

CLASSROOM LAW PROJECT proudly presents the 33rd annual statewide

2018-2019 Oregon High School Mock Trial Competition



FINLEY MACPHERSON, Plaintiff

v.

**COHO COMMUNITY ASSOCIATION, an Oregon
homeowners' association, Defendant**

~ A civil case about a community's struggle with the
clash between fish, fire, water, and land ~

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ACKNOWLEDGEMENTS

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*a case written by committee
in coordination with CLASSROOM LAW PROJECT*

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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.



Executive Director
Erin Esparza

Dear Students, Coaches, Parents, Judges and Volunteers:

Welcome to the 33rd annual mock trial competition!

We hope you'll find this case as interesting as we do. It brings light to Oregon's very relevant issues of wildfires, water use, and how we live together as a community. The case was authored by a committee made up of expert lawyers and teachers experienced in high school mock trial, and we believe it will foster some truly thoughtful conversations.

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

At Classroom Law Project we are committed to the best in civic education, and that includes the mock trial competition. Mock trial is unique in that it offers the benefits of a team activity and interaction with community leaders, all while learning about the justice system and practicing important life skills.

I'd like to ask for your help in continuing this successful program. If you are able, please give to Classroom Law Project, the primary sponsor of the Oregon High School Mock Trial Competition. The program costs more than \$50,000 per year, and less than half is covered by registration fees. We know that you have been asked many times to give and understand that your ability to do so may be limited. But, to the extent that you can, please consider how valuable this program is to the young people in your life. Any amount you can give is appreciated. Information about giving is available at our website, www.classroomlaw.org. Classroom Law Project is a non-profit organization and your donation is tax deductible to the extent permitted by applicable law.

I look forward to seeing you in the courtroom. Thank you, and good luck!

Sincerely,

Erin L. Esparza
Executive Director

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Classroom Law Project is a non-profit organization of individuals, educators, lawyers and civic leaders building strong communities by teaching students to become active citizens.

2018-19 OREGON HIGH SCHOOL MOCK TRIAL
Finley MacPherson v. Coho Community Association

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CLASSROOM LAW PROJECT

2018-19 OREGON HIGH SCHOOL MOCK TRIAL COMPETITION

I. INTRODUCTION

This packet contains the official materials that student teams will need to prepare for the 33rd annual Oregon High School Mock Trial Competition.

Each participating team will compete in a regional competition. Winning teams from each region will be invited to compete in the **state finals in Portland on March 15-16, 2019**. The winning team from the state competition will represent Oregon at the **National High School Mock Trial Competition in Athens, Georgia, May 16-18, 2019**.

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

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

Mock trial judges are instructed to follow the evaluation criteria when scoring teams' performances. Even with rules and evaluation criteria for guidance, not all scorers evaluate a performance identically. While CLASSROOM LAW PROJECT and competition coordinators work to ensure consistency in scoring, the competition can reflect otherwise, as in real life.

Each year, the mock trial case addresses serious matters facing society today. By affording students an opportunity to wrestle with large societal issues within a structured format, CLASSROOM LAW PROJECT strives to provide a powerful and timely educational experience. It is our goal that students will conduct a cooperative, vigorous, and comprehensive analysis of these materials with the careful guidance of teachers and coaches. This year's case offers opportunities for students to explore the very recent and relevant issues of wild fires, water usage, land management, and how communities get along together when they have differences of opinions.

II. PROGRAM OBJECTIVES

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

1. Increase proficiency in basic skills such as reading and speaking, critical thinking skills such as analyzing and reasoning, and interpersonal skills such as listening and cooperating.
2. Provide an opportunity for interaction with positive adult role models in the legal community.
3. Provide an interactive experience where students will learn about law, society, and the connection between the Constitution, courts, and legal system.

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

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

III. CODE OF ETHICAL CONDUCT

This Code should be read and discussed by students and their coaches at the first team meeting.

The Code governs participants, observers, guests and parents at all mock trial events.

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

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

Team members, coaches, parents and any other persons directly associated with the Mock Trial team's preparation are **not allowed to view other teams** in competition so long as they remain in the competition themselves. *Except*, the public is invited to attend the final round of the last two teams on **the last day of the state finals competition – approximately 2:00 p.m., March 16, 2019, in the Hatfield Federal Courthouse, Portland.**

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

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

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

Charges of ethical violations involving persons other than the student team members must be made promptly to the Competition Coordinator who will ask the complaining party to complete a dispute form. The form will be taken to the competition's headquarters, where a ruling will be made. 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. Case Summary

Plaintiff Finley MacPherson owns a thriving fishing business on the Coho River. But recently the Coho Community Association ("CCA"), which owns the land adjacent to MacPherson, diverted some of the river's flow to create a reservoir. The CCA claims it wants to set aside a reservoir of water to help fight the wildfires which come closer and closer to neighborhoods every year. MacPherson claims the diversion has caused harmful reduction of salmon population, affecting his/her business. In addition, MacPherson suspects fighting fires is not the CCA's only reason for creating the reservoir. MacPherson has filed a public nuisance complaint against the CCA and believes there has been substantial injury suffered by the public because of the river diversion.

B. Witness List

For the Plaintiff:

Finley MacPherson, Plaintiff. Fishing business owner along the Coho River
Campbell Castillo, Policy Advisor for the Natural Resources Defense Council
Sandy Feldman, farmer and landowner along the Coho River

For the Defense:

Rayyan Adeeb, President of the Coho Community Association
Perry Fong, Forestry scientist with the Oregon Department of Forestry
Riley Brand, 25-year career aerial firefighter

C. List of Exhibits

The exhibits in this case include the following:

1. Map of the Coho River diversion and reservoir
2. Map of recent wildfire zones near the Coho Community
3. Newsletter of the Coho Community Association
4. Statistical Information sheet about salmon used by the NRDC

The exhibits follow the witness statements.

D. Introduction of Complaint, Stipulations, Jury Instructions

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

The Complaint is the formal accusation against the defendant by the plaintiff. The Answer is the defendant's response to the claims made in the Complaint.

The Stipulations are the facts both sides agree upon. These are not issues for the trial.

Jury Instructions are issued from the judge to the jury after both sides have completed their case. Jury Instructions frame the law for the jurors so they can focus on whether the evidence supports or does not support the allegations in the Complaint. Jury Instructions are included for purposes of understanding how the evidence needs to be proved or disproved during the trial.

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF CASCADE

3
4 FINLEY MACPHERSON, an individual,

Case No. 18CV54321

5
6 Plaintiff,

COMPLAINT
(Public Nuisance)

7 v.

8
9 COHO COMMUNITY ASSOCIATION, an
10 Oregon homeowners’ association,

11
12 Defendant.
13
14

15 **INTRODUCTION**

16 1. Plaintiff Finley MacPherson (“Plaintiff”) brings this action against Defendant
17 Coho Community Association (“Defendant”). Plaintiff owns land adjacent to the Coho River.
18 Defendant is an association of homes in a residential community located downstream from
19 Plaintiff on the Coho River.

20 2. Defendant recently diverted a portion of the river’s flow to create a community
21 reservoir. Defendant’s diversion has caused a public nuisance, in that it caused a harmful
22 reduction in the population of salmon in the Coho River, including the segment of the river
23 bordering Plaintiff’s land.

24 **PARTIES AND VENUE**

25 3. Plaintiff is an individual who resides in Cascade County, Oregon.

26 4. Defendant is a homeowners’ association organized under the laws of the State of
27 Oregon and located in Cascade County, Oregon.

28 5. Venue is proper in this Court because Defendant is a resident of, and Plaintiff’s
29 cause of action arose in, Cascade County, Oregon.

30 **FACTS**

31 6. Plaintiff’s land borders the Coho River. Plaintiff has owned and lived on the land
32 for nearly 20 years.

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF CASCADE

3
4 FINLEY MACPHERSON, an individual,

Case No. 18CV54321

5
6 Plaintiff,

ANSWER

7 v.

8
9 COHO COMMUNITY ASSOCIATION, an
10 Oregon homeowners’ association,

11
12 Defendant.
13
14

15 For its Answer to Plaintiff Finley MacPherson’s (“Plaintiff’s”) Complaint, Defendant
16 Coho Community Association admits, denies, and alleges as follows:

17
18 **INTRODUCTION**

- 19 1. Defendant admits the allegations in paragraph 1.
20 2. Defendant admits that it recently diverted a portion of the river’s flow to create a
21 community reservoir, and that the population of salmon in the Coho River has recently declined.
22 Defendant otherwise denies the allegations in paragraph 2.

23
24 **PARTIES AND VENUE**

- 25 3. Defendant admits the allegations in paragraph 3.
26 4. Defendant admits the allegations in paragraph 4.
27 5. In response to the allegations in paragraph 5 of the Complaint, Defendant admits
28 that venue is proper in this Court.

29
30 **FACTS**

- 31 6. Defendant admits the allegations in paragraph 6.
32 7. Defendant admits the allegations in paragraph 7.
33 8. Defendant admits the allegations in paragraph 8.
34 9. Defendant admits the allegations in paragraph 9.

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF CASCADE
3

4 FINLEY MACPHERSON, an individual,

Case No. 18CV54321

5
6 Plaintiff,

STIPULATIONS

7 v.

8
9 COHO COMMUNITY ASSOCIATION, an
10 Oregon homeowners' association,

11
12 Defendant.
13
14

15 Plaintiff and Defendant hereby stipulate as follows:

16 1. This phase of the trial shall deal with Defendant's liability only. If necessary, a
17 determination as to damages and any other relief to which Plaintiff may be entitled will be made
18 in a separate proceeding.

19 2. The citizens of Oregon have a common right to fish for salmon in the Coho River.¹ If
20 Defendant's diversion caused a reduction in the population of salmon in the Coho River, the
21 reduction qualifies as "interference" with that right. However, Defendant does not admit that
22 such interference, if it occurred at all, was "substantial" or "unreasonable."

23 3. A reduction in the population of salmon in the Coho River on the segment of Plaintiff's
24 property bordering the Coho River qualifies as a "special injury" for the purposes of a public
25 nuisance claim.

26 4. Defendant has obtained all necessary permits for its planned diversion of water.
27 However, the fact that Defendants' planned diversion is properly permitted does not bar a
28 finding by the Court that the planned diversion of water amounts to a legal nuisance.
29

¹ The parties further note that the Oregon Supreme Court has recognized that right since at least 1939. *See Columbia River Fishermen's Protective Union v. City of St. Helens*, 160 Or. 654, 87 P.2d 195 (1939).

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF CASCADE

3
4 FINLEY MACPHERSON, an individual,

Case No. 18CV54321

5
6 Plaintiff,

FINAL JURY INSTRUCTIONS

7 v.

8
9 COHO COMMUNITY ASSOCIATION, an
10 Oregon homeowners’ association,

11
12 Defendant.
13
14

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

18
19 **PREPONDERANCE OF THE EVIDENCE**

20 The plaintiff must prove the plaintiff’s claims by what the law refers to as a
21 “preponderance of the evidence.” That means that the plaintiff must persuade you by evidence
22 that makes you believe that the plaintiff’s claims are more likely true than not true. After
23 weighing all of the evidence, if you cannot decide that something is more likely true than not
24 true, you must conclude that the plaintiff did not prove it. You should consider all of the
25 evidence in making that determination, no matter who produced it.
26

27 **PUBLIC NUISANCE**

28 In this case, the plaintiff has brought a claim for “public nuisance.” To establish a claim
29 of public nuisance, a plaintiff must prove the following elements:

- 30 1. The existence of a right of the general public to use and enjoy land, water, or
31 other property;
32 2. Substantial and unreasonable interference with that right;
33 3. The defendant’s culpable conduct;

1 to the existence or nonexistence of a certain fact. You may base your verdict on direct evidence
2 or on circumstantial evidence, or on both.

3
4 **WITNESS FALSE IN PART**

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

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

12
13
14 Dated: _____.

15
16 *s/Adriana Neilsen*
17 Hon. Adriana Neilsen
18 Judge of the Circuit Court of the State of Oregon
19
20
21
22
23
24
25
26
27
28
29
30
31

AFFIDAVIT OF FINLEY MACPHERSON

1
2 Hi there! My name is Finley MacPherson. I'm 44 years old, and I live on a beautiful little
3 patch of land in an unincorporated part of Cascade County, Oregon.

4 I live pretty far out into the wilderness now, but, believe it or not, I was once what you
5 might call a "city-slicker." In fact, I was born and grew up in the heart of Rowe, Oregon. After
6 graduating from Hamilton High School, I went to Oregon State University for my bachelor's
7 degree. When I got there, I didn't really know what I wanted to study, so I cast as wide a net as
8 possible. I joined an a-cappella group called the "Bee-Bop Beavers," but I couldn't carry a tune; I
9 auditioned for the theater club's winter production of *A Streetcar Named Desire*, but I couldn't
10 remember my lines; I even went to a few of the quiz bowl team's practices, but I quickly realized
11 that I was in way over my head. I mean, who can remember all of those random facts and figures?
12 Especially these days, I can barely remember what I had for breakfast!

13 I was pretty frustrated after my first few months of college, but then, a friend of mine named
14 Taylor Feldman asked me what turned out to be a fateful question: Did I want to go fishing on the
15 Coho River? Taylor owns Feldman Seed Farm along with his child, Sandy. At that time, fishing
16 was a totally foreign concept to me—the closest I had ever come to a fish was when I made the
17 mistake of ordering the fish and chips at Buddie's Burgers—but, I thought, why not give it a try?
18 The next day, Taylor and I woke up early and drove out to the Coho.

19 From the moment I sat down on the riverbank, I was mesmerized. Before then, I hadn't
20 spent much time outdoors, so the whole thing—the babbling water, the crisp morning air,
21 *everything*—was serene and peaceful in a way that I had never really known. It's hard to put it into
22 words, but it was a million miles away from the bustling, chaotic, 24-hour-a-day cacophony that I'd
23 grown up with in Rowe. You just can't appreciate that kind of "quiet" until you experience it, you
24 know? Plus, I caught a couple of pretty big trout, which Taylor showed me how to clean and cook.
25 Until then, I had thought you could only get food that good by going to some stuffy restaurant in
26 Rowe's über-trendy "Topaz" neighborhood. Was I ever wrong! The cleaning part was really gross,
27 but the fish itself was one of the best meals I've ever had.

28 After fishing with Taylor, everything seemed to fall into place. I decided to major in
29 fisheries and wildlife sciences, with an emphasis on environmental management and conservation.
30 My college coursework really opened my eyes to the impact of human activity on our ecosystem—
31 especially our lakes, rivers, and the fish that swim in them. You don't have to be a fish fanatic like
32 me to worry about what's happening in those waterways, which has an impact way beyond the

1 water itself. For example, when salmon migrate inland from the Pacific Ocean, they carry nitrogen
2 and other essential nutrients from the sea into our forests. So, if the condition of our rivers and
3 streams doesn't permit the salmon to survive the trip inland—for example, if the water is too warm
4 or too shallow—then our forests aren't replenished with the nutrients they need to survive.

5 I've always been pretty entrepreneurial, so, when I graduated, I decided to put my dual
6 passions for fishing and conservation to work in a way that would help the environment and, I
7 hoped, make me a buck or two. I started my own fishing company! I've always wanted to give
8 people the same experience that Taylor gave me on my first day of fishing, so my company does
9 two things. First, for folks who have time to come all the way out to the Coho River, I serve as a
10 fishing guide. In general, that involves showing my guests the basic ins-and-outs of fishing, helping
11 them clean and pack their catch at the end of the day, and providing helpful information on
12 sustainable fishing practices, the ecosystem, and environmental responsibility. Second, for folks
13 who don't have time to come out to the Coho, I bring the Coho to them by selling delicious, fresh-
14 caught fish through a number of specialty supermarkets around Oregon. I catch the fish myself in
15 the Coho River. For the most part, it's salmon, although I catch and sell a fair number of trout, too.

16 Of course, to run that sort of business, I needed a spot from which I could fish and lead
17 tours. So, a few months after graduating, I bought a beautiful plot of land bordering the Coho River.
18 Ever since then, I've lived in the little house that came with the property. It was a big expenditure,
19 and, in retrospect, it was probably more than I could afford. In fact, to this day, I still sometimes
20 have trouble making the mortgage payments. I love the land, though, and I really don't want to lose
21 it. Maybe someday I'll win the lottery, and then I won't have to worry so much. Who knows?

22 My first few years in business were pretty lean, but more recently, things have been going
23 swimmingly, so to speak. Of course, as with any business, I've had my ups and downs, but I always
24 seem to recover. That said, climate change has started to have a real impact on the number of
25 salmon that are available in the Coho. For example, 2015 was an especially bad year. That summer,
26 water temperatures spiked throughout the Pacific Northwest, and it led to the deaths of about a
27 quarter of a million sockeye salmon in the Coho River and other waterways. Unsurprisingly, my
28 catch that year was down by approximately 25 percent below its normal level. Things have
29 recovered somewhat since then, but, because of climate change's continuing effects, and because
30 many of the salmon now returning inland to spawn were born into 2015's less-than-great
31 conditions, there's always a risk that we'll have another bad year.

1 Believe it or not, though, climate change is only my second-biggest concern right now.
2 Currently, those awful people up at the Coho Community Association (the “CCA,” they call
3 themselves) are the most serious threat to my business, and, for that matter, to the health and
4 vibrancy of the Coho River overall. Most of them started moving into the area about 15 years ago,
5 and ever since then, they’ve been a thorn in my side. It really seems like they don’t care about the
6 environment! They love having a view of Mount Randolph from their backyards, but, at the same
7 time, they prefer to maintain their comfortable, suburban lifestyles at the expense of the natural
8 beauty of our environment. A few years ago, for example, the CCA cut what they described as a
9 wilderness “trail” to the south of their community, which runs through the woods near my property
10 on the other side of the river. It was much wider than a normal trail needed to be, though, and I
11 suspect that was because some people wanted to drive their four-wheelers on it. Now, pretty much
12 every weekend, I have to watch from my property as people from the CCA meander through the
13 woods across the river from my property, often leaving their litter behind them. (I’ve never actually
14 seen any four-wheelers, though.) It makes me furious. I just want to have some peace and quiet on
15 my land!

16 More recently, I was dismayed—but not surprised—when I learned that the CCA planned to
17 construct a harmful river diversion just downstream from my property. To make sure I stay on top
18 of whatever shenanigans they’re planning next, I always make sure to pick up a copy of the CCA’s
19 monthly newsletter, and the March 2018 edition contained a notice of a town meeting the following
20 month about the proposal. Based on the newsletter, which is shown in Exhibit 3, their plans seemed
21 disastrous; at a point downstream from my property, the CCA planned to build a “stoplog weir,”
22 which is basically a small dam that would narrow a short segment of the river and raise the water
23 level behind it. Then, using something called a “headgate,” they planned on siphoning water out of
24 the river and into a large, artificial reservoir. I couldn’t believe it! I knew I had to be prepared for
25 the meeting, so I started reading everything I could about the harmful environmental effects of those
26 sorts of river diversions.

27 When the meeting finally rolled around, I was ready. After Rayyan Adeeb, the president of
28 the CCA, outlined the basics of the plan, I stood up and made my case. Based on my reading, the
29 gap that the CCA planned to build in the middle of the weir would indeed allow some fish passage,
30 but, because of the gap’s narrow width and the increased river flow at the point of the gap itself, it
31 was almost certain that many fish wouldn’t be able to make it further upstream, either to my
32 property or beyond. When I explained all that, a few people at the meeting asked me where I read it.

1 I told them that I couldn't remember exactly, but that I'd be happy to provide them with a written
2 list of articles to that effect. They just ignored me!

3 After that, everyone at the meeting basically just shrugged their shoulders at my concerns.
4 "Finley, you're totally overreacting! I definitely hear what you're saying, but I think the fish will be
5 fine," said one person. (I don't remember who.) Rayyan was blunter, though. Rayyan said, "Look,
6 Finley, we've done our best to make sure the fish can get through, but the bottom line is that we
7 need to make sure we have the resources to fight wildfires. If a few fish have to die, then so be it." It
8 looked like there was just no convincing them. Over my objection, the CCA voted to proceed with
9 the diversion project.

10 Sadly, it turns out my predictions were right. Since the diversion went up in May 2018, my
11 average catch has declined by about 45 percent. The map shown in Exhibit 1 accurately shows
12 where my property is situated in relation to the CCA and the diversion, though it isn't to scale. I'm
13 still catching trout in normal quantities, but my salmon hauls—from which I derive most of my
14 revenue—are way, way down. Sure, I suppose it's technically possible that some of that might be
15 due to the effects of climate change, but, in my experience, climate change alone has (so far) never
16 led to such a dramatic drop-off in the number of salmon in the river. Plus, because I'm now
17 catching less, the monthly revenues that my company generates from the sale of fresh fish are
18 down. I haven't yet noticed a similar decrease in revenue from my fishing tours, but now, one out of
19 every two tours I lead ends with nobody catching anything; with that kind of a record, it won't be
20 long before people will decide my tours aren't worth the price.

21 There's one other thing about this diversion that makes my blood boil! After the CCA
22 finished installing the diversion, I was walking around over in the community when I noticed some
23 heavy earth-moving equipment in an open area near the new reservoir. I asked one of the residents
24 what was going on, and I was told that "somebody" is "probably" building a golf course. So, I
25 asked, where was the golf course going to get the water it needs to keep the fairways green? "Well,
26 from the reservoir, obviously," said the person. I can't remember who the person was, but because
27 they were from the community, I assume they're a member of the CCA.

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

6 *s/Finley MacPherson*

7 Finley MacPherson

8 Dated: October 22, 2018

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11 Subscribed and sworn to me this 22nd day of October, 2018.

12 *s/Barbara Rust*

13 Barbara Rust

14 Dated: October 22, 2018
15

1 **AFFIDAVIT OF CAMPBELL CASTILLO**

2 My name is Campbell Castillo. I'm 48 years old, and I work as a policy advisor for the
3 Natural Resources Defense Council, which we call the NRDC for short. My office is based in
4 Rowe, Oregon. I've held my current position for about eight years. Essentially, my job is to help the
5 NRDC develop environmental policy proposals for the federal, state, and local governments that
6 reflect the most cutting-edge science. On behalf of the NRDC, I write "white papers," testify before
7 legislative committees—in fact, I've testified twice before Congress—and advise government
8 officials on how best to craft public policy that protects our precious natural resources.

9 I may sound like a total policy wonk, but, at my core, my passion is science. It was for that
10 reason that I worked for 14 years as an NRDC fish biologist before moving into my current role. In
11 my former role with the NRDC, I focused on the "hard science" of fish biology. I served as lead
12 scientist in numerous scientific studies measuring water temperatures, bacteria levels, and a number
13 of other environmental factors in various waterways in the Pacific Northwest, including the Coho
14 River. My goal in those studies generally was to determine the overall health of the local fish
15 population and, if necessary, to recommend measures to improve its health. Though my current role
16 focuses more on policy, I still routinely assist other NRDC scientists in carrying out similar studies
17 where the study implicates a policy issue. I also remain active in the scientific community and have
18 published numerous papers on fish biology, both in scholarly scientific journals and popular
19 publications. (My most recent article, "Warming Planet, Waning Population: The Effect of Climate
20 Change on Northwest Salmon," appeared in *Scientific American* last year.) I hold bachelor's and
21 Ph.D. degrees from Stanford University in biology, each with an emphasis in conservation biology
22 and ecology.

23 When Finley MacPherson asked me to testify on Finley's behalf in this case, I jumped at the
24 chance. I've known Finley for about ten years. Back then, I conducted a study just upriver from
25 Finley's property, and Finley wandered out to our site to see what was going on. Initially, Finley
26 seemed a little distraught at our presence; as Finley was walking up to us, I remember Finley asked,
27 "What are you doing, and why can't you city people just leave me alone?" When I explained who
28 we were and what we were doing, though, we became instant friends. Finley seems to care
29 genuinely about the environment, and from the moment I heard about this case, I knew I had to help
30 Finley right the terrible injustice that Finley has experienced.

31 Finley asked me to evaluate a simple question: had the Coho Community Association's river
32 diversion led to a harmful reduction in the population of salmon in the Coho River? In evaluating

1 that question, I relied on two pieces of evidence. First, I visited the spot on the Coho River where
2 the CCA had installed the diversion, which, of course, I needed to see with my own eyes. Second, I
3 interviewed Finley and one other regular resident of the area around the Coho River about their
4 recent experiences fishing there. That evidence provided more than sufficient facts and data for my
5 analysis. As I'll explain more in a moment, the scientific principles and methods that I used to
6 analyze that evidence are reliable—for the most part, it's basic physics—and I reliably applied those
7 principles and methods to the facts of this case. Based on my analysis, the answer to Finley's
8 question was a resounding "yes": the CCA's diversion has led to a reduction of about 40 or 50
9 percent in the population of salmon in the segment of the Coho River near Finley's property.

10 To understand why that's occurred, it's helpful to understand a salmon's normal lifecycle.
11 Salmon are what we call an "anadromous" species, which means that their life cycle proceeds in
12 three parts. First, salmon hatch from eggs laid in inland freshwater streams. (The Coho is an
13 example of one such stream.) A newborn salmon is called an "alevin," which remains close to the
14 nest in which it was born for its first few months. Second, when the salmon grows big enough, it
15 emerges from the gravel, swims to the surface, and begins to feed; at this point, it's called a "fry"
16 and is especially vulnerable to predators, the elements, and other natural threats. Depending on the
17 specific species of salmon, a fry will spend up to a year or two in freshwater, where it feeds and
18 grows. Third, the fry eventually "smolts," during which time its scales turn silver, and starts
19 swimming downstream toward the ocean. A grown salmon typically spends anywhere from 18
20 months to eight years in the ocean. Finally, and most importantly for our purposes, the salmon then
21 returns to the freshwater and begins the long journey upstream to spawn almost always in the exact
22 same spot where it first hatched. It's a hugely arduous journey for the salmon, which stops feeding
23 once it reaches freshwater. As it swims upstream, the salmon draws huge amounts of energy from
24 its fat storage, muscles, and organs to the point where, after spawning, it's basically got nothing left;
25 soon after spawning, the salmon dies, supplying the inland environment with nitrogen and other
26 essential nutrients from the ocean.

27 It's largely that last part of the salmon's life cycle that makes the CCA's diversion so
28 harmful. As you might imagine, a salmon's lifecycle depends on its ability to pass freely
29 downstream during its youth and upstream during its final months. Many of the structures that
30 humans build into streams interfere with fish passage. Dams are the most common example—
31 obviously, if you build a dam in a river, salmon and other fish are going to have a hard time getting
32 around it—but they're by no means the only type of structure that impedes fish passage. In fact, the

1 type of stoplog weir that the CCA constructed can, in many circumstances, impede fish passage
2 almost as much as some dams.

3 To understand why, we need to consider the structure and physics of the weir. Based on my
4 observations, the width of the Coho River at the point of the diversion is approximately 50 feet. The
5 weir consists of two adjacent wooden walls extending about 20 feet each from opposite sides of the
6 river; thus, there's a gap of about ten feet in the middle of the river through which the river
7 continues to flow. Finley showed me the diagram of the weir in the CCA's March 2018 newsletter,
8 which is shown in Exhibit 3. Based on my observations of the weir itself, that diagram is an
9 accurate representation.

10 Since the weir blocks 40 feet of the river's 50-foot width, that leaves about ten feet through
11 which salmon could pass while swimming upstream. That may seem like a lot, and, in fact, many
12 people who construct weirs do so under the mistaken belief that they'll still allow easy fish passage.
13 The laws of physics, however, say otherwise. When the water in the river is forced to flow through
14 a narrower space, the velocity of the water increases. It's sort of like what happens when you put
15 your thumb on the end of a garden hose: the water has to pass through a smaller space, and as a
16 result, it comes out faster. Though it's not going quite as fast as water out of a hose, that's
17 effectively what's happening in the Coho River as a result of the diversion.

18 Why does that matter? Well, recall the final stage of a salmon's life cycle. At that stage,
19 when an adult salmon is swimming upriver, it's near the end of its life, and its physical resources
20 are often nearing depletion. That's especially true of the spot on the Coho River where the CCA
21 built its diversion, which is fairly far inland and somewhat close to many of the ultimate spots
22 where salmon will spawn; put differently, when salmon pass by that spot, they're nearing the end of
23 their journey. They're already swimming upstream, and when they encounter the increased flow
24 caused by the weir, many of them simply won't have the energy to make it past the structure. Those
25 salmon ultimately die without spawning. Based on my observation of the CCA's diversion—and, in
26 particular, my visual comparison of the velocities of the water leading up to the diversion and of the
27 water flowing through the diversion itself—it is my expert opinion that the diversion has had, and
28 will continue to have, a harmful effect on migrating salmon in the Coho River, especially upstream
29 from the diversion itself. Based on what I saw, that sort of effect is inevitable.

30 Of course, being a scientist, I needed to verify my conclusion. In an ideal world, my
31 colleagues at the NRDC and I would conduct a formal study aimed at determining the total
32 population of fish in that segment of the Coho River. Here, however, that approach didn't make

1 sense, for at least two reasons. First, even if we could use a formal sampling method to determine
2 the *current* population of fish in the river, we still wouldn't have a *prior* population figure to which
3 I could compare it. (As far as I'm aware, the last time someone formally sampled the population of
4 fish in that segment of the Coho River was ten years ago, when I met Finley; that's too long ago to
5 be of any real use.) Second, neither Finley nor the NRDC has the time or resources to conduct
6 formal sampling, which is quite expensive and can take months or, in some cases, years.

7 For that reason, I needed to use informal methods to estimate the precise effect of the
8 diversion on the population of salmon in that segment of the river. Ultimately, I decided that I
9 would simply interview Finley and any other fisherperson I could find in that area of the Coho
10 River. As far as I'm aware, that method has never been used in any scientific studies regarding fish
11 population, but, given the constraints on my time and resources, I wasn't left with much choice. I
12 started with Finley, who told me that Finley's average catch had declined by between 40 and 50
13 percent since the installation of the stoplog weir. After talking with Finley, I hiked about a mile or
14 two upstream, where I encountered another fisherperson. That fisherperson told me that she had
15 been fishing on the Coho River for several years and that she had noticed a significant decline in her
16 catch over the last few months, which seemed to correspond with the installation of the diversion.
17 When I asked her to estimate how much her catch had declined, she said, "I don't know—I'm
18 maybe catching two-thirds of the fish that I used to?" I don't recall her name or anything else she
19 said. (I lost the handwritten notes I took during my interviews; I admit, I'm sometimes a bit careless
20 with my research materials!) I kept hiking for another few hours in the same area, but I didn't
21 encounter anyone else.

22 Based on all of that evidence, I came to two conclusions. First, based on my scientific
23 knowledge, experience, and visual observations of the diversion, I concluded that the CCA's
24 stoplog weir has a harmful effect on the population of salmon in the Coho River. Second, based on
25 the same information as well as my interviews with Finley and the other fisherperson, I concluded
26 that the magnitude of the effect is between 33 and 50 percent of the fish population that existed
27 before the installation of the diversion.

28 I've heard that the CCA is suggesting that climate change is the true cause of the decline in
29 the fish population. That's a possibility, but it's a remote one. Climate change certainly poses
30 serious risks to salmon, but based on my review of publicly-available data and my personal
31 observations of the Coho River, I found no evidence of any ecologically significant changes in the
32 last year or so that could be attributed to climate change; this segment of the river's temperature, for

1 example, has remained fairly constant over that time. There conceivably could be factors outside
2 this segment of the river that have harmed the incoming salmon, but, based on my analysis in this
3 case, I really can't speak to that possibility.

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

9 *s/Campbell Castillo*
10 Campbell Castillo
11 Dated: October 22, 2018

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15 Subscribed and sworn to me this 22nd day of October, 2018.

16 *s/Barbara Rust*
17 Barbara Rust
18 Dated: October 22, 2018

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AFFIDAVIT OF SANDY FELDMAN

1
2 My name is Sandy Feldman. I'm 28 years old, and I'm the owner, along with my dad
3 Taylor, of Feldman Seed Farm. Our farm is just downriver from the Coho Community Association.
4 Our farm has been producing seeds for nearly one hundred years and four generations. My great-
5 grandparents started this farm just after the Great Depression and it's been in the family ever since.
6 To be honest, I never thought about doing anything different. I love the land that I grew up on and
7 the independence that a farmer has, pulling a living straight out of the soil. It's pretty amazing
8 when you think about it!

9 When the business first started, our mainstay was pasture grass seed for ranchers, but the
10 business has grown and diversified greatly since then. Some of our most profitable crops now are
11 golf course grass seeds like Bentgrass, Ryegrass, and Zoysia. We're in the right place for that sort
12 of business: grass seed is produced on nearly 1,500 grass seed farms in Oregon and is Oregon's
13 fifth largest agricultural crop at an estimated value of \$449 million annually. Statewide, grass seed
14 is grown on nearly 400,000 acres and the seeds are sold all over the world. My business is a
15 relatively small family farm with about 1200 acres of arable land. We also produce a wide variety
16 of flower and garden seeds.

17 Unfortunately, when I graduated from high school in 2009, the business was struggling
18 pretty badly because of the great recession. In fact, my parents were facing foreclosure. I had good
19 grades and played a pretty good soccer game, though, so as a result, I was given a very generous
20 scholarship to attend the University of Oregon. I earned a dual degree in agricultural business and
21 plant science. I took over the day-to-day operations of Feldman Seed Farm when I graduated in
22 2013. I immediately started making changes to update the farm and give us a leg up against our
23 competitors. Among other things, and using the farm as collateral, I took out a federally subsidized
24 agricultural loan from a local lender called Northwest Farm Services, and I started investing in
25 innovation. I built a state-of-the-art seed cleaning facility and a cutting-edge seed coating system.
26 Coating the seed with nutrients prior to planting helps ensure that more seeds germinate and reach
27 their yield potential faster.

28 I'm really going to need our business to continue to succeed over the next few years in order
29 to pay off the loan. Otherwise, we might lose the farm altogether.

30 For now, things are looking alright. Still, although the economy isn't as bad as it was when I
31 took over the business, our finances are still pretty tight. I'm doing my best to keep up with the loan

1 payments, but it can be hard. This is a cut-throat business with a thin profit margin, after all. It
2 wouldn't take much to for the whole thing to go under.

3 All that in mind, I'm quite concerned about the water diversion that the Coho Community
4 Association has built. I've spoken with lots of other farmers in Cascade County—my neighbors
5 Connor Zall and Elizabeth Esparza also operate farms—and they share my concern. Each of our
6 farms, which I've visited and seen for myself, operate in the essentially the same way: without
7 irrigation, our businesses don't happen.

8 Our irrigation rights allow us all to pull water from the Coho River, but because the salmon
9 that live in the river are protected by law, if the salmon population or water levels drop below a
10 certain level, I don't get any water. And if I don't get any water, I can't grow seeds—end of story.

11 That's exactly what happened back in 2015, which, I remember, was a particularly bad year
12 for salmon. Sometime that year I got a letter from some government agency (which I've since lost)
13 informing me that the weather conditions that year had led to the death of a huge number of salmon
14 in the Coho River, and that as a result my fellow farmers and I needed immediately to stop drawing
15 water from the river. I got a phone call from someone at the agency a few days later to confirm that
16 I had done so, which, of course, I had. (I always follow the law!) As a result, I lost about half of
17 my 2015 crop. It was horrible! Elizabeth and Connor told me that the same thing had happened to
18 them, too.

19 As you can probably imagine, then, the root of my concern is that the CCA's river diversion
20 might lead to a similar sort of loss in the future. Since they installed it, I've noticed a very small
21 reduction in the level of the Coho River near our farm. I'm not a hydrologist or anything like that,
22 but so far as I can see with my own two eyes, it's a little lower than it used to be. It hasn't had an
23 effect on our farming, but it's certainly possible that the effects of the diversion combined with
24 another bad-weather year will lead to a repeat of 2015. (I can't say that it necessarily will, though.)
25 That's not counting whatever effect the diversion will have on the salmon in the river. If the
26 diversion leads to a reduction in the number of salmon, that also could have disastrous implications
27 for our farms. (Again, though, I don't know that it inevitably will.)

28 Last time I saw Rayyan Adeeb, the president of the CCA, I was at Cartwright's Market
29 sometime in early 2018. Rayyan was standing in line right in front of me. When Rayyan saw me,
30 Rayyan looked kind of excited. Rayyan said, "Hey, I think the Coho Community Association is
31 probably going to be buying a bunch of seed from you real soon!" When I asked what kind of seed
32 and what it was going to be for, Rayyan pulled me aside and whispered that the Coho Community

1 Association was working on a plan to put in a golf course and that they were thinking of using
2 Bentgrass seed for the fairways. That didn't seem right to me. After all, it's too dry here in the
3 summer to maintain golf course grass without a great deal of water, which is why most of our
4 farm's golf course customers are elsewhere in the state. I remember mentioning as much to
5 Rayyan; in response, Rayyan just shrugged and grinned. After a moment, though, it occurred to me
6 that they were probably going to draw water from the Coho River to water the golf course. That's
7 when I really lost it and said some things I probably shouldn't have. I mean I've never really liked
8 Rayyan, or any of the rest of those people up in the CCA, who apparently thought nothing of
9 moving here and building themselves big, fancy homes in the middle of the wilderness. This was
10 too much, though -- the amount of water they'd need to maintain a golf course would, for the
11 reasons I've already explained, threaten my entire livelihood as a farmer. I don't remember exactly
12 what I said, but it was something about wishing that Coho didn't exist at all. Rayyan got pretty
13 tight-lipped at that point and hurried out of the store.

14 No one from the CCA ever came in for seed, but Finley MacPherson told me that they really
15 are putting in a golf course. I've known Finley for as long as I can remember. Finley has been a
16 really good friend of my dad's since they were in their early 20s. Unlike me, my dad is an avid
17 fisherman. I'm pretty sure it was actually my dad who turned Finley on to fishing back in the day,
18 and my dad still fishes with Finley most every week. They often stop in at the farm to share some of
19 their catch with our workers, which I appreciate more than I can put into words.

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

25 *s/Sandy Feldman*
26 Sandy Feldman
27 Dated: October 22, 2018
28

29 Subscribed and sworn to me this 22nd day of October, 2018.

30 *s/Barbara Rust*
31 Barbara Rust
32 Dated: October 22, 2018
33

AFFIDAVIT OF RAYYAN ADEEB

1
2 I'm Rayyan Adeeb. I'm 51 years old, and I'm President of the Coho Community
3 Association, where I've also lived for about the last fifteen years. (We call it the "CCA" for short.)
4 One of my jobs as president is to put together a little monthly newsletter for the Coho Community,
5 just to keep everyone who lives in the area up-to-date about local news and CCA activities.

6 Like a lot of us here, I moved to Coho to escape big city life. I was born and lived for most
7 of my life in Rowe, Oregon. I graduated from Burrough High School, went on to get my bachelor's
8 degree in history from the University of Oregon, and then returned to Burrough High to take a job
9 teaching American history. I'm definitely a history nerd, and it's been my lifelong passion to use
10 the lessons of the past to illustrate the concept of historical contingency to my students: things
11 didn't *have* to turn out the way they ultimately did! In keeping with that theme, I try to make clear
12 to my students that we're not unavoidably consigned to live in an environment that's being slowly
13 ravaged by pollution; every year, I assign a final project in which I ask my students to analyze a
14 recent environmental issue—and, in particular, to explain how the issue might've turned out if the
15 people involved had acted differently.

16 As you might've guessed, I also consider myself a lover of the environment. In Rowe,
17 though, my opportunities to enjoy the outdoors were fewer and farther between than I would've
18 liked. So, when I heard back in 2004 that Coho High School was looking to hire a history teacher, I
19 jumped at the chance. My family and I packed up our things and moved out there as fast as we
20 could. Coho is a beautiful little town in Cascade County and is situated about where the mountains
21 meet the high desert. There's skiing, hiking, fishing, and basically every other outdoor activity you
22 could conceive of within 15 minutes of our neighborhood. It's really great! My spouse's only gripe
23 when we got there was that the nearest golf course was about an hour and a half away, but my
24 spouse got used to that pretty quickly. Still, my spouse would be pretty happy if we were to get a
25 golf course near our neighborhood. (For the record, I'm not a golfer. To be honest with you, I think
26 it's sort of a boring sport!)

27 Speaking of our neighborhood, what a place to live! The neighborhood itself is on a
28 beautiful little street situated almost right next to the Coho River. We've also got a view of Mount
29 Randolph from our backyard, which, in my opinion, is one of the best parts of living there.
30 Especially because our house backs up to a wooded area with a couple of trails and plenty of
31 wildlife, I've felt much more connected to the land and to the environment than I ever have before.
32 There's really no substitute for being there, I suppose!

1 When we arrived there back in 2004, our neighborhood was still pretty new. In fact, we were
2 one of the first families to buy a house in our development. Pretty soon, it became clear that all of
3 us new homeowners were going to need to band together to make sure our neighborhood remained
4 livable without leaving too big of a footprint. I decided to take the initiative, and, well, voilà! The
5 Coho Community Association was born. We're a legally-recognized neighborhood association set
6 up under Oregon law. At our first meeting, I was elected President of the CCA, and I've held the
7 position ever since.

8 Back then, we had pretty modest goals—things like starting a neighborhood compost,
9 replacing our trash cans with “wildlife-proof” containers, that sort of thing. We also emphasized
10 maintenance of the hiking trails around our properties. Our attitude has always been that we're
11 stewards of the land around us; after all, I moved out to Coho to be closer to nature, and I want to
12 share that experience with as many other folks as possible. After a few years, we were getting so
13 many visitors that we decided to use funds from the CCA to add a new hiking trail that wound down
14 along the Coho River. It's one of the most beautiful areas in our region, and I hope that
15 experiencing it will impact visitors the way it has my family and me.

16 Sometime in 2012 or 2013, though, that started to change: around that time, wildfire season
17 started posing an increasingly serious threat to our neighborhood. Out here in Cascade County,
18 wildfires have always been a fact of life, especially in the late summer months. By that time,
19 enough of the landscape has become dry enough that even a small spark—whether from lightning, a
20 carelessly-discarded cigarette, really *anything*—can ignite a blaze that'll consume acres and acres of
21 forest. The difference, so far as I can tell, has been that the dry season has been getting drier and
22 longer, especially over the last few years. (That, of course, is due to climate change, although I'm
23 definitely not an expert in that subject.)

24 What that means—and what my neighbors and I have seen in the years since 2012 or
25 2013—is that wildfires are burning faster, longer, and more frequently. Before then, wildfire season
26 used to mean a day or two of unusually smoky air in the neighborhood. A few years later, though,
27 we started having periods of multiple days or, more recently, a week or two when the air was too
28 smoky even to go outside. The fires were still pretty far away at that point, but, given the trend, I
29 was starting to become more and more worried. I even invited Riley Brand to give a talk at one of
30 our CCA meetings in 2016. Riley is a good friend of mine and works as a firefighter pilot with the
31 U.S. Forest Service here in Cascade County—and, for that reason, is super knowledgeable about
32 how best to prepare for wildfire season. Riley talked about how having enough water is a big issue

1 for firefighters. Riley said with how dry everything is these days water access is the biggest barrier
2 for effective fire containment. Riley also mentioned something about defense perimeters or
3 something like that, but it sounded like it would require us to redo a lot of the community
4 landscaping, so that didn't seem like a really great approach.

5 The summer of 2017 was a summer I'll never forget. We were bracing for a bad year, but
6 nobody anticipated how scary it actually was: after a week in mid-August of increasingly bad
7 smoke, we were told that the local government had declared a state of emergency and that we would
8 need to evacuate our neighborhood. Everybody in the CCA complied, but the thought of losing our
9 homes forever made us all sick to our stomachs, especially given how hard we had all worked to
10 build our community. Fortunately, we eventually were able to return. Afterward, though, a number
11 of firefighters who had battled the blaze told me the fires had come within 15 miles of our
12 neighborhood. The way the air smelled when we had left, I believed it. The smoke was so bad, we
13 couldn't even see Mount Randolph.

14 Still, I was in shock. Were we really that close to losing our homes? At that moment, I knew
15 I had to do something, but I didn't know what. I decided, then, to do some digging. I made a few
16 calls to the Oregon Department of Forestry, where I spoke with Perry Fong, and separately asked
17 Riley to put me in touch with a couple of Riley's fellow firefighters. I wanted to gather as much
18 information as I could about how the blaze got so big and what we should do about it next time.
19 Everybody I spoke to agreed, for the most part, on two things. First, at bottom, they said that
20 climate change is to blame for the worsening wildfire seasons and that there's not a whole lot we
21 can do as a homeowners' association to reverse the overall trend. Second, though, they each
22 suggested that easy access to water—which, obviously, is used to fight the wildfires—is critical to
23 containing a wildfire like the one that almost scorched our neighborhood. (I don't recall who said
24 what specifically, but I'm sure that everybody I talked to expressed those general points.)

25 All of those conversations slowly gave rise to the idea that has brought us to court: if water
26 is key to containing a wildfire, I thought, why not draw some water from the Coho River into a
27 neighborhood reservoir to protect our community? Immediately, I called Riley and Perry to run it
28 by them. Both agreed that it was a good idea; the Coho River, they said, is generally too narrow,
29 rocky, and shallow for firefighters to draw water from it directly—plus, doing so can disturb the
30 riverbed, which can cause a host of environmental problems. But, they said, if they had easy access
31 to a separate reservoir, that'd solve the problem. Plus, we residents ourselves could use the water
32 during wildfire season to spray our roofs and water down the area around our neighborhood.

1 That wasn't the end of it, though. I had one more concern, which I asked each of them
2 about: what sort of environmental impact would the project have on the Coho River itself? Riley
3 didn't feel qualified to express an opinion, but Perry assured me that a combination of something
4 called a "stoplog weir" and a "headgate" would have a minimal environmental impact. That was the
5 last thing I needed to hear! We called a meeting of the CCA in late 2017 to consider the proposal
6 and ended up hiring a contractor to develop a plan for the project. I presented the contractor's plan
7 at a CCA meeting in April 2018, and everybody agreed that it was the right thing to do.

8 Well, almost everybody. There's a local named Finley MacPherson who lives further up the
9 Coho River from our community. Let me tell you, Finley has been a pest to us almost since day one.
10 Finley has lived on the Coho for a lot longer than any of us, and my feeling is that Finley just
11 doesn't want to share the area with any "outsiders," as I've heard Finley call us multiple times.
12 That's totally contrary to our mentality—we believe that the environment belongs to everybody—
13 but Finley just doesn't want to hear it. Things really came to a head when we built the new hiking
14 trail to the south of our neighborhood, which happened to run by Finley's property on the other side
15 of the river. For a few days, our volunteer trail-building teams (myself included) heard Finley
16 yelling about how we "outsiders" were "ruining" Finley's "perfect views" and that we should all
17 just "go back to where we came from." Anyway, Finley showed up at the April 2018 meeting and
18 started ranting about how our plan would "annihilate" all of the fish in the Coho River. As calmly
19 and politely as I could, I tried to explain to Finley that we checked that with Perry, that Perry had
20 assured us that our planned diversion would have the least environmental impact of all the available
21 options and that for that reason it wasn't an issue. Finley then launched into a tirade about how
22 Finley would provide us with a series of scientific articles documenting Finley's concern, but I cut
23 Finley off. I'll admit that probably was more abrupt than I should've been, but we'd already done
24 our due diligence!

25 Since it went in, the diversion and neighborhood reservoir have been a big success. The map
26 shown in Exhibit 1 accurately depicts the position of the diversion relative to the CCA and Finley's
27 property, though it isn't to scale. The summer of 2018 was, fortunately, not as scary a wildfire
28 season, so we didn't end up needing the reservoir. Still, wildfires are only going to get worse, and,
29 like I said, it's better to be safe than sorry. We have used some of the excess water to rejuvenate a
30 couple of small green spaces. I mean, it's not being used for anything else, is it?

31 I also know that there is talk that a new golf course is going in near our neighborhood and
32 that the water from the reservoir will be used for it. I'll admit that we were once contemplating that,

1 but as far as I know, that isn't part of the plan. I also know that Sandy Feldman claims that I talked
2 to Sandy about golf course seeds, but I was talking about flower seeds for the new butterfly garden
3 we're putting in around the Coho Community Library. And anyway, Sandy was incredibly rude to
4 me. Sandy told me, "I wish Coho Community Association would magically disappear in a puff of
5 smoke." I'm really sorry if our diversion has affected the population of fish in the Coho. I don't
6 know one way or the other whether it has, but if it did, I can't imagine it's a very big one. The
7 bottom line is that we need the reservoir to keep our homes safe and we don't really have any other
8 option.

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

14 *s/Rayyan Adeeb*
15 Rayyan Adeeb
16 Dated: October 22, 2018
17

18
19 Subscribed and sworn to me this 22nd day of October, 2018.

20 *s/Barbara Rust*
21 Barbara Rust
22 Dated: October 22, 2018
23

AFFIDAVIT OF PERRY FONG

1
2 Howdy, folks! My name is Perry Fong, and I'm a forestry scientist and researcher with the
3 Oregon Department of Forestry, or "ODF." I've worked in that role for the last eight years, and I've
4 held various other forestry positions with ODF for the previous 10 years or so. Before that, I earned
5 bachelor's and master's degrees in forestry from Oregon State University. Since then, I've
6 published a number of other academic papers on a range of topics related to forest ecology and
7 forest management, and I make sure to keep current on all of the major forestry-related scientific
8 literature. I'm also an adjunct professor at Oregon State University's College of Forestry, where I
9 teach courses in forest ecology and forest management.

10 My job at ODF focuses on pretty much every aspect of forestry. "Forestry" is a pretty broad
11 term, but, in general, it refers to the overall management of human beings' interactions with forests.
12 Of course, it doesn't take much expertise to realize what a critically important role forests play in
13 our daily lives. From the paper and other wood products we derive from their timber to their roles in
14 purifying our air, preventing erosion, and protecting our larger ecosystem—not to mention their
15 nearly limitless natural beauty—forests are, in myriad ways, an essential component of our society.
16 The harder part, however, is addressing all of those concerns in a way that meets our social and
17 economic needs, comports with our community values, and preserves our forests for generations to
18 come. With that in mind, a big part of my job involves thinking innovatively to come up with forest
19 management solutions that avoid conflicts between various stakeholders. In that regard, I regularly
20 work with members of communities across Oregon on issues related to forest management. (I have
21 to say, that's one of the best parts of my job.)

22 Especially over the last several years, an increasing part of my job has involved working on
23 issues related to wildfires. One key thing to remember is that wildfires, which have occurred
24 naturally for thousands of years, themselves play an important role in maintaining a forest's health.
25 Among other things, they return nutrients to the soil, remove threats associated with diseased plants
26 and animals, and—by burning up brushy undergrowth—give new waves of seedlings the sunlight
27 they need to flourish. For those sorts of reasons, wildfires aren't *inherently* bad. Rather, they're an
28 unavoidable, naturally-occurring phenomenon, at least at some level.

29 The problem we're seeing is that climate change and other human factors have caused the
30 scope, duration, and intensity of wildfires to spike dramatically, especially over the last few
31 decades. Hotter temperatures resulting from climate change and the drier conditions they produce
32 mean that there's plenty of fuel for wildfires, which, as a result, can spread abnormally fast. They're

1 much harder to control and pose an increased risk to humans living in their path. It's not just climate
2 change, though; humans have, in many ways, contributed more directly to wildfires as well. Some
3 human factors are pretty intuitive, like fires caused by errant cigarette butts or improperly-doused
4 campfires. As humans have encroached further and further into forests, those sorts of incidents
5 become more prevalent. Other human factors, though, are subtler. For example, federal and state
6 governments began to combat wildfires aggressively earlier in the 20th century. The immediate
7 benefits of those fire suppression efforts were that the fires burned smaller areas than they would
8 have if left alone, but this approach had harmful long-term effects. The suppression of natural fires
9 led to thicker, more fire-prone forests, which, in turn, has contributed to the larger and less
10 controllable fires that we see today.

11 For all of those reasons, my belief—which is consistent with the scientific consensus—is
12 that the massive wildfires that now are a familiar phenomenon during our summer months aren't
13 going away any time soon, and will almost certainly get worse before they get better. Earlier this
14 year, for example, researchers at the University of Idaho and Columbia University determined that
15 climate change led to fires that burned an additional 16,000 square miles, which, but for the effects
16 of climate change, would have been left untouched. It's difficult to say when those sorts of
17 increases will level off, but the excess of fuel caused by last century's more aggressive firefighting
18 efforts is largely still there, and the time it'll take to return to normal likely will be measured in
19 years, if not decades. During that time, of course, climate change will only cause the planet to
20 become hotter and drier, which will reinforce the trends we're already seeing. That's not to say we
21 shouldn't try to curb those trends, but in the near term, it's going to be practically impossible to
22 eliminate them entirely.

23 In late 2017, I got a call from Rayyan Adeeb, the President of the CCA, on this very topic.
24 Rayyan wanted to know what was causing the wildfires that were threatening the Coho Community
25 Association, and what Rayyan could do to help stop them. When I explained to Rayyan that climate
26 change and past firefighting practices have contributed to the current state of the region's wildfires,
27 Rayyan seemed a bit crestfallen and asked, "Well, is there anything at all that we can do?" I wanted
28 to be helpful, so, because persistent dry conditions are the root of the problem, I suggested, "Well,
29 ultimately, it'd be helpful to find another water source and use it to combat the dryness in and
30 around your neighborhood, especially during the summer months. I can't really advise you on the
31 specifics, but what about the Coho River?" Rayyan seemed interested in that idea and told me that
32 Rayyan would get back to me.

1 A few days later, Rayyan called me back. “I’ve thought about your advice,” Rayyan told me,
2 “and we’re thinking that we’re going to draw water from the Coho River into a community
3 reservoir near our neighborhood. Would that work?” To be honest, I felt a little like a deer in the
4 headlights. I couldn’t render an opinion on a hypothetical reservoir without knowing any of the
5 specifics. At the same time, I didn’t want to be completely unhelpful, so, consistent with my
6 scientific knowledge and experience, I replied, “Yes, that sounds potentially like the right solution.
7 For a local community like yours, combating dryness in your surrounding area is often the only
8 practical way in which to reduce the risk of wildfire.” I made sure to qualify my opinion, though. In
9 particular, I remember mentioning the potential ecological risks associated with that sort of project:
10 “Be careful,” I told Rayyan, “because a project like that inevitably will have an impact on the
11 river’s ecosystem.” “Yes, we’re working on that,” Rayyan replied and abruptly hung up the phone.

12 I can’t say one way or the other whether the specific diversion that the Coho Community
13 Association installed will have a negative effect on the population of fish in that part of the Coho
14 River; I’ve not actually visited the diversion, nor have I done any specific analysis on its effect on
15 the surrounding ecosystem. Based on what Rayyan told me about the project, though, it’s possible
16 that the reservoir will have an indirect positive impact on the local fish population. The ecosystems
17 of forests and rivers are inextricably intertwined, and oftentimes a decline in one will lead to a
18 decline in the other. Based on my knowledge of forest ecology and experience working with ODF,
19 devastating wildfires can lead to landslides, debris flows, and erosion that are detrimental to fish
20 habitats; if the CCA’s reservoir prevents those effects, that’s a good thing, and I’m sure the
21 wildlands firefighters would appreciate having another source of water. Still, in the long run,
22 wildfires can have a positive impact on fish habitat by enriching the habitats in the streams in which
23 the fish live. Again, I can’t opine on the positive or negative effects of this specific project.

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

29 *s/Perry Fong*

30 Perry Fong

31 Dated: October 22, 2018

32
33

1 Subscribed and sworn to me this 22nd day of October, 2018.

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4

5

s/Barbara Rust

Barbara Rust

Dated: October 22, 2018

AFFIDAVIT OF RILEY BRAND

1
2 My name is Riley Brand. I'm a 25-year career aerial firefighter with the U.S. Forest Service.
3 I primarily work in the Pacific Northwest, and in recent years I've been spending a lot of time
4 firefighting in and around Cascade County and Mount Randolph. Having done this job for so long,
5 I've been able to notice a dramatic increase in devastating wildfires in the area. Examples include
6 the "Blade Fire," which burned 12,000 acres in 2015, and the "Wilber Bar Fire," which burned
7 19,200 acres in 2017. That fire came within 30 miles or so of the Coho Community. Similar fires in
8 recent years have burned through communities like Coho, destroying property, injuring or killing
9 livestock and pets, and even killing people.

10 The climate is so dry and there are so few water sources that it's really difficult to combat a
11 fire once it starts. Every year it's seemed like there have been more fires that have burned hotter and
12 longer, consuming more and more acreage. That, and more and more people are building homes in
13 isolated areas, smack dab in the middle of the wilderness, trying to reconnect with nature and all, I
14 guess. It's a sure bet that both of these trends will continue, which is why I invested some of my
15 retirement savings in a Pacific Northwest company that builds helicopter scoopers for firefighting.
16 Based on my personal observations over that last several years, I've prepared a map showing recent
17 fires around Cascade County, which is shown in Exhibit 2.

18 Back in 2016, my good friend Rayyan Adeeb asked me to come speak to the Coho
19 Community Association (the "CCA," it's called) about the threat of wildfires and how to prevent
20 them. During that talk, I focused on a number of precautions. One of the most important precautions
21 for communities like Coho, as well as individual homeowners, is to maintain a defensible perimeter
22 around all properties. This consist of a 100-foot wide perimeter where the grass is kept short, low
23 branches are removed from trees, trees and shrubs are widely spaced, and all dry combustible
24 materials are removed. Additionally, people have to be careful not to operate motorized vehicles
25 near dry or forested areas during the summer because they can give off sparks that can quickly
26 ignite dry materials. This includes mowers and ATVs or all-terrain-vehicles.

27 I repeated this information to Rayyan when Rayyan called me after the Wilber Bar Fire of
28 2017. I also said that having enough water available to fight fires can make a really big difference.
29 So when I heard about the CCA's plans to build the community reservoir, I was thrilled. I thought
30 we might finally be able to make a difference in this area and keep people and their properties safe.
31 Unfortunately, though, as far as I know, no one from the CCA consulted with firefighting experts
32 about the reservoir that they built. In order for a reservoir to be useful to aerial firefighters, it has to

1 meet some pretty precise specifications. I can't say definitively one way or the other whether the
2 reservoir that the CCA built meets these standards, but from the look of it, though, it seems like it
3 probably does.

4 To get an idea of just how important the CCA's reservoir is, you need to know a little bit
5 about aerial firefighting. In a nutshell, aerial firefighting is the use of airplanes and helicopters to
6 combat wildfires. We do so in two ways. "Water bombers" are aircraft fitted with tanks that can be
7 filled with water on the ground at an air tanker base. "Scoopers," on the other hand, are airplanes
8 and helicopters that can skim water from lakes, reservoirs, or large rivers mid-flight and drop the
9 water on an active fire. Over the course of my career, I've flown both types of aircraft, and I have
10 experience fighting fires in both airplanes and helicopters. Most scoopers carry between 600 and
11 1600 gallons of water at a time. Scoopers are really helpful in rural areas—including Cascade
12 County—where flying back to an airbase for refills takes too much time. Scoopers are an ideal
13 solution where you need to launch high volume attacks on wildfires, but they can only be used
14 when there's a water source nearby for scooping.

15 What sort of water source do you need for scooping? Well, for what may be obvious
16 reasons, the water source needs to be relatively open and pretty large for the scooper to have time to
17 descend, skim, and climb out with enough water. Scoopers can sometimes scoop from rivers, but
18 only if there's a section of the river that's long enough, deep enough, and open enough for the
19 scooper to descend and ascend safely. And, let me tell you, that ain't the Coho River: by the time
20 the river gets to Cascade County, it's too narrow and there are too many natural obstructions along
21 the riverbank for scoopers to use it safely as a water source. Plus, even if there were a section of the
22 river that was open enough for a scooper, we still might not want to use it: the process of a scooper
23 drawing water from a river can harm fish by stirring up river beds and destroying spawning areas.
24 I'm not a biologist, though, so I can't really speak to the overall magnitude of that effect.

25 It's also super important for the water source to be close to the area at risk of wildfire. This
26 is an extremely dangerous line of work, so anything that makes a firefighter's job easier is also
27 going to help save lives. On average, over 25 percent of wildland firefighter fatalities involve
28 aviation crashes. These usually result from collisions with objects or other aircraft; mechanical
29 failure; pilot loss of control; failure to maintain clearance; and encounters with hazardous weather.
30 All of these risk factors are increased anytime a pilot has to travel a long distance in an
31 unpredictable, fiery atmosphere. The majority of wildland firefighter fatalities happen on the

1 ground, though. There will always be a need for traditional firefighters to help combat wildland
2 fires, but the more we can use air attack strategies, the better it'll be for firefighter safety.

3 Like I said, I've been working in the rural areas in and around Cascade County for the past
4 several years. Right now, we use mostly on-the-ground firefighting techniques. We have access to
5 one water bomber that can provide air support, but the nearest air tanker base is in Madison County,
6 which is about 200 miles away. Traveling that far to refill the airplane means that our air attack
7 efforts are inefficient, costly, and dangerous. We used to have access to a second water bomber, but
8 that plane crashed on its way back to refill at the tanker base. Airplane and helicopter scoopers are
9 smaller aircraft that are cheaper to maintain and generally have a longer lifespan than bombers.
10 We've got access to about a dozen scoopers, most of which are airplane scoopers, but we've never
11 been able to use them in this region due to a lack of scoopable water sources.

12 It's true that there are alternative strategies we could be looking at. Aircraft can also be used
13 to carry flame retardant rather than water, which obviously wouldn't require a reservoir for refilling.
14 But those aircraft would still have to travel a long way to refill at the tanker base—plus lots of
15 people have very understandable concerns about us dumping chemicals all over the forest.

16 I suppose the state could also build an air tanker base closer to this area, which would mean
17 that our water bomber wouldn't have to travel so far. But that would lead to a lot of additional
18 expense. We'd have to hire people to man the base, a lot of natural land would have to be cleared in
19 order to build runways for the aircraft to land, and the base would still have to get water from
20 somewhere. Plus, for a tanker base to be worth it, we would probably need to purchase or rent
21 several more large water bombers in addition to the one we have now. For the same cost as one
22 water bomber, we could probably buy several helicopter scoopers, and because these are the most
23 versatile tool for aerial firefighting, I'm convinced that they're the better bet for fighting fires in and
24 around Cascade County.

25 All of that is probably doable, but, in my opinion, the CCA's reservoir is probably the
26 quickest, safest, most cost-efficient way to make a real difference in the wildfire risk here in
27 Cascade County.

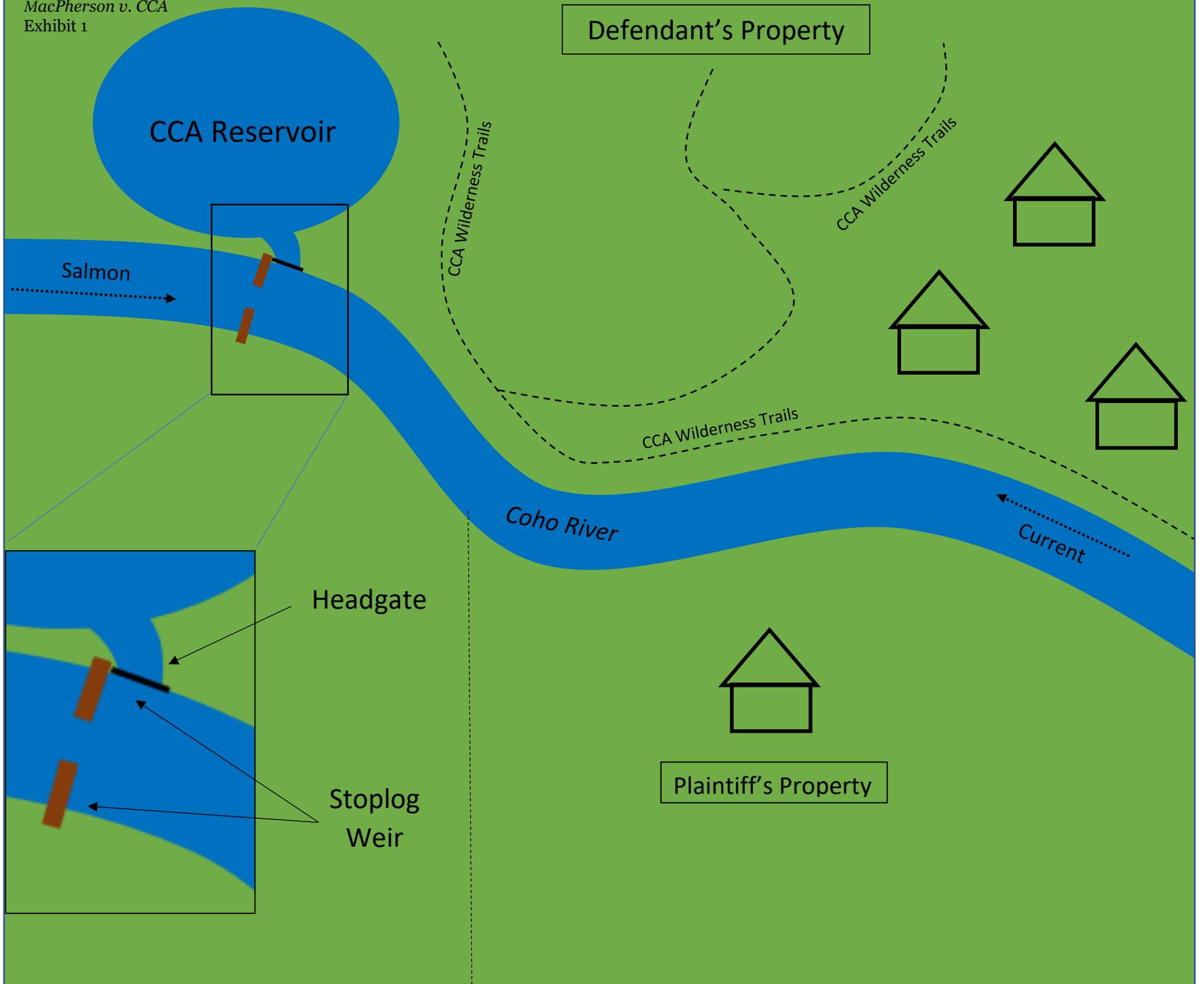
28 I hereby attest to having read the above statement and swear or affirm it to be my own. I also
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30 contain all relevant testimony, and I followed those instructions. I also understand that I can and
31 must update this affidavit if anything new occurs to me until the moment before I testify in this
32 case.

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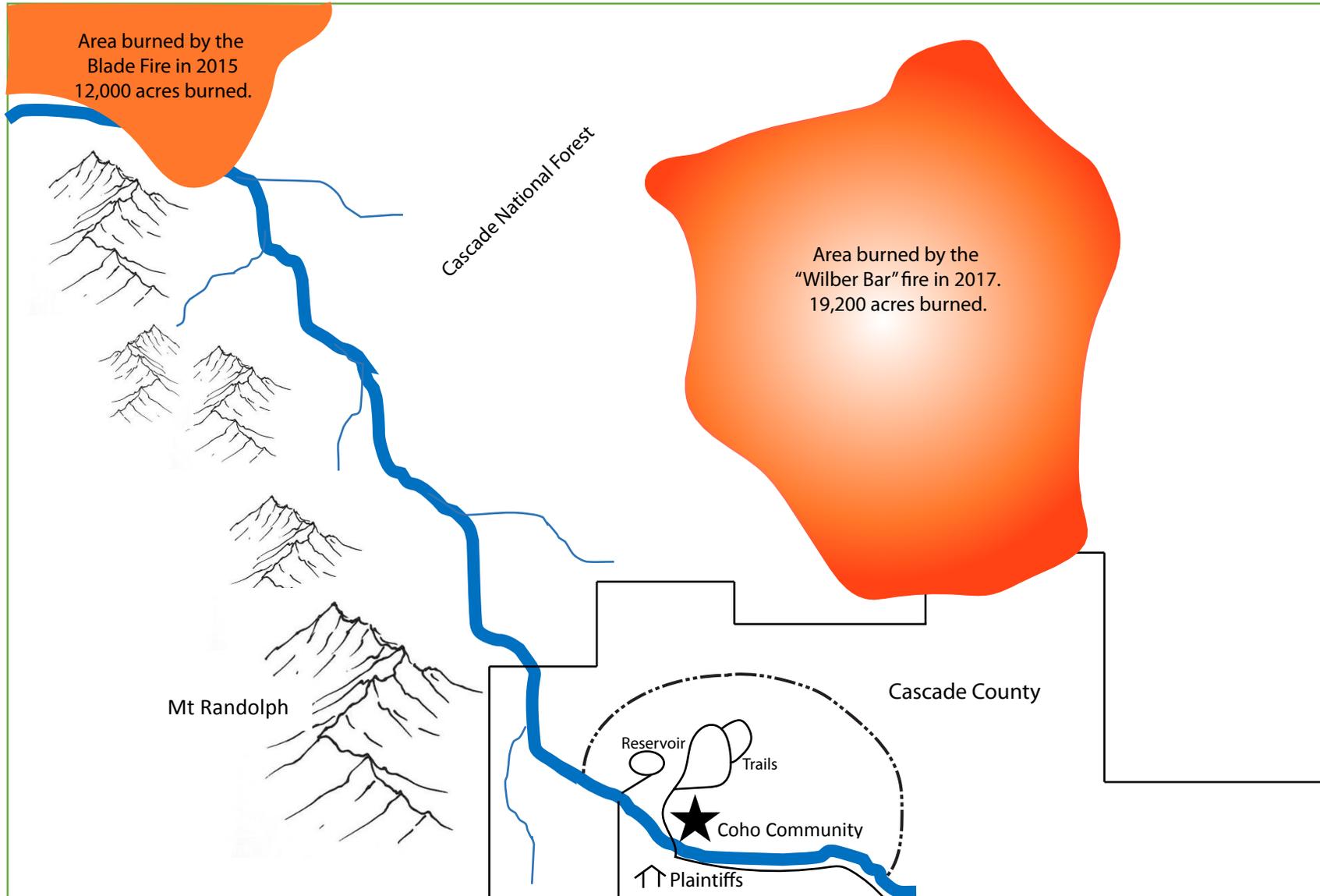
s/Riley Brand
Riley Brand
Dated: October 22, 2018

Subscribed and sworn to me this 22nd day of October, 2018.

s/Barbara Rust
Barbara Rust
Dated: October 22, 2018



Cascade County and Coho River Valley Wildfire History



COHO COMMUNITY ASSOCIATION

Monthly Newsletter

March 2018

🎵 FREE CONCERT! 🎵

Chuck Owens and the Titans of Twang will be performing a selection of old-timey country favorites at Cartwright Market on **Saturday, April 14th!**

All ages are welcome. Concert starts at 8:00 p.m. sharp!

WANT TO LEARN YOGA?

Our very own Dr. Catherine Means is not only a terrific physician—she’s also a certified yoga instructor! Dr. Means will be offering a free beginner’s yoga class at the **Coho Community Center** on the evening of **Thursday, April 26, 2018**. The class starts at **7:00 p.m.** sharp. No prior experience necessary. Hope to see you there!



INTERESTED IN GOLF?



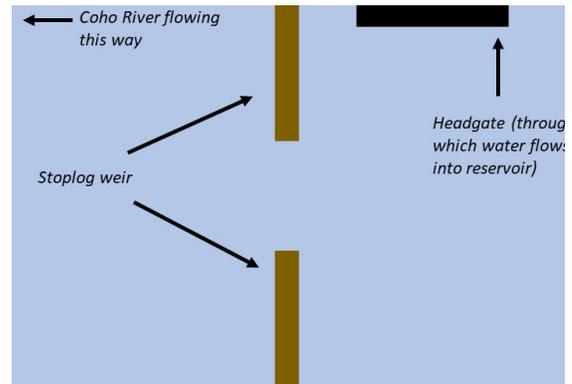
The CCA’s **Recreation Committee** is exploring a plan to build a brand-new golf course right here in Coho!

The committee is meeting on **Wednesday, April 18th at 5:30 p.m. at the Coho Community Center** to discuss the idea and how it might become a reality. All are welcome—feel free to drop by and let us know your views!

Community Alert: CCA Reservoir Planning Meeting

Dear all:

You’ll recall a few months ago we agreed to hire a contractor to come up with a plan to draw water from the Coho River to create a reservoir to combat wildfires. The contractor has finalized the plan, and will be presenting it during our **monthly meeting** on **April 10, 2018** at **5:30 p.m.** in the **Community Center**. The diversion will look something like this:



Please stop by and let us know your views; we want to make sure we’re taking everybody’s interests into account—including the potential environmental impact.

— Rayyan Adeeb, CCA President

Concerned about how to protect your home from wildfire this year? Check out the resource page on the **County Fire Prevention Tips** website for ways to mitigate fire damage if it comes close to your home.

SALMON AND THEIR HABITAT

FACTS FROM THE IUCN

(INTERNATIONAL UNION FOR CONSERVATION OF NATURE)



SALMON LIFE CYCLE

- Salmon eggs are laid in small pits (called 'redds') that are excavated in gravel-based freshwater streams by egg-bearing females.
- These nesting sites are selected because of their specific temperature, currents and oxygen levels.
- Salmon eggs hatch after about three months, although juveniles remain dependent on the yolk-sac for several weeks after hatching.
- Eventually the juveniles begin their downstream migration¹ during which time they develop a tolerance to saline waters.
- Young salmon may remain in fresh water for up to four years, before entering the ocean.
- Entry into the ocean coincides with planktonic blooms, upon which the juveniles feed.
- Older individuals may feed upon small invertebrates, squid and a diversity of marine fishes
- Depending on the species, salmon may spend between one and seven years at sea, where they continue to grow.
- Once mature, the salmon migrate back to their original hatching grounds to reproduce.
- Such migrations (which can be extremely long) use a combination of chemical, magnetic and celestial cues for navigation.
- For most species this landward migration occurs throughout the summer and autumn months, with a few species, such as Chinook, coho and chum salmon, continuing to migrate through the winter months.
- Salmon must travel continually against the current and overcome numerous threats and barriers including predators, disease and waterfalls. As a result, many salmon die during the migration, and those that survive are often bruised and battered.
- Upon arrival at the nesting site a salmon will typically spawn several times before dying.

SALMON POPULATION DECLINING

- Some salmon populations have declined significantly in recent decades.
- While human activities are largely responsible, climate change could now exacerbate or even supersede these threats, particularly in the southern part of their natural range.

PHYSICAL CHANGES TO RIVERS IMPACT SALMON NEGATIVELY

- Physical changes to freshwater ecosystems resulting from climate change will degrade and diminish available habitat, reduce reproductive success and jeopardize migration.
- Although not well understood, impacts on salmon's marine habitat could lead to temporal and spatial shifts in both their prey and predators.
- Possible changes to the timing of migration represents an important new threat.
- A reduction in flow levels will increase water temperatures further and are likely to reduce the overall habitat available to salmon.



SECTION V: THE FORM AND SUBSTANCE OF THIS CIVIL TRIAL

A. The Elements of a Civil Case

In civil lawsuit, when a person allegedly commits a wrong against another (other than a breach of contract), it is called a “tort”; a “tort” is a civil wrong committed by one person against another. The injured party (the plaintiff) may sue the wrongdoer (the defendant) in court for a remedy which is usually money damages.

B. Preponderance of the Evidence

The plaintiff must prove the plaintiff’s claims by what the law refers to as a “preponderance of the evidence.” That means that the plaintiff must persuade you by evidence that makes you believe that the plaintiff’s claims are more likely true than not true. After weighing all of the evidence, if you cannot decide that something is more likely true than not true, you must conclude that the plaintiff did not prove it. You should consider all of the evidence in making that determination, no matter who produced it.

C. Public Nuisance

In this case, the plaintiff has brought a claim for “public nuisance.” To establish a claim of public nuisance, a plaintiff must prove the following elements:

1. The existence of a right of the general public to use and enjoy land, water, or other property;
2. Substantial and unreasonable interference with that right;
3. The defendant’s culpable conduct;
4. A causal connection between the defendant’s culpable conduct and the interference; and
5. A resulting “special injury” to the plaintiff.

Interference is “substantial” if it would offend a reasonable person in the ordinary use and enjoyment of the person’s land. Interference is “unreasonable” if the gravity of the harm to the plaintiff and the public outweighs the utility of the defendant’s conduct to the defendant and the public.

As relevant in this case, a defendant’s conduct is “culpable” if it poses a foreseeable risk of harm to a third person or to the public, and is unreasonable in light of that risk.

There exists a causal connection between a defendant’s culpable conduct and its interference where the inference would not have occurred in the absence of the defendant’s culpable conduct.

D. The Legal Foundation

The below is an excerpt from *Driscoll v. Berg*, 1 P.2d 611 (Or. 1931) (cited in the Stipulations). This excerpt is NOT admissible as an exhibit but may be relied upon by attorneys at trial.

...[T]his question involves a consideration of whether the trap in question would obstruct, interfere with, or prevent gillnet fishing. [...] Several of the plaintiffs testified that at different times their nets have been caught upon the piling of the trap in question and damaged. Others of them testify that the operation of the trap prevented them from using that drift as fishing ground for gillnet fishing. As stated, on the first day of the trial a view of the waters involved herein was had by the court and test drifts were made.

[...]

The citizens of Oregon have a common right to fish in the waters mentioned in the complaint, and to deprive any one citizen of that right is to violate the state constitution. The operation of a fish trap, therefore, which deprives fishermen from fishing with gillnets in navigable waters otherwise adapted thereto is in violation of section 20, article 1 of the state constitution which commands that:

"No law shall be passed granting to any citizen or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens." *Monroe v. Withycombe*, 84 Or. 328 (165 P. 227).

E. Role Descriptions

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, Finley MacPherson. By questioning witnesses, they will try to convince the jury that the defendant, Coho Community Association, is liable by a preponderance of the evidence.

The defense attorneys present the case for the defendant, Coho Community Association. 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 also to be sympathetic. 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 and 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.

Attorneys - 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 plaintiff/defendant in this case.”

Proper phrasing in an opening statement includes:

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

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

Attorneys - Direct Examination

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

- call for answers based on information provided in the case materials;

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

Call for the witness with a formal request:

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

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

Proper phrasing of questions on direct examination include:

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

Conclude your direct examination with:

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

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

Attorneys - 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*.

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.

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**. The **defense** provides the **bailiff**.

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

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 or her performance.

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. The stopwatch cannot be a cell phone; no electronic devices are permitted (Rule 40) . Be sure to practice with it and know how to use it before the competition. Follow the time limits set for each segment of the mock trial and keep track of the time used and time left on the time sheet provided in the mock trial materials.

Time should stop when attorneys make objections. Restart after the judge has ruled on the objection and the next question is asked by the attorney. 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.

Team Manager, Unofficial Timer

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 plaintiff’s side. This unofficial timer must be identified before the trial begins and may check time with the bailiff twice during the trial (once during the 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.

SECTION 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 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 that calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 4, Unfair Extrapolation.

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

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

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

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

In cross-examination, anticipate what you will be asked and prepare your answers accordingly. Isolate all 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.

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

Rule 5. Gender of Witnesses

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’ preferred genders on the Team Roster for the benefit of judges and opposing counsel.

B. The Trial

Rule 6. Team Eligibility, Teams to State

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

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

All **regional** competitions are **Saturday, 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 early 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 consists of a **minimum of eight** and up to a **maximum of 18** students all from the same school. Additional students could be used in support roles as researchers, understudies, photographers, court artists, court reporters, 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 (see appendix) form listing the team name and all coaches and students to the Competition Coordinators at the student orientation. If a school enters more than one team, **team members cannot switch teams at any time for any round of regional or state competition.**

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

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

Rule 8. Team Presentation

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

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

Rule 11. Swearing in the Witnesses

The following oath may be used before questioning begins:

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

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

Rule 12. Trial Sequence and Time Limits

Each side will have a maximum of 43 minutes to present its case. The trial sequence and time limits are as follows:

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

*Not included in 43 minutes allotted for each side of the case. **Judges should INDEPENDENTLY score their own ballots but may confer at the end of trial. Scores need not match in terms of which is highest because each ballot rates different areas of the trial.**

**Plaintiff may reserve time for rebuttal at the beginning of 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. Timekeepers shall not use a cell phone as a stopwatch.** (No electronic devices are permitted – Rule 40). An optional unofficial timer may also be provided by the 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. Competition Coordinators may exercise their discretion if they find a complaint is frivolous or the conversation was harmless.

Rule 17. Viewing a Trial

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

Rule 18. Videotaping, Photography, Media

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

C. Judging and Team Advancement

Rule 19. Decisions

All decisions of the judging panel are FINAL.

Rule 20. Composition of Panel

The judging panel will consist of three individuals: one presiding judge, one attorney judge, and one educator/community 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 as well as the clerk and bailiff; 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. All judges receive the mock trial case materials, a memorandum outlining the case, orientation materials, plus a briefing in a judges' orientation.

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

Rule 21. Ballots

The term "ballot" refers to the decision made by a judge as to which side had the better performance. Each judge casts a ballot based on specific team members' performances: presiding judge scores overall team performances, attorney judge scores the attorneys, and the educator/community judge scores 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. A sample ballot is included in the Appendix.

Rule 22. Team Advancement

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

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

Rule 23. Power Matching

A random 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. At the state competition, as between the top two teams in the final championship round, the winner will be determined by ballots from the championship round only.

Power-matching provides that:

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

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

Rule 24. Merit Decisions

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

Rule 25. Effect of Bye, Default or Forfeiture

A “bye” 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 or his ruling on the dispute. That decision will be

recorded in writing on the dispute form, with no further announcement.

Rule 28. Effect of Violation on Score

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

Rule 29. Reporting Rules Violation – Outside the Bar

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

SECTION VII: RULES OF PROCEDURE

A. Before the Trial

Rule 30. Team Roster

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

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; No Electronic Devices

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

Rule 41. Redirect, Re-Cross

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

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

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

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

D. Closing Arguments

Rule 42. Scope of Closing Arguments

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

Explanation: a good closing argument summarizes the case in the light most favorable to your position. The 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 and synthesize what actually happened in court rather than being a rehearsed speech;
- be emotionally charged and strongly appealing (unlike the calm opening statement);
- emphasize the facts that support the claims of your side, but not raise any new facts, by reviewing the witnesses’ testimony and physical evidence;
- outline the strengths of your side’s witnesses and the weaknesses of the other side’s witnesses;

- isolate the issues and describe briefly how your presentation addressed these issues;
- summarize the favorable testimony;
- attempt to reconcile inconsistencies that might hurt your side;
- be well-organized, clear and persuasive (start and end with your strongest point);
- the plaintiff should emphasize that it has proven its case by a preponderance of the evidence;
- the defense should raise questions that show one or more elements were not proven by a preponderance of the evidence.

Proper phrasing includes:

“The evidence has clearly shown that ...”

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

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

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

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

E. Critique

Rule 43. The Critique

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

SECTION VIII. FEDERAL RULES OF EVIDENCE – MOCK TRIAL VERSION –

Oregon high school mock trial competitors will find changes. The rules of evidence now reflect the same or substantially the same rules as those found in the National High School Mock Trial Championship Rules of Evidence.

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the mock trial team to know the National High School Mock Trial Rules of Evidence 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 sections are skipped, those rules were not deemed applicable** to mock trial procedure. Text in italics or underlined represent 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.

Article I. General Provisions

Rule 101. Scope

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

Rule 102. Purpose and Construction

These Rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

Article II. Judicial Notice

Rule 201. Judicial Notice of Adjudicative Facts

- (a) This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
- (b) The court may judicially notice a fact that is not subject to reasonable dispute because it is a matter of mathematical or scientific certainty. For example, the court could take judicial notice that $10 \times 10 = 100$ or that there are 5280 feet in a mile.
- (c) The court must take judicial notice if a party requests it and the court is supplied with the necessary information.
- (d) The court may take judicial notice at any stage of the proceeding.
- (e) A party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed.
- (f) In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

Article IV. Relevancy and Its Limits

Rule 401. Definition of “Relevant Evidence”

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Rule 402. General Admissibility of Relevant Evidence

Relevant evidence is admissible unless these rules provide otherwise. Irrelevant evidence is not admissible.

Explanation/Example. Questions and answers must relate to an issue in the case. (Inadmissible in a traffic accident case:) “Mrs. Smith, how many times have you been married?”

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 404. Character Evidence; Crimes or Other Acts

- (a) Character Evidence.
 - (1) Prohibited Uses. Evidence of a person’s character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
 - (2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:
 - (A) a defendant may offer evidence of the defendant’s pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;
 - (B) a defendant may offer evidence of an alleged victim’s pertinent trait, and if the evidence is admitted, the prosecutor may:
 - (i) offer evidence to rebut it; and
 - (ii) offer evidence of the defendant’s same trait; and
 - (C) in a homicide case, the prosecutor may offer evidence of the alleged victim’s trait of peacefulness to rebut evidence that the victim was the first aggressor.
 - (3) Exceptions for a Witness. Evidence of a witness’s character may be admitted under Rules 607, 608, and 609.
- (b) Crimes, Wrongs, or Other Acts.
 - (1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.
 - (2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Rule 405. Methods of Proving Character

- (a) By Reputation or Opinion. When evidence of a person’s character or character trait is admissible, it may be proved by testimony about the person’s reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person’s conduct.
- (b) By Specific Instances of Conduct. When a person’s character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person’s conduct.

Rule 406. Habit, Routine Practice

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

Rule 407. Subsequent Remedial Measures

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.

Rule 408. Compromise Offers and Negotiations

- (a) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:
- (1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and
 - (2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.
- (b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Offers to Pay Medical and Similar Expenses

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

Rule 410. Pleas, Plea Discussions, and Related Statements

- (a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:
- (1) a guilty plea that was later withdrawn;
 - (2) a nolo contendere plea;
 - (3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
 - (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.
- (b) Exceptions. The court may admit a statement described in Rule 410(a)(3) or (4):
- (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
 - (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Rule 411. Liability Insurance (civil case only)

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or proving agency, ownership, or control.

Article V. Privileges

Rule 501. General Rule

There are certain admissions and communications excluded from evidence on grounds of public policy. Among these are:

- (1) communications between husband and wife;
- (2) communications between attorney and client;
- (3) communications among grand jurors;
- (4) secrets of state; and
- (5) communications between psychiatrist and patient.

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 testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. (*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

Any party, including the party that called the witness may attack the witness's credibility.

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

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

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

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

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

Witness responds, "yes."

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

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

Step 4: Dramatize the conflict in the statements. Remember, the point of this line of questioning is to demonstrate the contradiction in the statements, not to determine whether Mrs. Burns was in town or not.

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

"Yes."

"Yet in your affidavit you said you were *in* town, didn't you?"

"Yes."

Rule 608. Evidence of Character and Conduct of Witness

- (a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.
- (b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:
 - (1) the witness; or
 - (2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

Rule 609. Impeachment by Evidence of Conviction of Crime

- (a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
 - (1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
 - (A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and
 - (B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
 - (2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.
- (b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.
- (c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible if:
 - (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or
 - (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
- (d) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule only if:
 - (1) it is offered in a criminal case;
 - (2) the adjudication was of a witness other than the defendant;
 - (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and
 - (4) admitting the evidence is necessary to fairly determine guilt or innocence.
- (e) Pendency of an Appeal. A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

Rule 610. Religious Beliefs or Opinions.

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by Court; Purposes. The Court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

- (1) make those procedures effecting for determining the truth;
- (2) avoid wasting time; and
- (3) protect witnesses from harassment or undue embarrassment.

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

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

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

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

Cross examination should conclude with:

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

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

(c) Leading questions. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- (1) on cross-examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

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.

- (e) Permitted Motions. The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

Rule 612. Writing Used to Refresh a Witness’s Memory

If a written statement is used to refresh the memory of a witness either while testifying or before testifying, the Court shall determine that the adverse party is entitled to have the writing produced for inspection. The adverse party may cross examine the witness on the material and introduce into evidence those portions which relate to the testimony of the witness.

Rule 613. Witness’s Prior Statement

(a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness’s prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party’s attorney.

(b) Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness’s prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party’s statement under Rule 801(d)(2).

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, testimony in the form of opinion is limited to one that is:

- (a) rationally based on the witness’s perception;
- (b) helpful to clearly understand the witness’ testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

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

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

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

Rule 702. Testimony by Experts

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

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

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

Rule 703. Bases of Opinion Testimony by Experts

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

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) In General – Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.

(b) Exception. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

- (a) Statement. “Statement” means a person’s oral assertion, or nonverbal conduct, if the person intended it as an assertion.
- (b) Declarant. “Declarant” means the person who made the statement.
- (c) Hearsay. “Hearsay” means a statement that:
 - (1) the declarant does not make while testifying at the current trial or hearing; and
 - (2) a party offers in evidence to prove the truth of the matter asserted.

Explanation: If a witness tries to repeat what someone else 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, 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 That Are Not Hearsay. A statement that meets the following conditions is not hearsay:
- (1) A Declarant-Witness's Prior Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
 - (A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
 - (B) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from recent improper influence or motive in so testifying; or
 - (C) identifies a person as someone the declarant perceived earlier.

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. Prior inconsistent statements may be found in the witnesses' statements (considered to be affidavits) in the mock trial materials (see Impeachment Rule 607).

- (2) An Opposing Party's Statement. The statement is offered against an opposing party and:
 - (A) was made by the party in an individual or a representative capacity;
 - (B) is one the party manifested that it adopted or believed to be true;
 - (C) was made by a person whom the party authorized to make a statement on the subject;
 - (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
 - (E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

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

Rule 802. Hearsay Rule

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

Rule 803. Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant is Available as a Witness

The following are not excluded by the hearsay rule, regardless of whether the declarant is available as a witness:

- (1) Present Sense Impression. A statement describing or explaining an event or condition made while or immediately after the declarant was perceived it.

Example: As the car drove by Mary 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 that it caused.

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

- (3) Then-Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then-existing state of mind (such as motive, intent or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, and bodily health), but not including a statement of memory of belief to prove the fact remembered or believed unless it relates to the validity or terms of the 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) Statement Made for Medical Diagnosis or Treatment. Statements made for the purpose of medical diagnosis or treatment.
- (5) Recorded Recollection. A record that:
- (a) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
 - (b) was made or adopted by the witness when the matter was fresh in the witness's memory; and
 - (c) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

- (6) Records of Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:
- (a) the record was made at or near the time by – or from information transmitted by – someone with knowledge;
 - (b) the record was kept in the course of regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
 - (c) making the record was a regular practice of the activity;
 - (d) all these conditions are shown by the testimony of the custodian or another qualified witness; and
 - (e) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.
- (7) Absence of Regularly Conducted Activity. Evidence that a matter is not included in a record described in paragraph (6) if:
- (a) the evidence is admitted to prove that the matter did not occur or exist;
 - (b) a record was regularly kept for a matter of that kind; and
 - (c) the opponent does not show that the possible source of information or other indicated alack of trustworthiness.
- (8) Public Records. A record or statement of a public office if:
- (a) it sets out:
 - (i) the office's activities;
 - (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personal; or
 - (iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
 - (b) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.
- (10) Absence of a Public Record. Testimony that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:
- (a) the record or statement does not exist; or
 - (b) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

- (16) Statements in Ancient Documents. A statement in a document that is at least 20 years old and whose authenticity is established.
- (18) Statements in Learned Treatises, Periodicals, or Pamphlets. A statement contained in a treatise, periodical, or pamphlet if:
 - (a) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
 - (b) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.
- (21) Reputation Concerning Character. A reputation among a person's associates or in the community concerning a person's character.
- (22) Judgment of a Previous Conviction. Evidence of a final judgment of conviction if:
 - (a) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
 - (b) the conviction was for a crime punishable by death or by imprisonment for more than a year;
 - (c) the evidence is admitted to prove any fact essential to the judgment; and
 - (d) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

Rule 804. Hearsay Exceptions; Declarant Unavailable

- (a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:
 - (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
 - (2) refuses to testify about the subject matter despite a court order to do so;
 - (3) testifies to not remembering the subject matter;
 - (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
 - (5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:
 - (A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or
 - (B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

- (b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:
 - (1) Former Testimony. Testimony that:
 - (A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
 - (B) is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

- (2) Statement Under the Belief of Imminent Death. In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.
- (3) Statement Against Interest. A statement that:
 - (A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and
 - (B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.
- (4) Statement of Personal or Family History. A statement about:
 - (A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or
 - (B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.
- (6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant's unavailability as a witness, and did so intending that result.

Rule 805. Hearsay Within Hearsay

Hearsay included within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

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

SECTION IX. NOTES TO JUDGES

A. Judging Guidelines

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

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

1. Students are prohibited from making objections or using trial procedures not listed in the mock trial materials. Students should request a bench conference (to be held in open court from counsel table) if they think the opposing attorneys are using trial procedures outside the rules.
2. Students are limited to the information in the witness statements and fact situation. If a witness invents information, the opposing attorney may object on the grounds that the information is beyond the scope of the mock trial materials. The presiding judge 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.
6. Judges shall not give an oral critique at the end of the trial. At the conclusion of the trial, each judge may offer a general congratulatory comment to each team. Substantive comments or constructive criticism from judges may be included in judges' ballots, at their discretion. Judges' written comments will be given to teams in the week following the competition. (Rule 43)

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

B. Introductory Matters (Presiding Judge)

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

1. Ask each side if it is ready for trial. Ask each side to provide each judge with a copy of its Team Roster. Ask each member of a team to rise and identify himself/herself by name and role, and their team by their assigned letter designation (not by school name).
2. If video or audio recorders are present, inquire of both teams whether they have approved the taping of the round.
3. Ask if there are people present in the courtroom who are connected with other schools in the competition (other than the schools competing in this courtroom). If so, they should be asked to leave.

They may contact the sponsor's communication center to determine the location of the courtroom in which their school is performing.

4. Remind spectators of the importance of showing respect for the teams. **Silence electronic devices.** Judges may remove spectators who do not adhere to appropriate courtroom decorum.
5. Remind teams that witnesses are permitted to testify only to the information in the fact situation, their witness statements, and what can be reasonably inferred from the information.
6. Remind teams that they must complete their presentations within the specified time limits. The bailiff will signal you as the time for each segment of presentation runs out (3 and 1 minute warning and then 0 minute cards will be held up). At the end of each segment you will be stopped when your time has run out whether you are finished or not.
7. All witnesses must be called.
8. Only the following exhibits may be offered as evidence at the trial:
 - Exhibit 1 – Map of the Coho River & adjacent properties
 - Exhibit 2 – Map of Fire incursions near the Coho Community
 - Exhibit 3 – Newsletter of the Coho Community Association
 - Exhibit 4 – Facts about Salmon and their Habitat

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

At the end of the trial, the presiding judge shall ask teams if either side wishes to make a Rule 26 Violation. If so, resolve the matter as indicated in the rule. Then judges complete their ballots. **Judges shall NOT inform the students of results of their scores or results from their ballots.** The presiding judge may, however, announce a ruling on the legal merits of the case – that is, which side would have prevailed if the trial were real – being careful to differentiate that winning the trial has no bearing on which side won on performance (on judges' ballots).

C. Evaluation Guidelines

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

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

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

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

Judges should use the following evaluation guidelines when scoring:

Each judge shall assign a score of 1-10 to each team with presiding judge scoring on overall performance, clerk and bailiff; attorney-judge on attorneys; and educator-community judge on witnesses. 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:

- 1-2 pts Poor, Unprepared:** weak or unpracticed, does not meet criteria
- 3-4 pts Weak, Needs Practice:** developing the criteria, but inconsistent.
- 5-6 pts Fair, Average:** Meets the criteria some of the time
- 7-8 pts Good, Very Good:** Proficiency with the criteria nearly all of the time.
- 9-10 pts Excellent, Amazing:** mastery or near mastery of the criteria at all times

Criteria for each judge can be found on their ballots (attached here in the Appendices).

D. Penalty Points

Points should be deducted if a team member:

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

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

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

The judges' decision is final.

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

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SECTION X

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 (Civil Case)

ROUND: _____

Plaintiff Team Code _____ v. Defense Team Code _____

	Plaintiff Time Used		Defense Time Used	
	Opening: 5 minute maximum Used: _____		Opening: 5 minute maximum Used: _____	
	22:00		11:00	
W1	Direct* + Redirect* = Used** _____ + _____ = _____ >	- _____ = _____	Cross* + Recross* = Used** _____ + _____ = _____ >	- _____ = _____
W2	_____ + _____ = _____ >	- _____ = _____	_____ + _____ = _____ >	- _____ = _____
W3	_____ + _____ = _____ >	- _____ = _____	_____ + _____ = _____ >	- _____ = _____
	11:00		22:00	
W4	Cross* + Recross* = Used** _____ + _____ =	- _____ = _____	Direct* + Redirect* = Used** _____ + _____ = _____ -	- _____ = _____
W5	_____ ->	- _____ = _____	>	- _____ = _____
W6	_____ + _____ =	- _____ = _____	_____ + _____ = _____ ->	- _____ = _____
	_____ ->	- _____ = _____	_____ + _____ = _____ ->	- _____ = _____
	_____ + _____ =	- _____ = _____	_____ + _____ = _____ ->	- _____ = _____
	_____ ->	- _____ = _____		- _____ = _____
	Closing: 5 minute max. Used: _____ Unused: _____ Rebuttal: _____		Closing: 5 minute max. Used: _____ N/A N/A	
	Judges' Deliberation: 10 min. max		Time Used: _____	

*Round to the nearest 10 seconds before recording and adding together

**Round to the nearest 30 seconds before recording and subtracting from time remaining.

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TEAM ROSTER

Team Code: _____

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

MOCK TRIAL ROLE	STUDENT NAME
PLAINTIFF TEAM	
Witness – Finley MacPherson	
Witness – Campbell Castillo	
Witness – Sandy Feldman	
Attorney – Opening Statement	
Attorney – Direct Examination of Witness Finley MacPherson	
Attorney – Direct Examination of Witness Campbell Castillo	
Attorney – Direct Examination of Witness Sandy Feldman	
Attorney – Cross Examination of Defense Witness Rayyan Adeeb	
Attorney – Cross Examination of Defense Witness Perry Fong	
Attorney – Cross Examination of Defense Witness Riley Brand	
Attorney – Closing Argument	
Clerk	
DEFENSE TEAM	
Witness – Rayyan Adeeb	
Witness – Perry Fong	
Witness – Riley Brand	
Attorney – Opening Statement	
Attorney – Direct Examination of Witness Rayyan Adeeb	
Attorney – Direct Examination of Witness Perry Fong	
Attorney – Direct Examination of Witness Riley Brand	
Attorney – Cross Examination of Plaintiff Witness Finley MacPherson	
Attorney – Cross Examination of Plaintiff Witness Campbell Castillo	
Attorney – Cross Examination of Plaintiff Witness Sandy Feldman	
Attorney – Closing Argument	
Bailiff	



Presiding Judge

The Presiding Judge shall score the teams on their overall performance.

_____ v. _____
 (Team Code-PLF) (Team Code-DEF)

Round (circle one): **1** **2** **3**

SCORING: *For each criterion, score the **team as a whole** as follows.*

9-10: Excellent, Amazing: mastery or near mastery of the criteria at all times

7-8: Good, Very Good: proficiency with the criteria, nearly all of the time

5-6: Fair, Average: meets the criteria, some of the time

3-4: Weak, Needs Practice: developing the criteria, but inconsistent

1-2: Poor, Unprepared: weak or unpracticed; does not meet criteria

Criteria	Plaintiff Scoring 1-10	Defense Scoring 1-10
Theme/theory/strategy were consistent and emphasized throughout the opening, closing, and witness examinations.		
Overall presentation of the case created a clear and coherent portrayal of the events and issues, including legal issues.		
Team members stayed in character throughout the trial and were memorable in their performances , contributing to the success of the overall presentation, and never distracting from the process.		
Team members were attentive and collaborative at all times, quietly and appropriately conferring at the counsel table, and acting in support of one another.		
Team members exhibited knowledge, flexibility, and spontaneity when dealing with courtroom procedures, rules, objections, and the unexpected.		
Team members handled introductions, judge's questions, objections, and the unexpected with confidence, poise, and professionalism .		
TOTAL POINTS (up to 60 points each, NO TIES):		

Team with the best overall performance: Circle P or D

Procedural Roles (these do not impact overall team score):

Answer by Circling Yes or No for each:	
Clerk (plaintiff): Did the clerk fulfill his/her duties and contribute to the team's performance?	Y / N
Bailiff (defense): Did the bailiff's fulfill his/her duties and contribute to the team's performance?	Y / N

Please log notes on the back. These notes, along with your ballot, will be shared with the teams.

Presiding Judge Notes:

<i>Plaintiff</i> theme/theory/strategy	<i>Defense</i> theme/theory/strategy
clear and coherent portrayal	clear and coherent portrayal
all characters memorable in their performances	all characters memorable in their performances
attentive and collaborative	attentive and collaborative
knowledge, flexibility, and spontaneity	knowledge, flexibility, and spontaneity
confidence, poise, and professionalism	confidence, poise, and professionalism



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Mock Trial Ballot

Attorney Judge

*The Attorney Judge shall score the performances of the **attorneys only**.*

_____ v. _____
 (Team Code-PLF) (Team Code-DEF)

Round (circle one): **1** **2** **3**

SCORING: *For each component, score the **attorney** as follows; see the reverse for additional detail.*

- 9-10: **Excellent, Amazing:** mastery or near mastery of the criteria at all times
- 7-8: **Good, Very Good:** proficiency with the criteria, nearly all of the time
- 5-6: **Fair, Average:** meets the criteria, some of the time
- 3-4: **Weak, Needs Practice:** developing the criteria, but inconsistent
- 1-2: **Poor, Unprepared:** weak or unpracticed; does not meet criteria

	Plaintiff (PLF) Scoring	1-10 pts	Defense (DEF) Scoring	1-10 pts
	PLF Opening:		DEF Opening:	
PLF 1st Witness	PLF Direct:		DEF Cross:	
PLF 2nd Witness	PLF Direct:		DEF Cross:	
PLF 3rd Witness	PLF Direct:		DEF Cross:	
DEF 1st Witness	PLF Cross:		DEF Direct:	
DEF 2nd Witness	PLF Cross:		DEF Direct:	
DEF 3rd Witness	PLF Cross:		DEF Direct:	
	PLF Closing:		DEF Closing:	
	TOTAL POINTS FOR PLAINTIFF (up to 80 points, NO TIES):		TOTAL POINTS FOR DEFENSE (up to 80 points, NO TIES):	

Team with the best overall attorney performance: Circle P or D

Outstanding Attorney for the Plaintiff: _____

Outstanding Attorney for the Defense: _____

Note: Using notes is not a penalty by itself, though over-reliance, scripted, or distracting use can be marked down, just as a fluid, note-free performance can be rewarded.

PLAINTIFF ATTY TEAM

Opening Statement

- Provided a case overview and story
- The theme/theory of the case was identified
- Mentioned the key witnesses
- Provided a clear and concise description of their team's evidence and side of the case
- Stated the relief or verdict requested
- Discussed the burden of proof
- Presentation was non-argumentative; did not include improper statements or assume facts not in evidence
- Professional and composed
- Spoke naturally and clearly

Direct Examinations

- Properly phrased and effective questions
- Examination was organized effectively to make points clearly; questions had clear purpose
- Used proper courtroom procedures
- Handled objections appropriately and effectively
- Did not overuse objections
- Did not ask questions that called for an unfair extrapolation from the witness
- Handled physical evidence appropriately and effectively
- Professional and composed
- Spoke confidently and clearly

Cross Examinations

- Properly phrased and effective questions
- Examination was organized effectively to make points clearly; questions had clear purpose
- Used proper courtroom procedures
- Handled objections appropriately and effectively
- Did not overuse objections
- Did not ask questions that called for an unfair extrapolation from the witness
- Used various techniques, as necessary, to handle a non-responsive witness
- Properly impeached witnesses
- Handled physical evidence appropriately and effectively
- Professional and composed
- Spoke confidently and clearly

Closing Argument

- Theme/theory reiterated in closing argument
- Summarized the evidence
- Emphasized the supporting points of their own case and mistakes and weaknesses of the opponent's case
- Concentrated on the important, not the trivial
- Applied the relevant law
- Discussed burden of proof
- Did not discuss evidence that was not included in the trial presentation
- Overall, the closing statement was persuasive
- Use of notes was minimal, effective, and purposeful
- Contained spontaneous elements that reflect unanticipated outcomes of this specific trial
- Professional and composed
- Spoke naturally and clearly

DEFENSE ATTY TEAM

Opening Statement

- Provided a case overview and story
- The theme/theory of the case was identified
- Mentioned the key witnesses
- Provided a clear and concise description of their team's evidence and side of the case
- Stated the relief or verdict requested
- Discussed the burden of proof
- Presentation was non-argumentative; did not include improper statements or assume facts not in evidence
- Professional and composed
- Spoke naturally and clearly

Direct Examinations

- Properly phrased and effective questions
- Examination was organized effectively to make points clearly; questions had clear purpose
- Used proper courtroom procedures
- Handled objections appropriately and effectively
- Did not overuse objections
- Did not ask questions that called for an unfair extrapolation from the witness
- Handled physical evidence appropriately and effectively
- Professional and composed
- Spoke confidently and clearly

Cross Examinations

- Properly phrased and effective questions
- Examination was organized effectively to make points clearly; questions had clear purpose
- Used proper courtroom procedures
- Handled objections appropriately and effectively
- Did not overuse objections
- Did not ask questions that called for an unfair extrapolation from the witness
- Used various techniques, as necessary, to handle a non-responsive witness
- Properly impeached witnesses
- Handled physical evidence appropriately and effectively
- Professional and composed
- Spoke confidently and clearly

Closing Argument

- Theme/theory reiterated in closing argument
- Summarized the evidence
- Emphasized the supporting points of their own case and mistakes and weaknesses of the opponent's case
- Concentrated on the important, not the trivial
- Applied the relevant law
- Discussed burden of proof
- Did not discuss evidence that was not included in the trial presentation
- Overall, the closing statement was persuasive
- Use of notes was minimal, effective, and purposeful
- Contained spontaneous elements that reflect unanticipated outcomes of this specific trial
- Professional and composed
- Spoke naturally and clearly



Educator/Community Judge

*The Educator/Community Judge shall score the performances of the **witnesses only**.*

_____ v. _____
 (Team Code -PLF) (Team Code-DEF)

Round (circle one): **1** **2** **3**

SCORING: *For each examination, score the **witness** as follows; see the reverse for additional detail.*

- 9-10: Excellent, Amazing:** mastery or near mastery of the criteria at all times
- 7-8: Good, Very Good:** proficiency with the criteria, nearly all of the time
- 5-6: Fair, Average:** meets the criteria, some of the time
- 3-4: Weak, Needs Practice:** developing the criteria, but inconsistent
- 1-2: Poor, Unprepared:** weak or unpracticed; does not meet criteria

Scoring of Plaintiff (PLF) Witnesses		1-10 pts	Scoring of Defense (DEF) Witnesses		1-10 pts
PLF 1st Witness Name:	Direct:		DEF 1st Witness Name:	Direct:	
	Cross:			Cross:	
PLF 2nd Witness Name:	Direct:		DEF 2nd Witness Name:	Direct:	
	Cross:			Cross:	
PLF 3rd Witness Name:	Direct:		DEF 3rd Witness Name:	Direct:	
	Cross:			Cross:	
TOTAL POINTS PLAINTIFF WITNESSES (up to 60 points, NO TIES):			TOTAL POINTS DEFENSE WITNESSES (up to 60 points, NO TIES):		

Team with the best overall witness performance: Circle P or D

Outstanding Witness for the Plaintiff: _____

Outstanding Witness for the Defense: _____

Judge may use the back as a checklist rubric for the witnesses

<p>Plaintiff Witness #1 Name: _____</p> <ul style="list-style-type: none"> <input type="checkbox"/> Properly phrased and effective answers <input type="checkbox"/> Made points clearly, had purpose in responses <input type="checkbox"/> Used proper courtroom procedures <input type="checkbox"/> Did not overuse words or phrases <input type="checkbox"/> Did not maker extrapolations in responses <input type="checkbox"/> Handled physical evidence appropriately and effectively <input type="checkbox"/> Professional and composed <input type="checkbox"/> Spoke confidently and clearly <p>Direct Examination:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Contributed to team’s overall theory and goal for the case <input type="checkbox"/> Showed mastery of role and topic under questioning <p>Cross Examination:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Responded consistently with Direct Examination answers <input type="checkbox"/> Showed mastery of role and topic under questioning 	<p>Defense Witness #1 Name: _____</p> <ul style="list-style-type: none"> <input type="checkbox"/> Properly phrased and effective answers <input type="checkbox"/> Made points clearly, had purpose in responses <input type="checkbox"/> Used proper courtroom procedures <input type="checkbox"/> Did not overuse words or phrases <input type="checkbox"/> Did not maker extrapolations in responses <input type="checkbox"/> Handled physical evidence appropriately and effectively <input type="checkbox"/> Professional and composed <input type="checkbox"/> Spoke confidently and clearly <p>Direct Examination:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Contributed to team’s overall theory and goal for the case <input type="checkbox"/> Showed mastery of role and topic under questioning <p>Cross Examination:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Responded consistently with Direct Examination answers <input type="checkbox"/> Showed mastery of role and topic under questioning
<p>Plaintiff Witness #2 Name: _____</p> <ul style="list-style-type: none"> <input type="checkbox"/> Properly phrased and effective answers <input type="checkbox"/> Made points clearly, had purpose in responses <input type="checkbox"/> Used proper courtroom procedures <input type="checkbox"/> Did not overuse words or phrases <input type="checkbox"/> Did not maker extrapolations in responses <input type="checkbox"/> Handled physical evidence appropriately and effectively <input type="checkbox"/> Professional and composed <input type="checkbox"/> Spoke confidently and clearly <p>Direct Examination:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Contributed to team’s overall theory and goal for the case <input type="checkbox"/> Showed mastery of role and topic under questioning <p>Cross Examination:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Responded consistently with Direct Examination answers <input type="checkbox"/> Showed mastery of role and topic under questioning 	<p>Defense Witness #2 Name: _____</p> <ul style="list-style-type: none"> <input type="checkbox"/> Properly phrased and effective answers <input type="checkbox"/> Made points clearly, had purpose in responses <input type="checkbox"/> Used proper courtroom procedures <input type="checkbox"/> Did not overuse words or phrases <input type="checkbox"/> Did not maker extrapolations in responses <input type="checkbox"/> Handled physical evidence appropriately and effectively <input type="checkbox"/> Professional and composed <input type="checkbox"/> Spoke confidently and clearly <p>Direct Examination:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Contributed to team’s overall theory and goal for the case <input type="checkbox"/> Showed mastery of role and topic under questioning <p>Cross Examination:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Responded consistently with Direct Examination answers <input type="checkbox"/> Showed mastery of role and topic under questioning
<p>Plaintiff Witness #3 Name: _____</p> <ul style="list-style-type: none"> <input type="checkbox"/> Properly phrased and effective answers <input type="checkbox"/> Made points clearly, had purpose in responses <input type="checkbox"/> Used proper courtroom procedures <input type="checkbox"/> Did not overuse words or phrases <input type="checkbox"/> Did not maker extrapolations in responses <input type="checkbox"/> Handled physical evidence appropriately and effectively <input type="checkbox"/> Professional and composed <input type="checkbox"/> Spoke confidently and clearly <p>Direct Examination:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Contributed to team’s overall theory and goal for the case <input type="checkbox"/> Showed mastery of role and topic under questioning <p>Cross Examination:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Responded consistently with Direct Examination answers <input type="checkbox"/> Showed mastery of role and topic under questioning 	<p>Defense Witness #3 Name: _____</p> <ul style="list-style-type: none"> <input type="checkbox"/> Properly phrased and effective answers <input type="checkbox"/> Made points clearly, had purpose in responses <input type="checkbox"/> Used proper courtroom procedures <input type="checkbox"/> Did not overuse words or phrases <input type="checkbox"/> Did not maker extrapolations in responses <input type="checkbox"/> Handled physical evidence appropriately and effectively <input type="checkbox"/> Professional and composed <input type="checkbox"/> Spoke confidently and clearly <p>Direct Examination:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Contributed to team’s overall theory and goal for the case <input type="checkbox"/> Showed mastery of role and topic under questioning <p>Cross Examination:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Responded consistently with Direct Examination answers <input type="checkbox"/> Showed mastery of role and topic under questioning

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: _____

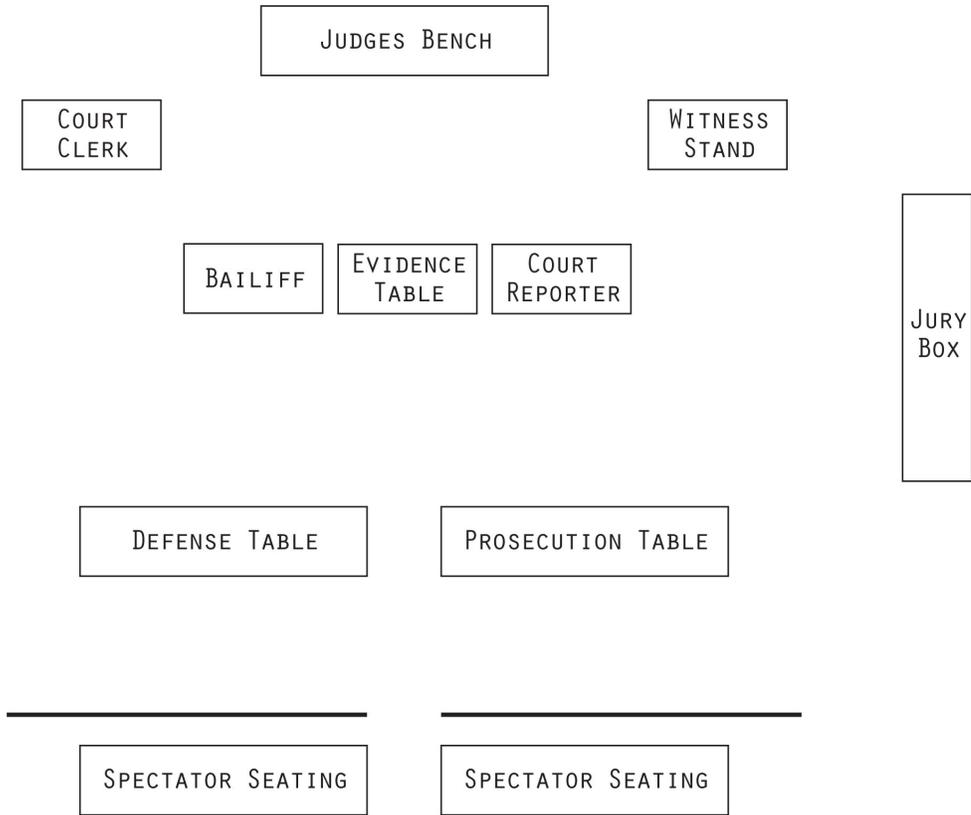
Notes From Hearing: _____

Decision/Action of Coordinator: _____

Signature of Competition Coordinator

Date /Time of Decision

DIAGRAM OF A TYPICAL U.S. COURTROOM



2018-19 OREGON HIGH SCHOOL MOCK TRIAL
Finley MacPherson v. Coho Community Association

NOTES

