

CLASSROOM LAW PROJECT proudly sponsors the

Oregon High School Mock Trial Competition



Mia Perez, a minor, by and through her parent Casey Perez

v.

*Shannon Dempsey, Jordan Reddick,
and Rubicon Soccer Club, Inc.*

**Soccer player bumps her head one too many times.
Whose fault is it?**

Originally Published and used in the 2013-14 School Year



Co-Sponsored by

**Lewis & Clark Law School
Oregon State Bar**





ACKNOWLEDGMENTS

Mini-Mock is Sponsored by

CLASSROOM LAW PROJECT

CLASSROOM LAW PROJECT is grateful to its **Circle Members**, those businesses, law firms, and associations that provide ongoing support for all programs

PRESIDENTS' CIRCLE

Lewis & Clark Law School
Oregon State Bar
Nike, Inc.
Oregon Trial Lawyers Association

JEFFERSON CIRCLE

Columbia Bank	Markowitz Herbold PC
Cosgrave Vergeer Kester LLP	Perkins Coie LLP
Davis Wright Tremaine LLP	Schwabe Williamson & Wyatt PC
Dunn Carney Allen Higgins & Tongue LLP	Stoel Rives LLP
Lane Powell PC	Tonkon Torp LLP

MADISON CIRCLE

Ater Wynne LLP	Miller Nash Graham & Dunn LLP
Buckley Law PC	NW Natural
Cambia Health Solutions	PGE
IMS Capital Management, Inc.	Tsongas Litigation Consulting

CLASSROOM LAW PROJECT gratefully acknowledges **Susan H. Johnson** and the **Carolina Center for Civic Education** for permission to adapt its case materials for use in Oregon.

Heartfelt appreciation is extended to all **teacher and attorney 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.

*Mia Perez v. Shannon Dempsey,
Jordan Reddick, and Rubicon Soccer Club, Inc.*

TABLE OF CONTENTS

I.	Introduction	1
II.	Program Objectives	1
III.	Code of Ethical Conduct	2
IV.	The Case	
	A. Brief Case Summary.....	3
	B. Witness List	3
	C. List of Exhibits	4
	D. Complaint, Answer, Stipulations	4
	Complaint.....	5
	Answer.....	9
	Stipulations	12
	E. Witness Statements	
	Affidavit of Casey Perez	13
	Affidavit of Bevin Register, Ph.D., A.T.....	18
	Tobin O'Reilly	24
	Shannon Dempsey	29
	Jordan Reddick	35
	Chris Durant	41
	F. Exhibits	
	Ex. 1. Acute Concussion Evaluation (ACE) Physician/Clinician.....	45
	Ex. 2. Acute Concussion Evaluation (ACE) Care Plan.....	47
	Ex. 3. CDC Facts About Concussion and Brain Injury	49
	Ex. 4. Sports Concussion Fact Sheet SB721, Jenna's Law	50
	Ex. 5. Rubicon Soccer Club Medical Consent/Waiver of Liability, Release.....	52
	Ex. 6. CDC High School Coaches' "Heads Up" Clipboard Sticker	53
	Ex. 7. CDC High School Athletes' Signs and Symptoms Poster	54
	Ex. 8. USYS Concussion Procedure and Protocol.....	55
	Ex. 9. USYS Possible Concussion Notification.....	57
	Ex. 10. Curriculum Vitae of Dr. Bevin Register	59
V.	The Form and Substance of a Trial	
	A. Elements of a Criminal Case.....	60
	B. Proof by a Preponderance of Evidence.....	60

C.	Role Descriptions.....	60
1.	Attorneys.....	60
a.	Opening Statement.....	61
b.	Direct Examination.....	62
c.	Cross Examination, Redirect, Re-Cross, and Closing.....	62
2.	Witnesses.....	63
3.	Court Clerk, Bailiff, Team Manager.....	63
a.	Duties of the Clerk – provided by the Plaintiff.....	63
b.	Duties of the Bailiff – provided by the Defense.....	64
c.	Team Manager, Unofficial Timer (optional).....	65

VI. Rules of the Competition

A.	Administration.....	66
Rule 1.	Rules.....	66
Rule 2.	The Problem.....	66
Rule 3.	Witness Bound By Statements.....	66
Rule 4.	Unfair Extrapolation.....	67
Rule 5.	Gender of Witness.....	68
B.	The Trial	
Rule 6.	Team Eligibility, Teams to State.....	68
Rule 7.	Team Composition.....	69
Rule 8.	Team Presentation.....	70
Rule 9.	Emergencies.....	70
Rule 10.	Team Duties.....	70
Rule 11.	Swearing In the Witnesses.....	71
Rule 12.	Trial Sequence and Time Limits.....	71
Rule 13.	Timekeeping.....	71
Rule 14.	Time Extensions and Scoring.....	72
Rule 15.	Supplemental Material, Illustrative Aids, Costuming.....	72
Rule 16.	Trial Communication.....	72
Rule 17.	Viewing a Trial.....	73
Rule 18.	Videotaping, Photography, Media.....	73
C.	Judging and Team Advancement	
Rule 19.	Decisions.....	73
Rule 20.	Composition of Panel.....	73
Rule 21.	Ballots.....	73
Rule 22.	Team Advancement.....	74
Rule 23.	Power Matching.....	74
Rule 24.	Merit Decisions.....	74
Rule 25.	Effect of Bye, Default or Forfeiture.....	75

D. Dispute Settlement	
Rule 26. Reporting Rules Violation – Inside the Bar	75
Rule 27. Dispute Resolution Procedure	75
Rule 28. Effect of Violation on Score	76
Rule 29. Reporting Rules Violation – Outside the Bar	76

VII. Rules of Procedure

A. Before the Trial	
Rule 30. Team Roster	76
Rule 31. Stipulations.....	76
Rule 32. The Record.....	76
Rule 33. Courtroom Seating	76
B. Beginning the Trial	
Rule 34. Jury Trial	77
Rule 35. Motions Prohibited	77
Rule 36. Standing During Trial	77
Rule 37. Objection During Opening Statement, Closing Argument	77
C. Presenting Evidence	
Rule 38. Objections	
1. Argumentative Questions	77
2. Lack of Proper Foundation	77
3. Assuming Facts Not In Evidence.....	77
4. Questions Calling for Narrative or General Answer	77
5. Non-Responsive Answer.....	78
6. Repetition	78
Rule 39. Procedure for Introduction of Exhibits.....	78
Rule 40. Use of Notes.....	79
Rule 41. Redirect, Re-Cross	79
D. Closing Arguments	
Rule 42. Scope of Closing Arguments	79
E. Critique	
Rule 43. The Critique	80

VIII. Federal Rules of Evidence – Mock Trial Version

Article I. General Provisions	81
Rule 101. Scope.....	81
Rule 102. Purpose and Construction	81

Article IV. Relevancy and Its Limits	
Rule 401. Definition of “Relevant Evidence”	82
Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible	82
Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time	82
Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes.....	82
Rule 405. Methods of Proving Character.....	83
Rule 407. Subsequent Remedial Measures.....	83
Rule 408. Compromise and Offers to Compromise.....	83
Rule 409. Payment of Medical or Similar Expenses.....	83
Rule 411. Liability Insurance (civil case only).....	83
 Article VI. Witnesses	
Rule 601. General Rule of Competency	84
Rule 602. Lack of Personal Knowledge	84
Rule 607. Who May Impeach	84
Rule 608. Evidence of Character and Conduct of Witness.....	85
Rule 609. Impeachment by Evidence of Conviction of Crime	85
Rule 610. Religious Beliefs or Opinions.....	85
Rule 611. Mode and Order of Interrogation and Presentation	85
 Article VII. Opinions and Expert Testimony	
Rule 701. Opinion Testimony by Lay Witness	87
Rule 702. Testimony by Experts	87
Rule 703. Bases of Opinion Testimony by Experts.....	87
Rule 704. Opinion on Ultimate Issue.	88
 Article VIII. Hearsay	
Rule 801. Definitions	88
Rule 802. Hearsay Rule.....	89
Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial.....	89
Rule 805. Hearsay within Hearsay.....	90
 IX. Notes to Judges	
A. Note to Judges.....	91
B. Introductory Matters.....	92
C. Evaluation Guidelines	93

D. Penalty Points94

Appendices

1. Often Used Objections in Suggested Form97
2. Time Sheet98
3. Team Roster99
4. Rule 26 - Reporting Rules Violation Form for Team Members Inside the Bar.....101
5. Rule 29 - Reporting Rules Violation Form for Use by Persons Behind the Bar102
6. Diagram of a Typical Courtroom.....103

CLASSROOM LAW PROJECT
**2018-19 OREGON HIGH SCHOOL
MINI-MOCK COMPETITION**

I. INTRODUCTION

This packet contains the official materials that student teams will need to prepare for this year's Mini-Mock Competition. This case was originally published and used as a competition case in the 2013-14 School Year.

The mock trial experience is designed to clarify the workings of our legal institutions for young people. In mock trial, 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.

Because teams are unaware of which side of the case they will present until minutes before the competition begins, they must prepare for both the plaintiff and defense.

Mini-Mock 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 Mini Mock case offers opportunities to discuss health and safety particularly as it relates to sports concussions, and responsibility for one's actions – for oneself as well as others. By participating in mock trial, students will develop a greater capacity to understand important issues in cases like this.

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 coach(es) 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.

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

Mia Perez, a minor child and the only daughter of Casey Perez, sustained a serious concussion during a college showcase soccer tournament on Friday, December 8, 2017*, while playing for the Rubicon Soccer Club Under-17 Premier soccer team. Mia continues to suffer from significant mental and physical impairment as a result of that concussion. Mia has filed a lawsuit against Rubicon soccer coach Shannon Dempsey, Rubicon Soccer Club Director Jordan Reddick, and Rubicon Soccer Club, Inc., arguing that they were negligent in returning her to play too soon after an earlier concussion and, therefore, are liable for the damages she sustained.

B. Witness List

For the plaintiff:

Casey Perez, parent of injured player Mia Perez
Dr. Bevin Register, concussion expert
Tobin O'Reilly, Rowe High School soccer coach

For the defense:

Shannon Dempsey, Co-Defendant, Rubicon Soccer Club Coach
Jordan Reddick, Co-Defendant, Director of Rubicon Soccer Club
Chris Durant, classmate of Mia Perez

** dates updated for purposes of 2018-19 Mini Mock Competition*

C. List of Exhibits

1. Acute Concussion Evaluation (ACE) Physician form for Mia Perez
2. Acute Concussion Evaluation (ACE) Care Plan for Mia Perez
3. CDC Fact Sheet: "Facts About Concussion and Brain Injury"
4. Sports Concussion Fact Sheet SB721, Jenna's Law
5. Rubicon Soccer Club Medical Consent/Waiver of Liability and Release
6. CDC High School Coaches' "Heads Up" Clipboard Sticker
7. CDC High School Athletes' Signs and Symptoms Poster
8. USYS Concussion Procedure and Protocol
9. USYS Possible Concussion Notification
10. Curriculum Vitae of Dr. Bevin Register

D. Complaint, Answer, Stipulations

Continued on next page.

Plaintiff to sit out for the remainder of practice.

9. Defendant Dempsey did not inform Casey Perez, Plaintiff's parent, of the incident in Monday's practice, nor did the Defendant suggest that Plaintiff Mia Perez be checked out by medical personnel for a possible concussion.

10. On Friday, December 8, 2017, Plaintiff Mia Perez suffered a blow to the head during the first half of the College Showcase tournament soccer game. Defendant Dempsey did not remove Plaintiff Mia Perez from the game at that time to check on her but, instead, kept Plaintiff Mia Perez in the game until halftime.

11. Defendant Dempsey did not ask Plaintiff Mia Perez about any possible concussion symptoms during halftime.

12. Defendant Dempsey put Plaintiff Mia Perez into the game at the beginning of the second half. About 15 to 20 minutes later, Plaintiff Mia Perez was tripped while dribbling the ball toward the goal. Plaintiff Mia Perez fell to the ground, striking her head hard when she landed.

13. Plaintiff Mia Perez was knocked unconscious by the force of the blow to her head. She was transported to the emergency room at Chinook County Hospital, where she regained consciousness more than an hour later.

14. Plaintiff Mia Perez suffered a serious concussion from the blow to her head. She continues to suffer from post-concussion syndrome months after this incident.

COUNT ONE

15. The Plaintiff hereby adopts and incorporates by reference paragraphs 1 through 14 as if fully set forth herein.

16. At all relevant times, Defendant Shannon Dempsey had a duty of care toward the Plaintiff to supervise, monitor, regulate, and take all reasonable and appropriate steps to minimize the risk of injury to the Plaintiff from her participation in soccer practices and games.

17. Beginning on Monday, December 4, 2017, and proceeding through Friday, December 8, 2017, Defendant Dempsey breached his/her duty to Plaintiff by carelessly and negligently ignoring clear symptoms of concussions which the Plaintiff exhibited throughout that period.

18. By failing to remove Plaintiff Mia Perez from practices and the College Showcase game until the Plaintiff had been cleared to play by a physician knowledgeable in the diagnosis and treatment of concussions, Defendant Dempsey created a foreseeable risk of harm to Plaintiff Mia Perez. In doing so, Defendant Dempsey directly and proximately caused the harm which Plaintiff Mia Perez suffered from repeated concussive events during the time in question.

19. Plaintiff Mia Perez has sustained past medical expenses and will incur future medical expenses and costs associated with the harm suffered and disability referenced above.

20. Plaintiff Mia Perez has in the past experienced, continues to experience, and may in the future suffer from an assortment of problems associated with the harm described above, including but not limited to, headaches, dizziness, loss of memory, depression, cognitive dysfunction, diminished educational achievement, employment impairment, limitations in physical activities, and loss of the pleasures of life.

21. As a result of the foregoing, Plaintiff Mia Perez has suffered damages and will in the future suffer damages caused by the negligence of Defendant Dempsey.

COUNT TWO

22. Plaintiff hereby adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

23. At all relevant times, Defendant Jordan Reddick, as the Director of the Rubicon Soccer Club, had a duty of care to Plaintiff to supervise, educate, monitor, and provide reasonable information and rules to club players, parents, and coaches, to minimize the risk of injury to the players.

24. Defendant Jordan Reddick was careless and negligent by breaching the duty of care to players and coaches both generally and in the following particular respects:

- a. Failing to educate players, parents, and coaches concerning symptoms of a possible concussion;
- b. Failing to warn of the risk of unreasonable harm or possible long-term complications resulting from repeated concussions;
- c. Failing to implement rules and protocols to adequately address the dangers of repeated concussions and to implement a medically-sound return-to-play policy to minimize long-term chronic cognitive problems;
- d. Other acts of negligence or carelessness which may materialize during this civil action.

25. Because of the negligence and breach of duty of Defendant Reddick, Plaintiff Perez has suffered damages and will in the future suffer damages as described in the foregoing paragraphs incorporated herein.

COUNT THREE

26. Plaintiff Mia Perez hereby adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

27. Defendant Rubicon Soccer Club, as the organization under which Plaintiff Mia Perez engaged in the sport of soccer, had a duty of care to establish reasonable rules and regulations and return-to-play protocols to minimize the risk of injuries to players in the club.

28. By failing to gather and disseminate specific information regarding prior player concussions on club medical waiver forms; failing to establish reasonable rules and regulations to educate players, parents, and coaches about the symptoms and risks of repeated concussions; and failing to establish clear and medically sound policies for safe return-to-play, Rubicon Soccer Club breached its duty of care to Plaintiff.

29. Because of the negligence and breach of duty of Rubicon Soccer Club, Plaintiff has suffered damages and will in the future suffer damages as described in the foregoing paragraphs incorporated herein.

WHEREFORE, Plaintiff requests judgment for the following:

1. Judgment against Defendants for compensatory damages in an amount to be determined by a jury;
2. Payment of the costs resulting from this action to be taxed against the Defendants;
3. Such other and further relief as this Court may deem just and proper.

Plaintiff requests a jury trial on all issues.

Respectfully submitted, this the 1st day of August, 2018.

Pat Jacobs

Pat Jacobs, Esq.
Attorney at Law
1111 Thorn Way
Rowe, Oregon 97205

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

MIA PEREZ, a minor, by and through her)
)
Parent, CASEY PEREZ)
)
) Plaintiff)
)
) v.)
SHANNON DEMPSEY, JORDAN)
)
)
REDDICK, and RUBICON SOCCER)
CLUB)
) Defendant)

Case No: MM2018-2019

ANSWER
DEMAND FOR JURY TRIAL

ANSWER

COMES NOW the Defendants, SHANNON DEMPSEY, JORDAN REDDICK, and RUBICON SOCCER CLUB, INC., and respond to the Plaintiff's Complaint as follows:

JURISDICTION AND VENUE

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Defendants admit that the aggregate damages claimed by the Plaintiff exceed \$50,000 but deny that the damages are due to negligence on the part of the Defendants. Nonetheless, Defendants do not contest the venue or jurisdiction of Chinook County Circuit Court.

FACTS

7. Admitted.
8. Defendants Jordan Reddick and Rubicon Soccer Club lack sufficient knowledge to form a belief as to the truth of the allegations in paragraph 8, and thus it is denied.
9. Defendants Jordan Reddick and Rubicon Soccer Club lack sufficient knowledge to form a belief as to the truth of the allegations in paragraph 9, and thus it is denied.
10. Defendants lack sufficient knowledge to form a belief as to the truth of the first allegation in paragraph 10, and thus it is denied. The second allegation is admitted.
11. Defendants Jordan Reddick and Rubicon Soccer Club lack sufficient knowledge to form a belief as to the truth of the allegations in paragraph 11, and thus it is denied.

12. Admitted.

13. Admit Plaintiff Mia Perez was nonresponsive during the second half of the December 8, 2017, game and was transported away from the field by emergency medical personnel. Except as admitted, Defendants lack sufficient knowledge to form a belief as to the truth of the allegation in paragraph 1, and thus it is denied.

14. Defendants lack sufficient knowledge to form a belief as to the truth of the in paragraph 13, and thus it is denied.

COUNT ONE

15. Defendants' responses to Paragraphs 1 – 14 are incorporated herein by reference.

16. Admitted.

17. Denied.

18. Denied.

19. Defendants lack sufficient knowledge to form a belief as to the truth of the allegations in paragraph 19, and thus it is denied.

20. Defendants lack sufficient knowledge to form a belief as to the truth of the allegations in paragraph 19, and thus it is denied.

21. Denied.

COUNT TWO

22. Defendants' responses to all prior paragraphs of the complaint are incorporated herein by reference.

23. Admitted.

24. Denied in general and as to all allegations in subparagraphs (a) – (d).

25. Denied.

COUNT THREE

26. Defendants' responses to all prior paragraphs of the Complaint are incorporated herein by reference.

27. Denied.

28. Denied.

29. Denied.

FIRST AFFIRMATIVE DEFENSE

30. Defendants assert the defense of comparative negligence. Plaintiff failed to exercise reasonable care for her own safety and thereby contributed to her own injury in one of more of the following ways: (1) by re-entering the soccer game after injuring her head, (2) by failing to notify her coach of her concussive symptoms, and (3) in such further ways as may be shown by evidence in this case.

WHEREFORE, Defendants pray the following from the Court:

1. That Plaintiff Mia Perez recover nothing from Defendants Shannon Dempsey, Jordan Reddick, and Rubicon Soccer Club, Inc.; and
2. Such other and further relief which the Court may deem just and proper.

Defendants request a jury trial on all issues.

Respectfully submitted this the 31st day of August, 2018.

Chris Sinclair
Chris Sinclair, Esq., Attorney at Law
12012 Winner Cir.
Rowe, Oregon 97205

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

MIA PEREZ, a minor, by and through her)
)
Parent, CASEY PEREZ)
)
) Plaintiff)
)
) v.)
SHANNON DEMPSEY, JORDAN)
)
)
REDDICK, and RUBICON SOCCER)
CLUB)
) Defendant)

Case No: MM2018-2019

STIPULATIONS

STIPULATIONS

1. All exhibits included in case materials are authentic. No objections to the authenticity of exhibits will be honored.
2. All signatures on Witness Affidavits and other documents are authentic. If asked, a witness must acknowledge signing the document(s) and must attest to the content of the documents(s) and the date(s) indicated thereon. The Witness Affidavits are deemed to be given under oath or affirmation.
3. The trial is bifurcated and the only issue to be determined in this trial is liability. The amount of damages to be awarded, if any, will not be at issue in this proceeding.
4. The Acute Concussion Evaluation (ACE) report is admissible without further foundation. No hearsay objection to this document will be allowed.
5. Before trial, the Court denied the Defendants' motion to dismiss the lawsuit on the grounds that Plaintiff waived and released her claims through her parent's execution of the Medical Consent/Waiver of Liability and Release, dated June 2, 2017. In its ruling, the Court determined, as a matter of law, that the waiver and release of liability was not enforceable against Plaintiff.

Pat Jenkins
Pat Jenkins, Esq.
Attorney at Law
1111 Thorn Way
Rowe, Oregon 97205

Chris Sinclair
Chris Sinclair, Esq.
Attorney at Law
12012 Winner Cir.
Rowe, Oregon 97205

1 school's biggest rival, Carthage High School, in the first playoff game last May. Mia was really
2 excited about the game; she thought Rowe might defeat Carthage for the first time ever, and if
3 they could get past Carthage, maybe they could go all the way to state finals. At halftime we
4 were leading 2 – 0, and Mia had scored one goal and assisted on the other. But about midway
5 through the second half, Mia collided with a defender when they both went up for a header, and
6 Mia went down hard. She looked woozy when she got up, so her coach, Tobin O'Reilly, pulled
7 her out right away. Coach O'Reilly is great; s/he wants to win, but not at any cost. When
8 Carthage scored, I saw Mia asking to go back in the game, but Coach O'Reilly wouldn't let her.
9 The team managed to hold off Carthage and won, 2-1! The whole team was jumping up and
10 down with excitement, although Mia mostly stayed still and just hugged her teammates.

11
12 After the game Coach O'Reilly told me that I should take Mia to the doctor the next day,
13 since she was still a bit woozy and complaining of a headache. Mia appeared to feel completely
14 fine the next morning but we went to our physician, Dr. Rick Mueller, first thing anyway. After
15 examining her, he said that Mia had a mild concussion. He told her she needed to rest and avoid
16 strenuous mental and physical activities, including soccer, for a week, then we should come back
17 for a follow-up visit. I still have the instruction sheet he gave us after her visit.

18
19 Mia rested just as Dr. Mueller ordered. But without her, the school team lost the next
20 playoff game. Mia felt really bad about that but Coach O'Reilly and all her teammates told her
21 not to worry, they'd have another chance the next year. Since soccer was finished for the season
22 and Mia said she felt fine, we never did go back for the follow-up visit with Dr. Mueller. It just
23 didn't seem necessary since the Rubicon club soccer tryouts were a month away.

24
25 Mia did well in tryouts and stayed on the top Under-17 Rubicon team with Coach
26 Michelle Foudy, although some of her good friends got dropped down to the second team. When
27 I turned in all of Mia's paperwork, I made sure to write down on the Medical Waiver form that
28 Mia had suffered a concussion in her school game on the line marked "List any unusual health
29 information" since the form does not ask for such information specifically.

30
31 Mia was really happy when her Rubicon practices started back up. Surprisingly, Mia's
32 team had a new coach, Shannon Dempsey. At the first team meeting, Coach Dempsey told the
33 girls that Coach Foudy left to care for her dad, who had been diagnosed with cancer. Mia and her
34 teammates were sad for Coach Foudy, but they were impressed to hear that Coach Dempsey had
35 played in college on a full soccer scholarship and had turned down an offer to play in the pros.

1 As the top team in the Premier division, Mia’s Rubicon club team was getting lots of
2 attention from college coaches. In fact, the girls were so confident of winning their division that
3 they made team shirts with the slogan “Rubicon Soccer: We Came, We Saw, We Conquered.”
4 Mia was still the leading scorer, and she was playing her best soccer ever. Coach Dempsey
5 stressed hard work and instituted strict rules, and it all seemed to pay off when the team finished
6 the season undefeated. When the team signed up for a college showcase tournament in early
7 December, Mia knew it was her chance to be seen by top college coaches from all across the
8 country: UPS, UCLA and Stanford, and even University of North Carolina and Duke. I made
9 sure to work extra evening shifts early in the week of the tournament so I could watch her play
10 that weekend. I knew how important this opportunity was for Mia; she had to get a scholarship to
11 have any hope of attending a top-tier university.

12
13 The tournament was on the weekend. I didn’t get to talk with Mia very much that week
14 because of my work. When I saw her for a few moments on Tuesday evening, she did seem kind
15 of quiet and stressed, but I knew she was feeling pressure to do well in the tournament. She was
16 already in bed when I got home from work on Wednesday, and I didn’t get to talk with her much
17 on Thursday morning. On Thursday evening when I got home she still seemed stressed, so I tried
18 to tell her to relax and play her game, and everything would be fine. She kind of paused and
19 looked at me like she wanted to say something, but then she just said she was going to bed. On
20 Friday morning she slept through her alarm and I had to wake her up for school, which surprised
21 me because Mia was always up before her alarm. I asked if she was getting sick but she said she
22 was okay, she was just tired from all of the tests she’d had that week. I told her again to relax and
23 said I would meet her at the game that afternoon.

24
25 I got to the game after it had already started. I noticed lots of coaches on the sidelines,
26 taking notes on clipboards; I even saw some of them pointing out Mia. Mia was out on the field
27 in her usual position of striker but I noticed she didn’t seem to be running as hard as usual. I
28 figured that maybe she was getting sick after all, and I hoped she’d be able to shake it off and
29 play well. With about 10 minutes to go in the first half, Mia tried to head the ball to score on a
30 corner kick, and it looked like she took an elbow to the head. She seemed a bit shaken, and co-
31 captain Megan Cheney even came over to check on her. But Coach Dempsey didn’t seem to care
32 and in any case, s/he didn’t pull Mia out. Soon it was halftime, with the score tied 0-0.

33
34 Mia started the second half, and she seemed to be a bit better after the short break for
35 halftime. In fact, she almost scored a goal about 5 minutes in, but the goalkeeper made a great
36 save. About 10 minutes later a teammate passed the ball to Mia right outside the penalty box, and

1 Mia started dribbling toward the goal. All of a sudden a defender made a hard tackle on the ball
2 and Mia lost her balance and crashed on the ground, hitting her head. I waited for her to get up,
3 but she just lay there. The referee stopped play immediately and Coach Dempsey ran out on the
4 field. Mia still wasn't moving and, next thing I knew, I saw the field marshal and athletic trainer
5 run out on the field. I was in shock; then I ran out on the field. Coach Dempsey said to me, "I'm
6 so sorry, I'm so sorry; I knew Mia wasn't feeling well. I can't believe she got hurt." I saw that
7 Mia was unconscious, and I heard them call for the ambulance which was at the tournament to
8 come get Mia and take her to the ER. Of course I rode with them, although I don't remember
9 much of what went on. All I kept thinking was "please, let her be okay; I can't lose her, too."

10
11 At the hospital, the doctors ran tests and they said Mia had a concussion. She finally
12 woke up about an hour after we got there but she seemed really "out of it." They kept her
13 overnight for observation, and they talked with both of us about what to watch for and how it
14 might be days or even weeks before Mia fully recovered. They said that in a small percentage of
15 cases, the person can have serious, long-lasting problems. Of course, we never thought that
16 would happen to Mia, but our worst fears have come true.

17
18 Mia started having serious migraines a few days after she was discharged. She was
19 incredibly sensitive to light and noise, and she was moody and depressed. She couldn't
20 concentrate and had trouble remembering things. I kept her out of school since it was almost the
21 winter break and I hoped she would get better before the new semester started. But she didn't. In
22 fact, she hasn't been able to return to school since the injury. She still has intense headaches,
23 dizziness, and even nausea, even though it's over a year later. Because light still bothers her, we
24 have to keep our house dark, with dim blue lights or candlelight. It's so bad that she can't come
25 to testify in court, because the stress is just too much for her.

26
27 Mia's taking one class online now, but that's all she can handle. She won't be able to
28 graduate with her class this spring, and she certainly won't be going to college on a soccer
29 scholarship or playing in the pros. Her life has been completely changed, and the doctors don't
30 know if she'll ever fully recover. And I worry about her future. I mean, you read now about these
31 NFL football players who are getting early dementia, and I wonder, is that going to be Mia? Will
32 she ever go to college or be the person she could have been?

33
34 I don't fault the game of soccer. Mia loves soccer, and obviously millions of people play
35 it without these types of problems. But I do fault Coach Dempsey and the Rubicon Soccer Club
36 Director Jordan Reddick. After Mia woke up in the hospital, she told me that she took a hard hit

1 to the head in practice on Monday before the tournament but Coach Dempsey never did anything
2 about it, and certainly didn't inform me about it. High schools have all these protocols in place to
3 train coaches about concussions and make sure students aren't put in danger, but the Rubicon
4 Soccer Club doesn't do anything to train coaches about concussions. Sure, the club talks about
5 good nutrition and all, but playing with a concussion can ruin a player's life.
6

7 I know I signed a waiver saying I can't hold the club accountable for injuries but,
8 thankfully, the judge ruled that the waiver doesn't keep Mia from suing them. And I wrote right
9 on the waiver form that Mia had suffered a concussion at school so that the Rubicon coach
10 would know to keep an eye on her. The Rubicon coach and club have a duty to take care of their
11 players but I think they've forgotten that in their zeal to brag about their winning teams and
12 scholarship-earning players. They should pay for the harm that Mia suffered, harm that was
13 preventable if they'd only had their priorities straight. Money can never make things right but at
14 least it can help us afford all of the therapy and educational support services that Mia will need in
15 the future. Without that, I just don't know what will become of Mia.
16

17 Of the exhibits in this case, I am familiar with the following: CDC High School Athlete
18 Fact Sheet; ACE Evaluation Form, ACE Care Plan for Mia Perez; and the Rubicon Soccer Club
19 Medical Consent/Waiver of Liability and Release.
20

21 I hereby attest to having read the above statement and swear or affirm it to be my own. I
22 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
23 should contain all relevant testimony, and I followed those instructions. I also understand that I
24 can and must update this affidavit if anything new occurs to me until the moment before I testify
25 in this case.
26

Casey Perez

Casey Perez

27
28
29 Subscribed and sworn before me on this day, the 23rd of August, 2018

Beth Eckhardt

Beth Eckhardt, Notary Public
30
31
32

1 **Affidavit of Bevin Register, Ph.D., A.T.**

2
3 My name is Dr. Bevin Register; I am 45 years old and the Director of the Sports
4 Medicine Concussion Research Center. The Center is part of the Department of Exercise and
5 Sport Science at the University of Rowe, where I am also department chair and Mihalik-Marshall
6 Distinguished Professor. For nearly twenty years my research has focused on the diagnosis and
7 long-term neurological impact of sport-related concussions. More recently, our center has also
8 begun focusing on injury awareness and prevention among youth athletes. As part of our work at
9 the Center, we offer pre-concussion baseline and post-injury follow-up testing to youth athletes. I
10 saw Mia Perez in February of 2018 after her concussion in December of 2017.

11
12 I became interested in studying concussions about 20 years ago when I worked as an
13 athletic trainer for an NFL pro football team. It seemed as though we did not have a good process
14 to determine when players with concussions could safely return to play. So I earned my Master's
15 degree and my Ph.D. in sports medicine, focusing on balance testing as an objective measure to
16 confirm concussions and recovery from concussions. We can never make athletes 100% safe,
17 though; all sports carry some degree of risk. We can only do our best to reduce the risks as much
18 as possible, realizing that some percentage of athletes will continue to get hurt.

19
20 I suffered a concussion as a high school soccer player myself and, as an adult, I have had
21 two more concussions, one from a skiing accident and another from riding a roller coaster. I
22 know from personal experience that the first concussion puts you at increased risk for more and
23 how it takes less force to cause subsequent concussions. Because of all I've seen, you might say
24 I'm on a personal crusade to raise awareness about the devastating impact of multiple
25 concussions.

26
27 A concussion is a type of mild traumatic brain injury, or mTBI, caused by a blow or jolt
28 to the head. Contrary to what many people believe, only 5 - 10% of concussions involve a loss of
29 consciousness. The injury occurs from acceleration and deceleration forces shaking the brain
30 inside the skull. We've recently discovered that this movement sets off a cascade of
31 neurophysiologic changes which are more akin to "software" problems than "hardware"
32 problems such as cell death or structural changes. We see alterations in the metabolism of
33 glucose (the major fuel for the brain), temporary disruptions in neural membranes that cause
34 impaired connectivity or changes in neurotransmitters, and reduced blood flow in the brain. As
35 the brain attempts to return to normal, any additional physical or cognitive activity can cause
36 symptoms to worsen and even lead to long-term problems.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

In the last ten to fifteen years we've begun to realize how serious the long-term effects of repeated concussions can be. Coaches used to encourage players to "tough it out" and get back in the game; continuing to play after getting your "bell rung" was almost a badge of honor. And we used to think that the brains of children and youth were more resilient than adults so we were less concerned when a youth suffered a concussion. Now we realize that youthful brains are actually more vulnerable and it can take youth athletes longer to recover than adults.

Every year, U.S. emergency departments treat more than 120,000 youth aged 10-19 for sports and recreation-related TBIs. The numbers are highest in boys football and girls' soccer. Because more boys participate in contact sports than do girls, the overall numbers are higher among boys; but when you compare them across similar sports (basketball, soccer, or baseball/softball), girls are twice as likely as boys to suffer from concussions. And some research indicates that females may face more brain swelling and take longer to recover from concussions than males do.

Immediately after a blow to the head that causes a concussion, certain signs may be observed. The athlete may appear dazed or stunned; he or she may appear confused about events or slow to respond to questions. He or she might seem clumsy or lose consciousness briefly. The athlete might also exhibit mood swings or personality changes. It is important for coaches to be alert to these symptoms, because the player might try to stay in the game and shake it off, or beg to be put back in if the coach takes him or her out. Sometimes players deliberately try to hide the injury from their coaches; other times the player just is not aware of what is happening because he or she is not thinking clearly. We can educate athletes about the symptoms of a concussion but, especially when dealing with youth players, I feel strongly that the real responsibility lies with the adults in the situation: the coaches, athletic trainers, and parents. It is crucial that regular training be provided to all athletic trainers and coaches working with youth in contact sports to make sure that they are aware of the symptoms and proper treatment of concussions.

Generally, concussion symptoms fall into four categories. The first category involves difficulty in cognitive activities. Concussed individuals may have trouble thinking clearly, concentrating, or remembering new information; they may feel mentally sluggish, hazy, or foggy. The second category is physical effects: nausea or vomiting (early on), headaches, blurry or double vision, dizziness or balance problems, and sensitivity to light or noise. Affected individuals will say that they have no energy or just "don't feel right." Third, concussed individuals can experience changes in mood or emotion: they may be irritable, sad, nervous, or

1 more emotional than usual. And lastly, affected individuals can have changes in their sleep
2 patterns: either difficulty in falling asleep, or sleeping more or less than usual.
3

4 Dr. R. Dawn Comstock at the Center for Injury and Research Policy in Ohio has been
5 collecting data on the reported incidence and symptoms of concussions for high school athletes
6 across the U.S. since the 2005-06 season. Dr. Comstock obtains weekly injury and participation
7 data from Certified Athletic Trainers (ATs) at a representative nationwide sample of high
8 schools via the High School RIO™ (Reporting Information Online) study. By analyzing the data
9 and tracking trends over time, Dr. Comstock's research helps the National Federation of State
10 High School Associations (NFHS) to develop policies to improve athletes' safety. Data from
11 2005-06 through 2010-11 revealed that during a six-year period, an estimated 120,000
12 concussions were sustained by high school boys' soccer players nationwide and 170,000
13 concussions by high school girls' soccer players. The girls' concussion numbers were higher
14 even though the NFHS reports that 10% more boys than girls play high school soccer each year.
15 And these numbers undoubtedly underestimate the true incidence, as they only reflect the
16 concussions that were known to the athletic trainers.
17

18 Dr. Comstock found that while headaches are the most commonly reported symptom
19 among all athletes – approximately 90% report headaches – boys and girls differ in their
20 exhibition of other symptoms. For instance, more boys than girls experience amnesia (27%
21 versus 14%), loss of consciousness (5% versus 2%), and tinnitus (11% versus 5%). In contrast,
22 girls more often report difficulty in concentrating (55% versus 41%), sensitivity to noise (19%
23 versus 12%), nausea (33% versus 24%), and feelings of drowsiness (34% versus 18%). It is
24 important to be aware of these differences so we don't overlook girls who have sustained a
25 concussion. While many people are aware that amnesia or loss of consciousness are symptoms of
26 concussions, complaints of drowsiness or sensitivity to noise may be attributed to busy teen
27 lifestyles rather than recognized as indications of a possible concussion.
28

29 When an athlete is suspected of having sustained a concussion, it is very important that
30 he or she be removed from play right away and not be allowed to go back in the game that day.
31 The athlete needs to be evaluated by a health care professional who is knowledgeable about
32 assessing and treating concussions. Diagnosis still largely depends upon observed symptoms and
33 the patient's report, as CT scans and MRIs appear normal unless the injury is severe enough for
34 intracranial bleeding.
35

1 Physicians frequently use an “Acute Concussion Evaluation,” or ACE, questionnaire
2 when interviewing a person thought to have sustained a concussion. The ACE notes the
3 characteristics of the injury, patient symptoms, and risk factors such as previous concussions or a
4 history of headaches that may indicate a full recovery could take longer than normal. After
5 evaluating the patient, the physician should give the individual an ACE Care Plan sheet detailing
6 what the patient should and should not do, and what types of follow-up are recommended. Mia
7 was evaluated using an ACE the day after she sustained a concussion while playing on her
8 school soccer team. It would have been important for Mia to tell her future coaches about that
9 concussion; I do not know whether her coaches were informed or not.

10
11 After sustaining her first concussion in Spring of 2017, Mia was at greater risk for a
12 subsequent concussion even with a lesser application of force. A study conducted by McGill
13 University in Montreal found that college soccer players who sustained one concussion were 4 to
14 6 times more likely than uninjured players to sustain a second concussion. It is critically
15 important for organizations involved in youth athletics, whether schools or clubs, to ask
16 incoming players about any past incidents of concussions so they will know to monitor affected
17 players more closely. Any failure to specifically ask for such information is unthinkable; no
18 responsible organization could possibly fail to recognize the importance of such information.

19
20 Most players who have sustained a mild concussion are symptom-free within a week to
21 ten days, but it takes others much longer to recover. According to the RIO™ data, concussion
22 symptoms resolved within 6 days for 83% of high school boys’ soccer players and 75% of high
23 school girls’ soccer players, leaving a substantial percentage with symptoms lasting a week or
24 longer. Since adolescent brains are still developing, it is better to err on the side of caution when
25 evaluating return-to-play: “When in doubt, sit them out.” Individuals vary greatly in the time
26 needed for a full recovery, and sometimes after physical symptoms have resolved, the player
27 may have lingering cognitive impairment or brain metabolism abnormalities.

28
29 Rest is a key part of recovery, and this includes rest from learning and mental stimulation
30 as well as physical rest. Youth athletes often feel stressed by the need to take time to recover,
31 feeling that they should “work through” their symptoms so they do not fall behind in their
32 schoolwork or lose athletic fitness. It is very important for coaches, parents, athletes and school
33 personnel to support the athlete’s need to take sufficient time to recover. Research shows that it
34 is even more critical to allow sufficient time when an athlete has suffered a repeat concussion.
35 For instance, after a second concussion, a player should sit out for a minimum of 2 weeks even if
36 the symptoms all clear up within 30 minutes of the incident.

1 An athlete should be completely free of symptoms at rest and have no symptoms with
2 cognitive stress (such as reading or schoolwork) before starting on a gradual progression to
3 return to play. If symptoms return at any point, the athlete must stop and rest; when they are
4 symptom-free, they must return to the previous stage that they completed without symptoms. It is
5 important that the athlete not progress too quickly and that he or she pay careful attention to any
6 recurring symptoms and honestly report those to their parent, coach, or athletic trainer. While a
7 coach or athletic trainer can observe symptoms such as poor balance, the athlete must be willing
8 to report other symptoms like difficulty concentrating which the coach cannot see as readily.
9

10 In my evaluation of Mia Perez at the Center in February, I conducted a number of
11 assessments, including computerized cognitive testing, computerized balance testing, clinical
12 cognitive and balance testing, symptom assessment, and an assessment of her history of
13 concussion. All of her test results showed that she was suffering from post-concussive syndrome.
14 During my evaluation she displayed difficulties with visual and recall memory, slowed
15 information processing, and inattentiveness. She was experiencing ongoing and severe
16 headaches, including migraines; other physical symptoms included poor balance, sensitivity to
17 light and noise, and unusual sleepiness. Mia also reported mood swings, intolerance to stress, and
18 feelings of depression. All of these symptoms made it impossible for her to attend school or take
19 classes online. I evaluated her again in early August, and although her symptoms were
20 marginally improved, she was still unable to tolerate more than one online class for school. Her
21 low tolerance for stress, continuing headaches, and sensitivity to light and noise will certainly
22 decrease the likelihood of her ability to be present in the courtroom.
23

24 From my assessments and interviews with Mia and Casey Perez, it appears that Mia may
25 have suffered one concussive event on Monday, December 4, and very likely suffered two
26 concussive events on December 8, 2017. The die was cast when Coach Dempsey left Mia in the
27 game after the first event on December 8, for the occurrence of a second blow in the same game
28 is almost certainly a key factor in her ongoing and debilitating problems. We know that in the
29 recovery phase, rest and avoidance of a second head injury is imperative; when [cerebral] blood
30 flow is low [as occurs after a concussion], another injury could be catastrophic. If the coach had
31 recognized Mia's symptoms and removed her from the game after the first incident, Mia almost
32 certainly would have received more appropriate and timely care, greatly increasing her chances
33 for a full recovery. Given the seriousness of her condition more than a year after her injury, it is
34 strongly likely that Mia will continue to suffer significant physical and cognitive problems for
35 the rest of her life. It is heartbreaking to know that a young woman with a bright future ahead of
36 her has almost certainly had that future snatched away, all because a soccer club and soccer

1 coach were too blind to see what was right in front of their faces. We have to do whatever it
2 takes to put a stop to this type of tragedy. Max’s and Jenna’s laws passed by the Oregon
3 legislature in 2009 and 2013, respectively, are a good start.

4
5 Of the exhibits in this case, I am familiar with the following: ACE Evaluation Form and
6 Care Plan for Mia Perez; CDC Fact Sheet: “Facts About Concussion and Brain Injury”; Sports
7 Concussion Fact Sheet SB 721: Jenna’s Law; and my own Curriculum Vitae.

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

14
15 *Bevin Register*
16 Bevin Register, PhD, AT

17
18 Subscribed and sworn before me on this day, the 23rd of August, 2018

19 **Beth Eckhardt**
20 Beth Eckhardt, Notary Public
21

Affidavit of Tobin O'Reilly

1
2
3 My name is Tobin O'Reilly. I am 35 years old. I teach Sports Medicine, Health, and PE
4 at Rowe High School in Rowe, Oregon. I also coach the boys' and girls' varsity and JV soccer
5 teams. I've always wanted to coach and teach at the high school level because I love seeing
6 students' excitement when they learn a concept or skill for the first time. And RHS is a great
7 place to work! As the only high school in town, we have fantastic community support for all of
8 our programs. When we play our arch-rivals from Carthage High School in soccer on a Friday
9 night, the bleachers are packed with students and townspeople cheering on our team!

10
11 I've always loved soccer; I played in high school myself and became a FIFA-certified
12 soccer referee to help pay for college. I even earned a scholarship to play soccer at the University
13 of North Carolina where I majored in Exercise and Sports Science with a minor in Coaching
14 Education. Before I graduating, I began coaching youth soccer part-time at Triad Soccer Club
15 and started attending soccer coaching courses. I eventually earned my NSCAA (National Soccer
16 Coaches Association of America) Advanced National Coaching Diploma, their second highest
17 certification. It is an intense course, equivalent to a USSF "B" level license.

18
19 After I earned my Advanced National Diploma, I heard that Rubicon Soccer Club was
20 looking to hire a club Director. Rubicon was still very new at that time, and the position sounded
21 like a great opportunity, maybe the only thing that could have lured me away from teaching at
22 RHS. I applied for the position and thought my interview went well but Rubicon hired Jordan
23 Reddick. I couldn't believe it. Sure, Jordan had played pro ball and I hadn't, but other coaches at
24 Triad Soccer Club said that Jordan was too focused on winning without regard to player safety.
25 In fact, they were relieved when Jordan left. I had to agree; I had seen Jordan's angry behavior
26 on the sidelines when his/her team wasn't playing well. On more than one occasion, I saw Jordan
27 kick chairs or trashcans when his/her team was losing, and Jordan often yelled insults at players
28 who made mistakes. I hate to admit it, but I kind of lost my head and posted some nasty
29 comments about Jordan on the online soccer coaches' forum. It wasn't the wisest idea, but I felt
30 pretty strongly that Jordan got the job that should have been mine.

31
32 I learned a lot about general sport safety and fitness in my college classes and coaching
33 certification courses. I know that sports injuries can hurt the whole team so I do everything I can
34 to keep our players healthy. I make sure they are hydrated and eat the right kinds of foods before
35 and after games and practices. I talk with them about getting enough rest and, of course, about

1 keeping their schoolwork as their top priority. A few of them will be able to play ball in college
2 but most of them won't, so I emphasize that they need to have good grades to stay on the team.
3

4 When I first started coaching, we didn't learn much about concussions in my training
5 classes. We mostly learned about sprains, strains, hydration and that sort of thing. But several
6 years ago I heard in the news about several high school football players who died after suffering
7 a second concussion in a game or practice. I knew soccer players sometimes got repeat
8 concussions – I had a teammate in college who had short-term memory problems and recurring
9 headaches after several concussions – so I started reading all I could about concussions. We
10 didn't have enough money to hire athletic trainers at RHS – that made it my job to stay on top of
11 current research in the field.
12

13 In 2010, I learned about the “Heads Up” concussion awareness initiative of the Centers
14 for Disease Control and Prevention and Oregon's Max's and Jenna's Laws. The CDC provides a
15 free online training video for coaches, as well as fact sheets for student-athletes and parents. The
16 information is incredibly helpful; it tells the signs and symptoms of concussions, how to prevent
17 them and what to do if you suspect an athlete has a concussion. The website has a guidebook for
18 high school coaches, and clipboard stickers and wallet cards that make it easy to keep the
19 information with you. That fall I began implementing the CDC recommendations at the
20 beginning of the season. I sent home the CDC high school athlete and parent fact sheets with all
21 my students because I wanted to make sure that my players knew not to hide their symptoms or
22 try to “play through” the pain. I put up several CDC posters in my office and in the gym to
23 remind students to take concussions seriously. As those posters say, “When in doubt, get
24 checked out; it's better to miss one game than the whole season.” Soccer is a great game, but it is
25 just a game. I would never risk a player's health for a win.
26

27 Our boys' soccer team advanced far into the playoffs in the fall of 2016 and, when the
28 girls' season began in the spring of 2017, I knew they had the potential to make the playoffs, too.
29 Mia Perez, a “striker” and our leading scorer, already had a year of experience on the varsity
30 team since she made the team as a freshman. I had never had a player like Mia. She was fast, had
31 wonderful ball control, could place her shot exactly where she wanted it, and had an intuitive feel
32 for the game. She had an incredible work ethic and her example inspired the other players. She
33 was well-liked and respected by all of her teammates, even the seniors, and they voted her as a
34 co-captain at the beginning of the spring. I knew that if any of my players had the potential to
35 play in college or the pros, it was Mia.
36

1 The team, and Mia in particular, certainly lived up to my expectations. We were
2 undefeated going into the playoffs, and our first playoff game was against our archrival,
3 Carthage High School. We hadn't played them in the regular season; the game was rained out
4 and we were never able to reschedule it. So I think the whole town was in the bleachers when we
5 faced Carthage at home in May. We really dominated in the first half; Mia scored a goal and sent
6 a beautiful cross in to get an assist on another goal. I'd never seen the girls play better. With a 2-
7 0 lead at halftime, we were focused and confident going into the second half.

8
9 But about 20 minutes into the half, Mia collided with a Carthage player when trying to
10 score on a header. Mia went down and seemed to hit her head on the ground. She took a minute
11 to get up and looked kind of dazed, so I pulled her out right away. I asked Mia some questions
12 based on my CDC clipboard sticker. She answered my questions slowly and she said she was
13 feeling "foggy." It was clear to me that she might have sustained a concussion so I told her she
14 would need to sit out for the rest of the game. Ten minutes later Carthage scored and Mia begged
15 to go back in, but there was no way I was going to do that. I'd rather lose the game than risk my
16 player's health.

17
18 Carthage came close to scoring but our defenders were great, and we won 2-1. The crowd
19 and all the players went wild, except for Mia. She had a huge grin on her face but she didn't try
20 to dance around like the other girls. After things calmed down, I spoke with Mia and her parent
21 and told them she needed to go to a doctor the next day because I suspected she might have a
22 concussion. They both assured me they would do that first thing. When she left that night, Mia
23 said "Don't worry, Coach, I'll be ready to play the next game." I didn't say anything but I knew
24 that was unlikely.

25
26 Max's Law became law in Oregon in 2009 and it requires schools to follow a particular
27 procedure before allowing athletes to return to play after a concussion. The law meant that Mia
28 wouldn't be allowed to return to play until she had medical clearance. That was okay with me
29 because my players' health and well-being comes first. The law didn't apply to clubs like
30 Rubicon at first, but that changed in 2013 when the legislature passed Jenna's Law. It was named
31 for a gold medal skier from Sisters who had at least ten concussions before hanging up her skis
32 and so, now, clubs have to follow procedures to protect players, too. A Fact Sheet about sports
33 concussions, Max's Law, Jenna's Law and so on are easy to find on the internet. I also got a cell
34 phone app that helps coaches determine right on the sidelines whether a player may have
35 suffered a concussion – well worth the \$4 cost, in my opinion. At RHS we developed emergency
36 plans and give instruction sheets to our students and parents in compliance with the law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Anyway, Mia did see a doctor the next day and I learned that he said she needed to rest for a week and then return to see him. Without Mia in the game on Saturday, we lost a close match to the Gallic High School team. Of course Mia and her teammates were disappointed, but I told them we would be even better the next year, and the important thing was that everyone played their best.

As a junior that year, Mia didn't have to take PE as a required course. Yet she signed up for my Tuesday-Thursday "Advanced Personal Fitness" class where students increase their fitness through high-intensity aerobics, circuit training, Tae-Bo, Zumba and weight training. Mia seemed to enjoy the class and said it gave her a nice break from all of her AP and Honors courses. She always went all-out in class and often encouraged other students who were not as athletic as she was. That's why I remember thinking that she must be getting sick the week after Thanksgiving when she asked to sit out halfway through our Zumba session on Tuesday. When I asked if she was okay, she said she had a bit of a headache from all of her studying for tests that week. On Thursday she didn't seem any better so I gave her a pass to go to the library to study instead of sitting around in the gym. She had talked about having a big club soccer tournament that weekend, so I hoped she would recover in time to play.

The next Monday I heard that Mia had sustained a serious concussion at the soccer tournament. She has not come back to classes on campus at all since that weekend because of her lasting injuries. I am devastated to hear that Mia, such a promising athlete and student, has suffered such serious long-term problems because of that concussion. I don't know the specifics of her injury but I do know that if a coach doesn't recognize the symptoms of a concussion and keeps a player in the game who has taken a hard hit, it can lead to problems like this. Max's Law applies to public schools not to club soccer organizations, but Jenna's Law should also apply. The dangerous effects of concussions had been in the news long before Mia was injured in December, and the CDC materials have been available online for several years. Any reasonable coach or club who cares about their players would have taken steps to educate themselves and their team families about concussions even without being required to do so by law. I did it before Max's & Jenna's Laws because it's just the right thing to do. Tragically, it takes a lawsuit to make some people realize that concussions are no joke, so they need to take their responsibilities seriously.

Affidavit of Shannon Dempsey

1
2
3 My name is Shannon Dempsey. I am 27 years old. In 2009 I began coaching soccer full-
4 time for the Rubicon Soccer Club after graduating from Julian College in Rowe, Oregon, with a
5 degree in communications. I played soccer at Julian on a full scholarship, and I was the second
6 leading scorer on my team in my senior year even though I played midfield. I also coached part-
7 time at Rubicon during my last two years in college. When I graduated, I got an offer to play in
8 the pros but I turned it down because the money for pro players in the US isn't all that great
9 unless you're a superstar. Rubicon Soccer Club Director Jordan Reddick told me I could coach
10 three teams and go full-time if I wanted, and I could use my communications training to help
11 market the club and update the website. It sounded good to me, so I did. I've been really happy
12 with the decision to work for Rubicon. It is the best club in the state and a lot of our players have
13 gone on to play in college.
14

15 Right now I'm coaching the Under-14 boys' premier team, the U-15 second division
16 classic boys' team, and the U-16 first division boys' team. Club soccer is divided into different
17 competitive levels, with premier level soccer being the highest statewide division, followed by
18 first division classic teams, second division classic teams, and challenge level teams. Below the
19 challenge level teams are recreation level teams which usually have volunteer coaches and
20 players who are just playing for fun. Although I've coached both genders, I enjoy coaching the
21 boys' teams more than the girls' because the guys are more focused on the competition and there
22 is less social drama. I have a harder time telling what the girls are thinking but the guys just blurt
23 it all out.
24

25 Before I could start working for Rubicon full-time, I had to obtain my National "D" level
26 soccer coaching license from the U.S. Soccer Federation. USSF is the only organization allowed
27 by the international soccer federation ("FIFA") to issue coaching licenses in the U.S. The
28 licensing course was pretty intense. It lasted six days and included classroom instruction,
29 homework and sessions where we had to plan and lead practices. The course covered learning
30 styles of players, soccer techniques and soccer tactics. We also had a short session on the care
31 and prevention of injuries which mostly focused on strains and sprains, broken bones and heat
32 exhaustion. We barely touched on concussions. To pass the course I had to pass oral, written, and
33 practical field evaluations. I think that out of the 30 people taking the course with me, only 20 of
34 us earned our National "D" license without having to repeat the course.
35

36 After I got my "D" license, the club moved me up from coaching challenge teams to

1 coaching three classic level teams. I was glad for the promotion because it meant I got to coach
2 players who were more talented and motivated. Don't get me wrong, I enjoyed the enthusiasm of
3 the challenge level players but I felt that my skills were put to better use with the more skilled
4 players. I asked to coach mainly boys' teams so that's all that I did for the first few years.
5

6 In early July of 2017, Michelle Foudy, the coach of the Rubicon U-17 girls' Premier
7 team, found out that her dad had been diagnosed with cancer and wouldn't live past Christmas.
8 She was devastated and left to be with him right away. Rubicon doesn't have assistant coaches
9 for the teams so the club needed someone to step in and take Michelle's place. Most of the other
10 full-time coaches already had four teams so, when Jordan Reddick asked if I was up to the job, I
11 jumped at the chance. It would be my first time coaching girls but I couldn't turn down an
12 opportunity to coach one of the top teams in the club. I've always gotten along great with my
13 players so I figured I could handle it.
14

15 Michelle had evaluated the players at tryouts and picked the maximum of 18 players.
16 They had already turned in all of their paperwork to the club administrator, who had given the
17 team medical forms to the team manager. I didn't ask to look at the forms; I figured I'd get them
18 if a player ever got injured and we needed to know her insurance information. The team hadn't
19 started practicing yet so I called a meeting to get to know everyone, and I brought watermelon to
20 help put everyone at ease. The girls seemed impressed by my background. And although they
21 were certainly concerned for Coach Foudy, they seemed to accept the coaching change without
22 complaining. When we began holding our regular practices on Mondays, Wednesdays, and
23 Thursdays, I was very impressed by their skills and teamwork. I knew that with a bit of luck, we
24 were going to have a great season. And, if the team did well, that would help solidify my
25 reputation in the club, too. So I wanted to make sure I helped the girls to win.
26

27 The club website has links to great information on sports nutrition and hydration so I
28 made sure the girls knew what to eat and drink to help them perform their best at practices and
29 games. Rubicon is also involved in an ACL Injury Prevention study in partnership with Julian
30 College. It's a pretty cool program; it seemed to be working because none of my players ever
31 tore their ACL.
32

33 Coaching girls was different than coaching guys. Girls seemed to need more time to
34 socialize. It took some getting used to and maybe I might have come across as a bit stern at first.
35 I always try to treat my players equally and make sure that I maintain a professional relationship
36 as a coach, not as a "friend." I got the feeling that I was different from Coach Foudy in that

1 respect. Since I saw my primary purpose as making them the best soccer players that they could
2 be, I didn't really take time for a lot of small talk about school or their boyfriends. I figured that I
3 was better off staying out of all of the drama.

4
5 The girls were highly motivated to finish the season undefeated so they could advance
6 from statewide Premier level play to the multi-state Regional Premier division in the next season.
7 At least six of the girls were hoping to earn college scholarships and they knew that advancing to
8 Regional Premier would get them a lot more exposure to college coaches. So the players worked
9 incredibly hard in practice and really stayed focused. Team co-captain Mia Perez was a big part
10 of that. She had an incredible work ethic and really set a high standard for the rest of the girls to
11 follow. She also organized "team bonding" times outside of practice because she said it would
12 help the team be cohesive on and off the field. I wasn't part of those gatherings, but it did seem
13 to make the team closer.

14
15 All of their hard work paid off and the team won every game in the regular season.
16 Incredibly, all of my players had made it through the season without injury. Mia was amazing
17 playing as a striker. She scored at least one goal in every game, two goals in two games, and a
18 "hat trick" (three goals) in one game! She clearly had the potential to play in college and maybe
19 even in the Olympics or the pros. We went on to win the State Cup championship two weeks
20 before Thanksgiving. I knew that the team's success had caught the eye of Jordan Reddick and I
21 figured I would have my pick of teams for the next year. All we had left now was the December
22 College Showcase tournament, one week after Thanksgiving.

23
24 Mia was especially excited about the College Showcase because she knew a lot of the top
25 college coaches were planning to be there. I think several coaches were attending specifically to
26 see Mia so I wanted to give her as much playing time as I could. College Showcase tournaments
27 are a bit unusual; winning the game isn't the most important thing, being seen is. So players
28 usually don't play quite as roughly as in a typical tournament because they can't play if they get
29 hurt. I figured that since all of my players made it through the season without injury, we were
30 probably home free now.

31
32 We didn't practice the week after Thanksgiving but resumed practice the next Monday.
33 During the scrimmage at the end of practice, Mia was tripped, fell, and hit her head on the
34 ground pretty hard. She was slow to get up and she seemed confused for a moment about where
35 she was. She was also holding on to her head and saying that she felt a little dizzy so I made her
36 sit out the last 10 minutes while I finished leading practice. As soon as practice ended, Mia

1 headed to her car before I could talk with her. I meant to call and check on her but it was too late
2 when I got home and it slipped my mind the next day.

3
4 Mia emailed me on Wednesday to say she had had a big test and couldn't make practice.
5 That was unusual; I think it was the first practice she had missed all season. On Thursday we just
6 had a light practice; I mainly spent the time reviewing the scouting reports on our opponents.
7 Mia seemed tired and quieter than usual. When I asked her how her test had gone, she acted
8 confused for a moment and then said it went okay. She said she had a bit of a headache from
9 stress and staying up late studying but she'd be fine by our game that weekend. I didn't think
10 much else about it; I could remember pulling all-nighters before important tests and knew it
11 could really wipe you out. I figured she'd rest up that night because I knew how much it meant to
12 her to impress the college coaches.

13
14 On game day everyone, including Mia, was excited to get going. We were playing a team
15 from Triad Soccer Club that was good but not great. I figured we should be able to put lots of
16 goals on the board and that would make Jordan Reddick happy. Jordan always liked it if we
17 could beat his/her old club. Lots of college coaches were at our field, and I heard several of them
18 mention Mia's name specifically. I wanted to give Mia as much playing time as I could so they
19 could get a good look.

20
21 Mia and the other co-captain, Megan Cheney, led the warm-ups and I started them in
22 their usual positions at striker and center midfielder. But about 10 minutes into the game, I
23 noticed that Mia wasn't playing as well as usual so I subbed her out to check on her. She said she
24 was just a little tired still and she begged to go back in so she could show the college coaches
25 what she could do. After she drank some water, I subbed her in and she did play better. She was
26 in a perfect position to score on a header when we got a corner kick near the end of the half, but
27 she sent the ball over the goal. I think she might have gotten jostled by a defender but the referee
28 didn't call a foul. Mia sort of stood around for a minute looking disgusted that she didn't score
29 and Megan went over to encourage her. Then Mia jogged back into position, although not with
30 her usual energy and enthusiasm. I didn't think anything of it at the time.

31
32 The first half ended with the score tied 0-0. The team was playing okay but not up to its
33 potential so I got after them at halftime. Sure, winning isn't the most important thing in a College
34 Showcase but goals are always impressive to college coaches and we should have been beating
35 that team easily. After I finished, Mia told me, "don't worry, coach, I'll get a goal for us," and
36 she ran onto the field. Immediately Megan came over to me and said that she was concerned

1 about Mia and maybe I should pull her out. She said that she knew that Mia wanted to play but
2 that she just didn't seem like herself. Megan also said something about asking Mia if she was
3 okay "after she took an elbow on that header" but she got a blank look and didn't say anything.
4 Before I could reply, the referee blew his whistle to start the second half and Megan had to run
5 onto the field.

6
7 I thought about yelling for a sub to pull Mia out but she had seemed so eager to get back
8 on the field that I decided to just watch her. Five minutes later Mia sent a rocket toward the goal
9 but the goalkeeper made an amazing save. Unlucky! Mia seemed back to her usual self; I knew it
10 was just a matter of time until she would score. Maybe 10 minutes later a teammate sent a
11 beautiful pass to Mia just outside the penalty box and Mia took a touch on the ball to get ready to
12 shoot. From out of nowhere a defender rushed at her and tackled the ball hard, and Mia lost her
13 balance. She didn't even have time to put out her arms to stop her fall, and she hit her head on
14 the ground really hard. The referee was sprinting over blowing his whistle; I figured he would
15 call for a penalty kick and Mia would get her goal after all. But Mia didn't get up, and she wasn't
16 moving. The referee motioned for me to come out on the field and, when I got there, I saw that
17 Mia's eyes were closed and it looked like she was unconscious. The field marshal and athletic
18 trainer ran out, too, and they radioed for the ambulance to come and get Mia. Casey Perez had
19 run out on the field, too, and I said how sorry I was that Mia had gotten hurt and how I was sure
20 she would be okay.

21
22 After the game ended, I called Casey's cell phone to get an update on Mia. It must have
23 been three hours later before I got a call back. Casey said that Mia had a serious concussion and
24 that she was going to stay in the hospital overnight for observation. Casey said Mia had
25 mentioned something about hitting her head in practice on Monday and why didn't I make sure
26 Casey knew about it?! Casey also told me that Mia had suffered a concussion in the spring on
27 her school team and I should have known to keep a closer eye on her. That was the first thing I
28 had ever heard about a previous concussion! Neither Casey nor Mia had ever mentioned it to me
29 before.

30
31 After Casey told me that, I looked at Mia's Medical Waiver form in the team manager's
32 notebook. I saw that the form mentioned Mia's concussion from the spring. Even though the
33 team manager brought those forms to all of our games as she was required to do, I had never read
34 through them before. I guess I should have read them all but it just didn't occur to me in the
35 busyness of the transition back in the summer.

1
2
3 **Affidavit of Jordan Reddick**

4 My name is Jordan Reddick. I am 39 years old and have been the Director of the Rubicon
5 Soccer Club since 2006. I attended Julian College on a soccer scholarship and started at center
6 back (defender) all four years. I earned my bachelor’s degree in Sport Administration in 1995,
7 which included coursework in sport marketing, statistics, finance, licensing, facility and event
8 management, and community relations. After I graduated I played professionally for a few years
9 before coming back home to Oregon in 1998. I put all my knowledge to use by coaching youth
10 soccer part-time at Triad Soccer Club while working as Director of the Parks and Recreation
11 Department in the town. In 2004 I became the fulltime Director of Player Development for the
12 Under-15 through Under-18 year old teams at Triad, but I soon realized that I disagreed with the
13 Triad Board of Directors over their coaching philosophy. The Triad teams were
14 underperforming, in my opinion; they should have been winning State Cup championships with
15 the talented players in the club. When I was offered a position at Rubicon, I was happy to leave
16 Triad.

17 Rubicon was the “new kid on the block” back then; the club had only been in existence
18 since 2005 and was still trying to “prove” itself. I knew that Rubicon could gain respect from
19 other clubs by producing players who earned college scholarships, so I set high standards for my
20 coaches. I insisted that all of my classic level coaches must have played in college so they could
21 demonstrate correct soccer techniques and understand how to compete at a high level. I had
22 earned my National “C” level coaching license and I required my coaches to earn a National “D”
23 license or higher (an “A” license is the highest). The certification courses are rigorous, covering
24 how to teach soccer techniques and tactics and including a short session on first aid. I knew that
25 requiring my coaches to obtain their National “D” license would make sure that they not only
26 knew how to *play* soccer, they would also learn how to *coach* soccer.

27
28 Under my leadership, Rubicon Soccer Club has excelled. We are now the third largest
29 club in the state, and every year about a dozen of our players earn college soccer scholarships.
30 We have twenty classic boys’ and girls’ teams in the Under-15 to Under-18 age groups, eight of
31 which are at the highest “Premier” level of play. All of our Premier teams attend at least three
32 tournaments every year in addition to the State Cup championship, and our club office is full of
33 their trophies. Between our recreational, challenge, and classic teams, we have over 2000
34 athletes playing soccer at Rubicon. I think our club success proves that we are on the right track,
35 and the huge turnout of players at tryouts every year shows that the parents think so, too.
36

1 In order to get qualified coaches, I have to pay them appropriately so club fees for the
2 classic players are not cheap. For the high school age players (U15 – U18) who only play club
3 ball in the high school off-season (fall club ball for girls, spring for boys), club fees are \$1200
4 per year, plus a \$250 registration fee, plus \$300 for the uniform, plus the cost of attending
5 tournaments. Altogether it probably costs \$3000 per year for players on the top classic teams.
6 Our fees are in line with the other clubs, and we do have some scholarship money available for
7 players who can demonstrate a need.

8
9 Each team has one paid coach and a volunteer manager; we do not have money for paid
10 assistant coaches or athletic trainers. We are not unusual for not having trainers; only the largest
11 soccer club in Oregon has an athletic trainer on staff. However, we do have an association with
12 the sports medicine department at Julian College. The college provides athletic trainers at our
13 club-hosted tournaments, and we refer players who need services to their trainers and physical
14 therapists. It's a great arrangement; the sports medicine students at Julian College get hands-on
15 experience and we get services for free.

16
17 Our players' health and safety are very important to us. We emphasize health and injury
18 prevention in our club because I know from personal experience what a difference good health
19 habits can make. Both in college and in the pros, I had coaches who were fanatics about proper
20 nutrition before and after games and practices. So we have links on our website to lots of
21 information about hydration, pre-game and post-game meals, and how to eat right when traveling
22 to tournaments. We also remind the players that proper rest is important because a tired player is
23 at increased risk of injury. When I checked last summer, I found that fewer than half of the
24 soccer clubs in the state have any kind of nutrition or hydration information posted on their
25 website, much less any additional information on injury prevention.

26
27 To show our dedication to our players' safety, just look at our ACL Injury Prevention
28 Project in partnership with Julian College. We're the only soccer club in the state that is involved
29 in this type of research project. The ACL, or anterior cruciate ligament, is one of the main
30 ligaments that stabilize a player's knee. It can get torn if the player tries to turn while her foot is
31 firmly planted, or if a player lands wrong after jumping, or sometimes during a collision with
32 another player. Female players are especially at risk for ACL tears. And it's a big deal; a player
33 who tears her ACL is likely to need surgical repair and then 6 to 9 months of rehab before she
34 can play again. So sports medicine grad students at Julian College work with players on our
35 classic teams to help them learn how to move and jump correctly to prevent ACL injuries. The
36 program seems to be working. Our players show improvement at the end of the season, and they

1 have lower rates of ACL injuries than many other clubs in the state. So it's crazy to say that our
2 club isn't concerned about injury prevention and player safety.

3
4 It's true that we don't have any information or links on our website about concussions
5 although we are planning to add that before next season. I had always thought that serious
6 injuries from concussions happened to football players or boxers. I think there might have been
7 some articles about concussions in my coaching magazines a few years ago, but I didn't read
8 them very closely because I was setting up our ACL Injury Prevention Study at the time. When I
9 was playing soccer, the big concern for soccer players was always torn ACLs or broken bones.
10 Sure, I suffered one concussion when I played professionally and several of my teammates had
11 concussions. But we all stayed in the game or went back in the very next game and none of us
12 had any problems. According to the US Youth Soccer Association (USYS), over 3 million youth
13 soccer players are registered to play across the United States so, if concussions were such a big
14 problem, you'd expect to hear about it all the time.

15
16 The USYS isn't the only resource for soccer information. Every soccer club in Oregon is
17 a member of the Oregon Youth Soccer Association (OYSA). OYSA is a member of both the
18 USYS and the US Soccer Federation (USSF), both of which are under the oversight of FIFA, the
19 international governing body for soccer. The OYSA, USSF, and USYS are all non-profit
20 organizations designed to provide education and support for soccer players, coaches, and clubs.
21 They run the certification classes for coaches both statewide and nationally, and they help
22 organize and run statewide, regional, and national tournaments. They want to make sure that the
23 sport stays safe and fun for everyone. So these organizations post educational information about
24 health and injury prevention on their websites.

25
26 I was not aware of any information about concussions on the USYS or USSF sites when
27 Mia was injured. If it was on there, it wasn't immediately obvious. After Mia was injured, I did a
28 specific search on the USYS site and found concussion protocol and notification forms that were
29 posted in August, evidently for use in USYS Regional and National tournaments. But I did not
30 know about them at that time. I do know that the USSF started posting medical information on a
31 variety of topics on their site last March. Obviously, that was too late to help Mia Perez, and you
32 still have to search for it to find it. I was not familiar with Jenna's Law at all until this trial.

33
34 I have heard of the CDC but I thought they mainly tried to track down the causes of
35 disease epidemics like the flu. I do remember seeing some free "Heads Up" concussion kits for
36 coaches at a Triad Soccer Club tournament back in November. I couldn't pick one up because

1 my hands were full at the time and I forgot to go back later to get one. I don't think any of our
2 coaches got them either; at least no one told me about getting one.

3
4 I was at the College Showcase tournament in December when Mia was injured; my own
5 U-18 classic Premier boys' team had just finished playing right before Shannon Dempsey's team
6 took the field. I always coach at least two teams every year just to keep my skills sharp, and all
7 of my coaching directors are required to do the same. Anyway, I had gone to the snack bar area
8 to grab a quick bite to eat and then had returned to the field at the start of the second half to
9 watch Shannon's team in action. I knew they were playing a team from Triad that they should be
10 able to beat easily and I was looking forward to watching the slaughter. It's especially satisfying
11 whenever a Rubicon team beats a Triad team.

12
13 I also knew Shannon had several players who were good enough to play in college
14 including Mia Perez. I figured Mia might be able to score a hat trick against this Triad team. Lots
15 of college coaches were on the sidelines as I arrived so I asked the score and was told it was 0-0
16 at the half. I heard a couple of coaches saying that they weren't impressed by Mia Perez; she
17 hadn't been working very hard at all in the first half. I was surprised to hear that because Mia
18 was probably Shannon's best player.

19
20 Mia looked a bit uncoordinated to start the second half, and she wasn't playing with her
21 usual intensity. But then she took a great shot a few minutes later, which was barely saved by the
22 opposing keeper. I figured she'd soon show those college coaches what she could do. Coach
23 Dempsey's halftime talk must have been inspiring because several of Mia's teammates were
24 playing better than I'd ever seen them play before. I was glad to hear the coaches say that maybe
25 it had been worth the trip to come watch the team after all. Keeping those college coaches happy
26 is good for them and good for Rubicon, too.

27
28 But Mia still wasn't running with her usual speed and she looked a bit confused at times,
29 like she wasn't sure where to go or what to do. I started wondering if she was sick or something.
30 Then one of her teammates sent her a great pass about 20 yards out from the goal and Mia started
31 dribbling the ball into the penalty area. The only person between Mia and the goal was the
32 keeper and, with Mia, that was practically a guaranteed goal. Then a defender came out of
33 nowhere from the side and tackled the ball hard and Mia went flying. She crashed to the ground,
34 landing hard on her head. The referee sprinted in, blasting on his whistle and I waited for Mia to
35 get up and score the penalty kick. But she didn't move and, next thing I knew, Shannon, the
36 Julian College athletic trainer, and the field marshal were all on the field huddled around Mia. I

1 was shocked and must admit I stood there frozen, not sure if I should join them or keep out of the
2 way. I don't have any medical training and figured I couldn't really help so I stayed on the
3 sidelines. The ambulance at the soccer complex soon arrived and took Mia to the hospital. I
4 called Shannon that night to see if s/he had heard anything and was told that Mia had suffered a
5 serious concussion.

6
7 I'm very sorry that Mia was injured that day, and even more sorry that she continues to
8 have problems so long afterward. Mia is a terrific young woman and, of course, I would never
9 want her or any other player to be hurt badly from playing soccer. What happened to Mia seems
10 like a freak accident to me. After all this happened, I checked out the statistics on high school
11 sport-related concussions from Dr. Dawn Comstock at Ohio State like I was trained to do in
12 college. Dr. Comstock gathers data on the "rate of concussions per 10,000 athlete-exposures."
13 She found that for every 10,000 high school girls competing in soccer matches on any given day
14 in the US during the 2006 through 2010 seasons, at least 8 sustained a concussion and the vast
15 majority don't involve a loss of consciousness. It's clear that serious concussions like Mia's are
16 certainly not a common occurrence although I guess when you consider how many high school
17 girls play soccer across the country, it can add up.

18
19 Looking back at all that has happened, I just don't know what Shannon or I could have
20 done to prevent Mia's injury. Rubicon was not educating our coaches about concussions at that
21 time but, as far as I know, Triad Soccer Club was the only club in Oregon handing out those
22 "Heads Up" kits to coaches. Of course, coaches from all over Oregon and even other states were
23 at that tournament. Looking back at it now, I wish I had gotten one of those kits. Evidently the
24 CDC had its "Heads Up" materials on its website but the USYS and USSF didn't make an effort
25 to publicize it to all the state associations at that time as far as I know. Maybe I should have
26 known more about concussions then – or maybe hindsight is just 20/20.

27
28 And sure, Max's and Jenna's Laws were passed a few years ago so stories on concussions
29 were probably in the news at that time. But I didn't see them and there wasn't a lot of media
30 about them. We're definitely going to start doing more now at Rubicon to educate our coaches
31 and club families about concussions. I certainly hope that Mia continues to get better and has a
32 full recovery. I understand that Mia and Casey Perez are upset about what happened but I don't
33 think it's reasonable to sue us for Mia's injuries when we have always tried to educate our
34 players about health, good nutrition, and injury prevention. If we only cared about winning,
35 would we have gone to all of that trouble?

1
2
3 **Affidavit of Chris Durant**

4 My name is Chris Durant. I'm a senior at Rowe High School and a classmate of Mia
5 Perez's. At least we used to be classmates until Mia was injured and couldn't come to class
6 anymore. We've been friends since middle school when we both ran track. Mia used to say that
7 track made her run fast and that helped with soccer. She was always crazy about soccer, talking
8 about her heroes Cindy Parlow and Mia Hamm, and saying how she wanted to play in the
9 Olympics and pros like them. I've always been into basketball myself; I think soccer is boring
10 because everyone runs around but hardly ever scores. It's true that Mia was the top scorer on the
11 high school varsity team but winning 3-1 or 2-0 isn't exactly exciting, at least not to me. Still, I'd
12 listen to Mia go on about soccer, and she'd listen to me about basketball. She's a good friend that
13 way, always listening to the other person and caring about what they care about. That's one
14 reason why everyone at Rowe loves Mia. She doesn't care if you were a jock or a geek or a
15 slacker, she could find a way to be your friend. So it's hard for me to testify for the defense. But
16 I promised to tell the truth when I was called to testify, and that's what I'm gonna do.

17 When we moved from middle school to the high school, we both quit running track and
18 focused on our favorite sports. As I said, Mia made the varsity soccer team her freshman year
19 while I played JV basketball the first two years before I moved up. We had a lot of AP classes
20 together though. Mia is really smart and was in the running for valedictorian before her injury.
21 We used to study AP US History, AP English and AP Chemistry together. Mia was awesome in
22 the social sciences and I was pretty good in science and math, so we were good study partners.
23

24 We were also in National Honor Society together and we had a lot of fun working on
25 service projects in Rowe. In February 2017, Mia even organized a free soccer clinic for
26 underprivileged kids in the community and got a lot of her school teammates to come. After that,
27 I got to know them pretty well. Soon a group of us started going to the movies or hanging out at
28 the mall nearly every weekend if we could. Five or six of her teammates were on both the
29 Rubicon Club and Rowe High School teams with Mia, and it was interesting to hear them talk
30 about their different coaches. RHS does a great job of hiring coaches who care about their
31 players as people; my basketball coaches are awesome! Mia and her school teammates love
32 Coach O'Reilly; they said Coach O'Reilly has legit credentials and pushes them in practice, but
33 also emphasizes the importance of keeping school first and staying healthy. I took Advanced
34 Personal Fitness class under Coach O'Reilly in the fall of my junior year and I can see why Mia
35 and the other players are so impressed. Coach O'Reilly taught me a ton of stuff about nutrition,
36 health, and preventing injuries in addition to helping me stay fit in the off-season.

1
2 Mia and her Rubicon teammates really like Coach Dempsey, too. They said Coach
3 Dempsey played in college and had the chance to go pro but turned it down in order to coach at
4 Rubicon. I've never met Coach Dempsey but all of the players have only positive things to say
5 about the soccer skills they've learned from him/her. They have mentioned that Coach Dempsey
6 is more serious and less of a friend than other coaches but they seem okay with that. They know
7 that winning games is more important on a club team because the reputation of the club is at
8 stake; that's the whole purpose of its existence – to win games and get college scholarships for
9 its players. They said that everyone knows that Coach Dempsey expects a lot of the players and
10 will bench them for being late to practice or pull them out if they're having a bad game, but that
11 s/he does it to make them work harder and give them a better chance of getting a scholarship.
12

13 However, some kids who were no longer on the top Rubicon team with Mia would
14 complain that the club was too ruthless and too quick to demote players who were having a bad
15 day. I remember Mia being upset after tryouts because her best friend got dropped down onto the
16 second team. Mia said her friend was sick during tryouts and didn't do as well as normal, so she
17 got demoted even though she had been one of the best players. Mia said she overheard the club
18 director, Jordan Reddick, saying that s/he didn't care if the player was sick – if she couldn't
19 tough it out and do better than that in tryouts, she'd be useless in tough games, too. I clearly
20 remember Mia saying, "if the club would do that to her, would they do it to me if I had a bad
21 day?" I told Mia she was crazy to worry about it; no way would they demote Mia. But I could
22 see that it worried her, and it didn't just worry Mia. Three or four other Rubicon players nodded
23 and said that it shocked them, too. Some of the joy of the game seemed to drain out of Mia after
24 that and she often looked a bit worried if she thought she might be getting sick before a game.
25

26 Mia and I had several classes together in our junior year. We were both taking AP
27 Chemistry, AP World History, Honors Pre-Calculus – and Advanced Personal Fitness for fun.
28 With our other classes, it was a killer schedule so we were all pretty tense when it was time for
29 midterms and finals. Junior year grades are so important for getting into a good college. I knew
30 Mia was looking at several top schools – Stanford, Duke, University of North Carolina – and was
31 hoping she had the grades to get accepted and get soccer scholarships so she could afford to go.
32 It's pretty stressful to maintain top grades and keep playing sports at a high level, too.
33

34 The way our classes were structured, we all had a bunch of big tests the week right after
35 Thanksgiving. You'd think the teachers would give us a break over the holiday but that's not
36 how it works. So, in between stuffing myself with turkey and playing with my younger cousins, I

1 tried to study for exams. I was glad when Mia called me on Saturday afternoon to ask if I wanted
2 to go to a movie with her and a bunch of other kids. Of course I jumped at the chance and even
3 suggested we meet for coffee at beforehand. When I got to the coffeehouse, Mia was already
4 there along with five of her teammates, all Rubicon players. I knew I was in for a lot of soccer
5 gossip but it beat talking about dinosaurs with my cousins. The others were excited because the
6 big College Showcase tournament was only a week away. Mia said she had heard that coaches
7 from all the schools she cared about were going to be there so she wanted to do her best. She said
8 she was looking forward to practice that week because she knew it would help her be prepared
9 when the games started on the weekend. They all chatted about soccer some more, and we all
10 complained about our big tests, and then we went and enjoyed our movie.

11
12 On Monday we had our Honors Pre-Calc exam; both Mia and I felt like we had aced it.
13 One down, three more to go! Mia said she was glad for the chance to run around at practice to
14 blow off steam. But Tuesday when she got to our Advanced Personal Fitness class, she seemed
15 different, quieter than usual and kind of “down.” I asked her what was wrong and at first she
16 said, “nothing; nothing’s wrong.” But when she looked uncoordinated in Zumba and asked to sit
17 out part-way through, I asked her again. She told me she had a bit of a headache and asked if I
18 had any medicine so, I gave her some ibuprofen. When we were walking to AP Chemistry after
19 APF, I asked if she was feeling any better. She said, “no, not really.” When I asked her if the
20 headache came from the stress of all our tests, she said, “maybe that’s part of it, but mostly I
21 think it’s because I tripped in practice last night and hit my head really hard when I fell. Do you
22 remember the concussion I got last spring? I’m feeling a bit like I did then, sort of woozy and out
23 of it. I started getting the headache last night.” I asked her if she told her mom/dad or anyone
24 about hitting her head and she said, “are you kidding? If I did, they wouldn’t let me play in the
25 Showcase. I *have* to play; it’s my big chance. You know I can’t afford college without a
26 scholarship. Promise you won’t tell anyone about this!” I must have looked concerned – because
27 I was. I’d read the posters Coach O’Reilly had posted in the gym. She grabbed my arm hard and
28 said, “I mean it! Promise me you won’t tell anyone!! Not anyone!!!” Reluctantly, I promised.

29
30 After the AP Chem exam, Mia rushed right out before I could speak with her again. I
31 tried calling her that evening to check on her because I knew she didn’t have soccer practice but
32 she didn’t answer her phone or my texts. We didn’t have any classes together on Wednesday so
33 the next time I saw her was in APF class on Thursday. But as soon as she got there, I saw her
34 talking with Coach O’Reilly and, next thing I knew, Coach O’Reilly gave Mia a library pass and
35 Mia left. I thought about saying something to Coach O’Reilly but I didn’t want to “rat” Mia out.
36 And anyway, I wasn’t positive of the reason why she left class, so I didn’t want to cost her a

1 chance to play if she was feeling better. I figured she knew what to look out for since she'd had a
2 concussion before and I tried to put it out of my mind.

3
4 Mia seemed to avoid looking at me in AP Chem and she rushed out the door as soon as
5 class was finished. On Friday she looked pretty groggy when she got to AP World History and
6 she kept rubbing her head during the exam. I tried to talk with her on the way out the door but
7 she just glared at me and said, "remember your promise!" Against my better judgment, I kept
8 quiet. I should have told Coach O'Reilly or called Mia's parent, but I thought that a friend
9 wouldn't rat on a friend. Now I have to live with knowing that, if I'd told someone, maybe Mia
10 wouldn't have played and maybe she'd still be okay. From the way she acted, I'm sure she
11 suspected she had gotten a concussion. And given the look in her eyes and the way she grabbed
12 my arm when she made me promise to keep silent, I am positive she tried to hide it from Coach
13 Dempsey and Mr./Ms. Perez. But I knew, and I should have done something about it.

14
15 I feel truly awful that Mia is injured and I hope nothing like this ever happens to any
16 other athlete, anywhere. I remember a bunch of news stories about football players who got
17 seriously injured or even died after suffering repeat concussions. I never dreamed something like
18 that could happen to one of my close friends. But it still doesn't seem fair to hold Coach
19 Dempsey or the soccer club responsible. I've never met either Coach Dempsey or Jordan
20 Reddick. But I do think that if Mia was able to hide her symptoms from her parent, how could
21 anyone expect Coach Dempsey or Jordan Reddick to know?

22
23 Of the exhibits in this case, I am familiar with the CDC High School Athletes' Signs and
24 Symptoms Poster.

25
26 I hereby attest to having read the above statement and swear or affirm it to be my own. I
27 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
28 should contain all relevant testimony, and I followed those instructions. I also understand that I
29 can and must update this affidavit if anything new occurs to me until the moment before I testify
30 in this case.

31 Chris Durant

32 Chris Durant

33
34 Subscribed and sworn before me on this day, the 27th of August, 2018.

35 Beth Eckhardt

36 Beth Eckhardt, Notary Public

EXHIBIT 1: Acute Concussion Evaluation (ACE) Physician/Clinician (Page 1 of 2)

ACUTE CONCUSSION EVALUATION (ACE)
PHYSICIAN/CLINICIAN OFFICE VERSION
 Gerard Gioia, PhD¹ & Micky Collins, PhD²
¹Children's National Medical Center
²University of Pittsburgh Medical Center

Patient Name: Mia Percy
 DOB: 4/3/01 Age: 16
 Date: 5/5/17 ID/MR#: 17645

A. Injury Characteristics Date/Time of Injury 5:30 PM 5/4/17 Reporter: Patient Parent Spouse Other _____

1. Injury Description Injured during school soccer game. Tried to "head" soccer ball, collided with opposing player, fell down and struck head on ground. (left side of head)

1a. Is there evidence of a forcible blow to the head (direct or indirect)? Yes No Unknown
 1b. Is there evidence of intracranial injury or skull fracture? Yes No Unknown
 1c. Location of Impact: Frontal Lt Temporal Rt Temporal Lt Parietal Rt Parietal Occipital Neck Indirect Force

2. Cause: MVC Pedestrian-MVC Fall Assault Sports (specify) Soccer Other _____

3. Amnesia Before (Retrograde) Are there any events just BEFORE the injury that you/ person has no memory of (even brief)? Yes No Duration 10 min
 4. Amnesia After (Anterograde) Are there any events just AFTER the injury that you/ person has no memory of (even brief)? Yes No Duration _____
 5. Loss of Consciousness: Did you/ person lose consciousness? Yes No Duration _____
 6. EARLY SIGNS: Appears dazed or stunned Is confused about events Answers questions slowly Repeats Questions Forgetful (recent info)
 7. Seizures: Were seizures observed? No Yes _____ Detail _____

B. Symptom Check List* Since the injury, has the person experienced any of these symptoms any more than usual today or in the past day?
 Indicate presence of each symptom (0=No, 1=Yes). *Lovell & Collins, 1998 JHTR

PHYSICAL (10)		COGNITIVE (4)		SLEEP (4)	
Headache	0 (1)	Feeling mentally foggy	(0) 1	Drowsiness	(0) 1
Nausea	(0) 1	Feeling slowed down	(0) 1	Sleeping less than usual	(0) 1 N/A
Vomiting	(0) 1	Difficulty concentrating	0 (1)	Sleeping more than usual	(0) 1 N/A
Balance problems	(0) 1	Difficulty remembering	(0) 1	Trouble falling asleep	0 (1) N/A
Dizziness	0 (1)	COGNITIVE Total (0-4)	<u>1</u>	SLEEP Total (0-4)	<u>1</u>
Visual problems	(0) 1	EMOTIONAL (4)		Exertion: Do these symptoms worsen with: Physical Activity <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Cognitive Activity <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Overall Rating: How different is the person acting compared to his/her usual self? (circle) Normal 0 (1) 2 3 4 5 6 Very Different	
Fatigue	0 (1)	Irritability	0 (1)		
Sensitivity to light	(0) 1	Sadness	(0) 1		
Sensitivity to noise	(0) 1	More emotional	(0) 1		
Numbness/Tingling	(0) 1	Nervousness	(0) 1		
PHYSICAL Total (0-10)	<u>3</u>	EMOTIONAL Total (0-4)	<u>1</u>		
(Add Physical, Cognitive, Emotion, Sleep totals)					
Total Symptom Score (0-22)			<u>6</u>		

C. Risk Factors for Protracted Recovery (check all that apply)

Concussion History? Y ___ N <input checked="" type="checkbox"/>	Headache History? Y ___ N <input checked="" type="checkbox"/>	Developmental History	Psychiatric History
Previous # 1 2 3 4 5 6+	Prior treatment for headache	Learning disabilities	Anxiety
Longest symptom duration Days ___ Weeks ___ Months ___ Years ___	History of migraine headache Personal ___ <input checked="" type="checkbox"/> Family <u>Cathy Percy</u>	Attention-Deficit/ Hyperactivity Disorder	Depression
If multiple concussions, less force caused reinjury? Yes ___ No ___		Other developmental disorder	Other psychiatric disorder

List other comorbid medical disorders or medication usage (e.g., hypothyroid, seizures) _____

D. RED FLAGS for acute emergency management: Refer to the emergency department with sudden onset of any of the following:

* Headaches that worsen	* Looks very drowsy/ can't be awakened	* Can't recognize people or places	* Neck pain
* Seizures	* Repeated vomiting	* Increasing confusion or irritability	* Unusual behavioral change
* Focal neurologic signs	* Slurred speech	* Weakness or numbness in arms/legs	* Change in state of consciousness

E. Diagnosis (ICD): Concussion w/o LOC 850.0 Concussion w/ LOC 850.1 Concussion (Unspecified) 850.9 Other (854) _____
 ___ No diagnosis

F. Follow-Up Action Plan Complete ACE Care Plan and provide copy to patient/family.
 No Follow-Up Needed
 Physician/Clinician Office Monitoring: Date of next follow-up 5/12/17
 Referral:
 ___ Neuropsychological Testing
 ___ Physician: Neurosurgery ___ Neurology ___ Sports Medicine ___ Physiatrist ___ Psychiatrist ___ Other _____
 ___ Emergency Department

ACE Completed by: Rick Muller MD © Copyright G. Gioia & M. Collins, 2006
This form is part of the "Heads Up: Brain Injury in Your Practice" tool kit developed by the Centers for Disease Control and Prevention (CDC).

EXHIBIT 1: Acute Concussion Evaluation (ACE) Physician/Clinician (Page 2 of 2)

A concussion (or mild traumatic brain injury (MTBI)) is a complex pathophysiologic process affecting the brain, induced by traumatic biomechanical forces secondary to direct or indirect forces to the head. Disturbance of brain function is related to neurometabolic dysfunction, rather than structural injury, and is typically associated with normal structural neuroimaging findings (i.e., CT scan, MRI). Concussion may or may not involve a loss of consciousness (LOC). Concussion results in a constellation of physical, cognitive, emotional, and sleep-related symptoms. Symptoms may last from several minutes to days, weeks, months or even longer in some cases.

ACE Instructions

The ACE is intended to provide an evidence-based clinical protocol to conduct an initial evaluation and diagnosis of patients (both children and adults) with known or suspected MTBI. The research evidence documenting the importance of these components in the evaluation of an MTBI is provided in the reference list.

A. Injury Characteristics:

1. Obtain **description of the injury** – how injury occurred, type of force, location on the head or body (if force transmitted to head). Different biomechanics of injury may result in differential symptom patterns (e.g., occipital blow may result in visual changes, balance difficulties).
2. Indicate the **cause of injury**. Greater forces associated with the trauma are likely to result in more severe presentation of symptoms.
- 3/4. **Amnesia:** Amnesia is defined as the failure to form new memories. Determine whether amnesia has occurred and attempt to determine length of time of memory dysfunction – **before** (retrograde) and **after** (anterograde) injury. Even seconds to minutes of memory loss can be predictive of outcome. Recent research has indicated that amnesia may be up to 4-10 times more predictive of symptoms and cognitive deficits following concussion than is LOC (less than 1 minute).¹
5. **Loss of consciousness (LOC)** – If occurs, determine length of LOC.
6. **Early signs.** If present, ask the individuals who know the patient (parent, spouse, friend, etc) about specific signs of the concussion that may have been observed. These signs are typically observed early after the injury.
7. Inquire whether **seizures** were observed or not.

B. Symptom Checklist:²

1. Ask patient (and/or parent, if child) to report presence of the four categories of symptoms since injury. It is important to assess all listed symptoms as different parts of the brain control different functions. One or all symptoms may be present depending upon mechanisms of injury.³ Record "1" for Yes or "0" for No for their presence or absence, respectively.
2. For all symptoms, indicate presence of symptoms as experienced within the past 24 hours. Since symptoms can be present preinjury/at baseline (e.g., inattention, headaches, sleep, sadness), it is important to assess **change** from their usual presentation.
3. **Scoring:** Sum total number of symptoms present per area, and sum all four areas into Total Symptom Score (score range 0-22). (Note: most sleep symptoms are only applicable after a night has passed since the injury. Drowsiness may be present on the day of injury.) If symptoms are new and present, there is no lower limit symptom score. Any **score > 0** indicates **positive symptom** history.
4. **Exertion:** Inquire whether any symptoms worsen with physical (e.g., running, climbing stairs, bike riding) and/or cognitive (e.g., academic studies, multi-tasking at work, reading or other tasks requiring focused concentration) exertion. Clinicians should be aware that symptoms will typically worsen or re-emerge with exertion, indicating incomplete recovery. Over-exertion may protract recovery.
5. **Overall Rating:** Determine how different the person is acting from their usual self. Circle "0" (Normal) to "6" (Very Different).

C. Risk Factors for Protracted Recovery:

 Assess the following risk factors as possible complicating factors in the recovery process.

1. **Concussion history:** Assess the number and date(s) of prior concussions, the duration of symptoms for each injury, and whether less biomechanical force resulted in re-injury. Research indicates that cognitive and symptom effects of concussion may be cumulative, especially if there is minimal duration of time between injuries and less biomechanical force results in subsequent concussion (which may indicate incomplete recovery from initial trauma).⁴⁻⁸
2. **Headache history:** Assess personal and/or family history of diagnosis/treatment for headaches. Research indicates headache (migraine in particular) can result in protracted recovery from concussion.⁹⁻¹¹
3. **Developmental history:** Assess history of learning disabilities, Attention-Deficit/Hyperactivity Disorder or other developmental disorders. Research indicates that there is the possibility of a longer period of recovery with these conditions.¹²
4. **Psychiatric history:** Assess for history of depression/mood disorder, anxiety, and/or sleep disorder.¹³⁻¹⁶

D. Red Flags:

 The patient should be carefully observed over the first 24-48 hours for these serious signs. Red flags are to be assessed as **possible signs of deteriorating neurological functioning**. Any positive report should prompt strong consideration of referral for emergency medical evaluation (e.g. CT Scan to rule out intracranial bleed or other structural pathology).¹⁷

E. Diagnosis:

 The following ICD diagnostic codes may be applicable.

- 850.0 (Concussion, with no loss of consciousness)** – Positive injury description with evidence of forcible direct/ indirect blow to the head (A1a); plus evidence of active symptoms (B) of any type and number related to the trauma (Total Symptom Score >0); no evidence of LOC (A5), skull fracture or intracranial injury (A1b).
- 850.1 (Concussion, with brief loss of consciousness < 1 hour)** – Positive injury description with evidence of forcible direct/ indirect blow to the head (A1a); plus evidence of active symptoms (B) of any type and number related to the trauma (Total Symptom Score >0); positive evidence of LOC (A5), skull fracture or intracranial injury (A1b).
- 850.9 (Concussion, unspecified)** – Positive injury description with evidence of forcible direct/ indirect blow to the head (A1a); plus evidence of active symptoms (B) of any type and number related to the trauma (Total Symptom Score >0); unclear/unknown injury details; unclear evidence of LOC (A5), no skull fracture or intracranial injury.
- Other Diagnoses** – If the patient presents with a positive injury description and associated symptoms, but additional evidence of intracranial injury (A 1b) such as from neuroimaging, a moderate TBI and the diagnostic category of 854 (Intracranial injury) should be considered.

F. Follow-Up Action Plan:

 Develop a follow-up plan of action for symptomatic patients. The physician/clinician may decide to (1) monitor the patient in the office or (2) refer them to a specialist. Serial evaluation of the concussion is critical as symptoms may resolve, worsen, or ebb and flow depending upon many factors (e.g., cognitive/physical exertion, comorbidities). Referral to a specialist can be particularly valuable to help manage certain aspects of the patient's condition. (Physician/Clinician should also complete the ACE Care Plan included in this tool kit.)

1. **Physician/Clinician serial monitoring** – Particularly appropriate if number and severity of symptoms are steadily decreasing over time and/or fully resolve within 3-5 days. If steady reduction is not evident, referral to a specialist is warranted.
2. **Referral to a specialist** – Appropriate if symptom reduction is not evident in 3-5 days, or sooner if symptom profile is concerning in type/severity.
 - **Neuropsychological Testing** can provide valuable information to help assess a patient's brain function and impairment and assist with treatment planning, such as return to play decisions.
 - **Physician Evaluation** is particularly relevant for medical evaluation and management of concussion. It is also critical for evaluating and managing focal neurologic, sensory, vestibular, and motor concerns. It may be useful for medication management (e.g., headaches, sleep disturbance, depression) if post-concussive problems persist.

EXHIBIT 2: Acute Concussion Evaluation (ACE) Care Plan (Page 1 of 2)

ACUTE CONCUSSION EVALUATION (ACE) CARE PLAN

Gerard Gioia, PhD¹ & Micky Collins, PhD²
¹Children's National Medical Center
²University of Pittsburgh Medical Center

Patient Name: <u>Mia Perez</u>	
DOB: <u>4/3/01</u>	Age: <u>16</u>
Date: <u>5/5/17</u>	ID/MR# <u>17645</u>
Date of Injury: <u>5/4/17</u>	

You have been diagnosed with a concussion (also known as a mild traumatic brain injury). This personal plan is based on your symptoms and is designed to help speed your recovery. Your careful attention to it can also prevent further injury.

You should not participate in any high risk activities (e.g., sports, physical education (PE), riding a bike, etc.) if you still have any of the symptoms below. It is important to limit activities that require a lot of thinking or concentration (homework, job-related activities), as this can also make your symptoms worse. If you no longer have any symptoms and believe that your concentration and thinking are back to normal, you can slowly and carefully return to your daily activities. Children and teenagers will need help from their parents, teachers, coaches, or athletic trainers to help monitor their recovery and return to activities.

Today the following symptoms are present (circle or check).				___ No reported symptoms
Physical	Thinking	Emotional	Sleep	
Headaches <input checked="" type="checkbox"/>	Sensitivity to light	Feeling mentally foggy	Irritability	Drowsiness
Nausea	Sensitivity to noise	Problems concentrating	Sadness	Sleeping more than usual
Fatigue <input checked="" type="checkbox"/>	Numbness/Tingling	Problems remembering	Feeling more emotional	Sleeping less than usual
Visual problems	Vomiting	Feeling more slowed down	Nervousness	Trouble falling asleep
Balance Problems	Dizziness <input checked="" type="checkbox"/>			

RED FLAGS: Call your doctor or go to your emergency department if you suddenly experience any of the following			
Headaches that worsen	Look very drowsy, can't be awakened	Can't recognize people or places	Unusual behavior change
Seizures	Repeated vomiting	Increasing confusion	Increasing irritability
Neck pain	Slurred speech	Weakness or numbness in arms or legs	Loss of consciousness

Returning to Daily Activities

1. Get lots of rest. Be sure to get enough sleep at night- no late nights. Keep the same bedtime weekdays and weekends.
2. Take daytime naps or rest breaks when you feel tired or fatigued.
3. **Limit physical activity as well as activities that require a lot of thinking or concentration. These activities can make symptoms worse.**
 - Physical activity includes PE, sports practices, weight-training, running, exercising, heavy lifting, etc.
 - Thinking and concentration activities (e.g., homework, classwork load, job-related activity).
4. Drink lots of fluids and eat carbohydrates or protein to main appropriate blood sugar levels.
5. **As symptoms decrease, you may begin to gradually return to your daily activities. If symptoms worsen or return, lessen your activities, then try again to increase your activities gradually.**
6. During recovery, it is normal to feel frustrated and sad when you do not feel right and you can't be as active as usual.
7. Repeated evaluation of your symptoms is recommended to help guide recovery.

Returning to School

1. If you (or your child) are still having symptoms of concussion you may need extra help to perform school-related activities. As your (or your child's) symptoms decrease during recovery, the extra help or supports can be removed gradually.
2. Inform the teacher(s), school nurse, school psychologist or counselor, and administrator(s) about your (or your child's) injury and symptoms. School personnel should be instructed to watch for:
 - Increased problems paying attention or concentrating
 - Increased problems remembering or learning new information
 - Longer time needed to complete tasks or assignments
 - Greater irritability, less able to cope with stress
 - Symptoms worsen (e.g., headache, tiredness) when doing schoolwork

~Continued on back page~

This form is part of the "Heads Up: Brain Injury in Your Practice" tool kit developed by the Centers for Disease Control and Prevention (CDC).

SCHOOL VERSION

EXHIBIT 2: Acute Concussion Evaluation (ACE) Care Plan (Page 2 of 2)

Returning to School (Continued)

Until you (or your child) have fully recovered, the following supports are recommended: (check all that apply)

- No return to school. Return on (date) _____
- Return to school with following supports. Review on (date) _____
- Shortened day. Recommend _____ hours per day until (date) _____
- Shortened classes (i.e., rest breaks during classes). Maximum class length: _____ minutes.
- Allow extra time to complete coursework/assignments and tests.
- Lessen homework load by ____%. Maximum length of nightly homework: _____ minutes.
- No significant classroom or standardized testing at this time.
- Check for the return of symptoms (use symptom table on front page of this form) when doing activities that require a lot of attention or concentration.
- Take rest breaks during the day as needed.
- Request meeting of 504 or School Management Team to discuss this plan and needed supports.

Returning to Sports

1. You should **NEVER** return to play if you still have **ANY** symptoms – (Be sure that you do not have any symptoms at rest and while doing any physical activity and/or activities that require a lot of thinking or concentration.)
2. Be sure that the PE teacher, coach, and/or athletic trainer are aware of your injury and symptoms.
3. It is normal to feel frustrated, sad and even angry because you cannot return to sports right away. With any injury, a full recovery will reduce the chances of getting hurt again. It is better to miss one or two games than the whole season.

The following are recommended at the present time:

- Do not return to PE class at this time
- Return to PE class
- Do not return to sports practices/games at this time
- Gradual** return to sports practices under the supervision of an appropriate health care provider.
- Return to play should occur in **gradual steps** beginning with aerobic exercise only to increase your heart rate (e.g., stationary cycle); moving to increasing your heart rate with movement (e.g., running); then adding controlled contact if appropriate; and finally return to sports competition.
 - Pay careful attention to your symptoms and your thinking and concentration skills at each stage of activity. Move to the next level of activity only if you do not experience any symptoms at the each level. If your symptoms return, stop these activities and let your health care professional know. Once you have not experienced symptoms for a minimum of 24 hours and you receive permission from your health care professional, you should start again at the previous step of the return to play plan.

Gradual Return to Play Plan

1. No physical activity
2. Low levels of physical activity (i.e.,). This includes walking, light jogging, light stationary biking, light weightlifting (lower weight, higher reps, no bench, no squat).
3. Moderate levels of physical activity with body/head movement. This includes moderate jogging, brief running, moderate-intensity stationary biking, moderate-intensity weightlifting (reduced time and/or reduced weight from your typical routine).
4. Heavy non-contact physical activity. This includes sprinting/running, high-intensity stationary biking, regular weightlifting routine, non-contact sport-specific drills (in 3 planes of movement).
5. Full contact in controlled practice.
6. Full contact in game play.

*Neuropsychological testing can provide valuable information to assist physicians with treatment planning, such as return to play decisions.

This referral plan is based on today's evaluation:

- Return to this office. Date/Time 4:00 pm 5/12/17
- Refer to: Neurosurgery _____ Neurology _____ Sports Medicine _____ Physiatrist _____ Psychiatrist _____ Other _____
- Refer for neuropsychological testing
- Other _____

ACE Care Plan Completed by: Rich Muller (MD) RN NP PhD ATC

© Copyright G. Gioia & M. Collins, 2005

EXHIBIT 3: CDC Facts About Concussion and Brain Injury (Page 1 of 1)

Facts about Concussion and Brain Injury



About Concussion

A concussion is a type of traumatic brain injury (TBI) caused by a bump, blow, or jolt to the head. Concussions can also occur from a fall or a blow to the body that causes the head and brain to move quickly back and forth. Doctors may describe a concussion as a “mild” brain injury because concussions are usually not life-threatening. Even so, their effects can be serious.

Concussion Signs and Symptoms

Most people with a concussion recover quickly and fully. But for some people, symptoms can last for days, weeks, or longer. In general, recovery may be slower among older adults, young children, and teens. Those who have had a concussion in the past are also at risk of having another one and may find that it takes longer to recover if they have another concussion. Symptoms of concussion usually fall into four categories:

Thinking/Remembering	Difficulty thinking clearly	Feeling slowed down	Difficulty concentrating	Difficulty remembering new information
Physical	Headache Fuzzy or blurry vision	Nausea or vomiting (early on) Dizziness	Sensitivity to noise or light Balance problems	Feeling tired, having no energy
Emotional/Mood	Irritability	Sadness	More emotional	Nervousness or anxiety
Sleep	Sleeping more than usual	Sleep less than usual	Trouble falling asleep	

Getting Better

Rest is very important after a concussion because it helps the brain to heal. Ignoring your symptoms and trying to “tough it out” often makes symptoms worse. Be patient because healing takes time. Only when your symptoms have reduced significantly, in consultation with your doctor, should you slowly and gradually return to your daily activities, such as work or school. If your symptoms come back or you get new symptoms as you become more active, this is a sign that you are pushing yourself too hard. Stop these activities and take more time to rest and recover. As the days go by, you can expect to gradually feel better.

Tips to help you get better:

- Get plenty of sleep at night, and rest during the day.
- Avoid activities that are physically demanding (e.g., sports, heavy housecleaning, working-out) or require a lot of concentration (e.g., sustained computer use, video games).
- Ask your doctor when you can safely drive a car, ride a bike, or operate heavy equipment.
- Do not drink alcohol. Alcohol and other drugs may slow your recovery and put you at risk of further injury.



There are many people who can help you and your family as you recover from a concussion. You do not have to do it alone. Keep talking with your doctor, family members, and loved ones about how you are feeling, both physically and emotionally. If you do not think you are getting better, tell your doctor.

For more information and resources, please visit CDC on the Web at: www.cdc.gov/Concussion.



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control and Prevention



How Common are Concussions?

- Each year more than one million children sustain a traumatic brain injury. 80-90 % of which are mild and are due to motor vehicle accidents, falls, and pedestrian accidents.
- The national Centers for Disease Control and Prevention says as many as 3.8 million sports- and recreation-related concussions occur every year. In sports alone, 300,000 concussions in children are estimated to occur each year.
- Concussions can occur in a wide variety of sports, including (but not limited to) **football, hockey, rugby, wrestling, horseback riding, lacrosse, basketball, cheerleading, and soccer.**
- Brain injuries cause more deaths than any other sports injury. In football, brain injury accounts for 65 to 85% of all fatalities.

Did You Know:

- A concussion is the most common type of brain injury sustained in sports.
- Most concussions do NOT involve loss of consciousness.
- You can sustain a concussion even if you do NOT hit your head. An indirect blow elsewhere on the body can transmit an "impulsive" force to the head and cause a concussion to the brain.
- Multiple concussions can have cumulative and long lasting life changes.
- Concussions typically do NOT appear in neuroimaging studies such as MRI or CAT Scans.
- During 2001-2005, children and youth ages 5-18 years accounted for 2.4 million sports-related emergency department (ED) visits annually, of which 6% (135,000) involved a concussion.
- Among children and youth ages 5-18 years, the **five leading sports or recreational activities**, which account for concussions, include **bicycling, football, basketball, playground activities, and soccer.**

Sports Concussion Fact Sheet SB721

Jenna's Law

A concussion is an injury to the brain caused by a blow or jolt to the head. Other terms used for concussion include mild traumatic brain injury or minor head trauma. Immediately following a concussion, a person may feel several types of symptoms affecting their cognitive, physical or emotional functioning. Symptoms can vary from one person to another, and can last for minutes, hours or weeks after a concussion.

Recovery from Concussion

Recovery from concussion can be different for every person. Symptoms can last from only a few minutes to days or weeks after the concussion. Long-standing symptoms can interfere with a child or adolescent's performance at school, or limit their participation in activities at home or in the community. Therefore, it is important to systematically evaluate and monitor any ongoing symptoms.

Football

- Football injuries associated with the brain occur at a rate of one in every 3.5 games.
- Football is responsible for more than 250,000 head injuries in the United States. In any given season 20% of all high school players sustain brain injuries and at least two will die.
- Football players with brain injuries are six times more likely to sustain new injuries.

Snow Sports

The high profile skiing deaths of Sonny Bono and Michael Kennedy in 1998, and actress Natasha Richardson in 2009, lead to awareness and reports on the need to wear helmets and receive immediate medical attention in snow sports.

- 68,761 reports of head injuries sustained while skiing or snowboarding presented to ER's from 2004-2010
- Males have the highest rates at 68.8 % of total reported head injuries, snowboarders (57.9 %), and young riders between the ages of 11-17 (47.7 %) most likely to be injured.

Too many kids are returning to the playing field too soon after a concussion.

- **62 % of organized sports-related injuries occur during practices** ¹ (Journal of Athletic Training).
- **41% of concussed athletes returned to play too soon**, if an athlete's concussion symptoms, such as dizziness or nausea, last longer than 15 minutes, he should be benched until he's been symptom-free for a week. (American Academy of Neurology guidelines).
- **Girls have a higher incidence of concussion than boys** - In some sports played by both sexes, girls actually run a higher risk of getting hurt.
- **High school Soccer:** female athletes suffered almost 40% more concussions than males (female players suffer some 29,000 concussions annually, males have 21,000).
- **High school basketball:** female concussions were nearly 240% higher (girls got 13,000 concussions playing basketball, boys 4,000).
- **In girls' volleyball and boys' basketball and baseball**, more than half of concussed players returned to play too soon (Journal of Athletic Training).

Mandatory Annual Coach & Referee Training on Sports Concussion

- Currently youth sports coaches are required to have annual training to spot child abuse, but not for sports concussion
- Provide annual training through online and community resources such as Center for Disease Control (CDC), BIAOR, local hospitals and other non-profits
- Remove a child from play if they have concussion symptoms for at least 8 day-they cannot return to play without a medical professional's release
- Parents and students over 12 read and sign form on the signs & symptoms of concussion

SB 721 - Jenna's Law

SB 721 expands the provisions of a 2009 bill called "Max's Law" that requires public school coaches and referees to protect student athletes from brain injury. SB 721 adds coaches and referees for club and recreational teams to those who must get yearly training on concussions and who must keep athletes who have signs of concussion out of competition for a day and get them medical screening.

Jenna Sneva, a former champion ski racer, after suffering repeated concussions as a skier, softball player and soccer player, was diagnosed with permanent brain damage. She recalled that when ski training, crashing was considered a sign of hard effort. If her coaches had recognized the symptoms of concussion, she could have been spared serious injury. "We need to protect the kids from suffering from the extreme pain that I did," she said. Her mother, Ronda Sneva, states that Jenna "might have a gold medal, but she has the brain of a 60-year-old stroke victim."

EXHIBIT 4: Sports Concussion Fact Sheet SB721, Jenna’s Law (Page 2 of 2)

Why are girls hurt more than boys

Of course, many girls suck it up too, but there are anatomical reasons that explain why they are more likely to have a concussion diagnosed. For starters, look to the neck. Bigger, stronger neck muscles can balance the head during impact and lower the chances of the brain's being jolted in a collision. According to a study that will be published in the Journal of Biomechanics, the circumference of men's necks is 20% larger than that of women's necks. Further, resistance tests showed that men's necks are 50% stronger than those of women. Another new biomechanical study shows that during adolescence, boys develop significantly stronger necks than girls do. "More-developed necks allow boys to better absorb a blow to the head," says Dr. Joseph Maroon, a neurosurgeon and consultant to the Sports Concussion Program at the University of Pittsburgh Medical Center.

The way girls play may also make a difference. Kevin Guskiewicz, director of the Sports Medicine Research Laboratory at the University of North Carolina, has found that female athletes are more likely than male athletes to land on the floor or field with their knees locked. The less flexible their knees, the worse their balance. The worse their balance, the more likely they'll hit the ground or another player.

CONCUSSION

- 50% of "second impact syndrome" incidents – brain injury caused from a premature return to activity after suffering initial injury (concussion) – result in death.²
- Female high school soccer athletes suffer almost 40% more concussions than males (29,000 annually).³
- Female high school basketball players suffer 240% more concussions than males (13,000).³
- Concussion rates more than doubled among students age 8–19 participating in sports like basketball, soccer and football between 1997 and 2007, even as participation in those sports declined.⁴
- The concussion rate was highest for ice hockey, at 10 per 10,000 participants for 7- to 11-year-olds and 29 per 10,000 participants for 12- to 17-year-olds.⁴
- Football accounted for the second highest concussion rate, at 8 per 10,000 for 7- to 11-year-olds and 27 per 10,000 for 12- to 17-year-olds.⁴
- **Youth sports are getting extremely competitive, and kids, in general, are getting bigger; so you end up with 8-year-olds in 13-year-old bodies but with the maturity still of 8-year-olds.⁴**

¹ Rachel J, Yard E, Comstock R. *An Epidemiologic Comparison of High School Sports Injuries Sustained in Practice and Competition*. J Athl Train. 2008;43(2):197–204.

² Cantu RC. Second impact syndrome: immediate management. Phys Sportsmed. 1992;20(9):14–17.

³ Covassin T, Swank C. Sex Differences and the Incidence of Concussions Among Collegiate Athletes. J Athl Train. 2003;38(3):238–244.

⁴ Bakhos L, Lockhart G, Myers R. Emergency Department Visits for Concussion in Young Child Athletes. Pediatrics. 2010;126(3):e550–6.

Signs and Symptoms

Parents may not be familiar with concussion symptoms. Contrary to popular belief, the child does not have to lose consciousness to sustain a concussion. In fact, the majority of children do not lose consciousness. A child or teenager suspected of having a concussion should be carefully assessed for any of the following symptoms listed below.

Cognitive Symptoms	Physical Symptoms	Emotional Symptoms
Poor attention/Concentration	Headaches	Nervousness/Anxiety
Problems remembering	Vacant stare	Sad
Difficulty following conversation	Appears dazed or stunned	Irritability
Answers questions slowly	Dizziness	Personality changes
Asks same question repeatedly	Clumsiness/Balance problems	Plays less
Mentally foggy	Fuzzy/Blurry vision	
	Sleeps more or less than usual	
	Appears fatigued, tired or sleepy	
	Vomiting/Nausea	

Concussion Evaluation

Appropriate evaluation and management are the keys to a safe outcome. The symptoms of a concussion can cause problems when the child returns to school, home or community activities. The concussion evaluation assesses possible cognitive, emotional or physical symptoms to assist in planning during recovery. During an evaluation, a child is given tests of attention, memory and speed. Test results are used to determine any needed interventions, as well as plan for return to school, sports, and other physical activities.

EXHIBIT 5: Rubicon Soccer Club Medical Consent/Waiver of Liability and Release

**RUBICON SOCCER CLUB
Medical Consent / Waiver of Liability and Release
2012-2013**

Mia Perez Rubicon Soccer Club 9
Player First Name MI Last Name Full Association Name Jersey #

4/3/01 Male Female
Birth Date Sex

12271 Timber Dr. Row OR 97205
Address of Player City State Zip

Casey Perez 503-768-4973
Parent/Legal Guardian Full Name Home Phone Work Phone Cell Phone

Mike Ditta 503-768-4973
Additional Person to Contact in an Emergency Home Phone Work Phone Cell Phone

12/1/15 n/a
Date of Last Tetanus Shot Current Medications

mild concussion in May 2017. while playing for school soccer team.
List Any Unusual Health Information Parent Email for Soccer Information

I (we), the undersigned, the parents/legal guardian of the above Registrant, a minor, who resides with us, do hereby declare our intent to allow that child to practice, train, play and participate in all soccer-related activities with the above mentioned soccer team affiliated with the North Carolina Youth Soccer Association and the United States Youth Soccer Association.

I (we) further release, discharge, and agree to hold harmless and indemnify Rubicon Soccer Club coaches from any and all liability, claims or demands arising from the Registrant participating in the programs with the club specifically to include any and all claims for personal injuries sustained while present or participating in the programs or traveling to or from events in the programs or while on trips sponsored by or in conjunction with the Programs.

In addition, I (we) do hereby authorize any one of the designated adults of the Team, if after a reasonable attempt has been made to reach a parent or guardian to obtain consent or if sound medical practice dictates that there is not time to make such an attempt, to consent to any x-ray examination, anesthetic, medical or surgical procedure, treatment, and/or hospital care, to be rendered to the Registrant under the general or special supervision of and/or on the advice of any physician, surgeon or dentist duly licensed to practice.

The undersigned have read and fully understand and agree to the foregoing.

Insurance Information: Red Shield Casey Perez
Insurance Company: Parent/Legal Guardian Signature

ID Number: 987654-W3

Confirmation Number: _____

EXHIBIT6: CDC High School Coaches' "Heads Up" Clipboard Sticker (Page 1 of 1)






A Resource for **COACHES**

SIGNS AND SYMPTOMS

These signs and symptoms may indicate that a concussion has occurred.

SIGNS OBSERVED BY COACHING STAFF	SYMPTOMS REPORTED BY ATHLETE
Appears dazed or stunned	Headache or "pressure" in head
Is confused about assignment or position	Nausea or vomiting
Forgets instructions	Balance problems or dizziness
Is unsure of game, score, or opponent	Double or blurry vision
Moves clumsily	Sensitivity to light
Answers questions slowly	Sensitivity to noise
Loses consciousness (even briefly)	Feeling sluggish, hazy, foggy, or groggy
Shows behavior or personality changes	Concentration or memory problems
Can't recall events prior to hit or fall	Confusion
Can't recall events after hit or fall	Does not "feel right"

ACTION PLAN

If you suspect that a player has a concussion, you should take the following steps:

1. Remove athlete from play.
2. Ensure athlete is evaluated by an appropriate health care professional. Do not try to judge the seriousness of the injury yourself.
3. Inform athlete's parents or guardians about the known or possible concussion and give them the fact sheet on concussion.
4. Keep the athlete out of play the day of the injury. Do not return the athlete to play or practice until a health care professional, experienced in evaluating/managing concussion, has cleared them to do so in writing.

IMPORTANT PHONE NUMBERS

FILL IN THE NAME AND NUMBER OF YOUR LOCAL HOSPITAL AND CONTACTS BELOW:

Hospital Name: _____

Hospital Phone: _____

Parent/Guardian Name: _____

Parent/Guardian Phone: _____

For immediate attention, CALL 911

If you think your athlete has sustained a concussion, take him/her out of play and seek the advice of a health care professional experienced in evaluating for concussion.

For more information and to order additional materials free-of-charge, visit www.cdc.gov/Concussion/sports

For more detailed information on concussion and traumatic brain injury, visit www.cdc.gov/Concussion

EXHIBIT 7: CDC High School Athlete's Signs and Symptoms Poster (Page 1 of 1)



A Fact Sheet for **ATHLETES**

WHAT IS A CONCUSSION?

A concussion is a brain injury that:

- Is caused by a bump or blow to the head
- Can change the way your brain normally works
- Can occur during practices or games in any sport
- Can happen even if you haven't been knocked out
- Can be serious even if you've just been "dinged"

WHAT ARE THE SYMPTOMS OF A CONCUSSION?

- Headache or "pressure" in head
- Nausea or vomiting
- Balance problems or dizziness
- Double or blurry vision
- Bothered by light
- Bothered by noise
- Feeling sluggish, hazy, foggy, or groggy
- Difficulty paying attention
- Memory problems
- Confusion
- Does not "feel right"

WHAT SHOULD I DO IF I THINK I HAVE A CONCUSSION?

- **Tell your coaches, parents and athletic trainer.** Never ignore a bump or blow to the head even if you feel fine. Also, tell your coach if one of your teammates might have a concussion.
- **Get a medical check up.** A doctor or health care professional with knowledge in concussion management can tell you if you have a concussion and when you are OK to return to play.
- **Give yourself time to get better.** If you have had a concussion, your brain needs time to heal. While your brain is still healing, you are much more likely to have a second concussion. Second or later concussions can cause damage to your brain. It is important to rest until you get approval from a doctor or health care professional to return to play.

HOW CAN I PREVENT A CONCUSSION?

Every sport is different, but there are steps you can take to protect yourself for soccer.

- Follow your coach's rules for safety and the rules of the sport.
- Practice good sportsmanship at all times.

It's better to miss one game than the whole season.

For more information and to order additional materials free of charge, visit: www.cdc.gov/Concussion/sports

For more detailed information on concussion and traumatic brain injury, visit: www.cdc.gov/Concussion

EXHIBIT 8: USYS Concussion Procedure and Protocol (Page 1 of 2)



Concussion Procedure and Protocol

Concussion: a traumatic brain injury that interferes with normal brain function. Medically, a concussion is a complex, pathophysiological event to the brain that is induced by trauma.

CONCUSSION SYMPTOMS AND MANAGEMENT AT COMPETITIONS AND TRAINING

Step 1:

Did a concussion occur?

Evaluate the player and note if any of the following symptoms are present:

- (1) Dazed look or confusion about what happened.
- (2) Memory difficulties.
- (3) Neck pain, headaches, nausea, vomiting, double vision, blurriness, ringing noise or sensitivity to sounds.
- (4) Short attention span. Can't keep focused.
- (5) Slow reaction time, slurred speech, bodily movements are lagging, fatigue, and slowly answers questions or has difficulty answering questions.
- (6) Abnormal physical and/or mental behavior.
- (7) Coordination skills are behind, ex: balancing, dizziness, clumsiness, reaction time.

Step 2:

Is emergency treatment needed?

This would include the following scenarios:

- (1) Spine or neck injury.
- (2) Behavior patterns change.
- (3) Loss of consciousness.

Step 3:

If a possible concussion occurred, but no emergency treatment is needed, what should be done now?

Focus on these areas every 5-10 min for the next 1 - 2 hours, without returning to any activities:

- (1) Balance.
- (2) Speech.
- (3) Memory.
- (4) Attention on topics, details.

Step 4:

Players should not re-enter competition, training, or partake in any activities for at least 24 hours. Even if there are no symptoms after 15-20 min, activity should not be taken by the player.

EXHIBIT 8: USYS Concussion Procedure and Protocol (Page 2 of 2)

Step 5:

A player diagnosed with a possible concussion may return to US Youth Soccer play only after release from a licensed medical doctor specializing in concussion treatment and management.

Step 6:

If there is a possibility of a concussion, do the following:

- (1) The attached Concussion Notification Form is to be filled out in duplicate and signed by a team official of the player's team.
- (2) If the player is able to do so, have the player sign and date the Form. If the player is not able to sign, note on the player's signature line "unavailable".
- (3) If a parent of the player is present, have the parent/legal guardian sign and date the Form, and give the parent one of the copies of the completed Form. If the parent/legal guardian is not present, then the team official is responsible for notifying the parent/legal guardian ASAP by phone or email and then submitting the Form to the parent/legal guardian by email or mail. When the parent/legal guardian is not present, the team official must make a record of how and when the parent/legal guardian was notified. The notification will include a request for the parent/legal guardian to provide confirmation and completion of the Concussion Notification Form whether in writing or electronically.
- (4) The team official must also get the player's pass from the referee, and attach it to the copy of the Form retained by the team.

References:

Kissick MD, James and Karen M. Johnston MD, PhD. "Return to Play After Concussion." Collegiate Sports Medical Foundation. Volume 15, Number 6, November 2005. http://www.csmfoundation.org/Kissick_-_return_to_play_after_concussion_-_CJSM_2005.pdf.
April 22, 2011.

National Federation of State High School Associations. "Suggested Guidelines for Management of Concussion in Sports". 2008 NFHS Sports Medicine Handbook (Third Edition). 2008 77-82.
<http://www.nfhs.org>.
April 21, 2011.

EXHIBIT 9: USYS Possible Concussion Notification (Page 1 of 2)



The Game for All Kids!

Possible Concussion Notification For US Youth Soccer Events

Today, _____, 2____, at the _____ [insert name of event], _____ [insert player's name] received a possible concussion during practice or competition. US Youth Soccer and Staff want to make you aware of this possibility and signs and symptoms that may arise which may require further evaluation and/or treatment.

It is common for a concussed child or young adult to have one or many concussion symptoms. There are four types of symptoms: physical, cognitive, emotional, and sleep.

If your daughter or son starts to show signs of these symptoms, or there any other symptoms you notice about the behavior or conduct of your son or daughter, you should consider seeking immediate medical attention:

- | | | |
|----------------------------------|-------------------|---------------------------------------|
| - Memory difficulties | - Neck pain | - Delicate to light or noise |
| - Headaches that worsen | - Odd behavior | - Repeats the same answer or question |
| - Vomiting | - Fatigued | - Slow reactions |
| - Focus issues | - Irregular sleep | - Irritability |
| - Seizures | Patterns | - Less responsive than usual |
| - Weakness/numbness in arms/legs | - Slurred speech | |

Please take the necessary precautions and seek a professional medical opinion before allowing your daughter or son to participate further. Until a professional medical opinion is provided, please consider the following guidelines:

- refraining from participation in any activities the day of, and the day after, the occurrence.
- refraining from taking any medicine unless (1) current medicine, prescribed or authorized, is permitted to be continued to be taken, and (2) any other medicine is prescribed by a licensed health care professional.
- refraining from cognitive activities requiring concentration cognitive activities such as TV, video games, computer work, and text messaging if they are causing symptoms.

If you are unclear and have questions about the above symptoms, please contact a medical doctor or doctor of osteopathy who specializes in concussion treatment and management.

EXHIBIT 9: USYS Possible Concussion Notification (Page 2 of 2)

Please be advised that a player who suffers a concussion may not return to play until there is provided a signed clearance from a medical doctor or doctor of osteopathy who specializes in concussion treatment and management.

Player's Team: _____

Age Group: _____

Player Name: _____ Gender: _____

Player Signature: _____ Date: _____

Parent/Legal Guardian Signature: _____ Date: _____

Team Official Signature: _____ Date: _____

By inserting my name and date and returning this Notification Form, I confirm that I have been provided with, and acknowledge that, I have read the information contained in the Form. If returning the signed Form by mail, send it to the following address:

9220 World Cup Way, Frisco, TX 75034. If returning this Form by email, send it to the following address:

nationaloffice@usyouthsoccer.org.

US Youth Soccer Notification: Yes No If yes, method and recipient: _____

References:

Kissick MD, James and Karen M. Johnston MD, PhD. "Return to Play After Concussion." Collegiate Sports Medical Foundation. Volume 15, Number 6, November 2005.
http://www.csmfoundation.org/Kissick_-_return_to_play_after_concussion_-_CJSM_2005.pdf.
April 22, 2011.

National Federation of State High School Associations. "Suggested Guidelines for Management of Concussion in Sports". 2008 NFHS Sports Medicine Handbook (Third Edition). 2008 77-82.
<http://www.nfhs.org>.
April 21, 2011.

Children's National Medical Center. "Safe Concussion Outcome, Recovery & Education (SCORE) Program." Adapted by Gerard Gioia, PhD; Micky Collins, PhD; Shireen Atabaki, MD, MPH; Noel Zuckerbraun, MD, MPH. [http:// www.childrensnational.org/score](http://www.childrensnational.org/score).
June 27, 2011.

EXHIBIT 10: Curriculum Vitae of Dr. Bevin Register (Page 1 of 1)

Bevin K. Register, PhD, AT

Curriculum Vitae

EDUCATION

Oregon Health Sciences University, Portland, OR

Doctor of Philosophy, Sports Medicine, 1993

Dissertation: *Effects of Mild Traumatic Brain Injury on Postural Stability*

University of Rowe, Rowe, OR

Master of Science in Human Physiology/Athletic Training, 1990

Thesis: *The Effects of Headache on Measures of Neurocognition and Balance*

University of Rowe, Rowe, OR

Bachelor of Science in Athletic Training, 1989 (and Athletic Trainer/AT Certification)

Minor: Nutrition

EMPLOYMENT

Department of Exercise and Sports Science, University of Rowe

Mihalik-Marshall Distinguished Professor, 2009-Present

Department Chair, 2005-Present

Professor, 2001-Present

Associate Professor, 1993-2001

Director, Sport-Related Concussion Research Center, 2007-Present

HONORS

McArthur Foundation Grant, 2010

Dorrance Educator of the Year Award, American College of Sports Medicine, 2008

Medal for Distinguished Research, National Athletic Trainers' Association, 2007

PUBLICATIONS

Over 200 scholarly peer-reviewed journal articles, including:

Pediatric Sport-Related Concussion (2010)

Incidences and Outcomes of Soccer-Related Concussions (2009)

Advances in Sport-Related Concussion Management (2009); and

Educating Coaches, Physicians, and Athletes about Concussions (2008).

Over 10 textbook chapters, including:

"Management of Sport Related Head Injury." In *Emergency Care in Sports and Athletic Training*. 2011.

"Head Injuries." In *Foundations of Clinical Sports Medicine*. 2007.

V. The Form and Substance of a Trial

A. The Elements of a Civil Case

In civil law, when a person commits a wrong, it is called a tort. It is a civil wrong committed by one against another. The injured party, or plaintiff, may sue the wrongdoer, or defendant, in court for a remedy which is usually money damages. In this case the plaintiff alleges that a tort has been committed and is suing under the legal theory of negligence.

The tort of negligence contains four elements and the plaintiff has the burden of proving each of them. They are:

- **Duty:** the defendant owed a duty of care to the plaintiff;
- **Breach of duty:** that duty was violated, or breached, by the defendant's conduct;
- **Causation:** the defendant's conduct caused the plaintiff's harm; and
- **Damages:** the plaintiff suffered actual damages.

A defendant can defend himself or herself by showing that plaintiff has failed to meet her burden of proof on at least one of the four elements above. But, if the plaintiff has proved that the defendant was negligent, the defendant may ask the jury to find that the plaintiff's harm resulted from her own **comparative negligence**. On this defense, the defendant has the burden of proof. Comparative negligence means dividing the loss according to the degree to which each party is at fault. If the defendant can prove that 50% or more of the fault lies with the plaintiff, then the plaintiff gets no damages and the defense wins.

B. Proof by a Preponderance of Evidence

The standard of proof in a civil case is the preponderance of the evidence. This standard requires that more than 50% of the weight of the evidence be in favor of the winning party. This means that Perez only has to show that it is more likely than not that the injuries occurred as a result of actions or inactions of the defendants. Likewise, the defendants need only prove that it is more likely than not that Perez's injuries occurred as a result her own actions or inactions.

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 plaintiff's attorneys present the case for the plaintiff, Mia Perez. By questioning witnesses, they will try to convince the jury that the defendants, Shannon Dempsey, Jordan Reddick and Rubicon Soccer Club, Inc., are liable by a preponderance of the evidence.

The defense attorneys present the case for all three co-defendants, Shannon Dempsey, Jordan Reddick and Rubicon Soccer Club, Inc. They will offer their own witnesses to present their clients' version of the facts. They may undermine the plaintiff'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 you 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/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 **plaintiff** is expected to provide the **clerk** and the **defense** provides the **bailiff**.

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

a. Duties of the Clerk – Provided by the Plaintiff

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/her performance.

b. Duties of the Bailiff – Provided by the Defense

When the judge arrives 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. 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. You should also stop the time 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 plaintiff 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. You will be given enough time sheets for all rounds. It is your responsibility to bring them to each round. 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 – 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 well 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. A designated 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 attorney 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 plaintiff'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 plaintiff's (direct examination/cross-examination/etc.)."

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

Be sure 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 proper rules of courthouse and courtroom decorum and security must be followed. CLASSROOM LAW PROJECT and Regional 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 which 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 you 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 the 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 (see Evidence Rule 607).

The stipulated facts are a set of indisputable facts from which witnesses and attorneys may draw reasonable inferences. The witness statements contained 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 and are to be dealt with in the course of the trial. 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.

The decision of the presiding judge regarding extrapolation or evidentiary matters is final.

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).

Rule 5. Gender of Witnesses

All witnesses are gender neutral. Personal pronouns in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender. Teams are requested to 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 [not applicable to Mini Mock]

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, March 2, 2019**. 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 mid-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 15-16, 2019**, 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 consist of a **minimum of eight** students and may include 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, and news reporters. However, none of these roles will be used in the competition. Schools are encouraged to use the maximum number of students allowable, especially where there are large enrollments.

Note: At the National High School Mock Trial Competition, teams shall consist of a maximum of eight members with six participating in any given round. Since teams larger than eight members are ineligible, 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 plaintiff and defense (students may play a role on the plaintiff side as well as on the defense side if necessary), clerk, and a bailiff. One possible team configuration could be:

- 3 attorneys for the plaintiff
- 3 attorneys for defense
- 3 witnesses for the plaintiff
- 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 – Coordinator’s Copy (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, your team name will be the same as your school name. For schools entering two teams, your team name will be your school name plus one of your school

colors (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 plaintiff 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 plaintiff 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 plaintiff 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 are to 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 plaintiff, swears in all witnesses.

Rule 12. Trial Sequence and Time Limits

Each side will have a maximum of 40 minutes to present its case. 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) | 20 minutes per side |
| 4. Cross and re-cross (optional) | 10 minutes per side |
| 5. Closing argument | 5 minutes per side** |
| 6. Judges’ deliberations | 10 minutes total (judges in private)* |

*Not included in 40 minutes allotted for each side of the case.

**Plaintiff 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 Plaintiff gives the opening statement first. And the Plaintiff 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**. An optional unofficial timer may also be provided by the plaintiff 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. Regional 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 member judge. All three shall score teams using ballots that carry equal weight. 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, and 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 side 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.

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 method of selection 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. The first-place team at state 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 results.

Rule 25. Effect of Bye, Default or Forfeiture

A “bye” becomes 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 any 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, found in the 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 for this, announce her/his decision to the Court, and 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/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 REVISED THIS YEAR

Copies of the Team Roster form (see Appendix) must 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 should 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 Plaintiff 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

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 conduct re-direct examination 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 conduct re-direct examination. 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 the 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 has been 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 has been 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 plaintiff delivers the first closing argument. The plaintiff 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, synthesize what actually happened in court rather than being re-packaged;
- be emotionally charged and strongly appealing (unlike the calm opening statement);
- emphasize the facts which 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 or the plaintiff was more than 50% comparatively negligent.

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 negligent. And the defense should say the plaintiff failed to prove the necessary elements of negligence, or that that the plaintiff is contributorily negligent.

E. Critique

Rule 43. The Critique

There will be no oral critique from the judging panel. Judges have the option to include a comment for the teams on their ballots. Judges' written comments will be forwarded by CLASSROOM LAW PROJECT to teams following the competition.

VIII.FEDERAL RULES OF EVIDENCE – Mock Trial Version

To assure each party of 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.

The rules of evidence used in real trials can be very complicated. A few of the most important rules of evidence have been adapted for mock trial purposes. 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 of Evidence (or procedure) 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.

Witness statements in the Mock Trial materials are considered to be affidavits.

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 paragraph three?" 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 don't 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: A short re-direct examination will be allowed following cross-examination if an attorney desires, and re-cross may follow re-direct. But in both instances, questions must be on a subjects 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 for more discussion of redirect and re-cross.

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 questioning the witness in the above manner, 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. Note to Judges

To ensure that the mock trial experience is the best it can be for students, please familiarize yourself with the case materials as well as 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 is encouraged 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. **NEW THIS YEAR: there will be no judges' critiques.**

Each courtroom will be assigned a panel of three judges:

- The presiding judge will sit at the bench and will be responsible for conducting the trial, including ruling on objections.
- The other two judges will sit in the jury box and will evaluate and score student performances.

The judging panel will usually be comprised of two representatives from the legal field and one educator or community representative.

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. Students are to identify their team by their assigned letter designation and 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 competing 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. Acute Concussion Evaluation (ACE) Physician/Clinician
 2. Acute Concussion Evaluation (ACE) Care Plan
 3. CDC Facts About Concussion and Brain Injury
 4. Sports Concussion Fact Sheet SB721, Jenna's Law
 5. Rubicon Soccer Club Medical Consent/Waiver of Liability and Release
 6. CDC High School Coaches' "Heads Up" Clipboard Sticker
 7. CDC High School Athletes' Signs and Symptoms Poster
 8. USYS Concussion Procedure and Protocol
 9. USYS Possible Concussion Notification

10. Curriculum Vitae of Dr. Bevin Register

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 including the teams before you. 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 specified in Rule 27. 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 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 number of ballots (which is the number of scoring judges' votes); and in Rounds 2 and 3, total number of points accumulated in each round.

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. The ballots shall be completed and given to the Clerk to deliver to the scoring room **immediately** following completion of the round. **NEW THIS YEAR:** 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 **1-10** to each team with presiding judge scoring on overall performance, attorney-judge on attorneys, and educator-community judge on witnesses, clerk and bailiff). This score, minus any penalty points, is the score that should be written on the official ballot to be turned in for scoring purposes. Judges shall score each team based on the following guidelines:

<u>POINTS</u>	<u>PERFORMANCE</u>	<u>CRITERIA FOR EVALUATING STUDENT PRESENTATIONS</u>
1-2	Poor	Unsure of self, illogical, uninformed, not prepared, is not ineffective in communication; total reliance upon notes; unsure when entering exhibits; easily distracted
3-4	Weak	Minimally informed and prepared. Performance is passable, but lacks depth in terms of knowledge of task and materials; not at ease; communications lack clarity and conviction; relies heavily on notes (if attorney); somewhat distracted
5-6	Fair	Average presentation; does not exclusively rely on notes; however, is hesitant and unsure when not using notes; is adequate in logic and understanding of the materials, but does not convey mastery of same; communications are clear and understandable; average in fluency and persuasiveness
7-8	Good	Presentation is fluent, persuasive, logical, clear, and understandable; materials and thoughts are well organized; exhibits mastery of the case; seldom refers to notes (if attorney); is intuitive in responses and in questioning (if attorney); responds to occurrences during trial
9-10	Excellent	Superior in qualities listed for 7-8 presentation, plus, thinks quickly and spontaneously; is logical; is poised at all times, even under pressure, sorts out essential from the nonessential, uses time effectively to accomplish major objectives; utilizes all resources to emphasize vital points of the trial

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 also impact the 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

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—20 minutes total

Start		20 minutes
Witness #1:	time used ___	less ___ minutes
		___ minutes unused
Witness #2:	time used ___	less ___ minutes
		___ minutes unused
Witness #3:	time used ___	less ___ minutes
		___ minutes unused

Defense: Cross/Re-cross—10 minutes total

Start		10 minutes
P witness #1:	time used ___	less ___ minutes
		___ minutes unused
P witness #2:	time used ___	less ___ minutes
		___ minutes unused
P witness #3:	time used ___	less ___ minutes
		___ minutes unused

Defense: Direct/Re-direct—20 minutes total

Start		20 minutes
D witness #1:	time used ___	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—10 minutes total

Start		10 minutes
D witness #1:	time used ___	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

Team Code _____

Submit copies to: (1) Competition Coordinator before trials begin, (2) every judge in every round, and (3) opposing team in each round. (You will need 19 copies not including spares.) For the benefit of judges and the opposing team, please 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 Chris Durant

attorney - student's name

Cross examining D's W Jordan Reddick

attorney - student's name

Cross examining D's W Shannon Dempsey

attorney - student's name

Closing Argument

attorney - student's name

Clerk

student's name

Defense

Opening Statement

attorney - student's name

Cross examining P's W Casey Perez

attorney - student's name

Cross examining P's W Tobin O'Reilly

attorney - student's name

Cross examining P's W Bevin Register

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

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: _____

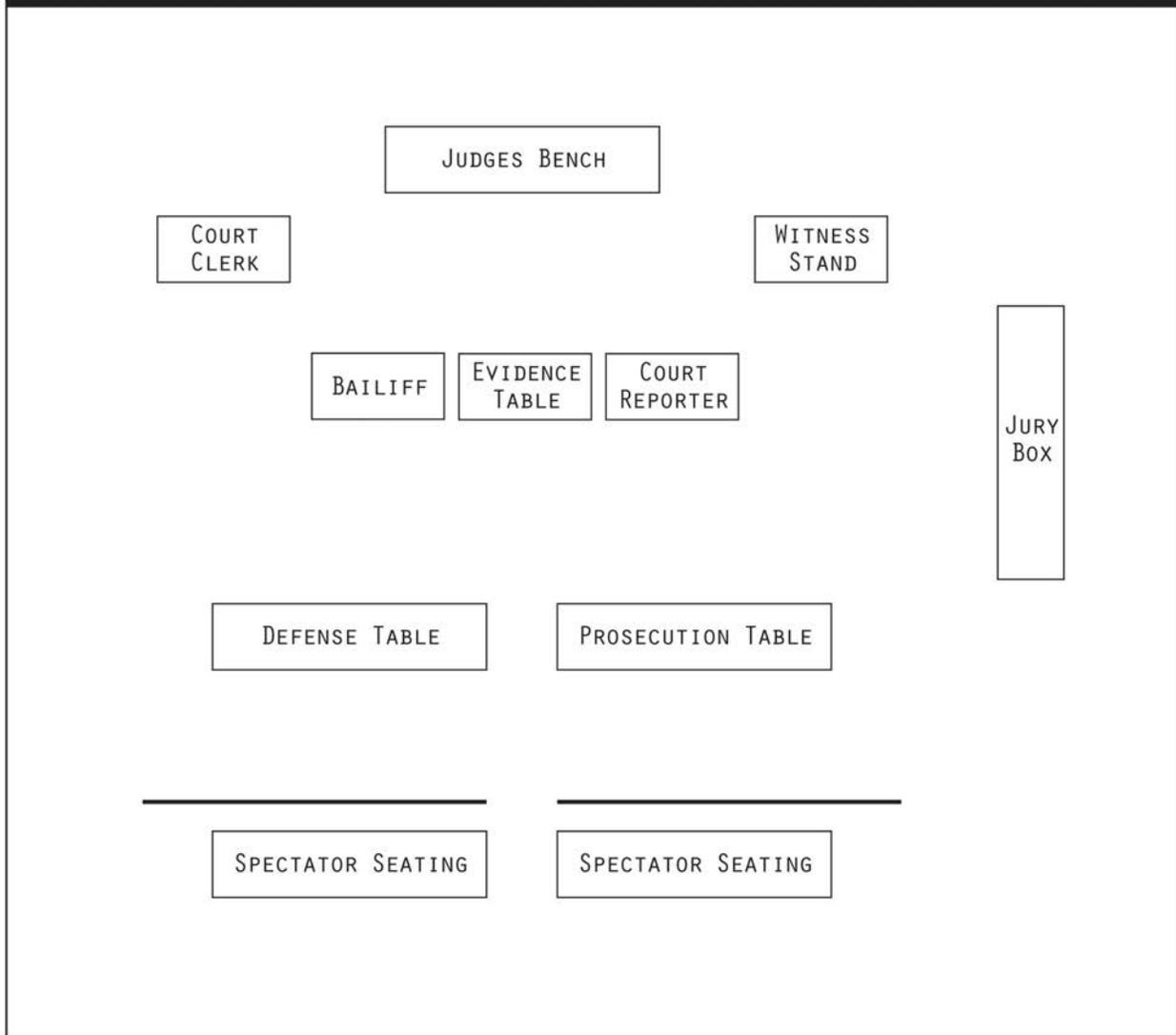
Notes From Hearing: _____

Decision/Action of Coordinator: _____

Signature of Competition Coordinator

Date /Time of Decision

DIAGRAM OF A TYPICAL U.S. COURTROOM



Notes:

Notes: