CLASSROOM LAW PROJECT proudly sponsors the 32nd annual statewide

2017-2018 Oregon High School Mock Trial Competition

CLASSROOM LAW PROJECT®

STATE OF OREGON

v.

DANNIE DELUCA, defendant

~A criminal case involving a teen driver, texting, a winding road, and an accident that killed an elderly driver ~

co-sponsored by

Lewis & Clark Law School
Oregon State Bar
Oregon Trial Lawyers Association

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In the Service of Justice

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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.

CLASSROOM LAW PROJECT®

620 SW Main Street, Suite 102
Portland, OR 97205
Tel: 503-224-4424
Fax: 503-224-1721
office@classroomlaw.org
www.classroomlaw.org

November 2017

Dear Students, Coaches, Parents, Judges and Volunteers:

Welcome to the 32nd annual mock trial competition!

We are proud of this case. It brings light to Oregon's new distracted driving law. This year's fact pattern – texting while driving – is relevant, timely, and an issue for all of us. I hope this case will foster thoughtful conversations. It was authored by a committee made up of lawyers and teachers experienced in their respective professions as well as in high school mock trial.

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

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

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

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

Sincerely,

Marilyn R. Cover
Executive Director

2017-18 Oregon High School Mock Trial Competition

State v. Dannie DeLuca

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CLASSROOM LAW PROJECT

2017-2018 OREGON HIGH SCHOOL MOCK TRIAL COMPETITION

I. INTRODUCTION

This packet contains the official materials that student teams will need to prepare for the 32nd 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 16-17, 2018. The winning team from the state competition will represent Oregon at the National High School Mock Trial Competition in Reno, Nevada, May 10-13, 2018.

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

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

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

Each year, the mock trial case addresses serious matters facing society today. By affording students an opportunity to wrestle with large societal issues within a structured format, CLASSROOM LAW PROJECT strives to provide a powerful and timely educational experience. It is our goal that students will conduct a cooperative, vigorous, and comprehensive analysis of these materials with the careful guidance of teachers and coaches. This year's case offers opportunities to issues related to texting while driving.

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

II. PROGRAM OBJECTIVES

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

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

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

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

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

III. CODE OF ETHICAL CONDUCT

This Code should be read and discussed by students and their 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 17, 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

It was May 12, 2017, a Friday night and a good night for driving around, connecting with friends and meeting at the lake. That was the plan anyway. Somewhere between connecting with friends and driving to the lake, the unthinkable happened. There was a crash and someone died.

Some say that the sweet old lady should not have been behind the wheel. Others say the teen at the wheel of the other car should not have been texting. Still others say that the road was so dangerous, no one should have been driving on it at all.

Chinook County law enforcement sees it as classic and tragic distracted driving and has charged 17-year old Dannie DeLuca with manslaughter in the death of Vivian Villanueva.

B. Witness List

For the prosecution:

Aziz Atwood, teen back seat passenger
Clevonn Cole, Deputy Sheriff
Gael Garcia, Sheriff's Office Accident Reconstruction Team

For the defense:

Dannie DeLuca, teen driver and defendant
Payton Piper, teen front seat passenger
Kacey Karasi, accident reconstruction consultant

C. Charges, Punishment

The prosecution has charged the defendant with Manslaughter in the First Degree. A person commits the crime of manslaughter in the first degree if that person recklessly causes the death of another person under circumstances manifesting extreme indifference to the value of human life. (ORS 163.118)

ORS 163.118 provides in pertinent part as follows:

(1) Criminal homicide constitutes manslaughter in the first degree when:
   (a) It is committed recklessly under circumstances manifesting extreme indifference to the value of human life.

First degree manslaughter is a Measure 11 offense. Therefore, when a defendant is found guilty in Oregon, the sentence is a mandatory 120 months.

D. List of Exhibits

The exhibits in this case include the following:

1. Crash Diagram
2. Text (Mom)
3. Text (Landry)
4. Vivian Villanueva Driving Record

The exhibits follow the witness statements.

E. Introduction of Indictment, Stipulations, Jury Instructions

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

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

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

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

The Jury Instructions are immediately followed by the Witness Statements.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
CHINOOK COUNTY

STATE OF OREGON, Prosecution, vs. DANNIE DELUCA, Defendant.	No. 12CR3456 **INDICTMENT** - Secret

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

COUNT 1: MANSLAUGHTER IN THE FIRST DEGREE (A Felony; ORS 163.118)

committed as follows:

COUNT 1
The defendant, on or about May 12, 2017, in Chinook County, Oregon, did unlawfully and recklessly under circumstances manifesting extreme indifference to the value of human life, cause the death of Vivian Villanueva, another human being.

Contrary to the statutes and against the peace and dignity of the State of Oregon.

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

##

IN THE CIRCUIT COURT OF THE STATE OF OREGON
CHINOOK COUNTY

STATE OF OREGON, Prosecution, vs. DANNIE DELUCA, Defendant.	No. 12CR3456 **STIPULATIONS**

The parties stipulate and agree to the following:

1. Each of the Exhibits is authentic.

2. Exhibit 1 – Crash Diagram is an accurate and proportional depiction of the collision scene on River Road as it existed on the night of May 12, 2017.

3. Each witness in the case has waived and agreed not to assert his or her federal and state constitutional rights against self-incrimination.

4. Vivian Villanueva died soley as a result of the collision that occurred on May 12, 2017.

5. A Grand Jury met and issued a secret indictment for the arrest of Defendant DeLuca on a charge of manslaughter.
(Explanation: Oregon Revised Statutes allow police to issue a citation for a traffic violation, a misdemeanor, or a felony that could be treated as a misdemeanor. For a manslaughter charge, police would either make an arrest on scene, or the case would be taken to the grand jury and indicted secretly, after which a warrant would be issued for the person's arrest on the charge the grand jury approved.)

##

IN THE CIRCUIT COURT OF THE STATE OF OREGON
CHINOOK COUNTY

STATE OF OREGON, Prosecution, vs. DANNIE DELUCA, Defendant.	No. 12CR3456 **FINAL JURY INSTRUCTIONS**

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

EVALUATING WITNESS TESTIMONY

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

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

INFERENCES

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

INNOCENCE OF DEFENDANT— PROOF BEYOND A REASONABLE DOUBT

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

VERDICT—FELONY CASE

When you return to the jury room, select one of your members to act as presiding juror. The presiding juror has no greater voting weight but is to preside over your deliberations and be the spokesperson for the jury. You should then deliberate and find your verdict. If it becomes necessary during your deliberations to communicate with me, do so in writing. I will consult with the parties before responding.

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

DIRECT OR CIRCUMSTANTIAL EVIDENCE

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

WITNESS FALSE IN PART

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

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

CRIMINAL CHARGES

In this case, the defendant is charged with the crime of Manslaughter in the First Degree.

Manslaughter in the First Degree – Recklessly

Oregon law provides that a person commits the crime of manslaughter in the first degree if that person recklessly causes the death of another person under circumstances manifesting extreme indifference to the value of human life.

In this case, to establish the crime of manslaughter in the first degree, the state must prove beyond a reasonable doubt the following elements:

1. the act occurred in Chinook County, Oregon;
2. the act occurred on our about May 12, 2017; and
3. Dannie DeLuca unlawfully and recklessly caused the death of Vivian Villanueva under circumstances manifesting extreme indifference to the value of human life.

Recklessly

A person acts recklessly if that person is aware of and consciously disregards a substantial and unjustifiable risk that a particular result will occur. The risk must be of such a nature and degree that disregarding it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

When used in the phrase "recklessly caused the death of another person," "recklessly" means that person is aware of and consciously disregards a substantial and unjustifiable risk that they will cause the death of another person. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

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

EXPERT OPINION EVIDENCE

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

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AFFIDAVIT OF AZIZ ATWOOD (Prosecution Witness)

My name is Aziz Atwood. I'm 17 and I live at 4 Summit Avenue, right here in Mountainville, Oregon. Right now, I'm a senior at Chinook Central High School. (You probably already know this, but we just call it "Central.")

Dannie DeLuca and I have been best friends since freshman year. Well, we were best friends. We used to dream about the type of cars we'd drive when we're rich. Personally, I'm a fan of Porsches – so sleek and fast. Anyway, I guess that's still pretty far off. When I turned 16, my parents bought me a red Subaru BRZ, which is kinda slow but it looks cool. Dannie wasn't as lucky. Dannie drives the family car, a blue Volvo. I'm not complaining though. It probably saved our lives?

Speaking of which, May 12, 2017 is a night I won't soon forget. That night, Dannie, Payton Piper, and I were in Dannie's car, and Dannie was driving. Dannie always kicks up the speed a notch when I'm in the car, probably to try to match up with my driving. Anyway, on that night, I was riding in the back seat. Basically, we were just cruising around, looking for something to do. We were thinking we might meet up with a bunch of other kids from Genesee High at the lake outside of their town, so we were heading in that direction. Genesee is way over on the eastern side of the county, so we were going to have to drive for a while.

Anyway, at some point, Dannie said, "Hey, let's play text roulette!" Text roulette is this game we'd play where we all swap phones and start texting random people. Last time we played, Dannie went way overboard. Dannie had my phone and texted this thing to my Mom that was incredibly inappropriate. I don't think I'm allowed to repeat it here, but let's just say there were a lot of bad words, and my mom was *not* happy to receive it; she even took away my car keys for a

week. I told Dannie that Dannie's text roulette went too far. Dannie just laughed and told me, "hey, sometimes you've just got to push the limits a little. Just chill."

I was still mad about my mom and losing my keys, so this time when Dannie suggested text roulette, I was out. I couldn't risk my mom getting another text like the last one. Besides, there's the texting while driving thing. So, I piped up, "Why don't we like wait until we get to the lake? I mean, you're not going to text while you're driving, right? We could get in an accident!"

Dannie just laughed and said, "You're such a goof, Aziz! It'll be fine. Let's just have fun tonight. School's almost over!" I was concerned, though, because by that point we were out of town, headed for River Road. Plus, Dannie was driving pretty fast. I looked over at the speedometer, and I saw somewhere between 55 and 65 miles per hour. But, I mean, I didn't want to be "that" person, right? I really wish I had been firmer with Dannie, but I just said, "Okay, fine, whatever; you and Payton can play. You never know, maybe *your* mom will be next."

I was just chilling in the backseat, checking Snapchat and stuff while Payton and Dannie were swapping phones. Payton's our text master; nobody's faster. I mean what Payton can do in a second would take most people 5; and I'm talking people my age here. Anyway, none of our friends even knew we were together, so Dannie and Payton were trolling people. It was pretty funny, but Dannie seemed to be really distracted.

We were on River Road and Dannie was going pretty fast and didn't seem to notice all those caution signs. River Road is one of those winding, backwoods-type roads, so I was getting a little worried. Payton was changing radio stations one second and showing something on the phone to Dannie the next, but I told them to knock it off. I have to agree with my parents on that one: texting while driving can be dangerous.

I couldn't see everything that was happening in the front of the car because those Volvo seats were big, and sometimes I was laying back against the door relaxing, taking advantage the whole back seat. Right before the crash, though, I know Dannie was texting. I'm sure of what I saw because, even though it was dark, I could see the light from the cell phone screen in Dannie's hand with the green and blue "bubbles" that you see when you open up text messages. When I called Dannie on it, Dannie got kind of mad and said, "Just chill out Aziz, my mom and Landry are bugging me!" I couldn't believe Dannie was still playing text roulette out on that scary road.

I don't remember much about the big crash itself, but I clearly remember right before it. All of a sudden Dannie make this weird, panicked sounding noise so I looked up from my phone and saw two headlights directly in front of us. I think we were going pretty straight just before that, but then it suddenly felt like we were swerving hard to the right; I remember being thrown hard to the left, like the car was making a hard right turn. Then we crashed.

After that, though, everything went black. My memory is pretty foggy for the rest of the night. Even though my cheek got pretty bruised up, I don't think I got a concussion or anything. Still, my doctor told me that an accident like that could end up playing tricks with my memory. I do remember Deputy Cole asking us a bunch of questions at the scene, but I can't really remember all of what we said, except for Dannie saying something about how it was "just a game." Thankfully, I'm okay, but it definitely was the scariest time of my life.

This whole thing has been really terrible. I feel so bad that Vivian died. See, she was my neighbor. She lived down the street from us my whole life. We lived on a pretty quiet street, so when we were kids we were always playing out there. She would bake these really great oatmeal chocolate chip cookies and bring them out to us. That was a long time ago, though.

There were no cookies lately; in fact, Vivian seemed to really decline the last few months. She didn't walk around the neighborhood much and, when she did, it was pretty slow. She just had a confused look about her, you know. I don't think she was driving much; it seemed like a lot of people were giving her rides.

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

/s/

Aziz Atwood

Dated: October 28, 2017

Subscribed and sworn before me on October 28, 2017.

/s/

Roberta Bost

Notary Public in and for the State of Oregon

AFFIDAVIT OF CLEVONN COLE (Prosecution Witness)

Hi there! My name is Clevonn Cole, and I'm 28 years old. I live in Rowe, Oregon, and I'm a deputy with the Chinook County Sheriff's Department. Most of us call it the "CCSD," for short.

I've been on the job for less than two years, but I've wanted to be a cop all my life. Both my parents were cops with the CCSD, and I grew up listening to their stories about life "on the beat." Not only did they make a career in law enforcement sound exciting, but, the way they told it, it really sounded like they were making a difference in people's lives. Whether it was a major drug bust or just helping an elderly person cross the street, you name it, they were there serving the community. So, basically, by the time I was in high school, I had made up my mind about what I wanted to do with my life. I graduated from Rowe High School, studied criminology at Rowe College, and joined the force right afterward. I haven't looked back since.

Even though I haven't been a cop for very long, the seriousness of the job isn't lost on me. I can say that because when I was in high school my dad got in big trouble for planting evidence. The perp was a real monster, though, pure evil, so I can't honestly say that my dad did anything wrong. But that mistake basically ruined my dad's career. I thought he was going to get fired. Since the CCSD usually won't ding you too hard for bad behavior unless it's *really* egregious, they let him take early retirement instead. When I asked my dad why he did it, he said, "look, somebody had to do something to put that creep behind bars, and I figured it might as well be me." Back then, if I had been in my dad's shoes, I can't say I wouldn't have done the same thing. Now, though, having seen what it did to his career, I can say definitively that I would *not* do the same thing.

May 12, 2017, is a night that'll stick in my mind forever. I had only been with the CCSD a couple of months, and it was my first big "situation" as a cop. That night, I was on patrol when I got a call on my radio that there had been a major car accident on River Road. This was shortly

before 9:00 p.m., at 8:54 as I recall. River Road is basically a deathtrap if you're not careful, and everybody in town knows it. It's winding, it's in the woods, and, in the area where the accident happened, there are no lights. Truth be told, it's bad enough in the day, but it's not safe for any driver at night. When I got the call, I turned on my sirens and sped over there, expecting the worst.

When I got there, boy, it really looked like the worst. There was a smashed-up blue Volvo facing west, back toward town. There were three juveniles – they looked like teenagers – walking around outside of the car, and they were dazed, muttering, and crying. Fortunately, though, it looked like the car's airbags and seatbelts saved them from any major injuries beyond a few scrapes and cuts. One of the juveniles, who told me their name was Payton Piper, said that Piper had hit Piper's head during the crash and had been knocked out for a while, but was fine now. I told them all to sit down by the side of the road and that I'd be right back. They complied with my request.

The other driver wasn't so lucky. Her car, an old Volkswagen Rabbit, was facing south and also was really smashed up. It didn't have any airbags, as far as I could tell. The driver, an elderly woman, was still in the driver's seat and bleeding profusely from her nose and mouth. I immediately called for an ambulance and additional backup.

She wasn't quite unconscious, but she was getting there. Basically, she was just mumbling, but when she saw me, I think she tried to look over at me and smile. I could make out words to this effect, "that kid … came out of nowhere… driving so fast ... I tried to stop… tell my family … " She was in really bad shape and I could tell she knew it. She had this really sad look in her eyes and tried to hold my hand and squeeze it when she said "family." Frankly, it didn't look like she was going to make it.

I stayed with the woman, whom I later identified based on her driver's license to be Vivian Villanueva, age 88 and from Mountainville, until the ambulance got there, although I shouted to the

teens by the Volvo that they shouldn't go anywhere. As soon as the ambulance arrived, I walked back over to the teens. I knew I had to get a clearer idea of what had happened.

I approached the three juveniles looking for anything that might shed some light on the accident. I noticed that one of them, later identified as Aziz Atwood, had fresh bruising to the left side of Aziz's face. I knew this to be consistent with being thrown from to the left as a car suddenly swerves to the right.

I asked who the driver of the car was and Piper and the kid with the bruised face each pointed to the third kid. I asked that individual for their name, and the kid told me it was Dannie DeLuca. DeLuca was still dazed and sitting on a pavement by the side of the road, staring downward, and muttering something that I couldn't quite comprehend. I asked DeLuca what had happened. In response, DeLuca looked at me, crying, and yelled, "I can't believe this is happening! I'm never playing text roulette again!" I asked what text roulette was, but before DeLuca could answer, Atwood began yelling at DeLuca, and shouted, "Dannie, I told you that you shouldn't've been texting and driving! Why didn't you listen to me!? If you had been paying attention to the road, you wouldn't have veered into the other lane, and maybe you could've avoided her!" By that point, DeLuca was crying pretty hard, and just said, "Aziz, it was just a game! Plus, you saw it, right? She was veering into our lane, too!"

Since it appeared that texting while driving may have been a factor, I asked the driver, DeLuca, if I could seize DeLuca's cellphone as evidence. DeLuca said, "sure," but added that the phone was still in the vehicle. I located the phone on the floor in front of driver's seat. I later examined the text messages on DeLuca's phone and found two exchanges that occurred around the time frame of the crash, which are depicted in Exhibits 2 and 3. About that time, the paramedics

arrived and needed to check each of the juveniles for injuries so I wasn't able to interview them any further.

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

/s/

Clevonn Cole

Dated: October 28, 2017

Subscribed and sworn before me on October 28, 2017.

/s/

Roberta Bost

Notary Public in and for the State of Oregon

AFFIDAVIT OF GAEL GARCIA (Prosecution Witness)

My name is Gael Garcia. I'm 40 years old, and I'm a Sergeant with the Chinook County Sheriff's Office.

I've worked in law enforcement for 18 years. Right now I'm in charge of the ART Unit in our Traffic Crimes Division; "ART" refers to the Accident Reconstruction Team. I got my undergraduate degree in physics from Western Oregon University, and I went on to earn a master's degree in Criminal Justice. For me, that was the perfect combination of science and social studies. It allows me to use the "numbers" side of my brain while I'm figuring out who did what in a crash in an effort to bring criminals to justice, which is my passion. People really need to understand that a vehicle is a dangerous instrumentality, and that every time you get behind the wheel of a car, you really can kill somebody if you behave recklessly. I've seen more than my fair share of accidents where the driver just didn't get that.

Over the course of my career, I've seen and investigated my fair share of accident scenes—over 150 of them, in fact. I've been qualified as an expert in criminal and civil trials related to some of those accidents, both in Oregon courts and, in a few cases, in other states. I've also published about a half-dozen scholarly articles on cutting-edge techniques in accident reconstruction. I've led the ART Unit for 5 years now and I'm proud to say that, under my watch, our unit is successfully processing more accidents with fewer staff.

In the ART Unit we get dispatched to all major collisions in Chinook County, and it's our job to do all of the forensics, measurements, and diagramming associated with the crashes. Once we've completed our analysis of the scene, we can determine if any criminal behavior caused the collision. A lot of the crash scenes I've worked were clearly caused by distracted driving, often

under the influence of drugs or alcohol, but every now and then we get dispatched to a scene that was caused by pure recklessness. Just dumb driving, really. I have to say, though, it's pretty rare.

I remember this crash scene well. In fact, it's not the first time that my staff and I have done a reconstruction at this site. On the night of this accident, May 12, 2017, there was a full moon, but it was cloudy so it was dark. Around 9:30 p.m., I was called out to the scene of a crash on River Road near the 28-mile marker that had occurred shortly before 8:54pm, which is when the 911 call was processed. River Road is a small, two-lane road just outside of town that carries east and westbound traffic. The roadway is paved asphalt, and the posted speed limit in that area is 45 m.p.h. Farther to the west, though, before the road gets really curvy, the speed limit is 65 m.p.h., and, I have to admit, when you're traveling east the sign that says "45 m.p.h." can be pretty hard to see among the trees, especially in the dark. Around the 28-mile marker, the two lanes are separated by a double yellow line indicating a no passing zone. River Road is winding, has no shoulder, and has frequent blind curves. Due to crashes in this area, our office worked with Chinook County Department of Transportation a few years ago to set up signs every mile or so that say, "CAUTION – CURVES AHEAD." Everyone in Chinook County knows you have to be extra diligent when driving this stretch of road, so it was particularly frustrating to be called out to another crash there—especially, as it turned out here, a fatality—on River Road.

When I arrived on scene, there were several deputies present, including Deputy Cole, who was the first responder. Deputy Cole looked pretty shaken up, so I immediately knew this was going to be a bad one. The victim and witnesses had already been taken from the scene, so I began documenting my observations. I later compiled this information in a crash reconstruction diagram, accurately depicted in Exhibit 1.

Vehicle 1, a 2008 blue Volvo V70, was facing westbound, while Vehicle 2, a brown 1982 Volkswagen Rabbit, was facing south. There was significant debris in the middle of the roadway and severe front-end damage to each vehicle. It appeared that the drivers collided head-on at the apex, or peak, of the curve in the roadway. The force of the impact plus their existing momentum carried the vehicles to their resting positions. It was impossible to tell precisely where the point of impact occurred, but most of the debris seemed to be in the eastbound lane.

Vehicle 1, being a newer model, had all of its airbags deployed, whereas Vehicle 2 did not. I know, based on my training and experience, that Vehicle 2's model year did not come equipped with airbags or most other modern safety features other than safety belts. Like I already said, both vehicles had severe front-end damage, but Vehicle 2 suffered much more crush damage than Vehicle 1. Some of this may be a result of Vehicle 1's durability compared to Vehicle 2's; Volvo is known for its safety, whereas an '82 Rabbit is basically a tin can on wheels. In this case, however, combined with my other observations, the damage indicated to me that Vehicle 1 was likely moving at a higher rate of speed at the time of impact.

I noted tire marks in the westbound lane, along what appeared to be Vehicle 2's path of travel. These marks were consistent with "locked wheel skid," which is common in collisions involving older vehicles that do not have anti-lock brakes. When a driver slams on the brakes to avoid a crash, the tires lock up, but the vehicle keeps moving forward, creating dark rubber marks on the roadway. Based on what I saw in this case, it appeared that the driver of Vehicle 2 attempted to use her brakes to avoid the collision.

I did notice that the tire marks extended slightly into the eastbound lane. This could be interpreted to mean that Vehicle 2 swerved into oncoming traffic. However, the more likely explanation is that once her tires locked up, the driver of Vehicle 2 was no longer able to adequately

steer. The fact that the tire marks begin totally within the westbound lane indicate that Vehicle 2 tried to avoid the collision while driving in the appropriate lane. Though it's possible that she swerved, that'd be pretty far-fetched, I think.

By contrast, Vehicle 1 was traveling eastbound and its path of travel did not contain any skid or tire marks. Vehicle 1 is a newer model and is equipped with anti-lock brakes, so the appearance of tire marks is somewhat less likely even if the driver does hit the brakes. That said, it was surprising that not even a small amount of scuff was present. Usually, in a crash as severe as this one, both drivers are able to apply their brakes for at least a moment or two before impact. In this case, though, it appeared to me that Vehicle 1 did not make any attempt to slow or stop before colliding with Vehicle 2. I can't say why that was, though.

All that in mind, and based on my observations at the scene, it was clear that Vehicle 1 was at fault for this crash. The evidence showed that Vehicle 1 was likely speeding as it approached a blind curve, ignoring many caution signs. The skid marks from Vehicle 2 show that it saw Vehicle 1 fast approaching and slammed on the brakes to avoid a crash. The skid indicates that Vehicle 2 applied the brakes while driving appropriately in the middle of its lane. I am not troubled by Vehicle 2's skid marks extending past the double yellow line and slightly into the oncoming lane. It was an expected length of skid from a VW Rabbit slamming on its brakes. The driver of Vehicle 1, likely distracted by something, made no attempt to stop before crashing into Vehicle 2. The impact to Vehicle 2 was severe, and the driver died as a result. The only thing I couldn't understand was, what could have caused Vehicle 1 to drive so dangerously?

When I heard this was a case of texting while driving, the pieces all fell into place. Texting and driving has led to a huge increase in traffic fatalities in the past few years. In fact, I've spearheaded a campaign to make texting and driving a misdemeanor level offense. I have a

personal stake in the issue, too. My niece was seriously injured by a driver who was texting and, as a result, she will never walk again. The jerk that hit her thought he was stopped at a stop sign but actually ended up drifting and hit my niece as she was walking in the crosswalk – colossally stupid, not to mention, against the law. In my opinion, it is one of the most reckless things a person can do behind the wheel. Anyone who texts and drives deserves to be prosecuted to the fullest extent of the law.

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

/s/

Gael Garcia

Dated: October 28, 2017

Subscribed and sworn before me on October 28, 2017.

/s/

Roberta Bost

Notary Public in and for the State of Oregon

AFFIDAVIT OF DANNIE DELUCA (Defendant)

My name is Dannie DeLuca. I'm 18 years old, and I'm a senior at Chinook Central High School, which we all just call "Central" for short.

I like to think of myself as a fairly cautious person. It's not like I'm a wuss, or anything, but I just don't like taking really big risks, especially when someone might get hurt. I mean, whenever my friends drag me over to Willows Amusement Park, I won't even go on the rollercoasters. Those things are scary! I mean, do you know how old they are? I'm also a scrupulous rule-follower. One time, I saw my friend Aziz Atwood take out Aziz's phone in class and start texting under the desk. Obviously, in class, we're not allowed to do that, so I said, really loudly, "Hey, Az, want to share what's in that text with the rest of the class?" Aziz ended up getting Aziz's phone confiscated for the rest of the week, and I think Aziz was pretty ticked because of it. That has to be why Aziz is testifying against me in this case, right?

Aziz, Payton Piper, and I all were really good friends, at least until May 12, 2017, when the accident happened. We had a bunch of our classes at Central together, and we all had a lot of the same interests (soccer, choir, etc.). Plus, each of us has a really crazy sense of humor. I guess that's why we each liked playing text roulette so much? Text roulette is this game where a bunch of friends swap cell phones and text random people in each other's list of contacts. It can sometimes get pretty out of hand, admittedly, but that's the point, right? This one time, when I was playing with Aziz and a few other people, I had Aziz's phone and ended up texting some swear words to Aziz's mom. I guess I just got caught up in the moment, you know? Anyway, Aziz got in trouble for it, but we were just having a little harmless fun. After all, Aziz has written way worse text messages on my phone other times when we were playing text roulette. Anyway, Aziz got really

mad at me and I don't think ever really forgave me. Maybe that's another reason Aziz is testifying against me in this case. I think Aziz really has it out for me.

On May 12, 2017, Aziz, Payton, and I had gotten out of school and were looking for something to do. It was a Friday, and school was almost out for the summer, so we were all itching to have a little fun. I was texting with my old friend Landry Lopez—Landry and I used to live next door to each other—and mentioned that we were looking for something to do. Landry, who graduated from Genesee High over on the other side of Chinook County a couple of years ago and is still in town saving some money for college, told me that a bunch of people were getting together at the lake out by Genesee that night, and that we should drop by. I mentioned that to Aziz and Payton, and they each seemed to be really into it. I was driving us around at that point, so we took a turn onto River Road and began heading over toward Genesee.

I know River Road well because I go out that way when I visit Landry. It's a winding, backwoods road, and you really need to be careful when you're driving on it, especially in the dark. It seems like I'm always reading in the news that there's a car accident out there, although, since the accident on the 12th, the county added some guardrails with reflectors to the road to make it safer. I know that exhibit shows some caution signs on the road, but I don't remember ever seeing those or I would have paid attention to them. If they're there, I swear they must be covered up with trees and brush and stuff.

I'll admit that I suggested that we all play text roulette while we were driving around that night, but I made that suggestion *before* we started heading out toward Genesee. It was a stupid decision, but I did send a few text messages while we were driving around. At that time, though, we were downtown where I was only going about 25 m.p.h. tops, and if I'd text, which was really, really rarely, I would only do it at stop signs. I think I may have sent a text or two, but nothing

more. Payton, the text master, was the one firing off texts on both of our phones. You can tell just by looking at that text to Landry in Exhibit 3. It's in Payton's signature shorthand but obviously Payton was pretending to be me. I'm not sure why Payton said we were on River Road already, but Payton says all kinds of crazy stuff when we play text roulette.

While we were driving, though, I heard my own phone make that ping that it makes whenever my mom sends me a text. I grabbed the phone from Payton, who was sitting next to me, glanced at the message, and sent a quick response about what we were doing that night. As soon as I hit "Send," I gave the phone back to Payton. That phone was nowhere near me when we crashed. The text and my response are shown in Exhibit 2. I know it was probably stupid of me to lie to my mom about what we were doing. She doesn't think much of Landry so I really didn't want her to know we were meeting up.

I feel so bad – really, really awful – that Ms. Villanueva died as a result of the collision that night. I don't see what I could've done to prevent it, though. After all, she swerved into our lane and, when I tried to get out of the way, she swerved even farther in the same direction! If I had to guess, I'd say it was something to do with her being too old to be driving. Ms. V was a sweet old lady – she used to help out at Central with school bake sales every once in awhile – but, having worked with her at some of those bake sales, it seemed like she wasn't 100% "with it," you know? She moved really, really slowly. I wonder if that contributed to the crash?

Those things that Deputy Cole is saying about our conversation may be partly true, but Deputy Cole is missing some important details. I remember saying something about wanting never to play text roulette ever again, but that was just because I'd now be associating it with that horrible night. Also, Aziz did say something about how I didn't swerve hard enough to get out of the way,

but Aziz said nothing about me texting. Maybe Deputy Cole confused what Aziz was saying with my comment about text roulette?

I'll never forget what happened that night. I still have nightmares about it. But the fact that the police are saying I'm at fault is crazy! I've tried to be totally forthright and honest, and I admit that I was texting while driving a little while before the crash. That's NOT what caused the crash, though, and I can't believe the police and Aziz are saying otherwise.

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

/s/

Dannie DeLuca

Dated: October 28, 2017

Subscribed and sworn before me on October 28, 2017.

/s/

Roberta Bost

Notary Public in and for the State of Oregon

AFFIDAVIT OF PAYTON PIPER (Defense Witness)

My name is Payton Piper. I'm 18 years old. I'm currently a senior at Chinook Central High School. I only moved to Mountainville about three years ago but I really like it here, and I'm hoping I get into Rowe College so I can stick around for the next few years. I'm planning on studying neurobiology, and I want to be a brain surgeon when I'm older. I've taken first aid, CPR, and I know where the AED machine is at school; I'm really into all that stuff.

I met Dannie DeLuca and Aziz Atwood pretty soon after I started at Central High. Right away, we discovered that we all had at least two things in common: soccer and choir. So, naturally, it didn't take long before we started hanging out. It was pretty hilarious when we'd all break out into song on the soccer field. It drove our opponents crazy. But I think those days are long gone now; that night last May changed everything.

May 12, 2017, was the scariest night of my life. I don't remember everything from that night though. See, I hit my head pretty hard, and I think the concussion knocked out some of my memory. As I've learned in biology class, it can take a long time to recover from a concussion. In fact, I wasn't right for quite a few months after the accident. I spent a lot of time sitting in the dark to let my brain heal, and I wasn't allowed to do homework or use screens. It got so I even missed homework. Even music was hard to take sometimes. The worst, though, was no screen time: pure torture. It was tough for people to understand because I looked ok on the outside, but I wasn't myself at all. The doctor said that my memories of that night might come back, and some have, but not all of them, I don't think.

That night, Dannie, Aziz, and I were all driving around in Dannie's car looking for something to do. Earlier in the night, we had heard about this late-night gathering at the lake over by Genesee High, so we decided to go. Dannie was driving, Aziz was in the back seat, and I was in

the passenger seat. While we were headed to the party, Dannie suggested that we all play "text roulette," which is this goofy game where everybody swaps phones and starts texting random people. I was doing most of the texting because, well, I'm a superstar. My thumbs are faster than butterfly wings. I can get texts out on two phones, even three, faster than most kids can do one. I'm not bragging; I'm just really fast and awesome at typing in shorthand. These hands will serve me well in the operating room when I'm older. Anyway, I'll admit that sometimes I might say crazy or even untrue stuff during text roulette, but it's all in good fun.

Dannie was driving when we started playing. I had both Dannie's and my phones, except for the random times Dannie had mine. Aziz wasn't playing – see, Aziz got burned big time when Dannie texted some nasty stuff to Aziz's mom by mistake. Oops. Anyway, Aziz was on Aziz's own phone Snapchatting, texting and stuff. We were all just laughing, texting random people and messing around. We were just goofing around so I really didn't think anything much about what we were doing. And I didn't think much about it when Aziz gave Dannie a hard time about texting and driving. We were just having fun.

Text roulette was winding down as we got further down the road and closer to the lake. I was in charge of the radio, among other things. On those winding roads in the hills, reception disappears all the time. Add to that that our local stations are so bad that in order to have any good music to listen to, you have to switch between them all the time. I'm a master at that though. It's like I can guess which station will play the next best song – like some virtual DJ or something. I think that was probably what I was doing just before the accident, though I can't really be sure.

Anyway, at one point as we were driving out there in the boonies and I was flipping through radio stations and texting, Dannie's phone pinged with a text from Dannie's mom. Whenever Dannie's mom texts Dannie, there is this special, unique ping sound so Dannie knows it's from her.

Dannie was still driving but grabbed the phone from me and responded; Dannie had to use the right language responding or Dannie's mom would get worried or suspicious about what we were doing.

I don't really remember Dannie giving the phone back to me at that point, but Dannie told me I was the last person with the phone before the crash, so I guess I had the phone last. I know I had been texting on Dannie's phone around the same time and I know I had been dinking around on the radio, but I'm not too sure what order things happened, or what road we were on. I do remember hearing Aziz and Dannie yelling at each other right before the crash, but I can't remember why. Like I said, my memory of that night is fuzzy from the concussion, but Dannie seemed pretty adamant that I was the one with the phone.

It's weird how the human brain works. Even though my memory is fuzzy, I know I had the wherewithal to call 911 after the crash. I actually called it in at exactly 8:53 p.m., right away after the crash. The responsibility to call must have just kicked in after my all my first aid training and such. While I don't remember much about the call itself, I know for sure that I made the call because, you see, I'm a faithful journaler and I wrote about it in my journal the next day.

Although it has taken me a long time to recover from the accident, and I will never forget that horrible night, I don't blame Dannie. I mean, accidents happen. I don't think Dannie crossed the yellow lines, even if Dannie did text a little.

I feel really bad for the old lady who died. I didn't know her or anything, but it is still pretty awful. That old Rabbit of hers was unmistakable. I remember seeing her driving around town sometimes; I remember being amazed at how good she could parallel park in those weeny spaces near the school. She seemed to be pretty organized and energetic for how old she was.

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contain all relevant testimony, and I followed those instructions. I also understand that I can and must update this affidavit if anything new occurs to me until the moment before I testify in this case.

/s/

Payton Piper

Dated: October 28, 2017

Subscribed and sworn before me on October 28, 2017.

/s/

Roberta Bost

Notary Public in and for the State of Oregon

AFFIDAVIT OF KACEY KARASI (Defense Witness)

My name is Kacey Karasi. I run my own private investigation service called Karasi Konsulting, LLC, with two Ks, you know, because my name has two Ks. Pretty clever, right? I do all kinds of cases, but am usually hired to testify for the defense in criminal matters. I used to be a detective for CCSD Traffic Crimes division, but left because of a misunderstanding in a case.

I was working on a DUII case and was tasked with sketching the crash diagram. I did a great job, if you ask me – that diagram made our case a slam-dunk! We ended up going to trial, and the defense came up with some bogus photos that they said made the details in my diagram "impossible" and accused me of falsifying evidence. The jury bought it and so did my boss, I guess, because he was going to put me on administrative leave so he could "look into the matter." Well, I wasn't going to stick around the department for that, so I decided to quit and start my own agency instead. I guess they didn't bother finishing their investigation once I left. Anyway, it's great being my own boss now – nobody accuses me of anything, plus people are willing to pay handsomely to get the answers they need, and I'm happy to help them.

While I was with Sheriff's Office, I was called to investigate hundreds of crashes and testify in numerous trials. All together I have been doing this work successfully for 25 years, 17 years with the force and 8 as a private consultant. Before that I graduated with honors from Western Oregon University with a degree in Criminal Justice. I have published numerous articles – in fact, my first one was when I was just a rookie cop, *First Responders at the Ready* – and spoken at trade conferences. I was meant for this line of work and I'm very good at what I do.

I was hired by the defense to evaluate the state's evidence and look into alternative theories of causes for the crash. That's what all of this is, you know, theories, and some theories are better than others. Some are based on better science than others and, believe me, my science is solid. I

had heard about the accident on the news already; it was a real tragedy what happened to that lady. I remember my first thought when I saw the news story: isn't she a little old to be driving? When I was contacted by the defense, I knew right away that was where my investigation was headed.

The first thing I did was review the reports and diagrams that the Sheriff's Office created, including Sergeant Garcia's crash diagram. A few things stood out to me about that sketch. First, my diagrams were way better when I was on the force. Second, the tire marks that were created by Vehicle 2 are a huge red flag. CCSD seems to be jumping to conclusions by assuming that the wheel skid must have been caused by Vehicle 2 trying to avoid the crash.

Vehicle 2 could have been braking for a number of reasons. What if she saw an animal in the road, slammed on the brakes to avoid it and swerved into the oncoming lane? What if she just got confused when she saw headlights in the dark night? She was 88, after all. It's also possible that Vehicle 2 suffered a mechanical malfunction – it was old, too – that caused the driver to brake and swerve. Vehicle 2 was basically smashed to a pulp in the crash, so there's no way to confirm, but there is no lack of other plausible, reasonable alternative explanations.

The other thing that stood out to me was the field of debris. Theoretically, the point of impact could be anywhere within the debris field, including the point at which Vehicle 2's tire marks went into the oncoming lane. If that was the point of impact, it would indicate that the driver of Vehicle 2 was primarily at fault. There is one point on which I agree with Sergeant Garcia—it really isn't clear where the precise point of impact was.

After I reviewed the state's evidence, I still wasn't satisfied with their conclusions. Being the professional that I am, I decided to dig a little deeper. I researched Vivian Villanueva's DMV driving record. Boy, am I glad I followed up on that hunch! Not only did it confirm that I was right about her being too old to drive but, in my opinion, her record is the real smoking gun in this case.

Everything you need to know is right there in the certified document, which is marked as Exhibit 4. Since 2015, Ms. Villanueva has had one violation for failure to obey a traffic control device, a violation for impeding traffic, and a careless driving citation! While three citations in a two-year period may not seem like a lot, it is when viewed in context. Before 2015: spotless, except for one parking violation in downtown Rowe. Considering her age and the recent onset of violations, they probably should have made her take the driving test again.

Obviously, I did my diligence. My job wasn't complete until I checked the defendant's DMV record, as well. Believe me, if Dannie was texting while driving, I'd want Dannie to be held accountable. I got rear-ended a couple years back by a texting driver. I got a bad case of whiplash and still have pain some days. People need to wise up and take this issue more seriously. Anyway, about Dannie's DMV record, there is nothing to show. Zip, nada, nothing. The kid didn't even have a parking ticket. The only thing the DMV record shows is that Dannie is a properly licensed driver. Compare that to Ms. Villanueva's. Don't get me wrong. Her death is a real tragedy, but if we're trying to determine what likely caused this crash, there's all the proof you need.

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

/s/
Kacey Karasi
Dated: October 28, 2017

Subscribed and sworn before me on October 28, 2017.

/s/
Roberta Bost
Notary Public in and for the State of Oregon

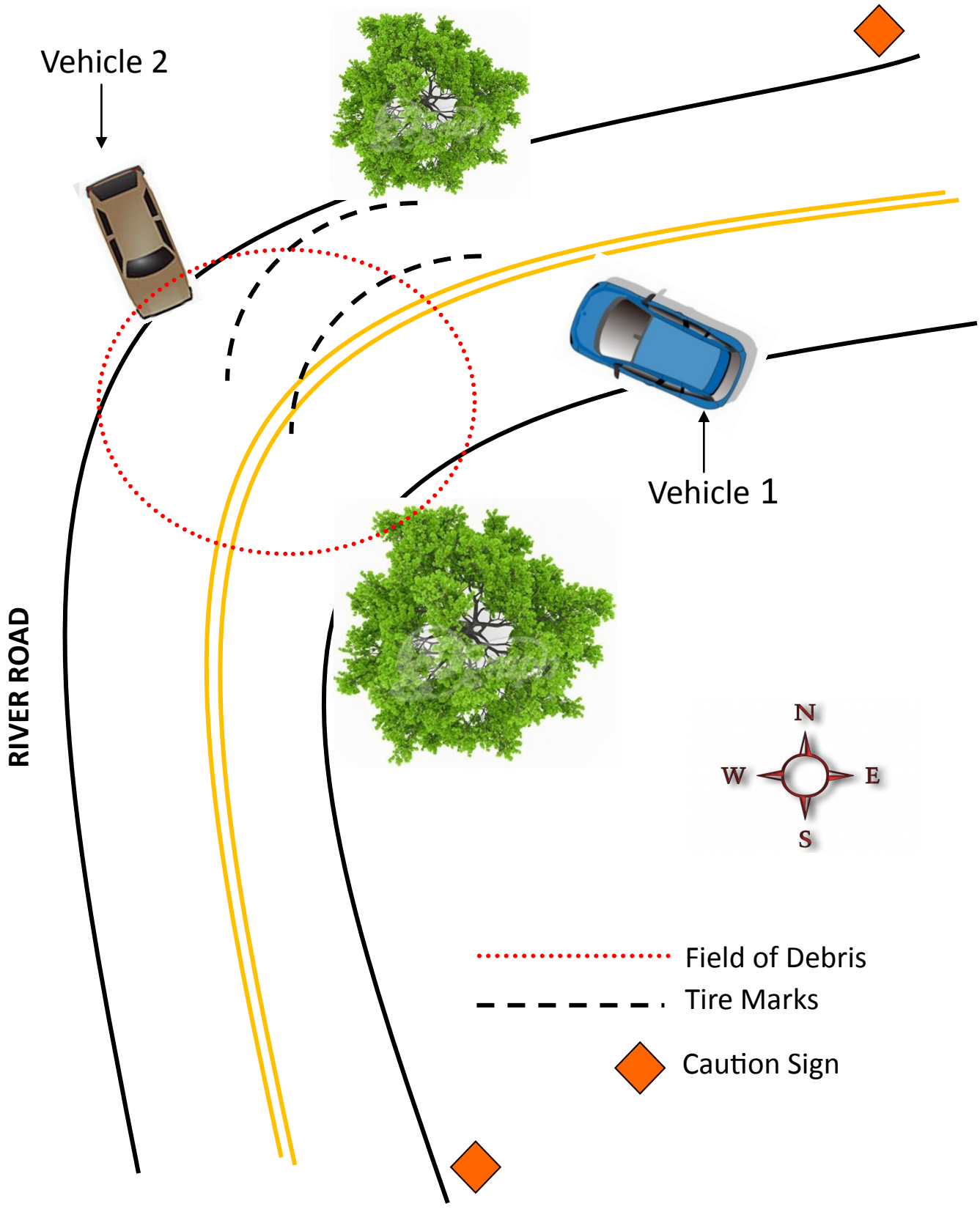

Exhibit 1
REVISED 1/26/18


●●○○○ AT&T LTE
80%
Back
Mom
Contact
Fri, May 12, 8:48 PM
When can I expect you home this evening?
Hi Mom, I promise I won't be out too late. We are only going to Buddy's for some burgers. Love you!

Exhibit 2


●●○○○ AT&T LTE
80%
Back
Landry
Contact
Fri, May 12, 8:44 PM
hey are yall coming out to the lake house
ya its me payton n aziz
sweet, how far away are you guys
comin up river rd rn

Exhibit 3

RECORDS INQUIRY

NAME: VILLANUEVA, VIVIAN A
920 SW DICKINSON ST
MOUNTAINVILLE, OR 97123
DOB:01-03-1929
LIC.NO:5743128 EXPIRES:09-27-2022
SEX:F HEIGHT:5-05 WEIGHT:120
ORIG ISSUE DATE: 09-27-77

ISSUED 09-27-77 VALID
ISSUED 09-06-84 VALID
ISSUED 09-08-91 VALID
ISSUED 09-19-99 VALID
ISSUED 09-15-07 VALID
ISSUED 09-26-15 VALID

CONVICTED 05-25-15 FAILURE TO OBEY TRAFFIC DEVICE
CHINOOK CO
CONVICTED 11-09-15 CARELESS DRIVING
CHINOOK CO
CONVICTED 3-22-16 OBSTRUCTING TRAFFIC
CHINOOK CO
ACCIDENT 05-12-17
CHINOOK CO

Exhibit 4

V. The Form and Substance of a Trial

A. Elements of a Criminal Case

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

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

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

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

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

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

The defendant in this case, Dannie DeLuca, is charged with one crime: manslaughter in the first degree. DeLuca has pled not guilty. A not guilty plea puts each element of the crime with which DeLuca has been charged in issue. A plea of not guilty requires the State to prove each element of the crime beyond a reasonable doubt.

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

To prove manslaughter in the first degree, the prosecution must show that DeLuca "recklessly under circumstances manifesting extreme indifference to the value of human life" caused the death of Vivian Villanueva in Chinook County on May 12, 2017. Extreme indifference to the value of human life is a state of mind that is more blameworthy than plain recklessness. The prosecution must prove that DeLuca showed an extraordinary lack of concern that DeLuca's actions might cause a death of another.

C. Role Descriptions

1. Attorneys

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

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

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

Demeanor of **all attorneys** is very important. On direct examination it is easy to be sympathetic and supportive of your witnesses. On cross-examination it is 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.

a. Opening Statement

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

One way to begin your statement could be as follows:

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

Proper phrasing in an opening statement includes:

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

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

b. Direct Examination

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

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

Call for the witness with a formal request:

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

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

Proper phrasing of questions on direct examination include:

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

Conclude your direct examination with:

> "Thank you Mr./s. _____. That will be all, your Honor."

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

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

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

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

For closing, see explanation to *Rule 41*.

2. Witnesses

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

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

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

3. Court Clerk, Bailiff, Team Manager

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

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

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

a. Duties of the Clerk – Provided by the Prosecution

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

1. Roster and rules of competition: The clerk is responsible for bringing a roster of students and their roles to each trial round. You should have enough copies to be able to give a roster to each judge in every round as well as a few extras. Use the roster form in the mock trial packet. In addition, the clerk is responsible for bringing a copy of the "Rules of Competition." In the event that questions arise and the judge needs clarification, the clerk shall provide this copy to the judge.
2. Swear in the witnesses: Every witness should be sworn in as follows:

   "Do you promise that the testimony you are about to give will faithfully and truthfully conform the facts and rules of the Mock Trial Competition?"

   Witness responds, "I do."

   Clerk then says, "Please be seated and state your name for the court and spell your last name."
3. Provide exhibits for attorneys or judges if requested (both sides should have their own exhibits, however, it is a well-prepared clerk who has spares).

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

b. Duties of the Bailiff – Provided by the Defense

When the 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 trail 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 prosecution has used twelve minutes, announce "10 minutes remaining" (22 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.

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

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

c. Team Manager, Unofficial Timer – optional

Team Manager (optional)

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

Unofficial Timer (optional)

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

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

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

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

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

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

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

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

Time shall be stopped during the period timekeeping is questioned.

VI. RULES OF THE COMPETITION

A. Administration

Rule 1. Rules

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

Rules of the competition as well as rules of courthouse, security and courtroom decorum 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 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 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, 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 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. Any student may portray the role of any witness. Teams are requested to indicate members' preferred pronouns on the Team Roster to assist the 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 3.** 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 16-17**, 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 the number of team members to participate at the national level.

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

3 attorneys for the prosecution
3 attorneys for defense
3 witnesses for the prosecution
3 witnesses for the defense
1 clerk

1 bailiff
14 TOTAL

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

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

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

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

Rule 8. Team Presentation

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

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

Rule 9. Emergencies

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

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

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

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

Rule 10. Team Duties

Team members should divide their duties as evenly as possible. Opening statements must be given by both sides at the beginning of the trial. The attorney who will examine a particular witness on

direct is the only person who may make the objections to the opposing attorney's questions of that witness' cross-examination; and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness.

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

Rule 11. Swearing In the Witnesses

The following oath may be used before questioning begins:

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

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

Rule 12. Trial Sequence and Time Limits

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

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

*Not included in 40 minutes allotted for each side of the case.
**Prosecution 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 Prosecution gives the opening statement first. And the Prosecution gives the closing argument first and should reserve a portion of its closing time for a rebuttal if desired. The rebuttal is limited to the scope of the defense's closing argument.

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

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

Rule 13. Timekeeping

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

- Timing will halt during objections, extensive questioning from a judge, and administering the oath.
- Timing will **not** halt during the admission of evidence unless there is an objection by opposing counsel.
- Three- and one-minute card warnings must be given before the end of each trial segment.
- **Students will be automatically stopped by the bailiff at the end of the allotted time for each segment.**

- The bailiff will also **time the judges' scoring time** after the trial; the judging panel is allowed 10 minutes to complete their ballots. When the time has elapsed, the bailiff will notify the judges that no time is remaining.

Rule 14. Time Extensions and Scoring

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

Rule 15. Supplemental Material, Illustrative Aids, Costuming

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case materials. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless specifically authorized in the case materials or by 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 to participate in videotaping, tape recording, photographing or media coverage. However, they shall be allowed by both teams in the championship round.

C. Judging and Team Advancement

Rule 19. Decisions

Decisions by 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. The presiding judge shall cast a ballot based on overall team performances; the attorney judge shall cast a ballot based on the performance of the attorneys; and the educator/community judge shall cast a ballot based on the performance of the witnesses, clerk and bailiff. All judges receive the mock trial case materials, a memorandum outlining the case, orientation materials, plus a briefing in a judges' orientation.

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

Rule 21. Ballots

The term "ballot" refers to the decision made by a judge as to which 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, but not guaranteed, to assure that teams do not meet the same opponent twice;

6. To the 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 in open 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 29 form. The form will be taken to the coordinator's communication center, where the panel will rule on any action to be taken regarding the charge, including notification of the judging panel. Violations occurring during a trial involving students competing in a round will be subject to the dispute process described in *Rules 26-28*.

VII. RULES OF PROCEDURE

A. Before the Trial

Rule 30. Team Roster

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

Rule 31. Stipulations

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

Rule 32. The Record

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

Rule 33. Courtroom Seating

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

B. Beginning the Trial

Rule 34. Jury Trial

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

Rule 35. Motions Prohibited

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

Rule 36. Standing During Trial

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

Rule 37. Objection During Opening Statement, Closing Argument

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

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

C. Presenting Evidence

Rule 38. Objections

1. **Argumentative Questions:** An attorney shall not ask argumentative questions.
   Example: during cross-examination of an expert witness the attorney asks, "you aren't as smart as you think you are, are you? "
2. **Lack of Proper Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.
3. **Assuming Facts Not In Evidence:** Attorneys may not ask a question that assumes unproven facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by the evidence (sometimes called a "hypothetical question").
4. **Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for specific answer.
   Example: Do not say, "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 prosecution delivers the first closing argument. The prosecution side should reserve time for rebuttal before beginning its closing argument and the judge *should* grant it. The closing argument of the defense concludes that side's the presentation.

A good closing should:

- be spontaneous and synthesize what actually happened in court rather than being a rehearsed speech;
- be emotionally charged and strongly appealing (unlike the calm opening statement);
- emphasize the facts that support the claims of your side, but not raise any new facts, by reviewing the witnesses' testimony and physical evidence;
- outline the strengths of your side's witnesses and the weaknesses no the other side;
- 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 prosecution should emphasize that it has proven its case beyond a reasonable doubt;
- the defense should raise questions that show one or more elements were not proven beyond a reasonable doubt.

Proper phrasing includes:

"The evidence has clearly shown that ..."
"Based on this testimony, there is doubt that ..."
"The prosecution has failed to prove beyond a reasonable doubt that ..."
"The defense would have you believe that ..."

Prosecution should conclude the closing argument with an appeal, beyond a reasonable, to find the defendant guilty. And the defense should say the prosecution failed to prove the necessary elements beyond a reasonable doubt.

E. Critique

Rule 43. The Critique

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

VIII. FEDERAL RULES OF EVIDENCE – NEW Mock Trial Version

NEW! 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 x 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

(B) 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.

IX. NOTES TO JUDGES

A. Note to Judges

To ensure that the mock trial experience is the best it can be for students, please familiarize yourself with 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 – 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

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 coordinator's headquarters 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 warnings, then 0 minute cards will be held up). At the end of each segment teams will be stopped when their time has run out whether they are finished or not.
7. All witnesses must be called.
8. Only the following exhibits may be offered as evidence at the trial:
    1. Crash Diagram
    2. Text (Mom)
    3. Text (Landry)
    4. Vivian Villanueva Driving Record

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

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

C. Evaluation Guidelines

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

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

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

- The presiding judge shall score based on overall strategy and performance – the "big picture."
- The attorney-judge shall score the attorneys' performances.

- The educator-community judge shall score the witnesses', clerk's and bailiff's performances.

Judges should use the following evaluation guidelines when scoring.

EVALUATION GUIDELINES

Each judge shall assign a score of 1-5 to each team with presiding judge scoring on overall performance, attorney-judge on attorneys, and educator-community judge on witnesses, clerk and bailiff. This score, minus any penalty points, is the score that should be written on the official ballot to be turned in for scoring purposes. Judges shall score each team based on the following guidelines:

1 pt **Not effective.** Unsure, illogical, uninformed, unprepared, ineffective communication skills.

2 pts **Fair**. Minimally informed and prepared; passable performance but lack of depth in terms of knowledge of task and materials. Communication lacked clarity and conviction.

3 pts **Good.** Good, solid but not spectacular; can perform outside script but with less confidence; logic and organization adequate but not outstanding. Grasp of major aspects of case. Communications clear and understandable but could be more fluent and persuasive.

4 pts **Excellent.** Fluent, persuasive, clear, understandable; organized material and thoughts well and exhibited mastery of case and materials.

5 pts **Outstanding**. Superior in qualities listed in above. Demonstrated ability to think on feet, poised under duress; sorted out essential from nonessential, used time effectively to accomplish major objectives. Demonstrated unique ability to utilize all resources to emphasize vital points of trial. Team members were courteous, observed proper courtroom decorum, spoke clearly and distinctly. All team members were involved in the presentation and participated actively in fulfilling their respective roles, including the Clerk and Bailiff. The Clerk and Bailiff performed their roles so that there were no disruptions or delays in the presentation of the trial. Team members demonstrated cooperation and teamwork.

D. Penalty Points

Points should be deducted if a team member:

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

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

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

The judges' decision is final.

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

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APPENDICES

Notes:

Often Used Objections in Suggested Form

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

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

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

1. **Leading Question** (see Rule 611)
   Objection: "Objection, Your Honor, counsel is leading the witness." (Opposing Attorney)
   Response: "Your Honor, leading is permissible on cross-examination," or "I'll rephrase the question." For example, the question would not be leading if rephrased as: "Mr. Smith, where did you and Ms. Jones go that night?" (This does not ask for a yes or no answer.)

2. **Relevance** (see Rule 402)
   Objection: "Your Honor, this question is irrelevant to this case."
   Response: "Your Honor, this series of questions will show that Mrs. Smith's first husband was killed in an auto accident, and this fact has increased her mental suffering in this case."

3. **Hearsay** (see Rules 801, etc.)
   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

_____ v. _____

Plaintiff/Pros.—Team Code **Defense—Team Code**

Opening Statement: 5 minutes per side

P	5 minutes	___ minutes used
D	5 minutes	___ minutes used

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

Start		22 minutes	
Witness #1:	time used _____	less	___ minutes
			___ minutes unused
Witness #2:	time used _____	less	___ minutes
			___ minutes unused
Witness #3:	time used _____	less	___ minutes
			___ minutes unused

Defense: **Cross/Re-cross—11 minutes total**

Start		11 minutes	
P witness #1	time used _____	less	___ minutes
			___ minutes unused
P witness #2	time used _____	less	___ minutes
			___ minutes unused
P witness #3	time used _____	less	___ minutes
			___ minutes unused

Defense: **Direct/Re-direct—22 minutes total**

Start		22 minutes	
D witness #1:	time used _____	less	___ minutes
			___ minutes unused
D witness #2:	time used _____	less	___ minutes
			___ minutes unused
D witness #3:	time used _____	less	___ minutes
			___ minutes unused

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

Start		11 minutes	
D witness #1	time used _____	less	___ minutes
			___ minutes unused
D witness #2	time used _____	less	___ minutes
			___ minutes unused
D witness #3	time used _____	less	___ minutes
			___ minutes unused

Closing Argument: **5 minutes per side**

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

Judges' Scoring: **10 minutes total** ___minutes used

Team Code _____

Team Roster

~complete both sides~

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

Plaintiff/Prosecution

Opening Statement _____ (attorney - student's name)

P Witness #1 _____ (witness' name) _____ (student's name)

Direct examination of W#1 _____ (attorney - student's name)

P Witness #2 _____ (witness' name) _____ (student's name)

Direct examination of W#2 _____ (attorney - student's name)

P Witness #3 _____ (witness' name) _____ (student's name)

Direct examination of W#3 _____ (attorney - student's name)

Cross examining D's W#1 _____ (witness' name) _____ (attorney - student's name)

Cross examining D's W#2 _____ (witness' name) _____ (attorney - student's name)

Cross examining D's W#3 _____ (witness' name) _____ (attorney - student's name)

Closing Argument _____ (attorney - student's name)

Clerk _____ (student's name)

Team Roster, continued, Team Code _____

Defense

Opening Statement _____
attorney - student's name

Cross examining P's W#1 _____ _____
witness' name attorney - student's name

Cross examining P's W#2 _____ _____
witness' name attorney - student's name

Cross examining P's W#3 _____ _____
witness' name attorney - student's name

D Witness #1 _____ _____
witness' name student's name

Direct examination of W#1 _____
attorney - student's name

D Witness #2 _____ _____
witness' name student's name

Direct examination of W#2 _____
attorney - student's name

D Witness #3 _____ _____
witness' name student's name

Direct examination of W#3 _____
attorney - student's name

Closing Argument _____
attorney - student's name

Bailiff _____
student's name

CLASSROOM LAW PROJECT®

2017-18 HIGH SCHOOL MOCK TRIAL BALLOT PRESIDING JUDGE

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

Round 1

P=Plaintiff/Prosecution AB *Team Code* **D=Defense** CD *Team Code*

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

Not Effective	Fair	Good	Excellent	Outstanding
1	2	3	4	5

		P		D
Opening Statement		4		3
P Witness #1 *Aziz Atwood*	Direct Examination	3	Cross-Examination	3
P Witness #2 *Clevonn Cole*	Direct Examination	3	Cross-Examination	3
P Witness #3 *Gael Garcia*	Direct Examination	4	Cross-Examination	4
D Witness #1 *Dannie DeLuca*	Cross-Examination	3	Direct Examination	3
D Witness #2 *Payton Piper*	Cross-Examination	4	Direct Examination	3
D Witness #3 *Kacey Karasi*	Cross-Examination	3	Direct Examination	4
Closing Arguments & Rebuttal		3		3
Subtotal from above (NO ties in this category):		27		26
Penalty Deduction:		0		0
TOTAL POINTS (NO TIES!):		27		26

BEST OVERALL PRESENTATION: Write *P or D* → P

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

J. Smith
Judge's Name: please print

Please deliver ballot to clerk before adjourning!

CLASSROOM LAW PROJECT®

2017-18 HIGH SCHOOL MOCK TRIAL BALLOT ATTORNEY JUDGE

The Attorney Judge shall score the attorneys' performances.

Round 1

P=Plaintiff/Prosecution AB *Team Code*

D=Defense CD *Team Code*

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

Not Effective	Fair	Good	Excellent	Outstanding
1	2	3	4	5

		P		D
Opening Statement		4		4
P Witness #1 *Aziz Atwood*	Direct Examination	3	Cross-Examination	3
P Witness #2 *Clevonn Cole*	Direct Examination	3	Cross-Examination	3
P Witness #3 *Gael Garcia*	Direct Examination	3	Cross-Examination	4
D Witness #1 *Dannie DeLuca*	Cross-Examination	3	Direct Examination	4
D Witness #2 *Payton Piper*	Cross-Examination	3	Direct Examination	3
D Witness #3 *Kacey Karasi*	Cross-Examination	3	Direct Examination	4
Closing Arguments & Rebuttal		3		4
Subtotal from above (NO ties in this category):		25		29
Penalty Deduction:		0		0
TOTAL POINTS (NO TIES!):		25		29

BEST OVERALL PRESENTATION: Write *P or D* → D

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

S. Brown
Judge's Name: please print

Please deliver ballot to clerk before adjourning!

CLASSROOM LAW PROJECT®

2017-18 HIGH SCHOOL
MOCK TRIAL BALLOT
EDUCATOR/COMMUNITY JUDGE

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

Round 1

P=Plaintiff/Prosecution AB *Team Code* **D=Defense** CD *Team Code*

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

Not Effective	Fair	Good	Excellent	Outstanding
1	2	3	4	5

						P		D
P Witness #1 Aziz Atwood	Direct: 4	+	Cross: 3	=	7			
P Witness #2 Clevonn Cole	Direct: 4	+	Cross: 4	=	8			
P Witness #3 Gael Garcia	Direct: 5	+	Cross: 4	=	9			
D Witness #1 Dannie DeLuca	Direct: 3	+	Cross: 3				=	6
D Witness #2 Payton Piper	Direct: 3	+	Cross: 3				=	6
D Witness #3 Kacey Karasi	Direct: 4	+	Cross: 4				=	8
Clerk					5			
Bailiff								4
Subtotal from above (NO ties in this category:)					29			24
Penalty Deduction:					0			0
TOTAL POINTS:					29			24

BEST OVERALL PRESENTATION: Write *P or D*

P

OPTIONAL: *I favored this team because…*

Aziz: so believable, so strong. Held firm on cross examination

A. Jackson

Judge's Name: please print

Please deliver ballot to clerk before adjourning!

Rule 26 - Reporting Rules Violation Form

FOR TEAM MEMBERS INSIDE THE BAR

(PERFORMING IN THIS ROUND)

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

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

Grounds for Dispute: _____

_____

_____

_____

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

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

Reason(s) for Denying Hearing: _____

_____

_____

_____

Initials of Opposing Team's Spokesperson: _____

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

_____

_____

_____

_____

Signature of Presiding Judge

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

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

Date: _____ **Time Submitted:** _____

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

Grounds for Dispute: _____

_____

_____

_____

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

Notes From Hearing: _____

_____

_____

_____

Decision/Action of Coordinator: _____

_____

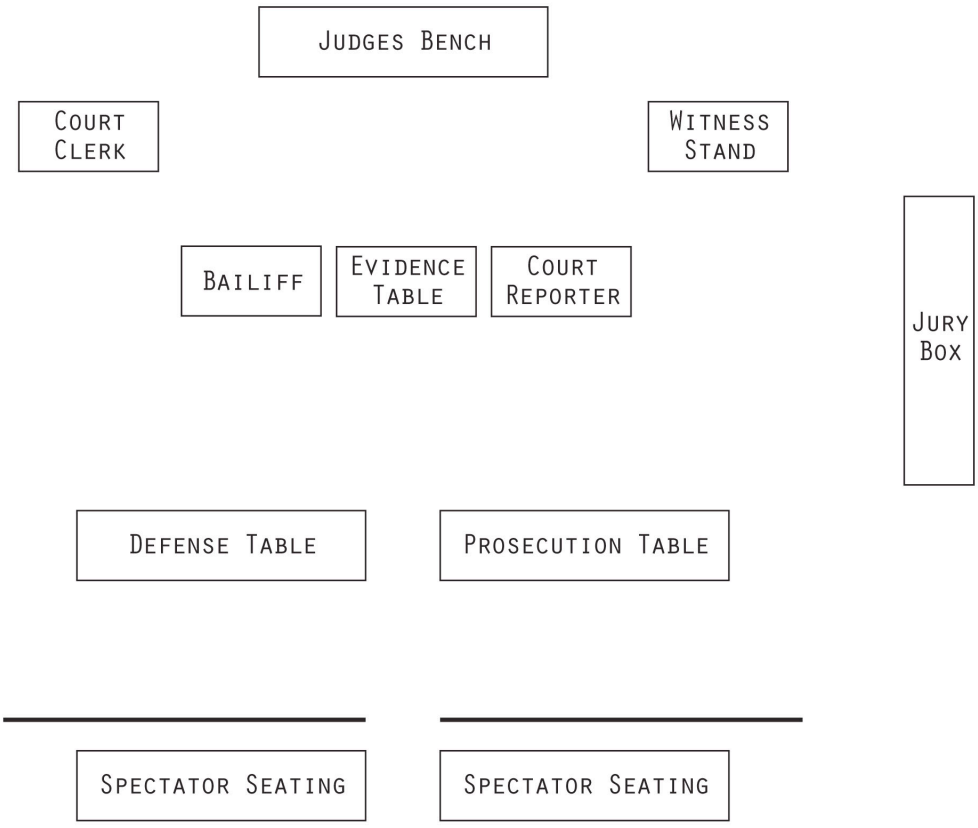
_____

_____

_____ _____

Signature of Competition Coordinator Date /Time of Decision

Diagram of a Typical U.S. Courtroom



Classroom Law Project
Street Law
OREGON's NEW DISTRACTED DRIVING LAW

October 2017

Objectives
Students will:

- Read and understand Oregon's new distracted driving law
- Think about what goes into drafting a bill
- Analyze distracted driving scenarios

Oregon Standards

- Social Science 26 - Acquire, organize, analyze and evaluate information from primary and secondary sources.
- HS.61. Analyze an event, issue, problem, or phenomenon, identifying characteristics, influences, causes, and both short- and long-term effects.
- HS.63. Engage in informed and respectful deliberation and discussion of issues, events, and ideas.

Materials

- Oregon Distracted Driving Law Text (HB 2597, attached)
- Street Law textbook pp. 20-21
- 3 scenarios to apply law

Introduction/Hook
Video of texting and driving
Open discussion:
Do you own a phone?
Do you drive?
Have you ever seen your parents text and drive while you are in the car? How do you feel when this happens? Why?
Do you think it is safe to text and drive?
Statistic about accidents and texting

ACTIVITIES
1. Students read Oregon law out loud – go around classroom.

2. Break into small groups and answer the following questions:
   - Is the law written in clear language?
   - Is the law understandable?
   - Is it in effect now?
   - Does this law contradict any other laws?
   - Is the law enforceable?

- Are the penalties for breaking the law clear and understandable?
- Would you change this law or word it any differently?

3. Discuss group answers as a class

4. Interpreting law

Case A:
You and your friend stop at a red light at 1am and send a text to your mother that you are on your way home.

Case B:
You have your little brother hold the phone with his hand like a bracket so that you can text "hands-free."

Case C:
You have your little sister hold the phone up so that you can see the directions on the phone's GPS.

Case D:
You are riding an electric bike on the street and texting.

Case E:
The school bus driver uses her cellphone to call her son while driving the bus.

Case F:
The ambulance driver has a Netflix movie playing while the cellphone is held in a hands-free bracket.

Debrief
Ask class to share thoughts/impressions
Did this make you think in any new ways?

Additional Notes, References

Distracted Driving Fact Sheet

The purpose of the law
Focus on driving and put away the distractions.

Important dates
- October 1, 2017: is when the law goes into effect.
- January 1, 2018: is when the court has the option to waive the fine for first-time offenders who attend a Distracted Driving Avoidance course.

Basic Requirement
It is illegal to drive while holding or using an electronic device (e.g. cell phone, tablet, GPS, laptop).

Exceptions (some are "affirmative defenses", which means you may need to prove to the court)
This new law does not apply to the following:

- When using hands-free or built-in devices, if 18 years of age or older.
- Use of a single touch or swipe to activate or deactivate the device or a function.
- While providing or summoning medical help and no one else is available to make the call.
- When parked safely, i.e., stopped at the side of the road or in a designated parking spot.
  ~ It is NOT legal to use the device when stopped at a stoplight, stop sign, in traffic, etc. ~
- Truck or bus drivers following the federal rules for CDL holders.
- Using a two-way radio: CB users, school bus drivers, utility truck drivers in the scope of employment.
- Ambulance or emergency vehicle operators in the scope of employment.
- Police, fire, EMS providers in the scope of employment, (can include when in a personal vehicle if, for example, when responding to an emergency call).
- HAM radio operators, age 18 years or older.

Fines

- First offense, not contributing to a crash: Class B violation.
  - Presumptive fine $260 (The amount on the ticket; if you don't simply pay, it could go up or down).
  - Minimum fine is $130; maximum fine is $1,000.

- Second offense, or first offense, if it contributed to a crash: Class A violation.
  - Presumptive Fine $435.
  - Minimum fine is $220; maximum is $2,500.

- Third offense in ten years: Class B misdemeanor.
  - Minimum fine $2,000.
  - Could be 6months in jail.

Course for First Time Offenders
For a first offense that does not contribute to a crash, the court *may* suspend the fine* if the driver completes an approved distracted driving avoidance course, and shows proof to the court, within four months.

* Only the *fine* is suspended – the violation will still be recorded on the offender's driving record.
http://www.oregon.gov/ODOT/Safety/Documents/HB2597_Summary_for_Public.pdf?fref=gc&dti=255070801638332

Independence v. Safety
http://www.adamgreenmanlaw.com/blog/2017/3/29/what-oregon-drivers-need-to-know-about-distracted-driving

http://katu.com/news/investigators/loophole-discovered-in-oregons-new-distracted-driving-law :
A Lyft spokesman cited a part of the **actual text of the new law naming multiple exceptions including one that says it does not apply to a "person who activates or deactivates a mobile electronic device or a *function of the device*."**
That allayed Hecahti's professional concerns although she said she still wishes it were clearer.

"If there's a loophole that drivers can get through if you can tap and swipe, anybody can tap and swipe," Hecahti said.

KATU asked Sgt. Michael Berland, an Oregon State Police spokesman, about the loophole.

He admitted the term "function of the device" is not defined by the law.
"With that being such a wide and just a general, generic term of just 'function,' I think that would rely on the trooper (or officer) on scene to figure out if the function of the phone is appropriate within the spirit of the bill," Berland said.
Of course with no clear definition of the term "function of the device" in the law it also potentially opens up several ways to get a ticket thrown out in court.

Enrolled
House Bill 2597

Sponsored by Representatives OLSON, LININGER, Senator BURDICK; Representatives BARKER, ESQUIVEL, MCKEOWN, RAYFIELD (Presession filed.)

CHAPTER .....

AN ACT

Relating to the offense of operating a motor vehicle while using a mobile electronic device; creating new provisions; amending ORS 811.507; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 811.507 is amended to read:

811.507. (1) As used in this section:

(a)(A) "Driving" means operating a motor vehicle on a highway or premises open to the public, and while temporarily stationary because of traffic, a traffic control device or other momentary delays.

(B) "Driving" does not include when the motor vehicle has stopped in a location where it can safely remain stationary and:

(i) Is pulled over on the side of, or is pulled off, a roadway;

(ii) Is in a designated parking space; or

(iii) Is required to park in the roadway to conduct necessary utility maintenance work.

[*(a)*] **(b)** "Hands-free accessory" means an attachment or built-in feature for or an addition to a mobile [*communication*] **electronic** device[*, whether or not permanently installed in a motor vehicle,*] that when used [*allows a person to maintain*] **gives a person the ability to keep** both hands on the steering wheel.

[*(b) "Mobile communication device" means a text messaging device or a wireless, two-way communication device designed to receive and transmit voice or text communication.*]

(c)(A) "Mobile electronic device" means an electronic device that is not permanently installed in a motor vehicle.

(B) "Mobile electronic device" includes but is not limited to a device capable of text messaging, voice communication, entertainment, navigation, accessing the Internet or producing electronic mail.

(d) "Using a mobile electronic device" includes but is not limited to using a mobile electronic device for text messaging, voice communication, entertainment, navigation, accessing the Internet or producing electronic mail.

(2) A person commits the offense of [*operating*] **driving** a motor vehicle while using a mobile [*communication*] **electronic** device if the person, while [*operating*] **driving** a motor vehicle on a highway[*,*] **or premises open to the public:**

(a) Holds a mobile electronic device in the person's hand; or

(b) Uses a mobile [*communication*] **electronic** device **for any purpose**.

(3) This section does not apply to a person**:**

(a) Who activates or deactivates a mobile [*communication*] **electronic** device or a function of the device [*or who*]**;**

(b) Who is employed as a commercial motor vehicle driver, or as a school bus driver, and is using a mobile electronic device within the scope of the person's employment if the use is permitted under regulations promulgated pursuant to 49 U.S.C. 31136;

(c) Who is operating a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in accordance with rules of the Federal Communications Commission while transporting forest products, or while operating a vehicle to assist in logging operations, within the scope of the person's employment;

(d) Who is using a two-way radio device while operating a school bus or school activity vehicle within the scope of the person's employment; or

(e) Who is using a two-way radio device or operating a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in accordance with rules of the Federal Communications Commission while operating a vehicle owned or contracted by a utility for the purpose of installing, repairing, maintaining, operating or upgrading utility service, including but not limited to natural gas, electricity, water or telecommunications, within the scope of the person's employment.

(4) It is an affirmative defense to a prosecution of a person under this section that the person:

(a) [*Uses*] **Used** the **mobile electronic** device [*for voice communication*] **to communicate** if the person[*:*]

[*(a) Is*] **was** summoning **or providing** medical or other emergency help if no other person in the vehicle [*is*] **was** capable of summoning help;

[*(b) Is using a mobile communication device for the purpose of farming or agricultural operations;*]

[*(c) Is operating an ambulance or emergency vehicle;*]

[*(d)*] **(b)** [*Is*] **Was** 18 years of age or older and [*is*] **was** using a hands-free accessory;

(c) Was driving an ambulance or emergency vehicle while acting within the scope of the person's employment;

(d) Was a police officer, firefighter or emergency medical services provider and was acting within the scope of the person's employment;

[*(e) Is operating a motor vehicle while providing public safety services or emergency services;*]

[*(f) Is operating a motor vehicle while acting in the scope of the person's employment as a public safety officer, as defined in ORS 348.270;*]

[*(g) Is operating a tow vehicle or roadside assistance vehicle while acting in the scope of the person's employment;*]

[*(h)*] **(e)** [*Holds*] **Was 18 years of age or older, held** a valid amateur radio operator license issued or any other license issued by the Federal Communications Commission and [*is*] **was** operating an amateur radio;

[*(i)*] **(f)** [*Is*] **Was** operating a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in accordance with rules of the Federal Communications Commission[*;*] **to summon medical or other emergency help; or**

(g) Was using a medical device.

[*(j) Is operating a vehicle owned or contracted by a utility for the purpose of installing, repairing, maintaining, operating or upgrading utility service, including but not limited to natural gas, electricity, water or telecommunications, while acting in the scope of the person's employment; or*]

[*(k) Is using a function of the mobile communication device that allows for only one-way voice communication while the person is:*]

[*(A) Operating a motor vehicle in the scope of the person's employment;*]

[*(B) Providing transit services; or*]

[*(C) Participating in public safety or emergency service activities.*]

[*(4)*] **(5)** The offense described in this section, [*operating*] **driving** a motor vehicle while using a mobile [*communication*] **electronic** device, is**:**

(a) Except as provided in paragraph (b) of this subsection, for a person's first conviction, a Class [*C*] **B** traffic violation.

(b) For a person's first conviction, if commission of the offense contributes to an accident described in ORS 811.720, a Class A traffic violation.

(c) For a person's second conviction within a 10-year period following the date of the person's first conviction, a Class A traffic violation.

(d) For a person's third or subsequent conviction within a 10-year period preceding the date of the person's current conviction, a Class B misdemeanor.

(6) In addition to any other sentence that may be imposed, the court shall impose a minimum fine of $2,000 on a person convicted of a Class B misdemeanor under subsection (5)(d) of this section.

(7) For purposes of this section, sentences for two or more convictions that are imposed in the same sentencing proceeding are considered to be one sentence.

[*(5)*] **(8)** The Department of Transportation shall place signs on state highways to notify drivers that [*violation of this section is subject to a maximum fine of $500*] **it is unlawful to drive a motor vehicle on the highways of this state while using a mobile electronic device and violators are subject to criminal penalties**.

SECTION 2. ORS 811.507, as amended by section 1 of this 2017 Act, is amended to read:

811.507. (1) As used in this section:

(a)(A) "Driving" means operating a motor vehicle on a highway or premises open to the public, and while temporarily stationary because of traffic, a traffic control device or other momentary delays.

(B) "Driving" does not include when the motor vehicle has stopped in a location where it can safely remain stationary and:

(i) Is pulled over on the side of, or is pulled off, a roadway;

(ii) Is in a designated parking space; or

(iii) Is required to park in the roadway to conduct necessary utility maintenance work.

(b) "Hands-free accessory" means an attachment or built-in feature for or an addition to a mobile electronic device that when used gives a person the ability to keep both hands on the steering wheel.

(c)(A) "Mobile electronic device" means an electronic device that is not permanently installed in a motor vehicle.

(B) "Mobile electronic device" includes but is not limited to a device capable of text messaging, voice communication, entertainment, navigation, accessing the Internet or producing electronic mail.

(d) "Using a mobile electronic device" includes but is not limited to using a mobile electronic device for text messaging, voice communication, entertainment, navigation, accessing the Internet or producing electronic mail.

(2) A person commits the offense of driving a motor vehicle while using a mobile electronic device if the person, while driving a motor vehicle on a highway or premises open to the public:

(a) Holds a mobile electronic device in the person's hand; or

(b) Uses a mobile electronic device for any purpose.

(3) This section does not apply to a person:

(a) Who activates or deactivates a mobile electronic device or a function of the device;

(b) Who is employed as a commercial motor vehicle driver, or as a school bus driver, and is using a mobile electronic device within the scope of the person's employment if the use is permitted under regulations promulgated pursuant to 49 U.S.C. 31136;

(c) Who is operating a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in

accordance with rules of the Federal Communications Commission while transporting forest products, or while operating a vehicle to assist in logging operations, within the scope of the person's employment;

(d) Who is using a two-way radio device while operating a school bus or school activity vehicle within the scope of the person's employment; or

(e) Who is using a two-way radio device or operating a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in accordance with rules of the Federal Communications Commission while operating a vehicle owned or contracted by a utility for the purpose of installing, repairing, maintaining, operating or upgrading utility service, including but not limited to natural gas, electricity, water or telecommunications, within the scope of the person's employment.

(4) It is an affirmative defense to a prosecution of a person under this section that the person:

(a) Used the mobile electronic device to communicate if the person was summoning or providing medical or other emergency help if no other person in the vehicle was capable of summoning help;

(b) Was 18 years of age or older and was using a hands-free accessory;

(c) Was driving an ambulance or emergency vehicle while acting within the scope of the person's employment;

(d) Was a police officer, firefighter or emergency medical services provider and was acting within the scope of the person's employment;

(e) Was 18 years of age or older, held a valid amateur radio operator license issued or any other license issued by the Federal Communications Commission and was operating an amateur radio;

(f) Was operating a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in accordance with rules of the Federal Communications Commission to summon medical or other emergency help; or

(g) Was using a medical device.

(5) The offense described in this section, driving a motor vehicle while using a mobile electronic device, is:

(a) Except as provided in paragraph (b) of this subsection, for a person's first conviction, a Class B traffic violation.

(b) For a person's first conviction, if commission of the offense contributes to an accident described in ORS 811.720, a Class A traffic violation.

(c) For a person's second conviction within a 10-year period following the date of the person's first conviction, a Class A traffic violation.

(d) For a person's third or subsequent conviction within a 10-year period preceding the date of the person's current conviction, a Class B misdemeanor.

(6) In addition to any other sentence that may be imposed, the court shall impose a minimum fine of $2,000 on a person convicted of a Class B misdemeanor under subsection (5)(d) of this section.

(7) For purposes of this section, sentences for two or more convictions that are imposed in the same sentencing proceeding are considered to be one sentence.

(8)(a) For a person's first conviction of driving a motor vehicle while using a mobile electronic device, the court may suspend the fine to be imposed under subsection (5)(a) of this section on the condition that the person, within 120 days of sentencing:

(A) Complete at the person's own expense a distracted driving avoidance course approved by the Department of Transportation under section 4 of this 2017 Act; and

(B) Provide proof of completion to the court.

(b) The court may schedule a hearing to determine whether the person successfully completed the distracted driving avoidance course.

(c) If the person has successfully completed the requirements described in paragraph (a) of this subsection, the court shall enter a sentence of discharge.

(d) If the person has not successfully completed the requirements described in paragraph (a) of this subsection, the court shall:

(A) Grant the person an extension based on good cause shown; or

(B) Impose the fine under subsection (5)(a) of this section.

[*(8)*] **(9)** The department [*of Transportation*] shall place signs on state highways to notify drivers that it is unlawful to drive a motor vehicle on the highways of this state while using a mobile electronic device and violators are subject to criminal penalties.

SECTION 3. Section 4 of this 2017 Act is added to and made a part of the Oregon Vehicle Code.

SECTION 4. (1) The Department of Transportation by rule shall establish standards for a distracted driving avoidance course provided to persons who violate ORS 811.507. The standards must describe the contents and quality of a curriculum for the course, specify requirements for obtaining a certificate or other evidence of having completed the course and otherwise determine the level and depth of knowledge a person must have obtained from the course.

(2) The department shall maintain a list of providers approved to lead the course described in this section and shall update the list monthly. The department shall prescribe procedures for providing the provider list to courts.

SECTION 5. The amendments to ORS 811.507 by section 1 of this 2017 Act apply to conduct that occurs on or after the effective date of this 2017 Act.

SECTION 6. (1) Section 4 of this 2017 Act and the amendments to ORS 811.507 by section 2 of this 2017 Act become operative on January 1, 2018.

(2) The Department of Transportation may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department, on and after the operative date specified in subsection (1) of this section, to exercise the duties, functions and powers conferred on the department by section 4 of this 2017 Act and the amendments to ORS 811.507 by section 2 of this 2017 Act.

SECTION 7. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect October 1, 2017.

Passed by House May 1, 2017

Repassed by House June 30, 2017

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 29, 2017

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

.....
Dennis Richardson, Secretary of State