’s home visibly intoxicated. Williams claimed that the end of the world is
8 coming and that s/he saw an unidentified flying object over the Hollywood sign and
9 needed a place of refuge. For this offense, Tony/i serves one year in prison and leaves at
10 the age of 20 in 2001.

11 Shortly after Williams is released, s/he becomes a motivational speaker and poet.
12 About 6 months later, s/he taps into the music industry and becomes a well known
13 musician and TV personality. At the age of 22, Tony/i gets married to Pat Cross—
14 wealthy owner of the largest bar and restaurant chain in Los Angeles. They have a set of
15 twins that they raise together for three years in the Hollywood Hills before they divorce
16 when Williams is 25. Williams gains full custody of the kids; however, Williams
17 becomes extremely lonely so s/he begins to hang out with his/her old friend, Charles,
18 who claims he is no longer a part of the world of drugs and alcohol to which he was
19 once accustomed. Charles, too, has tapped into the music industry as a sultry R&B artist
20 mostly known for utilizing the vocoder. They work together for months in the studio
21 and produce a new duet album entitled, “Dathangz-I-do-2-ya.” They decide to have the
22 album release party at a new Hollywood club called “Shaw-T.” Attending this event is
23 local radio personality and part-time celebrity blogger/journalist, London La Quinta.

24 London La Quinta has climbed the ranks to become a top celebrity blogger/journalist
25 in the industry over the past 5 years. When Tony/i Williams got out of prison, every
26 journalist/blogger in the business wanted the first interview with her/him about time
27 spent in prison and his/her new boy/girl-friend. London LaQuinta’s significant other
28 was the sibling of Tony/i’s Press Representative and was luckily able to secure

1 LaQuinta this sought after interview. LaQuinta had publicized on his/her blog that s/he
2 would be speaking with Tony/i for this primetime interview. Millions of fans
3 commented on the blog saying they could not wait for this interview set for early 2002.

4 One week before the interview was set to take place, Williams backs out and decides
5 to interview with another journalist. The interview gains huge success with over 14
6 million views on the internet and tons of television air time. The journalist who
7 interviewed Williams goes on to make an enormous amount of money and steps onto the
8 playing field as a nationally-recognized and popular celebrity journalist taking La
9 Quinta's place as the top journalist in the industry.

10 La Quinta, on the other hand, is left humiliated. La Quinta tries for years after to get an
11 interview with Tony/i Williams and no calls are ever returned. Even after news breaks
12 out that Tony/i and Charles Hancock are making an album together, the representatives
13 of Tony/i refused to give La Quinta any time with him/her.

14 La Quinta was able to gain access as publicity to the album release party at "Shaw-
15 T." At the album release party, Tony/i is seen drinking multiple alcoholic beverages and
16 leaving the main dance floor several times to go into a back room with Charles, their
17 agents, their managers, and the rest of their entourage. S/he was also seen at one point
18 wiping what appeared to be blood from his/her right nostril.

19 As Tony/i, Charles and their entourage are leaving the club from the backdoor, La
20 Quinta sees them and overhears them talking as they are walking to a black Bentley
21 coup. Luckily for La Quinta, s/he is the only journalist outside in the back of the club.
22 La Quinta had no luck getting Tony/i's attention inside the club so s/he walked outside
23 with a camera to smoke a cigarette by the dumpster.

24 Right when La Quinta is about to approach Tony/i from behind to ask for an
25 interview, s/he hears Tony/i say "No, Charles, I'm not going to do that. Not right now"
26 and then runs behind the dumpster, listens further and watches to try to get a picture. As
27 La Quinta watches, s/he sees something suspicious in Charles' hand. S/he looks closer
28 and sees that Charles is holding a small, plastic bag filled with a white, powdery

1 substance reaching towards Tony/i's right hand with it. La Quinta immediately takes
2 one photograph of this with his/her camera. At the same time, Charles' manager, Otis
3 Steel, catches a glimpse of this and points this out to Charles and Tony/i. Steel gives
4 chase, but La Quinta gets away.

5 The next day while Tony/i is eating breakfast with his/her twins and searching on
6 the web, s/he sees the picture of herself/himself and Charles on La Quinta's blog. There
7 is a blog post beneath it and directly above the photo are the words, "Old Habits Die
8 Hard." Tony/i immediately contacts his/her press representative in a very worried state.
9 The press rep offers assurances that the picture will be removed; However when Tony/i
10 is at the supermarket later that day, s/he sees three other celebrity tabloids with the
11 same photograph and the same article by London La Quinta. Concerned about what
12 this will do to her/his reputation and career and how this will affect her/his children,
13 Tony/i files a lawsuit for libel.

14 **APPLICABLE LAW**

15 *(Fictitious Statutes and Cases)*

16 **Cal. Civ. Code § 45. Libel defined**

17
18 Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other
19 fixed representation to the eye, which exposes any person to hatred, contempt, ridicule,
20 or obloquy, or which causes him to be shunned or avoided, or which has a tendency to
21 injure him in his occupation.
22

23 **Elements of libel law**

- 24
- 25 1. Defamatory language on the part of the defendant
 - 26 2. The defamatory language must be "of or concerning" the plaintiff
 - 27 3. Publication of the defamatory language by the defendant to a third person
- 28

1 4. Damage to the reputation of the plaintiff

2 5. Falsity of the statement

3

4 **Breakdown of each element**

5 1. Defamatory Language - Language tending to adversely affect one's reputation.
6 Statements of mere opinion are generally not actionable.

7 2. "Of or Concerning" Plaintiff - A reasonable reader/viewer would understand that the
8 defamatory statement referred to the plaintiff.

9 3. Publication - When the statement is communicated to someone other than the
10 plaintiff.

11 (a) Publication can be either intentionally or negligently.

12 (b) Each repetition is a separate publication (unless it's a newspaper, magazine, etc.).

13 (c) The author and/or the publisher can be liable for the publication.

14 (d) Someone who repeats the defamatory statement can also be liable, even if they
15 explicitly state that they don't believe the statement to be true).

16 (e) Someone selling the writing or playing the audio can be liable if they knew or
17 should have known of the defamatory content.

18 4. Damage to Reputation - In libel cases, the damages are generally presumed.

19 5. Falsity - For this exercise, assume this is a matter of *public concern*. Thus, the
20 plaintiff must prove the statements are false.

21 6. Fault - (i) If the plaintiff is a public figure/official, the plaintiff must prove that the
22 defendant had knowledge that the statement was false or that the defendant recklessly
23 disregarded the potential falsity of the statement. (ii) If the plaintiff is a private figure,
24 the plaintiff must only prove that the defendant was negligent regarding the falsity of the
25 statement.

26 (a) A public figure is anyone who has achieved pervasive fame or notoriety or has
27 *voluntarily* assumed a central role in a particular public controversy (for example,
28 Cindy Sheehan, the soldier's mother who vigorously protested Bush and the Iraq war).

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Possible Defenses

- 1. Consent - If the plaintiff consented to the publication, this is a complete defense.
- 2. Truth - The truth of the statement is a complete defense.
- 3. Absolute Privilege - Any remarks made during judicial proceedings (under oath in court), by legislators in debate, by federal executive officials, in "compelled" broadcasts, and between spouses. (Not at issue here.)
- 4. Qualified Privilege - Some privileges can be defenses, unless they are lost because it is not within the scope of the privilege, or if the speaker acted with malice. (Not at issue here.)

Case Law

MacLeod, v. Tribune Publishing Company, INC., Supreme Court of California. 1959 -- To constitute a libel it is not necessary that there be a direct and specific allegation of improper conduct, as in a pleading. The charge may be either expressly stated or implied; and in the latter case the implication may be either apparent from the language used, or of such a character as to require the statement and proof of extrinsic facts (inducement, colloquium, and innuendo) to show its meaning. In the last case, proper allegations and proofs of the facts necessary to make the meaning of the language apparent will be required. Otherwise, whether the charge be directly made or merely implied, the publication -- without averment, colloquium, or innuendo -- will, in itself, constitute a libel.

Polygram Records, INC. v. The Superior Court of Napa County., Court of Appeal of California, First Appellate District, Division Two. 1985 -- If the material complained of is not fairly susceptible of a defamatory meaning, it is proper to dismiss the action. Conversely, if the material is unambiguous and actionable on its face, it is proper to so

1 instruct the jury and refuse to permit the publisher to show that the utterance was used
2 and understood in an innocent sense. If the language is capable of two meanings, one
3 harmless and one defamatory, it is the province of the trier of fact to determine in which
4 sense the language was used and understood.

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GOOD LUCK!

the USC Dormsife Trial Advocacy Program