CLASSROOM LAW PROJECT proudly sponsors the 29th annual statewide

2014-15 Oregon High School Mock Trial Competition

AVERY LEON, plaintiff

v.

CHINOOK COUNTY TRANSPORTATION DISTRICT and LINDSEY PALMER, defendants

a civil rights case involving a police officer's use of alleged excessive force on a suspect

co-sponsored by

Lewis & Clark Law School
Oregon State Bar

ACKNOWLEDGMENTS

sponsored by

CLASSROOM LAW PROJECT

co-sponsored by

Lewis & Clark Law School
Oregon State Bar

a case written by Ed Piper, STOEL RIVES LLP
in coordination with CLASSROOM LAW PROJECT

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

PRESIDENTS' CIRCLE
K&L Gates
Lewis & Clark Law School
Nike, Inc.
Oregon State Bar

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

MADISON CIRCLE
Ater Wynne LLP
Barran Liebman LLP
Bullivant Houser Bailey PC
Cambia Health Solutions
Columbia Bank
Miller Nash LLP
NW Natural
Portland General Electric

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

CLASSROOM LAW PROJECT®

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

November 2014

Dear Competitors, Coaches, Parents, Judges and Volunteers:

Welcome to this year's Mock Trial competition! We look forward to seeing you in the courtroom.

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

This year, the case was authored from scratch. Our aim was to make it both topical and challenging. Our hope is that it provides competitors of all levels of experience with an opportunity to take risks, push boundaries, and learn new skills.

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

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

Thank you, and good luck with this year's case!

Sincerely,

Marilyn R. Cover
Executive Director

2014-15 Oregon High School Mock Trial Competition

Avery Leon v. Chinook County Transportation District and Lindsey Palmer

TABLE OF CONTENTS

I. Introduction 1

II. Program Objectives 1

III. Code of Ethical Conduct 2

IV. The Case

A. Brief Case Summary 3
B. Witness List 3
C. List of Exhibits 3
D. Introduction of Complaint, Answer, Stipulations, Jury Instructions 4
Complaint 5
Answer 10
Stipulations 14
Jury Instructions 16
E. Legal Authority 19
F. Witness Statements 21
Affidavit of Avery Leon 21
Affidavit of Cary Donatella. 25
Affidavit of Taylor Gomez 28
Affidavit of Lindsey Palmer 33
Affidavit of Skyler Todd 38
Affidavit of Sandy Ensign 41
G. Exhibits
Ex. 1. Map of Ramona Street C-Rail Stop 45
Ex. 2. Rattlesnakes T-Shirt 46
Ex. 3. Stun Gun 47
Ex. 4. Cruze Deposition and Incident Report 48
Ex. 5. CCTD Police Department Handbook 57
Ex. 6. CCTD Police Department Training Records 58
Ex. 7. CCTD Police Department Discipline Statistics 60
Ex. 8. Cruze/Irsay Incident Report 62
Ex. 9. Nguyen Incident Report 63
Ex.10. Bowlen Incident Report 64

V. The Form and Substance of a Trial

A. Elements of a Civil Case 65
B. Proof by a Preponderance of Evidence 65
C. Role Descriptions 65

1. Attorneys 65
a. Opening Statement 66
b. Direct Examination 66
c. Cross Examination, Redirect, Re-Cross, and Closing 67
2. Witnesses 67
3. Court Clerk, Bailiff, Team Manager 67
a. Duties of the Clerk – provided by the Plaintiff 68
b. Duties of the Bailiff – provided by the Defense 68
c. Team Manager, Unofficial Timer (optional) 69
Team Manager (optional) 69
Unofficial Timer (optional) 69

VI. Rules of the Competition

A. Administration 70
Rule 1. Rules 70
Rule 2. The Problem 70
Rule 3. Witness Bound By Statements 70
Rule 4. Unfair Extrapolation 71
Rule 5. Gender of Witness 71

B. The Trial
Rule 6. Team Eligibility, Teams to State 72
Rule 7. Team Composition 72
Rule 8. Team Presentation 73
Rule 9. Emergencies 73
Rule 10. Team Duties 74
Rule 11. Swearing In the Witnesses 74
Rule 12. Trial Sequence and Time Limits 74
Rule 13. Timekeeping 74
Rule 14. Time Extensions and Scoring 75
Rule 15. Supplemental Material, Illustrative Aids, Costuming 75
Rule 16. Trial Communication 75
Rule 17. Viewing a Trial 75
Rule 18. Videotaping, Photography, Media 76

C. Judging and Team Advancement
Rule 19. Decisions 76
Rule 20. Composition of Panel 76
Rule 21. Ballots REVISED 76
Rule 22. Team Advancement 76
Rule 23. Power Matching 76
Rule 24. Merit Decisions 77
Rule 25. Effect of Bye, Default or Forfeiture 77

D. Dispute Settlement
Rule 26. Reporting Rules Violation – Inside the Bar 77

Rule 27. Dispute Resolution Procedure 78
Rule 28. Effect of Violation on Score 78
Rule 29. Reporting Rules Violation – Outside the Bar 78

VII. Rules of Procedure

A. Before the Trial
Rule 30. Team Roster 78
Rule 31. Stipulations 78
Rule 32. The Record 79
Rule 33. Courtroom Seating 79

B. Beginning the Trial
Rule 34. Jury Trial 79
Rule 35. Motions Prohibited 79
Rule 36. Standing During Trial 79
Rule 37. Objection During Opening Statement, Closing Argument 79

C. Presenting Evidence
Rule 38. Objections
1. Argumentative Questions 79
2. Lack of Proper Foundation 79
3. Assuming Facts Not In Evidence 79
4. Questions Calling for Narrative or General Answer 79
5. Non-Responsive Answer 79
6. Repetition 80
Rule 39. Procedure for Introduction of Exhibits 80
Rule 40. Use of Notes 80
Rule 41. Redirect, Re-Cross 80

D. Closing Arguments
Rule 42. Scope of Closing Arguments 81

E. Critique
Rule 43. The Critique 82

VIII. Federal Rules of Evidence – Mock Trial Version

Article I. General Provisions 83
Rule 101. Scope 83
Rule 102. Purpose and Construction 83

Article IV. Relevancy and Its Limits
Rule 401. Definition of "Relevant Evidence" 83
Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible 83
Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time 83

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes 83
Rule 405. Methods of Proving Character 84
Rule 407. Subsequent Remedial Measures 84
Rule 408. Compromise and Offers to Compromise 84
Rule 409. Payment of Medical or Similar Expenses 84
Rule 411. Liability Insurance (civil case only) 84

Article VI. Witnesses
Rule 601. General Rule of Competency 85
Rule 602. Lack of Personal Knowledge 85
Rule 607. Who May Impeach 85
Rule 608. Evidence of Character and Conduct of Witness 86
Rule 609. Impeachment by Evidence of Conviction of Crime 86
Rule 610. Religious Beliefs or Opinions 86
Rule 611. Mode and Order of Interrogation and Presentation 86

Article VII. Opinions and Expert Testimony
Rule 701. Opinion Testimony by Lay Witness 87
Rule 702. Testimony by Experts 88
Rule 703. Bases of Opinion Testimony by Experts 88
Rule 704. Opinion on Ultimate Issue 88

Article VIII. Hearsay
Rule 801. Definitions 88
Rule 802. Hearsay Rule 90
Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial 90
Rule 805. Hearsay within Hearsay 90

IX. Notes to Judges
A. Note to Judges 91
B. Introductory Matters 91
C. Evaluation Guidelines 92
D. Penalty Points 93

Appendices
Often Used Objections in Suggested Form 97
Time Sheet 98
Team Roster 99
Sample Judges' Ballots 101
Rule 26 - Reporting Rules Violation Form for Team Members Inside the Bar 104
Rule 29 - Reporting Rules Violation Form for Use by Persons Behind the Bar 105
Diagram of a Typical Courtroom 106

CLASSROOM LAW PROJECT

2014-15 OREGON HIGH SCHOOL MOCK TRIAL COMPETITION

I. INTRODUCTION

This packet contains the official materials that student teams will need to prepare for the twenty-ninth 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 13-14, 2015. The winning team from the state competition will represent Oregon at the National High School Mock Trial Competition in Raleigh, North Carolina, May 14-16, 2015 (one week later than past years).

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

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 plaintiff and defense. All teams will present each side at least once.

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

Each year, the mock trial case addresses serious matters facing society today. By affording students an opportunity to wrestle with large societal issues within a structured format, CLASSROOM LAW PROJECT strives to provide a powerful and timely educational experience. It is our goal that students will conduct a cooperative, vigorous, and comprehensive analysis of these materials with the careful guidance of teachers and coaches. This year's case offers opportunities to discuss issues of excessive force by law enforcement, the wide variety and effect of multiple viewpoints and experiences, and how criminal and civil law may overlap.

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

II. PROGRAM OBJECTIVES

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

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

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

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

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

III. CODE OF ETHICAL CONDUCT

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

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

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

Team members, coaches, parents and any other persons directly associated with the Mock Trial team's preparation are **not allowed to view other teams** in competition so long as they remain in the competition themselves. *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 14, in the Hatfield Federal Courthouse, Portland.

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

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

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

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

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

IV. THE CASE

A. Brief Case Summary

On May 16, 2014, Avery Leon rushed to catch a commuter train after a baseball game. At the same time and place, Officer Lindsey Palmer was searching for a fleeing armed robbery suspect. Officer Palmer mistakenly thought Leon was the suspect and tased Leon. In this action, Avery Leon is suing the Chinook County Transportation District (CCTD) and Officer Lindsey Palmer alleging that excessive force was used.

B. Witness List

For the plaintiff:

Avery Leon, plaintiff
Cary Donatella, witness at the scene
Taylor Gomez, Citizen Review Committee

For the defense:

Lindsey Palmer, defendant
Skyler Todd, student
Sandy Ensign, Internal Affairs Division

C. List of Exhibits

The exhibits in this case include the following:

1. Map of Ramona Street C-Rail Station
2. Rattlesnakes T-Shirt
3. Stun Gun
4. Cruze Deposition and Incident Report
5. CCTD Police Department Handbook
6. CCTD Police Department Training Records
7. CCTD Police Department Discipline Statistics
8. Cruze/Irsay Incident Report
9. Nguyen Incident Report
10. Bowlen Incident Report

D. Introduction of Complaint, Answer, Stipulations, Jury Instructions

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

The **Complaint** is prepared by the plaintiff's lawyers and is submitted to the court. It is what initiates the lawsuit. The Complaint lays out the plaintiff's factual allegations and offers an overview of why these allegations amount to a violation of the law. Note, however, that the Complaint is not evidence. Rather, the purpose of the Complaint is to frame the issues for trial and help the parties hone in on specific arguments each will make.

The **Answer** is prepared by the lawyers for the defense; it responds directly to the Complaint. It identifies the allegations with which it agrees and those it will challenge. Like the Complaint, the Answer is not evidence and exists solely to frame the issues for trial.

Stipulations are the facts that both sides agree upon. They may be referred to – but not disputed by either side – during trial.

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

Shannon T. Schmidt (OSB No. 714520)
sschmidt@cpslaw.com
Allan M. Beach (OSB No. 911149)
abeach@cpslaw.com
CARLYLE, POLLARD & SCHMIDT LLP
1134 W. Tasso St., Suite 4000
Rowe, OR 97111

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON, ROWE DIVISION

AVERY LEON, an individual,

Plaintiff,

v.

CHINOOK COUNTY TRANSPORTATION DISTRICT, a municipal corporation of the State of Oregon; and CHINOOK COUNTY TRANSPORTATION DISTRICT POLICE OFFICER LINDSEY PALMER, in Palmer's individual and official capacity,

Defendants.

Case No.: 3:14-cv-00101-CC

COMPLAINT FOR DAMAGES AND FOR DECLARATORY AND INJUNCTIVE RELIEF

42 U.S.C. § 1983

JURY TRIAL DEMANDED

I. INTRODUCTION

1. Plaintiff Avery Leon ("Leon" or "Plaintiff") brings this civil rights action against Defendants Chinook County Transportation District ("CCTD") and CCTD police officer Lindsey Palmer ("Palmer") (collectively, "Defendants") for violating Leon's clearly established constitutional rights. On May 16, 2014, Palmer used excessive and unreasonable force against Leon when Palmer discharged a CCTD-issued "stun gun" into Leon during an arrest. Palmer did so without probable cause to believe that Leon had committed a crime and without any

legitimate reason to believe that Leon posed a threat to Palmer's or any other person's safety. Palmer's use of excessive force was a direct and proximate result of CCTD's policies and customs. Accordingly, Leon brings this action against CCTD and Palmer for damages and other relief.

II. JURISDICTION

2. This Court has jurisdiction over Plaintiff's claims by virtue of 28 U.S.C. §§ 1331 and 1343, *i.e.*, because this case involves a violation of Leon's federal civil and constitutional rights.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, *i.e.*, because the events giving rise to Leon's claims against CCTD and Palmer occurred in the judicial district in which this Court is situated.

III. PARTIES

4. Plaintiff Leon is an individual who resides in Carthage, Oregon.

5. Defendant Palmer is an individual employed as a police officer by CCTD, and a resident of Rowe, Oregon. At all material times herein, Palmer was acting within the course and scope of Palmer's employment with CCTD.

6. Defendant CCTD is an independent municipal corporation of the State of Oregon. CCTD operates the Chinook County Light Rail ("C-Rail") and maintains its own police force. By law, CCTD is responsible for the acts and omissions of its police officers and other employees and agents, including the acts and omissions of Palmer as described herein.

IV. FACTUAL ALLEGATIONS

7. Leon is a high school math teacher at Carthage High School in Carthage, Oregon. After work on Friday, May 16, 2014, Leon attended a minor-league baseball game in Rowe, Oregon. To get to the stadium, Leon used the C-Rail.

8. To get to the game, Leon boarded a Green Line C-Rail train at the Webster Street C-Rail station, transferred to a Blue Line train at the Ramona Street station, and rode the rest of the way to the stadium. He planned to take the same route home. Leon was carrying a black backpack with textbooks, teaching outlines, and other work materials.

9. After the game, Leon boarded a 9:30 p.m. Blue Line train to the Ramona Street station. There were dozens of other Rattlesnakes fans on the train. Like Leon, most of them wore dark red t-shirts with the team's signature "double R" logo. Leon was running late, and

knew that he would have only a few minutes to transfer to the Green Line train at the Ramona Street station.

10. The same night, Palmer and Palmer's partner, fellow CCTD police officer Courtney Cruze ("Cruze"), were stationed at the Ramona Street C-Rail station. At approximately 9:37 p.m., they received a radio dispatch indicating that an armed robbery had occurred at the Emerson Street C-Rail station, which is one stop away from the Ramona Street station. According to the dispatch, the suspect boarded the train bound for Ramona Street after the robbery. The dispatch clearly indicated that the suspect was wearing "an orange t-shirt," "jeans," and "a white baseball cap," and was carrying "a dark colored backpack." The dispatch gave no other physical description of the suspect and did not mention the suspect's gender.

11. Palmer and Cruze exited their CCTD police cruiser and proceeded to the platform where the train carrying Leon and the attacker would soon appear. There they waited for the Blue and Green Line trains to arrive.

12. When the two trains arrived, they immediately flooded the station with passengers. Leon ran onto the western side of the platform and toward the Green Line train, which would depart in just a few minutes.

13. A few seconds after the trains arrived, Cruze noticed Leon running across the platform. Cruze saw that Leon—like dozens of other game-goers returning home on the C-Rail—was wearing a red Rattlesnakes t-shirt. At that time, Cruze had no reason to believe that Leon posed a threat to anyone in the platform area, including either of the officers. Regardless, Cruze pointed at Leon and shouted to Palmer, "Lindsey, black backpack to your left!"

14. Palmer then discharged Palmer's CCTD-issued stun gun into Leon. Before doing so, Palmer neither announced Palmer as a police officer nor warned Leon that Palmer intended to use the stun gun.

15. Palmer discharged the stun gun into Leon without any probable cause to believe that Leon was the suspect or had committed any other crime. Contrary to the dispatch's description, Leon was wearing neither an orange t-shirt nor any sort of baseball cap.

16. Following Palmer's discharge of the stun gun, Leon fell to the ground and began convulsing. Palmer shocked Leon for between three and five seconds before disengaging the stun gun.

17. As a direct and proximate result of Palmer's use of the stun gun, Leon suffered physical injuries that required immediate medical attention, including a facial contusion and lacerations on Leon's forehead that Leon sustained as a result of his fall. As a direct and proximate result of Palmer's use of the stun gun, Leon has also suffered severe psychological trauma.

18. The CCTD Police Department's policies, practices, and customs allow, encourage, and direct CCTD police officers to use stun guns and other types of force in situations where officers lack a reasonable basis for the use of such force, or in circumstances where the officers should use lesser force.

19. Specifically, since 2010, the CCTD Police Department has countenanced at least three reported incidents in which police officers have discharged their CCTD-issued stun guns into suspects without justification or in a manner that violated CCTD protocols. In each case, the CCTD Police Department did not appropriately discipline and, to date, has not appropriately disciplined the offending officer. For example, in December 2010, a CCTD Police Department supervisor determined that Cruze had improperly and illegally directed a fellow officer to discharge a stun gun into a suspect who had already been subdued, which the fellow officer did. Cruze received only superficial discipline and soon returned to duty.

20. Following those incidents, the CCTD Police Department knew or should have known that additional measures were necessary to protect the public from its officers' pattern of unlawful conduct. Those measures would have included additional training, discipline, and, where appropriate, termination of the employment of officers who violate the constitutional rights of any member of the public, or who are otherwise deemed to have used excessive force.

21. Notwithstanding that knowledge, the CCTD Police Department's existing policies, practices, and customs with regard to the use of force by its officers have persisted without any material change since at least December 2010. The CCTD Police Department's deliberate indifference in the face of known risks associated with its officers' use of force amounts to an official practice of the CCTD Police Department.

22. Due to the CCTD Police Department's official practice, Palmer and Cruze knew that they could use excessive and unreasonable force against suspects with impunity. As a direct and proximate result of their knowledge and of the CCTD Police Department's official policies

and practices, Palmer violated Leon's clearly established constitutional right to be free from excessive force.

V. CLAIM FOR RELIEF

(42 U.S.C. § 1983—Excessive Force in Violation of Fourth Amendment)

23. Leon incorporates and realleges paragraphs 1 through 22 above.

24. As described above, in violation of the Fourth Amendment to the United States Constitution, Palmer subjected Leon to an unlawful seizure, using excessive and unreasonable physical force.

25. Palmer was acting under color of law when he discharged his stun gun into Leon.

26. As described above, the policies, practices, and customs of the CCTD Police Department caused, resulted in, or otherwise make CCTD liable for the violation of Leon's rights under the Fourth Amendment to the United States Constitution.

27. As a result of the above, Plaintiff is entitled to an award of economic, noneconomic and punitive damages against Defendants in amounts to be determined at trial.

28. Pursuant to 42 U.S.C. § 1988, Leon should be awarded attorneys' fees and costs incurred herein.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. Assume jurisdiction over this matter and grant a jury trial for all issues so triable;

2. Award Plaintiff economic, non-economic, and punitive damages against Defendants in amounts to be determined at trial;

3. Award Plaintiff reasonable attorneys' fees and costs incurred herein; and

4. Grant such other relief as may be just and proper.

DATED: June 2, 2014.

CARLYLE, POLLARD & SCHMIDT LLP

s/Shannon Schmidt
SHANNON T. SCHMIDT, OSB No. 714520
ALLAN M. BEACH, OSB No. 911149
Telephone: (541) 234-4000
Attorneys for Plaintiff

James J. McCoy (OSB No. 750046)
Senior Deputy City Attorney
jamesmccoy@rowe.or.gov
Corrina M. Ruberosa (OSB No. 083376)
Deputy City Attorney
corrinaruberosa@rowe.or.gov
Office of the City Attorney of Rowe
812 Channing Street, Suite 2100
Rowe, OR 97111
Telephone: (541) 871-7000
Facsimile: (541) 871-8000

Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON, ROWE DIVISION

AVERY LEON, an individual,

Plaintiff,

v.

CHINOOK COUNTY TRANSPORTATION DISTRICT, a municipal corporation of the State of Oregon; and CHINOOK COUNTY TRANSPORTATION DISTRICT POLICE OFFICER LINDSEY PALMER, in Palmer's individual and official capacity,

Defendants.

Case No.: 3:14-cv-00101-CC

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

For their Answer to Plaintiff Avery Leon's ("Plaintiff's") Complaint, Defendants Chinook County Transportation District ("CCTD") and Lindsey Palmer ("Palmer") (collectively, "Defendants") respond to Plaintiff's allegations as follows:

I. JURISDICTION

1. Defendants deny the allegations in paragraph 1.

II. JURISDICTION

2. Defendants admit the allegations in paragraph 2.

3. Defendants admit the allegations in paragraph 3.

III. PARTIES

4. Defendants admit the allegations in paragraph 4.

5. Defendants admit the allegations in paragraph 5.

6. Defendants admit that CCTD is an independent municipal corporation of the State of Oregon, that it operates the Chinook County Light Rail ("C-Rail"), that it maintains its own police force, and that, in general, it maintains an employer-employee relationship with its police officers. In the context of this action, and without admitting to the truth of any of Plaintiff's allegations, Defendant CCTD denies that it is legally responsible for the acts and omissions of Palmer as alleged in Plaintiff's Complaint.

IV. FACTUAL ALLEGATIONS

7. Defendants admit the allegations in paragraph 7.

8. Defendants admit the allegations in paragraph 8.

9. Defendants are without sufficient knowledge as to the truth of the allegations in paragraph 9, and therefore deny them.

10. Defendants deny the allegation in paragraph 10 that the dispatch "clearly" indicated the suspect was wearing "an orange t-shirt." Defendants otherwise admit the allegations in paragraph 10.

11. Defendants admit the allegations in paragraph 11.

12. Defendants admit the allegations in paragraph 12.

13. Defendants admit that CCTD police officer Courtney Cruze ("Cruze") noticed Plaintiff running across the platform, and that Cruze then pointed out Plaintiff to Palmer. Defendants otherwise deny the allegations in paragraph 13.

14. Defendants admit that Palmer discharged Palmer's CCTD-issued stun gun into Plaintiff. Defendants otherwise deny the allegations in paragraph 14.

15. Defendants admit that Plaintiff was not wearing an orange t-shirt or a baseball cap. Defendants otherwise deny the allegations in paragraph 15.

16. Defendants admit the allegations in paragraph 16.

17. Defendants are without sufficient knowledge as to the truth of the allegations in paragraph 17, and therefore deny them.

18. Defendants deny the allegations in paragraph 18.

19. Defendants admit that the CCTD Police Department disciplined Cruze following an incident involving a stun gun in December 2010. Defendants otherwise deny the allegations in paragraph 19.

20. Defendants deny the allegations in paragraph 20.

21. Defendants deny the allegations in paragraph 21.

22. Defendants deny the allegations in paragraph 22.

V. PLAINTIFF'S CLAIM FOR RELIEF

23. Defendants incorporate their responses to paragraphs 1 through 22 above.

24. Defendants deny the allegations in paragraph 24.

25. Defendants deny the allegations in paragraph 25.

26. Defendants deny the allegations in paragraph 26.

27. Defendants deny that Plaintiff is entitled to any damages.

28. Defendants deny that Plaintiff is entitled to any attorneys' fees or costs.

VI. AFFIRMATIVE DEFENSES

(Failure to State a Claim)

29. Plaintiff's claim for relief fails to allege facts sufficient to state a claim for relief.

30. Defendants reserve the right to plead additional affirmative defenses as discovery reveals additional information.

WHEREFORE, having answered Plaintiff's Complaint, Defendants pray that Plaintiff's Complaint be dismissed and that judgment be entered in Defendants' favor and for their costs and disbursements incurred herein, in addition to any other relief as may be justified.

DATED: June 30, 2014.

Respectfully submitted,

s/Corrina M. Ruberosa

James J. McCoy (OSB No. 750046)
Corrina M. Ruberosa (OSB No. 083376)
Telephone: (541) 871-7000

Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON, ROWE DIVISION

AVERY LEON, an individual,

Plaintiff,

v.

CHINOOK COUNTY TRANSPORTATION DISTRICT, a municipal corporation of the State of Oregon; and CHINOOK COUNTY TRANSPORTATION DISTRICT POLICE OFFICER LINDSEY PALMER, in Palmer's individual and official capacity,

Defendants.

Case No.: 3:14-cv-00101-CC

STIPULATIONS

The parties stipulate and agree to the following:

1. Leon did not commit the armed robbery to which Chinook County Transportation District (CCTD) Officers Palmer and Cruze were responding on May 16, 2014. Leon has never been convicted of any crime. The suspect in the May 16, 2014 robbery remains at large.
2. Leon was wearing the red shirt shown in Exhibit 2 at the time of Leon's arrest on May 16, 2014.
3. CCTD is a public entity for the purposes of 42 U.S.C. § 1983.
4. Palmer was acting under color of law when Palmer discharged Palmer's stun gun into Leon on May 16, 2014.[1]

---

[1] Under of color of law" means that the person is using authority given to him or her by local, state or federa**l government.**

5. The diagram shown in Exhibit 1 is a fair and accurate representation of the Ramona Street C-Rail stop of the Chinook County Light Rail, though not to scale.
6. The photograph shown in Exhibit 3 is a fair and accurate representation of the stun gun that Palmer discharged into Leon on May 16, 2014.
7. The CCTD Police Department first issued stun guns to all of its officers in April 2007. The only three incidents in which citizens have complained about CCTD police officers' use of their stun guns are detailed in Exhibits 8, 9, and 10. Apart from those incidents, the CCTD Police Department received no other complaints related to the use of its officers' stun guns.
8. Defendants agree to waive, and not to raise Qualified Immunity as a defense.[2]
9. Courtney Cruze was shot and killed in the line of duty on July 17, 2014. Officer Cruze is therefore unavailable. Officer Cruze's deposition testimony, however, is Exhibit 4.
10. No witness may invoke the Fifth Amendment or any other privilege.
11. This phase of the trial shall deal with Defendants' liability only. If necessary, a determination as to damages and any other relief to which Plaintiff may be entitled will be made in a separate proceeding.

The parties stipulate and agree to the foregoing and respectfully request that, as applicable, the court enter an order to that effect.

SO STIPULATED:

/s/Shannon T. Schmidt
Shannon T. Schmidt
Counsel for Plaintiff

/s/James J. McCoy
James J. McCoy
Counsel for Defendants

[2] While qualified immunity is often used in §1983 cases, for purposes of this mock trial, it shall not apply. Qualified immunity provides that a public official is not liable under 42 U.S.C. § 1983 if the official "could reasonably have believed that his actions were legal in light of clearly established law and the information he possessed at the time" and if defendant's conduct was "reasonable . . . even though it might have violated [Plaintiff's] constitutional rights."

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON, ROWE DIVISION

AVERY LEON, an individual,

Plaintiff,

v.

CHINOOK COUNTY TRANSPORTATION DISTRICT, a municipal corporation of the State of Oregon; and CHINOOK COUNTY TRANSPORTATION DISTRICT POLICE OFFICER LINDSEY PALMER, in Palmer's individual and official capacity,

Defendants.

Case No.: 3:14-cv-00101-CC

JURY INSTRUCTIONS

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

Instruction No. 1: Preponderance of the Evidence.

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

Instruction No. 2: Defendant Palmer.

In order to find in favor of the Plaintiff as to the Plaintiff's claim against Defendant Palmer, the Plaintiff must prove that the manner in which Defendant Palmer seized the Plaintiff violated the Fourth Amendment. Here, the Plaintiff has alleged that Defendant Palmer violated the Fourth Amendment in two ways: (1) Defendant Palmer arrested Plaintiff without probable cause, and (2) Defendant Palmer used excessive force during the arrest. An arrest is unlawful

under the Fourth Amendment if made without probable cause. "Probable cause" exists when, under all of the circumstances known to an officer at the time, an objectively reasonable police officer would conclude there is a fair probability that the person arrested has committed or was committing a crime. The Plaintiff must prove by a preponderance of the evidence that Defendant Palmer arrested him without probable cause.

A seizure of a person is unlawful under the Fourth Amendment if a police officer uses excessive force in making an arrest or in defending himself, herself, or others. Thus, the Plaintiff must prove by a preponderance of the evidence that Defendant Palmer used excessive force when Defendant Palmer discharged defendant Palmer's stun gun at the Plaintiff.

Under the Fourth Amendment, a police officer may only use such force as is "objectively reasonable" under all of the circumstances. In other words, you must judge the reasonableness of a particular use of force from the perspective of a reasonable officer on the scene and not with the 20/20 vision of hindsight.

In determining whether Defendant Palmer used excessive force in this case, consider all of the circumstances known to Defendant Palmer on the scene, including:

1. The severity of the crime or other circumstances to which the Defendant Palmer was responding;
2. Whether the Plaintiff posed or reasonably appeared to pose an immediate threat to the safety of any officers or to others;
3. Whether the Plaintiff was or reasonably appeared to be actively resisting arrest or attempting to evade arrest by flight;
4. The amount of time and any changing circumstances during which Defendant Palmer had to determine the type and amount of force that appeared to be necessary;
5. The type and amount of force used; and
6. The availability of alternative methods to subdue the Plaintiff.

If, according to these factors, you find the Plaintiff has proved that Defendant Palmer arrested the Plaintiff without probable cause or used excessive force, your verdict should be for the Plaintiff on the Plaintiff's claim against Defendant Palmer. If, on the other hand, the Plaintiff has failed to prove that Defendant Palmer arrested the Plaintiff without probable cause or used excessive force, your verdict should be for Defendant Palmer on the Plaintiff's claim against Defendant Palmer.

Instruction No. 3: Defendant CCTD.

In order to find in favor of the Plaintiff on the Plaintiff's claim against Defendant Chinook Country Transportation District ("CCTD"), you must find that the Plaintiff proved each of the following elements by a preponderance of the evidence:

1. Defendant Palmer acted under color of law;
2. Defendant Palmer acted without probable cause or used excessive force when Defendant Palmer discharged Defendant Palmer's stun gun at the Plaintiff, according to the standards set forth in Instruction No. 2; and
3. Defendant Palmer acted pursuant to an expressly adopted official policy or a longstanding practice or custom of defendant CCTD.

The parties have stipulated that Defendant Palmer acted under color of law, so that element is not in dispute.

"Official policy" means a rule or regulation promulgated, adopted, or ratified by the Defendant CCTD. "Practice or custom" means any permanent, widespread, well-settled practice or custom that constitutes a standard operating procedure of the Defendant CCTD.

If you find the Plaintiff has proved each of these elements, and if you find that the Plaintiff has proved all the elements the Plaintiff is required to prove under Instruction No. 2, your verdict should be for the Plaintiff on the Plaintiff's claim against Defendant CCTD. If, on the other hand, you find that the Plaintiff has failed to prove any one or more of these elements or the Plaintiff's claim against Defendant Palmer, your verdict should be for Defendant CCTD.

DATED: _____, 2015.

s/Alexis Joseph Patterson

Alexis Joseph Patterson
United States District Judge

E. Legal Authority

The following laws are offered as *background*. They are included so that teams may enrich their understanding of the legal basis used in 42 U.S.C. § 1983 cases. They are *not evidence,* therefore, they cannot be used in witnesses' testimony. Understanding the law, however, will help attorneys and witnesses alike highlight the evidence that supports the law.

Constitutional Provisions and Statutes

U.S. CONST., Amend. IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. § 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Definition of Excessive Force

***Graham v. Connor*, 490 U.S. 386 (1989):** Under the Fourth Amendment, a police officer's use of force is only "excessive" if it is objectively unreasonable. Determining whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

***Koon v. United States*, 518 U.S. 81 (1996):** The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

***Muehler v. Mena*, 544 U.S. 93 (2005):** Factors that bear on whether an officer's use of force is "reasonable" include the severity of the suspected crime, whether the person being detained is the subject of the investigation, whether such person poses an immediate threat to the security of the police or others, and whether such person is actively resisting arrest or attempting to flee.

Requirements for Municipal Liability Provisions

***Monell v. Department of Social Services of New York*, 436 U.S. 658 (1978):** Civil rights plaintiffs suing a municipal entity under 42 U.S.C. § 1983 must show that their injury was caused by a municipal policy or custom.

***Sloman v. Tadlock*, 21 F.3d 1462 (9th Cir. 1994):** Customary practices, if widespread among police employees, are a sufficient basis for municipal liability.

***Cash v. County of Erie*, 654 F.3d 324, 334 (2d Cir. 2011):** A municipal policy may be pronounced or tacit and reflected in either action or inaction. In the latter case, a city's policy of inaction in light of notice that its program will cause constitutional violations is the functional equivalent of a decision by the city itself to violate the Constitution. Consistent with this principle, where a municipal entity exhibits deliberate indifference to constitutional deprivations caused by its agents or employees, such that the inaction constitutes a deliberate choice, that acquiescence may be properly thought of as a policy or custom that is actionable under 42 U.S.C. § 1983.

***Wellington v. Daniels*, 717 F.2d 932, 936 (4th Cir. 1983):** A municipality may not be held liable under 42 U.S.C. § 1983 absent a causal connection between its policy or custom and the constitutional deprivations visited on the plaintiff. The causal link may be direct, as where the policy expressly commands the injury of which the plaintiff complains. Or the causal link may be indirect, in that the constitutional injury may be, for whatever reason, a natural consequence of the municipality's policy or custom. In either case, the plaintiff must demonstrate causation by a preponderance of the evidence. However, the initial inquiry is the existence of the policy or custom; even if a municipality "caused" a constitutional injury in some other sense, it may not be held liable absent a causal link between the injury and its policy or custom.

F. Witness Statements

AFFIDAVIT OF AVERY LEON, for the Plaintiff

I, Avery Leon, being first duly sworn and pursuant to 28 U.S.C. § 1746, declare and state as follows:

My name is Avery Leon. I'm 27 years old, and I'm a high school math teacher at Carthage High School in Carthage, Oregon. (Go Generals!) I grew up here in Carthage, and I've wanted to be a teacher for most of my life. Both of my parents are teachers and, in fact, they met during their first year of teaching at CHS. Suffice to say, teaching is in my DNA.

After graduating from CHS, I went to college at the University of Oregon, where I earned a bachelor's degree in math. I thought for a while about going to work in banking and finance, but it hit me pretty quickly that I'd have a really hard time sitting behind a desk all day, even if I got to crunch numbers – one of my favorite things to do – while I was there. I'm one of those people that can't sit still for very long; some people say I'm downright impatient, especially when I'm tired.

Anyway, given my love for my college math classes and for the volunteer teaching I did during my college summers, I ultimately decided to follow in my parents' footsteps. A year after graduating from college, I headed south to Stanford University, where I earned a master's degree in education in 2012. I racked up some pretty substantial student debt, which I'm still working to pay off, but it was worth every penny. I loved it down in Palo Alto and learned a lot. Then, just before I graduated, can you imagine how thrilled I was when CHS offered me a job as an entry-level math teacher? I bolted at the opportunity and I've been teaching at CHS ever since.

One of the things I love most about being back in Oregon is the Rowe Rattlesnakes. I'm a big baseball fan and, while it's disappointing that we don't have a pro team here, the minor leagues are almost just as good. Since I came back from the Bay Area, I've become a huge Rattlesnakes fan. Whenever I go to a game, I wear my dark red Rattlesnakes t-shirt with the Rattlesnakes' signature "double R" logo on the front; a fair and accurate picture of that shirt is shown in Exhibit 2.

To get to the games, I usually take the C-Rail. "C-Rail" is short for Chinook County Light Rail, which runs all over Chinook County and, in some cases, beyond. It's really convenient and affordable. Typically I'll board a Green Line C-Rail train at the Webster Street station which is just a few blocks away from CHS. There's no direct train to the stadium, so I have to get off at the Ramona Street station and transfer to the Blue Line. Sometimes the

transfer can be a little tight, especially on the way back home from the games. The Ramona Street station is always mobbed at that time and it can be tough to navigate your way through the crowds. Plus, I'm really not a fan of crowds; they make me claustrophobic and, whenever I'm in one, my first thought usually is, "How soon until I can get out of here?"

A few times, I've even missed my Green Line train back home when the Blue Line train is late, which is a total pain. One time, when the Blue Line was late, I had to pay $70 for a taxi back to my apartment! Believe me, especially on a teacher's salary, that's big money for a cab ride.

May 16, 2014, is a day I'll never forget. That day, I went to a Rattlesnakes game with some friends. My friends live on the other side of Rowe – after college, they all decided to move to the über-trendy "Topaz" neighborhood – so I met them at the stadium. I hopped on a 3:30 p.m. C-Rail train right after work and headed over. Since I was coming from work, I had my usual black backpack with me. I can't imagine how anybody would think I was carrying anything illicit in there. I mean, I just use it to carry around my teaching outlines, textbooks, and yet-to-be-graded tests!

Anyway, I got to the game at about 4:15 without a problem. The game was, of course, a ton of fun. The Rattlesnakes were playing the Des Moines Dodgers, who are incredibly good. The Rattlesnakes held their own through the first few innings but things began to deteriorate in the fourth. It looked like it was going to be a pretty decisive loss but then, in the eighth inning, Bernie Rodriguez – he's the face of the Rattlesnakes' franchise and will probably go pro someday – sent a grand slam flying over the left field fence. That tied it up! The game went into two extra innings and, by the time it was done, it was about 9:15 p.m. Happily, the Rattlesnakes had eeked out a win but I was pretty tired and couldn't wait to get home.

Since the game ran long, I missed my usual 8:30 p.m. train. My friends' train to the other side of Rowe departed from the stadium at about 9:25, so a few minutes after saying goodbye, I boarded a train scheduled to leave at 9:30 to the Ramona Street station which would arrive there at about 9:45. Already this was a recipe for disaster: the train didn't end up leaving until about 9:35, and it was packed to the brim with Rattlesnakes fans. I knew they were Rattlesnakes fans because most of them were wearing red Rattlesnakes t-shirts and matching red caps. I thought I may have seen someone in a white Rattlesnakes cap, but I can't be sure. Already I was worried that I would miss my connecting train home, which departed from Ramona Street at 9:50.

The train from the stadium arrived at Ramona Street at about 9:49 – right as my connecting Green Line was pulling up to the platform. The station was immediately in pandemonium. Throngs of passengers returning from dinner in Rowe's famous "Gourmet Ghetto" departed the Green Line train and ran headlong into a swarm of Rattlesnakes fans departing the Blue Line train. Some of them were pushing and jostling each other on the platform in an effort to make their connection. Not me, though. I just ran, ducked, and dodged as best I could through the crowds in the direction of the door to the train.

The last thing I remember clearly was looking into the Green Line train car from a few feet away on the platform. There were a few teenagers walking inside the car, but they were about 10 feet in front of me. Suddenly, I heard a voice behind me that sounded like it was saying something about my "hands." It didn't sound like the voice was yelling or that it was speaking to me in particular. At that point, I was focused entirely on getting into the traincar before the doors closed but, when I saw some of the teenagers in front of me look up at the voice, I instinctively began to turn around toward the eastern side of the platform. Since the voice had said something about "hands," I also began raising my hands. At that point, I had run from the westernmost door to the Blue Line train and was almost right in front of the westernmost door to the Green Line train as shown in Exhibit 1, with which I am familiar and which I agree is a fair and accurate representation of the Ramona Street C-Rail station.

Next thing I knew—and before I could completely turn around—I felt a searing, unbearable pain in my left shoulder and upper back. I didn't lose consciousness but I wish I had. My muscles froze and I began convulsing uncontrollably. I think I was screaming but the shock was so intense and disorienting that I couldn't really tell. It was the single most painful, terrifying experience I've ever had in my life. I fell, hit the ground hard, and looked up to see a police officer rushing over to me from the eastern side of the station. I remember that I was facing eastward and parallel to the train, and away from the door, because I had started to turn. I was still pretty dazed but I figured the officer would want to see my ID, so I reached with my left hand into my pocket for my wallet where I keep my driver's license and the C-Rail pass I have to swipe every time I get on or off a C-Rail train. Before I could get to it, though, the officer grabbed my hands, flipped me onto my stomach, and handcuffed me.

I learned later that the officer, who was a C-Rail police officer named Lindsey Palmer, thought I had just committed some sort of robbery and used a stun gun on me. But how could Officer Palmer think that? After I decided to sue, I learned that the suspect they were after was

supposedly wearing a white cap and an orange shirt, which I wasn't. I don't even own a white cap! The red shirt I was wearing is fairly and accurately depicted in Exhibit 2. In any event, there was no need for Officer Palmer to use the stun gun on me. If Officer Palmer had announced Officer Palmer as a police officer and warned me that a stun gun might be used, I would absolutely have complied with everything I was told to do. But, apart from the "hands" comment which I'm not even sure came from Officer Palmer, I didn't hear a peep from Officer Palmer or any police officer before I got tased.

I hereby attest to having read the above statement and declare under penalty of perjury under the laws of the United States that it is true and correct. Before giving this statement, I was told it should contain all relevant testimony, and I followed those instructions. I also understand that I can and must update this affidavit if anything new occurs to me until the moment before I testify in this case.

/s/ Avery Leon

Avery Leon

Dated: September 9th, 2014

Subscribed and sworn before me on this 9th day of September, 2014.

/s/ Bobby Dousa

Bobbie Dousa

Notary Public in and for the State of Oregon

//

//

//

//

//

//

//

//

//

//

//

AFFIDAVIT OF CARY DONATELLA, for the Plaintiff

I, Cary Donatella, being first duly sworn and pursuant to 28 U.S.C. § 1746, declare and state as follows:

My name is Cary Donatella. I grew up in Queens, New York, and moved to Oregon when I was ten. Funny story, actually: my dad owned a coffee shop which everybody used to say served the best cappuccino in the tri-state area. But then, one day, he read this article in the New York Times claiming that someplace called "Treetown Coffee" supposedly served the best cappuccino in the universe. Needless to say, he was pretty miffed so he packed up and headed out to Rowe to see if it was the real thing. Problem was, he didn't read the whole article: the Treetown Coffee from the article was in Rowe, *Massachusetts*, not Rowe, Oregon. He didn't realize that until he got to Oregon. But, he liked Oregon so much that he decided to move here anyway.

My dad really did make the best cappuccino in the whole universe and, pretty soon, the coffee shop he opened up in Rowe needed to expand. That's actually how I got into electrical stuff. I helped him do the wiring in the space he moved into and I've been hooked ever since. I worked for Fontana Electric, Inc. here in Rowe for years. I've worked on everything; I did everything from wiring new ceiling lights in little old ladies' bathrooms to repairing overhead power lines after a major storm. I know the science, and I know the real-life part of it, too: I've been shocked several times and, believe me, it's never pleasant. I retired in 2012, but I still keep up with the trade.

Anyway, they told me they wanted me to talk about what I saw at the Ramona Street C-Rail station. Before I do, though, there's something I have to get off my chest: from 2002 to 2004, I served time in prison for a theft conviction. The Chinook County District Attorney said I was stealing valuables from the houses and offices of some of my customers and then selling them at pawn shops. It was ridiculous! The only way they got me was by framing me; they put some of the loot in my house when they came to question me, and then said I took it. It was a set-up but, in order to avoid a trial – following which I was sure I'd end up with a stricter prison sentence, I just told the judge and the prosecutor what they wanted to hear and accepted a plea bargain. But believe me, since then, I sure haven't been too hot on police officers.

Anyway, on May 16, 2014, I was on my way back from my favorite Italian joint in Rowe's "Gourmet Ghetto" and, as usual, I was taking the C-Rail. I was taking my usual route home – Green Line from Middlefield Road to Ramona Street where I'd transfer to the Blue Line.

When I got to Ramona Street, the station was packed. It was mostly Rowe Rattlesnakes baseball fans in red shirts; some of them were also wearing baseball hats.

I was sort of tuned out, because I was writing a text message on my phone to my cousin Jimbo. All of a sudden, I heard someone yell something about a black backpack and hands. I can't say whether the person said anything else since I wasn't really paying attention. Anyway, in my book when someone yells "hands!" really loudly, like this person did, you look up so that's what I did. I didn't hear the person say anything else, at least that I could make out. I was confused for a second, because the way that person yelled, I thought I would be in the middle of a robbery or something. But at first, I didn't see nothing.

After about a second, though, I noticed some person in front of me over near the door to the Green Line train. I was standing about as far to the west side of the station as you can go, about midway in between the two trains, looking at the person's right side. The person was, like a lot of other people there, wearing a red Rattlesnakes shirt, which is why I didn't pick the person out at first.

Right when I saw the person, the person started turning away from me toward the eastern side of the platform, and begin to raise both of the person's hands. The person only got their hands to about waist height. All of a sudden, the person began convulsing and fell to the ground. The person was screaming and looked like they were in a lot of pain. I didn't see any more of what happened but I learned later that some police officer tased that poor person. Figures, right? I bet that person wasn't doing anything wrong.

Right afterward, the police officer who tased the person came running up to him. A second later, another police officer who was a little older than the first one also came running up. The first one was sort of panicking and said, "Court, I shouldn't have fired! This is the wrong person!" Then, the other officer said, "Relax, rookie, happens all the time. Just tell IAD that those kids were in danger or something. It'll all blow over. It always does."

A different police officer came up to me right afterward and questioned me, and I told her everything – except the part about the two officers' statements about how they shouldn't have fired because it was the wrong person, and the other officer's response. I didn't think they'd believe me and I didn't want to give them a reason to frame me again, you know?

Anyway, I later found out that the person on the ground—Avery Leon—had sued the police officers who tased Leon. I read it in the newspapers but then, a few weeks later, Leon's lawyers called me up and asked me if I could tell them anything about what happened. I didn't

want to get involved but I figured I had a civic duty to tell the truth, which is exactly what I'm doing here. I hope those police officers get what's coming to them.

I hereby attest to having read the above statement and declare under penalty of perjury under the laws of the United States that it is true and correct. Before giving this statement, I was told it should contain all relevant testimony, and I followed those instructions. I also understand that I can and must update this affidavit if anything new occurs to me until the moment before I testify in this case.

/s/ Cary Donatella

Cary Donatella

Dated: September 12th, 2014

Subscribed and sworn before me on this 12th day of September, 2014.

/s/ Bobbie Dousa

Bobbie Dousa

Notary Public in and for the State of Oregon

//

//

//

//

//

//

//

//

//

//

//

//

//

AFFIDAVIT OF TAYLOR GOMEZ, for the Plaintiff

I, Taylor Gomez, being first duly sworn and pursuant to 28 U.S.C. § 1746, declare and state as follows:

My name is Taylor Gomez. I'm a former police officer, and I serve as the chair of Chinook County's Citizen Review Committee, which we call "the CRC." The CRC conducts civilian oversight of city police, including Chinook County Transportation District ("CCTD") police officers. We investigate allegations of police misconduct, issue findings on whether misconduct has occurred and, if so, recommend remedial and disciplinary measures. We aren't officially a part of the police department so all we do is make recommendations. That said, the CCTD and the Rowe Police Department each tend to take our recommendations very seriously. In about 75% of the cases we review, the police department agrees with the recommendations we make.

I'd say I have a pretty evenhanded record on the CRC. Like each of my colleagues, I vote to recommend discipline in about one in every ten of the cases that come before us (or maybe slightly fewer). Not every incident is as simple as it seems, and I try to see that in every case I work on. For example, in 2011, I voted against a finding of misconduct in a case involving a Rowe police officer who fatally shot a suspected bank robber twice in the chest.

A little more about me: I was born and grew up in Tall Tree, Oregon, a small town in rural Willamette County. I went to college at Oregon State, where I earned a degree in human biology and physiology, and began my career as a beat cop with the Rowe Police Department in the early 2000s. It was a pretty boring job; my beat included such hot spots as the city's most popular local yoga studio, a few daycare centers, and an old folks' home. Suffice to say, I didn't see much action. A few years later, though, I left the department after learning of several incidents of what I thought was excessive force by "dirty" officers who went unpunished for their misconduct. They told me that I was overreacting and, in retrospect, maybe I was in some cases.

Anyway, I decided to move back to Tall Tree in 2003 after accepting a job as an internal affairs specialist with the Tall Tree Police Department. Most officers in my shoes would have seen the job as a dead end but I loved it. My job was to make sure that our public servants were serving the public as effectively as they possibly could which I found really rewarding. I worked as hard as I could and I even got statewide recognition in 2008 for uncovering a major drug ring in which three Tall Tree police officers were key players. It was all over the Rowe Mercury

News and, I have to say, I loved the praise. I mean, who doesn't like getting their picture in the paper?

When I was at the Tall Tree Police Department, I also conducted yearly trainings for Tall Tree officers on the use of lethal and non-lethal force which included lessons on the use and effects of stun guns. I drew on my knowledge of human biology, experience in the field, and the training materials the department had provided in conducting the trainings, the purpose of which was to educate the officers about the risks and effects of using pepper spray, stun guns, and their department-issued sidearms. I should note, though, that I've never used a stun gun in the field.

I really enjoyed Tall Tree but, when my spouse got a job as a software engineer at Rowe's hottest tech company in 2010, we moved back to Chinook County. I applied for jobs at the Rowe Police Department and at the CCTD Police Department but – to my great disappointment – I was told that neither was hiring. Wanting to stay involved in police work, I asked the Chinook County Board of Supervisors to appoint me to the CRC, which it did. I worried that my background in rural-area police work would make for a difficult adjustment in Rowe. I thought urban police work might be different from and more dangerous than rural police work but I quickly found that not to be true.

I was asked by Avery Leon's lawyers to review the evidence in the case and give an opinion about the incident on May 16, 2014. Drawing on my background and experience, I examined several different pieces of evidence, including the affidavits of Avery Leon, Cary Donatella, Lindsey Palmer, and Skyler Todd; Courtney Cruze's deposition and an attached report regarding a 1997 incident in which Officer Cruze shot a suspected bank robber in the back, all of which is shown in Exhibit 4; the summary of CCTD disciplinary statistics as compared with similar national statistics that was prepared by Sandy Ensign, a fair and accurate copy of which is reflected in Exhibit 7; the CCTD Police Department's handbook, a fair and accurate copy of which is in Exhibit 5; departmental training records concerning the use of stun guns, a fair and accurate copy of which is in Exhibit 6; and three other reports regarding CCTD officers' use of stun guns, fair and accurate copies of which are in Exhibits 8, 9, and 10. Those are the types of materials the CRC normally relies upon in its investigations, and were sufficient for me to arrive at my conclusions. I analyzed them using the normal methods I would use when analyzing an act of alleged police misconduct at the CRC, which are reliable and accepted in my field. I applied those methods reliably.

Based on my analysis, I reached two conclusions. First, it is possible that Leon would have remained composed enough following the stun gun shock to put Leon's left hand in Leon's pocket. Second, CCTD police officers provoke more citizen complaints and receive less discipline related to the use of force than other police departments across the nation, which has resulted directly from the CCTD's policies and practices regarding the use of force.

As to the first conclusion, it's important to understand the normal physiological effects of a stun gun on the human body. In most cases, the suspect is paralyzed when shocked but only while the stun gun is "engaged," meaning while electricity is flowing into the suspect's body. The paralysis occurs because the flow of electricity disrupts the suspect's nervous system by interfering with the electrical signals that originate in a normal human's brain. However, when the stun gun disengages, the flow of electricity ceases and the suspect's nervous system can return to normal which means that, unless there's some sort of injury that's been caused, the suspect can move again.

For that reason and, in my opinion, Leon's claim that Leon raised both hands and *then* placed Leon's left hand in Leon's pocket is perfectly plausible. Once the stun gun disengaged, Leon would have regained control of Leon's nervous system which would have allowed hand movement. Sure, the experience of being shocked with a stun gun is extremely painful and leaves many people dazed for a few minutes after the shock. But that's all physiological, and I can't say what the psychological effects of the shock would have been. From a pure physiological perspective, though, I can say with absolute certainty that Leon *could* have put Leon's hand in Leon's pocket.

As to my second conclusion, the statistics speak for themselves. Preliminarily, I have no reason to believe, and do not believe, that the statistics Ensign relied on are inaccurate; I believe they accurately reflect the number of complaints the CCTD Police Department has received since 2007, and those complaints' respective dispositions. That is not to say that those dispositions were appropriate in every case, though. I also independently verified the statistics Ensign used from the Bureau of Justice Statistics. In other words, the national "averages" that Ensign uses are accurate.

However, based on the number of officers in CCTD's police force, CCTD generally receives a slightly higher number of yearly complaints regarding the use of force than the national average. The national average for a department of CCTD's size would be 2.85 complaints per year but the CCTD Police Department averages over 3 complaints per year. That

might not seem like a big difference but it's very troubling when you consider the rates at which those complaints are sustained – which is almost *never*. In seven years, the CCTD Police Department has only had *two* citizen complaints sustained. While, admittedly, CCTD police officers serve in somewhat unique environments in and around train stations – in which confrontations with suspects generally are more likely – there's nothing "unique" about the way citizen complaints should be processed.

The handling of those complaints sent a message to CCTD police officers that they could use as much force as they pleased without consequence. The complaint in Exhibit 8 is a perfect example; there, Officers Cruze and Irsay received a far less severe punishment than was warranted or than the CRC would normally recommend. The normal punishment for that sort of thing would be, at minimum, a weeklong suspension, and possibly other measures. Effectively, the punishment that was actually handed down – a half-day suspension – amounted to a "slap on the wrist."

It's also especially concerning that Officer Cruze was involved in two of the three stun gun-related incidents shown in Exhibits 8, 9, and 10, plus the incident on May 16. If anyone at CCTD would have been exposed to its lax policies regarding the use of force, it would have been Officer Cruze. The same is true of his training; the Department's training records in Exhibit 6 show that he was permitted to be more lackadaisical about receiving proper training than any other member of the department. Additionally, Officer Cruze at least partly instigated the incident on May 16 by pointing out Leon to Officer Palmer and indicating that Palmer should subdue Leon. Thus, via Officer Cruze, CCTD's lax policies regarding punishment for the excessive use of force appear to have contributed directly to the incident in which Officer Palmer discharged the stun gun into Leon.

Based on my review of the evidence, I believe the CCTD Police Department's policies and practices directly resulted in an excessive use of force on Avery Leon. I hope justice is served. Nobody should have to go through what Leon experienced.

I hereby attest to having read the above statement and declare under penalty of perjury under the laws of the United States that it is true and correct. Before giving this statement, I was told it should contain all relevant testimony, and I followed those instructions. I also understand that I can and must update this affidavit if anything new occurs to me until the moment before I testify in this case.

/s/ Taylor Gomez

Taylor Gomez

Dated: September 14th, 2014

Subscribed and sworn before me on this 14th day of September, 2014.

/s/ Bobbie Dousa

Bobbie Dousa

Notary Public in and for the State of Oregon

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

AFFIDAVIT OF LINDSEY PALMER, Defendant

I, Lindsey Palmer, being first duly sworn and pursuant to 28 U.S.C. § 1746, declare and state as follows:

My name is Lindsey Palmer and I'm 26 years old. I'm a police officer with the Chinook County Transportation District Police Department. I grew up Chicago, on the South Side, so I know what "rough neighborhood" means better than just about anyone. On top of that, I come from a family of police officers; both my father and grandfather served in the Chicago Police Department. I moved to Oregon to go to college – I went to Lewis & Clark College on a full scholarship – and I've been here ever since.

Chalk it up to my family, I guess, but I've wanted to be a cop for as long as I can remember. When I graduated from Lewis & Clark in 2012, I put in applications at the Rowe Police Department and the Chinook County Transportation Police Department. CCTD ended up hiring me and, when I finished my time at the academy in January 2013, I was ready to hit the ground running, and I did. I've had a great career on the CCTD police force so far and I hope to continue for as long as they'll have me.

The Chief ended up pairing me with Courtney Cruze, who, as I quickly found out, was a total legend in the Department. He was there for about as long as the CCTD existed; he had a reputation as being eminently fair but, at the same time, he was one of the toughest guys around. He taught me – and I found out for myself on the job – that you need to be tough as nails to make it in the CCTD. Sure, I know Courtney had a few complaints filed against him over the years, but that happens to everybody. I don't know an officer here or at the Rowe Police Department who hasn't had at least one excessive force complaint filed against him or her. Early on, Courtney taught me my most important lesson: when we're reasonably sure someone has committed a crime and is planning to do so again, we're fair but we don't give them the benefit of the doubt in close cases. I can't remember how many times he told me that.

Part of the reason for that, Courtney explained, is that policing the C-Rail isn't quite like regular police work. I certainly don't mean to knock my colleagues over at the Rowe PD, but things can get much hairier much quicker on the C-Rail. See, unless you're in a bad neighborhood, most regular beats are manageable. Sure, sometimes you'll catch a drunk driver, sometimes you'll respond to a call about someone trying to steal a car but on most days it's pretty uneventful. I know because I used to ride along with my dad along a few different beats in Chicago when I was a kid, and I have a lot of friends at the Rowe PD.

But, when it comes to the C-Rail, it's a little different. Obviously, you've got people without tickets who, when the ticket-checkers catch them, naturally become a little belligerent at the prospect of paying a $250 fine. Plus, everybody is in closer quarters and – especially during rush hour – is usually operating on a shorter fuse. That means more pushing, more shoving, and a few more fights than you'll usually run into on your average street corner. Needless to say, we're always vigilant about whatever sort of threat might come up on the C-Rail, no matter how big or seemingly small it might be.

Before May 16, 2014, I had received one and only one complaint against me alleging excessive use of force. Between the time I started in January 2013 and that time, I had arrested or assisted in arresting about two dozen suspects, most on drug-related offenses. The suspect who filed a complaint claimed that I used my pepper spray on him without any good reason. Half of that is true – I sure did use my pepper spray on him but that was only because he came rushing at me with a switchblade while he was high on drugs. He was about 20 feet away from me when I sprayed him. Afterward, Courtney – who, as my partner, was there with me – told me he was amazed I hadn't reached for my gun or at least my taser. At CCTD, we're required to keep our guns on one side of our belt and our tasers on the other side; that requirement exists so, in the heat of the moment, we don't grab the wrong one. I decided to use my pepper spray because I wanted to be cautious. I'm a peaceful person, and my philosophy is that I'm only going to use as much force as is necessary to deal with the threat, and not an iota more. Anyway, the suspect's complaint was found to be frivolous. He was convicted and is now serving 10 years in prison for possession with intent to distribute so you know his complaint was probably no good from the get-go.

That incident, though, reinforced the lesson that Courtney had taught me when I started: there's a reason we don't give known or suspected criminals the benefit of the doubt. If I had hesitated or, if I had second-guessed myself, I believe I might not be alive today. It was an eye-opening moment for me and, based on my conversations with my colleagues at the CCTD, I think it's one that all police officers have at one point or another in their careers. Another officer, Paul Bowlen, whom I worked with had a similar experience that I witnessed. That experience is described in Exhibit 10, with which I am familiar and which I agree is an accurate representation of what happened that day.

May 16, 2014, was a night I won't forget anytime soon. That night, Courtney and I were stationed in our CCTD cruiser at the Ramona Street C-Rail stop. A little after 9:30 p.m., we

received a dispatch saying that an armed robbery had happened on a C-Rail train coming from Emerson Street. The Emerson Street station is one stop away from Ramona Street. According to the dispatch, a person in their late 20s or early 30s and of Avery Leon's race, height, and weight had approached a pair of teenagers, brandished a small silver revolver, and demanded that they turn over their cash, credit cards and cell phones. The dispatch did not mention the attacker's gender. The attacker was wearing an orange t-shirt, jeans, and a white baseball cap, it said. After grabbing the victims' purses and cell phones, the attacker shoved the contraband and the gun into some sort of dark backpack and ran onto a Blue Line C-Rail train headed for Ramona Street.

As soon as Courtney and I heard the dispatch, we looked at each other and grimaced. We knew that a similar attack had happened on the C-Rail a few weeks ago; Courtney was on duty at the time and had responded to the attack himself. In that case, a person in their late 20s or early 30s and of Avery Leon's gender, race, height, and weight had robbed an elderly couple with a small silver revolver. According to Courtney, the attacker hit one of the victims on the head with the butt of the revolver when she tried to resist. The force of the blow knocked her to the ground and gashed her forehead. She got a concussion and had to get stiches but she ultimately recovered. She was, however, pretty traumatized by the incident.

Courtney and I got out of our CCTD cruiser and started walking toward the platform where the train carrying the attacker would arrive. As we ran to the platform, Courtney mentioned the prior attack and said, "This perp got away once and under no circumstances are we going to let that happen again. Remember that we don't give the criminals the benefit of the doubt. You do whatever you need to do to take this person down." But, as he sometimes does, he then added, "but, I mean, don't do anything stupid." The train was supposed to arrive on the northern side of the platform. We each knew that another train – the Green Line train to Webster Street – would arrive on the southern side of the platform at about the same time, so it would be mobbed. To make sure we covered the whole area, I positioned myself at about equal distances from each train, and about equal distances in between the center and westernmost sets of doors on each train; basically, I was in the center-left part of the station as shown in Exhibit 1, with which I am familiar and which I agree is an accurate representation of the Ramona Street C-Rail stop. Courtney positioned himself in the same place on the other side of the platform, about 100 feet or so away from me.

All of a sudden both trains arrived. Courtney and I thought we'd have a few minutes to scan the departing passengers from the Blue Line train before the Green Line arrived, but the Blue

Line was late. A lot of people seemed to be pushing, jostling and running across the platform to make their connection to the Green Line. Courtney and I maneuvered as best we could in the crowds – we were simultaneously scanning the crowds and peering into the train itself to look for the attacker.

All of a sudden, I heard Courtney shout, "Lindsey, black backpack to your left!" I was facing the Blue Line train, but I swung around and saw a person whom I later learned to be Avery Leon running across the platform from the westernmost door to the Blue Line train toward the westernmost door to the Green Line train. Leon seemed to match the attacker's description wearing jeans and a black backpack. Leon also appeared to be running directly toward a group of teenagers who were standing at the door of the train. I saw that Leon was wearing what I thought was a orange or red t-shirt – although, in the split second I had to react, I couldn't tell exactly because it was partly obscured by the backpack. It could have been orange or it could have been red, I couldn't tell at the time. Then again, there were lots of people wearing similar shirts on the platform. Leon didn't seem to be wearing any sort of hat but I remember thinking at the time that, whoever this person was, the person was the attacker and had probably stuffed the cap in the backpack to avoid detection during the escape.

Then I noticed something really scary: as Leon was rushing toward the group of teenagers, Leon's left hand was in Leon's left pocket and seemed to be fumbling around for something that Leon couldn't quite get a grip on. My mind immediately flashed back to the attacker's silver revolver, the business end of which another group of teenagers had been looking down just a little while earlier. I wasn't going to let that or, heaven forbid, something worse, happen again.

I immediately unclipped the safety device securing my taser to my belt. A fair and accurate depiction of my taser is shown in Exhibit 3. I yelled at Leon, "You with the black backpack, stop right where you are and put your hands up!" That is all I remember saying. Leon didn't respond at all. Leon didn't look up. Leon didn't raise Leon's hands. Leon didn't do anything but continue running toward those teenagers while fumbling around for something in Leon's pocket. To me, given the dispatch we had received, that took the situation from "urgent" to "this might be life or death." I was standing about 30 feet away from Leon and, while it was loud on that platform, there's no way that Leon didn't hear me. I mean, some of the *teenagers* even turned around and looked at me when I yelled but Leon just kept running. What if Leon was about to pull out that silver revolver and use it on those teenagers?

At that point I had to make a decision. What I had in front of me was a person who partly matched the description of a vicious, violent attacker who kept running toward a group of teenagers after I had called for the person to stop. On one hand, if I did nothing, the consequences could be dire. On the other, if I used my taser, I could stop what would potentially have been a devastating second attack without any permanent physical damage to the attacker. Like I said, I'm a peaceful person and I never want to harm a suspect unless there's no other alternative. I made the only decision I could. I unholstered my taser, pointed it at Leon, and fired. At the time, Leon was approximately 30 feet away from me. The stun gun's two electrified barbs lodged in Leon's left shoulder. Leon screamed, stopped, convulsed, and fell over on Leon's side, parallel to the C-Rail and facing east. Leon's hand was still in Leon's pocket.

I know Leon turned out not to be the attacker and I feel really bad about that. But in those circumstances, I had no choice. It's easy to be an armchair quarterback when it comes to these sorts of incidents but, at the end of the day, we police officers have to make split-second decisions based on limited information. If we feel like we need to second-guess ourselves every time we face a dangerous suspect, that could mean we wait an extra second while an armed suspect takes a swipe at us. No police officer does that, and neither should they.

I'm really, really sorry for what happened to Avery Leon. But Leon heard me and Leon should have stopped when I called. If Leon had done so, I might have been able to rule Leon out, and might have even caught the attacker.

I hereby attest to having read the above statement and declare under penalty of perjury under the laws of the United States that it is true and correct. Before giving this statement, I was told it should contain all relevant testimony, and I followed those instructions. I also understand that I can and must update this affidavit if anything new occurs to me until the moment before I testify in this case.

/s/ Lindsey Palmer

Lindsey Palmer

Dated: September 8th, 2014

Subscribed and sworn before me on this 8th day of September, 2014.

/s/ Bobbie Dousa

Bobbie Dousa

Notary Public in and for the State of Oregon

AFFIDAVIT OF SKYLER TODD, for the Defense

I, Skyler Todd, being first duly sworn and pursuant to 28 U.S.C. § 1746, declare and state as follows:

I'm Skyler Todd. I'm 14 years old and I'm a student at Carthage High School in Carthage, Oregon. I've lived in Carthage my whole life and I've never really been in any sort of trouble. I mean, people tend to say I'm kind of a "goodie two shoes" but I think that's just because of that one time last year when I caught some of my friends cheating on math tests. I noticed them on the other side of our classroom looking at their cell phones under their desks. I told our teacher about it even though I knew they'd be in big trouble – I mean, what else was I going to do?

I'm an okay student, I guess. I get mostly B's and B+'s. My favorite class is art, by far. I really like visual art and I'm thinking about studying it in college. Problem sets, papers, and lab experiments are interesting enough, I guess, but I love trying to capture the world around me in a painting or photograph. My friends say I'm pretty good at it, too, and that I notice things that other people don't. Like in the early fall when my class takes its yearly field trip to Central Oregon, I'm always the first one to point out some of the more difficult-to-spot wildlife on our hikes. Owls are my favorite.

Anyway, on May 16, 2014, my friends and I were coming home from the Rowe Rattlesnakes baseball game. We all go to Carthage High School, but only one of us, my best friend Taylor Pahlke, is in one of Avery Leon's classes which Taylor doesn't like very much. We all had roundtrip C-Rail tickets to travel to and from the game. Since we all live in Carthage, we have to take the Green Line to Ramona Street, and then transfer to the Blue Line, which we then take the rest of the way to the stadium. Because I'm generally pretty forgetful, I gave my ticket Taylor to hold on to.

The game was great. I mean, I don't really care all that much about baseball, but it was really great to hang out with my friends! The game went pretty late so I was a little tired when we all headed out. We took a Blue Line C-Rail train back to Ramona Street where, like we had on the way there, we were planning on transferring to a Green Line train to take the rest of the way home.

As we were about to board the Green Line train back to Webster Street, I stopped and started fumbling for my ticket. After a second, I realized that I had forgotten that I gave it to Taylor. I felt like such a space cadet. But, to be honest, that sort of thing happens to me a lot.

At that point, when I realized Taylor had my ticket, I was just a few feet in front of the westernmost door to the Green Line train; the whole Ramona Street station is accurately reflected in Exhibit 1, with which I am familiar. The rest of my group was walking ahead of me toward the train and they had just about boarded it when, suddenly, I heard a voice behind me. The voice yelled something that sounded like, "You with the backpack, stop and put your hands in the air!"

I froze for a split-second. I thought I had done something wrong! But then when I got my bearings back, I turned around and saw someone whom I later learned was Avery Leon just a few feet away from me. I was directly in between Leon and the train. Leon seemed to be running really fast and straight toward me. Also, Leon's left hand was in Leon's left pocket, and it looked like Leon was trying to grasp at something. Leon's hand was wriggling around in the pocket pretty seriously, like Leon just couldn't get ahold of keys or something. Then again, why would Leon need keys if Leon was just about to get on the C-Rail? Did Leon have Leon's C-Rail pass in there? I'm sure about all that, because I thought it was kind of weird and, because of how fast Leon was running toward us, a little scary. It looked like Leon was going to run me over so I started to move out of the way.

Then, before I knew what was happening, Leon started screaming and fell to the ground. It looked like Leon was running straight toward my friends and me and then, all of a sudden, Leon started twitching and yelling, and then sort of jerked to Leon's left and fell in that same direction. I could see for sure that Leon's left hand was still in Leon's pocket after falling only, when Leon hit the ground, it didn't look like Leon was fumbling around for Leon's keys any more. I couldn't tell what had happened but, like I said, it was all really scary to me and so, except for what Leon was doing, I may not have seen everything else that was going on. I learned later that a police officer behind Leon had shot Leon with a stun gun.

Afterward, the police interviewed me and I told them everything I've said here. It was a really scary day but I remember everything exactly like it happened. I feel really bad for Leon; it sounds like Leon was just in the wrong place at the wrong time.

I hereby attest to having read the above statement and declare under penalty of perjury under the laws of the United States that it is true and correct. Before giving this statement, I was told it should contain all relevant testimony, and I followed those instructions. I also understand that I can and must update this affidavit if anything new occurs to me until the moment before I testify in this case.

/s/ Skyler Todd

Skyler Todd

Dated: September 8th, 2014

Subscribed and sworn before me on this 8th day of September, 2014.

/s/ Bobbie Dousa

Bobbie Dousa

Notary Public in and for the State of Oregon

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

AFFIDAVIT OF SANDY ENSIGN, for the Defense

I, Sandy Ensign, being first duly sworn and pursuant to 28 U.S.C. § 1746, declare and state as follows:

I'm Sandy Ensign and I'm 45 years old. I am the director of the Internal Affairs Division – IAD as we call it – at the CCTD Police Department.

I have lived in Rowe, Oregon all my life. I grew up in a *very* bad neighborhood; at the time, shootings, robberies, and other crimes were a daily reality. My best friend's parents owned and operated a small convenience store in the neighborhood and, when we were 14, my friend's parents were killed in a holdup at the store. The shooter was never caught. I saw the effect of the shooting on my friend, who eventually turned to drugs and wound up in prison, and so I decided to become a police officer. I went straight from high school to the Police Academy where I graduated first in my class. I became a beat cop in 1988 and a detective in 2001. Toward the end of my tenure, after the Department issued them to its officers, I used my stun gun in the field on several occasions. The stun gun I used was an older version of the same make and model that Lindsey Palmer used on Avery Leon in this case.

After my years as a detective, though, I realized that some of the problems facing rough neighborhoods like the one I grew up in can, in rare but important cases, have as much to do with the police officer handling the case as with the criminal he or she is trying to nab. That in mind, in 2010, I decided to become an investigator with the Chinook County District Attorney's Conviction Review Unit, which investigates allegations of police misconduct and recommends that the district attorney vacate convictions that are a product of such misconduct.

Right off the bat, I found the job incredibly rewarding and learned two important lessons. First, in my experience, the vast, overwhelming majority of police officers are decent, honest, hardworking people who are genuinely trying to make their communities better places. I also saw how a false complaint—even a frivolous one—can unfairly destroy an officer's reputation. The evidence typically bears that out. Of the 37 cases I reviewed in the Conviction Review Unit, I recommended the vacation of just two convictions. Second, though, I learned that in the rare case in which a police officer tampers with evidence, coerces a suspect into confessing, or commits some other sort of misconduct, the resulting conviction can unfairly destroy the defendant's life and family. It is important to remember that even an honest mistake can have that effect. In the two cases in which we recommended vacation of the defendant's conviction,

we did not believe that the investigating officers had *intentionally* tampered with evidence or coerced a confession; they seemed to be acting in good faith.

Anyway, in early 2014, the CCTD Police Department's then-current IAD director retired. The Department approached me about taking over the position and I accepted. I began work on May 19, 2014, just days after the incident with Avery Leon and Lindsey Palmer at the Ramona Street C-Rail station. I had never conducted a formal IAD review before but, given my extensive experience, I had no concerns about the integrity of my investigation.

In the course of my investigation I interviewed Avery Leon, Cary Donatella, Lindsey Palmer, and Skyler Todd. Their affidavits, which I have also reviewed, reflect everything that they each told me during those interviews. I also looked into the CCTD Police Department's protocols and procedures for responding to complaints of excessive force, with an emphasis on the use of stun guns. In connection with that part of my investigation, I reviewed the CCTD Police Department's handbook (Exhibit 5); departmental training records concerning the use of stun guns (Exhibit 6); a series of statistics comparing complaints that CCTD police officers receive as compared with similar national statistics (I assembled the results in Exhibit 7); Courtney Cruze's deposition, attached to which was an IAD report regarding a 1997 incident in which Officer Cruze shot a fleeing suspect in the back (all of which is in Exhibit 4); and three recent IAD reports regarding CCTD officers' use of their stun guns (Exhibits 8, 9, and 10).

I came to two conclusions: (1) it's incredibly unlikely, although technically not impossible, that Leon moved Leon's hand from outside of Leon's pocket and then into the pocket following the shock from the stun gun, and (2) the CCTD Police Department has responded appropriately to the excessive force complaints it receives.

As to my first conclusion, the key is that we consider both the physiological *and* psychological effects of a stun gun on the human body. I have also reviewed Taylor Gomez's affidavit, and I generally agree with Gomez's description of the physiological effects of a stun gun on the human body. As a pure biological matter, Gomez is correct to say that the flow of electricity from the stun gun interferes with the electrical signals that come from the brain. In other words, the electricity makes it all but impossible for a normal person to move their muscles while being shocked.

The key though – and the reason that Gomez's analysis misses the mark – is that stun gun shocks often produce physiological and psychological effects that can linger for several minutes *after* the shock itself. Those effects – which I witnessed personally several times during my

time as a police officer – may include disorientation, muscle tension, temporary paralysis, and potentially others. Generally, only a person with the build and mental toughness of a professional athlete can maintain enough composure following the use of a stun gun to maneuver in the way that Leon would have had to in order to put Leon's hand in Leon's pocket. Leon, I understand, had neither. For that reason, while I can't say it would be completely impossible, it would have been incredibly difficult for Leon to move Leon's hand with enough poise and coordination to get it into Leon's pocket in the moments following the shock.

As to my second conclusion, the first key thing is understanding how the complaint process typically works and the terminology that accompanies the process. If a complaint is determined to be valid, then the complaint gets "sustained" and disciplinary action generally is taken against the officer. If a complaint is determined to be invalid, then it is "dismissed" and nothing else happens. But, often times, things are not black and white and the standards that IAD professionals use across the country – CCTD's IAD Department included – are built to acknowledge that. We regularly find that there is insufficient evidence to determine *either way* whether a complaint is truly meritorious. In that case, the complaint is "not sustained." It's common in the rough and tumble world of policing to have a substantial number of "not sustained" complaints on a department's file. That doesn't mean it's a bad department; that just means that the circumstances of certain incidents make it too difficult to tell what happened one way or the other.

When you understand that terminology, CCTD statistics look about average when compared with the national numbers. There are plenty of incidents with police officers across the country – and CCTD is no exception – where there just is not enough evidence to come to a conclusion. And, as with any department, there are always some complaints that are "sustained." That doesn't mean the department is necessarily doing anything wrong; the work of a police officer is pretty rough and tumble and sometimes police officers make mistakes. I admit that CCTD's slightly higher-than-average rate of citizen complaints is potentially troubling. However, in my opinion, the higher rate of complaints is attributable the unique environment in which CCTD police officers work: the close quarters, rush-hour tempers, and other factors lead to a higher number of officer-citizen confrontations than usual. I cannot say why so many complaints were found to be "unfounded" or "exonerated" following investigation but it could be because there weren't any cameras on the C-Rail until last month. It will be interesting to see whether the added video evidence will make it easier to resolve citizen complaints.

Even where a citizen complaint is "not sustained," there may be certain other things a department can and, in some cases, should do in order to prevent confrontations where force may be necessary. CCTD appears to have taken some concrete steps to make clear when and how officers should use their stun guns; the CCTD Police Department's Officer Handbook shown in Exhibit 5 is an excellent example. If anything, the Department perhaps could require additional training following incidents where the use of force is alleged to have been improper. It is important that, where appropriate, police departments don't just discipline officers and leave it at that. It is equally critical to give officers the tools they need to avoid confrontations in the future.

All that in mind, if it were my decision, I would have required Officers Palmer and Cruze to attend additional training sessions on the use of stun guns following the incident with Avery Leon. I have not heard anything about any such training taking place, at least not yet. I am not sure I would have disciplined them but, clearly, something went wrong that day and it is important that CCTD take steps to make sure it does not happen again.

I hereby attest to having read the above statement and declare under penalty of perjury under the laws of the United States that it is true and correct. Before giving this statement, I was told it should contain all relevant testimony, and I followed those instructions. I also understand that I can and must update this affidavit if anything new occurs to me until the moment before I testify in this case.

/s/ Sandy Ensign

Sandy Ensign

Dated: September 15th, 2014

Subscribed and sworn before me on this 15th day of September, 2014.

/s/ Bobbie Dousa

Bobbie Dousa

Notary Public in and for the State of Oregon

//

//

//

//

//

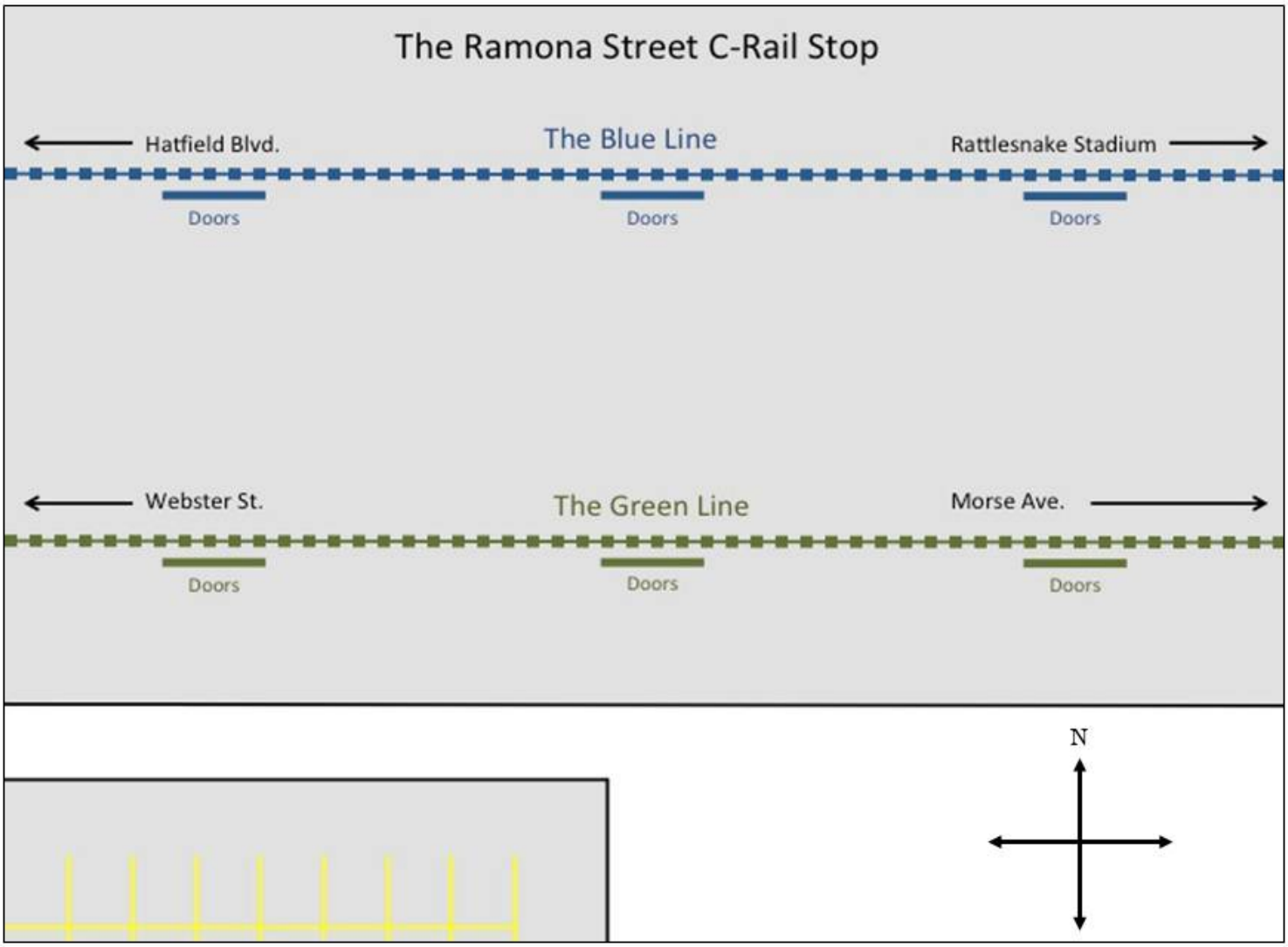

Exhibit 1: Map of Ramona Street C-Rail Stop

Exhibit 2: Rattlesnakes T-Shirt

Exhibit 3: Stun Gun

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON, ROWE DIVISION

AVERY LEON,

Plaintiff,

v.

CHINOOK COUNTY TRANSPORTATION DISTRICT; and CHINOOK COUNTY TRANSPORTATION DISTRICT POLICE OFFICER LINDSEY PALMER,

Defendants.

Case No.: 3:14-cv-00101-CC

DEPOSITION OF COURTNEY CRUZE

Taken before BOBBIE B. DOUSA, a Notary Public

in and for the County of Chinook

State of Oregon

July 16, 2014

COURTNEY CRUZE, residing at 912 Escondido Road, Rowe, OR 97141, having been first duly sworn by the Notary Public (BOBBIE B. DOUSA), was examined and testified as follows.

EXAMINATION BY MS. SCHMIDT:

Q. Please state your name for the record.

A. I'm Courtney Cruze, C-R-U-Z-E, and for the record, I really do not have time for this.

Q. Mr. Cruze, how old are you?

A. I'm fifty-four.

Q. Have you ever been deposed before?

A. Yes, twice. Once was during my divorce. The other time was during the lawsuit following that 1997 thing with the bank robber.

Q. We'll talk about that in a moment, but for now, I just want to get the basic introductory stuff out of the way. Are you taking any medications?

A. No.

Q. Are you currently under the influence of alcohol?

A. No.

Q. Is there any reason you're aware of why you wouldn't be able to answer my questions truthfully, accurately, and completely?

A. No, not that I can think of.

Q. If I ask you a question and you begin to answer it, I'm going to presume you understood the question fully. Is that okay?

A. Sure.

Q. If there's any part of a question you don't understand, please let me know, and I'll do my best to clarify, okay?

A. Sure.

Q. Okay, then let's dive right in. You mentioned a thing in 1997 about a bank robbery. What happened there?

A. How is that relevant to anything?

Q. I don't want to argue, Mr. Cruze, but we get to ask

a broad range of questions here.
MR. MCCOY: They do, Courtney.
THE WITNESS: Fine, whatever.
MR. MCCOY: Just go ahead and answer her questions as best you can.
BY MS. SCHMIDT:
Q. So, what happened with that bank robbery thing in 1997?
A. Well, back then, I was a beat cop with the CCTD, and one day, we get a call on the radio saying that some hoodlums were in the process of robbing Young's Savings and Trust, which used to be over on Serra Street near the C-Rail station. My partner and I were right in the area, and we responded. When we got there, we heard a gunshot from inside the bank and then saw the robbers just come tearing out of the front door. They were wearing masks, and split off in different directions.
So I went after one, and my partner went after the other. They were each carrying duffel bags full of cash, so it was hard to tell who had the gun, or maybe whether both of them had guns. I --
Q. Why did you believe both of them had guns?
A. I didn't say I believed they both had guns, I said we didn't know. We knew there was at least one gun, and we didn't know who had it.
Anyhow, my guy is running across the plaza in front of the bank and toward a car parked by the sidewalk. There are people on the sidewalk, too, including a young mother pushing her baby in a stroller. And I'm thinking, holy crap, this guy might take a hostage. Then I saw him reach into his pocket for something, like he was grabbing at something, and then I thought I saw something metal. So I didn't hesitate. I put him down.
Q. Put him down?
A. Yeah. I unholstered my sidearm, yelled for him to

stop and, when he didn't, I shot him.

Q. Why did you think he might take a hostage? I mean, did they have any other hostages?

MR. MCCOY: Objection, compound.

Q. You can answer.

A. Uh, seriously? Why did we think he might take a hostage? He had just robbed a bank, killed a teller, and was now on the run toward a woman and her baby with a cop hot on his tail. That's why I thought he might take a hostage.

Q. What did you yell at him?

A. What do you mean? I just told you. I yelled at him to stop.

Q. I mean specifically, what words did you use?

A. What words? I don't know. "Hey, you, stop." Something like that.

Q. Did you identify yourself as a police officer before firing?

A. Did I what?

Q. Did you identify yourself as a police officer before you shot him?

A. No, I mean, not that I remember. But believe me, this guy wasn't sprinting away from the bank because he wanted to make it to McDonald's before they stop serving breakfast. He saw the lights and heard the sirens when we pulled up. He knew we were cops.

Q. Did you announce that you would shoot him if he didn't stop?

A. Nah.

Q. Why not?

A. I don't know. I didn't have time. I mean, I already went through this with IAD a million times, it's all in the report.

Q. We'll get to the report, but I need you to tell me now.

A. Yeah, blah, blah, blah, I know, fine. What was the question again?

Q. Why didn't you tell him that you would shoot if he didn't stop?

A. Look, to be honest with you, we usually don't do that. I know Lindsey didn't do that here, and I back Lindsey up on that. The reality is, in my line of work, we have to make split-second decisions, and there's not always a lot of time to go through a mental checklist and say, hmm, did I give this criminal all of the warnings and protections and other stuff the department says we have to give him? I mean, a lot of the time, we just can't.

Q. So, any other reason, why you didn't warn him that you'd shoot, apart from not having time?

A. Uh, no. Not that I can think of. It was so long ago.

Q. You're aware that the person you shot wasn't actually armed, right?

A. I mean, yeah, it turns out he was reaching for his car keys or something. But I didn't know that at the time.

Q. You couldn't distinguish car keys from a gun?

A. No, not from where I was at that time. And I mean, like I said, we don't usually have time to double check when our view's obstructed. I was behind him at the time, and I couldn't see real well.

Q. I'm showing you Exhibit A.

[Exhibit A was marked.]

Q. According to this IAD report on the incident – this is the internal affairs report on that incident, isn't it?

A. Yeah.

Q. And, you've read it?

A. Yeah. Don't agree with some of what it says there.

Q. Well, according to this report, you're aware that there was a witness who said you were standing off to the side of the robber, and that it was pretty clear that the robber was going for his keys. And that you shot him anyway.

A. Yeah, we interviewed that guy. I smelled alcohol all over his breath. He was lying.

Q. Can you prove he was lying?

A. No, you and I both know I can't. That's why the complaint wasn't dismissed outright. But they still believed me over that drunk witness. That's why it was "non sustained."

Q. You know for a fact that's why the complaint was "not sustained"?

A. Yeah, our IAD chief, Bill Meeuwsen, told me that. He said the he knew I was telling the truth, but since this witness had come forward, he couldn't just throw the complaint out, because then it'd look like he was ignoring evidence or something. But he said that he'd make it go away and that it wasn't a big deal.

Q. As far as you know, did Mr. Meeuwsen do anything to investigate the matter himself?

A. I don't know. Maybe. I wouldn't hear about that sort of thing, because I'm not in IAD.

Q. You wouldn't hear about it? Mr. Cruze, it concerned an incident in which you shot and killed an unarmed man, and the review was focused on your action. You mean to say you wouldn't have heard about the investigation that was going on?

A. I don't know. We just usually don't really hear about that sort of stuff.

Q. So you don't know if Mr. Meeuwsen performed his own investigation?

A. I guess I don't.

Q. Okay. Did you ever talk to Lindsey Palmer about that incident?

A. The bank robbery? Sure. It was the first time I ever killed a guy in the line of duty. I used it as a teaching moment.

Q. A teaching moment?

A. Yeah. Lindsey's a good kid, and I wanted to do my part to teach Lindsey the ropes.

Q. How in the world did you use that shooting as a teaching moment

A. Well, okay, maybe that's not the best way to describe it. But here's the deal. The most important lesson I teach all the newbies when they come to the CCTD is like that thing Sean Connery's character said in that movie the Untouchables. Your first job requirement is that when your shift ends at the end of the day, you go home alive. And that's what I tried to teach Lindsey, and all the new kids who join.

Q. And you shooting the suspect was an example of staying alive at the end of your shift? Isn't that a little melodramatic, Mr. Cruze?

MR. MCCOY: Objection, compound, argumentative.

A. Are you kidding me? That's incredibly offensive, Ms. Schmidt. I know a bunch of guys at CCTD and at Rowe who don't think there's anything melodramatic about wanting to stay alive on the job, because they've lost friends in the line of duty.

Q. I'm sorry, I didn't mean it that way.

A. It's fine.

Q. No, I really am. I think what I'm getting at is how the 1997 incident has to do with the lesson you taught to Lindsey Palmer.

A. Sure, I get it. Here's what I told Lindsey after I told Lindsey that story: the point is that you don't second guess yourself, and you don't take chances. If I had wanted to be a hundred percent sure whether that guy had a gun, I would have had to wait another second or two after I first saw the metal, like, until he had drawn it all the way out of his pocket. And by that time, for obvious reasons, it can be too late. Don't do that, I told Lindsey. As soon as you have reason to believe that your life or someone else's life is in danger, you have to act.

Q. What does the department think about that?

A. What do you mean?

Q. Well, does the department support the use of lethal

force in those situations?

A. Support? I don't know. It depends on whether it's justified or not. And believe me, when it isn't, they come down on you like a ton of bricks.

Q. Can you think of a situation where they've done that?

A. Not off the top of my head. And that's because since then, there hasn't been a situation where an officer has used lethal force where it's even been a question whether the officer was justified or not.

Q. What about non-lethal force?

A. Oh, well, that's different.

Q. How so?

A. I mean, with non-lethal force, so as long as the suspect is alive and breathing at the end of the day, the department isn't always going to be breathing down your neck about how it went down. Those stun guns, I mean, they've saved people's lives. I might have used it with that bank robber in 1997 if we had had them then.

Hang on. My phone is going off. I have to go. Like, this is CCTD police stuff, and it really can't wait. Sorry.

MR. MCCOY: We can reschedule the rest of this.

MS. SCHMIDT: Yes, we'll have to. Mr. Cruze, are you sure you have to go?

THE WITNESS: Yeah, I really do.

MS. SCHMIDT: Okay, we'll just have to reschedule, I guess.

Whereupon, the deposition was concluded.

I have reviewed the transcript above and certify that it is an accurate transcription of the testimony that was given.

_____

Bobbie Dousa

Notary Public in and for the State of Oregon

Chinook County Transportation District
Police Department

DEPARTMENT OF INTERNAL AFFAIRS
INCIDENT REPORT AND RECOMMENDATION

Officer(s) Involved: Courtney Cruze
Date of incident: January 17, 1997

Description of incident, investigation, and findings: Officer Cruze and his partner, Officer David Rooney, arrived at Young's Savings and Trust following a report of an armed robbery. According to both officers and the dispatcher, the report alerted them that "one of the suspects is armed." When Cruze arrived, the two robbers ran out of the bank door and in different directions. The suspect Cruze was pursuing appeared to be running toward a car parked across the bank plaza. Cruze claims that he saw "something that looked like a gun in the guy's hands, so I ordered him to stop, and when he didn't, I discharged my weapon at him." The suspect was killed instantly. A set of car keys to a getaway vehicle was recovered on the body; no gun was found. Officer Rooney did not witness the incident but believes Cruze. One witness, whom IAD was unable to contact for a re-interview during its investigation, said to Officers Cruze and Rooney that Cruze was "standing off to the side of the robber, and it was pretty clear that guy was going for his keys and not a gun."

Disposition and recommendation: Because the key witness cannot presently be located, there is not enough evidence to sustain or dismiss the complaint following this incident. The most likely outcome was that Cruze reasonably believed that the suspect was armed and dangerous, even though no weapon was found on his body. However, there is insufficient evidence to support that finding fully. Complaint is not sustained.

/s/Bill Meeuwsen
Bill Meeuwsen, CCTD IAD Director
Dated: January 24, 1997

Recommendation approved:
/s/Ed Green
Chief, CCTD Police Department
Dated: January 25, 1997

Policy 12.2: Use of Stun Guns and Other Non-Lethal Force

All CCTD Police Officers must be aware at all times that the use of non-lethal force, including the use of CCTD-issued "stun guns," is a serious matter. CCTD has provided stun guns to give its officers with an alternative to lethal force, which may not be necessary in all circumstances involving a physical confrontation with a suspect. Stun guns, pepper spray, and other non-lethal implements may even help save the life of a suspect where an officer would otherwise be forced to use lethal force.

In all cases, there must be an imminent threat to the officer's or another person's safety in order to justify the use of non-lethal force. The amount of force to use depends on the circumstances; in all cases, officers must exercise caution and good judgment, and act with integrity and professionalism.

Officers must abide by the following additional requirements when using stun guns:

- While non-lethal in the vast majority of cases, stun guns may cause series injury or death if used improperly. Officers should use their stun guns only as a last resort in situations where there is no other reasonably effective way to subdue a suspect.

- Except where impossible or impracticable, officers should always warn a suspect of their intention to discharge their stun gun before doing so.

- Except where necessary to protect the officer's or the public's safety, officers should never discharge their stun gun at a suspect where the suspect is standing on a ledge, staircase, or any other elevated position.

CCTD Police Department Officer Training and Development

Officer Training Summary

Powered by TrainSmartHR®

Type of training: Stun gun use and safety
Instructor: Burt Lambeau, Safety Analytics, LLC
Topics covered: This training covers the mechanics of stun guns, appropriate uses of stun guns (including simulations and exercises), and the physiological and psychological effects of stun guns
Date Range start: 1/1/2007 **Date Range end:** 6/30/2014

Key: c = complete p = partial i = incomplete
jan = January jun = June + = commendation from instructor

Officer	2007	2008	2009	2010	2011	2012	2013	2014
Jones, J.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Irsay, J.	c+-jan c+-jun	c+-jan p-jun	c+-jan c-jun	c-jan p-jun	c-jan i-jun	c+-jan c-jun	c-jan c-jun	c+-jan p-jun
Cruze, C.	i-jan i-jun	i-jan i-jun	i-jan i-jun	p-jan c+-jun	c+-jan c+-jun	c+-jan p-jun	i-jan c+-jun	i-jan c+-jun
Allen, P.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
York, J.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c+-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Spanos, A.	c+-jan c+-jun	c-jan i-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan p-jun	c-jan c-jun	c-jan c-jun
McCasky, V.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Benson, T.	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Packer, F.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c+-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Kraft, R.	c+-jan c+-jun	c+-jan c+-jun	c-jan c-jun	c-jan c-jun	c+-jan c+-jun	c+-jan c+-jun	c+-jan c+-jun	c-jan c-jun
Richardson, J.	p-jan p-jun	c-jan c-jun	c-jan c-jun	p-jan i-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Johnson, W.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Bidwill, B.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Adams, B.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Blank, A.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Bisciotti, S.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun

60

Wilson, R.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c+-jun	c+-jan c+-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Brown, M.	c-jan p-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Haslam, J.	c+-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Bowlen, P.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan i-jun	c-jan c-jun	c-jan c-jun
Ford, M.	c-jan c-jun	c-jan c-jun	c-jan c-jun	p-jan i-jun	p-jan c-jun	c+-jan c-jun	c-jan p-jun	c-jan c-jun
McNair, R.	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Khan, S.	c+-jan c-jun	c-jan c-jun	c-jan c+-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c+-jan c-jun	c-jan c-jun
Ross, S.	c-jan c-jun	c-jan c-jun	c-jan c-jun	p-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Wilf, Z.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Mara, J.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Rooney, D.	c+-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	p-jan p-jun	c+-jan p-jun	c-jan p-jun	i-jan c-jun
Nguyen, A.	n/a	c+-jan c+-jun	c+-jan c-jun	c+-jan c+-jun	c+-jan c+-jun	c+-jan c-jun	c+-jan c-jun	c+-jan c+-jun
Lurie, J.	n/a	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Davis, C.	n/a	n/a	c-jan c-jun	c-jan c-jun	c-jan c+-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun
Palmer, L.	n/a	n/a	n/a	n/a	n/a	n/a	c+-jan c+-jun	c+-jan c+-jun

Exhibit 6: CCTD Police Department Training Records (page 2 of 2)

CCTD Police Department
Internal Affairs Department

From the desk of Sandy Ensign
Director, Internal Affairs Department

Phone: (541) 887-7000
Fax: (541) 887-6000
sandy.ensign@cctd.state.or.us

September 1, 2014

Corrina M. Ruberosa
Deputy City Attorney
corrinaruberosa@rowe.or.gov
Office of the City Attorney of Rowe
812 Channing Street, Suite 2100
Rowe, OR 97111

Dear Ms. Ruberosa:

You asked my office to provide statistics on complaints related to use of force against CCTD officers, and the dispositions of those complaints. The table below summarizes the complaints that have been filed against CCTD officers since 2007:

Year	Total Complaints	Unfounded/Exonerated	% of Total	Not Sustained	% of Total	Sustained	% of Total	Other	% of Total
2007	3	2	66.7%	1	33.3%	0	0.0%	0	0.0%
2008	4	1	25.0%	3	75.0%	0	0.0%	0	0.0%
2009	1	1	100.0%	0	0.0%	0	0.0%	0	0.0%
2010	3	2	66.7%	0	0.0%	1	33.3%	0	0.0%
2011	2	2	100.0%	0	0.0%	0	0.0%	0	0.0%
2012	7	3	42.9%	2	28.6%	1	14.3%	1	14.3%
2013	2	1	50.0%	1	50.0%	0	0.0%	0	0.0%
2014	4	2	50.0%	1	25.0%	0	0.0%	1	25.0%
Total since 2007	**26**	**14**	**53.8%**	**8**	**30.8%**	**2**	**7.7%**	**2**	**7.7%**

To view these statistics in context, there are a few important points to be aware of. The following data comes from a study ("Citizen Complaints about Police Use of Force") released in June 2006 by the Bureau of Justice Statistics: [3]

- On average, large municipal police departments receive approximately 9.5 complaints alleging improper use of force per 100 officers per year. Thus, based on the national average, a police department of CCTD's size (approximately 30 officers) would be expected to receive 2.85 complaints per year. Note, however, that there are two factors that make that figure an unreasonably low estimate of the number of

[3] This was the most recent report from the Bureau of Justice Statistics regarding the use of force by police officers that I could locate.

- complaints that CCTD should reasonably be expected to receive. First, CCTD is a not a "large" municipal police department, which is defined as a department with at least 100 full time officers. Second, CCTD police officers operate in an environment that is quite different from most other police officers. Given the often cramped quarters in the C-Rail and the sometimes short tempers of passengers during rush hour, confrontations are generally more frequent and, accordingly, lead to slightly increased numbers of complaints.

- Like many police departments nationwide, CCTD uses the Bureau of Justice Statistics' terminology to describe how complaints are resolved:

    - A complaint is **"unfounded"** if the complaint is, on its face, not based on facts, or if an investigation reveals that the reported incident did not occur.
    - A complaint is **"exonerated"** if the reported incident occurred, but the officer's action was deemed lawful and proper.
    - A complaint is **"not sustained"** if there is insufficient evidence to prove the allegation.
    - A complaint is **"sustained"** if an investigation reveals sufficient evidence to justify disciplinary action against the officer(s) involved.

- According to the Bureau of Justice Statistics study, in large municipal police departments: (a) approximately 46% of all force-related complaints are either unfounded or exonerated, (b) approximately 37% of all force-related complaints are not sustained, (c) approximately 8% of all force-related complaints are sustained, and (d) approximately 9% of all force-related complaints receive some other disposition (*e.g.*, they are withdrawn). I note that, in the aggregate, this date shows that the CCTD Police Department is essentially on par with the relevant national averages.

Please don't hesitate to let me know if you need any other information.

Very truly yours,

Sandy Ensign

Sandy Ensign

DEPARTMENT OF INTERNAL AFFAIRS
INCIDENT REPORT AND RECOMMENDATION

Officer(s) Involved: Courtney Cruze, Jessica Irsay
Date of incident: December 9, 2010, approx. 7:30 p.m.

Description of incident and investigation: Officers Cruze and Irsay observed a drug sale at the Middlefield Road station of the Chinook County Light Rail. No witness disputed the fact of the sale. When Officers Cruze and Irsay approached the suspect (the seller) and the buyer, the suspect attempted to flee. Officer Irsay tackled the suspect to the ground. The suspect resisted arrest by attempting to punch, kick, and bite Officer Irsay while she attempted to subdue him. The suspect was a male weighing approximately 160 pounds; Officer Irsay is a female weighing approximately 130 pounds. All witnesses agree that after approximately two seconds, Officer Cruze discharged his stun gun into the suspect. All witnesses except Officers Cruze and Irsay agree that, following Officer Cruze's discharge of his stun gun into the suspect, the suspect was subdued. (Officers Cruze and Irsay claim that they "weren't sure" whether the suspect was fully subdued or whether he was, in Officer Cruze's words, "playing dead.") At that point, Officer Cruze instructed Officer Irsay to "hit him again, just to make sure." That statement was confirmed by multiple bystanders interviewed by IAD, and admitted by Officers Cruze and Irsay themselves. Then, apparently at Officer Cruze's direction, Officer Irsay unholstered her stun gun and discharged it into the suspect a second time. At present, the suspect has no known long-term injuries as a result of the incident.

Disposition and recommendation: Officer Cruze properly discharged his stun gun into the suspect before he and Officer Irsay subdued the suspect. However, all witnesses except for Officers Cruze and Irsay seem to agree that Officer Irsay's subsequent use of her stun gun was unnecessary and improper; Officers Cruze and Irsay should have known that the suspect was subdued at that time. I recommend that Officers Irsay and Cruze each receive a written reprimand and a half-day suspension without pay.

/s/Bill Meeuwsen
Bill Meeuwsen, CCTD IAD Director
Dated: December 21, 2010

Recommendation approved and adopted:

/s/Ed Green
Chief, CCTD Police Department
Dated: December 23, 2010

DEPARTMENT OF INTERNAL AFFAIRS
INCIDENT REPORT AND RECOMMENDATION

Officer(s) Involved: Annie Nguyen
Date of incident: January 21, 2013, approx. 8:15 p.m.

Description of incident and investigation: All witnesses, including the three bystanders interviewed and Officers Nguyen and Courtney Cruze, agree to the following facts: Officers Nguyen and Cruze (who was filling on a shift for Nguyen's regular partner, Shannon Ross) approached a suspect at the top of a small staircase at Tasso Street station of the Chinook County Light Rail. Prior to the arrest, Officers Nguyen and Cruze had received word that the suspect was suspected of committing a violent and seemingly random assault that had taken place about an hour earlier, and was likely armed and dangerous. When the suspect saw them and began to flee toward the stairs, Officer Nguyen discharged her stun gun at the suspect. Officer Nguyen called for the suspect to stop, but did not warn him that she would use her stun gun if he failed to do so. She hit him in the lower back with her stun gun, which caused him to tumble the rest of the way down the staircase. The suspect (on whom Officer Nguyen discovered a gun and a substantial quantity of drugs) broke his collarbone and sustained several scrapes and bruises.

Disposition and recommendation: Officer Nguyen's actions were justified. While Officer Nguyen technically violated CCTD Police Department Policy 12.2, which generally prohibits the use of stun guns on suspects in elevated positions and requires an officer to announce her intention to discharge her stun gun before doing so, her actions were acceptable because the suspect posed an imminent threat to the public. I recommend that the complaint be exonerated.

/s/Bill Meeuwsen
Bill Meeuwsen, CCTD IAD Director
Dated: February 13, 2013

Recommendation approved and adopted:
/s/Ed Green
Chief, CCTD Police Department
Dated: February 13, 2013

DEPARTMENT OF INTERNAL AFFAIRS
INCIDENT REPORT AND RECOMMENDATION

Officer(s) Involved: Paul Bowlen
Date of incident: January 14, 2014, approx. 10:45 a.m.

Description of incident and investigation: All witnesses, including the five bystanders interviewed and Officers Paul Bowlen and Lindsey Palmer, agree to the following facts: Officers Bowlen and Lindsey Palmer (who was filling in on a shift for Officer Bowlen's regular partner, Jennifer Mara) responded to a report of a disturbance on a train at the Ramona Street station of the Chinook County Light Rail. There, they discovered a man suffering from mental illness, who was ranting at random passers-by and brandishing a pocketknife. When Officer Bowlen called for him to stop and put down the knife, the suspect began walking quickly toward Officer Bowlen. Officer Bowlen again called for him to stop, and indicated that he would use his stun gun if the suspect failed to do so. The suspect did not stop, and Officer Bowlen discharged his stun gun. The suspect suffered no permanent injuries but was admitted to St. George's Hospital for psychiatric evaluation.

Disposition: Officer Bowlen's actions were justified. The suspect posed an imminent threat to Officer Bowlen, particularly given his possession of a knife. All witnesses generally agree on the relevant events. I recommend that the complaint be exonerated.

/s/Bill Meeuwsen
Bill Meeuwsen, CCTD IAD Director
Dated: January 28, 2014

Recommendation approved and adopted:
/s/Ed Green
Chief, CCTD Police Department
Dated: January 28, 2014

V. The Form and Substance of a Trial

A. The Elements of a Civil Case

In civil lawsuit, when a person allegedly commits a wrong against another (other than a breach of contract), it is called a tort. It is a civil wrong committed by one against another. The injured party, or plaintiff, may sue the wrongdoer, or defendant, in court for a remedy which is usually money damages. In this case the plaintiff alleges that a tort has been committed and is suing under federal statute 42 U.S.C. § 1983.

A "Section 1983" claim, as it is known, is a lawsuit brought in federal court when the plaintiff claims that his or her civil rights have been violated by the government. Specific to the facts of this case, the plaintiff has the burden of proving several elements. The essential elements include:

1. **State action**. There has to be a "state action;" that is, the defendant must be a government actor, typically an official or employee. This is in contrast to a private action where the alleged wrongdoer could be, for example, a store manager.
2. **Color of law**. The state actor must be operating "under color of law," which is somewhat analogous to operating within the *scope of employment*. A state corrections officer, for example, could be sued if he or she deliberately interfered with the treatment of a serious medical need of person in custody.
3. **Constitutional violation – 4th Amendment**. There must also be a violation of the U.S. Constitution, in this case, the 4th Amendment. The plaintiff in this case must prove that there has been an unlawful search or seizure as guaranteed under the 4th Amendment.
4. **Harm**. The plaintiff was harmed.
5. **Causation**. The defendant's action was a substantial factor in causing the plaintiff's harm.

A defendant can defend himself or herself by showing that plaintiff has failed to meet his or her burden of proof on one or more of the elements above.

B. Proof by a Preponderance of Evidence

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

C. Role Descriptions

1. Attorneys

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

The plaintiff's attorneys present the case for the plaintiff, Avery Leon. By questioning witnesses, they will try to convince the jury that the defendants, Lindsey Palmer and Chinook County Transportation District, are liable by a preponderance of the evidence.

The defense attorneys present the case for all two co-defendants, Lindsey Palmer and CCTD. They will offer their own witnesses to present their clients' version of the facts. They may undermine the plaintiff's case by showing that their witnesses cannot be depended upon, or that their testimony makes no sense, or is seriously inconsistent.

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

Attorneys on both sides will:

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

a. Opening Statement

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

One way to begin your statement could be as follows:

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

Proper phrasing in an opening statement includes:

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

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

b. Direct Examination

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

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

- make the witness seem believable;
- keep the witness from rambling.

Call for the witness with a formal request:

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

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

Proper phrasing of questions on direct examination include:

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

Conclude your direct examination with:

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

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

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

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

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

For closing, see explanation to *Rule 41*.

2. Witnesses

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

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

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

3. Court Clerk, Bailiff, Team Manager

It is recommended that you provide two separate team members for these roles. If you use only one,

then that person must be prepared to perform as clerk and bailiff in every trial. The court clerk and bailiff aid the judge during the trial. For the purpose of the competition, the duties described below are assigned to the roles of clerk and bailiff.

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

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

a. Duties of the Clerk – Provided by the Plaintiff

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

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

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

   Witness responds, "I do."

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

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

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

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

judge questions a witness or attorney.

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

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

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

c. Team Manager, Unofficial Timer – optional

Team Manager (optional)

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

Unofficial Timer (optional)

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

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

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

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

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

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

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

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

Time shall be stopped during the period timekeeping is questioned.

VI. RULES OF THE COMPETITION

A. Administration

Rule 1. Rules

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

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

Rule 2. The Problem

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

Rule 3. Witness Bound By Statements

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

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

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

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

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

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

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

Rule 4. Unfair Extrapolation

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

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

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

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

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

Rule 5. Gender of Witnesses

All witnesses are gender neutral. Personal pronouns in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender. Teams

are requested to indicate members' genders on the Team Roster for the benefit of judges and opposing counsel.

B. The Trial

Rule 6. Team Eligibility, Teams to State

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

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

All **regional** competitions are **Saturday, February 28.** Teams should be aware, however, that it is subject to change. The Regional Coordinator has discretion to slightly alter the date depending on scheduling requirements, availability of courtrooms, and needs of teams. If dates change, every effort will be made to notify all times in a timely manner.

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

All teams participating at the regional level must be prepared to compete at the state level should they finish among the top their region. Students on the team advancing to the state competition must be the same as those in the regional competition. Should a team be unable to compete in the state competition, CLASSROOM LAW PROJECT may designate an alternate team. The **state finals** are scheduled for **March 13-14**, in Portland.

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

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

Rule 7. Team Composition

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

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

A mock trial team is defined as an entity that includes attorneys and witnesses for both the plaintiff and defense (students may play a role on the plaintiff side as well as on the defense side if

necessary), clerk, and a bailiff. One possible team configuration could be:

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

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

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

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

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

Rule 8. Team Presentation

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

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

Rule 9. Emergencies

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

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

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

average number of ballots and points received by the winning teams in that round.

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

Rule 10. Team Duties

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

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

Rule 11. Swearing In the Witnesses

The following oath may be used before questioning begins:

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

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

Rule 12. Trial Sequence and Time Limits

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

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

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

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

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

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

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

Rule 13. Timekeeping

Time limits are mandatory and will be enforced. The official timekeeper is the **bailiff** and is provided by the **defense**. **Timekeepers shall not use a cell phone as a stopwatch**. (No electronic devices are permitted – Rule 40). An optional unofficial timer may also be provided by the plaintiff

according to the directions in Section V.E.3.c. Unofficial Timer.

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

Rule 14. Time Extensions and Scoring

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

Rule 15. Supplemental Material, Illustrative Aids, Costuming

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

Rule 16. Trial Communication

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

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

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

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

Rule 17. Viewing a Trial

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

Rule 18. Videotaping, Photography, Media

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

C. Judging and Team Advancement

Rule 19. Decisions

All decisions of the judging panel are FINAL.

Rule 20. Composition of Panel

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

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

Rule 21. Ballots

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

Rule 22. Team Advancement

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

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

Rule 23. Power Matching

A random method of selection will determine opponents in the first round. A power-match system

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

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

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

Rule 24. Merit Decisions

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

Rule 25. Effect of Bye, Default or Forfeiture

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

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

D. Dispute Settlement

Rule 26. Reporting Rules Violation – Inside the Bar

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

Rule 27. Dispute Resolution Procedure

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

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

Rule 28. Effect of Violation on Score

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

Rule 29. Reporting Rules Violation – Outside the Bar

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

VII. RULES OF PROCEDURE

A. Before the Trial

Rule 30. Team Roster

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

Rule 31. Stipulations

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

Rule 32. The Record

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

Rule 33. Courtroom Seating

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

B. Beginning the Trial

Rule 34. Jury Trial

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

Rule 35. Motions Prohibited

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

Rule 36. Standing During Trial

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

Rule 37. Objection During Opening Statement, Closing Argument

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

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

C. Presenting Evidence

Rule 38. Objections

1. **Argumentative Questions:** An attorney shall not ask argumentative questions.
   Example: during cross-examination of an expert witness the attorney asks, "you aren't as smart as you think you are, are you? "
2. **Lack of Proper Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.
3. **Assuming Facts Not In Evidence:** Attorneys may not ask a question that assumes unproven facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by the evidence (sometimes called a "hypothetical question").
4. **Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for specific answer.
   Example: "tell us what you know about the case."
5. **Non-Responsive Answer:** A witness' answer is objectionable if it fails to respond to the question asked.

Warning: this objection also applies to the witness who talks on and on unnecessarily in an apparent ploy to run out the clock at the expense of the other team.

6. **Repetition:** Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

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

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

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

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

D. Closing Arguments

Rule 42. Scope of Closing Arguments

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

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

A good closing should:

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

Proper phrasing includes:
"The evidence has clearly shown that ..."
"Based on this testimony, there is doubt that ..."
"The plaintiff has failed to prove by a preponderance of the evidence that ..."
"The defense would have you believe that ..."

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

E. Critique

Rule 43. The Critique

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

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 buy the prosecution in a homicide case to rebut evidence that the victim was the aggressor;

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

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

Rule 405. Methods of Proving Character

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

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

Rule 407. Subsequent Remedial Measures

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

Rule 408. Compromise and Offers to Compromise

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

Rule 409. Payment of Medical or Similar Expenses

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

Rule 411. Liability Insurance (civil case only)

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

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

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

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

Rule 607. Who May Impeach

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

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

In order to impeach the witness by comparing information in the affidavit to the witness' testimony, attorneys should use this procedure:
Step 1: Introduce the affidavit for identification (see Rule 38).
Step 2: Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit.

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

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

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

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

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

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

Rule 608. Evidence of Character and Conduct of Witness

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

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

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

Rule 609. Impeachment by Evidence of Conviction of Crime

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

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

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

Rule 610. Religious Beliefs or Opinions. Not applicable.

Rule 611. Mode and Order of Interrogation and Presentation

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

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

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

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

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

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

Cross examination should conclude with:
"Thank you Mr./s _____ (last name). That will be all, your Honor."

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

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

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

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

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

Explanation: 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 establishing the witness as an expert by asking about his or her background, the attorney then asks the judge to qualify the witness as an expert.
Note: In criminal cases, witnesses, including experts, cannot give opinions on the ultimate issue of the case, that is, whether the defendant was guilty. This is a matter for the judge or jury to decide.

Rule 703. Bases of Opinion Testimony by Experts

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

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

Rule 704. Opinion on Ultimate Issue

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

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

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

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

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

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

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

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

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

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

conspirator of a party during the course in furtherance of the conspiracy.

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

Rule 802. Hearsay Rule

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

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

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

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

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

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

(3) Then existing mental, emotional, or physical conditions -- A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory 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 both affidavits and the rules of competition. Mock trial rules sometimes differ with what happens in a court of law. Particular attention should be paid to the simplified rules of evidence. The students have worked hard for many months and are disappointed when judges are not familiar with the case materials.

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

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

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

B. Introductory Matters

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

1. Ask each side if it is ready for trial. Ask each side to provide each judge with a copy of its Team Roster. Ask each member of a team to rise and identify himself/herself by name and role, and their team by their assigned letter designation (not by school name).

2. If video or audio recorders are present, inquire of both teams whether they have approved the taping of the round.
3. Ask if there are people present in the courtroom who are connected with other schools in the competition (other than the schools competing in this courtroom). If so, they should be asked to leave. They may contact the sponsor's communication center to determine the location of the courtroom in which their school is performing.
4. Remind spectators of the importance of showing respect for the teams. **Silence electronic devices.** Judges may remove spectators who do not adhere to appropriate courtroom decorum.
5. Remind teams that witnesses are permitted to testify only to the information in the fact situation, their witness statements, and what can be reasonably inferred from the information.
6. Remind teams that they must complete their presentations within the specified time limits. The bailiff will signal you as the time for each segment of presentation runs out (3 and 1 minute warning and then 0 minute cards will be held up). At the end of each segment you will be stopped when your time has run out whether you are finished or not.
7. All witnesses must be called.
8. Only the following exhibits may be offered as evidence at the trial:
   11. Ramona Street C-Rail Station
   12. Rattlesnakes T-Shirt
   13. Stun Gun
   14. Cruze Deposition and Incident Report
   15. CCTD Police Department Handbook
   16. CCTD Training Records
   17. CCTD Police Department Discipline Statistics
   18. Cruze Irsay Incident Report
   19. Nguyen Incident Report
   20. Bowlen Incident Report

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

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

C. Evaluation Guidelines

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

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

Judges will be provided with individual ballots by the Competition Coordinator. Ballots shall be completed and given to the Clerk to deliver to the scoring room **immediately** following completion

of the round. Judges will **not** provide oral critique. Judges shall score and provide any comments on their ballot. Teams will be provided photocopies of judges' ballots after the competition, usually the following week. Scoring duties among the three judges shall be distributed as follows:

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

Judges should use the following evaluation guidelines when scoring.

EVALUATION GUIDELINES

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

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

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

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

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

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

D. Penalty Points

Points should be deducted if a team member:

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

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

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

The judges' decision is final.

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

APPENDICES

Notes:

Often Used Objections in Suggested Form

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

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

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

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

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

3. **Hearsay** (see Rules 801, 802, 803, 805)
   Objection: "Objection, Your Honor, this is hearsay."
   Response: "Your Honor, this is an exception/exclusion to the hearsay rule." (Explain applicable provisions.)

4. **Personal Knowledge** (see Rule 602)
   Objection: "Your Honor, the witness has no personal knowledge of Harry's condition that night."
   Response: "The witness is just generally describing her usual experience with Harry."

5. **Opinions** (see Rule 701)
   Objection: "Objection, Your Honor, the witness is giving an opinion."
   Response: "Your Honor, the witness may answer the question because ordinary persons can judge whether a car is speeding."

6. **Outside the Scope of Mock Trial Materials/Rules** (see Rule 4)
   Objection: "Objection, Your Honor. The witness is testifying to information not found in the mock trial materials."
   Response: "The witness is making a reasonable inference."

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

Time Sheet

_____ v. _____

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

Opening Statement: 5 minutes per side

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

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

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

Defense: **Cross/Re-cross—10 minutes total**

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

Defense: **Direct/Re-direct—20 minutes total**

Start		20 minutes	
D witness #1:	time used _____	less	___ minutes
			___ minutes unused
D witness #2:	time used _____	less	___ minutes
			___ minutes unused
D witness #3:	time used _____	less	___ minutes
			___ minutes unused

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

Start		10 minutes	
D witness #1	time used _____	less	___ minutes
			___ minutes unused
D witness #2	time used _____	less	___ minutes
			___ minutes unused
D witness #3	time used _____	less	___ minutes
			___ minutes unused

Closing Argument: **5 minutes per side**

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

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

Team Roster

~complete both sides~

Team Code _____

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

Plaintiff/Prosecution

Opening Statement _____
attorney - student's name

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

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

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

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

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

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

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

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

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

Closing Argument _____
attorney - student's name

Clerk _____
student's name

Team Roster, continued, Team Code _____

Defense

Opening Statement _____
attorney - student's name

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

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

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

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

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

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

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

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

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

Closing Argument _____
attorney - student's name

Bailiff _____
student's name

2014-15 HIGH SCHOOL
SAMPLE COMPLETED BALLOT
PRESIDING JUDGE

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

Round 1

P=Plaintiff/Prosecution AB *Team Code*

D=Defense CD *Team Code*

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

Not Effective	Fair	Good	Excellent	Outstanding
1	2	3	4	5

		P		D
Opening Statement		4		3
P Witness #1 Leon	Direct Examination	3	Cross-Examination	3
P Witness #2 Donatella	Direct Examination	3	Cross-Examination	3
P Witness #3 Gomez	Direct Examination	4	Cross-Examination	4
D Witness #1 Todd	Cross-Examination	3	Direct Examination	3
D Witness #2 Ensign	Cross-Examination	4	Direct Examination	3
D Witness #3 Palmer	Cross-Examination	3	Direct Examination	4
Closing Arguments & Rebuttal		3		3
Total of Above (NO ties in this category):		27		26
Penalty Deduction:		0		0
TOTAL POINTS (NO TIES!):		27		26

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

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

J. Smith
Judge's Name: please print

Please deliver ballot to clerk before adjourning!

2014-15 HIGH SCHOOL
SAMPLE COMPLETED BALLOT
ATTORNEY JUDGE

The Attorney Judge shall score the attorneys' performances.

Round I

P=Plaintiff/Prosecution AB *Team Code*

D=Defense CD *Team Code*

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

Not Effective	Fair	Good	Excellent	Outstanding
1	2	3	4	5

		P		D
Opening Statement		4		4
P Witness #1 Leon	Direct Examination	3	Cross-Examination	3
P Witness #2 Donatella	Direct Examination	3	Cross-Examination	3
P Witness #3 Gomez	Direct Examination	3	Cross-Examination	4
D Witness #1 Todd	Cross-Examination	3	Direct Examination	4
D Witness #2 Ensign	Cross-Examination	3	Direct Examination	3
D Witness #3 Palmer	Cross-Examination	3	Direct Examination	4
Closing Arguments & Rebuttal		3		4
Total of Above (NO ties in this category):		25		29
Penalty Deduction:		0		0
TOTAL POINTS (NO TIES!):		25		29

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

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

S. Brown
Judge's Name: please print

Please deliver ballot to clerk before adjourning!

2014-15 HIGH SCHOOL
SAMPLE COMPLETED BALLOT
EDUCATOR/COMMUNITY JUDGE

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

Round 1

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

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

Not Effective	Fair	Good	Excellent	Outstanding
1	2	3	4	5

						P		D
P Witness #1 Leon	Direct: 4	+	Cross: 3	=		7		
P Witness #2 Donatella	Direct: 4	+	Cross: 4	=		8		
P Witness #3 Gomez	Direct: 5	+	Cross: 4	=		9		
D Witness #1 Todd	Direct: 3	+	Cross: 3				=	6
D Witness #2 Ensign	Direct: 3	+	Cross: 3				=	6
D Witness #3 Palmer	Direct: 4	+	Cross: 4				=	8
Clerk						5		
Bailiff								4
Team Points (NO ties in this category:)						29		24
Penalty Deduction:						0		0
TOTAL POINTS:						29		24

BEST OVERALL PRESENTATION: Write *P or D*

P

OPTIONAL: *I favored this team because…*

Gomez: so believable, so strong
held firm on cross examination

A. Jackson

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

RULE 26 - REPORTING RULES VIOLATION FORM
FOR TEAM MEMBERS INSIDE THE BAR
(PERFORMING IN THIS ROUND)

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

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

Grounds for Dispute: _____

_____

_____

_____

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

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

Reason(s) for Denying Hearing: _____

_____

_____

_____

Initials of Opposing Team's Spokesperson: _____

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

_____

_____

_____

_____

Signature of Presiding Judge

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

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

Date: _____ **Time Submitted:** _____

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

Grounds for Dispute: _____

_____

_____

_____

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

Notes From Hearing: _____

_____

_____

_____

Decision/Action of Coordinator: _____

_____

_____

_____

_____ _____

Signature of Competition Coordinator Date /Time of Decision

Diagram of a Typical U.S. Courtroom