

CLASSROOM LAW PROJECT proudly sponsors the 27th Annual Statewide

2012-13 Oregon High School Mock Trial Competition



State of Oregon
v.
Taylor Durden

**She drank too much water and died.
Could it be criminal?**

**Co-Sponsored by
Lewis & Clark Law School
Oregon State Bar**





November 2012

CLASSROOM LAW PROJECT®

Executive Director

Marilyn R. Cover

Program Director

Barbara Rost

Program Manager

Tyler Kaltenbach

Office Manager

Shanti McCarter

Board of Directors

Robert Aldisert

Charissa Anderson

Hon. Thomas Balmer

Jerry Boehm

Thom Brown

Jim Carter

Paul Conable

Marilyn Cover

Kenneth Davis

David Ernst

Richard George

Karen Gray

James Huffman

Judith Hutchison

Noah Jarrett

Lynn Johnson

Grant Jones

Steve Kanter

Margaret Kirkpatrick

Peter Koehler

Shelley Larkins

Daniel Larsen

Todd Lyon

Christopher Magana

Hon. Jean Maurer

Kim McGair

Hon. Keith Meisenheimer

David Reese

Bruce Rubin

Hon. Michael H. Simon

Joan Snyder

Karen Stratton

Brian Talcott

Jaye Taylor

Chip Terhune

Tim Volpert

Jennifer Williamson

Joel Wilson

Presidents' Circle

Lewis & Clark Law School

Oregon State Bar

Jefferson Circle

Cosgrave Vergeer Kester LLP

Davis Wright Tremaine LLP

Dunn Carney

Hart & Wagner LLP

Lane Powell PC

Miller Nash LLP

Nike, Inc.

Perkins Coie LLP

Schnitzer Steel Industries

Schwabe Williamson & Wyatt PC

Stoel Rives LLP

Madison Circle

Ater Wynne LLP

Bullivant Houser Bailey PC

NW Natural

Portland General Electric

The Standard

Tonkon Torp LLC

Umpqua Bank

West Coast Trust

Dear Coach, Parent, Friend, Supporter:

Thank you. You are working hard to ensure that young people have the experience of a lifetime. Mock trial is unlike any other high school competition. Academics, knowledge of the judicial system, quick-wittedness and teamwork are at the core of this program where young men and women are on equal footing. You are instrumental in bringing this experience to them. It means a great deal to them to have your support. Thank you for making a difference.

If you haven't already seen positive changes in the students as they prepare for the competition, I know you will. While the high school mock trial is designed to clarify the workings of our legal institutions for students, a great deal more than that goes on.

The mock trial experience provides students with the opportunity for interaction with positive adult role models – teachers, lawyers, and others. As students study our hypothetical case under their guidance, they acquire a working knowledge of our judicial system. You will notice an increased proficiency in reading and speaking skills; also critical thinking skills such as analyzing and reasoning; and interpersonal skills such as listening and cooperating. This hands-on experience outside the classroom is one where students not only learn essential knowledge about the law, they also gain valuable life skills.

We ask for your help in continuing this successful program. Classroom Law Project, an Oregon non-profit organization, is the sponsor of the annual high school mock trial. The mock trial program costs about \$30,000. Less than half of that comes from teams' registration fees. I know that you have been asked many times to give and I 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 and write a check accordingly. Any amount you can give is very appreciated; just send it to the address below. Your donation is tax deductible. Thank you.

Sincerely,

Marilyn R. Cover
Executive Director

620 SW Main St., Suite 102

Portland, OR 97205

Tel: 503.224.4424

Fax: 503.224.1721

office@classroomlaw.org

www.classroomlaw.org

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

ACKNOWLEDGMENTS

Sponsored by

CLASSROOM LAW PROJECT

Co-Sponsored by

Lewis & Clark Law School Oregon State Bar

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

PRESIDENTS' CIRCLE Lewis & Clark Law School Oregon State Bar

JEFFERSON CIRCLE

**Cosgrave Vergeer Kester LLP
Davis Wright Tremaine LLP
Dunn Carney
Hart & Wagner
Lane Powell PC
Miller Nash LLP**

**Nike, Inc.
Perkins Coie LLP
Schnitzer Steel Industries
Schwabe Williamson Wyatt LLP
Stoel Rives LLP**

MADISON CIRCLE

**Ater Wynne LLP
Bullivant Houser Bailey PC
NW Natural
Portland General Electric**

**The Standard
Tonkon Torp LLP
Umpqua Private Bank
West Coast Bank**

CLASSROOM LAW PROJECT gratefully acknowledges the **Carolina Bar Foundation and its 2010 High School Mock Trial Case Writing Committee** for permission to use its case materials.

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.

2012-13 Oregon High School Mock Trial Competition
State of Oregon v. Taylor Durden

TABLE OF CONTENTS

I.	Introduction	1
II.	Program Objectives	1
III.	Code of Ethical Conduct	2
IV.	The Case	
	A. Case Summary	2
	B. The Charges	3
	C. The Evidence	
	List of Exhibits.....	4
	D. Stipulations	4
	E. Statutes	5
	F. Witness Statements	7
	Affidavit of Sergeant Chris Knight, witness for the prosecution	8
	Affidavit of Dr. Jaden Chessler, witness for the prosecution	11
	Affidavit of Alex Richards, witness for the prosecution	13
	Affidavit of Taylor Durden, defendant	15
	Affidavit of Dr. Ahsan Jackson, witness for the defense.....	18
	Affidavit of Shawn Boyd, witness for the defense	20
	G. Exhibits	
	1. 911 Phone Transcript	22
	2. Initial Police Incident Report	24
	3. Investigative Report	26
	4. Emergency Room Record	28
	5. Record of Medical Examiner	29
	6. Photograph of th Episilon Sigma Epsilon House.....	32
	7. Photograph of Red Plastic 16oz. “Solo”Brand Cup used by the Victim	33
	8. Photograph of Water Coolers used by ESE in the Basement	34
	9. News Report of Hyponatremial Fatality	35
	10. WebMD.com Medical Report on Hyponatremia.....	37
	11. Medical Release Form	41
	12. Epsilon Sigma Epsilon Pledge Rules	42
	13. Death Certificate of Jessica Bateson	43
	14. Dr. Jackson’s Report	44
V.	The Form and Substance of a Trial	
	A. Elements of a Criminal Case.....	45
	B. Presumption of Innocence	45
	C. Proof Beyond a Reasonablbe Doubt	45
	D. Application to this Case	45
	E. Role Descriptions	46
	1. Attorneys	46
	a. Opening Statement	46
	b. Direct Examination	46

c.	Cross Examination, Redirect, Re-Cross, and Closing.....	47
2.	Witnesses	47
3.	Court Clerk, Bailiff, Team Manager	47
a.	Duties of the Clerk – provided by the Prosecution	48
b.	Duties of the Bailiff – provided by the Defense	48
c.	Team Manager, Unofficial Timer (optional)	49
	Team Manager (optional)	49
	Unofficial Timer (optional).....	49

VI. Rules of the Competition

A.	Administration	50
Rule 1.	Rules	50
Rule 2.	The Problem	50
Rule 3.	Witness Bound By Statements	50
Rule 4.	Unfair Extrapolation	51
Rule 5.	Gender of Witness	51
B.	The Trial	
Rule 6.	Team Eligibility, Teams to State	51
Rule 7.	Team Composition	52
Rule 8.	Team Presentation	52
Rule 9.	Emergencies	53
Rule 10.	Team Duties	53
Rule 11.	Swearing In the Witnesses	53
Rule 12.	Trial Sequence and Time Limits	53
Rule 13.	Timekeeping	54
Rule 14.	Time Extensions and Scoring.....	54
Rule 15.	Supplemental Material, Illustrative Aids, Costuming	54
Rule 16.	Trial Communication	54
Rule 17.	Viewing a Trial.....	55
Rule 18.	Videotaping, Photography, Media.....	54
C.	Judging and Team Advancement	
Rule 19.	Decisions	55
Rule 20.	Composition of Panel	55
Rule 21.	Ballots.....	55
Rule 22.	Team Advancement.....	55
Rule 23.	Power Matching	55
Rule 24.	Merit Decisions	56
Rule 25.	Effect of Bye, Default or Forfeiture	56
D.	Dispute Settlement	
Rule 26.	Reporting Rules Violation – Inside the Bar	56
Rule 27.	Dispute Resolution Procedure	56
Rule 28.	Effect of Violation on Score.....	57
Rule 29.	Reporting Rules Violation – Outside the Bar.....	57

VII. Rules of Procedure

A.	Before the Trial	
Rule 30.	Team Roster	57
Rule 31.	Stipulations	57
Rule 32.	The Record	57
Rule 33.	Courtroom Seating	57

B.	Beginning the Trial	
Rule 34.	Jury Trial	57
Rule 35.	Motions Prohibited	57
Rule 36.	Standing During Trial	58
Rule 37.	Objection During Opening Statement, Closing Argument	58
C.	Presenting Evidence	
Rule 38.	Objections	
1.	Argumentative Questions	58
2.	Lack of Proper Foundation	58
3.	Assuming Facts Not In Evidence	58
4.	Questions Calling for Narrative or General Answer	58
5.	Non-Responsive Answer	58
6.	Repetition.....	58
Rule 39.	Procedure for Introduction of Exhibits	58
Rule 40.	Use of Notes.....	59
Rule 41.	Redirect, Re-Cross	59
D.	Closing Arguments	
Rule 42.	Scope of Closing Arguments.....	59
E.	Critique	
Rule 43.	The Critique	60
VIII.	Federal Rules of Evidence – Mock Trial Version	
Article I.	General Provisions	61
Rule 101.	Scope	61
Rule 102.	Purpose and Construction.....	61
Article IV.	Relevancy and Its Limits	
Rule 401.	Definition of “Relevant Evidence”	61
Rule 402.	Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible	61
Rule 403.	Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.....	61
Rule 404.	Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes	62
Rule 405.	Methods of Proving Character	62
Rule 407.	Subsequent Remedial Measures	62
Rule 408.	Compromise and Offers to Compromise.....	62
Rule 409.	Payment of Medical or Similar Expenses	62
Rule 411.	Liability Insurance (civil case only)	62
Article VI.	Witnesses	
Rule 601.	General Rule of Competency	63
Rule 602.	Lack of Personal Knowledge	63
Rule 607.	Who May Impeach	63
Rule 608.	Evidence of Character and Conduct of Witness.....	64
Rule 609.	Impeachment by Evidence of Conviction of Crime	64
Rule 610.	Religious Beliefs or Opinions	64
Rule 611.	Mode and Order of Interrogation and Presentation	64
Article VII.	Opinions and Expert Testimony	
Rule 701.	Opinion Testimony by Lay Witness.....	65

Rule 702. Testimony by Experts.....	65
Rule 703. Bases of Opinion Testimony by Experts	66
Rule 704. Opinion on Ultimate Issue.....	66
Article VIII. Hearsay	
Rule 801. Definitions	66
Rule 802. Hearsay Rule	67
Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial.....	67
Rule 805. Hearsay within Hearsay.....	68
IX. Notes to Judges	
A. Note to Judges	68
B. Introductory Matters.....	69
C. Evaluation Guidelines	70
D. Penalty Points.....	70
E. Tips for Critiquing.....	71
Appendices	
Often Used Objections in Suggested Form.....	75
Team Rosters	76
Sample Judge’s Ballot.....	79
Time Sheet	81
Rule 26 - Reporting Rules Violation Form for Team Members Inside the Bar	82
Rule 29 - Reporting Rules Violation Form for Use by Persons Behind the Bar	83
Diagram of a Typical Courtroom.....	84

CLASSROOM LAW PROJECT

2012-13 OREGON HIGH SCHOOL MOCK TRIAL COMPETITION

I. INTRODUCTION

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

Each participating team will compete in a regional competition. Winning teams from each region will be invited to compete in the state finals in Portland on March 15-16, 2013. The winning team from the state competition will represent Oregon at the National High School Mock Trial Competition in Indianapolis, Indiana, May 9-11, 2013.

The mock trial is designed to clarify the workings of our legal institutions for young people. In the mock trial, students take on the roles of attorneys, witnesses, court clerks and bailiffs. As students study a hypothetical case, consider legal principles and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, they learn about our judicial system and hone invaluable life skills (public speaking, team building, strategizing, 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, like the phrase "beauty is in the eye of the beholder" points out the differences that exist in human perceptions, that same subjective quality is present when scoring mock trial. Even with rules and evaluation criteria for guidance, as in real life, not all scorers evaluate a performance identically. While CLASSROOM LAW PROJECT and competition coordinators work to ensure consistency in scoring, the competition reflects that quality which is a part of all human institutions, including legal proceedings.

Each year, the mock trial case addresses serious matters facing society today. By affording students an opportunity to wrestle with large societal issues within a structured format, CLASSROOM LAW PROJECT strives to provide a powerful and timely educational experience. It is our goal that students will conduct a cooperative, vigorous, and comprehensive analysis of these materials with the careful guidance of teachers and coaches. This year's case offers opportunities to discuss hazing, issues of peer pressure and responsibility for one's actions – for oneself as well as others. By participating in mock trial, students will develop a greater capacity to understand important issues in cases like this.

II. PROGRAM OBJECTIVES

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

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

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

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

III. CODE OF ETHICAL CONDUCT

This Code should be read and discussed by students and their coach(es) at the first meeting of the Mock Trial Team. **The Code governs participants, observers, guests and parents** at all mock trial events.

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

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

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

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

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

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

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

IV. THE CASE

A. Case Summary

The Case Summary below provides a general background to the reader. It is the kind of information people would know if they lived in the community. But, as in any community, some information will be perceived differently by different individuals. Thus, the summary below should not be regarded as stipulated facts.

The Greek and honors societies at Thomas McCall University draw large numbers of students each year through their bid process. As a college predominantly in a rural area, these societies offer social opportunities that cannot be found in the outside community. Though the honors societies choose their members differently than the traditional Greek organizations, there still remains an honored ritual of bid, acceptance, and initiation. Epsilon Sigma Epsilon (ESE) is no different in that regard. As a university-accredited honors society, ESE is by nature co-ed. ESE engages primarily in service related activities, although there is an optional pledge process, as well as social events. Though not a traditional Greek organization, ESE has its own house through the generous philanthropy of an alumni member. ESE has all of the traditional roles as Greek societies, such as chapter president, vice president, treasurer, social chair, education chair, and pledge master.

Saturday, August 25, 2012, was the last day in the pledge week for the ESE pledges. Throughout the week pledges participated in various activities commonly referred to as the Pledge Olympics. This included activities each day such as wiffle ball in the back yard, quiz sessions on University and ESE history, and team-building activities. What loomed before the pledges on that Saturday afternoon was made out by other members to be the most dreaded event – Water Jeopardy. This was a variant of Jeopardy™ which was the culmination of all their studies about ESE and McCall University. Much like Jeopardy™, pledges provided questions to the answers that were on the board. Only instead of earning points it was to avoid chugging water. Years ago ESE developed this game as an alternative to forcing pledges to chug beer which was clearly against University rules.

Against the wall in the basement of the ESE house was a row of standard office water coolers, all with five-gallon water jugs. The penalty for a wrong answer was to drink for a time period that increased with the value of the question. Failure to put the answer in the form of a question necessitated an even longer drinking period. Pledges were told that they could not go to the bathroom while playing the game. Nursing student Carmen Cordova (who convinced Jessica Bateson to pledge with her) got fed up with the treatment during Water Jeopardy and quit. Additionally, Carmen said she learned in nursing classes that this was probably dangerous to all the participants.

Jessica consumed an excessive amount of water during Water Jeopardy, collapsed and appeared to have passed out. This scared the pledge master, pledges, and other members of ESE who were present. 911 was called. EMS and University Police responded. EMS found Jessica in an unresponsive state and transported her to the local hospital. Jessica Bateson died within two hours of collapsing without ever regaining consciousness.

From the initial investigation, Sgt. Chris Knight found no wrongdoing and concluded that Jessica simply collapsed while playing an ESE game. Further investigation prompted by the results of the autopsy indicated that Jessica died due to a swollen brain stem brought on by acute hyponatremia from over-consumption of water. Pledge Master Taylor Durden was charged with involuntary manslaughter and the lesser included offense of hazing. ESE Chapter President Alex Richards was granted criminal immunity and agreed to testify for the state, though civil suits are pending.

B. The Charges

The defendant, Taylor Durden, is accused by Grand Jury Indictment of the County of Chinook, State of Oregon, as follows:

Count 1: Second Degree Manslaughter (ORS 163.125), a Class B Felony. The defendant, on or about August 25, 2012, in Chinook County, Oregon, did commit the crime of Second Degree Manslaughter in that Defendant did recklessly cause the death of Jessica Bateson, during the commission of a Class B violation. To-wit: the death occurred during hazing, contrary to the laws of the State of Oregon.

Count 2: Hazing (ORS 163.197), a Class B violation. The defendant, on or about August 25, 2012, in Chinook County, Oregon, did commit the crime of Hazing in that Defendant did intentionally

Compel the victim to engage in acts with an unreasonable risk of harm as a condition or precondition of attaining membership to a fraternal organization. To-wit: the Hazing occurred against Jessica Bateson, during an organized Epsilon Sigma Epsilon activity with death resulting, contrary to the laws of the State of Oregon.

Defendant Taylor Durden pled not guilty to all charges.

Class B felonies in the State of Oregon are punishable by 10 years in prison and \$250,000. For Class B violations, a maximum fine is \$1000 and no jail time.

C. The Evidence

List of Exhibits

The parties have stipulated to the authenticity of the exhibits listed below, therefore, they cannot object to their authenticity at trial. The parties have, however, reserved any objections to the admissibility of any of these exhibits until the trial. The exhibits may be introduced by either party, subject to the Rules of Evidence and the stipulations of the parties contained in the materials.

1. 911 Phone Transcript
2. Initial Police Incident Report
3. Investigative Report
4. Emergency Room Record
5. Record of Medical Examiner
6. Photograph of ESE House
7. Photograph of Red Plastic “Solo” Brand Cup Used by Victim
8. Photograph of Water Coolers used by ESE in the Basement
9. News Report of Hyponatremia Fatality
10. WebMD.com Medical Report on Hyponatremia
11. Medical Release Form
12. ESE Pledge Rules
13. Death Certificate of Jessica Bateson
14. Dr. Jackson’s Report

D. Stipulations

The parties have entered into the following stipulations, which shall not be contradicted or challenged:

1. The death of Jessica Bateson occurred on August 25, 2012.
2. Defendant was over the age of 21 as of August 25, 2012.
3. Carmen Cordova is deceased.
4. Colt Bateson is not available for trial due to armed services deployment.
5. The family medical history is not in dispute.
6. All exhibits listed are authentic and accurate in all respects.
7. The chain of custody for evidence is not in dispute.

8. The signatures on the witness statements and all other documents are authentic.
9. All witnesses who were questioned by law enforcement were properly advised of their Miranda rights. The search of the Epsilon Sigma Epsilon house was conducted with consent of the chapter president, and therefore was proper and in accordance with the law.
10. The transcript of the 911-phone call is admissible as a substitute for the actual recording and accurately reflects the contents of the recording. The caller's voice on the recording is identified as Alex Richards.
11. Exhibits 6 and 8 fairly and accurately reflect the scene, view, or geography they purport to depict.
12. Exhibit 7 is a true and accurate photograph of evidence recovered from 313 Salmon Street, Green Valley, Chinook County, Oregon by Sgt. Knight.
13. Exhibits 1, 2, 3, 4, 5, 11, and 13 are kept in the ordinary course of business or as part of the ordinary conduct of an organization or enterprise where it was part of the ordinary business of that organization, business or enterprise, to compile the data or information. The information was made for the purpose of recording the occurrence of an event, act, condition, opinion or diagnosis that takes place in the ordinary course of the business or enterprise, entry in the record or the compiling of the data was made at or near the time when the event took place, and the recording of the event was made by someone who has personal knowledge of it.
14. Recommended pronunciations of the following words are indicated below:

Chi	kī
Epsilon	ěp-sə-lŏn
Hyperthyroidism	hī-pər-thī-roi-dīz-əm
Hyponatremia	hī-pō-nə-trē-mē-ə
Si	sī
Sigma	sīg-mə
Thyroid	thī-roid

E. Statutes

ORS 163.005: Criminal homicide

- (1) A person commits criminal homicide if, without justification or excuse, the person intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being.
- (2) "Criminal homicide" is murder, manslaughter, criminally negligent homicide or aggravated vehicular homicide.
- (3) "Human being" means a person who has been born and was alive at the time of the criminal act.

ORS 163.125: Second degree manslaughter

- (1) Criminal homicide constitutes manslaughter in the second degree when:
 - (a) It is committed recklessly;
 - (b) A person intentionally causes or aids another person to commit suicide; or
 - (c) A person, with criminal negligence, causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:
 - (A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

- (B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115.
(2) Manslaughter in the second degree is a Class B felony.

ORS 161.085: Definitions

As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires otherwise:

- (1) “Act” means a bodily movement.
- (2) “Voluntary act” means a bodily movement performed consciously and includes the conscious possession or control of property.
- (3) “Omission” means a failure to perform an act the performance of which is required by law.
- (4) “Conduct” means an act or omission and its accompanying mental state.
- (5) “To act” means either to perform an act or to omit to perform an act.
- (6) “Culpable mental state” means intentionally, knowingly, recklessly or with criminal negligence as these terms are defined in subsections (7), (8), (9) and (10) of this section.
- (7) “Intentionally” or “with intent,” when used with respect to a result or to conduct described by a statute defining an offense, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.
- (8) “Knowingly” or “with knowledge,” when used with respect to conduct or to a circumstance described by a statute defining an offense, means that a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists.
- (9) “Recklessly,” when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. 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.
- (10) “Criminal negligence” or “criminally negligent,” when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

ORS 163.197: Hazing

- (1) A student organization or a member of a student organization commits the offense of hazing if, as a condition or precondition of attaining membership in the organization or of attaining any office or status in the organization, the organization or member intentionally hazes any member, potential member or person pledged to be a member of the organization.
- (2)
 - (a) A student organization that violates subsection (1) of this section commits a Class A violation.
 - (b) A member of a student organization who personally violates subsection (1) of this section commits a Class B violation.
- (3) Consent of the person who is hazed is not a defense in a prosecution under this section.
- (4) As used in this section:
 - (a) “Haze” means:
 - (A) To subject an individual to whipping, beating, striking, branding or electronic shocking, to place a harmful substance on an individual's body or to subject an individual to other similar forms of physical brutality;

(B) To subject an individual to sleep deprivation, exposure to the elements, confinement in a small space or other similar activity that subjects the individual to an unreasonable risk of harm or adversely affects the physical health or safety of the individual;

(C) To compel an individual to consume food, liquid, alcohol, controlled substances or other substances that subject the individual to an unreasonable risk of harm or adversely affect the physical health or safety of the individual; or

(D) To induce, cause or require an individual to perform a duty or task that involves the commission of a crime or an act of hazing.

(b) “Member” includes volunteers, coaches and faculty advisers of a student organization.

(c) “Student organization” means a fraternity, sorority, athletic team or other organization that is organized or operating on a college, university or elementary or secondary school campus for the purpose of providing members an opportunity to participate in student activities of the college, university or elementary or secondary school.

F. Witness Statements

Witness List

The witnesses in this case shall consist of the following:

For the prosecution:

1. Chris Knight – police sergeant
2. Jaden Chessler – medical examiner
3. Alex Richards – ESE chapter president

For the defense:

4. Taylor Durden – defendant, ESE pledge master
5. Ahsan Jackson – pathologist
6. Shawn Boyd – ESE member

Affidavit of Sergeant Chris Knight, witness for the prosecution

My name is Chris Knight. I am currently a Sergeant with the Thomas McCall University (TMU) Police Department. I attended McCall University for a year before transferring to Portland State University (PSU) for my undergraduate degree in Political Science. I have been in law enforcement for 13 years. I have Basic and Advanced School Resource Officer (SRO) certifications, Active Shooter Crisis Response training, Basic and Advanced Narcotics Interdiction training, Basic Instructor Development (BID), as well as Detective School training from the Oregon Criminal Justice Academy. I was formerly an investigator with the Oregon State University Police Department before coming to work with the McCall University Police Department.

At approximately 17:08 on August 25, 2012, the Emergency Communications Division dispatched a call of an unconscious person located at 313 Salmon Street, Green Valley. That's in Chinook County. I arrived on the scene at 17:27. The Chinook County Emergency Medical Service was already on scene and inside the location. Upon entry to the residence I spoke briefly with EMS personnel, who were loading an unresponsive female onto the stretcher for transport. There were seven people in the room in addition to the victim, EMS, and myself.

The first person I spoke with was Alex Richards, president of the honors society. Richards stated that s/he had been in the upstairs portion of the Epsilon Sigma Epsilon (ESE) house when a pledge came upstairs yelling to call 911 and that Jessica Bateson had collapsed during one of the pledge activities. Richards called 911 immediately, and then went downstairs to see what happened. While downstairs, Taylor Durden told Richards that Ms. Bateson had simply "fallen out" during the last phase of the Water Jeopardy game. This game served as the final activity of the initiation week for the society. I am somewhat familiar with the pledge activities of ESE, having been a pledge my second semester at TMU, before transferring to PSU. I was not fully accepted into ESE as a member; I was told by the then-president of ESE that another member accused me of cheating on finals. As a result, I transferred to PSU and was accepted into an honors society there.

Immediately following my interview with Richards, I interviewed Taylor Durden. Durden indicated that s/he was the pledge master for the Epsilon Sigma Epsilon honors society, and that they were completing the last activity in pledge week before full membership was to be granted. Durden then said that Ms. Bateson fell out. I asked what this meant and Durden said that she had to drink some more water after getting a question wrong. After drinking more water, she then fell down and it looked like she passed out. I specifically asked if this was a voluntary activity and Durden responded that it was and most of the pledges participated. My initial thoughts and concerns on scene were that perhaps this was an alcohol overdose related to hazing. I asked if alcohol was involved. Durden responded absolutely not, and that I was free to search the ESE house. Chapter President Richards also confirmed the consent to search. Along with an additional officer, I conducted a search of the ESE house and found a small quantity of tequila (less than 500 ml) in the room of an ESE member who was above 21. There was no other alcohol found on premises and it did not appear that the tequila was involved with the activities in the basement.

In speaking with Carmen Cordova, another pledge, she stated that they had all been playing a game in which wrong answers meant that one had to consume large amounts of water as punishment. Cordova additionally stated that she quit the game because she recalled from nursing classes that too much water was harmful.

1 Correct contact information for all witnesses interviewed was recorded for possible follow up.
2 With no other indications of criminal activity at the time, I cleared the incident location and went
3 to the hospital to ascertain Ms. Bateson's condition. Upon arrival at the hospital, one of the ER
4 physicians stated that Ms. Bateson never regained consciousness and died after her arrival in the
5 ER. I asked if there were any visible signs of foul play. The physician stated that there was no
6 overt trauma indicative of foul play, but pursuant to state law, there would be an autopsy. Not
7 seeing criminal conduct at the time, I contacted the student life coordinator at the University.
8 Along with a representative of the school, we made contact with the sheriff's office in Ms.
9 Bateson's home county, who handled notifying the family of her death.

10
11 At the time, I did not realize that Jessica Bateson was the younger sister of Colt Bateson. I have
12 had numerous law enforcement contacts with Colt Bateson. He was known on campus as a
13 reckless and uncaring individual with concern only for his immediate gratification. He was
14 investigated for several obnoxious campus pranks which, in my opinion, rose to the level of
15 criminal conduct though he was never charged. One of these events was the alleged theft of a
16 University Police golf cart along with a statue of the TMU mascot.

17
18 The autopsy was performed by a medical examiner working under the authority of the Office of
19 the Medical Examiner for Chinook County. At the autopsy, the cause of death was noted as
20 brain stem swelling brought on by a case of acute hyponatremia. The medical examiner noted
21 that this was not a natural cause based upon the volume of water in the victim's system. The
22 medical examiner was of the opinion that ingestion of this much water was not normal. An
23 individual's sense of thirst would not allow for the voluntary consumption of so much water and,
24 thus, it was a deliberate and forced act. The ruling of the Medical Examiner's office was that
25 Jessica Bateson's death was a homicide.

26
27 Upon reviewing the case file following the autopsy report, I spoke by phone with sophomore
28 Carmen Cordova, who had been present and questioned on August 25, 2012. She stated that she
29 and Jessica pledged ESE together and that Jessica was desperate to fit in and be liked. They had
30 been roommates during freshman year, and Carmen stated that Jessica pledged both semesters
31 without receiving an invitation from any of the sororities. Carmen indicated that she thought
32 Jessica would have been heartbroken to have been rejected from ESE and was doing everything
33 that was asked of her, no matter how ridiculous or dangerous. Carmen said she quit the Water
34 Jeopardy activity because she thought it was unsafe and she even told Pledge Master Taylor
35 Durden that she thought it could hurt the other pledges.

36
37 During subsequent investigation, the room in which Ms. Bateson died was reexamined.
38 Photographs of the room were taken, including a photo of eight water coolers lined up against
39 one wall of the basement. There were varying amounts of water in each of the coolers, and signs
40 above the coolers used by pledges. Because the scene was not secured immediately following
41 Ms. Bateson's death, it is not known if the water coolers were used after the incident in question
42 on August 25, 2012. The cooler marked with the name Jessica appeared to have significantly
43 less water than the other coolers.

44
45 Based upon the findings of the Medical Examiner's Office, information from other pledges, and
46 that Durden was responsible for the pledge activity known as Water Jeopardy; Durden was
47 arrested and charged with manslaughter and hazing. Chapter President Alex Richards was also
48 initially arrested and charged. Richards agreed to testify and all criminal charges were dropped
49 in exchange for Richards' testimony.

50
51 After Durden was arrested, I scheduled an appointment to meet with Carmen Cordova on
52 September 19, 2012. Unfortunately, Ms. Cordova died in a car accident on September 12, 2012.

1 The cause of the accident is still under investigation, and an investigator with the Oregon State
2 Police Department is handling the suspicious circumstances of the accident. The investigator
3 told me that though the findings are still pending, it appeared that the braking system of Ms.
4 Cordova's car was disabled. As an investigator, I find it interesting that Ms. Cordova was in a
5 fatal accident only two days after Durden was released on bail.

6
7 I have reviewed this statement, and I have nothing of significance to add at this time. The
8 material facts are true and correct.

9 Signed,
10 Chris Knight
11 Chris Knight
12
13

14 SIGNED AND SWORN to November 1, 2012
15

16 C.M. McCormack

17 C.M. McCormack, Notary Public, State of Oregon
18 My Commission Expires: December 31, 2013

1
2 **Affidavit of Dr. Jaden Chessler**, witness for the prosecution
3

4 My name is Jaden Chessler. I am 29 years old. I received my bachelor's degree in biology from
5 the University of Oregon, and my M.D. from Baylor College of Medicine. I have been in
6 Oregon for the last two years, since finishing my residency requirements. I won awards at
7 Baylor for top marks in the anatomical pathology specialty and graduated third in my class over
8 all. I am a board certified physician and licensed in the State of Oregon through the Oregon
9 Medical Board (OMB). I have certifications in Internal Medicine as well as Anatomical
10 Pathology. I serve as a Deputy State Medical Examiner for the State of Oregon and handle cases
11 from the various Medical Examiners offices that call on us. I have seen all of the usual causes of
12 death from drowning to shootings, stabbings and, of course, auto fatalities.
13

14 The morning of August 26, 2012, we received a body from the Chinook County Medical
15 Examiner's Office. The body was a Caucasian female, giving all outward physical appearances
16 of an older teenager. Per the positive identification of the Thomas McCall University Police
17 Department, the body was identified as Jessica Bateson, 19 years of age, of Hermiston, Oregon.
18 Per the records from the emergency room physician, she arrived at the emergency room in an
19 unresponsive state with fixed, dilated pupils and shallow, labored breathing. Time of death was
20 18:40 on Saturday, August 25, 2012.
21

22 The autopsy was conducted at 10:00 on Monday, August 27, 2012. Upon physical examination
23 of the body, the only marks of external trauma visible were consistent with a fall from
24 intermediate height. The only external markings upon the body were red nail polish on toes and
25 fingers and a tattoo of a cherub with an arrow through its back located on the outside of her right
26 ankle. This was noted in the autopsy filings. Weight of the body was 131 lbs 5oz, length 70
27 inches. The body was dressed in a white t-shirt and tan shorts. There was no indication that the
28 body had been dressed or that clothing was altered post mortem.
29

30 Through the course of the autopsy, all organs appeared unremarkable in coloration, size, and
31 weight with the exception of a distended bladder and an extremely swollen brain stem. I
32 determined the cause of death was swelling of the brain stem due to consumption of a lethal
33 amount of water. This is known as acute hyponatremia.
34

35 There are cases of hyponatremia in the United States every year. The vast majority of fatal
36 hyponatremia cases occur in infants and the elderly. To say it is strange that a teenager would
37 die of this would be an understatement. I have never seen a fatality from hyponatremia before
38 this case. I have read about it in the medical textbooks and I am familiar with the symptoms and
39 the physiological affects. Hyponatremia is a painful way to die. Picture drinking so much fluid
40 that your kidneys cannot keep up and you cannot relieve the fluid from your system to the point
41 that you literally drown in your own cells. When the urinary system cannot flush the excess fluid
42 from the body, the cells all begin to absorb the excess fluid. Some cells absorb water until they
43 burst, and can actually cause the victim to appear to have blotchy skin from all the burst cells.
44 Usually in conjunction with that is the swelling of the brain stem. This is particularly dangerous
45 because if not counteracted, coma and ultimately death occur. Among other things, the brain
46 stem controls consciousness, breathing, heartbeat, eye movements, pupil reactions, swallowing
47 and facial movements. Furthermore, all the sensations going to the brain, as well as the signals
48 from the brain to the muscles, must pass through the brain stem. Without a clear path for these
49 signals to pass back and forth from the brain, it is as if the head had been chopped off.
50

51 Upon checking the sodium serum levels, which indicates water consumption, the numbers were
52 off the charts at the low end of the scale. This merited further urinalyses and blood work.

1 Following the results of those tests, I came to the conclusion that such massive water
2 consumption could not have been voluntary. Ms. Bateson died as a direct result of human
3 intervention.

4
5 The death certificate notes the cause of death as acute hyponatremia, along with confirmation of
6 homicide as opposed to natural causes. It is unlikely that the condition was accelerated or
7 exacerbated by any other factors. I later found out that after my homicide ruling and the autopsy
8 that the TMU Police Department investigated further the circumstances of Ms. Bateson's death.
9 Taylor Durden and Alex Richards were held responsible with Taylor Durden ultimately charged.

10
11 I understand that Dr. Jackson is testifying for the defense and disagrees with my conclusion.
12 While I have the utmost respect for Dr. Jackson, I believe that medical advances in the field of
13 pathology have passed him/her by. In addition, I attended medical school with Dr. Jackson's
14 son, who later lost his license to practice medicine due to a drug conviction. Over the years, I
15 had on many occasions spoken at length with Dr. Jackson about the practice of medicine and
16 have been dismayed that his/her focus has turned from service to the public to the financial
17 rewards of being an expert witness or "hired gun."

18
19 I have reviewed this statement, and I have nothing of significance to add at this time. The
20 material facts are true and correct.

21 Signed,

22 Jaden Chessler

23 Jaden Chessler, M.D.
24
25

26 SIGNED AND SWORN to November 1, 2012
27

28 C.M. McCormack

29 C.M. McCormack, Notary Public, State of Oregon

30 My Commission Expires: December 31, 2013
31
32

1 **Affidavit of Alex Richards**, witness for the prosecution
2

3 My name is Alex Richards, and I am the president of the Chi Si Chapter of Epsilon Sigma
4 Epsilon honors society at Thomas McCall University. I turned 22 on November 10, 2012.
5 During the school year I live at the ESE house at TMU. During the summer I typically travel out
6 of the country to see more of the world. I am a senior with a 4.0 GPA, and have already been
7 accepted to law school once I graduate. I have been in ESE for three years now. I was elected
8 Pledge Master for a year before running for and being elected President of the chapter.
9

10 Though we have Greek letters identifying us, much as the traditional fraternities and sororities
11 do, we are quite a bit different. First, we are co-ed. Second, we have much higher GPA
12 standards than any of those groups. And finally, we do true services for the community. We
13 have a few other things in common with the traditional Greek organizations on campus. Our
14 officers are all required by the University to attend the same trainings as traditional Greek
15 organizations. We are an organization that gains membership by invitation only based on brains;
16 not necessarily beauty or popularity. I have greatly enjoyed my time here at Thomas McCall
17 University. I have worked hard to move up through the ranks of the ESE honors society. This
18 year, I became president of the Chapter, and had some great plans for the year. Things have
19 really derailed since then.
20

21 Taylor Durden joined ESE at the same time that I did. Taylor was always more happy working
22 with the new members, or pledges as they are often called. Taylor just loved the process of
23 screening and admitting new members and some of the fun things to build unity within ESE.
24 Taylor learned the ropes of being the pledge master like I did, from Jessica's older brother Colt.
25 Colt put us through the paces of the Water Jeopardy game. Taylor was miserable after we were
26 done that day, but Taylor and Colt became fast friends after the experience. They began to hang
27 out all the time together. I am willing to bet Taylor was with Colt when the University Police
28 golf cart was stolen.
29

30 Every year there is a type of ESE Pledge Olympics. All of the ESE officers review the proposed
31 activities to make sure that we do not run into trouble with the University's hazing policies.
32 Until this year, we have never even had a visit from the University Police Department, much
33 less been sanctioned in any way by TMU Administration. Last year when I was pledge master,
34 everyone had a great time and nobody died from Water Jeopardy. It is awful that Taylor cannot
35 say the same this year.
36

37 This year, Taylor seemed fixated on pushing the pledges further than we had before. I said it
38 was not a good idea, and I even thought that the Water Jeopardy that Taylor was so fond of was
39 probably close to hazing. I even told Taylor about a lady I had read about dying from drinking
40 too much water and not going to the bathroom as a part of a radio contest to win a Nintendo Wii
41 and showed Taylor an article about it. Taylor insisted that Water Jeopardy was not hazing but
42 that s/he would call the University Student Affairs Office to ask. I have no idea if Taylor ever
43 did call or, if Taylor did, what they even said. Either way, Taylor said s/he was moving forward
44 with the Water Jeopardy. We argued about it, and I decided that I did not want to be present for
45 the game. I probably should have double-checked behind Taylor but I had been busy settling
46 back into the fall semester routine. I was around for most of the other pledge week activities and
47 they all seemed to go pretty well. Everyone was having a good time, especially with the shaving
48 cream fight.
49

50 When the Water Jeopardy game started, I headed upstairs to my room to study. After awhile, I
51 heard Carmen Cordova yelling for a phone and to call 911. Carmen looked lost wandering
52 around the house when I came downstairs and I realized that she had never been inside the main

1 portion of the house since she was just a pledge. I called 911, while asking what the problem
2 was. Carmen said that one of the pledges passed out. That happens to people from time to time
3 but they could not get her to wake up. That scared me.
4

5 I went down to the basement level with Carmen, and we opened up the outside doors of the
6 basement and everyone waited for EMS. Taylor and a couple others were trying to wake Jessica
7 up the whole time. EMS arrived, and took Jessica out on a stretcher. She had been a quiet and
8 somewhat silly person, and was not taking the pledge process seriously enough for Taylor all
9 week long. I am sure that Taylor was punishing her with Water Jeopardy. The cop thought it
10 might have been an alcohol poisoning and hazing incident since it was pledge week all over
11 campus. Before Sgt. Knight left, Taylor and I were interviewed about what happened. Sgt.
12 Knight asked if it was okay to search the house for alcohol since there were appearances that
13 alcohol could be involved. Taylor and I both told the cop to feel free to search the house, so Sgt.
14 Knight and Cpl. Dechane did. They of course did not find anything. I found out later that
15 evening from the University Director of Student Affairs that Jessica died.
16

17 A couple days later, Sgt. Knight and another officer came back to the house and said that Water
18 Jeopardy was considered hazing and since Jessica died, this was manslaughter. They said the
19 water was forced on Jessica and that she died from the excessive water and it was our fault.
20 They arrested Taylor for it, and took me down to an interview room at the police department. I
21 was told that because I was the chapter president and it happened while I was responsible for the
22 honors society, that I could be held responsible too. The police gave me a choice. I could sit at
23 the prosecution table or the defense table. You do not have to have a 4.0 in aerospace
24 engineering to realize the implications of that decision. I am sure it was Taylor's meanness and
25 pushing events too far that got Jessica Bateson killed. I am sitting at the right table.
26

27 I have reviewed this statement, and I have nothing of significance to add at this time. The
28 material facts are true and correct.
29

Signed,

Alex Richards

Alex Richards

30
31
32
33
34 SIGNED AND SWORN to November 1, 2012
35

C.M. McCormack

36
37 C.M. McCormack, Notary Public, State of Oregon
38 My Commission Expires: December 31, 2013

1 **Affidavit of Taylor Durden**, defendant
2

3 My name is Taylor Durden. I am 21 years old, and will turn 22 on May 22, 2013. I live at the
4 Epsilon Sigma Epsilon house at Thomas McCall University during the school year. For the last
5 two years I have subleased apartment space during the summer so I can stay in town to take
6 summer classes. I am a senior at Thomas McCall University. I have a 3.5 GPA with a major in
7 business. Following undergrad, I plan to go back for an MBA and then work for a major
8 corporation.
9

10 I have been a member of the ESE honors society since 2009. I was the first pledge initiated to
11 the chapter that year and I loved it. I have been to every social, mixer, pledge event, and public
12 service opportunity that we have had since I started. I love the fact that we can have great parties
13 and we can all get together to help others in the community – like at the McCall U Blood Drive
14 and Toys for Tots.
15

16 For the last two years I assisted the other pledge masters including Alex Richards. This year I
17 was asked to be the pledge master. I have taken my role seriously because I think that everyone
18 who joins ESE should take the honor and responsibility seriously as well. My job was to make
19 sure that the students were not only of the highest caliber at the University, but that they were
20 knowledgeable about the University, the ESE chapter, and the community that we serve. I was
21 responsible for all the paperwork that the pledges completed and signed off on as they were
22 working towards joining ESE. That included requesting their transcripts so we could get their
23 GPAs, a medical history chart outlining any health problems that we needed to be aware of, and
24 a general liability release that the University insisted that we get before letting them participate
25 in any events. Everyone joining this semester were sophomores. According to my records, all of
26 them completed and submitted their required paperwork.
27

28 This year's pledge class was a mix of guys and girls like in most years. Our more rigorous GPA
29 requirements meant that we invited fewer to join. Everyone was having a good time all week
30 with the activities. It is not hazing or anything like what I have been accused of doing.
31 Everyone gets a copy of the activities for the week along with the rules for pledges during the
32 week. The rules said that the activities were optional. They weren't any big deal really – just
33 stuff like wearing the same color shirts and shorts every day of the week, not having cell phones
34 and going anywhere in the ESE house, except the basement. Sure, I may have given some of
35 them a hard time when they didn't want to do things but I never really said they couldn't quit. It
36 was all part of the fun.
37

38 The activities were all funny and sometimes foolish – all of which were designed for everyone to
39 get to know each other better, and test their knowledge of the University and the ESE chapter.
40 There were wiffle ball games in the back yard with members versus pledges. There was a water
41 balloon game where everyone stood at attention on the front lawn, and the members stood on the
42 roof and threw water balloons at pledges that did not answer the chapter questions correctly.
43 There were shaving cream fights on the back lawn for the pledges to “get even” with the
44 members who had been egging them on all week long. Then there was the final activity of the
45 week. This is where things went horribly, horribly wrong, but it was not my fault. That was the
46 Water Jeopardy game.
47

48 We all knew then and we all know now that forcing people to drink beer, especially if they are
49 underage, is a huge way to get in a world of trouble. That is why we liked Water Jeopardy so
50 much. We all had to sit in on the University-required sessions about hazing and how not to do
51 hazing, and on and on. That session was such a bore. We all knew that you could not force
52 people to drink alcohol or do humiliating things. That is why we had the water balloon activity,

1 the shaving cream fight, and Water Jeopardy. We have been doing Water Jeopardy for awhile
2 and never had a problem before.

3
4 In Water Jeopardy, we had the traditional looking Jeopardy™ screen projected on the wall and
5 the pledges had turns answering questions just like on the show. The catch was that instead of
6 getting points for correct answers and losing points for incorrect answers, the pledges had to
7 drink from water coolers if they got answers wrong. If someone forgot to put the answer in the
8 form of a question, then they had to drink even more water as a penalty. The pledges had to
9 drink for as long as I counted out loud. You know, 1 Mississippi, 2 Mississippi, and so on. If it
10 was a wrong question they had to drink until I counted to 5. If they did not phrase the answer in
11 the form of a question, then I made them drink for a 10 count. No big deal, it was just water.
12 Besides, it is not like I was going to top the things that happened when Alex was pledge master.
13 Every year there is an unspoken, unwritten challenge for the pledge master to add something to
14 the ESE pledge activities, or push the limits of what activities we were doing. As the Pledge
15 Master, you just had to push the pledges a little harder than the person before you.

16
17 Jessica was lousy at the game but I think she was intentionally being a clown. She kept getting
18 answers wrong and then laughing off her trip to the water coolers to drink. Sometimes she
19 would even forget to put the answer in the form of a question so there were even more penalties.
20 Carmen Cordova, one of the other pledges who was a nursing student, said she thought it was not
21 a good idea to play the game, but I don't know why. I even asked her why she said it was not a
22 good idea and she said something about her nursing professor saying it was bad. What does that
23 even mean? Like you have to use the bathroom? Or what? She was a quitter and didn't even
24 finish Water Jeopardy – she just sat at the back of the room after that. I don't remember Carmen
25 saying anything about Jessica looking ill.

26
27 I think we had been playing for about an hour and a half when Jessica made that fatal turn back
28 from the coolers. She just kind of fell forward and down on the carpet. At first I thought she
29 was just being funny and I told her to get up. When she did not move I got concerned. I went
30 over to her and rolled her over. She was breathing but appeared to have passed out. I thought
31 that was an odd time to pass out. It is not like we were outside in the heat, she was dehydrated,
32 or had been doing anything strenuous. I tried to wake her up a couple of times by shaking her a
33 little bit and calling her name. We even got some water from the water coolers and splashed it
34 on her face but it made no difference. That is when we all got scared and decided to call for an
35 ambulance. It was only a couple minutes before I yelled for someone to call 911. There was no
36 phone in the room where we were playing the game. I do not carry a cell phone when I am
37 conducting activities so that the pledges can see that I am also following the rules. I think
38 Carmen Cordova may have gone upstairs in search of a phone. A little while later Alex came
39 downstairs on the phone and said that an ambulance was on the way. After that, the EMTs came,
40 loaded her on the stretcher, and took her away. I answered some questions from the cop that
41 arrived, who said it did not look like we did anything wrong. I even told them to search the
42 whole house when they asked if her condition could be due to alcohol hazing. They searched
43 and, of course, there was no alcohol. We are not that kind of organization.

44
45 Four days later the cop came back and arrested me. I did not haze anyone. And I darn sure did
46 not kill anyone. Jessica Bateson could have stopped drinking water at any time. She even
47 signed a waiver saying that she knew what she was voluntarily doing for the entire pledge week.

48
49 Look, I am friends with Colt Bateson. I have known Jessica Bateson for years. She used to visit
50 her brother on campus on the weekends and she even did some of the service projects with us
51 while she was still in high school. In fact, we kept her from engaging in some of the more
52 inappropriate social activities around campus. There is no way that I would have let her continue
53 if I had known that she was in danger.

1
2 I have reviewed this statement, and I have nothing of significance to add at this time. The
3 material facts are true and correct.

4 Signed,
5 *Taylor Durden*
6 Taylor Durden
7

8
9 SIGNED AND SWORN to November 1, 2012
10

11 *C.M. McCormack*
12 C.M. McCormack, Notary Public, State of Oregon
13 My Commission Expires: December 31, 2013

1 **Affidavit of Dr. Ahsan Jackson**, witness for the defense

2
3 My name is Dr. Ahsan Jackson. I have an M.D. in internal medicine from Duke University, and
4 have been a Fellows Professor of Pathology at the University of Maryland for the last six years.
5 Prior to that, I was the Associate Director of the University of Tennessee Forensic Anthropology
6 Facility. It is more commonly referred to as the “Body Farm.” It is a facility in which medical
7 examiners, anthropologists, and law enforcement officials study all manner of death and
8 decomposition in order to make better decisions in criminal investigations and to make more
9 thorough diagnoses in the autopsy procedures. Both prosecutors’ offices and defense firms have
10 contracted with me for over 15 years as an expert in the field of pathology, decomposition, and
11 in questions determining the timeline of death. My average annual income as an expert (apart
12 and separate from my Fellowship at the University) has been approximately \$200,000 per year
13 for the past five years, before taxes and overhead. I hold certifications in Anatomical and
14 Clinical Pathology as well as Forensic Pathology and Anthropology.
15

16 I was contacted by the defense to look into the matter of the death of Jessica Bateson. For the
17 purposes of my investigation, I examined the health records, medical release, emergency room
18 record, death certificate, and Medical Examiner’s report on Ms. Bateson. These documents were
19 all released to the defense from the prosecutor’s office. My report works from the assumption
20 that the reports are full and complete records on Jessica Bateson with no other records or
21 information being available through other means.
22

23 The autopsy conducted by the State does properly show that the swelling of the brain stem did
24 ultimately cause the death of Ms. Bateson. What the State missed, in its overzealous attempt to
25 lay blame on what should more properly be termed an accident, were the underlying health
26 conditions of Ms. Bateson. Deputy Medical Examiner Chessler appears fascinated with the idea
27 of a death from hyponatremia. I can certainly remember being fascinated by some of the more
28 obscure deaths that I attended when first cutting my teeth as a pathologist.
29

30 According to the medical records provided by the solicitor’s office, Ms. Bateson had a family
31 history of thyroid problems. Hypothyroidism is a direct cause for acute hyponatremia and some
32 resulting fatalities. In the medical waiver statement obtained by the State from the ESE honors
33 society, there is no mention of that condition or history within the family. Certainly if someone
34 was suffering from this condition or if there was a family history, they could have given
35 warnings about volume of water intake, salt consumption and so on. Without the disclosure of
36 that information to the ESE members, they could not reasonably make accommodations for Ms.
37 Bateson, or even know what type of activities might be harmful to her.
38

39 Regardless of recent media hype, death from acute hyponatremia is a rare event. Other questions
40 as to Ms. Bateson’s death also are brought up. Acute hyponatremia is often best dealt with in the
41 field and en route to the hospital. I saw nothing in the emergency room record to reflect a proper
42 diagnosis of acute hyponatremia in progress. Had that been done, there would have been
43 multiple treatment regimens for the condition to lessen the brain stem swelling and thus prevent
44 brain damage and death.
45

46 Additionally, in reviewing the autopsy report and associated blood work, I noted the sodium
47 serum levels were depressed but certainly not in the critical range. In the report the brain stem
48 swelling is much more consistent with a reaction of the hyperthyroid to an influx of water rather
49 than of the water alone. In addition to evaluating sodium serum levels when acute hyponatremia
50 is suspected, a seasoned pathologist draws from the fluid remaining in the bladder to gain a
51 baseline for the volume of water that had been in the system of the deceased at the time of death.
52 Dr. Chessler did not do this and, had this occurred in my lab, it would have been considered a
53 fundamentally basic error. Without that baseline information as to how much water was in the

1 bladder, it would be difficult if not impossible to determine the volume of water in the
2 deceased's system in order to properly rule out hypothyroidism and establish acute hyponatremia
3 as a sole cause of brain stem swelling and ultimately death.
4

5 I have known Dr. Chessler since s/he was my son's classmate in medical school. Jaden was not
6 a very impressive student according to my son, Leon. Leon even said that Jaden would cheat off
7 of his exams. Further evidence of Jaden's lack of academic aspirations is the fact that Jaden has
8 never pursued any further specialization, teaching fellowships, or been published. Clearly not
9 the equal of my son.
10

11 Though a horrible accident for which the community and University should grieve, given the
12 lack of disclosure and the lack of diagnosis by medical professionals involved with this case, I
13 cannot see the connection of responsibility to anyone other than that of Ms. Bateson.
14

15 I am aware that Dr. Chessler believes that I am nothing more than a mercenary for the highest
16 dollar but I base my opinions on the medical records alone despite the financial rewards.
17

18 I have reviewed this statement, and I have nothing of significance to add at this time. The
19 material facts are true and correct.

20 Signed,

21 Ahsan Jackson, M.D.

22 Ahsan Jackson
23
24

25 SIGNED AND SWORN to November 1, 2012
26

27 C.M. McCormack

28 C.M. McCormack, Notary Public, State of Oregon

29 My Commission Expires: December 31, 2013

1 **Affidavit of Shawn Boyd**, witness for the defense
2

3 My name is Shawn Boyd. I am 20 years old, and a junior at McCall University. I live in the
4 South Quad dormitory. I am in my second year as a member of Epsilon Sigma Epsilon honors
5 society. I have known Taylor since I was a freshman. Taylor was a student assistant to the
6 professor in my University 101 class, and we have been friends ever since. I think Taylor is
7 crazy about the rules and rituals of the ESE but that has not caused any problems in our
8 friendship. Taylor learned all these rules and rituals from Colt Bateson. Even though Colt was
9 Taylor's pledge master, they became good friends even after the pledge week initiation chaos, so
10 I do not think Taylor would have done anything to deliberately hurt Jessica Bateson. Colt and
11 Taylor had some fun at TMU, but they are basically good people. Colt is a strong American who
12 felt the call to service so much that he joined the Army right after college and is currently serving
13 in Afghanistan.
14

15 For me, membership in ESE is something that I can point to on my resume after college. I did
16 not and do not care about the socials and all the other events. It is just a resume builder; it
17 makes me look good. Taylor encouraged me to join ESE. I gave it considerable thought and
18 decided to join. I told Taylor up front that I was not going to do all the foolishness and junk that
19 they push on all the pledges. Taylor gave me a hard time about it but ultimately had no choice
20 since it even says in the ESE charter that being a member depends on maintaining a certain GPA
21 and paying dues to the charitable funds account,. They use the funds to pay for supplies for Toys
22 for Tots and so on. Every year or so there might be a couple of us that pretty much pay our dues
23 but never do the activities or move into the house.
24

25 One of the forms that we all sign when we are joining says something about all the activities that
26 try to build unity at ESE, the rules, and not having to do the games and such. Taylor and Alex
27 have not gotten along for as long as I have known them. Alex thinks s/he is going to save the
28 world and that EVERYTHING we do has to be linked to that goal. Alex and Taylor have fought
29 before because the games and activities that Taylor organizes take up too much of ESE's time.
30 On top of that, they worked together on the pledge class last year when Alex was the pledge
31 master. Maybe Taylor pushed the limits further than Alex; I don't know. I do know that those
32 two were always at each other's throats about one thing or another. Some people just cannot get
33 along. Alex even said to Taylor at the last ESE mandatory meeting before pledge week started
34 that there was no way Taylor could top the pledge week of last year. I do not know if Alex
35 meant the number of pledges or the kind of activities for pledge week.
36

37 I also remember when Colt was the pledge master. I do not think that Taylor did anything
38 beyond what Colt did. In fact, I talked with Colt at the funeral. Colt said he thought this was a
39 tragic accident and could not believe there were criminal charges. They all used the Water
40 Jeopardy game as a part of the Pledge Olympics – Colt, Alex, and Taylor. Someone did pass out
41 during Colt's term as pledge master. I do not remember during what activity but that was
42 probably just from the stress of Pledge Week or from the August heat. Colt was deployed to
43 Afghanistan shortly after the funeral.
44

45 I was not around when Jessica died but I had been in the basement to watch the fun. It is always
46 funny to laugh at the pledges that take everything so seriously, especially with Water Jeopardy.
47 While I was there, Jessica was being a clown and had to drink more water than the rest. Before I
48 wandered out to go watch some of the fall football practice, I heard Carmen Cordova tell Jessica
49 to stop playing. Taylor laughed it off and asked Jessica if she wanted to continue and she said
50 she did. That was when I wandered out.

1
2 I talked to Taylor and others the next day about Water Jeopardy. Everyone said it was the usual stuff
3 being played during the game; nothing seemed out of the ordinary. Yeah, there was probably some
4 teasing when Carmen quit but I think Taylor was hard on all the pledges, not anyone in particular. If
5 Jessica could see that other people were quitting without negative consequences, then there was no
6 reason she could not have quit, too – especially if she was not feeling well. Taylor said something
7 about Carmen saying that drinking too much water could be bad but I don't think she ever told
8 anyone why or how it was bad. I think like everyone else who was present: Carmen was probably
9 just trying to find a way to get out of the game without looking like a wuss.

10
11 Jessica could have quit at any time but she always was a little irresponsible about her safety. When
12 she was still in high school and visited Colt on campus, she would try to attend parties where alcohol
13 was being served. Alex will do anything to stay out of trouble and blame others for what was a
14 weird accident. I think Alex is trying to throw Taylor under the bus with this whole hazing business.
15 All Alex cares about is staying out of trouble and getting rich after graduation. I think Alex would
16 do or say anything to keep a clean record and an impressive resume. In fact, when the police golf
17 cart was stolen, Alex told the other ESE members that if the cart was anywhere on ESE property,
18 that it had better be moved to another Greek house.

19
20 I have reviewed this statement, and I have nothing of significance to add at this time. The material
21 facts are true and correct.

22 Signed,

23 Shawn Boyd

24 Shawn Boyd
25
26

27 SIGNED AND SWORN to November 1, 2012
28

29 C.M. McCormack

30 C.M. McCormack, Notary Public, State of Oregon

31 My Commission Expires: December 31, 2013

G. Exhibits

EXHIBIT 1: 911 Phone Transcript (Page 1 of 2)

08-25-2012 17:06

Dispatch: Emergency 911. Is your emergency Police, Fire, or Medical?

Caller 1: I'm at the ESE house at 313 Salmon Street in Green Valley. One of the pledges has passed out. We need an ambulance in a hurry."

Dispatch: I need your name and location, please.

Caller 1: My name is Alex Richards.

Dispatch: Can you confirm the address?

Caller 1: It's the ESE house on Salmon Street. 313 Salmon.

Dispatch: EMS (Emergency Medical Service) 4, Prepare to copy.

EMS 4: EMS 4. Go ahead dispatch.

Dispatch: Report of a person unconscious at 313 Salmon Street, Green Valley. No further information available at this time. Your incident number is 46-108290911, and time of dispatch is 17:07.

EMS 4: EMS 4 copies. We are in route to 313 Salmon Street for report of an unconscious person. We have an ETA (estimated time of arrival) of ten minutes.

Dispatch: Good copy.

Dispatch: TMPD (Thomas McCall University Police Department) 33, prepare to copy.

TMPD 33: TMPD 33. Go ahead dispatch.

Dispatch: Report of a person unconscious at 313 Salmon Street, Green Valley. No further information available at this time. EMS en route. Your incident number is 46-108290911, and time of dispatch is 17:08.

TMPD 33: TMPD 33 copies. En route to 313 Salmon Street for report of person unconscious. 33 also copies EMS en route. Time is 17:09.

Dispatch: Good copy.

Dispatch: I've dispatched police and EMS to 313 Salmon Street, but it's a long street. Do you know the nearest cross-street?

Caller 1: We're near the intersection of North Pioneer Street. It's a big white two-story house with columns. They can't miss it.

EXHIBIT 1: 911 Phone Transcript (Page 2 of 2)

Dispatch: OK, I just want you to stay on the line with me. We need to know what's going on.

Caller 1: OK.

Dispatch: Do you know the name of the individual who passed out?

Caller 1: Yes, it's Jessica Bateson.

Dispatch: Do you know whether Jessica has any medical conditions? Is she on any medications?

Caller 1: I don't know.

Dispatch: Is Jessica conscious?

Caller 1: No, she's not but she's breathing really shallow.

EMS 4: Dispatch, EMS 4.

Dispatch: Go ahead EMS 4.

EMS 4: EMS 4 on scene.

Dispatch: Copy. EMS 4 on scene at 17:26.

TMPD 33: Dispatch, TMPD 33."

Dispatch: Go ahead TMPD 33.

TMPD 33: TMPD 33 on scene.

Dispatch: "Copy. TMPD 33 on scene at 17:27."

Caller 1: Thank goodness, EMS is here. Thank you. Thank you. I'm going now." — CALL ENDS

EMS 4: Dispatch, EMS 4.

Dispatch: Go ahead EMS 4.

EMS 4: One unconscious female, respiratory distress. En route Chinook Regional Medical Center cleared from 313 Salmon Street.

Dispatch: Copy. EMS 4 clear from 313 Salmon Street at 17:34, en route to Chinook Regional Medical Center with one unconscious female, respiratory distress.

EXHIBIT 2: Initial Police Incident Report (Page 1 of 2)

AGENCY ID OR04619		THOMAS MCCALL UNIVERSITY POLICE DEPARTMENT Green Valley, Oregon (541) 555-1234				INCIDENT # 46-108290911	
INCIDENT REPORT PRINT OR TYPE ALL INFORMATION							
EVENT	INCIDENT TYPE			COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
	Assisting other Agencies – Chinook County EMS			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Res.	1
				<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO		
				<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO		
	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)			ZIP CODE		WEAPON TYPE	
	313 Salmon Street			97652			
	INCIDENT DATE 8/25/2012		24 HOUR CLOCK 17:27	TO	DATE 8/25/2012	24 HOUR CLOCK 19:05	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) Richards, Alex			RELATIONSHIP TO SUBJECT NA	DAYTIME PHONE 541-555-0789	EVENING PHONE 541-555-0789		
ADDRESS 313 Salmon Street			CITY Green Valley	STATE OR	ZIP CODE 97652		
SUBJECT NO.1	NAME (LAST, FIRST, MIDDLE) NA			AKA			
	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULARITIES, ETC.						
	ADDRESS		CITY	STATE		ZIP CODE	
	SUBJECT (NO.1) USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN DRUGS <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN		ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input type="checkbox"/> NO		DATE / TIME OF OFFENSE		DATE / TIME OF ARREST
	<p>Responding Officer (RO) arrived on scene at the above date and time in reference to an unresponsive female at the Epsilon Sigma Epsilon house. In the basement area of the house, EMS was working on what appeared to be an unconscious teenage female. RO made contact with Chapter President Alex Richards, Pledge Master Taylor Durden, and pledge Carmen Cordova. Based upon experience, RO had probable cause to believe that this was an alcohol-based initiation. RO inquired with both Richards and Durden as to the age of the female and whether or not alcohol was being used. Both denied any alcohol and stated that Ms. Bateson merely passed out. During this time EMS cleared the scene to Chinook Regional Hospital with Bateson. RO requested and was granted permission to search the premises for alcohol. Additional officers arrived on scene shortly thereafter. Once additional officers were at the residence, RO and Cpl. Dechane conducted a thorough search of the premises. 500 ml. of tequila was discovered in the room of one resident who was above 21. No other illicit substances were discovered. RO interviewed Carmen Cordova following the consent</p>						
PROPERTY	TYPE (GROUP)				TOTAL VALUE		
	STOLEN						
	DAMAGED						
	BURNED						
	RECOVERED						
	SEIZED						
ADMINISTRATIVE	SUBJECT IDENTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED		<input type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED		<input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> ARRESTED 18 AND OVER
							<input type="checkbox"/> EX-CLEAR UNDER 18 <input type="checkbox"/> EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRACTION DENIED 4. <input type="checkbox"/> VICTIM DECLINES OPERATION 5. <input type="checkbox"/> JUVENILE NO CUSTODY						
	REPORTING OFFICER	DATE	24 HOUR CLOCK	APPROVING OFFICER		DATE	UNIT NUMBER
	Sgt. Chris Knight	8/25/2012	20:11	Lt. Solomon		8/25/2012	4618
FOLLOW-UP INVESTIGATION REQUIRED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO							

EXHIBIT 2: Initial Police Incident Report (Page 2 of 2)

AGENCY ID OR04619		THOMAS MCCALL UNIVERSITY POLICE DEPARTMENT Green Valley, Oregon (541) 555-1234				INCIDENT # 46-108290911		
SUPPLEMENTAL INCIDENT REPORT PRINT OR TYPE ALL INFORMATION)								
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 313 Salmon Street					ZIP CODE 97652		CASE # 1879320	
INCIDENT DATE 8/25/2012		24 HOUR CLOCK 17:27		TO	DATE 8/25/2012		24 HOUR CLOCK 19:05	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) Richards, Alex				RELATIONSHIP TO SUBJECT NA	DAYTIME PHONE 541-555-0789		EVENING PHONE 541-555-0789	
ADDRESS 313 Salmon Street				CITY Green Valley	STATE OR		ZIP CODE 97652	
SUBJECT NO.2	NAME (LAST, FIRST, MIDDLE) NA				AKA			
	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULARITIES, ETC.							
	ADDRESS		CITY		STATE		ZIP CODE	
	SUBJECT (NO.2) USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN DRUGS <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN		ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input type="checkbox"/> NO		DATE / TIME OF OFFENSE		DATE / TIME OF ARREST	
	DATE 8/25/2012		24 HOUR CLOCK 19:05					
SUPPLEMENTAL NARRATIVE	search for alcohol. Cordova stated that the game in which all pledges were playing required them to drink water as punishment if they answered questions wrong. RO asked if this was hazing, and Cordova stated that she felt it was, but she quit the game, so maybe it was not. RO asked why Cordova felt this was hazing, and Cordova stated that she heard in nursing class that too much water was harmful. Seeing nothing that constituted a criminal violation, RO cleared the scene, and drove to Chinook Regional Hospital to interview Ms. Bateson as to the circumstances of her collapse. Upon arrival at Chinook Regional Hospital, RO met with ER doctor on call, Cory White. Dr. White stated that Ms. Bateson never regained consciousness and died subsequent to her arrival at Chinook Regional. RO inquired about signs of trauma indicative of criminal intervention in her death. Dr. White stated that there was no evidence of any overt trauma that would have resulted in her death. As with state law, an autopsy would be performed. The body was transported by the Chinook County Medical Examiner's Office to the Medical Examiner's Office at the Medical University of Oregon. RO consulted with Lt. Solomon regarding the fatality of a student, and RO was assigned to attend the autopsy. RO then made contact with the Student Life Coordinator at the University and made contact with Hermiston County Sheriff's Office (HCSO). HCSO along with a local grief counselor handled death notification to the parents.							
	REPORTING OFFICER		DATE		24 HOUR CLOCK		SUPERVISING OFFICER	
	Sgt. Chris Knight		8/25/2012		20:11		Lt. Solomon	

EXHIBIT 3: Investigative Report (Page 1 of 2)

AGENCY ID OR04619		THOMAS MCCALL UNIVERSITY POLICE DEPARTMENT Green Valley, Oregon (541) 555-1234				INCIDENT 46-108290911		
INCIDENT REPORT PRINT OR TYPE ALL INFORMATION								
EVENT	INCIDENT TYPE			COMPLETED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	FORCED ENTRY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	PREMISE TYPE Res.	UNITS ENTERED 1	<input checked="" type="checkbox"/> TYPE VICTIM Individual Business Government Other
	Manslaughter							
	Hazing							
						<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 313 Salmon Street, Green Valley, OR					ZIP CODE 97652		WEAPON TYPE LINK
	INCIDENT DATE 8/25/2012		24 HOUR CLOCK 17:27		TO	DATE 8/25/2012		24 HOUR CLOCK 19:05
	VICTIM'S NAME (LAST, FIRST, MIDDLE) Bateson, Jessica				RELATIONSHIP TO SUBJECT In Care Of		DAYTIME PHONE LINK	
ADDRESS 603 Moore Tower, Thomas McCall University				CITY Green Valley		STATE OR		ZIP CODE 97652
SUBJECT NO. 1	NAME (LAST, FIRST, MIDDLE) Durden, Taylor L			AKA None				
	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULARITIES, ETC. None							
	ADDRESS 313 Salmon Street		CITY Green Valley		STATE OR		ZIP CODE 97652	
	SUBJECT (NO. 1) USING: ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNKNOWN DRUGS <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNKNOWN		ARRESTED NEAR OFFENSE SCENE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		DATE / TIME OF OFFENSE 8/25/2012 17:27		DATE / TIME OF ARREST 8/29/2012 15:30	
NARRATIVE	Following the homicide ruling of the Medical Examiner's Office in re: Jessica Bateson, Investigating officer questioned Durden and Richards. Based upon the further questioning, this officer did arrest and charge Durden and Richards with manslaughter, and hazing. Carmen Cordova was out of town when contacted, but agreed to an interview upon her return to the campus. Interview was set for 9/12/2012 at 09:00 at the TMU PD.							
PROPERTY	TYPE (GROUP)						TOTAL VALUE	
	STOLEN							
	DAMAGED							
	BURNED							
	RECOVERED							
	SEIZED							
ADMINISTRATIVE	SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED YES		<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED		<input type="checkbox"/> ARRESTED UNDER 18 <input checked="" type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEAR UNDER 18 <input type="checkbox"/> EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRACTION DENIED 4. <input type="checkbox"/> VICTIM DECLINES OPERATION 5. <input type="checkbox"/> JUVENILE NO CUSTODY							
	REPORTING OFFICER		DATE	24 HR CLOCK	APPROVING OFFICER		DATE	UNIT NUMBER
	Sgt. Chris Knight		8/29/2012	16:50	Lt. Solomon		8/29/2012	4618
	FOLLOW-UP INVESTIGATION REQUIRED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO							

EXHIBIT 3: Investigative Report (Page 2 of 2)

AGENCY ID OR04619		THOMAS MCCALL UNIVERSITY POLICE DEPARTMENT Green Valley, Oregon (541) 555-1234		INCIDENT # 46-108290911	
SUPPLEMENTAL INCIDENT REPORT PRINT OR TYPE ALL INFORMATION)					
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 313 Salmon Street				ZIP CODE 97652	CASE # 1879320
INCIDENT DATE 8/25/2012		24 HOUR CLOCK 17:27	TO	INCIDENT DATE 8/25/2012	24 HOUR CLOCK 19:05
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) Richards, Alex			RELATIONSHIP TO SUBJECT NA	DAYTIME PHONE 541-555-0789	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) Richards, Alex
ADDRESS 313 Salmon Street			CITY Green Valley	STATE OR	Zip Code 97652
SUBJECT NO. 2	NAME (LAST, FIRST, MIDDLE) Alex Richards			AKA	
	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULARITIES, ETC. None				
	ADDRESS 313 Salmon Street		CITY Green Valley	STATE OR	ZIP CODE 97652
	SUBJECT (NO.2) USING: ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNKNOWN DRUGS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNKNOWN		ARRESTED NEAR OFFENSE SCENE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	DATE / TIME OF OFFENSE 8/25/2012 17:27	
SUPPLEMENTAL NARRATIVE	DATE 8/29/2012		24 HOUR CLOCK 16:50	DATE / TIME OF ARREST 8/29/2012 15:30	
	Alex Richards identified as second subject.				
	REPORTING OFFICER		DATE	24 HOUR CLOCK	SUPERVISING OFFICER
Sgt. Chris Knight		8/29/2012	16:50	Lt. Solomon	

EXHIBIT 4: Emergency Room Record

Chinook Regional Hospital

3505 Chinook Highway
Chinook, OR 97652
541-555-7131

EMERGENCY ROOM REPORT**PATIENT NAME:** Jessica Bateson**BILLING ADDRESS:** 603 Moore Tower, Thomas McCall University, OR 97652**CONTACT NUMBER:** NA**DATE:** 8/25/2012**TIME OF ARRIVAL:** 17:50**TIME OF TREATMENT:** 17:51**INSURANCE COMPANY:** Blue Cross Blue Shield of Oregon**INSURANCE PHONE NUMBER:** (888) 675-6570**DATE OF BIRTH:** 05/22/1993**POLICY NUMBER:** OR 998405667-1**EMPLOYER:** None/Student**EMPLOYER NUMBER:** N/A**IF UNDER AGE OF 18, GUARDIAN NAME:** N/A**CONTACT NUMBER:** N/A**VITAL SIGNS:** BLOOD PRESSURE 101/50 PULSE 68bpm AGE 19 years old WEIGHT 131lbs**BLOOD TYPE:** B+**CURRENT MEDICATIONS:** None known at admission**ALLERGIES:** None known at admission**PHYSICIAN OF RECORD:** Dr. Cory White**NURSE ON DUTY:** Amanda Adams, RN**REASON FOR VISIT NOTED BY PATIENT:** N/A – Patient arrived unconscious via Chinook EMS**OBSERVATIONS MADE BY PHYSICIAN:** Patient arrived by Chinook County EMS. Patient was in an unresponsive state with fixed pupils and labored breathing.**TREATMENT PERFORMED:** Administered steroid to allow for ease of breathing, immediately following injection, patient's heart stopped. Code alarm triggered, immediate resuscitation efforts began, Shot of Adrenaline injected, AED paddles charged and executed four times, RN Adams administered rebreathing bag for approximately 20 minutes. Following 20 minutes of unsuccessful life support, Time of Death was called and resuscitation efforts ceased.**DIAGNOSIS:** Acute respiratory arrest**MEDICATIONS PRESCRIBED:** Anabolic Steroid, Adrenaline,**ADMITTANCE DATE / TIME:** 17:50**RELEASE DATE / TIME:** Time of Death Notated at 18:40. Subsequent release to the Chinook County Medical Examiner's Office.**FOLLOW-UP NEEDED:** N/A**REFERRED TO:** Chinook County Medical Examiner's Office*Cory White, M.D*8/25/2012

PHYSICIAN'S SIGNATURE

DATE

PATIENT'S SIGNATURE

DATE

EXHIBIT 5: Record of Medical Examiner (Page 1 of 3)

**STATE OF OREGON
OREGON STATE POLICE
DIVISION OF FORENSIC SCIENCES
RECORD OF MEDICAL EXAMINER**

City	Green Valley	County	Chinook	Case No.	2012-470152
Name of Deceased	Jessica Bateson				
Residence of Deceased	603 Moore Tower, Thomas McCall University, OR 97652				
Age	19 years, 3 months, 4 days	DOB	5/22/93		
Race	Caucasian	Height/Weight	70" 131 lbs, 5oz		

MANNER OF DEATH

() Natural (**X**) Homicide () Suicide () Accident () Undetermined () Other

CAUSE OF DEATH

Swollen brain stem as a result of acute Hyponatremia

LAST SEEN	Date	8/25/2012	Hour	n/a	Place	313 Salmon Street
FOUND	Date	8/25/2012	Hour	17:26	Place	313 Salmon Street
INJURY	Set forth below.					
PRONOUNCED	Date	8/25/2012	Hour	18:40	Place	Dr. Cory White
NOTIFIED	Date	8/26/2012	Hour	11:25	By	Lt. Clarice Starling, HCSO

BODY IDENTIFIED BY

(**X**) Fingerprints (**X**) State ID Card () Photographs () Family

AUTOPSY

AUTHORIZED BY	Medical Examiner Eppes	MEDICAL EXAMINER NOTIFIED	Yes
PRESENT AT AUTOPSY	Sgt. Chris Knight, Thomas McCall University Police Dept., Investigating Officer		

SUSPECT(S)

--	--	--	--

MORGUE INFORMATION

NAME	Chinook Regional Hospital	Date Received	8/25/2012	Hour	19:05
BODY REMOVED FROM	Chinook Regional Hospital				
TRANSPORTED BY	J.P. Dawson				

PURPOSE

(**X**) Autopsy () Limited Dissection () External Exam () History Review

PERFORMED BY	Dr. Jaden Chessler	Date	8/27/2012	Hour	10:15
SIGNED	<i>Dr. Jaden Chessler</i>	Date	8/27/12		
APPROVED	<i>Dr. Randall Gentry</i>	Date	8/27/12		

EXHIBIT 5: Record of Medical Examiner (Page 2 of 3)

In accordance with ORS § 146.117, an autopsy is performed on the body of Jessica L. Bateson at the Medical University of Oregon, Portland, Oregon, on Monday, August 27, 2012, commencing at 10:15 hours.

EXTERNAL, EXAMINATION: Body is that of an adult female, approximately 70" in height, and weighing 131 lbs. 5oz, consistent with the documented age of 19 years. Body is received wrapped in a black zippered disaster bag, identified by an attached name tag and clad in the following articles of clothing:

1. White shirt and tan colored shorts with multiple pockets were worn. ESE pin worn at the upper right of shirt. Gas station receipt and one container of Soft Lips lip-gloss were located in the front right pocket. No other contents found.
2. Tan colored flip-flops.

Body was refrigerated and is cool to the touch. The blood from the body pooled evenly in the lower portions of the body as it presents on the examination table. Rigor mortis is fully fixed in the extremities and jaw.

Red scalp hair ranges to an estimated 14 inches. Irises are hazel. Equal pupils are .118 inch. Whites of the eyes do not show blood vessels indicative of strangulation. Ears and nose are without discharge. Mouth is in good condition. Lips, gums, and tongue are moist. Symmetric neck is mildly pinched but otherwise without note.

Chest is normal size and is without lesion. Upper chest area still has medical leads attached from resuscitation efforts at Chinook Regional Hospital.

Hands have moderate length, irregular nails red in color, with minimal dirt underneath. Dorsal right forearm has multiple purple contusions extending from the dorsal hand to the forearm. A 1-inch group of blue ink lines is on the left outer hand. Bilateral shins lack significant edema. An indistinct 6-inch purple contusion is around the left knee and matching on the right knee. Skin of the bilateral shins, extending to the feet is without note. Additional superficial healed scars range to 1 inch. Varicose veins of both feet are prominent at the arches and insteps. Toenails are short to moderate in length, painted red, and minimally irregular. Pooling of blood in the upper back is prominent with multiple blotchy spots. Remaining extremities and back are without lesion.

EVIDENCE OF MEDICAL INTERVENTION: A single electrocardiographic lead is on the upper left chest. Injection site is visible where IV port is still present and in place on the inside of the right forearm. Marks from AED paddles are visible on the opposing chest sides in locations consistent with emergency cardiac resuscitation efforts. Intubation tube is still present in upper trachea extending out of the mouth. Patient identification is still present on left wrist.

EVIDENCE OF INJURY: A 1-inch group of abrasions is on the dorsal right elbow, indicative of a fall of intermediate height.

INTERNAL EXAMINATION: The following excludes the described injuries. Soft tissues and typically positioned internal organs lack unusual odor or color. Soft tissues and internal organs have mild breakdown of cells/tissue by self-produced enzymes.

CAVITIES: The serosal cavities have usual smooth glistening tan-pink lining. Tissues around the heart have no fibrous adhesions and contain estimated 110 ml of fluid without clot. Remaining cavities are without excess fluid accumulation.

CARDIOVASCULAR: The 360-gram heart is smooth and glistening with mildly increased fat tissue. The valves, delicate cords, and papillary muscles are without note. The chambers of the heart that receive blood from the veins are acutely dilated.

EXHIBIT 5: Record of Medical Examiner (Page 3 of 3)

LIVER / GALLBLADDER: The 2260-gram liver has a smooth glistening capsule. The pale yellow-brown tissue is soft and without discrete gross lesion. The liver is without note. The typically positioned gallbladder contains an estimated 15 ml of green sticky bile without stone; the duct is open and unobstructed.

RESPIRATORY: The examination of neck musculature lacks blood or lesion. The intact typically minimally hyoid bone is situated between the base of the tongue and the larynx supporting the tongue, larynx and their muscles are without note. The typically branching tracheobronchial tree has a smooth glistening tan-pink mucosa without lesion. A moderate quantity of pink froth is within the lower bronchial tree. The typically formed 560-gram right and 530 gram left lung have smooth glistening membranes. Each is well aerated, deep purple red to pink parenchyma which issues a small quantity of pink froth but which otherwise has no discrete gross lesion. The pulmonary blood vessels are without note.

GASTROINTESTINAL: The typically formed tongue, esophagus, junction involving the stomach and the esophagus, and lining of the digestive tract are without note. The stomach contains an overabundance of water. The gastric tubular organ contains an estimated 550 ml of yellow-green thick opaque fluid and includes partially digested pizza. The small and large bowels are enlarged from excessive water presence but are without significant gross lesion.

GENITOURINARY: The 190-gram right and 210 gram left kidney have smooth red-brown outward appearances and distinct junctions. The pelvis contains no stone and drains freely to the unobstructed organs, which empty typically to the bladder. The urinary bladder contains an estimated 750 ml of clear pale to clear urine. The urinary bladder is markedly grossly enlarged.

NEUROLOGICAL: The 1420-gram brain has a distinct grey-white matter. The symmetric hemispheres are without gross lesion. The grey-white matter separation is distinguishable. The brainstem and the cerebellum located between the brain stem and the back of the cerebrum have significant swelling. Further detail notes excessive fluid in the area. At the brain stem area, excessive swelling noted. Likely nerve damage.

MUSCULOSKELETAL: The typically formed skeleton is without note. The intact vertebrae, ribs, pelvis and extremity long bones are without note.

OTHER PROCEDURES:

1. Documentary photographs obtained.
2. Blood, urine, bile, and other fluids submitted for toxicological analysis.
3. Blood submitted for blood analysis.
4. Head and body hair submitted.
5. Clothing submitted for chemical determination.

AUTOPSY FINDINGS: At the time of death, this was a healthy adult female, showing no natural cause of death or traumatic injury. Toxicological testing per report: no alcohol, nor narcotics – prescription.

OPINION: Based upon the medical science reports, as well as physical observation, this otherwise healthy 19-year-old female, Jessica L. Bateson, died from an overdose of water resulting in an acute case of hyponatremia. The volume of water found in the decedent's system was sufficient to alter the sodium serology balance, and would undoubtedly be lethal for someone of Bateson's height and weight. Based upon this information, a lethal overdose of water was neither accidental nor self-inflicted.

MANNER OF DEATH: Deceased died of acute hyponatremia through criminal intervention.

EXHIBIT 6: Photograph of the Epsilon Sigma Epsilon House



EXHIBIT 7: Photograph of Red Plastic 16oz. “Solo” Brand Cup Used by the Victim



EXHIBIT 8: Photograph of Water Coolers used by ESE in the Basement



EXHIBIT 9: News Report of Hyponatremia Fatality¹ (Page 1 of 2)

CBS/AP – JAN 2007. Homicide detectives are investigating the death of a woman believed to have been killed by drinking too much water in a radio station contest.

On a tape of the Jan. 12 show, disc jockeys on KDND-FM's "Morning Rave" joke about the possible dangers of consuming too much water, at one point alluding to a college student who died during such a stunt in 2005.

During the contest, a listener - self-identified as a nurse - called the live radio broadcast and warned that the game was dangerous, CBS News station KOVR-TV reported. "I want to say that those people drinking all that water can get sick and die from water intoxication," said the caller.

"Yeah, we're aware of that," one of them said. Another DJ laughed: "Yeah, they signed releases, so we're not responsible. We're OK." "And if they get to the point where they have to throw up, then they're going to throw up, and they're out of the contest before they die, so that's good, right?" another one said.

The Sacramento County Sheriff's Department decided to pursue the investigation Wednesday after listening to the tape, obtained by The Sacramento Bee newspaper, sheriff's spokesman Sgt. Tim Curran said.

Jennifer Lea Strange, a 28-year-old mother of three, was one of about 18 contestants who tried to win a Nintendo Wii gaming console by determining how much water they could drink without going to the bathroom. The show's DJs called the contest "Hold your Wee for a Wii."

"Hey, Carter, is anybody dying in there?" a DJ asked during the show. "We got a guy who's just about to die," the other responded, and all the DJs laughed. "I like that we laugh about that," another said.

"Make sure he signs the release. ... Get the insurance on that, please."

Strange participated in the contest during the morning in the studio and was found dead that afternoon. The county coroner said preliminary autopsy findings indicate she died of water intoxication.

Other contestants said Strange may have ingested as much as two gallons of water. Several hours into the contest, Strange was interviewed on the air and complained that her head hurt. "They keep telling me that it's the water. That it will tell my head to hurt and then it will make me puke," she said.

¹ © [2007] Sacramento Televisions Incorporated. All rights reserved. Reproduced under license.

EXHIBIT 9: News Report of Hyponatremia Fatality² (Page 2 of 2)

Strange won the second-place prize, tickets to a Justin Timberlake concert. She commented on the tape that she looked pregnant, and a female DJ agreed. "Oh, my gosh, look at that belly. That's full of water. ... Come on over, Jennifer, you OK?" the DJ asked. "You going to pass out right now? Too much water?"

The winner of the contest, Lucy Davidson, said she collapsed just 15 minutes after leaving the station with her prize. "I didn't know what was wrong with me. I just knew I had never felt so sick in my life," Davidson told KOVR.

Davidson said Strange's stomach protruded over her waist as the contest ended.

"As soon as we went to the bathroom we both came out of the stalls. I looked over at her and she probably looked as pale as I did," Davidson said.

On Tuesday, KDND's parent company, Entercom/Sacramento, fired 10 employees connected to the contest, including three morning disc jockeys. The company also took the morning show off the air. Station spokesman Charles Sipkins said Wednesday that the company had not yet heard from the sheriff's department but that it would cooperate with the investigation. Attorneys for the Strange family said Wednesday they plan to file a wrongful death lawsuit against the radio station.

² © [2007] Sacramento Televisions Incorporated. All rights reserved. Reproduced under license.

EXHIBIT 10: WebMD.com Medical Report on Hyponatremia³ (page 1 of 4)

Background

Serum sodium concentration and serum osmolarity normally are maintained under precise control by homeostatic mechanisms involving stimulation of thirst, secretion of antidiuretic hormone (ADH), and renal handling of filtered sodium. Clinically significant hyponatremia is relatively uncommon and is nonspecific in its presentation; therefore, the physician must consider the diagnosis in patients presenting with vague constitutional symptoms or with altered level of consciousness. Irreparable harm can befall the patient when abnormal serum sodium levels are corrected too quickly or too slowly. The physician must have a thorough understanding of the pathophysiology of hyponatremia to initiate safe and effective corrective therapy. The patient's fluid status must be accurately assessed upon presentation, as it guides the approach to correction.

Hypovolemic hyponatremia

Total body water (TBW) decreases; total body sodium (Na⁺) decreases to a greater extent. The extracellular fluid (ECF) volume is decreased.

Euvolemic hyponatremia

TBW increases while total sodium remains normal. The ECF volume is increased minimally to moderately but without the presence of edema.

Hypervolemic hyponatremia

Total body sodium increases, and TBW increases to a greater extent. The ECF is increased markedly, with the presence of edema.

Redistributive hyponatremia

Water shifts from the intracellular to the extracellular compartment, with a resultant dilution of sodium. The TBW and total body sodium are unchanged. This condition occurs with hyperglycemia or administration of mannitol.

Pseudohyponatremia

The aqueous phase is diluted by excessive proteins or lipids. The TBW and total body sodium are unchanged. This condition is seen with hypertriglyceridemia and multiple myeloma.

Pathophysiology

Serum sodium concentration is regulated by stimulation of thirst, secretion of ADH, feedback mechanisms of the renin-angiotensin-aldosterone system, and variations in renal handling of filtered sodium. Increases in serum osmolarity above the normal range (280-300 mOsm/kg) stimulate hypothalamic osmoreceptors, which, in turn, cause an increase in thirst and in circulating levels of ADH. ADH increases free water reabsorption from the urine, yielding urine of low volume and relatively high osmolarity and, as a result, returning serum osmolarity to normal. ADH is also secreted in response to hypovolemia, pain, fear, nausea, and hypoxia.

Aldosterone, synthesized by the adrenal cortex, is regulated primarily by serum potassium but also is released in response to hypovolemia through the renin-angiotensin-aldosterone axis. Aldosterone causes absorption of sodium at the distal renal tubule. Sodium retention obligates free water retention, helping to correct the hypovolemic state. The healthy kidney regulates sodium balance independently of ADH or aldosterone by varying the degree of sodium absorption at the distal tubule. Hypovolemic states, such as hemorrhage or dehydration, prompt increases in sodium absorption in the proximal tubule. Increases in vascular volume suppress tubular sodium reabsorption, resulting in natriuresis and helping to restore normal vascular volume. Generally, disorders of sodium balance can be traced to a disturbance in thirst or water acquisition, ADH, aldosterone, or renal sodium transport.

Hyponatremia is physiologically significant when it indicates a state of extracellular hyposmolarity and a tendency for free water to shift from the vascular space to the intracellular space. Although cellular edema is well tolerated by most tissues, it is not well tolerated within the rigid confines of the bony calvarium. Therefore, clinical manifestations of hyponatremia are related primarily to cerebral edema. The rate of development of hyponatremia plays a critical role in its pathophysiology and subsequent treatment. When serum sodium concentration falls slowly, over a period of several days or weeks, the brain is capable of compensating by extrusion of solutes and fluid to the extracellular space. Compensatory extrusion of solutes reduces the flow of free water into the intracellular space, and symptoms are much milder for a given degree of hyponatremia.

³ <http://emedicine.medscape.com/article/907841-overview>, excerpt reprinted with permission from eMedicine.com, 2009.

EXHIBIT 10: WebMD.com Medical Report on Hyponatremia⁴ (page 2 of 4)

When serum sodium concentration falls rapidly, over a period of 24-48 hours, this compensatory mechanism is overwhelmed and severe cerebral edema may ensue, resulting in brainstem herniation and death.

Frequency United States: Hyponatremia is the most common electrolyte disorder, with a marked increase among hospitalized and nursing home patients. A 1985 prospective study of inpatients in a US acute care hospital found an overall incidence of approximately 1% and a prevalence of approximately 2.5%. On the surgical ward, approximately 4.4% of postoperative patients developed hyponatremia within 1 week of surgery. Hyponatremia has also been observed in approximately 30% of patients treated in the intensive care unit.

International: Though clearly not indicative of the overall prevalence internationally, hyponatremia has been observed in as high as 42.6% of patients in a large acute care hospital in Singapore and in 30% of patients hospitalized in an acute care setting in Rotterdam.

Mortality/Morbidity

Pathophysiologic differences between patients with acute and chronic hyponatremia engender important differences in their morbidity and mortality.

- Patients with acute hyponatremia (developing over 48 h or less) are subject to more severe degrees of cerebral edema for a given serum sodium level. The primary cause of morbidity and death is brainstem herniation and mechanical compression of vital midbrain structures. Rapid identification and correction of serum sodium level is necessary in patients with severe acute hyponatremia to avert brainstem herniation and death.
- Patients with chronic hyponatremia (developing over more than 48 h) experience milder degrees of cerebral edema for a given serum sodium level. Brainstem herniation has not been observed in patients with chronic hyponatremia. The principal causes of morbidity and death are status epilepticus (when chronic hyponatremia reaches levels of 110 mEq/L or less) and cerebral pontine myelinolysis (an unusual demyelination syndrome that occurs in association with chronic hyponatremia).
- The distinction between acute hyponatremia and chronic hyponatremia has critical implications in terms of morbidity and mortality and in terms of proper corrective therapy.

Sex

Overall incidence of hyponatremia is approximately equal in males and females, though postoperative hyponatremia appears to be more common in menstruant females.

Age

Hyponatremia is most common in the extremes of age; these groups are less able to experience and express thirst and less able to regulate fluid intake autonomously. Specific settings that have been known to pose particular risk include the following:

- Infants fed tap water in an effort to treat symptoms of gastroenteritis
- Infants fed dilute formula in attempt to ration
- Elderly patients with diminished sense of thirst, especially when physical infirmity limits independent access to food and drink

Clinical

History

- The number and severity of symptoms increase with the degree of hyponatremia and the rapidity with which it develops. When the serum sodium level falls gradually, over a period of several days or weeks, sodium levels as low as 110 mEq/L may be reached with minimal symptomatology. In contrast, an equivalent fall in serum sodium level over 24-48 hours may overwhelm compensatory mechanisms, leading to severe cerebral edema, coma, or brainstem herniation.
- Symptoms range from mild anorexia, headache, and muscle cramps, to significant alteration in mental status including confusion, obtundation, coma, or status epilepticus.
- Hyponatremia is often seen in association with pulmonary/mediastinal disease or CNS disorders. Hyponatremia must be considered in patients with pneumonia, active tuberculosis, pulmonary abscess, neoplasm, or asthma, as well as in patients with CNS infection, trauma, or neoplasm. Patients with carcinoma of the nasopharynx, duodenum, stomach, pancreas, ureter, prostate, or uterus also have an increased risk.
- Hyponatremia is associated with numerous medications. The patient's medication list should be examined for drugs known to cause hyponatremia.

⁴ <http://emedicine.medscape.com/article/907841-overview>, excerpt reprinted with permission from eMedicine.com, 2009.

EXHIBIT 10: WebMD.com Medical Report on Hyponatremia⁵ (page 3 of 4)

- Hyponatremia has been noted in patients with poor dietary intake who consume large amounts of beer (called beer potomania) and after use of the recreational drug *N*-methyl-3,4-methylenedioxymphetamine (ie, MDMA or ecstasy). MDMA-induced hyponatremia occurs via multiple mechanisms; these include the induction of syndrome of inappropriate antidiuretic hormone (SIADH), the encouragement to drink large amounts of water to prevent unpleasant side effects of the drug, and the tendency among those intoxicated to be involved in vigorous physical activity that results in heavy sweating.
- A history of hypothyroidism or adrenal insufficiency should be sought because each is associated with hyposmolar hyponatremia.
- Patients with clinically significant hyponatremia present with nonspecific symptoms attributable to cerebral edema. These symptoms, especially when coupled with a recent history of altered fluid balance, should suggest the possibility of hyponatremia.
 - Anorexia
 - Nausea and vomiting
 - Difficulty concentrating
 - Confusion
 - Lethargy
 - Agitation
 - Headache
 - Seizures

Physical

Physical findings are highly variable and dependent on the degree and the chronicity of hyponatremia. Patients with acutely developing hyponatremia are typically symptomatic at a level of approximately 120 mEq/L. Those patients with chronic hyponatremia tolerate much lower levels.

- Most abnormal findings on physical examination are characteristically neurologic in origin.
 - Level of alertness ranging from alert to comatose
 - Variable degrees of cognitive impairment (eg, difficulty with short-term recall; loss of orientation to person, place, or time; frank confusion or depression)
 - Focal or generalized seizure activity
 - In those patients with acute severe hyponatremia, signs of brainstem herniation, including coma; fixed, unilateral, dilated pupil; decorticate or decerebrate posturing; sudden severe hypertension and respiratory arrest
- In addition to neurologic findings, patients may exhibit signs of hypovolemia or hypervolemia. Determining the hydration status of the patient may help establish the etiology of the hyponatremia and direct subsequent treatment.
 - Dry mucous membranes, tachycardia, diminished skin turgor, and orthostasis suggest hypovolemic hyponatremia due to excessive loss of body fluids and replacement with inappropriately dilute fluids.
 - Pulmonary rales, S3 gallop, jugular venous distention, peripheral edema, or ascites suggest hypervolemic hyponatremia due to excess retention of sodium and free water (ie, cirrhosis, nephrotic syndrome, congestive heart failure).
 - Patients who lack findings of hypovolemia or hypervolemia are considered to have euvolemic hyponatremia, which is consistent with such etiologies as exogenous free water load, hypothyroidism, cortisol deficiency, or SIADH.
- Other nonspecific signs include muscle weakness and cramping. Rhabdomyolysis is an occasional consequence of hyponatremia and should be considered in patients with muscle pain or tenderness.

Causes

- Hypovolemic hyponatremia develops as sodium and free water are lost and replaced by inappropriately hypotonic fluids, such as tap water, half-normal saline, or dextrose in water. Sodium can be lost through renal or nonrenal routes. Nonrenal routes include GI losses, excessive sweating, third spacing of fluids (eg, ascites, peritonitis, pancreatitis, burns), and cerebral salt-wasting syndrome.
 - Excess fluid losses (eg, vomiting, diarrhea, excessive sweating, GI fistulas or drainage tubes, pancreatitis, burns) that have been replaced primarily by hypotonic fluids
 - Acute or chronic renal insufficiency, in which the patient may be unable to excrete adequate amounts of free water
 - Salt-wasting nephropathy

⁵ <http://emedicine.medscape.com/article/907841-overview>, excerpt reprinted with permission from eMedicine.com, 2009.

EXHIBIT 10: WebMD.com Medical Report on Hyponatremia⁶ (page 4 of 4)

- Cerebral salt-wasting syndrome seen in patients with traumatic brain injury, aneurysmal subarachnoid hemorrhage, and intracranial surgery. Cerebral salt-wasting must be distinguished from SIADH because both conditions can cause hyponatremia in neurosurgical patients, and yet the pathophysiology and treatment are different.
- Prolonged exercise in a hot environment, especially in patients who hydrate aggressively with hypotonic fluids during exertion. Severe symptomatic hyponatremia has been reported in marathon runners and in recreational hikers in the Grand Canyon.
- Euvolemic hyponatremia implies normal sodium stores and a total body excess of free water. This occurs in patients who take in excess fluids.
 - Psychogenic polydipsia, often in psychiatric patients
 - Administration of hypotonic intravenous or irrigation fluids in the immediate postoperative period
 - In a recent meta-analysis, administration of hypotonic maintenance intravenous fluids to hospitalized children has been associated with an increased incidence of acute hyponatremia compared with administration of isotonic maintenance fluids.
 - Infants who may have been given inappropriate amounts of free water
 - Ingestion of sodium phosphate or sodium picosulfates and magnesium citrate combination as a bowel preparation before colonoscopy or colorectal surgery
 - SIADH
- Hypervolemic hyponatremia occurs when sodium stores increase inappropriately.
 - This may result from renal causes such as acute or chronic renal failure, when dysfunctional kidneys are unable to excrete the ingested sodium load. It also may occur in response to states of decreased effective intravascular volume.
 - History of hepatic cirrhosis, congestive heart failure, or nephrotic syndrome, in which patients are subject to insidious increases in total body sodium and free water stores
- Uncorrected hypothyroidism or cortisol deficiency (adrenal insufficiency, hypopituitarism)
- Consumption of large quantities of beer or use of the recreational drug MDMA (ecstasy)
- Hyponatremia can be caused by many medications. Known offenders include acetazolamide, amiloride, amphotericin, aripiprazole, atovaquone, thiazide diuretics, amiodarone, basiliximab, angiotensin II receptor blockers, angiotensin-converting enzyme inhibitors, bromocriptine, carbamazepine, carboplatin, carvedilol, celecoxib, cyclophosphamide, clofibrate, desmopressin, donepezil, duloxetine, eplerenone, gabapentin, haloperidol, heparin, hydroxyurea, indapamide, indomethacin, ketorolac, levetiracetam, loop diuretics, lorcarinide, mirtazapine, mitoxantrone, nimodipine, oxcarbazepine, opiates, oxytocin, pimozide, propafenone, proton pump inhibitors, quetiapine, sirolimus, ticlopidine, tolterodine, vincristine, selective serotonin reuptake inhibitors, sulfonyleureas, trazodone, tolbutamide, venlafaxine, zalcitabine, and zonisamide.

⁶ <http://emedicine.medscape.com/article/907841-overview>, excerpt reprinted with permission from eMedicine.com, 2009.

EMERGENCY MEDICAL/GENERAL RELEASE/WARNING**EPSILON SIGMA EPSILON (ESE)****CHI SI Chapter**

Name of Participant: Jessica Bateson Phone: (541) 555-26XX
 Address: 603 Moore Tower, Thomas McCall University, Green Valley, OR 97652
 Date of Birth: 5/22/1993
 Emergency Contact: Linda Bateson Phone: (541) 555-26XY

1. I hereby certify that I am physically fit to participate in Epsilon Sigma Epsilon (ESE). JB I hereby consent to be said participant competing in events sponsored by ESE Fraternity and/or the Epsilon Sigma Epsilon Foundation. JB

2. By signing this contract, I agree to abide by the rules and regulations of ESE and events. I understand that signing this contract releases from liability: ESE Fraternity, its chapters and the ESE Foundation. I understand that signing this contract releases from liability: ESE Fraternity's and ESE Foundation's members, employees, officers, agents, sponsors, judges, coaches and managers, in connection with any injury to or death of the above named participant. JB

WARNING: I am aware that playing or practicing to play/participate in any sport can be dangerous activity involving many risks of injury. I understand that the dangers and risks of playing or practicing to play/participate in the above mentioned event(s) include, but are not limited to, death, serious neck and spinal injuries which may result in complete or partial paralysis, injury to virtually all bones, joints, ligaments, muscles, tendons and other aspects of the skeletal system, and serious injury or impairment to other aspects of my body, general health and well being. I understand that the dangers of playing or practicing to play/participate in the above mentioned event may result not only in serious injury, but also in serious impairment of my future abilities to earn a living, to engage in other business, social and recreational activities and generally enjoy my life.

ACKNOWLEDGEMENT OF WARNING: I (student) Jessica Bateson, hereby acknowledge that I have been properly advised, cautioned, and warned by the proper personnel of ESE Taylor Durden, that by participating in such event, I am exposing myself to the above described risks.

Signature of Participant: Jessica Bateson **Date:** 8/15/2012

Signature of Witness: Taylor Durden **Date:** 8/15/2012

GENERAL RELEASE OF ALL CLAIMS:

General Release made August 15, 2012 by Jessica Bateson student of Thomas McCall University residing at 603 Moore Tower city of Green Valley, county of Chinook.

In consideration of permission granted by me by ESE Fraternity to participate in ESE, Jessica Bateson, I hereby release and discharge ESE Fraternity, its chapters and ESE Foundation, and their members, employees, officers, agents, sponsors, coaches, judges and managers, from all claims, demands, actions, judgments, and executions which the undersigned's heirs, executors, administrators, or assigns may have or claim to have against ESE Fraternity, its chapters and ESE Foundation, their members, employees, officers, agents, sponsors, coaches, judges, and managers for all injuries or death to me, Jessica Bateson, including personal injuries or death caused by negligence, or otherwise, known or unknown, and injuries to property, real or personal, caused by, or arising out of the above event(s). I, the undersigned, have read this general release and understand all of its terms. I execute it voluntarily and with full knowledge of its significance. In witness whereof, I have executed this general release the day and year set forth above written.

MEDICAL HISTORY / IMPAIRMENTS: Please note any prior injuries or medical history that would preclude you from participating in ESE activities. None

Signature of Participant: Jessica Bateson **Date:** 8/15/2012

Signature of Witness: Taylor Durden **Date:** 8/15/2012

EXHIBIT 12: Epsilon Sigma Epsilon Pledge Rules

PLEDGE RULES FOR EPSILON SIGMA EPSILON CHI SI Chapter Thomas McCall University

1. Wear pledge pin all of the time (this includes on pajamas, towel to and from the shower etc).
2. Carry pledge book at all times (this includes to and from the shower etc).
3. Address members as "Ms." and "Mr."; a pledge may never address a member by their first name.
4. All pledges will wear tan shorts and white shirts without logos or graphics on them during pledge week.
5. Possession of cell phones by pledges during pledge week is prohibited.
6. Pledges are not allowed in any portion of the ESE House except the basement via a basement entrance until full membership status is attained.
7. Mandatory pop quizzes initiated by members at any time.
8. Must carry backpacks to and from classes for members with the same course.
9. Must transport home at any time any member who calls upon a pledge to do so from any location within the metro area.
10. Massive memorization of every song, local chapter affiliation and large portions of the ESE constitution is required.
11. Prepare a pledge class song and skit and perform it on request whenever and wherever requested.
12. Wear a pledge clothing item to all University sponsored athletics activities.

Demerits may be received for any rule infraction. Demerits must be atoned for before full initiation. Atonement for demerits may include any of the following at a member's request: washing laundry, picking up meals at the Student Union, washing member's cars, singing the ESE song during lunch in the Student Union, swimming through the reflecting pool at the library, or any other appropriately formulated task assigned by a full member.

EXHIBIT 13: Death Certificate of Jessica Bateson

STANDARD CERTIFICATE OF DEATH STATE OF OREGON CENTER FOR HEALTH STATISTICS State Board of Health			File No – For State Registrar Only <h2 style="margin: 0;">OR-55513</h2>	
1. Place of Death County of <u>Chinook</u>			Registered No. _____ <small>(For use of Local Registrar) (If death occurred in a Hospital or institution give its NAME instead of street and Number.)</small>	
or City of <u>Green Valley</u>				
Home Address: <u>603 Moore Tower, Thomas McCall University, Green Valley, OR 97652</u>				
2. FULL NAME <u>Jessica Bateson</u>			Registration District No. <u>46-055-89</u> In City <u>19</u> Yrs <u>3</u> Mos <u>4</u> Days	
PERSONAL AND STATISTICAL PARTICULARS			MEDICAL CERTIFICATE OF DEATH	
3. Sex <u>F</u>	4. Color of Race <u>Caucasian</u>	5. Marital Status <u>Single</u>	21. DATE OF DEATH (month, day and year) <u>August 25, 2012</u>	
a. If married, widowed, or divorced HUSBAND or WIFE of _____			22. I HEREBY CERTIFY, That I attended deceased from <u>8/25/2012</u> to <u>8/25/2012</u> . I last saw <u>Jessica Bateson</u> alive on <u>8/25/2012</u> , death is said to have occurred on the date stated above, at <u>18:40</u> . The principal cause of death and related cause of importance in	
6. DATE OF BIRTH (month, day, year): <u>May 22, 1993</u>				
7. AGE <u>19</u> Years <u>3</u> Months <u>4</u> Days			Date of Onset: _____	
OCCUPATION	8. Trade, profession or particular kind of work done as spinner, lawyer, bookkeeper, etc. _____		<u>Severe Respiratory Distress</u>	
	9. Industry or business in which work was done, as silk mill, saw mill, bank, etc. _____		<u>Unrecovered Cardiac Arrest</u>	
	10. Date deceased last worked at this occupation (month and year) _____		8/25/2012	
	11. Total time (years) spent in this occupation _____		Was this death due to pregnancy or to childbirth? If so, state which. _____	
12. BIRTHPLACE (city or town) <u>Hermiston</u> (State or Country) <u>Oregon</u>			Contributory causes of importance not related to principal cause. <u>Respiratory arrest</u>	
FATHER	13. NAME <u>William Bateson</u>		Name of operation _____ Date _____	
	14. BIRTHPLACE (city or town) <u>La Grande, Oregon</u>		What test confirmed diagnosis? _____ Was there an autopsy? <u>Yes</u>	
MOTHER	15. NAME <u>Linda Bateson</u>		23. If death was due to external causes (violence) fill in the following:	
	16. BIRTHPLACE (city or town) <u>Coos Bay, Oregon</u>		Accident, suicide, or homicide? _____ Date of Injury _____ Where did the injury occur? _____ (Specify city or town and state) Specify whether injury occurred in industry, in home, or in public place Manner of Injury _____ Nature of Injury _____	
17. Information _____ (Address)			24. Was disease or injury in any way related to occupation of deceased? <u>no</u> If so, specify _____ (Signed) <u>Cory White</u> M.D. Address <u>3505 Chinook Highway, Chinook, OR 97652</u>	
18. BURIAL, CREMATION, OR REMOVAL Place _____ Date _____				
19. UNDERTAKER _____ (Address)				
20. FILED <u>1</u> / <u>1</u> _____ (Registrar Signature)				

EXHIBIT 14: Dr. Jackson's Report

Ahsan Jackson, M.D.

180 Glen Burnie Drive, Baltimore, MD 21282 – Phone: 301.555.129XY

Pathology Report - CONFIDENTIAL – Defense Work Product

SUBJECT NAME: Jessica Bateson

DATE OF DEATH: 8/25/2012

DECEDANT'S ADDRESS: 603 Moore Tower
Thomas McCall University
Green Valley, OR 97652

LOCATION OF DEATH: Chinook Regional Hospital **ATTENDING PHYSICIAN:** Cory White, M.D.

DATE OF AUTOPSY: 8/27/2012

AT BEHEST OF: State of Oregon

AUTOPSY CONDUCTED BY: Jaden Chessler, M.D.

RECORDS AVAILABLE FOR EXAMINATION:

Medical Waiver, Emergency Room Records, Death Certificate, Autopsy Record, E-911 Transcript, Family Medical History and Limited Records from Primary Care Physician

Pursuant to defense counsel request, I have reviewed all of the above listed records to ascertain the cause of death for Jessica Bateson. In particular, I reviewed the report of the Coroner's Office and autopsy report due to the rare cause of death listed.

Jessica Bateson died at Chinook Regional Hospital on August 25, 2012. Immediately prior to her death, she had been a pledge at the Epsilon Sigma Epsilon Honors Society, and was participating in events termed as "Pledge Week." At one of these events, she collapsed and was transported to Chinook Regional Hospital by Chinook County EMS.

The cause of death was listed as acute hyponatremia and was ruled as a homicide by the Coroner's Office. Due to an excess amount of water in the system, the brain stem became swollen to the point that it destroyed impulse transmission from the brain to the rest of the nervous system. In a teenager this would be a very rare diagnosis. In the autopsy findings, no mention is made of testing for hypothyroidism. This would be an intervening factor that could cause acute hyponatremia with a much lower volume of water than would normally be fatal for anyone outside of infants and the extremely elderly. In the documents provided by the State, a medical release for Jessica Bateson was included. The medical release indicates in her own handwriting no medical conditions or impairments that would preclude her from activities. The family history and medical records from the primary care physician both indicate a genetic history of thyroid related illnesses. This strongly suggests that a thyroid condition existed in Ms. Bateson and was missed by the autopsy. A family history of thyroid problems would be a condition necessary to disclose on any medical release.

Additionally, there was no treatment or diagnosis of acute hyponatremia either by the paramedic with the EMS unit or by the treating emergency room physician. Had either of these professionals made the correct diagnosis, Ms. Bateson could have been rapidly treated with an IV solution that would bring the body chemistry back into balance. This treatment would have prevented the coma and death. The treatment could have even averted brain damage, but definitely would have prevented the coma and death.

In my professional medical opinion, the ineptness of the paramedic and ER attending physician in addition to the lack of disclosure by Ms. Bateson led to her death. The autopsy report was incomplete and thus negligent by not conducting serology tests to determine if an underlying thyroid condition could have contributed to or been the root cause for the acute hyponatremia which resulted in the brain stem swelling and death.

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, though, 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

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.

C. Proof 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 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.

D. Application to this Case

The defendant, Taylor Durden, is charged with Second Degree Manslaughter and Hazing. The defendant has pled not guilty. A plea of not guilty puts in issue each element of the crimes with which the defendant is charged. A plea of not guilty requires the State to prove each element of the crimes beyond a reasonable doubt. Durden is presumed innocent and this presumption continues throughout the trial. The defendant must be found not guilty unless the State produces evidence that convinces the trier of fact beyond a reasonable doubt of each element of the crimes.

To prove the charge of second degree manslaughter, the prosecution must show that Bateson's death occurred as a result of Durden's recklessness – that Durden was aware of and consciously disregarded a substantial and unjustifiable risk that was a gross deviation of care that a reasonable person would have observed. Hazing requires showing that the defendant intentionally hazed a potential member or person pledged to be a member of the organization – in this case, compelled Bateson to consume liquid that subjected her to an unreasonable risk of harm.

E. 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, Taylor Durden, is guilty beyond a reasonable doubt.

The defense attorneys present the case for the defendant, Taylor Durden. They will offer their own witnesses to present their client's 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 not less important to be sympathetic and winning. An effective cross-examination is one in which the cross examiner, the witness, the judge and jury all agree on the outcome. It is bad manners and unethical to be sarcastic, snide, hostile or contemptuous. The element of surprise may, in fact, be a valuable attorney's tool, but it is best achieved by being friendly and winning in the courtroom, including with the other side.

Attorneys on both sides will:

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

a. Opening Statement

The opening statement outlines the case it is intended to present. The 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/her feel comfortable. Appropriate introductory questions might include asking the witness’ name, residence, present employment, etc.

Proper phrasing of questions on direct examination include:

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

Conclude your direct examination with:

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

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

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

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

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

For closing, see explanation to *Rule 41*.

2. Witnesses

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

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

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

3. Court Clerk, Bailiff, Team Manager

It is recommended that you provide two separate team members for these roles. If you use only one, then that person must be prepared to perform as clerk and bailiff in every trial. The court clerk and

bailiff aid the judge during the trial. For the purpose of the competition, the duties described below are assigned to the roles of clerk and bailiff.

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

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

a. Duties of the Clerk – Provided by the 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/her performance.

b. Duties of the Bailiff – Provided by the Defense

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

1. Call to Order: As the judges enter the courtroom, say, "All rise. The Court with the Honorable Judge _____ presiding, is now in session. Please be seated and come to order."
Say, "all rise" whenever the judges enter or leave the room.
2. Timekeeping. The bailiff is responsible for bringing a stopwatch to the trial. Be sure to practice with it and know how to use it before the competition. Follow the time limits set for each segment of the mock 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 "8 minutes remaining" (20 minutes total allowed for direct/redirect, less the twelve minutes already used). When the time has run out for any segment of the trial, announce "Time" and hold up the "0" card. After each witness has completed his or her testimony, mark on the time sheet the time to the nearest one-half minute. When three minutes are left, hold up "3" minute card, then again at "1" minute, and finally at "0" minutes. Be sure time cards are visible to all the judges as well as to the attorneys when you hold them up.

Time sheets will be provided at the competition. You will be given enough time sheets for all rounds. It is your responsibility to bring them to each round. Time cards (3, 1, 0 minute) will be provided in each courtroom. Leave them in the courtroom for the next trial round.

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

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

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

Unofficial Timer (optional)

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

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

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

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

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

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

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

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

Time shall be stopped during the period timekeeping is questioned.

VI. RULES OF THE COMPETITION

A. Administration

Rule 1. Rules

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

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

Rule 2. The Problem

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

Rule 3. Witness Bound By Statements

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

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

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

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

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

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

The stipulated facts are a set of indisputable facts from which witnesses and attorneys may draw reasonable inferences. The witness statements contained should be viewed as signed statements made in sworn depositions. If you are asked a question calling for an answer that

cannot reasonably be inferred from the materials provided, you must reply something like, “I don’t know” or “I can’t remember.” It is up to the attorney to make the appropriate objection when witnesses are asked to testify about something that is not generally known or cannot be reasonably inferred from the fact situation or witness statement.

Rule 4. Unfair Extrapolation

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

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

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

Possible rulings a judge may give include:

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

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

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings (see FRE 602 and Rule 3).

Rule 5. Gender of Witnesses

All witnesses are gender neutral. Personal pronouns in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender. Team Rosters, exchanged between teams before the round begins (Rule 31), indicates witnesses and their gender so that references to them can be made correctly during trial.

B. The Trial

Rule 6. Team Eligibility, Teams to State

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

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

All **regional** competitions are **Saturday, March 2**. Teams should be aware, however, that it is subject to change. The Regional Coordinator has discretion to slightly alter the date depending on scheduling requirements, availability of courtrooms, and needs of teams. If dates change, every effort will be made to notify all times in a timely manner.

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

All teams participating at the regional level must be prepared to compete at the state level should they finish among the top their region. Students on the team advancing to the state competition must be the same as those in the regional competition. Should a team be unable to compete in the state competition, CLASSROOM LAW PROJECT may designate an alternate team. The **state finals** are scheduled for **March 15-16**, 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 must consist of a **minimum of eight** students and may include up to a **maximum of 18** students all from the same school. Additional students could be used in support roles as researchers, understudies, photographers, court artists, court reporters, and news reporters. However, none of these roles will be used in the competition. Schools are encouraged to use the maximum number of students allowable, especially where there are large enrollments.

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

A mock trial team is defined as an entity that includes attorneys and witnesses for both the 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 – Coordinator's Copy (see appendix) form listing the team name and all coaches and students to the competition coordinators at the student orientation. If a school enters more than one team, **team members cannot switch teams at any time for any round of regional or state competition.**

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

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

Rule 8. Team Presentation

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

Note: **Because teams are power-matched after Round 1, there is no guarantee that in Round 2**

the other side of your team will automatically argue. However, if, for example, in Rounds 1 and 2 your prosecution side argued, then you are guaranteed that in Round 3 the defense side will argue. **Parents should be made aware of this rule.**

Rule 9. Emergencies

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

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

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

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

Rule 10. Team Duties

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

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

Rule 11. Swearing In the Witnesses

The following oath may be used before questioning begins:

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

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

Rule 12. Trial Sequence and Time Limits

Each side will have a maximum of 40 minutes to present its case. The trial sequence and time limits are as follows:

- | | |
|-----------------------------------|---|
| 1. Introductory matters | 5 minutes total (conducted by judge)* |
| 2. Opening Statement | 5 minutes per side |
| 3. Direct and Redirect (optional) | 20 minutes per side |
| 4. Cross and re-cross (optional) | 10 minutes per side |
| 5. Closing argument | 5 minutes per side** |
| 6. Judges' debrief | 15 minutes total (conducted by judges)* |

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

**Prosecution may reserve time for rebuttal at the beginning its closing argument. Presiding Judge should grant time for rebuttal even if time has not been explicitly reserved.

The Prosecution gives the opening statement first. And the Prosecution gives the closing argument

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

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

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

Rule 13. Timekeeping

Time limits are mandatory and will be enforced. The official timekeeper is the **bailiff** and is provided by the **defense**. An optional unofficial timer may also be provided by the 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' critique** after the trial; the judging panel is allowed 15 minutes (5 minutes per judge). When the time has elapsed, the bailiff will hold up the "0" card. Presiding judge should limit critique sessions to the 15 minutes allotted.

Rule 14. Time Extensions and Scoring

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

Rule 15. Supplemental Material, Illustrative Aids, Costuming

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

Rule 16. Trial Communication

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

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

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

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

Rule 17. Viewing a Trial

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

Rule 18. Videotaping, Photography, Media

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

C. Judging and Team Advancement

Rule 19. Decisions

All decisions of the judging panel are FINAL.

Rule 20. Composition of Panel

The judging panel will consist of three individuals: one presiding judge, one attorney judge, and one educator/community member judge. All three shall score teams using ballots. All judges receive the mock trial case materials, a memorandum outlining the case, orientation materials, and a briefing in a judges' orientation.

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

Rule 21. Ballots

The term "ballot" refers to the decision made by a judge as to which team won the round. Each judge completes his or her own ballot with a number between 1 (poor) and 10 (excellent), less penalty points, for each team. 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 points 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. The first-place team at state will be determined by ballots from the championship round only.

Power-matching provides that:

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

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

Rule 24. Merit Decisions

Judges are not required to make a ruling on the legal merits of the trial. However, during the critiquing process, judges may inform students of a hypothetical verdict. Judges shall **not** inform the teams of score sheet results.

Rule 25. Effect of Bye, Default or Forfeiture

A “bye” becomes necessary when an odd number of teams compete in a region. The byes will be assigned based on a random draw. For the purpose of advancement and seeding, when a team draws a bye or wins by default, that team will be given a win and the average number of ballots and points earned in its preceding trials.

A forfeiting team will receive a loss and points totaling the average received by the losing teams in that round. If a trial cannot continue, the other team will receive a win and an average number of ballots and points received by the winning teams in that round.

D. Dispute Settlement

Rule 26. Reporting Rules Violation – Inside the Bar

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

Rule 27. Dispute Resolution Procedure

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

If the judge determines the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (five minutes maximum) to prepare their arguments, the judge will conduct a hearing

on the dispute, providing each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 28. Effect of Violation on Score

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

Rule 29. Reporting Rules Violation – Outside the Bar

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

VII. RULES OF PROCEDURE

A. Before the Trial

Rule 30. Team Roster

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

Rule 31. Stipulations

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

Rule 32. The Record

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

Rule 33. Courtroom Seating

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

B. Beginning the Trial

Rule 34. Jury Trial

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

Rule 35. Motions Prohibited

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

Rule 36. Standing During Trial

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

Rule 37. Objection During Opening Statement, Closing Argument

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

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

C. Presenting Evidence

Rule 38. Objections

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

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

Rule 39. Procedure for Introduction of Exhibits

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

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

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

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

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

The attorney may then proceed to ask questions.

8. If admitted, Exhibit X becomes a part of the Court’s official record and, therefore, is handed over to the Clerk. *Do not* leave the exhibit with the witness or take it back to counsel table.

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

Rule 40. Use of Notes

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

Rule 41. Redirect, Re-Cross

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

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

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

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

D. Closing Arguments

Rule 42. Scope of Closing Arguments

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

Explanation: a good closing argument summarizes the case in the light most favorable to

your position. The 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, synthesize what actually happened in court rather than being re-packaged;
- be emotionally charged and strongly appealing (unlike the calm opening statement);
- emphasize the facts which support the claims of your side, but not raise any new facts, by reviewing the witnesses' testimony and physical evidence;
- outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses;
- isolate the issues and describe briefly how your presentation addressed these issues;
- summarize the favorable testimony;
- attempt to reconcile inconsistencies that might hurt your side;
- be well-organized, clear and persuasive (start and end with your strongest point);
- the prosecution should emphasize that it has proven guilt beyond a reasonable doubt;
- the defense should raise questions that show elements of the crimes not met; and
- weave legal points of authority with the facts.

Proper phrasing includes:

"The evidence has clearly shown that ..."

"Based on this testimony, there can be no doubt that ..."

"The prosecution has failed to prove that ..."

"the defense would have you believe that ..."

Prosecution should conclude the closing argument with an appeal, based on the evidence, to find the defendant guilty beyond a reasonable doubt. And the defense should say the prosecution has failed to meet its burden of proof and, therefore, must find the defendant not guilty.

E. Critique

Rule 43. The Critique

The judging panel is allowed 15 minutes for critiquing. The bailiff will monitor the critique following the trial. Judges are to limit critique sessions to 15 minutes total (5 minutes per judge) time allotted.

Note: Judges' 15 minutes is not included in 40 minutes allotted to each side of the case.

VIII. FEDERAL RULES OF EVIDENCE – Mock Trial Version

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

The rules of evidence used in real trials can be very complicated. A few of the most important rules of evidence have been adapted for mock trial purposes. These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is

being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. The burden is on the mock trial team to know the Federal Rules of Evidence (Mock Trial Version) and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses.

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

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

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

Article I. General Provisions

Rule 101. Scope

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

Rule 102. Purpose and Construction

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

Article IV. Relevancy and Its Limits

Rule 401. Definition of “Relevant Evidence”

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

Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible

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

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

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

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

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

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

- (a) Character Evidence. – Evidence of a person’s character or character trait, is not admissible to prove action regarding a particular occasion, except:
- (1) Character of accused. – Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
 - (2) Character of victim. – Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;
 - (3) Character of witness. – Evidence of the character of a witness as provided in Rules 607, and 608.
- (b) Other crimes, wrongs, or acts. – Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

- (a) Reputation or opinion. – In all cases where evidence of character or a character trait is admissible, proof may be by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.
- (b) Specific instances of conduct. – In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person’s conduct.

Rule 407. Subsequent Remedial Measures

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

Rule 408. Compromise and Offers to Compromise

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

Rule 409. Payment of Medical or Similar Expenses

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

Rule 411. Liability Insurance (civil case only)

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

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

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

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

Rule 607. Who May Impeach

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

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

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

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

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

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

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

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

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

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

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

Rule 608. Evidence of Character and Conduct of Witness

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

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

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

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General rule. For the purpose of attacking the character for truthfulness of a witness,

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

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

Rule 610. Religious Beliefs or Opinions. Not applicable.

Rule 611. Mode and Order of Interrogation and Presentation

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

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

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

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

- call for answers based on information given in witness statements or fact situation;
- use leading questions which are designed to get "yes" or "no" answers;
- never give the witness a chance to unpleasantly surprise the attorney;
- include questions that show the witness is prejudiced or biased or has a personal interest in the outcome of the case;

- include questions that show an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or experience;

Examples of proper questions include: “Isn’t it a fact that ...?” “Wouldn’t you agree that ...?” “Don’t you think that ...?”

Cross examination should conclude with:

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

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

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

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

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

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

Explanation: A short re-direct examination will be allowed following cross-examination if an attorney desires, and re-cross may follow re-direct. But in both instances, questions must be on a subjects raised in the immediately preceding testimony. If an attorney asks questions on topics not raised earlier, the objection should be “beyond the scope of re-direct/cross.” See Rule 44 for more discussion of redirect and re-cross.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

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

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

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

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

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill,

experience, training, or education, may testify in the form of an opinion or otherwise.

Note: The usual mock trial practice is that attorneys qualify a witness as an expert by asking questions from the list suggested above. After questioning the witness in the above manner, the attorney then asks the judge to qualify the witness as an expert.

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

Rule 703. Bases of Opinion Testimony by Experts

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

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

Rule 704. Opinion on Ultimate Issue

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

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

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

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

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

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

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

received it. But if the letter was offered to prove that what was said in the letter was true, it would be hearsay.

(d) Statements which are not hearsay -- A statement is not hearsay if:

(1) Prior statement by witness -- the declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is

(A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition or

(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or

(C) one of identification or a person made after perceiving the person; or

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

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

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

Rule 802. Hearsay Rule

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

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

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

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

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

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

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

Example: A witness testifies, "Mary told me she was in a lot of pain and extremely

angry at the other driver.”

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

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

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

Rule 805. Hearsay within Hearsay

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

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

IX. NOTES TO JUDGES

A. Note to Judges

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

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

1. Students are prohibited from making objections or using trial procedures not listed in the mock trial materials. Students should request a bench conference (to be held in open court from counsel table) if they think the opposing attorneys are using trial procedures outside the rules.
2. Students are limited to the information in the witness statements and fact situation. If a witness invents information, the opposing attorney may object on the grounds that the information is beyond the scope of the mock trial materials. The presiding judge is encouraged request a bench conference (to be held in open court from counsel table) and ask the students to find where the information is included in the case materials.
3. Bailiffs are the official timekeepers. The defense team is responsible for providing the bailiff (plaintiff/prosecution provides the clerk). Bailiffs time all phases of the trial *including the 15-minute judges' critique (5 minutes per judge)*.
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 within two hours**. To keep the competition on schedule, please keep within the time limits set out in Rule 12. **Do not allow judges' critiques go overtime.**

Each courtroom will be assigned a panel of three judges:

- The presiding judge will sit at the bench and will be responsible for conducting the trial, including ruling on objections.

- The other two judges will sit in the jury box and will have primary responsibility for evaluating and scoring student performances.

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

B. Introductory Matters

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

1. Ask each side if it is ready for trial. Ask each side to provide each judge with a copy of its Team Roster. Ask each member of a team to rise and identify himself/herself by name and role. Students are to identify their team by their assigned letter designation and not by school name.
2. If video or audio recorders are present, inquire of both teams whether they have approved the taping of the round.
3. Ask if there are people present in the courtroom who are connected with other schools in the competition (other than the schools competing in this courtroom). If so, they should be asked to leave. They may contact the sponsor's communication center to determine the location of the courtroom in which their school is performing.
4. Remind spectators of the importance of showing respect for the competing teams. **Silence electronic devices.** Judges may remove spectators who do not adhere to appropriate courtroom decorum.
5. Remind teams that witnesses are permitted to testify only to the information in the fact situation, their witness statements, and what can be reasonably inferred from the information.
6. Remind teams that they must complete their presentations within the specified time limits. The bailiff will signal you as the time for each segment of presentation runs out (3 and 1 minute warning and then 0 minute cards will be held up). At the end of each segment you will be stopped when your time has run out whether you are finished or not.
7. All witnesses must be called.
8. Only the following items may be offered as evidence at the trial:
 - Ex. 1. 911 Phone Transcript
 - Ex. 2. Initial Police Incident Report
 - Ex. 3. Investigative Report
 - Ex. 4. Emergency Room Record
 - Ex. 5. Record of Medical Examiner
 - Ex. 6. Photograph of ESE House
 - Ex. 7. Photograph of Red Plastic "Solo" Brand Cup Used by Victim
 - Ex. 8. Photograph of Water Coolers used by ESE in the Basement
 - Ex. 9. News Report of Hyponatremia Fatality
 - Ex. 10. WebMD.com Medical Report on Hyponatremia
 - Ex. 11. Medical Release Form
 - Ex. 12. ESE Pledge Rules
 - Ex. 13. Death Certificate of Jessica Bateson
 - Ex. 14. Dr. Jackson's Report

Finally, before you begin, indicate that you have been assured that the Code of Ethical Conduct has been read and will be followed by all participants in the mock trial competition including the teams before you. Should there be a recess at any time during the trial, the communication rule (see third paragraph of Code of Ethical Conduct) shall be in effect.

If there are no other questions, begin the trial.

At the end of the trial, the presiding judge shall ask teams if either side wishes to make a Rule 26 Violation. If so, resolve the matter as specified in Rule 27. Then judges complete their ballots. **Judges shall NOT inform the students of results of their scores or results from their ballots.** The Presiding Judge may, however, announce a ruling on the merits of the case – that is, which side would have prevailed if the trial were real – being careful to differentiate that winning the trial has no bearing on which side won on performance (on judges' ballots).

C. Evaluation Guidelines

All teams will compete in all three rounds. Teams are randomly matched for Round 1 and then power matched based on win/loss record; total number of ballots (which is the number of scoring judges' votes); and in Rounds 2 and 3, total number of points accumulated in each round.

Teams will provide Team Rosters to each judge. The rosters are helpful for note-taking, identifying gender of witnesses and providing critique at the end.

Judges will be provided with individual ballots by the Competition Coordinator. The ballots must be filled out and given to the Clerk to deliver to the scoring room **before** judges begin critiquing. Judges' Team Rosters and ballots are confidential and shall not be shared with any team members.

The following evaluation guidelines should be used to provide comments to the students during the debrief and determine the overall team presentation points:

EVALUATION GUIDELINES

An overall presentation score (1-10) must be awarded each team. This score, minus any penalty points, is the total team score that should be written on the colored win/loss ballot to be turned in for scoring and matching purposes. The three judges do **not** need to agree on number of points or winning team.

The following criteria should be used in determining **overall team presentation** points:

- | | |
|-----------------|---|
| 1-2 pts | Not effective. Unsure, illogical, uninformed, unprepared, ineffective communication skills. |
| 3-4 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. |
| 5-6 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, but no mastery. Communications clear and understandable but could be more fluent and persuasive. |
| 7-8 pts | Excellent. Fluent, persuasive, clear, understandable; organized material and thoughts well and exhibited mastery of case and materials. |
| 9-10 pts | Outstanding. Superior in qualities listed in 7-8 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. Rate each team on overall presentation using 1-10 points. **Use whole numbers only (no fractions!)**. A unanimous decision among the three judges is not required.

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

The judges' decision is final.

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

E. Tips for Critiquing

Although students are anxious to hear how they did in all rounds of the mock trial competition, specific feedback is most important in the early rounds so that students have the opportunity to incorporate judges' suggestions for improvement into their next trial rounds. Judges should not only praise students but also to provide comments to help them improve. Each judge should offer a **few, short** comments. Providing one useful comment to a student is better than a generic, "well done" to all.

Because it is impossible for each of the three judges to offer comments to every team member within the 15-minute debrief time allotted, it is recommended that judges divide the team members among the themselves so that every team member gets at least one comment but the critique time is honored:

- the educator judge should critique the witnesses, bailiff, and clerk;
- the presiding judge should critique on trial strategy and overall presentation; and
- the other judge should critique the attorneys.

Suggested critique might include comments such as:

"The content of your opening statement laid a clear strategy for your case – well done. A little more volume and it would have been even better." *or*

"You asked good, specific questions on direct that went to the heart of your team's strategy – that made you and your team look great. Be ready to defend your questions when objections are made."

The bailiff shall time the critique. Critique is limited to 15 minutes total – five minutes per judge. When the bailiff holds up the "0" minutes card, the critique is over. Once the critique has concluded, the presiding judge should make certain that the courtroom is cleaned before the teams are dismissed.

##

Notes:

APPENDICES

Notes:

Often Used Objections in Suggested Form

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

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

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

1. Leading Question (see Rule 611)

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

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

2. Relevance (see Rule 402)

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

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

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

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

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

4. Personal Knowledge (see Rule 602)

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

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

5. Opinions (see Rule 701)

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

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

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

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

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

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

TEAM ROSTER – COORDINATOR’S COPY

*Complete form by identifying students by name in their respective roles.
Please provide one copy to Competition Coordinator at student orientation.*

School Name		Team Letter Code	
OPENING			
Prosecution		Defense	
Direct	Witness	Cross	
	Sgt. Chris Knight		
	Jaden Chessler, M.D.		
	Alex Richards		
Cross		Direct	
	Taylor Durden		
	Ahsan Jackson, M.D.		
	Shawn Boyd		
CLOSING			
Prosecution		Defense	
Clerk		Bailiff	
Coaches (include addresses)			

TEAM ROSTER – PROSECUTION SIDE

Complete form by identifying students by name in their respective roles; write small so that judges can take notes. Please provide each judge with a copy.

Team Letter Code	
OPENING STATEMENT	Prosecution
Direct	Witness
	Sgt. Chris Knight
	Jaden Chessler, M.D.
	Alex Richards
Cross	
	Taylor Durden
	Ahsan Jackson, M.D.
	Shawn Boyd
CLOSING	Prosecution
Clerk	
General Comments	

TEAM ROSTER – DEFENSE SIDE

Complete form by identifying students by name in their respective roles; write small so that judges can take notes. Please provide each judge with a copy.

Team Letter Code	
OPENING STATEMENT	
Defendant's attorney	
Witness	Cross examination
Sgt. Chris Knight	
Jaden Chessler, M.D.	
Alex Richards	
Direct examination	
Taylor Durden	
Ahsan Jackson, M.D.	
Shawn Boyd	
CLOSING ARGUMENTS	
Defendant's attorney	
Bailiff	
General Comments	

SAMPLE JUDGE'S BALLOT

JUDGES: Please fill in every line, enclose with colleagues' ballots in envelope provided, **seal** envelope and ask clerk to deliver envelope to scoring room **BEFORE beginning your debrief!**

WINNER: _____
Winning Team Code

Winning score (1-10):	_____	points
Less penalty points:	_____	points*
TOTAL SCORE:	_____	points

LOSER: _____
Losing Team Code

Losing score (1-10):	_____	points
Less penalty points:	_____	points*
TOTAL SCORE:	_____	points

Penalty points may*, at the discretion of the judge, be deducted if a team member:

1. Uses procedures beyond the mock trial rules.
2. Goes beyond scope of the mock trial materials.
3. Does not follow mock trial rules in any other way.
4. Talks to coaches, non-performing members or other observers. This includes breaks or recesses, if any should occur, in the trial (***mandatory** 2 point penalty).
5. Does not call all witnesses (***mandatory** 2 point penalty).

Frivolous complaints should not be filed. The regional coordinator and judge have discretion to determine whether a communication was harmful.

- You may assign the number of penalty points at your discretion except where otherwise indicated.
- Rate the team on overall presentation using 1-10 points.
- Use whole numbers (no fractions!).
- The winning team must have more points than the losing team.

Do NOT announce which team has won by points

~but OKAY to announce team winning on the legal merits~

Evaluation Guidelines

An overall presentation score (1-10) must be awarded each team. This score, minus any penalty points, is the total team score that should be written on the colored win/loss ballot to be turned in for scoring and matching purposes. The three judges do **not** need to agree on number of points or winning team.

The following criteria should be used in determining **overall team presentation** points:

- | | |
|-----------------|---|
| 1-2 pts | Not effective. Unsure, illogical, uninformed, unprepared, ineffective communication skills. |
| 3-4 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. |
| 5-6 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, but no mastery. Communications clear and understandable but could be more fluent and persuasive. |
| 7-8 pts | Excellent. Fluent, persuasive, clear, understandable; organized material and thoughts well and exhibited mastery of case and materials. |
| 9-10 pts | Outstanding. Superior in qualities listed in 7-8 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. |

Time Sheet

Plaintiff/Pros.—Team Code

v.

Defense—Team Code

Opening Statement: 5 minutes per side

P 5 minutes

___ minutes used

D 5 minutes

___ minutes used

Plaintiff/Pros.: Direct/Re-direct—20 minutes total

Start 20 minutes

Witness #1: time used ___ less

___ minutes

___ minutes unused

Witness #2: time used ___ less

___ minutes

___ minutes unused

Witness #3: time used ___ less

___ minutes

___ minutes unused

Defense: Cross/Re-cross—10 minutes total

Start 10 minutes

P witness #1 time used ___ less

___ minutes

___ minutes unused

P witness #2 time used ___ less

___ minutes

___ minutes unused

P witness #3 time used ___ less

___ minutes

___ minutes unused

Defense: Direct/Re-direct—20 minutes total

Start 20 minutes

D witness #1: time used ___ less

___ minutes

___ minutes unused

D witness #2: time used ___ less

___ minutes

___ minutes unused

D witness #3: time used ___ less

___ minutes

___ minutes unused

Plaintiff/Pros.: Cross/Re-cross—10 minutes total

Start 10 minutes

D witness #1 time used ___ less

___ minutes

___ minutes unused

D witness #2 time used ___ less

___ minutes

___ minutes unused

D witness #3 time used ___ less

___ minutes

___ minutes unused

Closing Argument: 5 minutes per side

Plaintiff/Pros. time used ___ less

___ minutes

___ minutes left for rebuttal

Defense time used ___ less

___ minutes

Judges' Debrief: 15 minutes total

___ minutes used

**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

