



ILLINOIS STATE
BAR ASSOCIATION

Illinois State Bar Association
424 South Second Street, Springfield, IL 62701
800.252.8908 217.525.1760 Fax: 217.525.0712

Illinois State Bar Association High School Mock Trial Case

Jersey Johnson

v.

Columbia Broadcasting System

A fictional case based on the *War of the Worlds* radio broadcast in 1938.

None of the characters in this case are real. Any similarity between these characters and living people is coincidental and unintentional.

© Copyright 2013 Illinois State Bar Association

IN THE CIRCUIT COURT OF THE 24TH JUDICIAL CIRCUIT,
LINCOLN COUNTY, ILLINOIS

Jersey Johnson,)	
Plaintiff)	
)	
v.)	No. 03-4242
)	
Columbia Broadcasting System,)	
Defendant)	

COMPLAINT

NOW COMES the Plaintiff, Jersey Johnson, by his/her attorneys, and for his/her Complaint against the Defendant, Columbia Broadcasting System, states as follows:

1. Plaintiff, Jersey Johnson, is an adult resident of a family farm in a secluded area just outside of Grovers Mill, Lincoln County, State of Illinois.
2. The Columbia Broadcasting System (“CBS”) is a commercial broadcast radio network with its principal place of business in New York City, State of New York, and with affiliate network stations located in, among other places, Logan County, State of Illinois.
3. As part of its radio network operations, and at all times relevant to this Complaint, CBS produced, programmed and aired by radio broadcast a radio drama anthology series known as the “Mercury Theatre on the Air.” The Mercury Theatre on the Air was known as a “sustaining show”, in that it aired without commercial interruption during its show episodes.
4. At all times relevant to this Complaint, that radio program was broadcast by CBS to residents of Grovers Mill, Lincoln County, State of Illinois.

5. On the evening of October 30, 1938, CBS, through its radio program Mercury Theatre on the Air, broadcast as an episode of that radio series a program known as “The War of the Worlds”.

6. That program was broadcast by CBS primarily in the form of simulated news bulletins that suggested to listeners that an actual alien invasion of the Earth by Martians was currently in progress and occurring, in part, near a “farm” in or near “Grovers Mill”.

7. CBS purposefully and intentionally broadcast that program for the specific purposes and intent of: (a) having the program listeners believe that they were listening to live news broadcasts of the Martian invasion; and (b) invoking tension, panic, fear, and horror in the program listeners.

8. CBS should have known that there was a high probability that the manner in which it broadcast the program would inflict severe emotional distress in program listeners.

9. On October 30, 1938, Plaintiff listened to CBS’ broadcast of “The War of the Worlds” program on the radio.

10. CBS’ program caused Plaintiff to reasonably believe that he/she was listening to live broadcasts of a Martian invasion of the Earth, including in or near Grovers Mill where Plaintiff resided.

11. CBS’ program broadcast caused Plaintiff to react with tension, panic, fear, and horror.

12. At no time prior to broadcasting the program did CBS inform potential listeners of the program that CBS intended to broadcast a dramatic representation of a literary work depicting a Martian invasion of the Earth.

13. At no time during the broadcasting of the program did CBS provide timely and frequent warnings or disclaimers to alert listeners of the simulated nature of the broadcast.

14. The manner in which CBS broadcast the program, as alleged in this Complaint, constituted extreme and outrageous conduct.

15. CBS recklessly disregarded the high probability that the manner in which it broadcast the program would inflict severe emotional distress upon listeners like Plaintiff.

16. CBS's broadcast of the program did in fact inflict severe emotional distress upon Plaintiff.

17. At the time of the broadcast, Plaintiff received income by selling produce from his/her farm and from working as a part time hardware clerk.

18. As a direct result of listening to the CBS program, Plaintiff became severely emotionally distraught, reasonably believing that a Martian invasion of the Earth was taking place, in part, in or near the vicinity of Grovers Mill where s/he resided.

19. As a direct result of believing that said Martian invasion was in fact occurring, Plaintiff reasonably feared for his/her safety and his/her life.

20. As a direct result of fearing for his/her safety and life, Plaintiff took reasonable steps to protect him/herself, moving into the cellar of his/her home and remaining in that cellar until such time as s/he could reasonably believe that s/he was safe from harm.

21. At no time on the evening of October 30, 1938, when Plaintiff was listening to CBS's program broadcast, and from that time until December 11, 1938, when Plaintiff was discovered, did Plaintiff have any reasonable basis to believe that what s/he had heard from the CBS radio broadcast was not true and actually occurring.

22. As a direct result of the CBS program broadcast, Plaintiff: (a) experienced and continues to experience medically significant severe and emotional distress; (b) was unable to work his/her farm, resulting in a loss of next season's earnings; (c) was compelled to live in a cellar for some six weeks without sufficient food and drink for most of that period; (d) had experienced near starvation; (e) lost income; (f) was made the object of ridicule and insults; (g) incurred and will continue to incur medical bills for seeking medical care and treatment for emotional distress; and (h) continues to suffer anxiety, headaches, loss of sleep and poor health.

WHEREFORE, the Plaintiff, Jersey Johnson, prays that judgment be entered in his/her favor and against the Defendant, Columbia Broadcasting System, and that Plaintiff be awarded a sum in excess of \$50,000.00 to compensate him/her for the damages, losses and injuries as alleged in this Complaint, including for psychological pain and suffering, medical expenses and lost wages, and that, in addition, Plaintiff be awarded his/her costs of this action and such further relief as the Court deems just and equitable.

JERSEY JOHNSON, Plaintiff

By: A.J. Noble-Jones
One of his/her attorneys

Statement of the Case

In 1898, the writer H.G. Wells published the science fiction book “The War of the Worlds.” In 1938, on the evening before Halloween, Orson Welles and Columbia Broadcasting System’s Mercury Theater on the Air, a radio program, presented an interpretation of “The War of the Worlds” staged as “live” news flashes interspersed between musical presentations. While it was on the air, the broadcast was widely believed to be true and actually happening. In some areas, there was panic as many people ran outside to see if the United States and, in fact, the world, was under attack by aliens.

This is a fictional law suit brought by Jersey Johnson against Columbia Broadcasting System, which broadcast the program without telling listeners that the work was fictional. Actually, there was a disclaimer at the beginning of the broadcast, but the next indication that the audience was hearing a play came 40 minutes into the broadcast. By that time Johnson and his/her cousin, Logan St. Clair, had turned off their radio and had gone into hiding. They did not hear the original disclaimer that aired or the one that came 40 minutes into the program, nor the one at the end, which stated: “You have been listening to a work of fiction. Nothing you heard in the previous hours has been real.”

Johnson and St. Clair spent the next month hidden in the cellar of the home they lived in outside of Grovers Mill, Illinois, to avoid capture by the aliens. They lost their jobs. They had unplugged all appliances, including the telephone, so the aliens wouldn’t be able to locate them in their rural haven. They almost starved to death, surviving on stale food, canned goods and greens they could scavenge from their garden after dark. They received no newspapers. They did not have a television in their home and their neighbors were miles away. They hid in the cellar during the daylight hours to stay hidden from the aliens. Six weeks after the initial broadcast, the postal service noticed that their post office box hadn’t been emptied for quite some time and notified authorities (Officer Morgan Edgar) who found Johnson and St. Clair in a state of mental disarray and physical deterioration from their time in hiding.

Johnson now alleges that Columbia Broadcasting System intentionally caused emotional distress and that s/he is now ostracized in the community because of the incident.

NOTE: Although this scenario is staged in 1938, you will be trying the case using current Illinois law.

Plaintiff Witnesses

Jersey Johnson
Dr. Madison Lake, psychologist
Mulder McScully

Defense Witnesses

Kendall Hancock, Columbia Broadcasting System
Officer Morgan Edgar
Dr. Hardin White, physician

Plaintiff Witness Affidavit: Jersey Johnson

Logan St. Clair and I live on our family farm outside of Grovers Mill in Lincoln County, Illinois. This farm has been in our family since the early 1800's and we'll never leave it. The house we share has a root cellar where Logan and I headed when we heard that radio broadcast about the invasion of the aliens. I never was more afraid in my whole life.

We grow our own food and get some income from selling off what we don't eat. We also had jobs until this nasty business started. I lost my clerk job at the local hardware store and some college kid got it because it's now summertime and I've been recuperating all winter from our ordeal. My cousin Logan is getting no calls either. The entire community is laughing at us. Nothing we experienced could be seen as funny. We lived through a nightmare for a month and a half and no one is trying to understand how we feel. It's very lonely being a laughing stock.

The night before Halloween last year, my cousin and I finished our chores and sat down in front of the radio to have a nice evening listening to music and reading. That's what we did in the evenings after our work. We'd relax, listen to the radio and talk about what we needed to do the next day. I remember we tuned into the Columbia Broadcasting presentation that evening, but we tuned in about a minute late because we'd been doing chores. When those news people broke into the dance music and we heard that reporter talk about a "huge flaming object" that had dropped from the sky near a farm in Grovers Mill, we both screamed out loud. Now we know they were talking about New Jersey, but at the time, all we heard was Grovers Mill and farm. That could be us. We did look out the windows, but we desperately wanted to hear what was going on so we pulled the curtains, turned off the lights and kept on listening. We didn't want the aliens to know we were there, so we put out the fire, locked the doors and windows and sat huddled by the radio and listened until we couldn't bear it any longer and we turned it off and ran to the root cellar and barred the door.

By the time we ran to the cellar, we'd heard enough. The people on the radio had been talking about a wriggling thing like a gray snake, and they said there was more than one. They said the aliens looked like a bear with wet leather-like skin and dripping saliva from rimless lips that quivered. It was so awful thinking that those monsters were out there, probably eating our neighbors and there was nothing we could do. I remember thinking that the gun was there, but we only had a few bullets for varmints. No one would be laughing now if the broadcast had been real... and we thought it was. We really did. We listened for over a half an hour and never heard anything that would have led us to believe the broadcast was a fake.

When daylight came, we crept upstairs and unplugged everything we could. We thought maybe the aliens could sense electricity and would find us. We took some food and water and went back to the cellar. That night, we peeked out to see if the aliens had left. We saw a dark shape down through the woods out back. When we tried to get a closer look, we caught a glimpse of what we thought was one of the aliens. It even had tentacles! We were terrified! After that, we didn't go back outside again for fear that the aliens would find us. We took to the cellar and stayed there. We lived for weeks on rain water and the food we had in the pantry, cellar, and what we could scavenge from the fields with no outside communications. No one came by to check on us until Officer Morgan Edgar found us. By that time we were as weak as kittens and filthy. We knew

Officer Edgar, but at first we were pretty convinced that s/he had been affected by the aliens in some way. Maybe s/he was an alien? How could we tell? We made Officer Edgar stand in the yard and plied him/her with questions about Grovers Mill and some of the citizens he/she should know about. Officer Edgar passed all the tests. We were finally convinced that it was okay to come out. That's when we found out that Columbia Broadcasting pranked the entire country with that broadcast.

Then the real horror began. Word got out quick. We are now known as the Moles. People laugh at us all the time and we never feel quite right in our own skins anymore. If we thought the aliens would treat us badly, we had no idea how badly some of our friends might treat us. Everyone thinks we're fools. I don't think it's foolish to be careful. That radio broadcast has made us the laughing stocks of Grovers Mill. We've lost customers for our garden produce because we went into hiding. We couldn't sell any late season crops and we lost the entire crop for next season because we couldn't prepare the soil properly before winter.

We know we're not alone. There are stories across the country of people loading their guns and hiding in their homes and basements. Some people even thought there might be poison gas and wrapped themselves in wet towels for protection. I guess we were all pretty convinced that the broadcast was real. And, what if it had been? Would our actions have been so silly then? Would we be laughed at if we were some of the only ones to survive an attack because of the precautions we took? I don't think we're foolish or gullible; we're just careful people and now we're paying for it. Our reputations are ruined. People don't want to hire us or buy vegetables from us. They look at us like we're the aliens from outer space or have something really wrong with us. We're not crazy. But we are feeling really emotionally beat up. We keep thinking about living in that cellar all those weeks...and about how everyone is laughing at us.

We've been to see our physician, Dr. Hardin White, who thinks we're both physically fine, but we also saw a psychologist, Dr. Madison Lake, who says we may have permanent damage from the experience. Dr. Lake says there's something called intentional infliction of emotional distress, and that's what we think Columbia Broadcasting did to us. Nothing physical, but we'll probably re-live the horrible experience for the rest of our lives, especially if everybody keeps teasing and laughing at us. Dr. Lake says when people experience trauma, especially over a long period of time, it can take years to get back to normal...and that process can take even longer if the people around the victims aren't supportive. Dr. White is nice and supportive, and thinks we'll be absolutely recovered after we gain back some weight, but Dr. Lake says it will take longer and that we need to lead quiet lives surrounded by compassionate people.

We think that the Columbia Broadcasting System should pay something for their nasty and thoughtless prank, like for our medical care or for the time we couldn't work. We own our home outright and we have enough money to live, but our standing in the community is lost forever and that isn't our fault. Our health was put in jeopardy. Spending all those cold nights in the cellar with no heat gave us both lung problems. It's a miracle we didn't get pneumonia or worse. Logan suffers from joint pain from the damp. I have no idea when that will go away. Dr. Lake says it will take quite awhile for us to gain back the weight we lost. Six weeks on a terrible diet drinking dirty water didn't do us any favors physically. Both Logan and I have trouble sleeping and our appetites aren't back to normal. We have headaches and are anxious all the time.

I don't know if you can tell from our diary, which we were asked to produce to prove our fear and determination to stay safely out of the way of the aliens, but we were completely convinced we were in danger. We were so sure it was real that we risked our lives by drinking that awful rain water and eating rotten food. Normal people don't do that, but really, truly frightened people do that kind of thing to survive. Our goal was to last until the military or the police could kill off the aliens and get us to safety. We thought it would take some time, and, as it turned out, it was the police who came to our rescue.

If the Columbia Broadcasting System people would have said they were sorry, maybe all of this wouldn't have happened. We want to stop them from doing something like this again. So far we've heard nothing from them in the way of an apology for what they did and the havoc that they created. I think they'll do it again if we don't stop them in this courtroom. I don't want others to experience what we did. It was awful. It's still awful.

Jersey Johnson

Plaintiff Witness Affidavit: Dr. Madison Lake, Psychologist

My name is Madison Lake, I'm a licensed, practicing psychologist in Grovers Mill, Illinois. My practice in Grovers Mill began five years ago when I moved here from Springfield, Illinois. I've been in family practice for seven years and concentrate on anxiety disorders. I received my undergraduate, Master's and Ph.D. from Lincoln University Medical School in Lincoln County, Illinois.

When I started seeing accounts of Jersey Johnson and Logan St. Clair in the local newspaper and some of my clients began mentioning them and laughing, I was sure I would be able to help them. I contacted them by mail and offered my services. These two people had been innocent farmers who lead relatively calm and very productive lives until the Columbia Broadcasting System aired that "War of the Worlds" broadcast around Halloween.

Johnson and Logan were not the only people who experienced trauma from that broadcast. I received no fewer than 25 calls after that event from citizens of Grovers Mill who wanted to talk things through. They all had lasting fears from the broadcast, even though they realized that the entire episode was a theatrical production and had not been real. There were concerns about children who had heard the story and were having trouble sleeping. I've even gone to the local public school and talked to classroom groups about how to handle fears. All this was prompted by that one broadcast! It's changed our small community. In some ways, there have been good changes. People are talking about their fears more openly and that's always good...but there are some bad things that have resulted, as well. Like people's reactions to Johnson and St. Clair. Whether the broadcast was real or not, they feel ostracized by their neighbors. They know people are laughing at them. Those people are laughing because it's a release. They were afraid too, but they reacted more sensibly and survived.

It's my professional opinion that, in broadcasting this program, the Columbia Broadcasting System acted in a manner that was both extreme and dangerous with great potential for harming the listening public. They had no way of knowing who would be listening; nor could they anticipate if listeners would hear the entire broadcast and hear their disclaimers that the production was fake. Both Jersey Johnson and Logan St. Clair were probably more susceptible to emotional distress than others because of their relative seclusion. They had no other family members to cushion their emotional reactions; they had no close neighbors to comfort them. They felt, and they were, alone.

When a company like a major broadcasting company intentionally disregards the probability of causing emotional harm or distress, there is fault that can be found in that conduct. They must take responsibility for fixing the harm. The emotional trauma suffered by both Jersey Johnson and Logan St. Clair can best be described as a combination of negative emotions including but not limited to fear, worry, shame, grief, absolute and utter horror, humiliation, embarrassment, and anxiety. When a person feels those emotions constantly for a long period of time, the brain starts to change. Chemical reactions within the body alter. Both Johnson and St. Clair, in my professional opinion, experienced a long period of unusual stress which brought on panic disorders, judgment and reasoning issues, headaches, weight loss, muscle weakness, nausea and

more. One begins to subsist on a different plane from others. It takes a long time to get the body and mind back in working order.

It's the duration of the emotional distress that's of importance to this psychological study. When Johnson and St. Clair barricaded themselves in their cellar, they began a long period of intense emotional distress based upon what they had heard on that broadcast. They concentrated on survival and remembering what they had heard, reliving the broadcast again and again, reinforcing their panic and horror. Seeing what they believed to be a tentacled creature in the forest on Halloween removed any doubts they might have had. They honestly believed that there was a monster or monsters in the area that were, in all likelihood eating their friends and neighbors. They never would have experienced this but for the Columbia Broadcasting System's production of "The War of the Worlds."

Johnson and St. Clair were surviving by instinct. They went "under cover," or "underground," to make themselves invisible to the predators they thought had landed in Grovers Mill. This emotional response is natural when there is a threat. What has happened to Johnson and St. Clair, in equal amounts, it seems, is that they have suffered a long and severe emotional trauma that has led to a long-lasting neurosis. They first became obsessed with what the monsters/aliens looked like, what the aliens ate, how the two of them were spending their last days alive on earth, what would happen to their farm, etc. They became absolutely fixated on surviving. This experience has led to a social phobia. They no longer enjoy the society of others because others are laughing at them.

I call what Jersey Johnson and Logan St. Clair experienced as being in the threat sector. They were in a zone, both mentally and physically, that was filled with threats. There was the threat from the aliens, and there was the threat of starvation as time passed and no one came to their rescue. Johnson and Logan's physical condition improved during the weeks after their discovery; however, their mental condition is still quite precarious.

I've seen both Jersey Johnson and Logan St. Clair individually and in group sessions. They are improving and becoming more self-confident after their trauma. However, it is my professional opinion that they will both live the rest of their natural lives with lasting emotional scars that will prompt episodes of depression and anxiety. Both of these can be treated with additional prolonged and regular therapy sessions.

It is beyond doubt that it was the Columbia Broadcasting System that caused this harm; and it is beyond a doubt that both Johnson and St. Clair have suffered severe and extreme emotional distress and continue to do so as a result of listening to that broadcast in October. Those who broadcast and participate in a broadcast of a media event like this should be very aware that they have a powerful tool that can make the unreal seem all too real. It can turn an author's fantasy into a reality through a theatrical production; that's what happened here. They crossed a line and obviously worked diligently to use their considerable talents to convince the public that the news of the alien invasion was real.

I am absolutely confident that the broadcast intended to cause emotional distress though this hoax. The actors and that company wanted to frighten people. They worked hard to dramatize

the production to make it as real as possible and failed to warn the public that it was a dramatic representation of a literary work. If they had interspersed disclaimers throughout the production, the public would have still enjoyed the production, but would not have suffered the emotional panic they obviously did.

Johnson and St. Clair are delightful, down-to-earth people. They are kind, generous and thoughtful citizens who have been utterly compromised by what happened to them. They deserve restitution from the company that caused the harm. Who wants to spend the rest of their lives being called “Mole People,” which is exactly what the children are calling them. The time I spent speaking to those students in their classes was enlightening. Johnson and St. Clair know they are being ridiculed by virtually everyone in town, but I’m not at all sure they know the depth of the mockery coming from every direction. This would surely add to their anxiety.

As to the comments that they would heal faster if they simply dropped the matter and the lawsuit, I disagree. Receiving some form of compensation from the entity that caused all this distress would work wonders at getting these two on the path to full recovery. It would acknowledge that the fault is not theirs alone and is at least shared by the entity and the individuals who initiated the production and fooled the public.

Dr. Madison Lake, Ph.D.

Plaintiff Witness Affidavit: Mulder McScully

My name is Mulder McScully of the Grovers Mill McScullys. I've lived on our family land outside of Grovers Mill, Lincoln County, Illinois with my ma and pa for all of my 40 years. Our 20-acre farm has been in our family for several generations. My folks and I live in the old farm house and I farm the land. I understand that our neighbors, Jersey Johnson and Logan St. Clair, got into a little trouble not too long ago. It was all on account of those kids playing out in the park, and that science fiction story they played on the radio. I hadn't seen Jersey and Logan much this past year or so, but I didn't know why until I saw it in the papers. My pappy listened to the whole radio program that night and said it was a real hoot. I didn't get a chance to hear it 'cause I was out working the field past sunset. I do most of the work around the farm these days. We grow winter wheat or corn, depending on the year. This year was corn. Anyway, Logan and Jersey are friends of mine, and have been ever since I was knee high to a corn stalk. They're real nice folk, always friendly and helpful to me and my kin. For my part, I wish I had been a better neighbor to them. I hadn't seen them for a few weeks, but I didn't think twice about that. I just figured they were busy. I feel bad about that because I could have helped them avoid this situation, at least a little.

You see, I believe Jersey and Logan. I saw them aliens too, just like Jersey and Logan say they did, except I got a better look than they did and I could tell that it was kids. I was out working my field that evening and I saw two of them. They looked real! They were intolerable ugly and lifelike with long, swirling tentacles and they made horrible noises. I was pretty busy all day turning the field, trying to get that done before the first frost set in. And I did. About the time I was finishing up, a little while before sunset, I heard some crazy noises echo up from the valley, like gargling and yelling put together. I took a look down into the valley after that, and what I saw made me stop what I was doing. At first, I saw two giant, gray creatures, with tentacles, making those strange sounds. They were moving around, with long swirling arms and sounding like a drowning wildcat. It was so strange, I have to admit, my heart skipped a beat. I saw some nearby park-goers who started packing up their things and leaving in a hurry.

As I watched, I figured out, it was just some darned kids and they were bothering other folk, it was plain to see. Even from where I stood, probably a couple acres away and down into the valley, the costumes glistened in the setting sun and the tentacles seemed like they were real. I can't imagine what someone up close would think. It looked like it really messed up the peaceful setting out there at the creek, that's for sure. I've seen animals do some crazy things, and people, too, but I didn't know what I was seeing at first. I worked it out real quick, though. Now, I knew it was almost Halloween, so sure, I'd seen some other kids here and there all dressed up. But let me tell you, that sound was hideous, even from where I stood. As I said, I saw other folks get up and leave in a big hurry. I figured out for sure it was just crazy kids when I saw one of them take his mask off.

About ten of our acres run down the hill to the creek, where there's a ribbon of public ground called the Grovers Mill Nature Park. My land's on the north side of the creek and public park area and the St. Clairs and Johnsons got about 10 acres over'n other side just south of the public land. I remember when the nature preserve was first set aside, about 20 years ago now, it was so that people could take walks and picnic alongside the creek. Sometimes the city folk need to get

out to the country, even for just a little while. It's nice to hear and see families out there with young children in nature. Anyway, down in the preserve there are some walking paths and picnic tables, and a few clearings. It's real pretty in the spring and fall and a nice, cool place to get away in the hottest part of the summer. The timbered hills of the St. Clair land are right up next to the preserve, and the color changes in the fall can be spectacular in the setting sun. They put a small parking lot in over near the county road to the east. It being the end of October, about the time of the first real frost, the number of visitors to the park goes down. That happens every year. Sometimes you can go out there and the trees still have leaves clear into November. I remember, this was one of those days, when you had a clear sky, and the trees were full of color, and the wind wasn't so bad. It was a good day to be in the park, and a good day for being out in the field, for the same reasons. I can see pretty far down into the valley from my fields, if I care to look. From where I was, I could see a few peaceful park-going people picnicking and enjoying the late fall sunset, and I could hear them chatting and walking around the park. Then, all of a sudden, I started hearing those noises.

If Jersey and Logan say they were scared by that radio program, and holed up in the root cellar they way they did, then I'm thinking what they heard on the radio must have really shaken them and whatever it was probably never should have been aired. That's one thing about Jersey and Logan; you can take them at their word. When they tell you they are going to do something, they are bound to it. And they're also real generous, sensible, and fun to be around. Take for instance one time a few years back, before Old Blue passed, the old horse got riled up and threw a shoe. Well, Jersey and Logan were out working their farm, and I give them a call and they came on over, lickety-split, just like that. Logan is about as handy a person as there is and Jersey is just as good with farm animals. Working together, they helped me corral the old boy and put not one, but a whole set of new shoes on him, right then and there. I mean, they dropped their farm work and spent the day with me and Old Blue, telling stories and poking fun at one another and at me. My ma was so happy she made us all a great big meal for dinner. They turned a pretty terrible set of events into a memorable day. So, you see, from where I'm standing, if they felt they had to hide for their own safety, I put a lot of stock into their story, and how that radio show must have made them feel. I don't reckon they would make this whole story up just for fame or fortune; that's just not who they are.

Now, I don't usually like to involve the authorities, but I thought given that there weren't going to be many more days for people to come out and enjoy the park, the Grovers Mill Police Department needed to know about what was going on. Usually these kinds of things just work themselves out, but in this case, I made the call. I admit it. It had to be done. Right before I stepped back inside the house for dinner, I called the Grovers Mill Police department and reported those kids. A few minutes later, I saw a police squad car out there, and the yelling and growling was put to an end. That's good, I remember thinking, 'cause there were some more people out there walking along the creek later, and I could see from the window in my kitchen that they were able to enjoy the sunset before leaving the park. It's one thing to go around scaring each other, but to bother other people just out there to enjoy some peace and quiet before the weather turned even colder, that's something different altogether.

Mulder Mc Scully

Defense Witness Affidavit: Kendall Hancock, representative of Columbia Broadcasting System

My name is Kendall Hancock and I am here to represent Columbia Broadcasting System to defend Mercury Theater on the Air for broadcasting the play on October 30 that was an interpretation of H. G. Wells' 1898 seminal work "The War of the Worlds." The original book by Wells told the story of the Earth being invaded by Martians. It's this work that is said to have launched an entire genre of alien science fiction work! When Orson Welles approached the Columbia Broadcasting System with the idea of broadcasting the "War of the Worlds" in segments as a live series of fake news bulletins, we signed on almost immediately.

We figured that we'd announce that the listeners were going to experience a groundbreaking work of art, a realistic interpretation of a great literary work. We thought it was Halloween eve; people expect to be frightened. We wanted to heighten the effect of the broadcast, so we spaced the "it's not real" announcements as far apart as we felt was appropriate at the time. There were a total of three announcements during the broadcast, including the one at the very beginning.

It was 1938, and we had some sophisticated listeners who enjoyed good music and good radio. We did think we'd scare some people, but we never expected people to completely ignore the "disclaimers" we broadcast at the beginning and about 40 minute intervals in the broadcast reassuring people that they were listening to a fictional broadcast. The public reaction was a surprise, but when we realized that our attempt to heighten the dramatic experience had worked so well, we were delighted. It was a real breakthrough in broadcasting history! We anticipated nothing unusual; this technique has been used before to great effect.

While we do profit from our advertising revenues, we are not a "deep pocket" and a large settlement for damages could harm the Company and its investors for years. Next thing that will happen is that people will start suing us because the music we play got them too worked up. This is just plain silly.

I firmly believe that Jersey Johnson and Logan St. Clair's over-reaction to "The War of the Worlds" broadcast went well beyond what a reasonable person would do or feel. Johnson's lawsuit is the only lawsuit we have pending against us for the broadcast; every other person who experienced fright and took some small action to defend themselves and their families understood that the Columbia Broadcasting System had attempted to duly inform the public that the broadcast was a theatrical interpretation and was not real. We carefully explained this at the beginning of the program, approximately 40 minutes into the broadcast, and again at the end. Our lawyers felt this was sufficient notice.

The fact that Johnson wishes to announce his/her gullibility and their extraordinary precautions only tells me that Johnson is not all that affected by any negative publicity that s/he claims is harming the two of them. If Johnson wanted this story to go away and stop people from looking at the two of them as foolish small town farmers, then s/he should accept some personal responsibility for their over-reaction. Stop talking about the experience and concentrate on getting back to normal; if there is a normal for the two of them.

Who in their right mind hides in a basement, drinking rain water, cutting themselves off from all sources of sanity, for a period exceeding a full month, without once thinking that they might be wrong...That there were no aliens...That it was a Halloween story broadcast to entertain? And to then say that they were convinced by some kid dressed up as an alien on Halloween? We are not dealing with normal people. These are overly emotional individuals who want someone else to take the blame for their quirky personalities, silly actions and irresponsible decisions.

We never intentionally inflicted emotional distress as this suit alleges. Our primary intent was to entertain, thrill, challenge people to think, confront their fears and perhaps even face up to some social phobias. There is a difference between a rational reaction to anxiety and an irrational reaction. A rational person will think about options, will look for alternatives and will find solutions. An irrational reaction is manifested quite clearly in the actions of Jersey Johnson and Logan St. Clair. They hid and escalated their fears by cutting themselves off from the rest of the world.

If a tornado threatened, you would rationally head to the cellar, but when the threat passed, you would come out. And, the only way to determine if the threat of a tornado has passed is to look outside to check on reality. These two people barricaded themselves in a cellar and only looked out one time, on Halloween. Never faced their fear and reached out to determine fact from fantasy. I'm no doctor and I've never studied psychology, but if there's a mental issue that these two experienced based on what they heard during "The War of the Worlds" broadcast, it's a mental issue that was there long before our broadcast. Perhaps it was latent and we helped bring it out, but it was almost certainly there.

To become a reclusive phobic overnight is, at least in my untrained mind, impossible and irrational. No jury should be able to find in favor of Jersey Johnson and Logan St. Clair. Columbia Broadcasting System did not permanently damage or harm them; they chose to harm themselves when they barred that cellar door. It should tell you something that theirs is the only lawsuit to be brought due to this broadcast. It tells me that Johnson and St. Clair can accurately add "opportunists" and "profiteers" to their list of personality flaws.

The fact that one of these small town farmer is taking on a mega broadcasting company may seem appealing to some, but Johnson's action could open the floodgates to dozens, hundreds of suits from people like these two cousins who want to profit from their own instability. Maybe Johnson thinks if he gets a settlement then his/her friends and neighbors will stop laughing at him as he is laughing on the way to the bank. It's not our job to undo what they did to themselves. No amount of money can make those friends and neighbors forget that Johnson and St. Clair spent six weeks in their cellar avoiding fantasy aliens that a theater company had introduced to the public on Halloween Eve.

Kendall Hancock

Defense Witness Affidavit: Officer Morgan Edgar

My name is Morgan Edgar and I'm a police officer in Grovers Mill, Lincoln County, Illinois. I'm one of three officers assigned in Grovers Mill. It's a small community of about 500 people, but our responsibility extends outside of the town and encompasses much of Lincoln County. It's a very rural area, hilly, with some nice, rich farmland. Most of the folks around here are easy-going and friendly. We have the usual number of odd folks, but who doesn't? We've never had any problems with Jersey Johnson or Logan St. Clair. They're two cousins who inherited the old St. Clair farm on the outskirts of town. It's a pretty secluded area; about a 10 acre farm, mostly dedicated to subsistence farming to feed the two owners. They sell at the local farmers' market and that income keeps them going.

They both had what could be called part time jobs, but I'm not at all sure they needed to work. It's common knowledge that the farm's paid for, and the income they get from the family trust pays for the taxes and utilities and provides a small monthly stipend. Those two don't have to lift a finger if they don't want to.

Out of curiosity I contacted the Columbia Broadcasting System and asked for a transcript of the evening's broadcast. It's funny; the broadcast said that the aliens had landed in Grovers Mill, New Jersey. I bet Johnson and St. Clair only heard the Grovers Mill part and didn't catch that the whole business was supposedly taking place on the east coast. They should have listened more carefully. They should have listened to the whole program; then they would have heard the disclaimers.

On Halloween, I got a call about sunset to investigate some kids that were dressed up as aliens in the forest preserve out near the St. Clair farm. I took the squad car out there, but I didn't use my lights or siren so I could get a good look at what they were doing. Turns out a few kids were having fun hiding in the trees and running around and had bothered some people. I took one of the juveniles – dressed up as an alien with tentacles, no less – back to the station to cool off. I drove past the St. Clair farm on the way back into town, but I didn't see anything to be concerned about at that time. Of course, that's not unusual. Johnson and St. Clair mostly keep to themselves.

In fact, I hadn't heard from Johnson or St. Clair for some time when the police were contacted by the Post Master who let us know that Johnson and St. Clair had failed to come into town to check their post office box for weeks. Mail was piling up. We routinely check on some of the smaller farms in outlying areas, but we hadn't been by the St. Clair farm for about that long. It seemed a good idea to go check on things.

On December 11, I went out to their farm and when I pulled into the yard, I could tell things had been neglected. Some of the late season vegetables hadn't been harvested and winter crops hadn't been planted or the soil worked. That didn't look so good, but I started by calling out their names over the speaker on the car. I identified myself as Officer Edgar. They both know me. We've shared coffee and donuts at the cafe in downtown Grovers Mill countless times. In a town of 500, everyone knows everyone...it took some time, but I finally saw a curtain move.

I waved and again identified myself. Now I wonder if they might have thought that an alien had taken over my body. They recognized me, but sure didn't trust me. Logan St. Clair finally opened the front door and told me to stay where I was and said that "There's a gun on you." Meaning, I guess, that Johnson had a gun pointed at me.

I told them I was just checking to see if they were okay, that the folks in town were worried about them. It took me a good hour of persuading, but I finally got them to believe that I was who I said I was and that I didn't have any alien blood in me. I even offered to cut myself to show them red blood, but they said that wasn't necessary. They thought, finally, that I looked human enough.

Those two were panic stricken, near starving, skin and bones, shaking and filthy. They finally admitted that on that October evening before Halloween, they had been listening to the radio and they had been overcome with a tremendous fear that the alien might crawl through the pipes so they'd been drinking rainwater out of barrels in the yard. They had been feverish. They said they saw an alien in the woods and kept muttering about a "huge grey snake" and "tentacles."

At first, I guess I was a little angry. These poor folks had been terrorized in their own minds by a simple prank by a radio program. Now they face public ridicule, not to mention being ostracized in the community because everyone, even those who were just as frightened by the program when it aired, are pointing fingers and laughing. It's not easy being the target of public ridicule.

My sympathy for Johnson and St. Clair began to fade pretty quickly, though. They just kept ranting about how unfair it was and how someone would have to pay. They started talking about money the minute they realized they were the favorite topic of conversation throughout the town...and it wasn't very nice how people were laughing at them, but come on. It was pretty silly hiding in a root cellar for over a month because of something you heard on the radio.

It's obvious from the transcript and from my own experience having listened to the entire broadcast that Columbia Broadcasting System did make routine announcements during the program that the story was a fake; but these two didn't get that message. That's not the broadcasting company's fault. For crying out loud, people need to take some personal responsibility for themselves and their conduct. Sure, Johnson and St. Clair took a look on Halloween and saw what they believed to be an alien in the trees. But it was Halloween! That's when kids dress up!

During the weeks that those two were holed up in that cellar, didn't they get curious about the community at large? Did they never once see a car drive by their house, or turn on a light or a radio and see that the grid still worked and that the utilities were functioning? Merciful heavens, how can a reasonable person believe that an alien monster can find them because they pick up a phone? Tentacles don't fit through phone wires or radio wires!

These two need to buck up and get on with their lives. If they start acting normal, the people in the community will leave them alone. If they had any sense of humor they would see that this situation is actually amusing and no damage was really done. They could get their jobs back if they would get themselves pulled together. I saw a lot of panic that night, and to be quite honest,

I thought at first that the story could be real, but aliens? Why on earth would aliens choose to land in Grovers Mill, Illinois? What were they looking for, corn? Beans? That's about all we have around here. Maybe cows. It's about 90% farming in this area.

And to sue over losing their jobs? Johnson was a part time clerk at a hardware store and the only reason s/he hasn't gotten that job back is because its summertime and a college kid took the job for three months. The owner is perfectly willing to have Johnson back in the fall. Where's the harm there? And St. Clair was a self-employed fix it person who lost that "job" because clients found him/her to be unreliable when s/he didn't show up to fulfill contracts he/she had. And their farm plot? Maybe they lost some winter crops and some early crops. But now they can plant some new crops! Once everyone realizes what happened, they will forgive and forget and there will be no permanent harm. Sure they're going to be laughed at for some months, but they should be able to laugh at themselves too. Heck, they should start working on selling the rights to their story to someone. Two gullible people hoodwinked by a radio broadcast. *How To Survive Being Foolish* would be a pretty accurate title.

Morgan Edgar

Defense Witness: Hardin White, physician

My name is Hardin White and I'm a physician/general practitioner in Grovers Mill, Lincoln County, Illinois. I've been a doctor for over 45 years and am getting ready to retire. I brought both Jersey Johnson and Logan St. Clair into this world and I've watched them grow up. Those two were as rambunctious as any two cousins I've ever known. They had a curiosity and "need to know" sense about them from the time they started walking and talking.

I was called on to examine both Jersey and Logan after they came out of hiding after that broadcast of "The War of the Worlds." It was Officer Morgan Edgar who called me and asked me if I'd check them out and I agreed. When they arrived, Officer Edgar told me that Jersey and Logan had been holed up in their cellar for about six weeks after being frightened out of their wits by the broadcast of "The War of the Worlds." I had heard that broadcast and enjoyed it immensely. My family had sat around the radio that evening, getting ready for Halloween. We were carving pumpkins and laughing about the descriptions of the aliens. All those tentacles and glistening skin! It was a wonderfully dramatic production; so incredibly well-done. Why, after the program, some of the neighborhood kids even decided to make some home-made alien costumes for Halloween the next night.

We knew it wasn't real because we heard the program from the very beginning and we listened straight through to the end. It was a very enjoyable evening. I was very surprised to read the next day that so many had panicked because they thought it was real. They hadn't heard the very clearly stated disclaimers that the broadcasting company had included. It never occurred to me that anyone in our community would take to hiding because the names of the towns were the same. The broadcast had clearly stated that the aliens were supposed to have landed in Grovers Mill, New Jersey. We laughed out loud at that. The children were delighted that there might be another Grovers Mill somewhere other than in Lincoln County, Illinois.

When Jersey Johnson and Logan St. Clair arrived at my office, I was shocked to see both of them looking so terrible. They were filthy, emaciated, and obviously hadn't been eating or drinking enough to keep them alive much longer. Their story gradually came out that they had listened to that broadcast and had thoroughly believed it to be completely authentic and had taken action to save their skins. They'd been holed up in their cellar since the broadcast aired, only coming out at night to drink rain water and eat food from the garden. As it was early winter when they were found, it's a miracle they hadn't starved. They had been eating potatoes and turnips raw. They'd eaten everything they had in the pantry and then had sustained themselves on the garden produce.

I examined them both immediately. I had medical records for both Jersey and Logan. Each had lost between 20 and 25 pounds and both were seriously dehydrated. Both seemed disoriented and unable to concentrate. They were bewildered and did not respond to questions quickly or with any degree of certainty. They knew the date, they knew names of everyone around them, so they were sane, but they were not their normal selves.

As I took blood pressure and other samples to see if they were suffering from any infections, I gave them fluids and sent out for a meal. Once they had eaten, their minds seemed to clear and they begin discussing their ordeal.

Officer Edgar had already heard their story but it came as a surprise to me. These two took that broadcast of “The War of the Worlds” so seriously that they had hidden themselves away until they were rescued by the police. I was incredibly sorry for them, but I continued with the physical examination.

I found that both were suffering from bacterial intestinal problems and both were running fevers, which confirmed my suspicion that they were also suffering from infections. Their weight was a concern, as was their state of dehydration. Their diet and personal hygiene had been so poor for so long that their hair had become dull and matted. They were filthy and afraid, but they were responding well to the care they were receiving.

I must take a moment to compliment Officer Morgan Edgar who was patient and extremely kind and gentle with both Jersey and Logan. There was not a moment of impatience or intolerance as the story unfolded. They had been afraid; they holed up in the cellar to protect themselves from the awful aliens they had heard about on the radio. They had been utterly convinced that the theatrical production had been real. I was dumbfounded that anyone I knew to be a relatively normal and functioning adult citizen of our community had been so totally and utterly taken in by the broadcast.

Aside from the physical deterioration that was manifest in both Jersey Johnson and Logan St. Clair, I was concerned about their mental stability; however, I hesitated in referring them for a psychological review until such time as their physical well-being was assured. Oftentimes when a person undergoes a period of near starvation, their mental status deteriorates. Once nutrition and hydration are re-introduced and there is stability in the diet, the mental status naturally corrects itself.

During a follow-up visit, Jersey Johnson showed me the diary that they had kept jointly while they were hidden in the cellar. Johnson wanted me to see that they were completely sane during the entire episode but that they were frightened nearly out of their wits. Some of the entries were heart wrenching. I recall one in particular. They had spent days trying to remember some of the passages from the broadcast verbatim. It’s a credit to their memory skills that they came so close. They had complete quotes that seemed quite accurate. For instance, “Good heavens, something’s wriggling out of the shadow like a gray snake,” and another entry recalled the lines, “Now it’s another one...and another. They look like tentacles to me.” A third entry was particularly chilling...and it repeated through some of the other pages. It said: “...that face...the eyes are black and gleam like a serpent...saliva drips from rimless lips that pulsate.”

Those two must have been horrified. It seems as if their lives revolved around what they heard in the broadcast and foraging for food...and hiding. But that’s all over now and they are back to normal, almost. Now that they are out of hiding, their health has improved and I notice no lasting effects of their weeks in hiding. This will all become a faded memory, if they would only let it go. It’s my professional opinion that this lawsuit is only drawing out the negative

experience. Once Jersey and Logan get back to their normal lives, they'll be just fine. The only mental scarring that will be left will be a silly memory.

Dr. Hardin White, MD

Exhibit A - Excerpts from the Diary of Jersey Johnson and Logan St. Clair during stay in cellar at St. Clair Farm, Grovers Mill, Lincoln County, Illinois.

October 31 - after the horrible news on the radio, we turned off all the electrical appliances and headed to the cellar and barred ourselves in. We made the mistake of going outside tonight. At first, no sounds from outside. Then, we saw something moving down in the trees. When we tried to get a closer look, we saw one! A strange creature with tentacles! We think it might have heard us! If we stay here, quiet, all may be well.

November 2 - it's been two full days and we have heard nothing from outside. Maybe our plan is working and the aliens can locate people only when they detect electronics or see light. We'll stay as quiet as possible and not use the phone or any lights. Eating from the pantry. So far water is holding.

November 6 - we've been trying to remember what the broadcast said about the aliens. We remember that the newsman said something like, "Good heavens, something's wriggling out of the shadow like a gray snake," and later said there was more than one. "Now it's another one...and another. They look like tentacles to me." Wondering if tentacles are small enough to enter through a sewer pipe? We've stuffed ours full of rags. Then we heard that the monsters had death ray machines instead of arms. If they find us, they'll kill us for certain.

November 9 - we've ventured out at night to gather up some of what the garden has to offer. All is quiet. Saw no lights. Heard nothing. Heavy frost. Maybe the aliens don't like cold. We remembered more about them. The reporter said, "...that face...the eyes are black and gleam like a serpent...saliva drips from rimless lips that pulsate." No signs of drool outside frozen or otherwise. That's good.

November 11 - hungry and thirsty and dirty, but safe

November 18 - considered going out, or at least looking outside, during daylight hours but can't know for sure if it's safe. May wait to see if the military comes. Surely they will come.

November 22 - looked outside during daylight hours. All seems well. No sign of a huge flaming object having been anywhere near the farm. Everything looks and smells normal. We're thinking that maybe aliens have a particular odor to them. We've noticed nothing but ourselves. We're filthy.

November 28 - we're drinking from the faucets upstairs now, but food is getting really low. Been eating raw potatoes and turnips for the past few days. Where's the military? Where are the police?

December 9 - Very hungry and weak. We may be too unappetizing for the aliens now, but could still be the subject of experiments. No sign of the military or police. If no one finds us and we starve to death, we leave the farm and all its resources to the community. Maybe they can use it better than we did.

EXHIBIT B

Grovers Mill Gazette

December 12, 1938

Long time residents of Grovers Mill, Jersey Johnson and Logan St. Clair, who reside at St. Clair Farm on the North side of the town, have come out of hiding after living for six weeks in their cellar. They two were among the countless citizens who fell victim to the Mercury Theater broadcast of H.G. Wells's literary masterpiece, *The War of the Worlds*, on October 30. The broadcast left many of our citizens on edge and the police received over 50 telephone calls from panicked families who were afraid for their safety.

While the authorities had not been warned about the theatrical production, police in Grovers Mill had listened to the entire production and were able to reassure those who called that the broadcast was a work of fiction and was nothing to fear. They encouraged everyone to sit back and enjoy the Halloween treat.

It came as a major surprise when the police were contacted by the U.S. Postmaster to notify them that Johnson and St. Clair had not been seen in town and had not emptied their post office box for weeks. Officer Morgan Edgar responded and paid a visit to St. Clair Farm. Johnson and St. Clair firmly believed that the broadcast was real and had promptly barricaded themselves in their basement to wait for the military or the police to rescue them.

Our sources say that the pair would come out of hiding after dark to harvest their garden and get fresh water from the rain barrel. They wanted to call no attention to themselves so had unplugged all electric appliances and had been living in the dark.

Johnson and St. Clair are being treated by Dr. Hardin White, long time practicing general practitioner in Grovers Glen who says that both will fully recover in time. Their experience also prompted local psychologist Dr. Madison Lake to pay the two a courtesy visit. Dr. Lake is less sure about their full recovery. Lake says that the two may experience lasting emotional effects from the long period of seclusion and fear.

Grovers Mill Gazette

February 12, 1939

Weeks ago when Jersey Johnson and Logan St. Clair came out of their cellar after a period in hiding resulting from panic after the broadcast on of *The War of the Worlds* the evening before Halloween last year, they seemed well on the road to recovery.

Our sources now report that Johnson has filed a lawsuit against the company that aired the broadcast, Columbia Broadcasting System. Johnson alleges that s/he continues to experience emotional and physical damages based on the time the two of them spent in hiding after the broadcast. Johnson also alleges that the broadcasting company was negligent when it failed to clearly state that production was not real.

EXHIBIT C

Form #2528908

Police Report: NAME OF OFFICER FILING REPORT: Morgan Edgar

Grovers Mill Police Department, Grovers Mill, Lincoln County, Illinois

DATE AND TIME OF REPORT: December 11, 5:30 p.m.

PLEASE SYNOPSISIZE EVENT(S) AS CLEARLY AND AS COMPLETELY AS POSSIBLE:

Arrived at St. Clair Farm at 12 Noon after receiving a report from Post Master Green that post office box had not been emptied for a number of weeks. Upon arrival at the property I noted that all curtains/blinds were closed, all doors locked and no response to knocking. On car loudspeaker, I called to Jersey Johnson and Logan St. Clair for approximately 5 minutes. They finally responded by cracking open the front window. The two proceeded to ask me questions about my family, about Grovers Mill, and about Illinois and United States history. They later explained that this was to make sure I wasn't an alien in disguise. Both appeared emaciated, extremely apprehensive and filthy. They had been living in the cellar since the Columbia Theater broadcast on Halloween Eve. They firmly believed that the events depicted during "The War of the Worlds" broadcast were real and they had hidden themselves away until they were "rescued." An investigation of the property confirmed their story. There was no food in the pantry, all electrical appliances, lamps, etc., had been unplugged, the phone had been removed from the wall. Johnson explained this was to prevent the aliens from noting their presence in the house. They told me that they had seen an alien with tentacles the night after the news reports about the invasion. They had survived by drinking rain water from a barrel at the back porch and by eating potatoes and turnips from the garden. Canned goods had run out some weeks ago and refrigerated items were consumed first. They had eaten everything in a raw state. Evacuated both, with their consent, to Dr. Hardin White, who agreed to see them both immediately. No crime committed. Both appeared to be comfortable with Dr. White and willing to remain in the doctor's care. I offered to return them to St. Clair Farm

when they were capable of returning on their own. Dr. White assumed responsibility for Johnson and St. Clair on December 11 at 3:45 p.m.

Signature of investigating officer: Morgan Edgar

JURY INSTRUCTIONS

Burden of Proof

The Plaintiff in this case has the burden of proving each of the following elements:

1. That the Defendant's conduct was extreme and outrageous;
2. That the Defendant intended to cause or recklessly or consciously disregarded the probability of causing emotional distress;
3. That the Plaintiff suffered severe or extreme emotional distress; and
4. That the Defendant's conduct actually caused emotional distress.

"Extreme and outrageous conduct" is that which goes beyond all bounds of decency.

The Plaintiff does not need to establish a contemporaneous physical impact or injury.

"Reckless or conscious disregard" is conduct from which the actor knows severe emotional distress is certain or substantially certain to result.

To establish extreme emotional distress it is not enough that the Plaintiff simply experience fright or worry; the distress must be of such intensity and duration that no reasonable person could be expected to endure it.

If you find from your consideration of all of the evidence in this case that the Plaintiff has proven each of these elements, then you must find in favor of the Plaintiff and against the Defendant and then consider the amount of damages to be awarded to the Plaintiff.

If you find from your consideration of all of the evidence in this case that the Plaintiff has failed to prove any of these elements, then you must find in favor of the Defendant and against the Plaintiff, in which case you will have no occasion to consider the issue of damages.

Whether any of these elements of damages has been proved by the evidence is for you to determine.

21.01: Meaning Of Burden Of Proof

When I say that a party has the burden of proof on any proposition, or use the expression "if you find," or "if you decide," I mean you must be persuaded, considering all the evidence in the case, that the proposition on which he has the burden of proof is more probably true than not true.

30.01, 30.05.01, 30.06, 30.07: Measure of Damages

If you decide for the Plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate the Plaintiff for any of the following elements of damages proved by the evidence to have resulted from the wrongful conduct of the Defendant, taking into consideration the nature, extent and duration of the injury:

The pain and suffering experienced and reasonably certain to be experienced in the future as a result of the injuries.

The reasonable expense of necessary medical care, treatment, and services received.

The value of time, earnings, salaries and benefits lost.

36.01: In Absence of Liability -- No Occasion to Consider Damages

If you decide for the Defendant on the question of liability, you will have no occasion to consider the question of damages.

Classroom Discussion and Research Options

Johnson v. Columbia Broadcasting System

- Research media reports from 1938 when Orson Welles and Mercury Theater broadcast “The War of the Worlds.” Were there any lasting “harms” experienced by the public? Were any legal cases filed against Welles, Mercury Theater or the Columbia Broadcasting Company?
- Could this happen today? Would there be legal ramifications if a theater group broadcast a “terrorist attack” or “alien invasion” that fooled the country and caused widespread panic? If you were fooled into an outlandish over-reaction would you sue?
- Orson Welles was aware of a previous broadcast in England that was similar to the “play” broadcast of “The War of the Worlds” and knew that there could be over-reactions. Did Welles have a duty to warn the broadcasting company that the public could panic and suggest that disclaimers be broadcast more frequently throughout the play?
- Did Johnson and St. Clair have a responsibility or duty to investigate for themselves to see if the broadcast was real? Should they have considered exploring the area to determine if the aliens had landed?
- According to news reports, the original author of *The War of the Worlds*, H.G. Wells, was angry when he heard that his work had been turned into a theatrical work and broadcast. He said, “It was my understanding with the broadcasting company that the broadcast should be presented as fiction and as not as news. I gave no permission whatever for alterations which might lead to the belief it was real news.”¹ If you were H.G. Wells, would you sue over the misuse of your original work? Or would you be pleased that your work got so much attention? Or both?

The War of the Worlds, by H.G. Wells: http://en.wikipedia.org/wiki/The_War_of_the_Worlds

The War of the Worlds radio broadcast:

[http://en.wikipedia.org/wiki/The_War_of_the_Worlds_\(radio\)](http://en.wikipedia.org/wiki/The_War_of_the_Worlds_(radio))

1938 Headlines

“Radio Hoax Terrifies State; 15 in Hospital” Newark Ledger, Monday, October 31, 1938

“Radio Listeners in Panic, Taking War Drama as Fact Many Flee Homes to Escape”
The New York Times, Monday, October 31, 1938

“Radio Thriller Panics Nation” The Bismarck Tribune, Monday, October 31, 1938

¹ Trenton Evening Times, October 31, 1938

“Nation in Panic as Radio Stages Play on Invasion of N.J. by Mars Rocket”

Camden Evening Courier, Monday, October 31, 1938

“Radio ‘Invasion’ Throws Listeners into Hysteria”

Seattle Post-Intelligencer, Monday, October 31, 1938