

CLASSROOM LAW PROJECT proudly sponsors the 30th annual statewide

2015-16 Oregon High School Mock Trial Competition



STATE OF OREGON, prosecution

v.

BOBBY DOUSA, defendant

~ a criminal case involving drugs and the staying power of images on the Internet ~

co-sponsored by

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Heartfelt appreciation is extended to all **teachers, coaches, regional coordinators, county courthouse personnel, attorneys and other volunteers** whose dedication and hard work make the regional and state competitions successful. Without the efforts of volunteers like these, this event would not be possible.



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Dear Students, Coaches, Parents, Judges and Volunteers:

Welcome to this year's mock trial competition! This is our thirtieth annual competition and this year's trial promises to be one of Oregon's best.

The case was authored by a committee made up of experienced lawyers, a judge, and a teacher. The committee's aim was to make the case topical, challenging, balanced, and engaging. I believe that this case delivers.

As you may already know, mock trial is an extraordinary activity. It demands intense pretrial preparation and spur-of-the-moment adjustments in the courtroom; pure legal knowledge and real-world practicality; individual excellence and an unwavering commitment to teamwork; and, above all else, the desire to have fun and learn something new.

At Classroom Law Project, we are committed to the best in civic education, and that includes the mock trial competition. Mock trial is unique in that it offers the benefits of a team activity and interactions with community leaders, all while learning about the justice system and practicing important life skills. Plus, it is an opportunity in which young women and men compete on equal footing.

I ask for your help in continuing this successful program. Please give to Classroom Law Project, the sponsor of the Oregon High School Mock Trial Competition. The program costs more than \$35,000 per year; less than half comes from registration fees. We know that you have been asked many times to give and understand that your ability to do so may be limited. But to the extent that you can, please consider how valuable this program is to the young people in your life. Any amount you can give is appreciated. Information about giving is available at our website, www.classroomlaw.org. Classroom Law Project is a non-profit organization and your donation is tax deductible to the extent permitted by applicable law.

I look forward to seeing you in the courtroom. Thank you, and good luck with this year's case!

Sincerely,

Marilyn R. Cover
Executive Director

2015-16 Oregon High School Mock Trial Competition

State of Oregon v. Bobby Dousa

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CLASSROOM LAW PROJECT

2015-16 OREGON HIGH SCHOOL MOCK TRIAL COMPETITION

I. INTRODUCTION

This packet contains the official materials that student teams will need to prepare for the thirtieth annual Oregon High School Mock Trial Competition.

Each participating team will compete in a regional competition. Winning teams from each region will be invited to compete in the state finals in Portland on March 11-12, 2016. The winning team from the state competition will represent Oregon at the National High School Mock Trial Competition in Boise, Idaho, May 12-14, 2016.

The mock trial experience is designed to clarify the workings of our legal institutions. Students take on the roles of attorneys, witnesses, court clerks and bailiffs. As they study a hypothetical case, consider legal principles and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, students learn about our judicial system and develop valuable life skills (public speaking, team building, strategizing and decision making to name a few) in the process.

Since teams are unaware of which side of the case they will present until minutes before the competition begins, they must prepare for both the prosecution and defense. All teams will present each side at least once.

Mock trial judges are instructed to follow the evaluation criteria when scoring teams' performances. However, just as the phrase "beauty is in the eye of the beholder" underscores the differences in human perceptions, a similar subjective quality is present when scoring mock trial. Even with rules and evaluation criteria for guidance, not all scorers evaluate a performance identically. While CLASSROOM LAW PROJECT and competition coordinators work to ensure consistency in scoring, the competition can reflect otherwise, as in real life.

Each year, the mock trial case addresses serious matters facing society today. By affording students an opportunity to wrestle with large societal issues within a structured format, CLASSROOM LAW PROJECT strives to provide a powerful and timely educational experience. It is our goal that students will conduct a cooperative, vigorous, and comprehensive analysis of these materials with the careful guidance of teachers and coaches. This year's case offers opportunities to discuss how having fun at a party can get out of hand. The "date-rape" drug Rohypnol and the staying power of images on the internet are issues.

By participating in mock trial, students will develop a greater capacity to understand important issues such as these.

II. PROGRAM OBJECTIVES

For the **students**, the mock trial competition will:

1. Increase proficiency in basic skills such as reading and speaking, critical thinking skills such as analyzing and reasoning, and interpersonal skills such as listening and cooperating.

2. Provide an opportunity for interaction with positive adult role models in the legal community.
3. Provide an interactive experience where students will learn about law, society, and the connection between the Constitution, courts, and legal system.

For the **school**, the competition will:

1. Promote cooperation and healthy academic competition among students of various abilities and interests.
2. Demonstrate the achievements of high school students to the community.
3. Provide a challenging and rewarding experience for participating teachers.

III. CODE OF ETHICAL CONDUCT

This Code should be read and discussed by students and their coaches at the first team meeting. **The Code governs participants, observers, guests and parents** at all mock trial events.

All participants in the Mock Trial Competition must adhere to the same high standards of scholarship that are expected of students in their academic performance. Plagiarism of any kind is unacceptable. Students' written and oral work must be their own.

Coaches, non-performing team members, observers, guests, and parents **shall not talk to, signal, or communicate with** any member of the currently performing side of their team during trial. Likewise, these individuals shall not contact the judges with concerns about a round; these concerns should be taken to the Competition Coordinator. These rules remain in force throughout the entire competition. Currently performing team members may communicate among themselves during the trial, however, no disruptive communication is allowed. Non-performing team members, teachers, coaches, and spectators must remain outside the bar in the spectator section of the courtroom.

Team members, coaches, parents and any other persons directly associated with the Mock Trial team's preparation are **not allowed to view other teams** in competition so long as they remain in the competition themselves. *Except*, the public is invited to attend the final round of the last two teams on the last day of the state finals competition – approximately 2:00 p.m., March 12, in the Hatfield Federal Courthouse, Portland.

Students promise to compete with the highest standards of deportment, showing respect for their fellow students, opponents, judges, coaches, and competition Coordinator and volunteers. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly and with the utmost civility. Students will avoid all tactics they know are wrong or in violation of the rules. Students will not willfully violate the rules of the competition **in spirit or in practice**.

Teacher coaches agree to focus attention on the educational value of the mock trial competition. **Attorney coaches** agree to uphold the highest standards of the legal profession and zealously encourage fair play. All coaches shall discourage willful violations of the rules. Coaches will instruct students on proper procedure and decorum, and will assist their students in understanding and abiding by the competition's rules and this Code. Teacher and attorney coaches should ensure that students understand and agree to comply with this Code. Violations

of this Code may result in disqualification from competition. Coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.

Charges of ethical violations involving persons other than the student team members must be made promptly to the Competition Coordinator who will ask the complaining party to complete a dispute form. The form will be taken to the competition's communication's center, where a panel of mock trial host sponsors will rule on any action to be taken regarding the charge, including notification of the judging panel. Violations occurring during a trial involving students competing in a round will be subject to the dispute process described in the Rules of the Competition.

All participants are bound by this Code of Ethical Conduct and agree to abide by its provisions.

IV. THE CASE

A. Brief Case Summary

This is a criminal case. Star basketball player Addie Anderson was drugged the night before the big game. While unconscious, someone drew the logo of the opposing team on Addie's face and posted a picture of it on Facebook. The pep squad president of the opposing team, Bobby Dousa, has been charged with the offenses.

B. Witness List

For the prosecution:

Addison Anderson, victim and basketball player at Hamilton High School
Dakota Sherman, Burrough High School student
Leslie Chen, Rowe Police Department forensics specialist

For the defense:

Bobby Dousa, defendant and Burrough High School student
Emerson Kannan, Hamilton High School student
Layne Juarez, M.D., emergency room physician

C. List of Exhibits

The exhibits in this case include the following:

1. Screenshot of Facebook Post
2. Rohypnol Bottle
3. Draft Email Recovered from Smartphone
4. Toxicology Report

D. Introduction to Indictment, Stipulations, Jury Instructions

The Indictment, Stipulations and Jury Instructions appear on the following pages. This is a brief explanation of the information they provide.

The **Indictment** is the formal accusation against the defendant. It is submitted by the prosecution to the court and the defendant is made aware of the charges against him or her.

Stipulations are the facts that both sides agree upon. They are not issues for the trial.

Jury Instructions are issued from the judge to the jury after both sides have completed their case. Jury instructions frame the law for jurors so they can focus on whether the evidence supports – or fails to support – the allegations. Jury Instructions are included for purposes of understanding the prosecution’s burden of proof as well as the elements that need to be proved or disproved during the trial and, therefore, should be helpful to students’ understanding of the case.

...

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR CHINOOK COUNTY

STATE OF OREGON,

Prosecution,

No. 15CR08993

vs.

INDICTMENT - Secret

BOBBY DOUSA,

Defendant.

The above-named defendant is accused by the Grand Jury of Chinook County by this indictment of the crime(s) of

- Count 1: CAUSING ANOTHER PERSON TO INGEST A CONTROLLED SUBSTANCE (FSG= 8; B Felony; ORS 475.908)
Count 2: ASSAULT IN THE FOURTH DEGREE (A Misdemeanor; ORS 163.160)
Count 3: HARASSMENT (B Misdemeanor; ORS 166.065)

committed as follows:

COUNT 1

The defendant, on or about December 5, 2014, in Chinook County, Oregon, did unlawfully and knowingly, and without the consent of Addison Anderson, cause Addison Anderson to ingest Rohypnol, a controlled substance.

COUNT 2

The defendant, on or about December 5, 2014, in Chinook County, Oregon, did unlawfully and recklessly cause physical injury to Addison Anderson.

COUNT 3

The defendant, on or about December 5, 2014, in Chinook County, Oregon, did unlawfully and intentionally harass or annoy Addison Anderson by subjecting Addison Anderson to offensive physical contact, contrary to the statutes and against the peace and dignity of the State of Oregon.

It is hereby affirmatively declared for the record, upon appearance of the defendant for arraignment, and before the Court asks how the defendant pleads to the charges, that the State intends that any misdemeanor offenses charged herein each proceed as a misdemeanor.

##

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR CHINOOK COUNTY

STATE OF OREGON,

Prosecution,

No. 15CR08993

vs.

STIPULATIONS

BOBBY DOUSA,

Defendant.

The parties stipulate and agree to the following:

1. Count 1 of the Indictment (“Causing Another Person to Ingest a Controlled Substance”) refers to Defendant Dousa’s allegedly causing Addison Anderson to ingest Rohypnol.
2. Count 2 of the Indictment (“Assault in the Fourth Degree”) refers to Defendant Dousa’s allegedly causing Addison Anderson to lose consciousness by the nonconsensual ingestion of Rohypnol.
3. Count 3 of the Indictment (“Harassment”) refers to the nonconsensual physical contact that resulted in the drawing on Addison Anderson’s face.
4. Addison Anderson ingested Rohypnol on the evening of December 5, 2014. The parties do not stipulate as to how the Rohypnol was ingested, when it was ingested, or who caused its ingestion.
5. Rohypnol is a controlled substance.
6. Loss of consciousness constitutes impairment of physical condition and “physical injury” sufficient to sustain a conviction for Assault in the Fourth Degree.
7. Exhibit 1 accurately reflects the Burrough High School pep squad’s official Facebook page, to which Defendant Bobby Dousa had access as of December 5-6, 2014. The parties further stipulate that Exhibit 1 accurately depicts a photo that is recognizable as Addison Anderson’s cheek with a Burrough High School’s “Raider” logo drawn on it. The parties do not stipulate that any other person did or did not have access to that Facebook page as of that date.
8. No person at the party that took place on December 5, 2014 at Dakota Sherman’s house possessed or ingested any alcohol or any other controlled substance apart from Rohypnol.

9. As to any statements made by Dr. Layne Juarez to Addison Anderson, or any statements made by Addison Anderson to Dr. Layne Juarez, physician-patient privilege is not an issue and may not be raised by either party at trial.
10. The warrants for the searches of Dakota Sherman's residence, Bobby Dousa's electronic devices, and Bobby Dousa's arrest were properly obtained and executed. No party may raise any challenge regarding any of those warrants at any time during trial.
11. Defendant Bobby Dousa is left-handed.
12. All exhibits included in case materials are authentic. All signatures on witness affidavits and other documents are authentic. No objections to the authenticity of exhibits are allowed.

The parties stipulate and agree to the truth of the foregoing facts, but not necessarily to their admissibility at trial.

##

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR CHINOOK COUNTY

STATE OF OREGON,		No. 15CR08993
	Prosecution,	FINAL JURY INSTRUCTIONS
vs.		
BOBBY DOUSA,		
	Defendant.	

The Court will now submit the case to the jury; you need to decide, based on the law and the evidence presented to you at trial, whether the prosecution has prevailed in proving the prosecution’s charges against the defendant.

EVALUATING WITNESS TESTIMONY

The term *witness* includes every person who has testified under oath in this case. Every witness has taken an oath to tell the truth. In evaluating each witness’s testimony, however, you may consider such things as:

- (1) The manner in which the witness testifies.
- (2) The nature or quality of the witness’s testimony.
- (3) Evidence that contradicts the testimony of the witness.
- (4) Evidence concerning the bias, motives, or interest of the witness.
- (5) Evidence concerning the character of the witness for truthfulness.

INFERENCES

In deciding this case you may draw inferences and reach conclusions from the evidence, if your inferences and conclusions are reasonable and are based on your common sense and experience.

INNOCENCE OF DEFENDANT – PROOF BEYOND A REASONABLE DOUBT

The defendant is innocent unless and until the defendant is proven guilty beyond a reasonable doubt. The burden is on the prosecution to prove the guilt of the defendant beyond a reasonable doubt. Reasonable doubt is doubt based on common sense and reason. Reasonable doubt means an honest uncertainty as to the guilt of the defendant. Reasonable doubt exists when, after careful and impartial consideration of all the evidence in the case, you are not convinced to a moral certainty that the defendant is guilty.

VERDICT – FELONY CASE

When you return to the jury room, select one of your members to act as presiding juror. The presiding juror has no greater voting weight but is to preside over your deliberations and be the

spokesperson for the jury. You should then deliberate and find your verdict. If it becomes necessary during your deliberations to communicate with me, do so in writing. I will consult with the parties before responding.

Remember that you are not to tell anyone, including me, how the jury stands numerically until you have reached a lawful verdict or have been discharged. When you have arrived at a verdict, the presiding juror will sign the appropriate verdict form. After you have reached your verdict, signal the bailiff. The court will receive your verdict.

DIRECT OR CIRCUMSTANTIAL EVIDENCE

There are two types of evidence. One is direct evidence—such as the testimony of an eyewitness. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of a certain fact. You may base your verdict on direct evidence or on circumstantial evidence, or on both.

WITNESS FALSE IN PART

A witness who lies under oath in some part of his or her testimony is likely to lie in other parts of his or her testimony. Therefore, if you find that a witness has lied in some part of his or her testimony, then you may distrust the rest of that witness’s testimony.

Sometimes witnesses who are not lying may give incorrect testimony. They may forget matters or may contradict themselves. Also different witnesses may observe or remember an event differently. You have the sole responsibility to determine what testimony, or portions of testimony, you will or will not rely on in reaching your verdict.

CRIMINAL CHARGES

In this case, the defendant is charged with the crimes of Causing Another to Ingest a Controlled Substance, Assault in the Fourth Degree, and Harassment. In summary, those charges alleges as follows:

[The judge reads the indictment to the jury]

The defendant has entered a plea of not guilty to each of these charges. A plea of not guilty is a denial of every fact alleged by the prosecution.

EXPERT OPINION EVIDENCE

An expert witness is a person with special skills or education in a particular field. Even though expert witnesses may testify about their opinions, you are not required to accept those opinions. To determine the value, if any, you will give to an expert’s opinion, you should consider such things as the expert’s qualifications, the expert’s opportunity and ability to form the opinion, the expert’s believability, and how the expert reached the opinion or conclusion.

##

E. Case Law

The following cases are offered as *background*, and are included so teams may better understand the legal issues in this case. They are not evidence, and therefore may not be used in witnesses' testimony. Understanding the law, however, will help attorneys and witnesses alike highlight the evidence that supports the law and each side's arguments. Attorneys may refer to cases when arguing objections if they choose, but no student may use or refer to any of the cases below at any other time or for any other purpose.

State v. Clegg (2001): A murder victim's declaration that, before receiving the defendant's call, she had intended to go to lunch, was admissible under the "state of mind" exception (Rule of Evidence 803(3)) as a statement of the declarant's "then-existing intent or plan."

State v. Johnson (2006): In an aggravated murder prosecution, the victim's statement on the night she disappeared that she intended to go to the defendant's house was proper "state of mind" evidence under Rule of Evidence 803(3).

State v. Neal (1996): "Bias" is the friendly or hostile feeling a witness holds toward a party; "interest" is having a stake in the outcome of the proceeding; however, personal belief in the guilt or innocence of the defendant is the ultimate question for the jury.

State v. Adonri (1996): In the absence of any evidence attacking the defendant's character for truthfulness as a witness, evidence of his truthful character should not have been admitted; once admitted, however, it opened the door to evidence of *the victim's* character for truthfulness, which was not otherwise admissible under Rule of Evidence 608's limitations on rehabilitation.

State v. Dugan (2001): Evidence of the defendant's character for truthfulness was not admissible until the state attacked the defendant's character. Moreover, the state's evidence indicating that the defendant had made false statements to the police about the crime did not constitute an attack on the defendant's character.

State v. Hendrix (1992): Circumstantial evidence may be sufficient to prove any element of a crime; proof of a mental element may be inferred from conduct.

##

1 **F. Witness Statements**

2 **AFFIDAVIT OF ADDISON ANDERSON**

3 My name is Addison Anderson; people call me “Addie” for short. I’m 18 years old,
4 and I live in Rowe, Oregon. I’m mainly known around here for being the former starting
5 point guard on Hamilton Hurricanes’ basketball team. People say I’m one of the best athletes
6 to ever come out of Rowe—I’m definitely better than anyone on Burrough’s team—but I try
7 not to focus too much on all the attention. Really, I just love the game. I’m taking a year off
8 between high school and college but am already lined up to play for Oregon State next year
9 on a scholarship, and I’m really excited about it. Some say I could go pro, but I don’t think
10 so. I want to go to medical school and become a doctor.

11 Life has been crazy lately and it’s really hurting my game. I’m sure my scholarship
12 will be fine—especially given everything that’s happened to me. Still, though, it really hurts
13 knowing that I’m not playing as well as I could be or as well as I had been. I had my
14 “breakout” season during my sophomore year. By about midway through the season I had so
15 many double-doubles that some of my fans called me “double double A.”

16 The next year was even better; I led Hamilton to the state championship. We were
17 against Burrough in the finals. The ref gave us a few bad calls early in the game, and by the
18 end of the fourth quarter we were down by two points. But in the final seconds, I nailed a
19 three-pointer to give us a victory. It was incredible! A few college scouts were watching,
20 and the next day I got a call from Oregon State. Everything was going great until all this.

21 Burrough High School is also in Rowe, but it’s on the other side of town. It’s been
22 Hamilton’s biggest rival for forever. When we play each other practically the whole city
23 comes out to watch. The games are huge and, if your school loses, the fans don’t forget.

1 People still talk about games that happened decades ago. The rivalry runs deep, and it can
2 get kind of heated on the court.

3 For our first game of the 2014-15 season, my senior year, we were playing Burrough.
4 Coming off our huge championship the year before, the pressure was even more intense than
5 usual. The game was scheduled for December 6, 2014, a Saturday night. We were the clear
6 favorite to win, but we had still been practicing twice as hard as normal to make sure
7 everything would be perfect. Coach wanted us well-rested, so he gave us Friday off and said
8 to take it easy.

9 I will always regret not taking Coach's advice. I don't know what came over me.
10 Maybe it was nerves about playing in my first game in my senior year, college scouts ... who
11 knows. I had heard that Dakota Sherman, a member of Burrough's pep squad, was having a
12 party Friday night and kids from both schools were invited. Dakota's parents were going to
13 be away, and the party was supposed to be *huge*. A lot of people at school wanted me to go
14 and represent Hamilton. I guess I thought it could be a way to relax a little and take my mind
15 off the game. I wasn't planning on staying long. Plus, who was I to turn down a challenge?

16 When I first arrived, people seemed to be having a good time. There were tons of kids,
17 the music was going, and everyone was just mingling. After a while, conversation turned
18 toward the next day's game. You could feel the rivalry in the air, but it was good-natured.
19 People were singing fight songs, cracking jokes about the other school, stuff like that.

20 But after a while, things took an uncomfortable turn. Jokes turned into trash talk, and
21 things got a little tense. There were a lot more people from Burrough than Hamilton, and it
22 kind of seemed like they were starting to gang up on us. In particular, I remember one
23 Burrough kid named Bobby getting kind of rowdy. Bobby, the defendant in this case,
24 seemed to be the leader of the entire group. Bobby started egging me on to "show us some

1 skills” on the basketball hoop in the driveway, but I didn’t really want to. At that point, I had
2 been hanging out with my teammates, trying to take it easy and stay out of the trash talking.
3 But Bobby kept at it, and I could see in my teammates’ eyes that they wanted me to go out
4 there and prove myself.

5 So I put my drink down and went outside. I made sure to wedge it back in the corner
6 between the couch and the wall so it wouldn’t get mixed up with anyone else’s. Bobby was
7 standing right in front of me when I put my drink down, and when I got up Bobby was sort of
8 staring at me and smiling. I went outside, someone tossed me a ball, and I played for
9 probably about 10 minutes. I shot some deep threes, did a few layup tricks, and showed off
10 my ball-handling skills. I challenged a couple of Burrough kids to some quick one-on-one
11 and made some ridiculous blocks. Everyone from Hamilton was cheering like crazy. I think
12 even some of the Burrough people were impressed, or at least jealous. At the very least, it
13 seemed like the tension had faded and people were starting to have a good time again.

14 When I finished showing the Burrough kids who the better player was, everyone went
15 back inside. It was about 9:00 p.m. At some point after that, I’m not sure exactly when, I got
16 my drink from where I had left it behind the couch. I know I had it in my hand at 9:45
17 because I remember glancing at the clock as I took a sip and noticing how late it was getting.
18 That, I think, was also when I realized I was feeling pretty out of it—sort of dizzy and
19 disoriented. About 15 minutes after that, I started feeling nauseous so I headed for the
20 bathroom, and handed Dakota my cup as we passed in the hall. The nausea went away pretty
21 quickly and when I came out of the bathroom Dakota handed me my cup. As I went to take
22 it back, we nearly dropped it and most of the soda spilled. Dakota offered to clean it up, so I
23 took a sip and went off to find my friends.

1 By about 10:15 or 10:30, though, I had started feeling drowsy and was even having
2 trouble standing. I was trying to chat with my friends, but everything felt really slow. My
3 muscles were weak, and I started feeling sluggish and disoriented. I thought I might just
4 have been exhausted from practicing so much and then showing off in the driveway, so I
5 guess I didn't think much of it at first. One of my teammates asked if I was ready to go
6 home, but I said to go ahead, and I would follow in a few minutes. I had driven myself to the
7 party, and I wasn't going to get behind the wheel until I snapped out of it.

8 I went into a bedroom and sat down on the bed to try to gather myself. That's the last
9 thing I remember. Next thing I knew, it was 8:00 a.m. I woke up on that same bed feeling
10 groggy, confused, nauseous, and I had a splitting headache. I was so wobbly, I could barely
11 get to my car. The house was a mess from the party, but I didn't see anyone on my way out.

12 As soon as I got in my car, I did a double-take. I saw in my rearview mirror that
13 someone had drawn a huge "Raider"—that's Burrough's mascot—on the side of my face. It
14 was covering up my entire cheek! I drove straight home and started furiously washing my
15 face, trying to get rid of it. No matter what I did, it wouldn't come off. Whoever did this had
16 drawn on my face with some kind of seriously permanent marker. On game day!

17 When I got home I got on my computer to see if I could find out anything from anyone
18 about what happened at that party. I couldn't understand why I didn't remember anything. I
19 got on Facebook and saw immediately that I had over a hundred messages. Then, to my
20 horror, I realized they were all about the same thing: someone from Burrough had posted a
21 photo of me on their pep squad's fan page that everyone could see. I clicked the link, and my
22 stomach turned. There was a photo of my face when I passed out with that huge Raider
23 drawn on my face. The caption read: "GO RAIDERS!" The post and the photo are shown in
24 Exhibit 1. The photo already had hundreds of "likes" and dozens rude comments from

1 Burrough fans. I was totally mortified. Not only was I supposed to lead Hamilton to victory,
2 but that day's game was supposed to be the highlight of my senior season. How was I
3 supposed to win if I was the laughingstock of the entire town?

4 We lost the game that night. The headache and grogginess still hadn't gone away by
5 game time. What's more, the whole time I was playing, I could feel everyone staring, pointing,
6 and joking about my face. It completely threw me off. I knew my team was disappointed in
7 me. The whole school was mad at me. I went straight home afterward without talking to
8 anyone. My parents were worried sick when I told them what happened. After the game, they
9 asked me if I thought maybe someone slipped something in my drink at the party that made me
10 pass out. It made a lot of sense; my memory from that night after about 9:00 is pretty hazy
11 although I'm pretty sure of the overall timeline. So the next morning they took me to the ER to
12 get a toxicology test. When I got the results back, I couldn't believe it. Someone had given
13 me Rohypnol at that party! Sure, the mark may be gone from my face, but that photo will
14 never disappear, and I will never live it down.

15 I hereby attest to having read the above statement and swear or affirm it to be my own.
16 I also swear or affirm to the truthfulness of its content. Before giving this statement, I was
17 told it should contain all relevant testimony, and I followed those instructions. I also
18 understand that I can and must update this affidavit if anything new occurs to me until the
19 moment before I testify in this case.

20
21
22
23 Subscribed and sworn before me on August 31, 2015
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25
26

Addison Anderson
Addison Anderson
Dated: August 31, 2015
Nikita Daijavad
Nikita Daijavad
Notary Public in and for the State of Oregon

1 **AFFIDAVIT OF DAKOTA SHERMAN**

2 My name is Dakota Sherman. I'm 18 years old, and I'm a senior at Burrough High School
3 here in Rowe, Oregon. I'm a member of the Burrough pep squad, and for the past two years I've
4 basically been Bobby Dousa's right hand in all things Raider-related. We joined the squad together
5 when Bobbie was a sophomore and I was a freshman, but we had been friends for years before that.
6 If someone had asked me a year ago, I probably would've said no one knew Bobby as well as I did.
7 At this point, though, I feel like I don't really know Bobby at all.

8 Things started changing between Bobby and me at the end of my sophomore year and
9 Bobby's junior year. The squad was electing a president for the next year, and I wanted the job.
10 Plus, it was kind of an unspoken rule that the president has to be a new person every year and,
11 because Bobby was squad president junior year, I figured I had it in the bag. But out of nowhere,
12 Bobby decided to seek another term. I'll admit, I was pretty upset at the time. From where I stood,
13 Bobby was being pretty selfish. But Bobby is really competitive and has a lot of energy, so when the
14 team re-elected Bobby almost unanimously there wasn't much I could do about it. It was one of the
15 only times we've ever fought and, after that, things were never really the same between us.

16 Pep squad was still a blast, though. Bobby may be a little overzealous, but Bobby is a really
17 good leader. During Bobby's first year as president, we had more pep rallies than any other time in
18 school history, and during Bobby's senior year we kept up the pace. Turnout for every game was
19 high, and we did all kinds of pride events at school to get people excited. Bobby even made a
20 Facebook page to keep students, alumni, and their families in the loop; by December 2014, thousands
21 were following us. At the games themselves, our student section usually drowns out any other group,
22 except maybe when we're playing Hamilton High. But even then, we're a force to be reckoned with.
23 Bobby goes all-out, especially for basketball games.

1 The 2014 season opener against Hamilton was going to be Bobby’s biggest game ever. The
2 days leading up to the game were pretty fun. We did pride week at school and had our normal pep
3 rally, but I think everyone was especially excited because Addie Anderson would be on the court for
4 Hamilton. The season before, Burrough was the underdog, but we powered through to the finals
5 where we played Hamilton. We were ahead the whole game, but we ended up losing on a last-second
6 three-pointer by Addie. I think everyone knew we would probably lose this one, but the Raiders
7 really seemed to be rallying around Bobby, and we all were starting to enjoy being the underdog
8 again.

9 I wanted to do my part, so I decided to have a party the Friday before the game. Deep down, I
10 think I was still a little peeved that Bobby had stolen my spot as pep squad president, and I sort of
11 wanted to prove everybody who voted for Bobby wrong. So I had a wild idea: I decided to invite
12 everybody I knew from Burrough *and* Hamilton. The rivalry would be on full display, and it was
13 going to be awesome. It’s pretty rare for Raiders and Hurricanes to party together, and it’s basically
14 unheard of before a game this big. With Bobby’s help, I was doing everything possible to make sure
15 we outnumbered Hamilton at the party. I offered to make a post about it on Facebook but, as usual,
16 Bobby wasn’t willing to delegate any of the “president’s jobs” to anyone else. Bobby refused even to
17 give anyone else administrative access to post on the group page, although I think I could probably
18 have guessed the password if it came down to it. I’m pretty sure it was “Burrough2014,” or
19 something like that. I’ve known Bobby for over a decade, after all.

20 In any event, Bobby’s Facebook post worked. About an hour into the party, there were easily
21 twice as many Raiders as there were Hurricanes. Raider pride was in the air. Everyone seemed to be
22 getting along, at least until Addie showed up. Naturally, people gravitated toward Addie, and I knew
23 it was really going to bother Bobby. Bobby had been talking about the big game for weeks, going on

1 about how Addie is overrated, how we shouldn't believe the hype, etc. I had never seen Bobby so
2 amped up about a single player before. I wasn't really surprised when Bobby started getting
3 everyone riled up and singing the Raider fight song to try to turn the spotlight away from Addie and
4 back onto the Raiders.

5 I'll admit, I helped out initially but it wasn't long before Bobby took things in a direction I
6 didn't want to go. Bobby started making things personal with Addie and even challenged Addie to
7 show off Addie's skills. That's Bobby's biggest weakness; Bobby doesn't know when to quit. After
8 the championship game, right after Addie hit the game-winning shot, Bobby grabbed an almost-full
9 cup of soda and hurled it at Addie. Bobby missed—Bobby is probably the least coordinated person I
10 know—but practically the entire stadium heard Bobby yell, "The Raiders aren't going to forget this
11 anytime soon, Anderson!"

12 Anyway, after hesitating a few minutes, I headed outside with the rest of the party. That was
13 at about 8:45 p.m. and Addie had just started to play. On my way out of the house, I passed by
14 Bobby who seemed to be coming back inside for some reason. I saw a look in Bobby's eye that I
15 only saw once before; it was the same look that was on Bobby's face when Bobby hurled the cup of
16 soda at Addie at the championship. I asked if everything was okay and Bobby said, "It will be. Trust
17 me, Addie's going to be in for quite a surprise." I had no idea what Bobby meant but I didn't think
18 much of it at the time. I joined the rest of the group to watch Addie play. Bobby was walking pretty
19 quickly at that point. I thought Bobby may have left the party but, then again, I was pretty sure I saw
20 Bobby's car still parked outside a couple hours later.

21 Once everyone came back inside, I spent some more time mingling, meeting people from
22 Hamilton, and chatting with my pep squad friends. I remember seeing Addie hanging around, but
23 Addie was looking really exhausted. At one point, around 10:00 p.m. I think, Addie asked me to hold

1 a drink while Addie used the bathroom. Addie seemed to be really out of it—kind of pale, slurring
2 words, and looking uncoordinated. I remember asking, “Hey, are you okay?” but Addie didn't even
3 respond. I don't remember ever seeing Addie again after that point; I can't be sure, but I don't think
4 Addie ever even came back for the drink.

5 I first saw the photo with the Raider on Addie's cheek on Saturday morning after I woke up.
6 I'll admit it, I laughed at first. It was a pretty good prank. But the more I thought about it, the more I
7 wondered how someone managed to draw that on Addie's face. I could see Bobby doing something
8 like this but I couldn't imagine how it could happen. Then when I heard Addie had been drugged at
9 the party, it all made sense. I mean Bobby had gone back inside the house when no one else was
10 around, and I'm pretty sure Bobby was still there after everyone came back in. I remembered what
11 Bobby said when we passed each other, and that made me think Bobbie could have pulled this off. I
12 knew I had to say something.

13 I went immediately to the police and told them everything that happened. I told them Bobby
14 was the only person with access to the Raider Facebook page where the photo appeared; a picture of
15 it is on Exhibit 1. It wasn't long before Bobby was arrested. I didn't tell them at first about the
16 Rohypnol in my mom's medicine cabinet; at the time I didn't know how Addie had been drugged.
17 But when I learned a few days later that it was Rohypnol, a light went on in my head. My family
18 spent Thanksgiving in Mexico, and when my mom came down with insomnia the hotel doctor
19 prescribed Rohypnol to help her sleep. Apparently, though it's illegal in the United States, Rohypnol
20 is legal and pretty common in Mexico. I noticed that my mom put a few leftover pills in the medicine
21 cabinet upstairs after we got back. I remember mentioning the Rohypnol when I was telling Bobbie
22 about my vacation but I'm pretty sure I never actually showed Bobby the bottle. Then, about a day or
23 so before the party, Bobby asked me out of the blue if my mom still had any pills left. I thought it

1 was kind of a weird question, but I had no idea at the time what Bobby was planning. Bobby's been
2 over to my house a million times and knows where our medicine cabinet is in the upstairs bathroom.
3 I just wish I had kept my mouth shut about those pills and maybe none of this would have happened.

4 After Addie was drugged, the principal decided Bobby could no longer be president of the
5 pep squad. I unofficially took over the president's job, which I'm still doing. It's been great, but,
6 until this whole thing blows over, they're keeping a lid on the kinds of rallies we can do.

7 I hereby attest to having read the above statement and swear or affirm it to be my own. I also
8 swear or affirm to the truthfulness of its content. Before giving this statement, I was told it should
9 contain all relevant testimony, and I followed those instructions. I also understand that I can and must
10 update this affidavit if anything new occurs to me until the moment before I testify in this case.

11 *Dakota Sherman*

12 Dakota Sherman

13 Dated: September 2, 2015

14 Subscribed and sworn before me on September 2, 2015.

15 *Nikita Daijavad*

16 Nikita Daijavad

17 Notary Public in and for the State of Oregon

18

1 **AFFIDAVIT OF LESLIE CHEN**

2 My name is Leslie Chen, and I'm a computer forensic investigator with the Rowe Police
3 Department (RPD) here in Rowe. I'm 38 years old, and I have worked for RPD for 16 years. I've
4 always had two loves: computers and crime dramas. I took apart my parents' computer when I was
5 little and from then on I was hooked. And I relate to techies in the forensic labs in crime shows.
6 They always come up with the key evidence that nails the bad guy, right?

7 Anyway, I carried both loves with me through college. I went to Portland State University
8 where I got my bachelor's degree in computer science with an emphasis in computer forensics.
9 Portland was great but, obviously, Rowe is better, so when I graduated I came home and accepted a
10 job in the RPD's forensic lab. My job with the RPD requires me to do more than just computer
11 forensics, so during my first two years of employment I completed my master's degree in forensic
12 analysis at Rubicon College here in Rowe. In addition to computer forensics, I developed expertise
13 in evidence preservation, fingerprint analysis, crime scene analysis, and a number of other areas in
14 the field of forensics.

15 I became involved in this case during the week of December 8, 2014, when I was asked to
16 assist in executing warrants for a search of Dakota Sherman's house for the bottle of Rohypnol that
17 was used to drug Addison Anderson, for the arrest of the defendant Bobby Dousa, and for a search of
18 the defendant's electronic devices. On December 11, I accompanied the arresting officer to the
19 Dousa residence where we found the defendant studying in the defendant's room. As the arresting
20 officer placed the defendant in handcuffs, I collected the "smartphone" (a cell phone that is equipped
21 with internet access, email, a camera, and other advanced features) that was on the defendant's desk.
22 I then proceeded to the Sherman residence. Dakota Sherman's parents answered the door and when I
23 asked them to show me their bottle of Rohypnol, they complied and led me to the upstairs medicine

1 cabinet. I took the bottle and the defendant’s smartphone back to RPD’s forensic lab where I
2 analyzed them.

3 I began with the bottle of Rohypnol. Specifically, I wanted to see if I could locate any of the
4 defendant’s fingerprints on the bottle. The bottle itself was orange plastic and was covered around its
5 circumference with a glossy plastic label—basically, it was a regular prescription bottle—which
6 made the bottle a prime surface from which to extract fingerprints. After “dusting” the bottle, I was
7 able to recover two usable fingerprints. There were a number of other partial prints that were either
8 too small or too smudged to be usable.

9 I then compared the two fingerprints on the Rohypnol bottle to fingerprints taken from the
10 defendant while the defendant was being processed following the arrest. Each of those ten
11 “comparator” prints were clear and usable and, together with the prints on the bottle, I had more than
12 enough data to complete my analysis. I compared the fingerprints using forensic principles that have
13 been widely accepted as reliable (and used) among forensic professionals for literally decades, and I
14 applied them reliably in this case. The principles focus on several unique features or characteristics,
15 which also are often referred to as “points,” that are common in the patterns made by fingerprints.
16 When comparing fingerprints, my colleagues in the forensic community and I look for as many
17 matching “points” as possible; the greater the number of matching points, the greater the probability
18 of a match. The forensic community generally accepts a 12-point match as conclusive proof that two
19 fingerprints are the same, although a small minority of experts believes that a “conclusive” match
20 requires at least 15-20 points. However, based on the majority of the existing literature and in my
21 experience, a 12-point match means you can be 95% certain that you’re looking at two images of the
22 same fingerprint.

1 Based on the facts, data, and principles above, and on my analysis of the Rohypnol bottle, I
2 concluded that the first of the two fingerprints was a 12-point match to the defendant’s right index
3 finger. In other words, there are 12 unique features that are common to both the defendant’s right
4 index finger and the print I lifted from the bottle. The second fingerprint which I found farther down
5 and clockwise around the bottle, was an 8-point match for the defendant’s right thumb. I gather that
6 the defendant is left handed and, given where I found the fingerprints, that makes sense; it appears the
7 defendant picked up the bottle with the defendant’s right hand so that the defendant could open it
8 with the defendant’s left hand. An image of the bottle with fingerprints is shown in Exhibit 2.

9 I then turned to my computer forensic analysis of the defendant’s smartphone. Generally
10 speaking, “computer forensics” refers to the process of preserving, recovering, and analyzing data
11 from computers, smartphones, USB drives, email accounts, and basically any other electronic device
12 or account that’s capable of storing data. When you delete a file from your computer, do you think
13 it’s gone forever? Think again. Computer forensic analysts can sometimes recover data from
14 devices that have been tampered with, “wiped,” or even damaged. After all, in the digital world, very
15 few types of information are ever really “gone” forever.

16 I understood that a picture of the victim had been posted on Facebook on or about December
17 5, and I thought it likely that the picture had been taken with and possibly posted from the
18 defendant’s smartphone. So I focused my analysis on text, photos, and other data from the phone that
19 could be related to the Facebook post. To conduct the analysis, I used advanced computer software
20 called “ForensicMagician,” which preserves and extracts data from computers and smartphones and
21 is accepted as reliable and used by virtually every computer forensic professional in the country to
22 conduct forensic analyses. ForensicMagician can extract not only text, photos, and other “regular”
23 computers files, but also can reveal more “advanced” information such as when particular files were

1 last accessed or even deleted. I ran the ForensicMagician program on the defendant’s smartphone
2 reliably and without any problems.

3 The results were telling. First, since I was looking for photos, I checked the folder where
4 photos would normally be stored in the smartphone. The folder, however, had been “wiped”—*i.e.*, its
5 entire contents had been deleted at approximately 5:35 p.m. on December 9, 2014. I thought there
6 might be something in the smartphone’s email, though, so I next looked there. Although I didn’t see
7 anything relevant to my investigation in the defendant’s email inbox or sent folder, using
8 ForensicMagician I was able to recover a draft email that had been deleted (or so the defendant
9 thought) at approximately 1:00 a.m. on December 6, 2014. The email’s contents are shown in
10 Exhibit 3. Additionally, though I wasn’t able to recover the image itself, I could see that the
11 smartphone’s user had attached a photo to the draft email.

12 Finally, I wanted to see if I could find any useful information in the smartphone’s internet
13 search history. Just like a computer, a smartphone records the user’s internet activity. Again, the
14 results were telling: on December 3, 2014, at approximately 7:37 p.m., the smartphone’s user
15 performed a Google search for “Rohypnol effects short long term.”

16 I hereby attest to having read the above statement and swear or affirm it to be my own. I also
17 swear or affirm to the truthfulness of its content. Before giving this statement, I was told it should
18 contain all relevant testimony, and I followed those instructions. I also understand that I can and must
19 update this affidavit if anything new occurs to me until the moment before I testify.

20 _____
21 *Leslie Chen*
22 Leslie Chen
23 Dated: September 28, 2015

23 Subscribed and sworn before me on September 28, 2015.

24 _____
25 *Nikita Daijavad*
26 Nikita Daijavad
Notary Public in and for the State of Oregon

1 **AFFIDAVIT OF BOBBY DOUSA**

2 My name is Bobby Dousa. I'm 18 years old, and I live in Rowe, Oregon. I was formerly the
3 leader and president of Burrough High School's pep squad and am, without a doubt, the biggest
4 Raiders fan you'll ever meet. Pep squad is a huge deal at Burrough, probably because of our rivalry
5 with Hamilton High across town. I got involved in pep squad during my sophomore year along with
6 my best friend Dakota Sherman. Well, Dakota used to be my best friend.

7 Anyway, during my senior year, around the beginning of December 2014, everyone was
8 gearing up for the big game against Hamilton. Hamilton had won the previous year's state
9 championship in a nail-biter against Burrough and everybody—including me—was eager for
10 payback. During the first week of December, we put on our annual "pride week" where everyone
11 wears basketball jerseys and school colors every day leading up to the first game of the season. Pride
12 week is my favorite week of the year but last year I had completely outdone myself. For the entire
13 week, I was totally decked out in Burrough gear from head to toe. I decorated my car and my locker,
14 helped lead chants and cheers in the hallways between classes, and even custom-made an amazing
15 red-and-black Burrough jacket that I basically didn't take off the entire week. One day, I even used
16 face paint to draw an awesome Raider logo on some of my friends' cheeks. It took some practice
17 getting the image right—it's not an easy logo to draw, especially on someone's cheek—but by the
18 end of the day I thought they were turning out great.

19 Don't get me wrong, I knew we were probably going to lose the game. I knew about
20 Hamilton's Addie Anderson, and I knew we didn't have anyone that talented on our team. Addie is
21 just unstoppable; I hate to admit it, but watching Addie in that championship game was incredible.
22 But, obviously, I was going to be rooting for the Raiders win or lose. Sure, Addie is probably going

1 to be famous someday, but I knew that if there was anything I could do to help the Raiders put up a
2 good fight, I was going to do it.

3 So, when I heard about the party at Dakota Sherman’s house on Friday night, I knew I had to
4 go. My fellow Raiders needed their biggest fan to be there when the Hurricanes showed up. During
5 my first year as pep squad president, I created a Facebook page called “Raider Central,” and students
6 and alumni use it to keep in touch about Raider-related events, gatherings, and—most importantly—
7 sports. I was the only one with administrative privileges, and that means I was the only one with the
8 password (or who’s supposed to know the password) that allows you to post anything on it. It’s been
9 changed since, but on December 5 the password was “RAIDERS” in all caps. The Friday before the
10 big game, I logged on and made a post about the party so we could try to round up as many Raiders
11 as possible to be there. It looked like the turnout was going to be huge.

12 I showed up at Dakota’s house pretty early, and it wasn’t long before a ton of other people
13 showed up including a bunch of Hamilton kids. Things were going smoothly and everyone seemed
14 to be having a good time. After a while, Addie and some other Hamilton players waltzed in.
15 Obviously, it was all eyes on Addie who, even though Addie was still in high school, was already
16 being treated like a basketball celebrity. Some might say I’m a little overly competitive, but I didn’t
17 want Dakota’s party to become the Addie show – especially the night before our game. I needed to
18 do something, and I needed to do it fast.

19 I got a group of my fellow pep-squadders to start singing the Burrough fight song. Then we
20 began chanting for a bit, and after that we started a little friendly trash talk with some Hamilton kids.
21 It wasn’t anything serious—just a few innocent jabs about how the refs had basically handed them
22 the championship on a silver platter—but you could tell they were getting a little annoyed, which was
23 exactly what I was hoping for. People were finally getting into the spirit of things, and I wanted to

1 add a little fuel to the fire. I was going to start up another chant, but when I looked over at the
2 Hurricane crowd Addie was just sitting there on the couch sipping Addie’s drink, too cool for school.
3 You’d think the star player would have a little more pride. So I walked right up to Addie and said,
4 “If you’re so great, show us what you’ve got. Show us those skills outside!” I thought Addie was
5 going to say no—I was kind of hoping Addie would so I could show everybody what a wimp Addie
6 really is—but Addie jumped up and ran outside to the basketball hoop in the driveway. Everyone
7 knew they were in for a show and followed Addie outside.

8 I don’t know what I expected to happen. I guess I hoped that Addie would totally mess up, or
9 even sprain a wrist or ankle and be unable to play the next day. But when Addie started playing, it
10 was immediately clear that the hype was for real. I don’t remember ever seeing anyone with that
11 kind of natural talent.

12 As I stood there watching, all I could think about was how badly we were going to get
13 stomped the next day. The biggest game of my senior year was going to be a total embarrassment.
14 As the pep leader, I felt personally responsible for the disappointment my fellow Raiders were going
15 to feel. My competitive side got the best of me, and I got pretty upset. I didn’t want to be at the party
16 anymore if Addie was going to steal the show like that. I needed to go home and prepare for the next
17 day’s game, or at least try to figure out a way to stall the momentum that Hamilton seemed to be
18 building from Addie’s performance. When the two teams hit the court the next night, I wanted the
19 Raiders’ fans to be ready.

20 So I turned around and decided to leave. I checked my watch, and it was around 8:45 p.m. As
21 I was heading back inside, Dakota stopped me and asked if everything was okay. I must have looked
22 kind of annoyed, and I said something like, “It will be.” I don’t remember my exact words, but all I
23 meant was that Burrough’s pep squad would be pulling out all the stops for the game and that I was

1 going to find a way to motivate the Raiders to victory. I certainly didn't say anything else, though. I
2 knew I would cool down eventually, but it wasn't going to happen until I got out of there.

3 After that, I left. I had come by myself, and I left by myself. I don't know how long Addie
4 kept showing off, but Addie was still out there when I left. I was mad the whole drive home just
5 thinking about it. I couldn't really sleep that night so I spent a couple hours on the internet just
6 messing around. I felt bad about leaving so abruptly and about being short with Dakota.

7 I was as surprised as anyone about what happened on Saturday. When I saw the photo of
8 Addie's face with the Raider drawn on it, I have to admit that I was pretty impressed. Sure, I
9 wondered how it got there, but in my excitement I didn't give it a lot of thought. I was one of the
10 first people to "like" the photo (what loyal Raider fan wouldn't?), but I certainly didn't have anything
11 to do with it. I also didn't expect the picture to affect Addie's play so dramatically, but I wasn't
12 going to complain! The worse Addie played, the louder I cheered. Our student section was going
13 totally nuts by the end of the game. By the end of the game, the memory of my sulking the night
14 before faded away entirely. We actually had beaten the Hurricanes. It was a huge upset, and I was
15 ecstatic.

16 About a week later the police showed up at my house and arrested me. Everything since then
17 has been a total blur. I can't believe people are accusing me of committing a crime, let alone one as
18 stupid and dangerous as slipping Rohypnol into somebody's drink. There's no way I could have
19 done anything to Addie because I left the party while Addie was still playing basketball in the
20 driveway! The police are taking all my statements and actions out of context to blame me for this.
21 They even took my cell phone! And, as for the photo, someone must have hacked the pep squad
22 group page and posted it. That sort of thing happens all the time, right?

1 The thing that's upset me most about this whole ordeal is that Dakota, who I thought was my
2 best friend, is apparently the person who's pinning this on me. And I think I know why; it was
3 probably Dakota who slipped Addie the Rohypnol. I know Dakota and Dakota's parents had spent
4 Thanksgiving in Mexico and, a few days before the party, Dakota told me that Dakota's mom had
5 insomnia during the trip. Dakota's mom got a prescription for Rohypnol from the hotel doctor; it's
6 apparently legal and commonly prescribed for insomnia in Mexico. I remember asking Dakota about
7 the pills a few days before the game because I was getting pretty stressed about everything and
8 thought I might need a little help sleeping. I had done a little bit of research to make sure the pills
9 were safe and didn't have any long-term risks. Dakota told me there were still a few left over.

10 I have reviewed the affidavit of Leslie Chen, and Chen's conclusions are way off base. I have
11 no idea how my fingerprints would even have gotten on the bottle of Rohypnol. When I asked about
12 the Rohypnol pills, I happened to be over at Dakota's house, and Dakota actually showed me the
13 bottle. Maybe I touched it then? As for the draft email, the photo that was going to be attached to it
14 was just an old picture of my face painted with a Raider logo from a game a few years ago; I wanted
15 to ask Dakota whether Dakota was interested in getting some Raider fans to do the same thing at the
16 big game the next day. I haven't been able to find any old copies of that photo since I deleted the
17 draft email, though. I ended up deciding not to send it because I wanted to think up something even
18 better to do at the game.

19 It must have been Dakota who drugged Addie. Maybe I shouldn't be surprised; I always
20 knew Dakota wanted to be president of the pep squad and probably was jealous that I had been
21 elected twice. Before my second election, no one had ever been president of the pep squad for two
22 years in a row, and I know Dakota was vying for the position for my senior year. But Dakota was

1 crazy to think I'd give up my title to Dakota or anyone else. No one in that school is a bigger or more
2 loyal Raider fan than me.

3 I hereby attest to having read the above statement and swear or affirm it to be my own. I also
4 swear or affirm to the truthfulness of its content. Before giving this statement, I was told it should
5 contain all relevant testimony, and I followed those instructions. I also understand that I can and must
6 update this affidavit if anything new occurs to me until the moment before I testify in this case.

7 Bobby Dousa

8 Bobby Dousa

9 Dated: September 17, 2015

10 Subscribed and sworn before me on September 17, 2015.

11 Nikita Daijavad

12 Nikita Daijavad

13 Notary Public in and for the State of Oregon

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1 **AFFIDAVIT OF EMERSON KANNAN**

2 My name is Emerson Kannan. I'm 17 years old, and I'm a junior at Hamilton High School in
3 Rowe, Oregon. I live near Hamilton, but I started high school at Burrough High because I thought
4 I'd be more likely to make the varsity basketball team there. But I ended up transferring to back to
5 Hamilton after my freshman year because Burrough just wasn't for me. It seemed like everyone at
6 Burrough was more concerned with the hype leading up to the games than the basketball games
7 themselves. I'm a pretty good player, I guess, but I didn't really like the pep rallies that Burrough's
8 pep squad always had. They were just too wild and over-the-top for me. I'm fairly quiet and before
9 a game I can't be partying; I need to be calm and focused. I'm pretty sure I got put on their junior
10 varsity team because at the beginning of the year I only went to one of those rallies, and even then I
11 wasn't "enthusiastic" enough.

12 Anyway, at first, I was really happy to be back for sophomore year at Hamilton last year.
13 Since we're less crazy about our pep rallies I thought I'd have more time to focus on my game, and I
14 was sure I'd make varsity. Turns out I was partly right and partly wrong. I had way more time to
15 focus on practice, but I ended up on the junior varsity team. I was floored—I thought tryouts went
16 really well—but I guess that's just the way it goes. I was a little mad about how tryouts had happened,
17 though. Everybody knew Addie Anderson would be on varsity, but I still thought that Addie would
18 have to try out just like everybody else. That didn't happen. I heard Addie complaining to the coach
19 about a sore ankle that day. I knew that wasn't true. About 20 minutes later, as I was leaving the gym
20 after tryouts, I saw Addie shooting hoops with a few friends and running around like normal in the
21 parking lot.

22 I was still hoping to make varsity though so, when I heard about Dakota Sherman's party last
23 year—the night before the season's opening game against Burrough, I knew I had to be there. I had

1 heard Addie was planning on going, and I wanted to try to chat with Addie about ways to improve
2 my game. Plus, I still have a lot of friends at Burrough, and I wanted to catch up with them.

3 One of those friends is Bobby Dousa, the former president of Burrough’s pep squad. Even
4 though I didn’t really like pep rallies, Bobby was always so nice to me. During the first (and only)
5 pep rally I went to at Burrough, one of the other Burrough pep squad members, Sandy Lutz, grabbed
6 me and tried to cram me into a Hamilton basketball jersey that was way too small. I guess Sandy
7 thought it was funny; Sandy knew I lived on the “Hamilton side of town” but Bobby didn’t.
8 Immediately Bobby yelled at Sandy to stop and came up to me and apologized. I remember Bobby
9 told me that “even though we have a pretty intense rivalry with Hamilton, it’s my job to make sure
10 nothing ever gets too out of hand. We respect people from Hamilton just like we respect our own
11 players.” The rally was pretty insane, though, and I think Bobby might just have been trying to get
12 me excited about Burrough’s pep squad. A few minutes after that, Bobby jumped up on a table and
13 led an insulting chant about how bad Hamilton’s team was. I’m pretty sure Bobby mentioned Addie
14 and other Hamilton players by name.

15 Anyway, I got to the party around 8:00 p.m. and was having a pretty good time. Bobby was
16 there and, true to form, was whipping the Burrough kids into a frenzy. Bobby kicked it into
17 overdrive when Addie showed up, though. After a few minutes, Bobby started getting right in
18 Addie’s face. By that time, Addie was sitting on the couch with a few of Addie’s friends and
19 drinking soda out of a red party cup. Bobby seemed to be challenging Addie to a game of one-on-
20 one, and Addie looked pretty annoyed. I also remember seeing Dakota standing right behind Bobby
21 as Bobby was taunting Addie; Dakota seemed to be egging Bobby on.

22 After a few minutes, Addie seemed to get fed up with Bobby and Dakota’s taunting. Addie
23 said, “Let’s take this outside,” put Addie’s drink down somewhere behind the couch, got up, and

1 headed for the driveway. I don't remember it exactly, but I'm pretty sure that as soon as Addie said,
2 "Let's take this outside" and before Addie put Addie's drink down behind the couch, Bobby had
3 turned around and also was heading for the door. Dakota, though, seemed to hang around the couch
4 for a few seconds after Addie got up – which I thought was a little weird. Dakota was still standing
5 there when I turned and started following Bobby and Addie outside.

6 A minute or two after we got outside, though, I realized I had left my cell phone inside. I
7 knew my parents would get really mad if they tried to call, so I went back to look for it. As I went by
8 the bottom of the stairs, I saw someone in a red and black Burrough jacket near the top of the
9 staircase. The lights were off upstairs so I couldn't get a clear view of who it was. I know Bobby
10 had been wearing a pretty distinctive Burrough jacket around that time, but I don't think it was
11 Bobby that I saw because I'm pretty sure I saw Bobby outside with everyone else right before I came
12 back in. Plus, a lot of people were wearing Burrough gear at the party, so it could have been anyone.

13 I left the party at around 10:00. Right before I left, I remember that I was trying to talk to
14 Addie. As I approached Addie, Addie's eyes looked a little hazy and Addie seemed to have trouble
15 standing up straight. When Addie saw me though, Addie seemed to straighten up. Before I could say
16 a word, Addie said to me, "Beat it, kid. Maybe you'll make varsity next year." I was stunned. Addie
17 was the best basketball player I had ever met and, to Addie, I apparently was just a peon. I was so
18 upset that I decided to leave.

19 I was floored when I heard that someone had drugged Addie that night and even more floored
20 when I heard the police thought it was Bobby. Bobby may be a little intense, but Bobby would never
21 do something so dangerous or so stupid. I have no idea who slipped a drug into Bobby's drink but,
22 whoever it is, I hope they catch the person. What a horrible thing to do!

1 I hereby attest to having read the above statement and swear or affirm it to be my own. I also
2 swear or affirm to the truthfulness of its content. Before giving this statement, I was told it should
3 contain all relevant testimony, and I followed those instructions. I also understand that I can and must
4 update this affidavit if anything new occurs to me until the moment before I testify in this case.

5 Emerson Kannan

6 Emerson Kannan

7 Dated: September 7, 2015

8 Subscribed and sworn before me on September 7, 2015.

9 Nikita Daijavad

10 Nikita Daijavad

11 Notary Public in and for the State of Oregon

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1 It also can cause anterograde amnesia, meaning someone who ingests Rohypnol typically will not
2 remember what happened to him or her after taking the drug. In high enough doses, Rohypnol can lead
3 to death. The drug is tasteless and odorless, and is produced by the manufacturer exclusively in the
4 form of a one-milligram pill.

5 Rohypnol also typically is both fast- and long-acting. The drug's effects almost always begin
6 within 30 minutes of ingestion, generally peak within 2 hours, and may persist for up to 8 hours or
7 more depending on the dosage. A single, one-milligram dose of Rohypnol can produce effects for 8-
8 12 hours after ingestion. The time it takes for particular symptoms to appear depend somewhat on a
9 patient's age, weight, and potentially other factors, although a patient almost always begins to feel
10 *some* effects of the drug within 30 minutes.

11 I was working in the ER on Sunday morning, December 7, 2014. About 7:00 a.m. Addison
12 Anderson and Addison's parents arrived at the ER and said that Addison had been "drugged"
13 sometime Friday night. I examined Addison and, although Addison seemed to be a little groggy,
14 Addison seemed outwardly to be in good health. However, Addison told me a chilling story.
15 Addison had been at a party on Friday night and had put Addison's beverage down when Addison
16 went outside to play basketball. At some point after that, Addison thought that Addison had handed
17 the drink to another person before going to the bathroom. Addison was a little vague on when the
18 symptoms started to appear, but Addison was sure about feeling dizzy, confused, and disoriented
19 soon after returning from the bathroom. Addison stated that Addison couldn't remember anything
20 else about that night, which is understandable given that a variety of drugs including Rohypnol can
21 cause both anterograde and retrograde amnesia.

22 Addison and Addison's parents insisted that Addison had been drugged and, notwithstanding
23 Addison's general good health, we needed to administer a drug test as quickly as possible. Many

1 drugs can linger in the human body for hours or even days after the drug’s symptoms dissipate. With
2 that in mind, I immediately ordered a urine test to determine what drug, if any, Addison may have
3 ingested. Addison underwent the test and the results showed that, as of Sunday morning, there were
4 very small amounts of Rohypnol in Addison’s system. This is noted in Exhibit 4, the Toxicology
5 Report.

6 Given that Addison claimed to have been drugged on Friday night, that was slightly
7 surprising, but it wasn’t at all unusual. Though it sometimes dissipates or even disappears entirely
8 after 24 hours—which is one of the many reasons why it is critical that a patient seek medical
9 attention *immediately* after learning that he or she may have ingested Rohypnol, GHB, or any other
10 controlled substance—trace amounts of Rohypnol can linger for up to 60 hours following ingestion.
11 The test was performed at approximately 7:30 a.m., nearly 36 hours after Addison claimed to have
12 been drugged. The test, however, can *not* pinpoint precisely when Addison was drugged. Like other
13 drugs, Rohypnol affects different people in different ways.

14 For that reason, based on what Addison told me, it is my medical opinion that Addison could
15 have been drugged with Rohypnol *at any time* between approximately 9:00 p.m. to 10:00 p.m. I have
16 reviewed Addison’s affidavit in this case and that affidavit completely and accurately reflects
17 everything Addison told me about what happened on Friday night. On one hand, it’s clear that
18 Addison was suffering the effects of the Rohypnol by 10:15 or 10:30 p.m., when Addison reported
19 feeling drowsy, having trouble standing, and so on. On the other hand, because Rohypnol affects
20 different people in different ways, Addison may have been drugged as late as 10:00 or 10:05 p.m., or
21 as early as 9:00 p.m. I express no opinion on what scenario is more likely; my medical opinion is
22 simply that many scenarios are possible.

Facebook interface showing a post from Rowe Raiders. The post includes a cartoon illustration of a raider holding a knife, the text "GO RAIDERS!!!!!!", and engagement metrics (1,235 likes). The page header shows "Recent" years from 2015 to 1998. The left sidebar contains navigation links: "18,576 people like this", "Invite friends to like this Page", "ABOUT", "Hometown: Rowe, OR", "http://www.roweraiders.com", "APPS", "Game Dates", "Roster", and "Buy Tickets". The footer contains copyright information: "English (US) · Privacy · Terms · Cookies · Advertising · Ad Choices · More · Facebook © 2015".

Exhibit 1. Screenshot of Facebook Post



Exhibit 2. Rohypnol Bottle



Dakota Sherman <dsherma1@gmail.com>

An idea....

1 message

Bobby Dousa<bobby.dousa@gmail.com>

To: Dakota Sherman <dsherma1@gmail.com>

Hey Dakota - Let's make sure EVERYBODY has a Raiders logo on their face tomorrow :) GO RAIDERS!

- B

Sat, Dec 6, 2014 at 1:00 AM

Exhibit 3. Draft Email Recovered from Smartphone

NCH

Neuberger
Community
Hospital

1918 Jefferson Avenue Rowe, Oregon 97123



Date: December 10, 2014

Attention: Addison Anderson
Lab # 14UA1389

ANALYTICAL REPORT

Described below is a summary of the analytical results and/or conclusions of the undersigned physician concerning the referenced sample submitted on December 7, 2014:

A urine specimen which is labeled as having been collected from Anderson, Addison on December 7, 2014. Toxicological examination by gas chromatography/mass spectrometry (GC/MS) confirms the presence of:

- Rohypnol (Flunitrazepam), a Schedule IV controlled substance.

The urine toxicology procedures of this laboratory are designed to identify and confirm most controlled substances and many pharmaceuticals.

This analysis was requested by the guardian(s) of Addison Anderson.

I certify this to be my report concerning the laboratory tests conducted on the evidence in the above identified case. I further certify that this analysis was conducted in accordance with procedures established by the American Medical Association and that this laboratory is a nationally accredited laboratory in urinalysis and toxicology.

Layne Juarez

Layne Juarez, M.D.

Exhibit 4. Toxicology Report

V. The Form and Substance of a Trial

A. Elements of a Criminal Case

The criminal code generally defines two aspects of every crime: (1) the physical part, and (2) the mental part. Most crimes specify some physical act, such as firing a gun in a crowded room, plus a guilty or culpable mental state. The intent to commit a crime and a reckless disregard for the consequences of one's actions are examples of culpable mental states. Bad thoughts alone are not enough; a crime requires the union of thought and action.

The mental state requirements prevent the conviction of an insane person. Such a person cannot form criminal intent and should receive psychological treatment. Also, a defendant may justify his/her actions by showing a lack of criminal intent. For instance, the crime of burglary has two elements: (1) breaking and entering (2) with intent to commit a crime. A person breaking into a burning house to rescue a baby does not commit a burglary.

B. Presumption of Innocence, Proof Beyond a Reasonable Doubt and Applicability to this Case

The American criminal justice system is based on the premise that allowing a guilty person to go free is better than putting an innocent person behind bars. For this reason, the prosecution bears a heavy burden of proof. Defendants are presumed innocent. The prosecution must convince a judge or jury of guilt beyond a reasonable doubt.

Despite its use in every criminal trial, the term "reasonable doubt" is hard to define. The concept of reasonable doubt lies somewhere between the probability of guilt and a lingering possible doubt of guilt. A defendant may be found guilty beyond a reasonable doubt even though a possible doubt remains in the mind of the judge or juror. Conversely, triers of fact might return a verdict of not guilty while still believing that the defendant probably committed the crime. "Beyond a reasonable doubt" is considered to be proof of such a convincing character that one would be willing to rely and act upon it without hesitation in the most important of one's own affairs.

Jurors often reach verdicts despite contradictory evidence. Two witnesses might give different accounts of the same event. Sometimes a single witness will give a different account of the same event at different times. Such inconsistencies often result from human fallibility rather than intentional lying. The trier of fact (the judges in the Mock Trial competition) applies his/her own best judgment in evaluating inconsistent testimony.

The defendant, Bobby Dousa, is charged with three crimes: Causing Another Person To Ingest A Controlled Substance, Assault In The Fourth Degree, and Harassment. Dousa has pled not guilty to all three charges. A not guilty plea puts in issue each element of each of the crimes with which Dousa has been charged. A plea of not guilty requires the State to prove each element of the crimes beyond a reasonable doubt.

Dousa is presumed innocent and this presumption continues throughout the trial. The defendant must be found not guilty unless the State produces evidence that convinces the trier of fact beyond a reasonable doubt of each element of the crimes.

To prove the charge of Causing Another Person To Ingest A Controlled Substance, the prosecution must show that Dousa knowingly caused Anderson to ingest Rohypnol without

Anderson's consent. The Assault charge refers to Anderson's loss of consciousness due to nonconsensual ingesting of Rohypnol. So the prosecution has to show that Anderson lost consciousness and that it was because of Dousa's causing Anderson to ingest Rohypnol without consent. And, finally, to prove Harassment, the prosecution must show that the defendant intentionally subjected Anderson to offensive physical contact by drawing the Raider logo on Anderson's face and posting a picture of it on the internet.

C. Role Descriptions

1. Attorneys

Trial attorneys control the presentation of evidence at trial and argue the merits of their side of the case. They introduce evidence and question witnesses to bring out the facts surrounding the allegations.

The prosecution presents the case for the State of Oregon. By questioning witnesses, they will try to convince the jury that the defendant, Bobby Dousa, is guilty beyond a reasonable doubt.

The defense attorneys present the case for the defendants, Bobby Dousa. They will offer their own witnesses to present their clients' version of the facts. They may undermine the prosecution's case by showing that their witnesses cannot be depended upon, or that their testimony makes no sense, or is seriously inconsistent.

Demeanor of **all attorneys** is very important. On direct examination it is easy to be sympathetic and supportive of your witnesses. On cross-examination it is no less important to be sympathetic and winning. An effective cross-examination is one in which the cross examiner, the witness, the judge and jury all agree on the outcome. It is bad manners and unethical to be sarcastic, snide, hostile or contemptuous. The element of surprise may, in fact, be a valuable attorney's tool, but it is best achieved by being friendly and winning in the courtroom, including with the other side.

Attorneys on both sides will:

- conduct direct examination and redirect if necessary;
- conduct cross examination conduct redirect and re-cross if necessary;
- make appropriate objections (note: only the direct and cross-examining attorneys for a particular witness may make objections during that testimony);
- be prepared to act as a substitute for other attorneys; and
- make opening statement and closing arguments.

a. Opening Statement

The opening statement outlines the case it is intended to present. The attorney for plaintiff delivers the first opening statement and the defense follows with the second. A good opening statement should explain what the attorney plans to prove, how it will be proven; mention the burden of proof and applicable law; and present the events (facts) of the case in an orderly, easy to understand manner.

One way to begin your statement could be as follows:

“Your Honor, my name is (full name), representing the prosecution/defendant in this case.”

Proper phrasing in an opening statement includes:

- “The evidence will indicate that ...”

- “The facts will show that ...”
- “Witnesses (full names) will be called to tell ...”
- “The defendant will testify that ...”

Tips: You should appear confident, make eye contact with the judges, and use the future tense in describing what your side will present. Do not read your notes word for word – use your notes sparingly and only for reference.

b. Direct Examination

Attorneys conduct direct examination of their own witnesses to bring out the facts of the case. Direct examination should:

- call for answers based on information provided in the case materials;
- reveal all of the facts favorable to your position;
- ask questions which allow the witness to tell the story. Do not ask leading questions which call for only “yes” or “no” answers – leading questions are only appropriate during cross-examination;
- make the witness seem believable;
- keep the witness from rambling.

Call for the witness with a formal request:

“Your Honor, I would like to call (full name of witness) to the stand.”
The clerk will swear in the witness before you ask your first question.

It is good practice to ask some introductory questions of the witness to help him or her feel comfortable. Appropriate introductory questions might include asking the witness’ name, residence, present employment, etc.

Proper phrasing of questions on direct examination include:

- “Could you please tell the court what occurred on (date)?”
- “How long did you remain in that spot?”
- “Did anyone do anything while you waited?”

Conclude your direct examination with:

“Thank you Mr./s. _____. That will be all, your Honor.”

Tips: Isolate exactly what information each witness can contribute to proving your case and prepare a series of clear and simple questions designed to obtain that information. Be sure all items you need to prove your case will be presented through your witnesses. Never ask questions to which you do not know the answer. Listen to the answers. If you need a moment to think, it is appropriate to ask the judge for a moment to collect your thoughts, or to discuss a point with co-counsel.

c. Cross Examination, Redirect, Re-Cross, and Closing

For cross examination, see explanations, examples, and tips for *Rule 611*.

For redirect and re-cross, see explanation and note to *Rule 40* and *Rule 611*.

For closing, see explanation to *Rule 41*.

2. Witnesses

Witnesses supply the facts in the case. As a witness, the official source of your testimony, or record, is your witness statement, all stipulations, and exhibits you would reasonably have knowledge of. The witness statements contained in the packet should be viewed as signed and sworn affidavits.

You may testify to facts stated in or reasonably inferred from your record. If an attorney asks you a question, and there is no answer to it in your official statement, you can choose how to answer it. You may reply, “I don’t know” or “I can’t remember,” or you can infer an answer from the facts you do officially know. Inferences are only allowed if they are *reasonable*. If your inference contradicts your official statement, you can be impeached. Also see Rule 3.

It is the responsibility of the attorneys to make the appropriate objections when witnesses are asked to testify about something that is not generally known or cannot be inferred from the witness statement.

3. Court Clerk, Bailiff, Team Manager

It is recommended that you provide two separate team members for these roles. If you use only one, then that person must be prepared to perform as clerk and bailiff in every trial. The court clerk and bailiff aid the judge during the trial. For the purpose of the competition, the duties described below are assigned to the roles of clerk and bailiff.

The **prosecution** is expected to provide the **clerk**. The **defense** provides the **bailiff**.

When evaluating the teams, judges will consider contributions by the clerk and bailiff.

a. Duties of the Clerk – Provided by the Prosecution

When the judge arrives in the courtroom introduce yourself and explain that you will assist as the court clerk. The clerk’s duties are as follows:

1. Roster and rules of competition: The clerk is responsible for bringing a roster of students and their roles to each trial round. You should have enough copies to be able to give a roster to each judge in every round as well as a few extras. Use the roster form in the mock trial packet. In addition, the clerk is responsible for bringing a copy of the “Rules of Competition.” In the event that questions arise and the judge needs clarification, the clerk shall provide this copy to the judge.
2. Swear in the witnesses: Every witness should be sworn in as follows:
“Do you promise that the testimony you are about to give will faithfully and truthfully conform the facts and rules of the Mock Trial Competition?”
Witness responds, “I do.”
Clerk then says, “Please be seated and state your name for the court and spell your last name.”
3. Provide exhibits for attorneys or judges if requested (both sides should have their own exhibits, however, it is a well-prepared clerk who has spares).

A proficient clerk is critical to the success of a trial and points will be given on his or her performance.

b. Duties of the Bailiff – Provided by the Defense

When the judges arrive in the courtroom, introduce yourself and explain that you will assist as the court bailiff. The bailiff’s duties are to call the court to order and to keep time during the trial.

1. Call to Order: As the judges enter the courtroom, say, “All rise. The Court with the Honorable Judge _____ presiding, is now in session. Please be seated and come to order.”
Say, “all rise” whenever the judges enter or leave the room.
2. Timekeeping. The bailiff is responsible for bringing a stopwatch to the trial. The stopwatch cannot be a cell phone; no electronic devices are permitted (Rule 40). Be sure to practice with it and know how to use it before the competition. Follow the time limits set for each segment of the mock trial and keep track of the time used and time left on the time sheet provided in the mock trial materials.

Time should stop when attorneys make objections. Restart after the judge has ruled on the objection and the next question is asked by the attorney. The time should also stop if the judge questions a witness or attorney.

After each witness has finished testifying, announce the time remaining, e.g., if after direct examination of two witnesses, the prosecution has used twelve minutes, announce “8 minutes remaining” (20 minutes total allowed for direct/redirect, less the twelve minutes already used). When the time has run out for any segment of the trial, announce “Time” and hold up the “0” card. After each witness has completed his or her testimony, mark on the time sheet the time to the nearest one-half minute. When three minutes are left, hold up “3” minute card, then again at “1” minute, and finally at “0” minutes. Be sure time cards are visible to all the judges as well as to the attorneys when you hold them up.

Time sheets will be provided at the competition with enough time sheets for all rounds. Time cards (3, 1, 0 minute) will be provided in each courtroom. Leave them in the courtroom for the next trial round.

A competent bailiff who times both teams in a fair manner is critical to the success of a trial and points will be given on his/her performance.

**c. Team Manager, Unofficial Timer (both optional)
Team Manager (optional)**

Teams may wish to have a person act as its **team manager**. She or he could be responsible for tasks such as keeping phone numbers of all team members and ensuring that everyone is informed of meeting times, listserv posts, and so on. In case of illness or absence, the manager could also keep a record of all witness testimony and a copy of all attorneys’ notes so that someone else may fill in if necessary. This individual could be the clerk or bailiff. An official team manager is not required for the competition.

Unofficial Timer (optional)

Teams may, at their option, provide an unofficial timer during the trial rounds. The unofficial timer can be a Clerk or a currently performing attorney from prosecution’s side. This unofficial timer must be identified before the trial begins and may check time with the bailiff twice during the trial (once during the prosecution’s case-in-chief and once during the presentation of the defense’s case). When possible, the unofficial timer should sit next to the official timer.

Any objections to the bailiff’s official time must be made by the unofficial timer during the trial, before the judges score the round. The presiding judge shall determine if there has been a rule violation and whether to accept the Bailiff’s time or make a time adjustment. Only currently-performing team members in the above-stated roles may serve as unofficial timers.

To conduct a time check, request one from the presiding judge and ask the Bailiff how much time was recorded in every completed category for both teams. Compare the times with your records. If the times differ significantly, notify the judge and ask for a ruling as to the time remaining. If the judge approves your request, consult with the attorneys and determine if you want to add or subtract time in any category. If the judge does not allow a consultation, you may request an adjustment. You may use the following sample questions and statements:

“Your Honor, before calling the next witness, may I compare time records with the Bailiff?”

“Your Honor, there is a discrepancy between my records and those of the Bailiff. May I consult with the attorneys on my team before requesting a ruling from the court?”

“Your Honor, we respectfully request that ___ minutes/seconds be subtracted from the prosecution’s (direct examination/cross-examination/etc.).”

“Your Honor, we respectfully request that ___ minutes/seconds be added to the defense (direct examination/cross-examination/etc.).”

Do NOT to interrupt the trial for minor time differences; your team should determine in advance a minimum time discrepancy to justify interrupting the trial. The unofficial timer should be prepared to show records and defend requests. Frivolous complaints will be considered by judges when scoring the round; likewise, valid complaints will be considered against the violating team.

Time shall be stopped during the period timekeeping is questioned.

VI. RULES OF THE COMPETITION

A. Administration

Rule 1. Rules

All trials will be governed by the Rules of the Oregon High School Mock Trial Competition and the Federal Rules of Evidence – Mock Trial Version.

Rules of the competition as well as courthouse and security rules, and courtroom decorum must be followed. Competition Coordinators have the authority to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations, or breaches of decorum that affect the conduct of a trial or that impugn the reputation or integrity of any team, school, participant, court officer, judge, or mock trial program. Questions or interpretations of these rules are within the discretion of CLASSROOM LAW PROJECT; its decision is final.

Rule 2. The Problem

The problem is a fact pattern that contains statement of fact, stipulations, witness statements, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

Rule 3. Witness Bound By Statements

Each witness is bound by the facts contained in his or her own witness statement, also known as an affidavit, and/or any necessary documentation relevant to his or her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question that calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 4, Unfair Extrapolation.

If in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement and does not materially affect the witness' testimony. A witness may be asked to confirm (or deny) the presence (or absence) of information in his or her statement.

Example: A cross-examining attorney may ask clarifying questions such as, "isn't it true that your statement contains no information about the time the incident occurred?"

A witness is **not** bound by facts contained in other witness statements.

Explanation: Witnesses will supply the facts in the case. Witnesses may testify only to facts stated in or reasonably inferred from their own witness statements or fact situation. On direct examination, when your side's attorney asks you questions, you should be prepared to tell your story. Know the questions your attorney will ask and prepare clear and convincing answers that contain the information that your attorney is trying to get you to say. However, do not recite your witness statement verbatim. Know its content beforehand so you can put it into your own words. Be sure that your testimony is never inconsistent with, nor a material departure from, the facts in your statement.

In cross-examination, anticipate what you will be asked and prepare your answers accordingly. Isolate all possible weaknesses, inconsistencies, or other problems in your testimony and be prepared to explain them as best you can. Be sure that your testimony is never inconsistent with, nor a material departure from, the facts in your statement. Witnesses may be impeached if they contradict what is in their witness statements (Evidence Rule 607).

Witness statements should be viewed as signed statements made in sworn depositions. If you are asked a question calling for an answer that cannot reasonably be inferred from the materials provided, you must reply something like, "I don't know" or "I can't remember." It is up to the attorney to make the appropriate objection when witnesses are asked to testify about something that is not generally known or cannot be reasonably inferred from the fact situation or witness statement.

Rule 4. Unfair Extrapolation

Unfair extrapolations are best attacked through impeachment and closing arguments. A fair extrapolation is one that is neutral. Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting unfair extrapolation.

If a witness is asked information not contained in the witness' statement, the answer must be consistent with the statement and may not materially affect the witness' testimony or any substantive issue of the case.

Attorneys for the opposing team may refer to *Rule 4* when objecting, such as “unfair extrapolation” or “outside the scope of the mock trial materials.” Possible rulings a judge may give include:

- a) no extrapolation has occurred;
- b) an unfair extrapolation has occurred;
- c) the extrapolation was fair; or
- d) ruling taken under advisement.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings (see FRE 602 and Rule 3). The decision of the presiding judge regarding extrapolation or evidentiary matters is final.

Rule 5. Gender of Witnesses

Any student may portray the role of any witness of either gender. Personal pronouns in witness statements indicating gender of the characters may be made. Teams SHALL indicate members’ genders on the Team Roster for the benefit of judges and opposing counsel.

B. The Trial

Rule 6. Team Eligibility, Teams to State

Teams competing in the Oregon High School Mock Trial Competition must register their team(s) by the registration deadline. A school may register one, two or three teams.

To participate in the state finals, a team must successfully compete at the regional level. Teams will be assigned to their regions by CLASSROOM LAW PROJECT in January.

All **regional** competitions are **Saturday, February 27**. Teams should be aware, however, that it is subject to change. The Regional Coordinator has discretion to slightly alter the date depending on scheduling requirements, availability of courtrooms, and needs of teams. If dates change, every effort will be made to notify all times in a timely manner.

Teams will be notified of the region in which they will compete after registration closes in January. Teams are not guaranteed to be assigned to the same region they were in last year.

All teams participating at the regional level must be prepared to compete at the state level should they finish among the top their region. Students on the team advancing to the state competition must be the same as those in the regional competition. Should a team be unable to compete in the state competition, CLASSROOM LAW PROJECT may designate an alternate team. The **state finals** are scheduled for **March 11-12**, in Portland.

The following formula will be used to determine the number of teams that advance to the state competition:

No. of Teams in Region	No. of Teams to State
4-5	1
6-10	2
11-15	3
16-20	4
21-25	5

Rule 7. Team Composition

A mock trial team consists of a minimum of eight and up to a maximum of 18 students all from the same school. Additional students could be used in support roles as researchers, understudies, photographers, court artists, court reporters, news reporters, etc. However, none of these roles will be used in the competition. Schools are encouraged to use the maximum number of students allowable.

Note: At the National High School Mock Trial Competition, teams consist of a maximum of eight members with six participating in any given round. Thus, Oregon's winning team may have to scale back on the number of team members to participate at the national level.

A mock trial team is defined as an entity that includes attorneys and witnesses for both the prosecution and defense (students may play a role on the prosecution side as well as on the defense side if necessary), clerk, and a bailiff. One possible team configuration could be:

3 attorneys for the prosecution
3 attorneys for defense
3 witnesses for the prosecution
3 witnesses for the defense
1 clerk
1 bailiff
14 TOTAL

All team members, including teacher and attorney coaches, are required to wear name badges at all levels of competition. Badges are provided by the competition coordinator.

All mock trial teams must submit the Team Roster (see appendix) form listing the team name and all coaches and students to the Competition Coordinators at the student orientation. If a school enters more than one team, **team members cannot switch teams at any time for any round of regional or state competition.**

For schools entering one team, the team name will be the same as the school name. For schools entering two teams, the team names will be your school name plus a school color (for example, West Ridge Black and West Ridge Blue).

For purposes of pairings in the competition, all teams will be assigned letter designations such as AB or CD. This addresses concerns related to bias in judging due to school name. Teams will be assigned letter codes by CLASSROOM LAW PROJECT prior to the competition. Notification of letter code designations will be made via the mock trial listserv.

Rule 8. Team Presentation

Teams must present both the prosecution and defense sides of the case. All team members must be present and ready to participate in all rounds. The competition coordinators guarantee that both the prosecution and defense sides of every team will have at least one opportunity to argue its side of the case.

Note: Because teams are power-matched after Round 1, there is no guarantee that in Round 2 the other side of your team will automatically argue. However, if, for example, in Rounds 1 and 2 your prosecution side argued, then you are guaranteed that in Round 3 the defense side will argue. Parents should be made aware of this rule.

Rule 9. Emergencies

During a trial, the presiding judge shall have discretion to declare an emergency and adjourn the trial for a short period to address the emergency.

In the event of an emergency that would cause a team to participate with less than eight members, the team must notify the Competition Coordinator as soon as is reasonably practical. If the Coordinator, in his or her sole discretion, agrees that an emergency exists, the Coordinator shall declare an emergency and will decide whether the team will forfeit or may direct that the team take appropriate measures to continue any trial round with less than eight members. A penalty may be assessed.

A forfeiting team will receive a loss and points totaling the average number of the team ballots and points received by the losing teams in that round. The non-forfeiting team will receive a win and an average number of ballots and points received by the winning teams in that round.

Final determination of emergency, forfeiture, reduction of points, or advancement will be made by the Competition Coordinator.

Rule 10. Team Duties

Team members should divide their duties as evenly as possible. Opening statements must be given by both sides at the beginning of the trial. The attorney who will examine a particular witness on direct is the only person who may make the objections to the opposing attorney's questions of that witness' cross-examination; and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness.

Each team must call all three witnesses; failure to do so results in a mandatory two-point penalty. Witnesses must be called by their own team and examined by both sides. Witnesses may not be recalled by either side.

Rule 11. Swearing In the Witnesses

The following oath may be used before questioning begins:

“Do you promise that the testimony you are about to give will faithfully and truthfully conform to the facts and rules of the mock trial competition?”

The **clerk**, provided by the prosecution, swears in all witnesses.

Rule 12. Trial Sequence and Time Limits – NEW THIS YEAR

Each side will have 43 minutes to present its case (this year slightly more time allotted for direct and cross-examination). The trial sequence and time limits are as follows:

- | | |
|-----------------------------------|---------------------------------------|
| 1. Introductory matters | 5 minutes total (conducted by judge)* |
| 2. Opening Statement | 5 minutes per side |
| 3. Direct and Redirect (optional) | 22 minutes per side |
| 4. Cross and re-cross (optional) | 11 minutes per side |
| 5. Closing argument | 5 minutes per side** |
| 6. Judges' deliberations | 10 minutes total (judges in private)* |

*Not included in 43 minutes allotted for each side of the case.

**Prosecution may reserve time for rebuttal at the beginning its closing argument.

Presiding Judge should grant time for rebuttal even if time has not been explicitly reserved.

The prosecution gives the opening statement first. And the prosecution gives the closing argument first and should reserve a portion of its closing time for a rebuttal if desired. The rebuttal is limited to the scope of the defense's closing argument.

None of the foregoing may be waived (except rebuttal), nor may the order be changed.

The attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

Rule 13. Timekeeping

Time limits are mandatory and will be enforced. The official timekeeper is the **bailiff** and is provided by the **defense**. **Timekeepers shall not use a cell phone as a stopwatch.** (No electronic devices are permitted – Rule 40). An optional unofficial timer may also be provided by the prosecution according to the directions in Section V.E.3.c. Unofficial Timer.

- Timing will halt during objections, extensive questioning from a judge, and administering the oath.
- Timing will **not** halt during the admission of evidence unless there is an objection by opposing counsel.
- Three- and one-minute card warnings must be given before the end of each trial segment.
- **Students will be automatically stopped by the bailiff at the end of the allotted time for each segment.**
- The bailiff will also **time the judges' scoring time** after the trial; the judging panel is allowed 10 minutes to complete their ballots. When the time has elapsed, the bailiff will notify the judges that no time is remaining.

Rule 14. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the scoring judges may determine individually whether to deduct points because of overruns in time.

Rule 15. Supplemental Material, Illustrative Aids, Costuming

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case materials. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials or CLASSROOM LAW PROJECT. Use of easels, flip charts and the like is prohibited. Violation of this rule may result in a lower team score.

Rule 16. Trial Communication

Coaches, non-performing team members, alternates and observers shall not talk, signal, communicate with or coach their teams during trial. **This rule remains in force during any recess time** that may occur. Performing team members may, among themselves, communicate during the trial, however, no disruptive communication is allowed. **There must be no spectator or non-performing team member contact with the currently performing student team members once the trial begins.**

Everyone in the courtroom shall turn off all electronic devices except stopwatches by the timer(s).

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in the round may sit inside the bar.

There will be an **automatic two-point deduction** from a team's total score if the coach, other team members or spectators are found in violation of this rule by the Judges or Competition Coordinators. Competition Coordinators may exercise their discretion if they find a complaint is frivolous or the conversation was harmless.

Rule 17. Viewing a Trial

Team members, alternates, coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except those authorized by the Coordinator, are **not** allowed to view other teams in competition, so long as their team remains in the competition.

Rule 18. Videotaping, Photography, Media

Any team has the option to refuse participation in videotaping, tape recording, still photography or media coverage. However, media coverage shall be allowed by the two teams in the championship round.

C. Judging and Team Advancement

Rule 19. Decisions

All decisions of the judging panel are FINAL.

Rule 20. Composition of Panel

The judging panel will consist of three individuals: one presiding judge, one attorney judge, and one educator/community judge. All three judges shall score teams. The presiding judge shall cast a ballot based on overall team performances; the attorney judge shall cast a ballot based on the performance of the attorneys; and the educator/community judge shall cast a ballot based on the performance of the witnesses, clerk and bailiff. All judges receive the mock trial case materials, a memorandum outlining the case, orientation materials, plus a briefing in a judges' orientation.

During the final championship round of the state competition, the judges' panel may be comprised of more than three members at the discretion of CLASSROOM LAW PROJECT.

Rule 21. Ballots

The term "ballot" refers to the decision made by a judge as to which team had the better performance. Each judge casts a ballot based on specific team members' performances: presiding judge votes on overall team performances, attorney judge votes on the attorneys, and the educator/community judge votes on the performance of the witnesses, clerk and bailiff. Each judge completes his or her own ballot. Ties and fractional points are not allowed. The team that earns the most points on an individual judge's ballot is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The winner of the round shall not be announced during the competition. Sample ballots are included in the Appendix.

Rule 22. Team Advancement

Teams will be ranked based on the following criteria in the order listed:

1. Win/Loss record - equals the number of rounds won or lost by a team;
2. Total number of ballots - equals the number of judges' votes a team earned in preceding rounds;
3. Total number of points accumulated in each round;
4. Point spread against opponents – used to break a tie, the point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

Rule 23. Power Matching

A random draw will determine opponents in the first round. A power-match system will determine opponents for all other rounds. The schools emerging with the strongest record from the three rounds will advance to the state competition and final round. At the state competition, as between the top two teams in the final championship round, the winner will be determined by ballots from the championship round only.

Power-matching provides that:

1. Pairings for the first round will be at random;
2. All teams are guaranteed to present each side of the case at least once;
3. Brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order: (1) win/loss record, (2) ballots, and (3) total presentation points. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;
4. If there is an odd number of teams in a bracket, the team at the bottom of that bracket will be matched with the top team from the next lower bracket;
5. Efforts are made to assure that teams do not meet the same opponent twice;
6. To the greatest extent possible, teams will alternate side presentation in subsequent rounds;
7. Bracket integrity in power matching supersedes alternate side presentation.

Competition Coordinators in smaller regions (generally fewer than eight teams) have the discretion to modify power matching rules to create a fairer competition.

Rule 24. Merit Decisions

Judges are not required to make a ruling on the legal merits of the trial. The presiding judge, at his or her discretion, may inform students of a hypothetical verdict. Judges shall **not** inform the teams of score sheet or ballot results.

Rule 25. Effect of Bye, Default or Forfeiture

A “bye” is necessary when an odd number of teams compete in a region. The byes will be assigned based on a random draw. For the purpose of advancement and seeding, when a team draws a bye or wins by default, that team will be given a win and the average number of ballots and points earned in its preceding trials. A forfeiting team will receive a loss and points totaling the average received by the losing teams in that round. If a trial cannot continue, the other team

will receive a win and an average number of ballots and points received by the winning teams in that round.

D. Dispute Settlement

Rule 26. Reporting Rules Violation – Inside the Bar

At the conclusion of the trial round, the presiding judge will ask each side if it needs to file a dispute. If a team has serious reason to believe that a material rules violation has occurred including the Code of Ethical Conduct, one of its student attorneys shall indicate that the team intends to file a dispute. The student attorney may communicate with co-counsel and student witnesses before lodging the notice of dispute or in preparing the form (Appendix, Rule 26 form). **At no time in this process may team sponsors or coaches communicate or consult with the student attorneys.** Only student attorneys may invoke dispute procedure. Teams filing frivolous disputes may be penalized.

Rule 27. Dispute Resolution Procedure

The presiding judge will review the written dispute and determine whether the dispute deserves a hearing or should be denied. If the dispute is denied, the judge will record the reasons and announce her/his decision to the Court, then retire along with the other judges to complete the scoring process.

If the judge determines the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (five minutes maximum) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her or his ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 28. Effect of Violation on Score

If the presiding judge determines that a substantial rules violation or a violation of the Code of Ethical Conduct has occurred, the judge will inform the scoring judges of the dispute and provide a summary of each team's argument. The judges will consider the dispute before reaching their final decisions. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring judges. The decisions of the judges are FINAL.

Rule 29. Reporting Rules Violation – Outside the Bar

Charges of ethical violations that involve people other than performing student team members must be made promptly to a Competition Coordinator, who will ask the complaining party to complete a dispute form, found in the Appendix, Rule 30 form. The form will be taken to the coordinator's communication center, where the panel will rule on any action to be taken regarding the charge, including notification of the judging panel. Violations occurring during a trial involving students competing in a round will be subject to the dispute process described in *Rules 26-28*.

VII. RULES OF PROCEDURE

A. Before the Trial

Rule 30. Team Roster

Copies of the Team Roster form (see Appendix) shall be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified by their letter code only; no information identifying team origin should appear on the form. Before beginning a trial, the teams shall exchange copies of the Team Roster Form. Witness lists shall identify the gender of each witness for the benefit of the judges and the opposing team.

Rule 31. Stipulations

Stipulations shall be considered part of the record and already admitted into evidence.

Rule 32. The Record

No stipulations, pleadings, or jury instructions shall be read into the record.

Rule 33. Courtroom Seating

The prosecution team shall be seated closest to the jury box. No team shall rearrange the courtroom without permission of the judge.

B. Beginning the Trial

Rule 34. Jury Trial

The case will be tried to a jury; arguments are to be made to the judge and jury. Teams may address the scoring judges as the jury.

Rule 35. Motions Prohibited

The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

Rule 36. Standing During Trial

Unless excused by the judge, attorneys will stand while giving opening statements and closing arguments, during direct and cross examinations, and for all objections.

Rule 37. Objection During Opening Statement, Closing Argument

No objections shall be raised during opening statements or during closing arguments.

Note: It will be the presiding judge's responsibility to handle any legally inappropriate statements made in the closing; all judges may consider the matter's weight when scoring.

C. Presenting Evidence

Rule 38. Objections

1. **Argumentative Questions:** An attorney shall not ask argumentative questions.

Example: during cross-examination of an expert witness the attorney asks, "you aren't as smart as you think you are, are you? "

2. **Lack of Proper Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.
3. **Assuming Facts Not In Evidence:** Attorneys may not ask a question that assumes unproven facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by the evidence (sometimes called a "hypothetical question").
4. **Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for specific answer.
Example: "tell us what you know about the case."
5. **Non-Responsive Answer:** A witness' answer is objectionable if it fails to respond to the question asked.
Warning: this objection also applies to the witness who talks on and on unnecessarily in an apparent ploy to run out the clock at the expense of the other team.
6. **Repetition:** Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Teams are not precluded from raising additional objections so long as they are based on Mock Trial Rules of Evidence or other mock trial rules. **Objections not related to mock trial rules are not permissible.**

Rule 39. Procedure for Introduction of Exhibits

As an *example*, the following steps effectively introduce evidence:

Note: Steps 1 - 3 introduce the item for identification.

1. Hand copy of exhibit to opposing counsel while asking permission to approach the bench. "I am handing the Clerk what has been marked as Exhibit X. I have provided copy to opposing counsel. I request permission to show Exhibit X to witness _____."
2. Show the exhibit to the witness. "Can you please identify Exhibit X for the Court?"
3. The witness identifies the exhibit.

Note: Steps 4-8 offer the item into evidence.

4. Offer the exhibit into evidence. "Your Honor, we offer Exhibit X into evidence at this time. The authenticity of the exhibit has been stipulated."
5. Court, "Is there an objection?" If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.
6. Opposing Counsel, "no, your Honor," or "yes, your Honor." If the response is "yes," the objection will be stated on the record. Court, "Is there any response to the objection?"
7. Court, "Exhibit X is/not admitted."

The attorney may then proceed to ask questions.

8. If admitted, Exhibit X becomes a part of the Court's official record and, therefore, is handed

over to the Clerk. *Do not* leave the exhibit with the witness or take it back to counsel table.

Attorneys do not present admitted evidence to the jury (judges in jury box) because they have exhibits in their case materials; thus, there is no “publishing” to the jury.

Rule 40. Use of Notes; Electronic Devices Prohibited

Attorneys may use notes when presenting their cases. Witnesses, however, are **not** permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes. The use of laptops or other electronic devices is prohibited.

Rule 41. Redirect, Re-Cross

Redirect and re-cross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Federal Rules of Evidence (Mock Trial Version). **For both redirect and re-cross, attorneys are limited two questions each.**

Explanation: Following cross-examination, the counsel who called the witness may conduct re-direct examination. Attorneys re-direct to clarify new (unexpected) issues or facts brought out in the immediately preceding cross-examination only; they may not bring up other issues. Attorneys may or may not want to re-direct. If an attorney asks questions beyond the issues raised on cross, they may be objected to as “outside the scope of cross-examination.” It is sometimes more beneficial not to conduct it for a particular witness. The attorneys will have to pay close attention to what is said during cross-examination of their witnesses so that they may decide whether it is necessary to conduct re-direct. Once re-direct is finished, the cross examining attorney may conduct re-cross to clarify issues brought out in the immediately preceding re-direct examination only.

If the credibility or reputation for truthfulness of the witness is attacked on cross-examination, during re-direct the attorney whose witness has been damaged may wish to “save” the witness. These questions should be limited to the damage the attorney thinks was done and should enhance the witness’ truth-telling image in the eyes of the Court. Work closely with your attorney coach on re-direct and re-cross strategies. Remember that time will be running during both re-direct and re-cross and may take away from the time needed to question other witnesses.

Note: Redirect and re-cross time used will be deducted from total time allotted for direct and cross-examination for each side.

D. Closing Arguments

Rule 42. Scope of Closing Arguments

Closing arguments must be based on the actual evidence and testimony presented during the trial.

Explanation: a good closing argument summarizes the case in the light most favorable to your position. The prosecution delivers the first closing argument. The prosecution side should reserve time for rebuttal before beginning its closing argument and the judge *should* grant it. The closing argument of the defense concludes that side’s the presentation.

A good closing should:

- be spontaneous and synthesize what actually happened in court rather than being a rehearsed speech;

- be emotionally charged and strongly appealing (unlike the calm opening statement);
- emphasize the facts that support the claims of your side, but not raise any new facts, by reviewing the witnesses' testimony and physical evidence;
- outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses;
- isolate the issues and describe briefly how your presentation addressed these issues;
- summarize the favorable testimony;
- attempt to reconcile inconsistencies that might hurt your side;
- be well-organized, clear and persuasive (start and end with your strongest point);
- the plaintiff should emphasize that it has proven its case by a preponderance of the evidence;
- the defense should raise questions that show one or more elements were not proven by a preponderance of the evidence.

Proper phrasing includes:

“The evidence has clearly shown that ...”

“Based on this testimony, there is doubt that ...”

“The plaintiff has failed to prove by a preponderance of the evidence that ...”

“The defense would have you believe that ...”

Plaintiff should conclude the closing argument with an appeal, based on a preponderance of the evidence, to find the defendant liable. And the defense should say the plaintiff failed to prove the necessary elements by a preponderance of the evidence.

E. Critique

Rule 43. The Critique

There is **no oral critique** from the judging panel. At the conclusion of the trial, each judge may offer a general, brief congratulatory comment to each team. Substantive comments or constructive criticism from judges may be included in judges' ballots, at their discretion. Judges' written comments will be given to teams in the week following the competition.

VIII. FEDERAL RULES OF EVIDENCE – Mock Trial Version

To assure a fair hearing, certain rules have been developed to govern the types of evidence that may be introduced, as well as the manner in which evidence may be presented. These rules are called the “rules of evidence.” The attorneys and the judge are responsible for enforcing these rules. Before the judge can apply a rule of evidence, an attorney must ask the judge to do so. Attorneys do this by making “objections” to the evidence or procedure employed by the opposing side. When an objection is raised, the attorney who asked the question that is being challenged will usually be asked by the judge why the question was not in violation of the rules of evidence.

These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. The burden is on the mock trial team to know the

Federal Rules of Evidence (Mock Trial Version) and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence, and its numbering system. **Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure.** Text in italics represents simplified or modified language.

Not all judges will interpret the Rules the same way and mock trial attorneys should be prepared to point out specific rules (quoting if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate.

The mock trial Rules of Competition and these Federal Rules of Evidence - Mock Trial Version govern the Oregon High School Mock Trial Competition.

Article I. General Provisions

Rule 101. Scope

These Federal Rules of Evidence - Mock Trial Version govern the trial proceedings of the Oregon High School Mock Trial Competition.

Rule 102. Purpose and Construction

These Rules are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.

Article IV. Relevancy and Its Limits

Rule 401. Definition of “Relevant Evidence”

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

Relevant evidence is admissible, except as otherwise provided in these Rules. Irrelevant evidence is not admissible.

Explanation: Questions and answers must relate to an issue in the case; this is called “relevance.” Questions or answers that do not relate to an issue in the case are “irrelevant” and inadmissible.

Example: (in a traffic accident case) “Mrs. Smith, how many times have you been married?”

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, if it confuses the issues, if it is misleading, or if it causes undue delay, wastes of time. or is a needless presentation of cumulative evidence.

Rule 404. Character Evidence Not admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character Evidence. – Evidence of a person’s character or character trait, is not admissible to prove action regarding a particular occasion, except:

(1) Character of accused. – Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;

(2) Character of victim. – Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;

(3) Character of witness. – Evidence of the character of a witness as provided in Rules 607, and 608.

(b) Other crimes, wrongs, or acts. – Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

(a) Reputation or opinion. – In all cases where evidence of character or a character trait is admissible, proof may be by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.

(b) Specific instances of conduct. – In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person’s conduct.

Rule 407. Subsequent Remedial Measures

When measures are taken after an event which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence or subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusions of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct investigation or prosecution.

Rule 409. Payment of Medical or Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 411. Liability Insurance (civil case only)

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 3.)

Example: "I know Harry well enough to know that two beers usually make him drunk, so I'm sure he was drunk that night, too."

Rule 607. Who May Impeach

The credibility of a witness may be attacked or challenged by any party, including the party calling the witness.

Explanation: On cross-examination, an attorney wants to show that the witness should not be believed. This is best accomplished through a process called "impeachment," which may use one of the following tactics: (1) asking questions about prior conduct of the witness that makes the witness' truthfulness doubtful (e.g. "isn't it true that you once lost a job because you falsified expense reports?"); (2) asking about evidence of certain types of criminal convictions (e.g. "you were convicted of shoplifting, weren't you?); or (3) showing that the witness has contradicted a prior statement, particularly one made by the witness in an affidavit, also called witness statements.

In order to impeach the witness by comparing information in the affidavit to the witness' testimony, attorneys should use this procedure:

Step 1: Introduce the affidavit for identification (see Rule 38).

Step 2: Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit.

Example: "Now, Mrs. Burns, on direct examination you testified that you were out of town on the night in question, didn't you?"

Witness responds, "yes."

Step 3: Ask the witness to read from his or her affidavit the part that contradicts the statement made on direct examination.

Example: "All right, Mrs. Burns, will you read line #18?" Witness reads, "Harry and I decided to stay in town and go to the theater."

Step 4: Dramatize the conflict in the statements. Remember, the point of this line of

questioning is to demonstrate the contradiction in the statements, not to determine whether Mrs. Burns was in town or not.

Example: “So, Mrs. Burns, you testified that you were *out* of town in the night in question didn’t you?”

“Yes.”

“Yet in your affidavit you said you were *in* town, didn’t you?”

“Yes.”

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character. – The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) Specific instances of conduct. – Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’ credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness’ character for truthfulness or untruthfulness, or (2) concerning the character of truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused’s or the witness’ privilege against self-incrimination with respect to matters related only to credibility.

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General rule. For the purpose of attacking the character for truthfulness of a witness, (1) evidence that a witness other than an accused been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.

Rule 610. Religious Beliefs or Opinions. Not applicable.

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by Court. -- The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to:

- (1) make the questioning and presentation effective for ascertaining the truth,
- (2) avoid needless use of time, and
- (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross examination. -- The scope of cross examination **shall not** be limited to the scope of the direct examination, but **may inquire into any relevant facts or matters contained in the witness' statement**, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.

Explanation: Cross examination follows the opposing attorney's direct examination of his/her witness. Attorneys conduct cross examination to explore weaknesses in the opponent's case, test the witness's credibility, and establish some of the facts of the cross-examiner's case whenever possible. Cross examination should:

- call for answers based on information given in witness statements or fact situation;
- use leading questions which are designed to get "yes" or "no" answers;
- never give the witness a chance to unpleasantly surprise the attorney;
- include questions that show the witness is prejudiced or biased or has a personal interest in the outcome of the case;
- include questions that show an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or experience;

Examples of proper questions include: "Isn't it a fact that ...?" "Wouldn't you agree that ...?" "Don't you think that ...?"

Cross examination should conclude with:

"Thank you Mr./s _____ (last name). That will be all, your Honor."

Tips: Be relaxed and ready to adapt your prepared questions to the actual testimony given during direct examination; always listen to the witness's answer; avoid giving the witness an opportunity to re-emphasize the points made against your case during direct examination; don't harass or attempt to intimidate the witness; and do not quarrel with the witness. **Be brief; ask only questions to which you already know the answer.**

(c) Leading questions. -- Leading questions are **not** permitted on direct examination of a witness (except as may be necessary to develop the witness' testimony). Leading questions **are** permitted on cross examination.

Explanation: A "leading" question is one that suggests the answer desired by the questioner, usually by stating some facts not previously discussed and then asking the witness to give a yes or no answer.

Example: "So, Mr. Smith, you took Ms. Jones to a movie that night, didn't you?" This is an appropriate question for cross-examination but not direct or re-direct.

(d) Redirect/Re-Cross. -- After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition. **For both redirect and re-cross, attorneys are limited to two questions each.**

Explanation: Short re-direct examination is allowed following cross-examination, and re-cross may follow re-direct. In both instances, questions must be on a subject raised in the immediately preceding testimony. If an attorney asks questions on topics not raised earlier, the objection should be "beyond the scope of re-direct/cross." See Rule 44.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Explanation: Unless a witness is qualified as an expert in the appropriate field, such as medicine or ballistics, the witness may not give an opinion about matters relating to that field. But a witness may give an opinion on his/her perceptions if it helps the case.

Example - inadmissible lay opinion testimony: "The doctor put my cast on wrong. That's why I have a limp now."

Example - admissible lay opinion testimony: "He seemed to be driving pretty fast for a residential street."

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise.

Note: The usual mock trial practice is that attorneys qualify a witness as an expert by asking questions from the list suggested above. After establishing the witness as an expert by asking about his or her background, the attorney then asks the judge to qualify the witness as an expert.

Note: In criminal cases, witnesses, including experts, cannot give opinions on the ultimate issue of the case, that is, whether the defendant was guilty. This is a matter for the judge or jury to decide.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.

Explanation: Unlike lay witnesses who must base their opinions on what they actually see and hear, expert witnesses can base their opinions on what they have read in articles, texts, or records they were asked to review by a lawyer, or other documents which may not actually be admitted into evidence at the trial. **These records or documents may include statements made by other witnesses.**

Rule 704. Opinion on Ultimate Issue

(a) opinion or inference testimony otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact. (b) In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

Note: In criminal cases, witnesses, including experts, cannot have opinions on the guilt or innocence of the defendant. This is a matter for the judge or jury to decide.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

- (a) Statement -- A *statement* is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) Declarant -- A *declarant* is a person who makes a statement.
- (c) Hearsay -- *Hearsay* is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Explanation: If a witness tries to repeat what someone has said, the witness is usually stopped from doing so by the hearsay rule. Hearsay is a statement made by someone other than the witness while testifying. Because the statement was made outside the courtroom, usually a long time before the trial, it is called an “out-of-court statement.” The hearsay rule also applies to written statements. The person who made the statement is referred to as the “declarant.” Because the declarant did not make the statement in court under oath and subject to cross examination, the declarant’s statement is not considered reliable.

Example: Witness testifies in court, “Harry told me the blue car was speeding.” What Harry said is hearsay because he is not the one testifying. He is not under oath, cannot be cross-examined, and his demeanor cannot be assessed by the judge or jury. Further, the witness repeating Harry’s statement might be distorting or misinterpreting what Harry actually said. For these reasons, Harry’s statement, as repeated by the witness, is not reliable and therefore not admissible. The same is true if Harry’s prior written statement was offered.

Only out-of-court statements which are offered to prove what is said in the statements are considered hearsay. For example, a letter that is an out of court statement is not hearsay if it is offered to show that the person who wrote the letter was acquainted with the person who received it. But if the letter was offered to prove that what was said in the letter was true, it would be hearsay.

- (d) Statements which are not hearsay -- A statement is not hearsay if:
 - (1) Prior statement by witness -- the declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is
 - (A) inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition or
 - (B) consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or
 - (C) one of identification or a person made after perceiving the person; or

Explanation: If any witness testifies at trial, and the testimony is different from what the witness said previously, the cross-examining lawyer can bring out the inconsistency. In the witnesses’ statements in the mock trial materials (considered to be affidavits), prior inconsistent statements may be found (see Impeachment Rule 607).

(2) Admission by a party-opponent -- The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Explanation: A statement made previously by a party (either the prosecution or defendant) is admissible against that party when offered by the other side. Admissions may be found in the prosecution's or defendant's own witness statements. They may also be in the form of spoken statements made to other witnesses.

Rule 802. Hearsay Rule

Hearsay is not admissible, except as provided by these rules.

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression -- A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

Example: As the car drove by Janet remarked, "wow, that car is really speeding."

(2) Excited utterance -- A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

Example: the witness testifies, "Mary came running out of the store and said, 'Cal shot Rob!'"

(3) Then existing mental, emotional, or physical conditions -- A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of a declarant's will.

Example: A witness testifies, "Mary told me she was in a lot of pain and extremely angry at the other driver."

(4) Statements for purposes of medical diagnosis or treatment -- Statements made for the purpose of medical diagnosis or treatment.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity.

(21) Reputation as to character. Reputation of a person's character among associates or in the community.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

Example: A police report contains a notation written by the officer, “Harry told me the blue car was speeding.” The report might be admissible as a business record but Harry’s statement within the report is hearsay.

IX. NOTES TO JUDGES

A. Notes to Judges

To ensure that the mock trial experience is the best it can be for students, please familiarize yourself with both affidavits and the rules of competition. Mock trial rules sometimes differ with what happens in a court of law. Particular attention should be paid to the simplified rules of evidence. The students have worked hard for many months and are disappointed when judges are not familiar with the case materials.

Please note that the mock trial competition differs from a real trial situation in the following ways:

1. Students are prohibited from making objections or using trial procedures not listed in the mock trial materials. Students should request a bench conference (to be held in open court from counsel table) if they think the opposing attorneys are using trial procedures outside the rules.
2. Students are limited to the information in the witness statements and fact situation. If a witness invents information, the opposing attorney may object on the grounds that the information is beyond the scope of the mock trial materials. The presiding judge should request a bench conference (to be held in open court from counsel table) and ask the students to find where the information is included in the case materials.
3. Bailiffs are the official timekeepers. The defense team is responsible for providing the bailiff (plaintiff/prosecution provides the clerk). Bailiffs time all phases of the trial.
4. Students have been instructed to address their presentations to the judge and jury. The students will address the presiding judge as the judge in the case and the other judges as jurors since they are in the jury box.
5. Each trial round should be **completed in less than two hours**. To keep the competition on schedule, please keep within the time limits set out in Rule 12.
6. Judges shall not give an oral critique at the end of the trial. At the conclusion of the trial, each judge may offer a general congratulatory comment to each team. Substantive comments or constructive criticism may be included in judges’ ballots, at their discretion. Judges’ written comments will be given to teams in the week following the competition. (Rule 43)

Each courtroom will be assigned a panel of three judges. The judging panel will usually be comprised of two representatives from the legal field and one educator or community representative. The presiding judge will sit at the bench and the other two judges will sit in the jury box.

B. Introductory Matters

The presiding judge should handle the following introductory matters prior to the beginning of the trial:

1. Ask each side if it is ready for trial. Ask each side to provide each judge with a copy of its Team Roster. Ask each member of a team to rise and identify himself/herself by name and role, and their team by their assigned letter designation (not by school name).
2. If video or audio recorders are present, inquire of both teams whether they have approved the taping of the round.
3. Ask if there are people present in the courtroom who are connected with other schools in the competition (other than the schools competing in this courtroom). If so, they should be asked to leave. They may contact the sponsor's communication center to determine the location of the courtroom in which their school is performing.
4. Remind spectators of the importance of showing respect for the teams. **Silence electronic devices.** Judges may remove spectators who do not adhere to appropriate courtroom decorum.
5. Remind teams that witnesses are permitted to testify only to the information in the fact situation, their witness statements, and what can be reasonably inferred from the information.
6. Remind teams that they must complete their presentations within the specified time limits. The bailiff will signal you as the time for each segment of presentation runs out (3 and 1 minute warning and then 0 minute cards will be held up). At the end of each segment you will be stopped when your time has run out whether you are finished or not.
7. All witnesses must be called.
8. Only the following exhibits may be offered as evidence at the trial:
 1. Screenshot of Facebook Post
 2. Rohypnol Bottle
 3. Draft Email Recovered from Smartphone
 4. Toxicology Report

Finally, before you begin, indicate that you have been assured that the Code of Ethical Conduct has been read and will be followed by all participants in the mock trial competition. Should there be a recess at any time during the trial, the communication rule (see third paragraph of Code of Ethical Conduct) shall be in effect. If there are no other questions, begin the trial.

At the end of the trial, the presiding judge shall ask teams if either side wishes to make a Rule 26 Violation. If so, resolve the matter as indicated in the rule. Then judges complete their ballots.

Judges shall NOT inform the students of results of their scores or results from their ballots. The presiding judge may, however, announce a ruling on the legal merits of the case – that is, which side would have prevailed if the trial were real – being careful to differentiate that winning the trial has no bearing on which side won on performance (on judges' ballots).

C. Evaluation Guidelines

All teams will compete in all three rounds (unless a team has a bye). Teams are randomly matched for Round 1 and then power matched based on win/loss record, total ballots (which is the number of scoring judges' votes), and total number of points.

Teams will provide Team Rosters to each judge. The rosters are helpful for note-taking and reference when evaluating performances.

Judges will be provided with individual ballots by the Competition Coordinator. Ballots shall be completed and given to the Clerk to deliver to the scoring room **immediately** following completion of the round. Judges will **not** provide oral critique. Judges shall score and provide any comments on their ballot. Teams will be provided photocopies of judges' ballots after the competition, usually the following week. Scoring duties among the three judges shall be distributed as follows:

- The presiding judge shall score based on overall strategy and performance – the “big picture.”
- The attorney-judge shall score the attorneys' performances.
- The educator-community judge shall score the witnesses', clerk's and bailiff's performances.

Judges should use the following evaluation guidelines when scoring.

EVALUATION GUIDELINES

Each judge shall assign a score of 1-5 in each blank of the scoresheet. The presiding judge scores on overall performance, attorney-judge on attorneys, and educator-community judge on witnesses, clerk and bailiff. The total score, minus any penalty points, is the number that should be entered at the bottom the scoresheet and returned to the Competition Coordinator. See sample scoresheets in the Appendix. Judges shall score based on the following guidelines:

- 1 pt Not effective.** Unsure, illogical, uninformed, unprepared, ineffective communication skills.
- 2 pts Fair.** Minimally informed and prepared; passable performance but lack of depth in terms of knowledge of task and materials. Communication lacked clarity and conviction.
- 3 pts Good.** Good, solid but not spectacular; can perform outside script but with less confidence; logic and organization adequate but not outstanding. Grasp of major aspects of case. Communications clear and understandable but could be more fluent and persuasive.
- 4 pts Excellent.** Fluent, persuasive, clear, understandable; organized material and thoughts well and exhibited mastery of case and materials.
- 5 pts Outstanding.** Superior in qualities listed in above. Demonstrated ability to think on feet, poised under duress; sorted out essential from nonessential, used time effectively to accomplish major objectives. Demonstrated unique ability to utilize all resources to emphasize vital points of trial. Team members were courteous, observed proper courtroom decorum, spoke clearly and distinctly. All team members were involved in the presentation and participated actively in fulfilling their respective roles, including the Clerk and Bailiff. The Clerk and Bailiff performed their roles so that there were no disruptions or delays in the presentation of the trial. Team members demonstrated cooperation and teamwork.

D. Penalty Points

Points should be deducted if a team member:

1. Uses procedures beyond the mock trial rules.
2. Goes beyond the scope of the mock trial materials.
3. Does not follow mock trial rules in any other way.
4. Talks to coaches, non-performing team members or other observers. This includes breaks or recesses, if any should occur, in the trial: **mandatory 2-point penalty**. The Competition Coordinator and judge have discretion to determine whether a communication was harmful.
5. Does not call all witnesses: **mandatory 2-point penalty**.

Judges may assign the number of penalty points at their discretion except where otherwise indicated. **Use whole numbers only (no fractions!)**. A unanimous decision among the three judges is not required.

Note: The behavior of teachers and attorney coaches may impact a team's score.

The judges' decision is final.

Judges shall not engage in any discussion with students or coaches about scoring after the trial. Any questions from teams about scoring should be referred to the Competition Coordinators.

APPENDICES

Notes:

Often Used Objections in Suggested Form

Note: This exhibit is provided to assist students with the proper form of objections. It is NOT a comprehensive list of all objections. Permissible objections are those related to a rule in the mock trial material (examples below). Impermissible objections are those not related to mock trial rules (example: hearsay based on business records exception). That is to say, an objection must be based on a rule found in the Mock Trial materials, not additional ones even if they are commonly used by lawyers in real cases.

The following objections are often heard in mock trials but do not represent an exhaustive list.

Note: Objections during the testimony of a witness will be permitted only by the direct examining and cross-examining attorneys for that witness.

1. Leading Question (see Rule 611)

Objection: "Objection, Your Honor, counsel is leading the witness." (Opposing Attorney)

Response: "Your Honor, leading is permissible on cross-examination," or "I'll rephrase the question." For example, the question would not be leading if rephrased as: "Mr. Smith, where did you and Ms. Jones go that night?" (This does not ask for a yes or no answer.)

2. Relevance (see Rule 402)

Objection: "Your Honor, this question is irrelevant to this case."

Response: "Your Honor, this series of questions will show that Mrs. Smith's first husband was killed in an auto accident, and this fact has increased her mental suffering in this case."

3. Hearsay (see Rules 801, 802, 803, 805)

Objection: "Objection, Your Honor, this is hearsay."

Response: "Your Honor, this is an exception/exclusion to the hearsay rule." (Explain applicable provisions.)

4. Personal Knowledge (see Rule 602)

Objection: "Your Honor, the witness has no personal knowledge of Harry's condition that night."

Response: "The witness is just generally describing her usual experience with Harry."

5. Opinions (see Rule 701)

Objection: "Objection, Your Honor, the witness is giving an opinion."

Response: "Your Honor, the witness may answer the question because ordinary persons can judge whether a car is speeding."

6. Outside the Scope of Mock Trial Materials/Rules (see Rule 4)

Objection: "Objection, Your Honor. The witness is testifying to information not found in the mock trial materials."

Response: "The witness is making a reasonable inference."

The presiding **judge** may call a bench conference for clarification from both attorneys.

Time Sheet

Plaintiff/Pros.—Team Code

v.

Defense—Team Code

Opening Statement: 5 minutes per side

P 5 minutes _____ minutes used

D 5 minutes _____ minutes used

Plaintiff/Pros.: Direct/Re-direct—22 minutes total

Start
Witness #1: time used **22 minutes**
 less _____ minutes

Witness #2: time used less _____ minutes unused
 _____ minutes

Witness #3: time used less _____ minutes unused
 _____ minutes
 _____ minutes unused

Defense: Cross/Re-cross—11 minutes total

Start
P witness #1 time used **11 minutes**
 less _____ minutes

P witness #2 time used less _____ minutes unused
 _____ minutes

P witness #3 time used less _____ minutes unused
 _____ minutes
 _____ minutes unused

Defense: Direct/Re-direct—22 minutes total

Start
D witness #1: time used **22 minutes**
 less _____ minutes
 _____ minutes unused

D witness #2: time used less _____ minutes
 _____ minutes unused

D witness #3: time used less _____ minutes
 _____ minutes unused

Plaintiff/Pros.: Cross/Re-cross—11 minutes total

Start
D witness #1 time used **11 minutes**
 less _____ minutes
 _____ minutes unused

D witness #2 time used less _____ minutes
 _____ minutes unused

D witness #3 time used less _____ minutes
 _____ minutes unused

Closing Argument: 5 minutes per side

Plaintiff/Pros. time used less _____ minutes
 _____ minutes left for rebuttal

Defense time used less _____ minutes

Judges' Scoring: 10 minutes total _____ minutes used

Team Roster

~complete both sides~

Team Code _____

Submit copies to: (1) Competition Coordinator before trials begin, (2) every judge in every round, and (3) opposing team in each round (19 copies not including spares). For the benefit of judges and the opposing team, indicate gender by including Mr. or Ms.

Plaintiff/Prosecution

Opening Statement

attorney-student's name

P Witness #1 _____
witness' name

student's name

Direct examination of W#1

attorney-student's name

P Witness #2 _____
witness' name

student's name

Direct examination of W#2

attorney-student's name

P Witness #3 _____
witness' name

student's name

Direct examination of W#3

attorney-student's name

Cross examining D's W#1 _____
witness' name

attorney-student's name

Cross examining D's W#2 _____
witness' name

attorney-student's name

Cross examining D's W#3 _____
witness' name

attorney-student's name

Closing Argument

attorney-student's name

Clerk

student's name

Team Roster, continued,

Team Code _____

Defense

Opening Statement

attorney-student's name

Cross examining P's W#1 _____
witness' name

attorney-student's name

Cross examining P's W#2 _____
witness' name

attorney-student's name

Cross examining P's W#3 _____
witness' name

attorney-student's name

D Witness #1 _____
witness' name

student's name

Direct examination of W#1

attorney-student's name

D Witness #2 _____
witness' name

student's name

Direct examination of W#2

attorney-student's name

D Witness #3 _____
witness' name

student's name

Direct examination of W#3

attorney-student's name

Closing Argument

attorney-student's name

Bailiff

student's name



**2015-16 HIGH SCHOOL
MOCK TRIAL BALLOT
PRESIDING JUDGE**

Presiding Judge shall score based on overall strategy and performance - the "big picture."

Round 1

P=Plaintiff/Prosecution AB
Team Code

D=Defense CD
Team Code

***Using a scale of 1-5, rate P and D in the categories below.**
***DO NOT use fractions nor award zero points.**
***DO NOT leave any categories blank.**
***Total points possible for winning team: 40.**

Not Effective	Fair	Good	Excellent	Outstanding
1	2	3	4	5

	P		D
Opening Statement	4		3
P Witness #1 <i>Anderson</i>	3	Cross-Examination	3
P Witness #2 <i>Sherman</i>	3	Cross-Examination	3
P Witness #3 <i>Chen</i>	4	Cross-Examination	4
D Witness #1 <i>Doussa</i>	3	Direct Examination	3
D Witness #2 <i>Kannan</i>	4	Direct Examination	3
D Witness #3 <i>Juarez</i>	3	Direct Examination	4
Closing Arguments & Rebuttal	3		3
Subtotal from above (NO ties in this category):	27		26
Penalty Deduction:	0		0
TOTAL POINTS (NO TIES!):	27		26

BEST OVERALL PRESENTATION: Write P or D



P

OPTIONAL: *I favored this team because...*
*Solid throughout. Particularly good opening-
 great blueprint for P's theory of the case.*

J. Smith

Judge's Name: please print

Please deliver ballot to clerk before adjourning!



**2015-16 HIGH SCHOOL
MOCK TRIAL BALLOT
ATTORNEY JUDGE**

The Attorney Judge shall score the attorneys' performances.

Round **I**

P=Plaintiff/Prosecution **AB**
Team Code

D=Defense **CD**
Team Code

*Using a scale of 1-5, rate P and D in the categories below.				
*DO NOT use fractions nor award zero points.				
*DO NOT leave any categories blank.				
*Total points possible for winning team: 40.				
Not Effective	Fair	Good	Excellent	Outstanding
1	2	3	4	5

	P		D
Opening Statement	4		4
P Witness #1 <i>Anderson</i>	3	Cross-Examination	3
P Witness #2 <i>Sherman</i>	3	Cross-Examination	3
P Witness #3 <i>Chen</i>	3	Cross-Examination	4
D Witness #1 <i>Doussa</i>	3	Direct Examination	4
D Witness #2 <i>Kannan</i>	3	Direct Examination	3
D Witness #3 <i>Juarez</i>	3	Direct Examination	4
Closing Arguments & Rebuttal	3		4
Subtotal from above (NO ties in this category):	25		29
Penalty Deduction:	0		0
TOTAL POINTS (NO TIES!):	25		29

BEST OVERALL PRESENTATION: Write P or D



D

OPTIONAL: *I favored this team because...
D's lawyers knew when to object and how to object. Well done!*

S. Brown

Judge's Name: please print

Please deliver ballot to clerk before adjourning!



**2015-16 HIGH SCHOOL
MOCK TRIAL BALLOT
EDUCATOR/COMMUNITY JUDGE**

*The Educator/Community Judge shall score
the witnesses', clerk's and bailiff's performances.*

Round 1

P=Plaintiff/Prosecution AB
Team Code

D=Defense CD
Team Code

- * Using a scale of 1-10 (1-5 on direct; 1-5 on cross), rate P and D witnesses in the categories below.
- * Using a scale of 1-5, rate Clerk and Bailiff below.
- * DO NOT use fractions nor award zero points.
- * DO NOT leave any categories blank.
- * Total points possible for winning team: 35

Not Effective	Fair	Good	Excellent	Outstanding
1	2	3	4	5

	P		D	
P Witness #1 <i>Anderson</i> Direct: <input type="text" value="4"/> + Cross: <input type="text" value="3"/> =	7			
P Witness #2 <i>Sherman</i> Direct: <input type="text" value="4"/> + Cross: <input type="text" value="4"/> =	8			
P Witness #3 <i>Chen</i> Direct: <input type="text" value="5"/> + Cross: <input type="text" value="4"/> =	9			
D Witness #1 <i>Dousa</i> Direct: <input type="text" value="3"/> + Cross: <input type="text" value="3"/> =			6	
D Witness #2 <i>Kannan</i> Direct: <input type="text" value="3"/> + Cross: <input type="text" value="3"/> =			6	
D Witness #3 <i>Juarez</i> Direct: <input type="text" value="4"/> + Cross: <input type="text" value="4"/> =			8	
Clerk	5			
Bailiff			4	
Subtotal from above (NO ties in this category:)	29		24	
Penalty Deduction:	0		0	
TOTAL POINTS:	29		24	

BEST OVERALL PRESENTATION: Write P or D



P

OPTIONAL: *I favored this team because...*

*Chen: so believable, so strong.
Held firm on cross examination*

A. Jackson

Judge's Name: please print
Please deliver ballot to clerk before adjourning!

Rule 26 - Reporting Rules Violation Form
FOR TEAM MEMBERS INSIDE THE BAR
(performing in this round)

THIS FORM MUST BE RETURNED TO THE TRIAL COORDINATOR ALONG WITH THE SCORESHEETS OF THE SCORING JUDGES.

Round (circle one) **1 2 3** **Pros/Plaintiff:** team code ____ **Defense:** team code _____

Grounds for Dispute: _____

Initials of Team Spokesperson: _____ Time Dispute Presented to Presiding Judge: _____

Hearing Decision of Presiding Judge (circle one): **Grant Deny** Initials of Judge: _____

Reason(s) for Denying Hearing: _____

Initials of Opposing Team's Spokesperson: _____

Presiding judge's notes from hearing and reason(s) for decision: _____

Signature of Presiding Judge

**RULE 29 - REPORTING RULES VIOLATION FORM
FOR USE BY PERSONS BEHIND THE BAR
(NOT PERFORMING IN THIS ROUND)**

*Non-Performing team members wishing to report a violation must promptly
submit this form to competition coordinator*

Date: _____ **Time Submitted:** _____

Person Lodging: _____ **Affiliated With:** (Team Code) _____

Grounds for Dispute: _____

Initials of Competition Coordinator: _____ Time Dispute Presented to Coordinator: _____

Notes From Hearing: _____

Decision/Action of Coordinator: _____

Signature of Competition Coordinator

Date /Time of Decision

DIAGRAM OF A TYPICAL U.S. COURTROOM

