

CLASSROOM LAW PROJECT proudly presents the 34th annual statewide

2019 – 2020 Oregon High School Mock Trial Competition



State of Oregon, Prosecution v. Cy Miles, Defendant

A musician is ousted. A fan is dead. Who is to blame?

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Dear Students, Coaches, Parents, Judges, and Volunteers:

Welcome to the 34th annual mock trial competition!

We hope you'll find this case as fun as we do. It asks whether one musician's ouster from the band ultimately caused the death of a fan. The case was authored by a committee made up of expert lawyers and teachers experienced in high school mock trial.

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

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

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

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

Sincerely,

Erin L. Esparza
Executive Director

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

2019 – 2020 Oregon High School Mock Trial

State of Oregon v. Cy Miles

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CLASSROOM LAW PROJECT

2019 – 2020 OREGON HIGH SCHOOL MOCK TRIAL COMPETITION

I. Introduction

This packet contains the official materials student teams will need to prepare for the 34th 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 6th-7th, 2020**. The winning team from the state competition will represent Oregon at the **National High School Mock Trial Competition in Evansville, Indiana, May 6th-9th, 2020**.

The mock trial experience is designed to clarify the workings of our legal institutions. Students take on the roles of attorneys, witnesses, court clerks, and bailiffs. As they study a hypothetical case, consider legal principles and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, students learn about our judicial system and develop valuable life skills (public speaking, team building, strategizing and decision making to name a few) in the process. Since teams are unaware of which side of the case they will present until minutes before the competition begins, they must prepare for both the Prosecution and Defense. All teams will present each side at least once.

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

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

II. Program Objectives

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

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

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

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

III. Code of Ethical Conduct

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

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

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

Team members, coaches, parents and any other persons directly associated with the Mock Trial team's preparation are **not allowed to view other teams** in competition so long as they remain in the competition themselves. Except, the public is invited to attend the final round of the last two teams on **the last day of the state finals competition – approximately 2:00 p.m., March 7th, 2020, 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, Competition Coordinators, 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 the competition. Coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.

Charges of ethical violations involving persons other than the student team members must be made promptly to the Competition Coordinator who will ask the complaining party to complete a dispute form. The form will be taken to the competition's headquarters, where a ruling will be made. Violations occurring during a trial involving students competing in a round will be subject to the dispute process described in the Rules of the Competition.

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

IV. The Case

A. Case Summary

Marlo Hubbard and Cy Miles are professional musicians in Rowe, Oregon. In 2017, the two met at a musical festival at Buddie's Burgers and decided to form a band, *Destination Conflagration*. The two made an agreement to share rights to the songs they wrote and off they went!

Over the next year and a half the two enjoyed growing success. Cy wrote songs and Marlo managed the business aspects of the band. The music journalist, Jett Jones, covered the band extensively and helped to grow their fan base. In late 2018, they met a record label representative who suggested they add some "pizazz" to their show. Marlo was all for the added effects, but Cy was not.

Tension grew between the two after they added an electric keyboard to their act. The tension led to a falling out which resulted in Cy being ousted from the band just before a big show at the Digby Theater. Jett Jones covered the break up.

The night of the show at the Digby, Cy and Marlo saw one another during soundcheck. Their accounts differ as to what occurred when they spoke, but both agree that Cy left the theater after their encounter. During the show, Jett Jones spotted a Facebook post from a user called "Cynical Songwriter" which implied that something bad was going to happen during the *Destination Conflagration* show. Jett reposted the post and warned people inside the Digby to get out. Concertgoers started to see the post and head for the exits. As they started to leave, a loud bang came from the area of the stage, causing a panic in the crowd.

People tried to exit the theater through both exits and found that the side exit would not open. The resulting crush of people resulted in injuries and one death. The fan who was killed was named Janet Jopson. Cy Miles has been accused of tampering with the door and the band's pyrotechnics, causing the explosion and the resulting stampede. The Prosecution alleges that Cy's actions resulted in the death of Janet Jopson. Cy has been indicted for manslaughter in the first degree and disorderly conduct in the second degree.

B. Witness List

Prosecution Witnesses:

- 1) Marlo Hubbard
- 2) Jett Jones
- 3) Frankie Zapata

Defense Witnesses

- 1) Cy Miles
- 2) Stevie Raven
- 3) Ari Frankel

C. List of Exhibits

Exhibit 1: Agreement Between Cy Miles and Marlo Hubbard

Exhibit 2: Digby Theater Floorplan

Exhibit 3: Social Media Post

Exhibit 4: Report from ForensicMagician

Exhibit 5: Facebook Subscriber Information

D. Indictment, Stipulations, Jury Instructions

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

STATE OF OREGON,

Plaintiff,

vs.

CY MILES,

Defendant.

No. 19CR05398

INDICTMENT

Secret

The above-named defendant is accused by the Grand Jury of Chinook County by this indictment of the crimes of

Count 1: MANSLAUGHTER IN THE FIRST DEGREE (FSG= 10; A Felony; ORS 163.118)

Count 2: DISORDERLY CONDUCT IN THE SECOND DEGREE (B Misdemeanor; ORS 166.025)

committed as follows:

COUNT 1

The defendant, on or about October 26, 2019, in Chinook County, Oregon, did unlawfully and recklessly, under circumstances manifesting extreme indifference to the value of human life, cause the death of another human being.

COUNT 2

The defendant, on or about October 26, 2019, in Chinook County, Oregon, did unlawfully and with the intent to cause public inconvenience, annoyance or alarm, initiate or circulate a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency.

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

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

Dated: November 20, 2019

Witnesses subpoenaed, examined and appeared in person unless otherwise indicated before the Grand Jury for the State of Oregon:

Marlo Hubbard
Jett Jones
Frankie Zapata

A TRUE BILL
s/Dave Bowdie
Foreperson of the Grand Jury

WAYMORE JENNER, District Attorney
s/Nona Simon
Nona Simon
Deputy District Attorney
Oregon State Bar #029384

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

STATE OF OREGON,

Plaintiff,

vs.

CY MILES,

Defendant.

No. 19CR05398

STIPULATIONS

The parties stipulate and agree to the following facts:

1. The “Cynical Songwriter” Facebook account was created on October 26, 2019 at 4:27 p.m. from the IP address 172.16.254.1, which, on that date and time, was assigned to the Digby Theater.
2. The manner in which the Chinook County Sheriff’s Office seized the defendant’s cell phone on the evening of October 26, 2019 at the Digby Theater was lawful. The manner in which it later searched and analyzed the phone also was lawful. All defenses and objections to the Sheriff’s Office’s seizure, search, and analysis of the phone, whether arising under the Fourth Amendment to the United States Constitution, Article I, Section 1, Clause 9 of the Oregon Constitution, or otherwise, have been waived.
3. The Rowe Fire Code provides that (i) buildings with a maximum occupancy of 301-500 people are required to have at least 2 exits, and (ii) all commercial buildings must display signage indicating the building’s maximum occupancy.
4. Janet Jopson died solely as a result of the stampede that took place at the Digby Theater on October 26, 2019.
5. All defenses and objections based on the First Amendment to the United States Constitution or Article I, Section 1, Clause 8 of the Oregon Constitution have been waived.
6. Each witness has waived and agreed not to assert his or her right against self-incrimination, whether arising under the Fifth Amendment to the United States Constitution, Article I, Section 1, Clause 12 of the Oregon Constitution, or otherwise.

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

STATE OF OREGON,

Plaintiff,

vs.

CY MILES,

Defendant.

No. 19CR05398

FINAL JURY INSTRUCTIONS

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

EVALUATING WITNESS TESTIMONY

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

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

INFERENCES

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

INNOCENCE OF DEFENDANT—PROOF BEYOND A REASONABLE DOUBT

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

VERDICT—FELONY CASE

When you return to the jury room, select one of your members to act as presiding juror. The presiding juror has no greater voting weight but is to preside over your deliberations and be the spokesperson for the jury. You should then deliberate and find your verdict. If it becomes necessary during your deliberations to communicate with me, do so in writing. I will consult with the parties before responding. Your verdict must be supported by a vote of at least 10 to 2.¹ Remember that you are not to tell anyone, including me, how the jury stands numerically until you

¹ Oregon is presently the only state in the United States that permits criminal convictions based on non-unanimous jury verdicts. Currently, however, the United States Supreme Court is considering (in a case named *Ramos v. Louisiana*) whether the Sixth and Fourteenth Amendments together require that criminal convictions in state court be supported by unanimous jury verdicts. For more information on that case, see <https://www.scotusblog.com/case-files/cases/ramos-v-louisiana/>.

have reached a lawful verdict or have been discharged. When you have arrived at a verdict, the presiding juror will sign the appropriate verdict form. After you have reached your verdict, signal the bailiff. The court will receive your verdict.

DIRECT OR CIRCUMSTANTIAL EVIDENCE

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

WITNESS FALSE IN PART

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

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

INTENTIONALLY AND WITH INTENT

A person acts “intentionally” or “with intent” when that person acts with a conscious objective to cause a particular result or engage in particular conduct.

RECKLESSLY

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

MANSLAUGHTER IN THE FIRST DEGREE

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

DISORDERLY CONDUCT IN THE SECOND DEGREE

Oregon law provides that a person commits the crime of disorderly conduct in the second degree if the person, with the intent to cause public inconvenience, annoyance, or alarm, initiates or circulates a report, knowing it to be false, concerning and alleged or impending fire, explosion, crime, catastrophe, or other emergency.

EXPERT OPINION EVIDENCE

An expert witness is a person with special skills or education in a particular field. Even though expert witnesses may testify about their opinions, you are not required to accept those opinions. To determine the value, if any,

you will give to an expert's opinion, you should consider such things as the expert's qualifications, the expert's opportunity and ability to form the opinion, the expert's believability, and how the expert reached the opinion or conclusion.

PROSECUTION WITNESS STATEMENTS

AFFIDAVIT OF MARLO HUBBARD

1
2
3 What’s up, stranger! I’m Marlo Hubbard, and I’m 37 years young. You might not know my name
4 yet, but trust me, you’ll know it soon: I’m the lead vocalist and lead guitarist for Destination Conflagration,
5 a revolutionary rock-n-roll band based right here in Rowe, Oregon. We’ve got one of the most innovative
6 sounds you’ll hear anywhere. It’s hard to explain but think of us as a combination of Chuck Berry, Joni
7 Mitchell, Otis Redding, and Led Zeppelin. Make sense? No? Well, you’ll just have to come to one of our
8 shows and see for yourself!

9 I’ve been obsessed with music for pretty much as long as I can remember. My parents are old-
10 school country fanatics, so I grew up listening to folks like Hank Williams, Loretta Lynn, and Willie
11 Nelson croon about hard times and heartbreaks. Pretty soon, though, I started going through other musical
12 phases that, put together, made me into the artist I am today. In high school, I was all about punk rock; in
13 college, hip-hop; after that, I even went through a brief period in which I learned as much as I could about
14 classical music. (I gave it up when I found that I couldn’t manage to listen to Chopin’s nocturnes without
15 falling asleep.)

16 I graduated from Portland State University in 2005 with a degree in economics and immediately
17 set about forming a band. Turns out the music industry is a tough one! My first project—an electro-folk
18 outfit called Peter Piper and the Pop Rocks—looked promising at first but disbanded when Peter, our
19 cowbellist, up and moved to New York City. After that, I spent a few years gigging solo. It was fun, but
20 it sure was hard to pay the bills without a record contract. I never want to go back to the life of a starving
21 artist, that’s for sure.

22 Fortunately, in the summer of 2017, I met Cy Miles, and everything seemed to click. We were
23 scheduled one afternoon to play back-to-back solo acoustic sets at Buddie’s Burgers, a fantastic little
24 burger joint here in Rowe. The owner, Buddie Gartowski, was calling every musician in Rowe with a
25 request to perform at what he was calling “BuddieFest.” I knew it wouldn’t exactly be Austin City
26 Limits—Buddie was “paying” each artist with a complimentary burger—but, especially back then, I
27 couldn’t refuse a chance at easy publicity. I swallowed my pride, swore to myself that it’d be the last time
28 I play for free, and told Buddie I’d be there.

29 In retrospect, I’m glad I did. I went on first, played a pretty low-voltage set (some Baez, some
30 Dylan, that sort of thing), and then headed offstage to muted applause. I decided to stick around for a few
31 minutes to watch the next set, and that’s when I first saw Cy. As a musician, Cy was like nobody I’d ever
32 seen before. Cy began with four or five phenomenal original songs, and then, to close out Cy’s set, Cy

1 played the single best version of Johnny Cash’s “Ring of Fire” I’ve ever heard—like, maybe better than
2 the Man in Black himself. I was blown away.

3 I walked right up to Cy as Cy was exiting the stage, and, well, the rest was history. We decided
4 over burgers at a picnic table in Buddie’s backyard that we would start a band, something that kept true
5 to our mutual roots in folk music but that also came with a little extra panache. Cy, we agreed, would play
6 lead guitar and take primary responsibility for writing and singing our songs. I’d play rhythm guitar and
7 serve as our band manager. It’d be my responsibility to book our gigs, manage our equipment, distribute
8 everybody’s pay, that sort of thing. Having been in this business a while, I also knew that I needed to do
9 one more thing: I made Cy sign an agreement, which we wrote out on a Buddie’s napkin and which is
10 shown accurately in Exhibit 1. The agreement made clear that we’d have equal legal rights in all of the
11 songs we wrote, and that either of us would be free to perform the songs individually or as a group. “Sure,
12 whatever, we can share the songs,” Cy muttered after I wrote out the agreement and showed it to Cy. I
13 think Cy signed the agreement without reading it, but I figured that was Cy’s problem, not mine. “No
14 gimmicks,” Cy told me as we were wrapping up. “I never want to become one of those artists who hides
15 behind synthesizers and special effects.” I said that was fine.

16 After that, all that was left was to come up with a name. Having seen Cy’s rendition of Ring of
17 Fire, one phrase came immediately to mind: Destination Conflagration. I mean, I’m definitely no
18 wordsmith, but I thought it was the perfect combination of concepts: “destination” invoked the open road,
19 and “conflagration” invoked the fiery intensity with which I had just seen Cy play. Plus, it rhymes!

20 We then found a bassist and a drummer, and things took off pretty quickly. For our first few
21 months, we gigged regularly at Buddie’s. Eventually, I managed to get us an “in” at a slightly bigger venue
22 called the Coho Club over in Rowe’s über-trendy Topaz neighborhood. Over the next year or so, we honed
23 our songs and live performances. Eventually, toward the end of the summer of 2018, we were regularly
24 playing to standing-room-only crowds.

25 Unfortunately, though, things were getting a bit complicated between Cy and me by that time. Our
26 stripped-down sound had worked really well at Buddie’s, but the crowd at the Coho Club had, let’s say,
27 higher expectations. After a few sparsely-attended shows there, I realized that we needed to up our game,
28 so I made an executive decision to add an electric keyboard player to our ensemble. We just needed a
29 bigger, lush sound, you know? Everybody seemed to really like it—everybody but Cy, that is. When Cy
30 first saw the keyboard player setting up on stage at the Coho, Cy grumbled, “What’s next, fireworks? This
31 is ridiculous.” I didn’t think much of it at the time, because Cy typically overreacts to just about everything
32 that doesn’t go exactly Cy’s way.

1 A few months after that, in October 2019, Sturgeon Sampson (who, obviously, is one of the biggest
2 names in music right now) was scheduled to play a show at Rowe’s historic Digby Theater. I’ve been
3 there more times than I can count, and, according to Cy, Cy has as well. The Digby is an amazing venue;
4 it was built all the way back in 1922, at the height of the big band era, and the interior décor really takes
5 you back to that age. Unfortunately, some of the design aspects also remind you that the place was built
6 before the advent of modern building codes. For one thing, the theater itself is on the second floor of the
7 building. For another, the theater has all of two entrances, one at the back of the room and another toward
8 the front of the room on stage left, which they added fairly recently. (Exhibit 2 accurately depicts the
9 layout of the theater, though it’s not necessarily to scale.) To get in and out of the theater, you’ve got to
10 go through one of those entrances and up or down a narrow flight of stairs. As far as I’m concerned, that
11 amounts to a huge safety hazard. I mentioned that to Cy one time when we were walking out of a show
12 there, and Cy agreed. “Yeah,” Cy said, “if there were ever an earthquake or a fire or something, it’d be a
13 total disaster. People might get hurt.”

14 Anyway, a few days before Sturgeon’s concert, I got a call that totally changed Destination
15 Conflagration’s trajectory. It turned out that Sturgeon’s opening act—the singer Beyond-Kay Coles—had
16 been nominated for a Grammy and bowed out in order to rehearse for her live performance at the awards
17 show. Sturgeon needed a replacement, and, somehow, he had landed on us. I was beside myself! This was
18 our chance to prove ourselves to the world, and I wasn’t going to let anybody or anything get in the way.

19 That night, we played a condensed version of our regular set to raucous applause. A few minutes
20 after we left the stage, somebody named Jessica Gallagher found Cy and me and asked to talk to us after
21 the show. Once Sturgeon finished up, we headed back into the artists’ lounge and found her. She told us
22 that she was an associate record producer at Fourth Person Records—one of the biggest indie record
23 companies on the West Coast—and wanted to bring her boss to see us and consider whether to sign us.
24 She said she’d be able to get us back on stage at the Digby in a week or two. She had one request, though:
25 “Your songwriting is amazing,” she told us, “but your sound needs a little more pizazz. Let’s get some
26 lights, some pyrotechnics, and a few more digital effects for the next show. Don’t worry, I can arrange
27 everything!”

28 It took me a moment to pick my jaw up from the floor, but when I did, I said, “You got it! I’ve
29 been saying we need more pizazz in our sound for months, anyway. You good with this, Cy?” I looked
30 over at Cy, though, and saw a stone-cold expression on Cy’s face. “My songs don’t need any more
31 ‘pizazz,’ Ms. Gallagher,” Cy muttered angrily, “because they’re perfect the way they’re written.” There
32 was an awkward moment of silence, and then I piped up: “Well, uh, a few effects won’t do any harm,

1 right? Anyway, Cy, remember the contract we signed?” Ms. Gallagher and I exchanged phone numbers,
2 and I told her to send me the details.

3 Once Ms. Gallagher left, Cy and I went at it. (We were still in the artists’ lounge at that point, and
4 we were by ourselves.) Cy wasn’t having any of Ms. Gallagher. “Look,” Cy said through what were almost
5 tears, “I won’t do this. I won’t degrade my songs with a bunch of fireworks and funny lights.” I then
6 reminded Cy about our contract. “I had hoped it wouldn’t come to this,” I said, “but this contract entitles
7 me to play these songs with or without you.” Cy’s face went bright red, and Cy began stammering.
8 “That’s... but... you said... you said we’d each have rights in the songs!” “That’s right,” I said, “and I’m
9 exercising my right to perform them.” Cy stormed off. “Contract or not,” Cy yelled as Cy was walking
10 out the door, “I am *not* going to let you make a mockery of lyrics that I poured my heart and soul into!”

11 I called Ms. Gallagher the next day to let her know that Cy had left the band and that I would be
12 the one singing the songs. She sounded relieved, actually, and said it was fine. More importantly, she also
13 let me know that she had gotten Destination Conflagration a slot at the Digby on October 26, 2019 for the
14 “Can You Dig It?” concert, a charity show that attracts huge names. We were slated to play in between
15 the Septemberists (an indie band) and FAME MON-E (a professional basketball player with a side gig as
16 a rapper). I couldn’t believe it!

17 When the night finally came, I was expecting it to be one of my best nights ever—but it ended up
18 being one of my worst. I was so nervous before going on that I basically just camped out in the artists’
19 lounge for the entire day, but, of course, I had to pop out onto the stage for a soundcheck that afternoon,
20 about two hours before the show started. As I entered the theater, I saw someone walking hurriedly off
21 the stage. When the person got down to the floor and turned around, I recognized the face: it was Cy. I
22 knew I needed to focus on the show, so I put Cy out of my mind, but, at one point during the soundcheck,
23 I saw Cy lingering around the door to the side of the stage. It looked like Cy was fiddling around with
24 something in Cy’s pockets, but, since I was busy with the soundcheck, I couldn’t be sure. I kept on ignoring
25 Cy and focusing on the show.

26 I wish I had said something, because if I had, maybe all of this never would have happened. A few
27 minutes into our set, I noticed that a bunch of people in the crowd were starting to push frantically toward
28 the rear exit. It looked like many of them were looking at their phones. A bunch of other people looked
29 like they were trying to get out of the side door, but it looked like it was locked. Next thing I knew, I heard
30 a huge *bang* from behind me. I felt a wave of heat and was showered in sparks, smoke, and some sort of
31 burning material that seemed like construction paper. I thought a bomb had gone off, and, in that moment,
32 I thought for sure I was going to die. We were at about the point in our second song when Ms. Gallagher

1 had told me the pyrotechnics would come on, but, according to her, it was supposed to be just some light
2 smoke and a few sparkler-like effects emanating from around the drum kit.

3 It took me a moment to realize that I hadn't been blown to smithereens, but when I composed
4 myself, what I saw was almost worse. The crowd seemed to think a bomb had gone off, and they were
5 stampeding for the exits. Not everybody seemed to realize that the side door was locked, and people were
6 pushing and shoving each other on the way to the back door. It was chaos! I threw down my guitar and
7 retreated back into the artists' lounge as fast as I could. I learned later that Janet Jopson—one of our
8 biggest fans—was actually killed in the stampede. It was the most awful thing I possibly could have
9 imagined. She was just 27! Janet was one of the first people ever to take an interest in Destination
10 Conflagration. She followed us really closely after that and came to pretty much every single one of our
11 shows.

12 When I found out what really happened, I couldn't believe it. I knew that Cy had a bit of an
13 attitude—most great artists do—but I never believed that Cy would be capable of doing something as
14 horrible as this. If I had known about Cy's prior conviction for arson, I never would have been in a band
15 with Cy. I just hope that Cy finally gets what's coming to Cy, both for Janet's sake and for the sake of
16 Destination Conflagration's future. Obviously, we didn't get a record contract as a result of the show that
17 night. Ms. Gallagher told me that her boss told her that, given what happened, we were "too uncertain a
18 prospect." But, if Cy ends up going to jail, maybe the folks over at Fourth Person Records will see that
19 this was truly a fluke and that with Cy out of the picture, we're a safe bet to become superstars. Otherwise,
20 I guess I'm going to have to start a whole new band and write whole new songs.

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

25 *s/Marlo Hubbard*

26 Marlo Hubbard

27 Dated: October 31, 2019

28
29 Subscribed and sworn before me on October 31, 2019.

30 *s/Roberta Bost*

31 Roberta Bost

32

AFFIDAVIT OF JETT JONES

1
2
3
4 Hi there, folks! Jett Jones, here. I'm 48 years old, and I'm a music journalist with *Rock & Rowe*
5 *Today*, Rowe's preeminent music magazine. I've been a music superfan for as long as I can remember,
6 although I've never been very good at writing or playing music myself. When I was a kid, I tried just
7 about every instrument out there—violin, piano, guitar, even the triangle—but my only talent seemed to
8 be in somehow making each of them sound like a cat getting a shave in a mud-puddle. (Trust me, I grew
9 up with cats, and that ain't a good sound.)

10 Still, my complete and utter lack of musical talent notwithstanding, I've always loved going to live
11 shows. And, more importantly, when I got to college, I realized that I also love reading and writing about
12 music, musicians, and the music industry in general. When I arrived at the University of Oregon as a
13 freshman, I had plans to be a business major, but I took a couple of creative writing classes on a whim and
14 realized immediately that storytelling was my true calling. After that, I changed my major and never
15 looked back. Well, actually, that's not quite true: I thought briefly during my junior year about changing
16 my major again from creative writing to journalism. After a few journalism classes, though, I dropped that
17 idea. Journalism is about facts, whereas creative writing is about fiction. And fiction, I found, is often way
18 more interesting than real life.

19 Anyway, *Rock & Rowe Today* hired me right out of college as a staff writer, and in my early years
20 there, I found that I really didn't need to do much "creative" writing at all. In light of the personal and
21 professional turmoil they tended to carry with them, the artists I was covering gave me plenty of fodder
22 for my articles. I mean, have you seen *Ray*, *Walk the Line*, or *Amy*? They're all true stories! In fact, I've
23 been dreaming for years about writing a screenplay of my own. It'd be a biopic, of course, about a talented
24 but troubled musician. The challenge, though, has been in finding the right subject. Nowadays it's getting
25 harder and harder to find a band or an artist whose story is dramatic enough for a truly juicy article, let
26 alone the big screen. Gone are the days of the Rolling Stones and the Hell's Angels at Altamont; now,
27 every band has a manager, a public relations person, and about a dozen or so other goons whose job is to
28 keep the artists "in line." If you ask me, it's all getting so boring!

29 Or, at least, things *were* getting boring until Destination Conflagration entered Rowe's music
30 scene. I first encountered them at the Coho Club a few years ago, and they were a breath of fresh air, both
31 musically and as potential subjects for a story. At the time, Marlo Hubbard and Cy Miles were the core of
32 the band, and they complemented each other perfectly. Marlo is a loud, flashy, larger-than-life, in-your-
33 face kind of bandleader. Marlo isn't always perfectly honest with the crowds, but I think that's part of
34 why people seem to like Marlo's performances. One time, for example, Marlo told a crowd at the Coho

1 that Marlo had an “original” song to play, and then launched into a not-so-subtly plagiarized solo version
2 of Fleetwood Mac’s “Landslide.” I’ve seen Marlo do stuff like that several times. Nobody ever really
3 seems to mind, though, and to be honest, the performances, plagiarized though they are, are usually really
4 fun to watch. Cy, on the other hand, is a quiet, brooding, perpetually tormented musical genius. Even
5 though Cy doesn’t have the same energy that Marlo has on stage, Cy makes Cy’s presence felt musically;
6 Cy’s guitar work is just as inspired as Cy’s songwriting.

7 Cy also has always been willing to talk to me for my stories. The second or third time I saw
8 Destination Conflagration play, I approached Cy after the show and asked if Cy would be willing to be
9 interviewed for my first full-length article about the band. Cy agreed, and it was really helpful. In that first
10 article, I ended up writing that Cy had graduated from the Julliard School in New York—I didn’t know
11 that for a fact, but given Cy’s amazing playing, I figured Cy had to have some sort of professional musical
12 background—and I think that annoyed Cy a bit. The morning after the article went live, I woke up to a
13 Facebook friend request from Cy, which I accepted. A few minutes later, Cy sent me a private message
14 about the article: “I didn’t go to Julliard! I’m flattered, but I’d really like the article to be accurate.” I
15 apologized and issued a correction.

16 Thankfully, my little embellishment didn’t seem to affect our friendship much. Cy and I kept in
17 touch as Destination Conflagration became more and more popular, and I think it really helped both of us.
18 Cy gave me plenty to write about, and in return, I gave Cy and the band as much free publicity as I could.
19 During that time, Cy and I communicated primarily via Facebook, both in private messages and on each
20 other’s public “walls.” A couple of times each month, Cy would write a public post on Cy’s wall and “tag”
21 me in it. That would give me the option to republish Cy’s post on my own wall, which I always did.
22 Oftentimes, I wouldn’t even bother to read Cy’s posts before republishing them; I’d just hit the “repost”
23 button reflexively as soon as I saw it. I figured I was doing Cy a huge favor because, then as now, my
24 Facebook page had a little over seven thousand followers (most of whom were Rowe residents), so each
25 repost was basically giving Cy a digital megaphone. Also, I know Cy was seeing my reposts because Cy
26 would always “like” each one within a minute or two after it appeared on my wall.

27 Like everybody else who was following Destination Conflagration, I started to sense some tension
28 between Marlo and Cy toward the end of 2018. The source of the tension was obvious: the band had added
29 an electric keyboard player around that time, and Cy was just not having it. At their shows, whenever it
30 was time for a keyboard solo, Cy would roll Cy’s eyes and stick out Cy’s tongue. After one of those shows,
31 I caught Cy coming offstage and asked about the keyboard. “It’s temporary,” Cy said sharply. Like any
32 good journalist, I asked a follow-up question: “Do you think your songs sound better without it?” Cy
33 seemed to snap at that. “You’d better believe they do,” replied Cy, who at that point was almost yelling.

1 “These songs are all I’ve got, and I’m going to do whatever it takes to protect them.” Cy then stormed off.
2 Normally, I would’ve immediately published that sort of comment in a story, but since I hadn’t established
3 that Cy was on-record and because I knew it’d make Cy look really bad, I decided to bury it. Marlo and
4 Cy were headed for an interpersonal blow-up anyway, I figured, so I was sure I’d have something else to
5 write about soon enough.

6 Was I ever right! In mid-October 2019, I heard that Destination Conflagration would be opening
7 for Sturgeon Sampson at the historic Digby Theater in old-town Rowe. This might be their big break, I
8 thought, so I knew I had to be there. The show was great, and, as usual, Cy was rolling Cy’s eyes each
9 time the electric keyboard player soloed. After the show, though, I saw Cy and Marlo walking toward the
10 artists’ lounge with a woman who looked a lot to me like a record producer. I followed my hunch and
11 camped out by the door. After a few minutes, the record producer left the room, and Marlo and Cy were,
12 I assumed, in there alone. A few seconds later, I heard Marlo and Cy shouting at each other, but I couldn’t
13 make out what they were saying. After a minute or two of shouting, Cy flung open the door. “The contract
14 is irrelevant,” Cy shouted back at Marlo and said something like, “I am *not* going to let you destroy the
15 songs that I poured my heart into!” I tried to get a comment from Cy, but Cy ignored me and stormed
16 away.

17 The next day, I learned that Destination Conflagration had been slotted to play at the “Can You
18 Dig It?” concert at the Digby on October 26, 2019. I knew it was the work of that record producer, but I
19 was still trying to get the scoop. Normally, I would’ve just talked to Cy, but Cy had gone completely silent
20 and was refusing to return any of my Facebook messages. That was really unusual—normally, we’d check
21 in at least once a week—so I knew something was up. I decided that I’d figure out what was going on by
22 sneaking into Destination Conflagration’s soundcheck before the show and trying to corner either Marlo
23 or Cy for a quick interview.

24 Unfortunately, my plan didn’t work. I managed to sneak into the theater about two hours before
25 the show, but Marlo was nowhere to be found. When I arrived, though, I saw Cy holding what looked like
26 a small wrench and fumbling with a black box on the stage by the drum kit, which I knew from my
27 experience in the music business was a pyrotechnic effect. As soon as I approached Cy, Cy seemed
28 surprised and began hurrying away. “Sorry, gotta go,” muttered Cy, “but check your messages and make
29 sure you don’t miss tonight’s show.” I stood there, dumbfounded and frustrated, as Cy yelled one more
30 thing back at me: “And go out the front door when you leave, that other door’s locked.” I didn’t think
31 anything of it at the time and decided to wait for the show itself.

32 Right when Destination Conflagration was about to hit the stage, I was jockeying for a better
33 position in the crowd when I felt my phone buzz in my pocket. I pulled it out and saw a notification from

1 Facebook. When I opened Facebook, I saw that an account called “Cynical Songwriter” had tagged me in
2 a post, in which I was shocked to see what looked to me like a threat to burn down the theater. Right away,
3 I knew two things: I had to warn everybody in the theater of the threat, and I had a potentially explosive
4 scoop on my hands. I reposted the post to my own page with a warning to concertgoers. An image of the
5 repost is shown in Exhibit 3. I then started making my way toward the closest door—the theater’s side
6 door—so I could alert the authorities. When I got there, I found (just like Cy had said) that the door was
7 locked, so I headed instead toward the main door at the rear of the theater.

8 I’ll never forget what happened next. A few seconds after I left the side door, I noticed a group of
9 concertgoers looking nervously at their phones and shouting to each other over the music. As I got closer
10 to them, I could hear what they were saying: “Someone’s going to burn down the theater!” Next thing I
11 knew, I heard a huge *bang* and flash of fire and light from the stage, and then, well... it was chaos. The
12 music stopped, and I saw Marlo rushing offstage. It was at that point that I realized Cy wasn’t up there
13 with the band, which was really odd. About half of the concertgoers seemed like they were headed for the
14 side door, and the other half were headed for the rear door. Everybody was basically on top of each other,
15 and I saw at least a half-dozen people fall down amid the stampede. I’m just lucky I got out of the theater
16 without getting hurt. I remember talking to a police officer named Frankie Zapata while I was outside, but
17 I was so amped up from what had just happened that I don’t really remember what we talked about.

18 I just can’t believe that “Cynical Songwriter” was Cy, but I suppose in retrospect it makes a lot of
19 sense. Cy had been acting really strangely in the week or so leading up to the concert, and I heard afterward
20 from a colleague at *Rock & Rowe* that Marlo had basically kicked Cy out of the band. Still, there might
21 be a silver lining: the more I think about it, the more I’m liking the idea of a screenplay about Cy’s meteoric
22 musical rise and crushing, premature fall. Everybody loves a crime story, right? Who knows—maybe it’ll
23 win me an Academy Award!

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

28 s/Jett Jones

29 Jett Jones

30 Dated: October 31, 2019

31 Subscribed and sworn before me on October 31, 2019.

32 s/Roberta Bost

33 Roberta Bost

AFFIDAVIT OF FRANKIE ZAPATA

1
2
3 My name is Frankie Zapata. I'm currently a deputy with the Chinook County Sheriff's Office,
4 where I work as a forensic analyst for digital devices. I graduated from Western Oregon University in
5 1999 with a degree in Criminal Justice. Right after school, I signed up with the Sheriff's Office, where I
6 worked until 2010. I then joined the U.S. Drug Enforcement Agency (the "DEA," for short) as a Task
7 Force Officer. It was during my time with the DEA that I developed expertise in analyzing cell phones
8 and other types of electronic devices that might contain evidence of criminal wrongdoing. I attended about
9 a dozen DEA-organized trainings on how such devices operate and how to extract evidence from them,
10 including a 10-day course on digital evidence acquisition at the FLETC (which is short for the "Federal
11 Law Enforcement Training Center") in Glynco, Georgia. In 2016, I decided to return to the Chinook
12 County Sherriff's office, and since then, I've analyzed and testified about data that I extracted from cell
13 phones and other similar electronic devices in hundreds of criminal cases. Oftentimes, that type of
14 evidence can be critical in determining the outcome of a prosecution. Criminals use their phones for just
15 about everything, and the cell phone and app companies collect all kinds of information from their users.
16 Believe me, they know a lot more than just who you're calling; based on the data you provide when using
17 your phone, they often can know what room in the house you're in, who your friends are, and maybe even
18 what you're thinking about having for breakfast.

19 That said, the way the police handle cell phones has changed a lot over the last few years. It used
20 to be that you could just grab a phone out of someone's hands during an arrest and start browsing through
21 it. Back in 2014, though, the Supreme Court decided that cops need to get a warrant before doing that. If
22 you ask me, it wasn't a great decision. I mean, I get the general privacy concern, but do you really want
23 criminals getting away scot-free because they're able to delete cell phone data before the police have time
24 to get a warrant? I certainly don't. So, up until a few years ago, whenever I was involved in an arrest, I
25 would grab the suspect's phone if I thought there was a good reason to do so.

26 Sure enough, that eventually got me in trouble. Toward the end of 2017, I was riding along with
27 my colleague Quincy Harrison during a traffic stop. Quincy ran the driver's information and discovered
28 that he had a warrant out for his arrest. I had a hunch that the driver was up to something pretty bad, so,
29 while Quincy was processing his license, I grabbed his phone, began scrolling through his texts, and found
30 a series of messages proving that he was selling drugs to kids. Even though I knew that wasn't technically
31 "lawful," I thought I had done the right thing—but a judge ended up suppressing that evidence because of
32 the manner in which I had seized the phone, and the guy walked. After that, the Sheriff's Office told me I
33 wasn't allowed to assist our detectives and beat cops in the field, which I used to do pretty frequently.

1 Now, they just hand me phones to analyze when they've already gotten authorization for a search. That
2 makes it easier, I guess, but I sure do miss the action I'd see out on the streets of Rowe.

3 Fortunately, however, this case got me back into the mix again. On the evening of October 26,
4 2019, basically every law enforcement officer in Chinook County got a call to report to the Digby Theater,
5 where, according to dispatch, some sort of major accident had occurred during a concert. What I saw on
6 the scene was horrible. People were scared and crying, and paramedics were doing what they could for a
7 couple of injured concertgoers. Right as I arrived, I also saw paramedics rushing a gravely injured fan out
8 of the theater. I later learned from my colleagues in the Sheriff's Office that her name was Janet Jopson,
9 that she had been trampled during a stampede in the theater, and that she had died in the hospital shortly
10 after I saw her. I still get a little emotional thinking about it. I decided right then and there that I would
11 find out who committed this crime and bring that person to justice as swiftly as I could.

12 My sergeant asked me to help interview the concertgoers outside the theater, and I was happy to
13 oblige. I first interviewed Jett Jones, a music journalist with the *Rock & Rowe* magazine who was present
14 at the scene and had attended the concert. Jett seemed agitated, but not fearful or worried in any way. Jett
15 started stammering about how there had been a bomb threat made during the concert, and that it was what
16 had caused the stampede. While I was talking to Jett, Jett kept looking down at Jett's phone. I asked Jett
17 why Jett was spending so much time looking at the phone, and Jett told me it was important to see how
18 many likes and reposts "the story" got. I asked what "the story" was, and Jett showed me the Facebook
19 post depicted in Exhibit 3. I asked Jett a few more questions after that about what happened, how the
20 crowd reacted, and whether Jett had seen anything suspicious in the theater, but I just couldn't get Jett to
21 focus. Every time Jett got a notification on Jett's phone, Jett's eyes would light up. I know that some
22 people who study social media talk about how it creates a "dopamine-driven feedback loop" in a typical
23 user's brain, but this was ridiculous. I didn't notice anything else that I found particularly suspicious during
24 my interview with Jett.

25 I next spoke with Cy Miles, who was also present at the scene and, as I had just learned from Jett,
26 was a member of the band that was playing when the stampede started. Cy was covered in sweat and
27 seemed very preoccupied. I asked if Cy had just run out of the theater. Cy told me no, and that Cy had
28 been standing by the theater's main exit when the stampede started. That all seemed odd to me, especially
29 given what I saw on Cy's hands. They looked a little bruised and sort of strange—kind of like Cy had
30 wrapped a string really tightly around Cy's fingers—so I asked what happened. Cy said that happened
31 while Cy was working on a fishing lure a few days prior. I didn't think that was true, because the bruises
32 looked pretty fresh to me.

1 A minute or two into the interview, Cy abruptly grabbed Cy’s phone from Cy’s pocket and started
2 frantically trying to access it. I’ve been a cop for long enough to know what that usually means: in all
3 likelihood, Cy was trying to delete evidence from the phone. To make sure that didn’t happen, I grabbed
4 the phone out of Cy’s hand. We struggled over the phone for a moment or two, and when I finally got it
5 safely into my hands, I saw that it was on the “Settings” screen. Given that phone’s particular operating
6 system, and based on my knowledge and experience in working with phones of the same make and model,
7 I know that the “Settings” screen is where you would go in order to erase data from the phone. Still, I
8 can’t say with 100% certainty which screen Cy was accessing when I first grabbed the phone, because
9 either or both of us might have accidentally interacted with the screen during the struggle.

10 After securing the phone, I had another officer detain Cy and put Cy’s phone in a faraday bag,
11 which is a special case used by computer forensic professionals that blocks all outside radio signals. I did
12 so in order to preserve the information on the phone until we could get a search warrant; after all, it was
13 possible that Cy would attempt to “wipe” the phone remotely. (Later, a judge signed a warrant to search
14 the phone.) I interviewed a couple of other people at the scene, none of whom seemed to know anything
15 beyond what Jett and Cy had already told me and whose names I can’t recall. Given the Facebook post
16 that Jett had shown me, I knew this case would come down to the computer forensic evidence on Cy’s
17 phone.

18 That in mind, I took Cy’s phone and Jett’s phone—which Jett provided to me voluntarily at the
19 scene—back to my office and began my analysis of each device. To conduct each analysis, I used
20 advanced computer software called “ForensicMagician,” which preserves and extracts data from
21 computers, cell phones, and other types of electronic devices. ForensicMagician is accepted as reliable
22 and used by virtually every computer forensic professional in the country to conduct forensic analyses
23 like the ones I was doing. ForensicMagician can extract not only text, photos, and other “regular”
24 computer files from electronic devices, but it also can reveal more “advanced” information, such as a
25 device’s internet browsing history and metadata associated with particular files stored on the device. I
26 applied the ForensicMagician software to each phone reliably and without any problems.

27 The results of my ForensicMagician analysis are accurately depicted in Exhibit 4. As Exhibit 4
28 shows, I found data on Cy’s phone from which I could infer Cy’s location on the evening of the stampede.
29 Specifically, the phone’s WiFi history showed that it connected to the WiFi network at the Digby Theater,
30 which is called “DigbyUnsecuredWiFi,” on October 26, 2019 at 4:08 p.m. Pacific time. According to Jett
31 and the other witnesses I interviewed at the scene, that was just a couple of hours before the start of the
32 concert at which the stampede took place. Based on that data, I concluded that Cy had been present at the
33 Digby Theater at that time. Jett’s phone, however, hadn’t connected to any WiFi network for several days,

1 apparently because the WiFi setting on the phone had been turned off. I later called and asked Jett about
2 that, and Jett confirmed that Jett usually keeps the WiFi on the phone turned off because Jett’s cell phone
3 plan provides unlimited cellular data.

4 I also was able to extract Cy’s internet browsing history from Cy’s phone. It showed that Cy (or
5 whoever was using the phone) looked up the following sorts of search terms repeatedly in the days leading
6 up to the concert: “concerts gone wrong”; “criminal penalties for threats”; and “Home Depot.” Cy also
7 had downloaded the Facebook app to Cy’s phone, but the data from the app had been deleted.
8 Unfortunately, I was unable to determine when that data was deleted or which Facebook accounts were
9 accessed from it. The phone only had 16 gigabytes of storage, so it’s possible that Cy might have deleted
10 the app’s data in order to clear out some extra storage space, but the whole thing still seemed awfully
11 suspicious to me. Jett’s phone had downloaded the Facebook app, but the only Facebook account it ever
12 accessed via the app was Jett’s personal account (*i.e.*, the account with which Jett had reposted the original
13 “Cynical Songwriter” post). Jett’s search history also revealed nothing suspicious.

14 Given the lack of Facebook data on Cy’s phone, we went next to Facebook itself. Using a
15 subpoena, we asked Facebook to provide some basic information associated with the “Cynical
16 Songwriter” account. In response, Facebook provided us with the document shown in Exhibit 5, which,
17 as a Facebook representative told me, is the sort of record that Facebook keeps and regularly updates in
18 course of providing its services. I also regularly rely on these sorts of reports during investigations. The
19 document indicates that the “Cynical Songwriter” account was created on October 26, 2019 at 4:32 p.m.
20 from the Internet Protocol (“IP”) address 172.16.254.1. The IP address proved to be critical to our
21 investigation. I’m simplifying things a bit, here, but an IP address serves essentially the same purpose for
22 an internet connection that a physical address does for a house or office building; basically, it’s a unique
23 number that identifies a particular connection, and only one IP address at a time can be assigned to a
24 particular place. IP addresses are managed on a global level by the Internet Assigned Numbers Authority
25 (the “IANA”), and as a law enforcement officer, my colleagues and I routinely rely on databases managed
26 by the IANA in order to determine physical addresses and other information associated with particular IP
27 addresses. In my experience, the IANA’s information has always been accurate and reliable. Using a
28 standard IANA database, I determined that the IP address 172.16.254.1 was assigned to the Digby
29 Theater’s WiFi network at the time the “Cynical Songwriter” Facebook account was created.

30 Unfortunately, that was about all of the forensic evidence we were able to gather. The email
31 account used to set up the “Cynical Songwriter” account was buddiescoho@russiamail.ru. That address
32 is associated with an email service that anyone in the United States (or anywhere else) can use, but its
33 servers are based in Russia, so I couldn’t get any other information about it. I suppose I could have

1 followed up with Facebook to see if they had any more information about the “Cynical Songwriter”
2 account; for instance, it might’ve been useful to know whether other Facebook accounts had been accessed
3 via the same IP address at the same time. That said, given that the IP address was assigned to an unsecured
4 public network, I didn’t think that information would tell us much. I suppose I also could have looked
5 further into Jett Jones’s phone or other devices, but, again, I didn’t think that’d be useful. We already had
6 enough to prove that Cy Miles was the one responsible for causing the stampede, I figured, so we didn’t
7 need anything else.

8 Based on the evidence above, it’s my conclusion that Cy Miles set up the “Cynical Songwriter”
9 Facebook account on Cy’s cell phone on the afternoon of October 26, 2019 while Cy was connected to
10 the Digby Theater’s WiFi network. Cy then used that account to post the bomb threat shown in Exhibit 3,
11 which in turn caused the stampede that killed Janet Jopson. I’ll never forget how terrible the scene was
12 after that stampede, and I hope Cy gets what’s coming to Cy.

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

17 s/Frankie Zapata

18 Frankie Zapata

19 Dated: October 31, 2019

20
21 Subscribed and sworn before me on October 31, 2019.

22 s/Roberta Bost

23 Roberta Bost

24
25

DEFENSE WITNESS STATEMENTS

AFFIDAVIT OF CY MILES

1
2
3 Hi, everybody. My name is Cy Miles, and I'm 29 years old. I've lived here in Rowe for my entire
4 life. Up until last year, I was the lead singer and lead guitarist for a band called Destination Conflagration.
5 Last October, I was on the verge of beginning a solo career when I was falsely accused of causing a
6 stampede at the Digby Theater through a Facebook post. Let me be perfectly clear: I had nothing to do
7 with that Facebook post or the resulting tragedy, and I don't know who's responsible for it. I'm testifying
8 here in order to clear my name.

9 In a way, I've been fighting circumstance for most of my life. My family didn't have much when
10 I was growing up, and, despite my best efforts, I was never a very good student. Still, there's always been
11 one thing that's given me constant direction, and that's been music. I went to Hamilton High School here
12 in Rowe, and every day, I looked forward to my jazz band class, where I could use the sonics of my guitar
13 to express myself in ways that would seem impossible in most other settings. I say "most" because, at
14 times, I also seemed to thrive in English class. I was never much for writing essays or reading novels, but
15 on the rare occasion when it came time for us to study poetry, I felt like I was completely in my element.
16 Emily Dickinson, Robert Frost, and Maya Angelou were (and still are) my favorite poets.

17 Unfortunately, right before I graduated high school, I got a bit sidetracked. A few weeks before
18 summer started, my friend Dannie DeLuca and I played a prank on the pep squad at Burrough High School,
19 and things went a bit sideways. At the time, Dannie and I each were on the pep squad at Hamilton, which,
20 as you probably know, is Burrough's arch-rival. The Burrough pep squad had pranked us a few weeks
21 earlier while we were hanging out at Buddie's Burgers. While we were eating at a picnic table outside,
22 they snuck up on us and showered us with a disgusting combination of silly string, cheese-whiz, and
23 whipped cream. Of course, our Hamiltonian honor meant that we couldn't let Burrough's shenanigans go
24 unanswered. We hatched a plan to get revenge by doing the same thing to them—but with firecrackers.
25 Dannie and I waited behind some bushes outside of the auditorium where the Burrough pep squad
26 practiced its rallies, and as they exited the building, we shouted "Bombs away from your friends at
27 Hamilton!" and let them have it. The whole thing was a bad idea, but in retrospect, we made one especially
28 stupid decision: rather than using regular firecrackers, we bought a bunch of different types of fireworks
29 and mixed their contents together, which, we thought, would make them louder and brighter.
30 Unfortunately, we were right. Nobody got hurt, but, as a result of our concoction's enhanced firepower,
31 the auditorium caught fire and burned down.

32 It didn't take Sam Spade to figure out that we were the responsible parties, and Dannie and I each
33 ended up pleading guilty to first-degree arson, which is a felony. The prosecutor wanted to throw us each

1 in jail for a year and a half—she was a Burrough alum, I think—but, since Dannie and I were only 18 at
2 the time of the incident, the judge let us off with probation and community service. I took responsibility
3 for my actions, completed my sentence without incident, and have tried since then to move on from the
4 whole thing. I just hope I’m not judged in this trial for a stupid decision that I made over a decade ago.

5 It was a year or two after I completed my sentence that my musical intuition really began to
6 sharpen. In large part, that was because I began to appreciate that music and history are pretty much
7 inextricably intertwined. I came to that realization largely because I began regularly attending shows at
8 Rowe’s historic Digby Theater, which was built in the 1920s and whose art, architecture, and general vibe
9 really take you back in time. When I first started attending shows there, it took a long time to get into and
10 out of the main theater, which is situated on the second floor of the building and which you could only
11 access via a narrow staircase. While I was waiting in line to get in and out, I began to notice the historic
12 photographs of artists who had appeared at the Digby that lined the walls. Among them were pictures of
13 Sister Rosetta Tharpe and Big Mama Thornton, both of whom had played at the Digby in the 1950s and
14 1960s. (If you think Elvis invented rock ‘n’ roll, think again; rock music as a whole owes a greater debt
15 to those two than to Elvis, the Rolling Stones, and the Beatles combined.)

16 Fortunately, a couple of years ago, the Digby underwent some minor renovations, including the
17 addition of another exit on the side of the main theater. It now only takes five or ten minutes to exit the
18 theater after a show, which, if you ask me, is a huge safety improvement. One time before the renovation,
19 I was standing in line on the main staircase when somebody tripped in the crowd and fell down the stairs.
20 Thankfully, the only injury was a sprained ankle, but it was a little scary to witness an accident like that
21 in such a small space. Since the addition of the side exit, though, I’ve really never seen much of a crowd
22 on the stairs going into and out of the main theater.

23 I knew that my best chances of establishing myself as a professional musician would be in a band.
24 Fortunately, I met Marlo Hubbard a couple of years ago, and things seemed to click—at least for a while.
25 Back in the summer of 2017, I was playing a solo gig at Buddie’s Burgers, a greasy little burger joint here
26 in Rowe. The owner, a big guy from Texas named Buddie Gartowski, was calling the event “BuddieFest”
27 and trying to recruit every musician he could possibly find in Rowe to play there. Buddie wasn’t paying—
28 he was hoping to entice us all into playing with free burgers—but I figured it might be fun. (Plus, I love a
29 good Baconator.) Marlo played right before my set, and Marlo had a stage presence unlike anyone I’ve
30 ever seen. It turns out Marlo saw something in me, too, because Marlo approached me immediately after
31 my set and suggested we form a band. It seemed like Marlo had everything figured out: the name
32 (“Destination Conflagration”), a few places where we could play our initial gigs, the names of people who
33 could play bass and drums, and lots of other little details that I hadn’t thought of. Marlo also suggested

1 right up front that we sign a contract spelling out our rights in the music we would create. Marlo explained
2 that we'd have equal legal rights in the songs that we wrote, which sounded fair to me. I signed the
3 contract, which is shown accurately in Exhibit 1, without really reading it.

4 We continued gigging at Buddie's for a while after that until Marlo somehow managed to get us a
5 regular gig at this place called the Coho Club over in Rowe's Topaz neighborhood. If you ask me, the
6 place is a little stuffy, and I doubt that most of the people there are *truly* interested in our music, but it paid
7 the bills and gave us consistent opportunities to hone our sound. As it turns out, we were mostly playing
8 songs that I had written before meeting Marlo. For that reason, I figured that our agreement didn't apply
9 to them, but, at the time, I was happy to share them.

10 Sometime in 2018, I showed up a few hours before one of our gigs to find an electric keyboard
11 player setting up on stage with us. "Um, Marlo," I asked, "what's this?" "This is Erin," Marlo replied,
12 "she's going to help us spice up our sound." Erin seemed nice enough, but, if I'm being honest, I absolutely
13 hated the idea. Marlo and I clicked at the beginning because we each had folk roots, and, suffice to say, a
14 synthesizer doesn't exactly belong in a folk band. Marlo seemed pretty committed, though, so I gritted my
15 teeth and put up with it. (I certainly didn't say anything about "fireworks" in that encounter.) It was at that
16 time that I started thinking about embarking on a solo career, although I didn't mention it to anyone.

17 By mid-2019, Erin was still playing the electric keyboard, and I was getting ready officially to
18 jump ship from Destination Conflagration. The whole enterprise had just become too over-the-top; Erin
19 was playing as many spaceship-sounding solos on her keyboard as I was playing on my guitar, and the
20 clash of styles just wasn't working. I still hadn't told anybody—I was waiting for the right moment—but
21 I was determined eventually to go off on my own. In October, though, fate threw me a curveball: Marlo
22 called me and let me know that Sturgeon Sampson's opening act at his upcoming Digby Theater
23 performance had canceled—and that Sturgeon wanted us to fill in. I had mixed feelings. On one hand, I
24 was ecstatic that Sturgeon saw potential in us, but on the other, I was a little embarrassed at the idea of
25 playing music that sounded vaguely like synth-pop to such a huge crowd.

26 In the end, I swallowed my pride and played the show, which, I have to say, went really well. After
27 the show, we ended up meeting in the artists' lounge with someone named "Gallagher" who told us that
28 she was a record producer with Fourth Person Records, a really well-known indie record label. She told
29 us that she wanted to arrange for us to play another show for her boss, who, if she liked what she saw,
30 might give us a full-blown record deal. Something seemed a little off with her pitch—Gallagher seemed
31 like she was *really* trying to sell us hard—and, at any rate, I wasn't planning on sticking around with
32 Destination Conflagration. Still, I was open to the idea of another show. Our sound, she suggested, needed
33 more "pizazz," which she thought she could help us create with fireworks, lights, and digital effects. I was

1 on the verge of laughing at her when she finished, but before I could say no, Marlo piped up: “You got
2 it,” Marlo blurted out, “I’ve been saying we need more pizazz, anyway!”

3 I was aghast. Especially since about half of our set consisted of songs that I had written before
4 meeting Marlo, I simply couldn’t let this happen. I’m no Dee Snider, after all; I’ve poured my heart and
5 soul into my songs, which are serious poetic works about love, loss, hard times, and a number of other
6 topics with which flashy lights and disco balls just aren’t compatible. I couldn’t let Marlo or Gallagher
7 cheapen my art with a bunch of special effects.

8 Marlo is flat-out lying about what happened next. It’s true that we got into a huge fight once
9 Gallagher left. What’s not true, though, is Marlo’s claim that I gave Marlo some sort of threatening
10 ultimatum. Marlo told me that our contract entitled Marlo to play *all* of Destination Conflagration’s songs,
11 even the ones that I had written before we met. Obviously, that isn’t what it says. It’s limited to songs that
12 we “write together” as a band, and I told Marlo as much. “Good luck proving that you actually wrote those
13 songs before we met,” Marlo replied with a smirk. At that point, I lost it and stormed out of the artists’
14 lounge. I might’ve said something sort of rude to Marlo, but, to be honest, I was so mad that I don’t
15 remember exactly. I *do* remember, though, that I wasn’t thinking about blowing anything up. I was
16 thinking instead about retaining an intellectual property lawyer to protect my legal rights in my songs.

17 I never did end up retaining a lawyer. Instead, I found out that Marlo and the rest of the band were
18 scheduled to play at the “Can You Dig It?” charity concert on October 26, 2019. I knew Marlo would be
19 there, so I went to the theater during the afternoon soundcheck to try to talk some sense into Marlo. When
20 I arrived, I tried to enter the theater through the side door, but it was jammed. I knew it wasn’t locked
21 because it moved a few inches when I grabbed the handle, but I couldn’t pry it open any further. I ended
22 up entering through the main door. When I got into the theater, I saw Marlo on stage with a screwdriver
23 in one hand and an adjustable wrench in another. I was surprised, because Marlo isn’t exactly “handy.”
24 (Most of the time, Marlo can barely figure out how to lock Marlo’s guitar case.) It looked like Marlo was
25 tinkering with the pyrotechnics, which I recognized because some light smoke was spilling out of the box
26 that Marlo seemed to be working on. Marlo seemed surprised to see me. “What do you want?” asked
27 Marlo abruptly. “You’re out of the band.” “Yes, I know,” I replied. I let Marlo know that I was embarking
28 on a solo career and asked Marlo not to play any of my original songs at the show that night. I also let
29 Marlo know that I might have no choice but to make a legal issue out of it if Marlo did. That would be
30 bad for a band on the verge of getting a record contract, I observed, so I suggested to Marlo that it would
31 be in everybody’s best interests if Marlo simply agreed to play other songs. Marlo basically laughed in
32 my face: “Remember what I said about you proving that you wrote those songs? Now get out of here—
33 I’ve got a soundcheck to finish.”

1 I was disappointed that we hadn't been able to resolve our differences, but I realized at that point
2 that I'd have no choice but to go to a lawyer. I tried to leave through the side door to the theater, but, again,
3 it seemed like it was jammed. I exited through the main door instead. By that point, it was about two hours,
4 give or take, before Destination Conflagration (minus its lead singer and guitarist) was about to hit the
5 stage. At no point during the time I was at the theater did I ever even touch the pyrotechnics, nor did I do
6 anything to lock the side door.

7 After I left, I hailed a cab outside the theater. I was headed out to Duckington, a suburb about 30
8 minutes outside of Rowe. I wanted to spend a few hours clearing my head and going for a walk in Cover
9 Park, a great little greenspace near downtown Duckington that I've been going to since I was a kid. After
10 about an hour there, I decided to grab a cab back to the theater, because I wanted to take one more shot at
11 salvaging things with Marlo. When I got there, though, what I saw was horrible. Several ambulances had
12 pulled up, and hundreds of concertgoers were huddled in the street. I was still trying to figure out what
13 had happened when a police officer named Frankie Zapata ambushed me and started asking me all kinds
14 of strange questions about my hands, which I had messed up working on a fishing lure a few days prior.
15 When I pulled my phone out of my pocket—I wanted to check the local news to see if anyone knew what
16 was going on—Officer Zapata grabbed my phone out of my hand and told me, “You're going to fry for
17 this!”

18 Officer Zapata is now taking the data on my phone way out of context. I was searching for terms
19 like “criminal penalties for threats” because I thought that Marlo's threat to use my songs without my
20 permission might have been illegal, and I was searching for terms like “concerts gone wrong” because I
21 was genuinely worried about what might happen with the pyrotechnics at the show on October 26th. (It
22 turns out I was right.) And “Home Depot”? That was just because my sink broke, and I needed a couple
23 of new tools in order to fix it. Similarly, I deleted my Facebook account when I was on my way back to
24 the Digby Theater on the 26th. Like I said, I was trying to clear my head, and social media isn't exactly
25 great for that sort of thing.

26 I feel awful about what happened at the theater that night—and especially about what happened to
27 Janet Jopson—but, the fact is, I had nothing whatsoever to do with it. My guess is that Marlo was tinkering
28 with the pyrotechnics, made a mistake, and is now trying to blame me for Marlo's error, which, of course,
29 had tragic consequences. Given my arson conviction, I figure I make an easy scapegoat. I'm confident,
30 however, that the truth will come out during trial.

31 I hereby attest to having read the above statement and swear or affirm it to be my own. I also swear
32 or affirm to the truthfulness of its content. Before giving this statement, I was told it should contain all

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

3 *s/Cy Miles* _____

4 Cy Miles

5 Dated: November 25, 2019

6

7 Subscribed and sworn before me on November 25, 2019.

8 *s/Roberta Bost* _____

9 Roberta Bost

AFFIDAVIT OF STEVIE RAVEN

1
2
3 Um, hi! My name’s Stevie Raven. I’m 27 years old, and for my day job, I work as a marketing
4 manager out at Feldman Seed Farm. That’s just my 9-to-5, though. When I’m not at work, I’m a music
5 *superfan*. I like a pretty broad range of music—jazz, electronica, big-band swing, hip-hop, and especially
6 Texas-style blues-rock—and I especially love going to live shows. I live out in Coho County, and although
7 it’s a totally beautiful place to live and work, it’s not exactly a bustling metropolis. That means my favorite
8 bands tend not to come through Coho when they’re on tour. That’s okay, though, because whenever I
9 want to see live music, I drive a couple of hours into Rowe, which, as you probably know, has a really
10 vibrant music scene.

11 One of my favorite places to see live music in Rowe is the Digby Theater, which is right downtown.
12 I’ve been going to shows there since I was in high school, and I absolutely love it. It’s one of those
13 beautiful old theaters from the 1920s, and you can really see it in the way it’s built: from the moment you
14 walk in the front door, you know you’re in a historic building. They definitely don’t make theaters like
15 the Digby anymore. Everything from the tilework on the ceiling and the old-timey murals on the walls to
16 the creaky floor, the narrow front staircase, and the fact that the theater itself is on the second floor of the
17 building screams “old-fashioned.” Most of the time that’s a good thing, but occasionally it gets a little
18 annoying. In particular, up until a few years ago, it used to take about 45 minutes for the theater to empty
19 out after a show, mostly because of the size of the main staircase at the back of the theater. Fortunately,
20 though, a few years ago, the owners of the theater seemed to realize that having only one entry and exit to
21 the theater itself was a safety concern, so they added a side door that leads to a staircase and large exit on
22 the side of the building. (Exhibit 2 accurately depicts the layout of the theater, although it’s not necessarily
23 to scale.) Now, with that addition, it usually takes about five or ten minutes for everybody to leave the
24 theater.

25 I was at the Digby on October 26, 2019 for the “Can You Dig It?” concert, which I attend every
26 year. The city closes down the area in front of the theater for the event, which is essentially an all-day
27 block party. Local food trucks line the curbs on each side of the street, so people are coming in and out of
28 the theater all day for snacks between shows. (My favorite truck is always Finley’s Fresh Fish; they make
29 fish & chips with fresh-caught salmon!) That day, I went in and out of the theater several times before the
30 Destination Conflagration show, including once just a minute or two before the show started. I used the
31 main staircase (the older one) each time, but there didn’t seem to be much foot traffic on it. Given the
32 huge number of people both in the theater and outside, I have to imagine that someone would’ve said
33 something—or, at least, the main staircase would’ve been more crowded—if the other staircase was

1 blocked. Since I never used the side entrance, though, I can't say one way or the other whether it was
2 blocked.

3 About an hour and a half before Destination Conflagration was scheduled to go on stage, I was
4 about to head back into the theater when I saw Cy Miles hanging out outside the main entrance to the
5 theater. I immediately recognized Cy (I'm a *huge* Destination Conflagration fan, and I had been to several
6 of their shows in the past) and decided to ask for an autograph. Cy was looking down at Cy's phone at the
7 time, and when I got close enough to say hello, Cy hurriedly put Cy's phone into Cy's pocket. "Hi, Cy!"
8 I said giddily. "I'm a huge Destination Conflagration fan, and I'm really looking forward to your show!
9 Can I have an autograph?" At that, Cy seemed to grimace. "Sure, what's your name? I just called a cab,
10 so we'll have to make it quick, but I'm always happy to meet a fan." I was so thrilled to meet Cy and even
11 happier to find out that Cy is actually a really nice person! Cy and I chatted for a few minutes about our
12 guitar collections—I'm an amateur player myself—and then Cy's cab pulled up. "Say, where are you
13 going? Aren't you going to be on stage in a couple of hours?" "Yeah," said Cy, "but I've got to go have a
14 quick meeting with a record producer in Duckington," which is a suburb about 30 minutes outside of town.
15 "Don't tell anyone, but I may be embarking on a solo career," Cy told me. "Hey, that means you'll be my
16 first fan!"

17 Needless to say, I swooned as Cy drove away. I couldn't believe I was Cy's first solo fan! I think
18 it was a few minutes before 4:30 p.m. when Cy's cab pulled away. I'm pretty sure about the time because
19 I hurried immediately back into the theater to see FAME MON-E, who was slotted to play at 4:30 p.m.,
20 an hour and a half before Destination Conflagration was supposed to hit the stage. I didn't miss the start
21 of FAME MON-E's show, although I guess it's technically possible that he started a bit late. (I wasn't
22 looking at my watch or anything.)

23 Later, right before Destination Conflagration was supposed to hit the stage, I was jostling in the
24 crowd for a better spot when I bumped into Jett Jones, the music journalist. Jett and I have a bit of a
25 complicated past. A couple of years ago, I had the idea that I would leave the world of marketing and
26 become a music journalist. There's nobody more well-known in that business than Jett, so I emailed Jett
27 a copy of my resume and a few writing samples about my favorite bands. I waited a few days, and Jett
28 hadn't responded, so I sent another email asking what was going on. This time, Jett replied, and, I have to
29 say, Jett was pretty mean: "Look, kid, I glanced at your writing, and let's just say you've got some work
30 to do. Don't quit your day job." My feelings were pretty hurt. I mean, I know the music business is a
31 cutthroat industry, but I still felt like Jett had crushed my dreams. As far as I'm concerned, though, it's
32 water under the bridge by now. I'm perfectly happy just being a regular music fan.

AFFIDAVIT OF ARI FRANKEL

1
2
3 My name is Ari Frankel, and I'm a professional building inspector and building safety consultant.
4 I own my own company, which is called Inspection Perfection, LLC. I attended Oregon State University,
5 where I earned a bachelor's degree in civil engineering in 2002. After getting my bachelor's degree, I
6 decided to take a shot at becoming a firefighter. I've always been a bit of a pyromaniac, I guess, and I
7 couldn't think of a more thrilling career. Unfortunately, I couldn't manage to pass the Rowe Fire
8 Department's applicant test. After a couple of failed attempts, I gave up and figured that becoming a
9 building inspector would be the next best thing. (It was either that or become a professional arsonist, right?
10 I'm kidding, of course.) I went back to Oregon State and in 2005 earned a master's degree, which also
11 was in civil engineering. After that, I took Oregon's version of the National Home Inspector Exam, which
12 I passed on my second try. Ever since then, I've worked as a licensed building inspector and consultant
13 here in Rowe. I also regularly publish articles on building safety issues. My most recent piece was titled
14 "Does Midcentury Modern Measure Up? Assessing the Safety of Homes Built in the 1950s and '60s" and
15 appeared in *Building Safety Quarterly*, a national trade publication for building inspectors.

16 Like many new building inspectors, I started my career in Rowe's Inspections Division, where I
17 worked for about two years. Unfortunately, though, my job with the city hit a bit of a snag back in 2009
18 when I accidentally overlooked a couple of critical details during an annual inspection of Chinook
19 County's terrible old courthouse. My supervisor caught the error, but the mistake cost me my job. It
20 seemed kind of silly to me at the time—they're building an entirely new courthouse, and the old one is
21 probably going to get knocked down pretty soon—but boy did I learn my lesson about paying attention to
22 detail!

23 After leaving the Inspections Division, I was worried that my reputation in the inspection
24 community had been pretty badly damaged, and that I might have a hard time finding work as a result.
25 That in mind, I decided to strike out on my own and found Inspection Perfection. For a while, I did pretty
26 much nothing but home inspections for people in the process of selling or buying a house, but, after
27 everything I learned doing commercial inspections for the city, I figured I should at least try to make some
28 use of that knowledge. So, in about 2014, I started devoting a portion of my time to inspections of small
29 commercial buildings. It's still a relatively small part of what I do, but it keeps things interesting. Also,
30 around the same time, I figured out one other thing: I could use my expertise to educate jurors and judges
31 in court! I've been Chinook County's go-to trial expert in the area of building safety for several years
32 now. Since 2014, I've testified in about two dozen civil and criminal trials regarding building hazards,
33 code violations, shoddy renovations, and lots of other similar topics. If I'm being honest, it's sure paying

1 off. Given the money I earn as an expert, I have a fancier car and nicer suits than I ever would have had
2 on my old city salary.

3 Anyway, that’s how I got involved in this case. I heard about the incident at the Digby on October
4 26th and was practically parked by the phone for a few days waiting to be retained for this trial by one
5 side or the other. Finally, I got a call from Cy Miles’s defense lawyers, who hired me to evaluate the Digby
6 Theater for code violations and other possible safety hazards. After all, if the building was unsafe, or if
7 some dangerous condition existed somewhere in the theater, that could be the real reason for the tragedy
8 that occurred there. After the lawyers retained me, I began my analysis by obtaining all of the Digby
9 Theater’s blueprints and site plans from Rowe’s Inspections Division and examining them. I then visited
10 the Digby Theater myself and observed its general layout. The facts and data that I gathered from those
11 sources were more than sufficient for my analysis and are of the type that a building inspector or safety
12 consultant would normally use in this sort of analysis. In the course of my analysis, I used principles and
13 methods that are widely seen as reliable among building safety professionals, and I applied those principles
14 and methods reliably in this case. I should note that it’s been about a year since I inspected anything other
15 than a single-family home, but once I got into the facts of this case, all of my commercial building
16 inspector skills came back to life pretty quickly.

17 As an initial matter, it’s important to understand what a building inspector does. A building
18 inspector’s basic job is to assist developers and property owners in ensuring that their buildings are safe
19 and appropriately designed for their occupants. Among other things, a building inspector makes sure that
20 in the event of a disaster—a fire, earthquake, flood, that sort of thing—a building’s design and layout will
21 permit its occupants to exit the building as quickly and safely as possible.

22 The Digby is a pretty old building, but, historic landmark or not, both common sense and Rowe’s
23 Fire Code dictate that it needs to meet certain minimum safety requirements in order to remain open to
24 the public. That in mind, the first step in my analysis was to review the Digby’s past inspection records at
25 the Inspections Division. I wanted to see if past inspections had identified any issues that had gone
26 unresolved. I was shocked, however, to find that the building apparently hasn’t been inspected *at all* since
27 at least the mid-1990s, which is as far back as the Inspections Department’s records go. I called the
28 Inspections Department shortly after I was retained and requested copies of all of the Digby’s inspection
29 records, which are public documents and which (as I know from my time working there) the Inspections
30 Department maintains in the regular course of carrying out inspections all around the city. After getting
31 stuck on hold for what seemed like an hour, I was finally able to get in touch with a clerk, who informed
32 me that she couldn’t locate any such records and that they almost certainly didn’t exist. “It’s an historic

1 building,” she told me, “so I guess we made an exception for that particular property.” I couldn’t believe
2 it!

3 My next step was to analyze the Digby Theater myself, and after reviewing its blueprints and site
4 plans, I paid the theater an in-person visit. When I arrived and saw the inside layout, I was immediately
5 certain that I’d find something about the building that was unsafe. The fact that a large, second-story event
6 space had only two exits seemed shocking to me.

7 As I normally do when I’m evaluating a building’s safety, I started by assessing the space’s risks
8 in light of its capacity and the circumstances of the event in question. “Capacity” is just a fancy way of
9 referring to the maximum number of people that can fit into a particular space before the space becomes
10 crowded to the point of being unsafe. A building’s capacity isn’t always obvious to its occupants: to
11 determine the capacity of a building, a building inspector first must calculate its occupant load, which
12 refers the maximum number of people that could fit inside the space and leave no less than 7 square feet
13 of floor space per occupant. Based on that calculation, the Fire Code then will dictate how many exits (or,
14 as the Fire Code puts it, how many “means of egress”) the building needs to have in order to be minimally
15 safe. Finally, depending on how many exits you have and where the exits are, the Fire Code will also tell
16 you how large each exit needs to be.

17 Based on my review of the Digby Theater’s blueprints and site plans, as well as measurements I
18 took during my visit to the theater, I determined that the main floor of the Digby Theater—that is, the area
19 where concertgoers stand, which excludes the stage, walkways, and other areas that would be
20 inappropriate for occupancy during a concert—is approximately 50 feet wide and 70 feet long. That means
21 it’s got a total surface area of 3,500 square feet. Allowing for 7 square feet of floor space per occupant
22 means that its maximum capacity is 500 people. Rowe Fire Code Section 201.9 provides that buildings
23 with a capacity of 301-500 people are required to have at least two exits. The Digby Theater has precisely
24 two exits—one at the back of the venue, and one on the side nearer to the stage. Again, based on both the
25 building’s documentation and my own measurements, I determined that the exits are approximately 85
26 feet apart. Thus, according to Rowe’s Fire Code, they must each be at least 10 feet wide in order to
27 accommodate all occupants in a safe and efficient egress. Similarly, because the venue is on the second
28 floor of the building, the stairwells past the exits must also be at least 10 feet wide to avoid a “bottleneck”
29 as people try to leave. Based on both the building’s documentation and my own measurements, I
30 determined that the exits are each exactly 10 feet wide. The stairwells outside of each exit are the same
31 width.

32 It’s fair to say that the Digby Theater is technically compliant with the egress requirements of
33 Rowe’s Fire Code. For that reason, it might appear at first glance that the theater didn’t pose any significant

1 safety risks that conceivably might have contributed to the tragedy on October 26th. For two reasons,
2 however, that’s exactly wrong.

3 First, a building’s technical compliance with the Fire Code does *not* mean that the building is
4 necessarily safe. Technical compliance is never the ultimate goal when it comes to building safety. Rather,
5 the Fire Code reflects a bare minimum; its requirements represent the ones without which a building
6 becomes an obvious and unacceptable hazard. Depending on the context, however, even technically
7 compliant buildings can still pose significant hazards. Say, for example, you’ve got lecture hall with a
8 maximum occupancy of 300 and the required one exit. If its owner told me it would be used solely for
9 book signings and other literary events, I’d probably think that was fine. Even though the numbers are
10 right on the margin of being unacceptable, those events tend to be pretty low-key. But if the owner told
11 me that the space would regularly host hard rock concerts and wrestling matches? In either of those cases,
12 I’d probably have a much more significant safety concern.

13 The Digby Theater is, of course, in the latter category. For a venue that regularly hosts concerts,
14 technical compliance is simply not good enough, especially given that the concert hall itself is on the
15 building’s second floor. In my opinion, in order to be truly safe, the Digby should have at least three exits.
16 After all—as we now know all too well—it’s quite possible in an environment like a rock concert that one
17 exit might become obstructed if disaster strikes. A third exit is needed to mitigate that risk. And you don’t
18 have to take my word for it: nowadays, most developers err on the side of caution. Many new buildings
19 are built with more (and larger) exits than required by the Fire Code, as well as other “optional” safety
20 measures designed to limit the likelihood of a tragedy when disaster strikes. In other words, it’s fair to say
21 that that sort of thing is now standard practice. Sadly, though, it looks like no one at the Digby had that
22 idea in mind. Based on my analysis of the theater, it’s my opinion that the absence of a third exit
23 contributed substantially to the tragedy that occurred on the 26th.

24 Secondly, it’s not at all clear to me that the organizers of the concert on October 26th abided by
25 what would have been the theater’s normal occupancy requirement. During my visit to the theater, I
26 couldn’t find any signage indicating the venue’s maximum occupancy, which itself is a small but
27 significant violation of Rowe’s Fire Code. Moreover, I’ve previously been to several shows at the Digby,
28 and while I never conducted an exact count, it sure seemed to me like they allowed more than 500 people
29 to cram into the theater on each occasion. I wasn’t at the concert on the 26th, and I wasn’t able to obtain
30 any information on how many people were in the theater at the time of the stampede, but if there truly
31 were more than 500 people in the theater at that time, it’s my opinion that that lapse also contributed to
32 the injuries and the fatality that occurred as a result of the stampede.

1 There was one more thing from my visit to the Digby that was, to say the least, peculiar. I
2 understand that the theater’s side exit somehow became blocked during the stampede, which led the crowd
3 to rush toward the only available exit, and which could have caused the trampling that led to the fatality.
4 Naturally, I wanted to know more about that particular exit, so I asked my “tour guide”—a Digby Theater
5 employee—if I could inspect the side exit door in question as well as its locking mechanism.

6 The employee told me that the Digby had installed the side exit a couple of years ago because its
7 owners decided that having only a single exit wasn’t safe. The door to the exit was a standard, industrial-
8 sized double-door with push-bar handles. The handles are commonly known as “panic bars,” because they
9 provide the easiest means of opening a door in the event of an emergency. All in all, it’s a pretty typical
10 type of door, and you can see versions of it in most commercial buildings. There didn’t appear to be
11 anything wrong with the doors themselves, so I knew I needed to take a closer look at the locks. The Rowe
12 Fire Code is clear that all exit doors are supposed to be equipped with a locking device that does three
13 things: (1) only locks when a building master key is used, (2) automatically unlocks as soon as a building
14 alarm sounds, and (3) automatically unlocks if the overhead water sprinkler system activates.

15 As far as I could tell, the door’s lock met all three requirements. In this case, there wasn’t an actual
16 fire, so the sprinkler system didn’t activate. The Digby employee who was showing me around told me
17 that the venue’s alarm system did activate once the stampede started, but, nevertheless, the door for some
18 reason failed to unlock. When I shined my flashlight into the locking mechanism itself, I saw why: there
19 was a twisted-up piece of metal lodged in the keyhole where the master key is meant to be inserted. This
20 caused the mechanism to jam in a permanently locked position. I extracted the object and untwisted it—
21 turns out, it was an old guitar string! To be honest, I had no idea what to make of it, but, since I was
22 conducting my analysis less than a week after the stampede itself had occurred, it seemed clear that it was
23 the guitar string that had caused the door to jam.

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

28 s/Ari Frankel

29 Ari Frankel

30 Dated: December 2, 2019

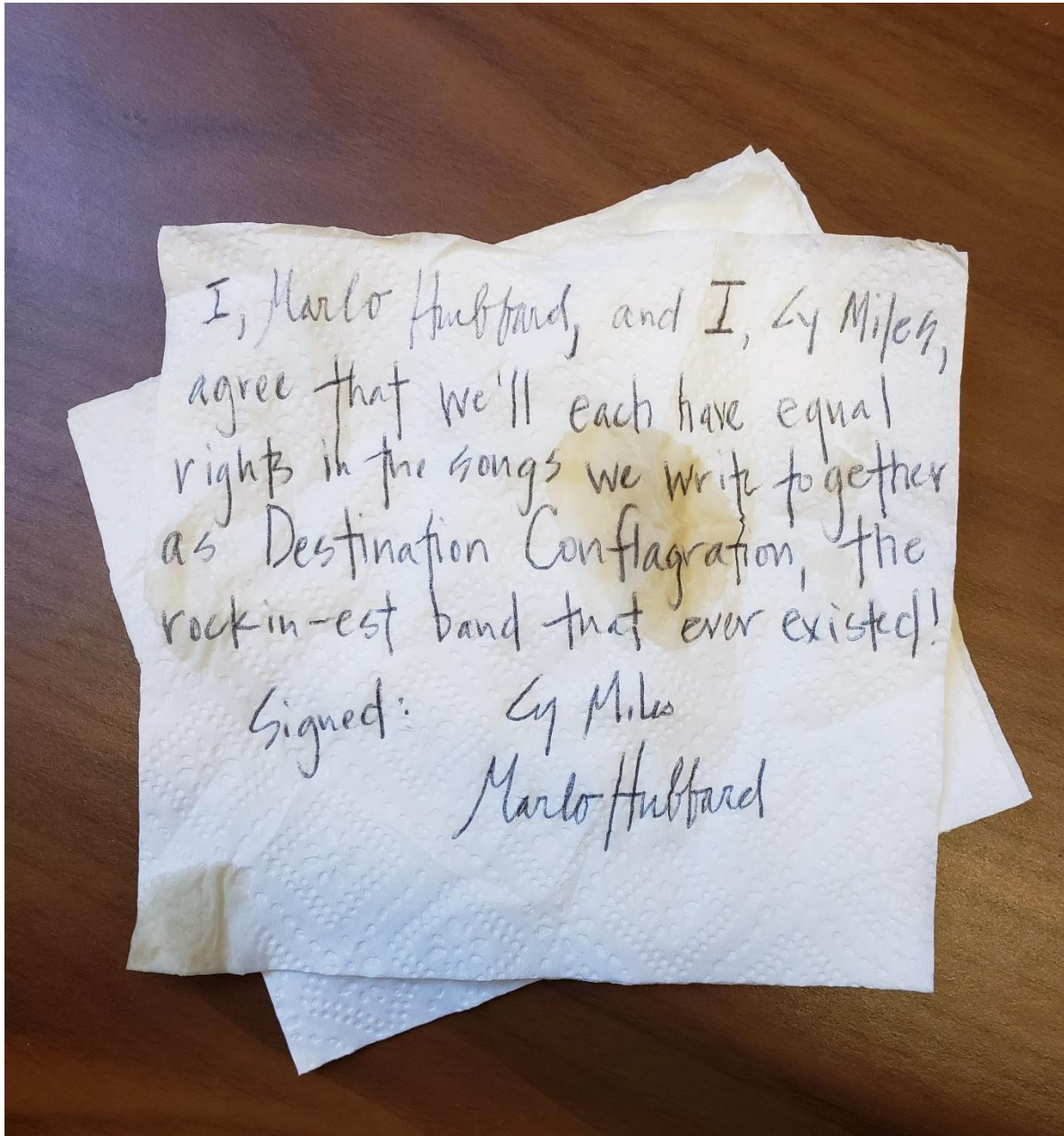
31 Subscribed and sworn before me on December 2, 2019.

32 s/Roberta Bost

33 Roberta Bost

EXHIBITS

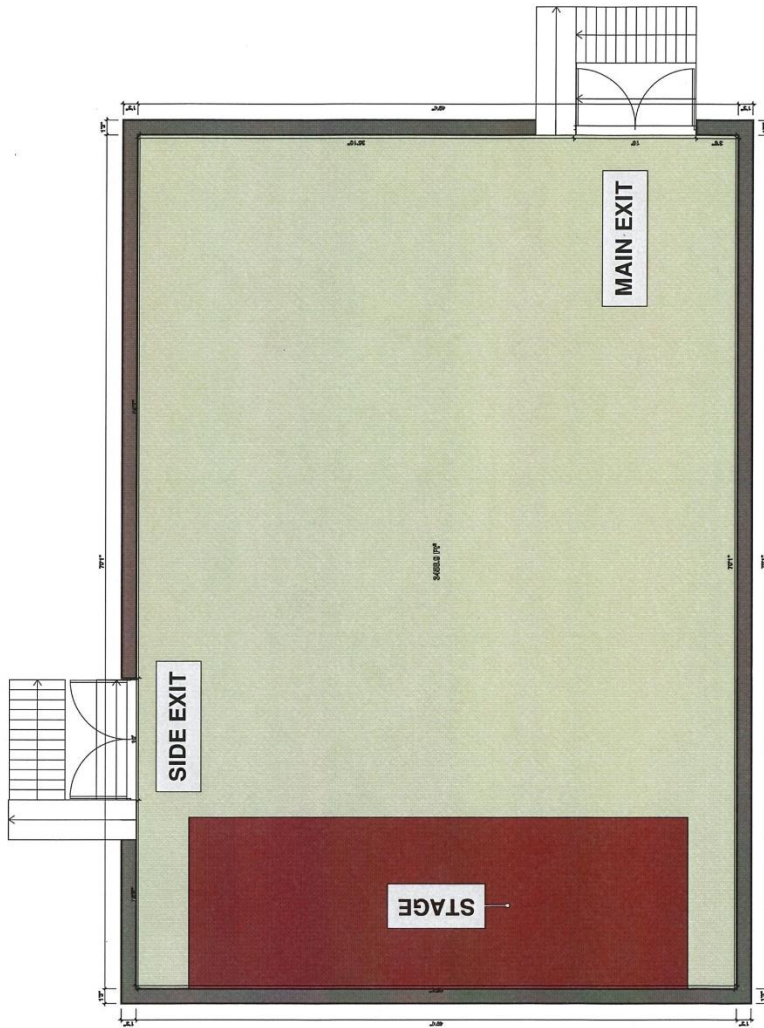
EXHIBIT 1: Agreement Between Cy Miles and Marlo Hubbard



I, Marlo Hubbard, and I, Cy Miles,
agree that we'll each have equal
rights in the songs we write together
as Destination Conflagration, the
rockin-est band that ever existed!

Signed: Cy Miles
Marlo Hubbard

EXHIBIT 2: Digby Theater Floorplan



DIGBY THEATER
ROWE, OREGON
OCTOBER 26, 2019

EXHIBIT 3: Social Media Post



Jett Jones

October 26, 2019 at 6:05 PM

Reader, your #1 music reporter here posting live from the Digby with a breaking story. Was just tagged by a crazy fan who's made what appears to be a bomb threat. Alerting the [Rowe Police Department](#) via 911. In the meantime, folks should exit in an orderly fashion. Live updates to follow.



Cynical Songwriter

October 26, 2019 at 6:04 PM

hey [Jett Jones](#) u might want to cover this story about tonights [Destination Conflagration](#) show at the digby. i heard cy miles isnt going to be there, and the band is going to bomb... in more ways than one. the crowd should get outta the theater as quick as they can before the fireworks start. otherwise someone might get hurt.

EXHIBIT 4: Report from ForensicMagician

Forensic Magician® User: Zapata, Frankie Report Generated: 31-Oct-2019 16:47 PDT Report Type: Custom Fields Report No.: 19-1248 Device(s) Analyzed: Andromeda Smartphone v. 3.12.17 serial no. 2332178904 (recovered: 26-Oct-2019 from Miles, Cy) Andromeda Smartphone v. 4.1.4 serial no. 9438509242 (recovered: 26-Oct-2019 from Jones, Jett)			
Andromeda Smartphone v. 3.12.17 serial no. 2332178904		Andromeda Smartphone v. 4.1.4 serial no. 9438509242	
WiFi History (last 30 days)	"DigbyUnsecuredWiFi" (last connected 26-Oct-19 16:08 PDT)	WiFi History (last 30 days)	none
Search history (22-Oct-19 to 26-Oct-19)	"criminal penalties for threats" (26-Oct-19 12:09 PDT) "concerts gone wrong" (26-Oct-19 12:08 PDT) "Home Depot" (26-Oct-19 11:57 PDT) "gas station Duckington" (25-Oct-19 14:11 PDT) "criminal threats" (24-Oct-19 20:44 PDT) "criminal penalties threats" (24-Oct-19 20:37 PDT) "concert accident" (22-Oct-19 13:31 PDT) "Digby" (22-Oct-19 12:51 PDT) "Buddies burgers" (22-Oct-19 12:01 PDT) "Home Depot" (22-Oct-19 11:57 PDT)	Search history (22-Oct-19 to 26-Oct-19)	"Cy miles destination conflagration" (26-Oct-19 13:13 PDT) "Cy solo" (26-Oct-19 13:11 PDT) "Cy miles" (26-Oct-19 13:10 PDT) "screenplay subject music" (25-Oct-19 08:57 PDT) "How to write a screenplay" (25-Oct-19 08:57 PDT) "good thesaurus" (24-Oct-19 2:28 PDT) "thesaurus" (24-Oct-19 15:28 PDT) "Sturgeon Sampson news" (23-Oct-19 15:45 PDT) "burrough high school band performance weekend" (22-Oct-19 10:17 PDT) "burrough high school band" (22-Oct-19 10:15 PDT) "jimmy page 1959 les paul number one price" (22-Oct-19 08:17 PDT)
App data (Facebook)	none	App data (Facebook)	Added account(s): Jett Jones

EXHIBIT 5: Facebook Subscriber Information
Facebook Business Record – Subscriber Information

Service	Facebook	
Target	99999222221	
Date Range	Creation to 2019-10-31 23:59:59 PDT	
Name	First	Cyanara
	Middle	Destination
	Last	Conflagration
Vanity Name	Cynical Songwriter	
Registered Email	<u>buddiescoho@russiamail.ru</u>	Email Verified

V. The Form and Substance of this Criminal Trial

A. The Elements of a Criminal Case

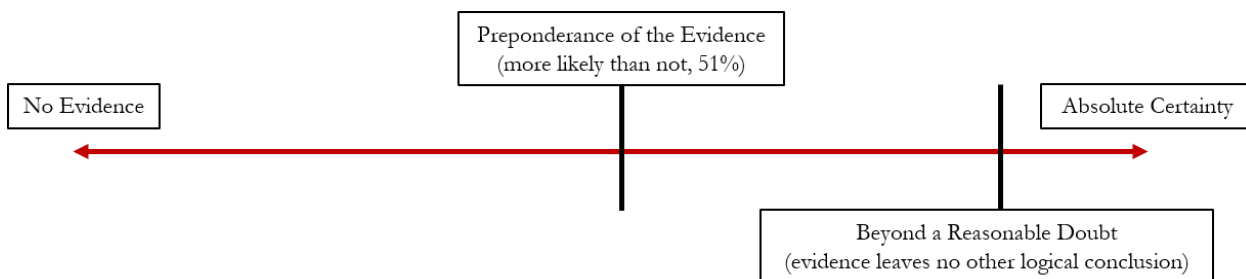
Criminal statutes generally define two aspects of every crime: (1) the physical act (*actus reus*), and (2) the mental state of the actor (*mens rea*). Most crimes are composed of some physical act, such as firing a gun in a crowded room, **plus** a guilty or culpable mental state, such as the *intent* to commit a crime or a *reckless disregard* for the consequences of one's actions. Bad thoughts alone are not enough; a crime requires the union of thought and action, or *actus reus* and *mens rea*.

Also, a defendant may justify his/her actions by showing a lack of criminal intent. For instance, the crime of burglary has two elements: (1) breaking and entering (2) with intent to commit a crime. A person breaking into a burning house to rescue a baby does not commit a burglary.

B. Presumption of Innocence, Proof Beyond a Reasonable Doubt

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

Despite its use in every criminal trial, the term *reasonable doubt* is one of the more difficult legal terms to understand. A good way to think about the standard is by imagining a continuum (see below). In the middle of the continuum is the civil case standard of proof of *preponderance of the evidence* which means that the evidence shows that it is more likely than not that the defendant is responsible for the harm to the plaintiff. *Beyond a reasonable doubt* is greater than a preponderance, but less than absolute certainty. When the jury considers all of the evidence presented and the only logical conclusion is that the defendant committed the crime with the required mental state, then the Prosecution has proven its case *beyond a reasonable doubt*.



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

The defendant in this case, Cy Miles, is charged with manslaughter in the first degree and disorderly conduct in the second degree. Miles has pled not guilty. A not guilty plea puts

each element of the crime with which Miles has been charged in issue. A plea of not guilty requires the State to prove each element of the crime beyond a reasonable doubt.

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

To prove manslaughter in the first degree, the Prosecution must show that Miles “recklessly under circumstances manifesting extreme indifference to the value of human life” caused the death of Janet Jopson in Chinook County on October 26, 2019. Extreme indifference to the value of human life is a state of mind that is more blameworthy than plain recklessness. The Prosecution must prove that Miles showed an extraordinary lack of concern that Miles’s actions might cause a death of another.

To prove disorderly conduct in the second degree, the Prosecution must show that Miles committed one of the acts listed in ORS 166.025 with the intent to cause public inconvenience, annoyance or alarm OR recklessly create the risk of public inconvenience, annoyance, or alarm.

C. Statutes

ORS 163.118 – Manslaughter in the First Degree

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

ORS 166.025 – Disorderly Conduct in the Second Degree

- (1) A person commits the crime of disorderly conduct in the second degree if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:
- (a) Engages in fighting or in violent, tumultuous or threatening behavior;
 - (b) Makes unreasonable noise;
 - (c) Disturbs any lawful assembly of persons without lawful authority;
 - (d) Obstructs vehicular or pedestrian traffic on a public way;
 - (e) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or
 - (f) Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

D. Role Descriptions

Attorneys

Trial attorneys present evidence to support their side of the case. They introduce physical evidence and elicit witness testimony to bring out the facts surrounding the allegations.

In a criminal case, the State brings the case against a defendant. In this case, the State of Oregon will try to prove Cy Miles's guilt beyond a reasonable doubt.

The Defense attorneys will present the case of the defendant, Cy Miles. They will offer their own witnesses and evidence to show their client's version of the facts. They may undermine the Prosecution's case by showing that the Prosecution's witnesses cannot be depended upon, that their witness testimony makes no sense or is inconsistent, or by presenting physical evidence that contradicts that brought by the Prosecution.

The demeanor of **all attorneys** is very important. It is easy to be sympathetic and supportive on direct examination of your own witnesses. While less easy, it is also important to be sympathetic on cross-examination. An effective cross-examination is one in which the cross-examiner, the witness, the judge, and the jury all agree on the outcome. It is poor form and unethical to be sarcastic, snide, hostile or contemptuous on cross-examination. The element of surprise is a valuable tool in an attorney's tool belt, but it is best achieved by being friendly and winning in the courtroom, including when interacting with the other side.

Attorneys on both sides will:

- conduct direct and redirect (if necessary) examination;
- conduct cross-examination and recross (if necessary);
- make appropriate objections (**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 an opening statement and a closing argument.

Attorneys – Opening Statement

An opening statement outlines the case each side intends to present at trial. The attorney for the Prosecution delivers the first opening statement and the Defense follows with the second. A good opening statement should explain what the attorneys plan to prove, what evidence they will use to prove it, mention the burden of proof and applicable law, and present the facts of the case in an orderly, easy to understand manner.

One way to begin your opening statement could be:

“Your Honor, members of the jury, my name is _____ and I represent the State of Oregon/defendant in this case.”

Proper phrasing in an opening statement includes:

- “The evidence will indicate that...”
- “The facts will show that...”
- “Witness (use name) will be called to tell...”
- “The defendant will testify that...”

An attorney makes a successful opening statement when they appear confident, make eye contact with the judges, use the future tense when describing what their side will present, and uses notes sparingly and for reference.

Attorneys – Direct Examination

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

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

Attorneys call a witness with a formal request:

“Your Honor, the Prosecution/Defense would like to call _____ to the stand.”

The clerk will swear in the witness before you begin asking questions. It is good practice to ask your witness some introductory questions to help the witness feel more comfortable. Appropriate introductory questions might include asking the witness’s name, residence, present employment, etc.

Some examples of the phrasing of questions on direct examination include:

“Could you please tell the court what occurred on _____?”

“How long did you remain in that spot?”

“What happened while you waited?”

Conclude your direct examination with:

“Thank you _____. I have no further questions, your Honor.”

To prepare for direct examination, an attorney should isolate the information each witness can contribute to proving the case and prepare a series of clear and simple questions designed to obtain that information. Good attorneys make certain that all items needed to prove the case are presented through the witnesses, never ask a question they don't know the answer to and listen very carefully to the answers given before asking the next question. It is appropriate to ask the judge for a brief moment to collect your thoughts or confer with co-counsel if needed.

Attorneys – Cross Examination, Re-Direct, Re-Cross, and Closing

- For cross-examination, see explanations, examples, and tips for [Rule 611](#).
- For redirect and recross, see explanation and note to [Rule 42](#) and [Rule 611](#).
- For closing, see explanation to [Rule 43](#).

Witnesses

Witnesses supply the facts in the case. A witness's official source of testimony is the witness's statement, all stipulations, and exhibits a witness would reasonably have knowledge of.

A witness may testify to facts stated in or reasonably inferred from the record. If an attorney asks a witness a question and there is no answer to it in the official record, the witness may choose how to answer it. A witness may reply, "I don't know," or "I don't remember," or can infer an answer from the facts the witness officially knows. Inferences are only allowed if they are *reasonable*. If the inference contradicts the official statement, the witness can be impeached. [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. If an objection is not made, the testimony will stand.

Court Clerk, Bailiff, Team Manager

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

The **Prosecution** is expected to provide the **clerk**. The **Defense** provides the **bailiff**.

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

Duties of the Clerk – Provided by the Prosecution

When the judge arrives in the courtroom, the clerk should introduce him/herself and explain that he/she 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. The clerk should have enough copies to be able to give a roster to each judge in every round, one for the opposing team, and some extras (5-6 copies per round). The [roster form](#) contained in this packet should be used. In addition, the clerk is responsible for bringing a copy of the "Rules of Competition" to each round. 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:** The clerk should swear in each witness as follows:

"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?"

Witness responds, "I do."

Clerk then says, "Please be seated, state your name for the court, and spell your last name."

3. **Provide Exhibits:** The clerk should provide copies of the exhibits for attorneys or judges if requested (both sides should have their own copies of the exhibits, however, a well-prepared clerk has spare copies).
4. **Extra Duties:** A clerk may also be asked to perform other duties to assist the judges or Competition Coordinator. A clerk should be prepared to assist in whatever way possible to help the competition run smoothly.

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

Duties of the Bailiff – Provided by the Defense

When the judge arrives in the courtroom the bailiff should introduce him/herself and explain that he/she 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, the bailiff says, "All rise. The Court with the Honorable Judge _____ presiding, is now in session. Please be seated and come to order." Whenever the judges leave or enter the courtroom, you should ask the audience to rise.
2. **Timekeeping:** **The bailiff is responsible for bringing a stopwatch to the trial.** The stopwatch cannot be a cell phone; no electronic devices are permitted. [See Rule 41](#). A bailiff should practice with the stopwatch and know how it works before the competition. [Time limits](#) are provided for each segment of the trial. The bailiff should keep track of time used and time remaining for each segment of the trial using the [timesheet](#) provided in this packet.

Time should stop when attorneys make objections and restart after the judge has ruled on the objection and the next question is asked by the attorney. The time should also stop if the judge questions a witness or attorney.

After each witness has finished testifying, the bailiff should announce the time remaining in the segment. For instance, if after direct examination of two witnesses, the Prosecution has used 12 minutes announce, "Ten minutes remaining." (22 minutes total allowed for direct/redirect, less the 12 minutes already used). After each witness has completed his/her testimony, the bailiff marks the timesheet the time to the nearest 10 seconds. When three minutes remain, the bailiff holds up the "3 minutes" card, followed by the "1 minute" and "0" cards. When time has run out for a segment, the bailiff announces, "Time." The bailiff should make certain the time cards are visible to all judges and attorneys when they are held up.

Timesheets for each round will be provided at the competition. The bailiff is responsible for bringing the sheets to each round. Each team will also be provided with time cards.

A proficient bailiff who times both teams in a fair manner is critical to the success of a trial. Points will be given on the bailiff's performance.

Team Manager, Unofficial Timer

Team Manager (optional)

Teams may wish to have a person acting as Team Manager. This person can be responsible for tasks such as keeping phone numbers of all team members and ensuring that everyone is well-informed of meeting times, Q&A posts, and so on. In case of illness or absence of a team member, the manager could keep a record of all witness testimony and a copy of all attorneys' notes so that someone else may fill in. This individual could also serve as the clerk or bailiff. This position is not required for the competition.

Unofficial Timekeeper (optional)

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

Any objections to the bailiff's official time must be made by the unofficial timekeeper 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 current-performing team members in the above-stated roles may serve as unofficial timekeepers.

To conduct a time check, the unofficial timekeeper should request one from the Presiding Judge and ask the bailiff how much time was recorded in every completed category for both teams. The unofficial timekeeper should then compare times with the bailiff. If the times differ *significantly*, the unofficial timekeeper should notify the judge and ask for a ruling as to the time remaining. If the judge approves the request, the unofficial timekeeper should consult with attorneys and determine if time should be added or subtracted in any category. If the judge does not allow a consultation, the unofficial timekeeper may request an adjustment. The following sample questions and statements may be used.

“Your Honor, before calling the next witness, may I compare time records with the bailiff?”

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

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

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

The trial should not be interrupted for minor time differences. A team should determine in advance a minimum time discrepancy to justify interrupting the trial. The unofficial timekeeper should be prepared to show records and defend requests. Frivolous complaints will be considered by judges when scoring for the round. Likewise, valid complaints will be considered against the violating team.

Time shall be stopped during a timekeeping request.

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 and its decisions are 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 their own witness statement, also known as an affidavit, and/or any necessary documentation relevant to their testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If on 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's testimony. A witness may be asked to confirm (or deny) the presence (or absence) of information in his/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.

MVP Tip: As a witness, you will supply the facts in the case. You may testify only to facts stated in or reasonably inferred from your 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 answers that contain the information that your attorney is trying to elicit. 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.

MVP Tip continued: In cross-examination, anticipate what you will be asked and prepare your answers accordingly. Isolate all of 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. You may be impeached if you contradict what is in your witness statement. See [Rule 607](#).

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's testimony or any substantive issue of the case.

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

1. no extrapolation has occurred;
2. an unfair extrapolation has occurred;
3. the extrapolation was fair; or
4. 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 [Rule 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 exist. Any student may portray the role of any witness of either gender. Teams are requested to indicate members' preferred gender pronouns 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 by the registration deadline. A school may register up to three teams.

To participate in the state competition, a team must successfully compete at the regional level. Teams will be assigned to their regions by Classroom Law Project in January. Every effort is made to allow team to compete in the regions in which their school or organization is located. If a region

assignment causes substantial hardship to a team, the Competition Coordinator may change the assignment to address the hardship.

All **regional** competitions will be held on **Saturday, February 22nd, 2020**. Teams should be aware that the regional competition date is subject to change. Regional Coordinators have discretion to slightly alter the date depending on scheduling requirements, availability of courtrooms, the needs of teams, or inclement weather. If dates change, every effort will be made to notify all teams in a timely manner.

All teams participating at the regional level must be prepared to compete at the state level should they finish among the top in their region. Students on the advancing team 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 competition** is scheduled for **March 6th-17th, 2020**, in Portland.

The number of teams advancing to the state competition will be determined as follows:

Number of Teams Competing in Region	Number of Teams Advancing to State
5 or less	1
6-10	2
11-15	3
16-20	4
21-25	5
More than 25	TBD by Classroom Law Project

Rule 7. Team Composition

A mock trial team must consist of a **minimum of eight** and a **maximum of 18** students all from the same school or organization. Classroom Law Project will determine on a case-by-case basis if a team affiliated with an organization, rather than a school, is eligible to compete.

Additional students may be used in support roles as researchers, understudies, photographers, courtroom artists, court reporters, and news reporters. However, none of these roles will be used in the competition. Teams are encouraged to use the maximum number of students allowable in order to maximize participation.

Note: The National High School Mock Trial Competition limits teams to a maximum of nine members with no more than six competing in any given round. Oregon's advancing team may have to change the composition of the team in order to participate at the national level.

A mock trial team is defined as an entity that includes attorneys and witnesses for both the Prosecution and Defense (students may play roles on both sides if necessary), clerk, and a bailiff.

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

All mock trial teams must submit a [Team Roster](#) listing the team name and all coaches and students to the Competition Coordinators at student check-in. If a school/organization enters more than one team, **team members cannot switch teams at any time for any round of regional or state competition.**

Schools will provide a color to accompany the team name in order to differentiate between teams from the same school. For instance, West Ridge Green and West Ridge Purple.

For purposes of competition, all teams will be assigned a random letter code such as EQ or MZ. The code is assigned to maintain anonymity of the team for judging. Teams will be assigned a letter code by Classroom Law Project prior to the competition. Notification of the letter code assignments will be made via the Mock Trial Q&A webpage.

Rule 8. Team Presentation

Teams must present both the Prosecution and Defense sides of the case. All team members must be present and ready to participate in all rounds. The Competition Coordinators will make certain that both the Prosecution and Defense sides of each 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 a team will automatically switch sides for Round 2. However, if a team argues the same side in Rounds 1 and 2, they will be guaranteed to switch sides in Round 3. Parents/observers 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 time 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 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. The rules do not provide for voluntary forfeiture by a team.

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 objections to the opposing attorney’s questions of that witness’s cross-examination; and vice versa.

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

Rule 11. Swearing in the Witnesses

The following oath may be used before questioning begins:

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

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

Rule 12. Trial Sequence and Time Limits

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

Introductory Matters	5 minutes total (conducted by Presiding Judge)*
Opening Statement	5 minutes per side
Direct and Re-Direct(optional)	22 minutes per side
Cross and Re-Cross(optional)	11 minutes per side
Closing Argument	5 minutes per side**
Judges’ Deliberations	10 minutes total (judges in private)*
Total Competition Time Per Side	43 minutes

*Not included in 43 minutes allotted for each side of the case.

**Prosecution may reserve time for rebuttal at the beginning of its Closing Argument. The Presiding Judge should grant time for rebuttal (if any time remains) even if time has not been explicitly reserved.

The Prosecution delivers its Opening Statement and Closing Argument first. The Prosecution may reserve a portion of its closing argument time for rebuttal. 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 segment 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.** An optional unofficial timekeeper may also be provided by the Prosecution according to the directions in [Section V.E.](#) of these materials.

Timing will stop during objections, extensive questioning from a judge, and administering the oath. Timing will **not** stop 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 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. The bailiff will notify the judges when time has elapsed.

Rule 14. Time Extensions and Scoring

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

Rule 15. Supplemental Material, Illustrative Aids, Costuming

Teams may refer only to materials included in these trial materials. 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 in these case materials or by Classroom Law Project. Use of easels, flip charts, and the like is prohibited. Violation of this rule may result in a lower team score.

Rule 16. Trial Communication

Coaches, non-performing team members, alternates, and observers shall not talk, signal, communicate with, or coach their teams during trial. **This rule remains in force during any recess time** that may occur. Performing team members may, among themselves, communicate during 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 being used by the timekeeper(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 in deducting points 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 Competition Coordinator, are **not** allowed to view other teams in competition, so long as their team remains in the competition. Courtroom artists may compete in a courtroom that is not associated with their school or organization.

Rule 18. Videotaping, Photography, Media

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

C. Judging and Team Advancement

Rule 19. Decisions

All decisions of the judging panels are FINAL.

Rule 20. Composition of Panel

The judging panel will consist of three individuals: one Presiding Judge, one Attorney Judge, and one Witness Judge. All three shall score teams using the [sample ballots](#) provided in these materials. The Presiding Judge shall cast a ballot based on the overall team performances including the clerk and bailiff, the Attorney Judge shall cast a ballot based on the performance of the attorneys, and the Witness Judge shall cast a ballot based on the performance of the witnesses. All judges receive the mock trial case materials, a memorandum outlining the case, orientation materials, and a briefing in a judges' orientation.

If necessary to continue competition, the Competition Coordinator may allow two judges to score a trial. In that instance, the witness ballot shall be completed by the Presiding Judge and Attorney Judge together.

During the final championship round of the state competition, the judges' panel may have more than three members at the discretion of Classroom Law Project.

Rule 21. Ballots

The term "ballot" refers to the decision made by each judge as to which side had the better performance in a round. Each judge casts a ballot based on specific team members' performances: Presiding Judges score overall team performances, clerks, and bailiffs; Attorney Judges score the attorneys; Witness Judges score the witnesses. Each judge completes his/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. [Sample ballots](#) are included in these materials.

Rule 22. Team Advancement

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

1. Win/Loss Record – the number of rounds won or lost by a team;
2. Total Number of Ballots – the number of judges' votes a team earned in preceding rounds;
3. Total Number of Points accumulated;
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

Pairings for the first round of regional competition will be selected randomly. A power matching system will determine opponents for all other rounds. The teams emerging with the strongest record from the first three rounds will advance to the state competition and the final round. At the state competition, as between the top two teams in the championship round, the winner will be determined by the ballots from the championship round only.

Power matching provides that:

1. Pairings for the first round of regional competition will be randomly selected;
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: (a) win/loss record, (b) ballots, and (c) total 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 will be made to assure 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 (less than eight teams) have the discretion to modify power matching rules to create a fairer competition.

Rule 24. Merit Decisions

Judges shall not announce a ruling either on the legal merits of the trial or based on the ballots and score sheets.

Rule 25. Effect of Bye, Default, or Forfeiture

A bye becomes necessary when an odd number of teams compete in a region. The bye in the first round is assigned randomly. In Rounds 2 and 3, the bye is given to the team with the lowest cumulative score at that point in the competition.

For the purposes of advancement and seeding, when a team draws a bye or wins by default in Round 1, that team will be given a win and, temporarily, the average number of ballots and points earned by all Round 1 winners. A team that wins by default or draws a bye in Round 2 will be given a win and, temporarily, the average number of ballots and points earned by all the Round 2 winners. A team that wins by default or draws a bye in Round 3 will be given a win and an average of that team's wins and ballots from Rounds 1 and 2. After Round 3, bye teams or default winners will replace their average ballots and points with an average of their own ballots and points from the 2 rounds in which they competed.

D. Dispute Settlement

Rule 26. Reporting Rules Violation – Inside the Bar

At the conclusion of each trial round, the Presiding Judge will ask each side if it would like to file a dispute. If any team has serious reason to believe that a material rules or ethical violation has

occurred, 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 [Rule 26 Reporting Form](#) contained in these materials. **At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke dispute procedures.** 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 Presiding Judge will record the reasons for denial, announce the decision to the Court, and retire along with the other judges to complete the scoring process.

If the Presiding 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 Presiding Judge, the Presiding Judge will ask each team to designate a spokesperson. Spokespersons will have 5 minutes maximum to prepare their arguments, after which the Presiding Judge will conduct a hearing, providing each spokesperson three minutes to present their argument. Spokespersons may be questioned by the judge. At no time during the 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 a ruling on the dispute. That decision will be recorded 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 scorers of the dispute and provide a summary of each team's argument. Two penalty points will also be deducted from the violating teams score and indicated on the Presiding Judge's ballot. The decision of the Presiding Judge is 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 the [Rule 29 Reporting Form](#). The form will be submitted to the Competition Coordinator who will rule on any actions to be taken regarding the charge, including notification of the judging panel. Violations occurring during a trial involving competing students should be handled according to [Rules 26-28](#).

VII. Rules of Procedure

A. Before the Trial

Rule 30. Team Roster

Copies of the [Team Roster](#) 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, teams shall exchange copies of the Team Roster. Witness lists should identify the preferred gender pronouns 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 Setting

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

B. Beginning the Trial

Rule 34. Jury Trial

The case will be tried to a jury; arguments are to be made to the Presiding Judge and jury. Teams may address the judges seated in the jury box as the jury.

Rule 35. Motions Prohibited

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

Rule 36. Standing During Trial

Unless excused by the Presiding Judge, attorneys will stand while giving opening statements and closing arguments, 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 argument. 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 for 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

Attorneys may not ask questions that are so general that they do not call for a 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.

MVP Tip: This objection also applies to a 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.

Rule 39. Procedure for Introduction of Exhibits

The following steps effectively introduce evidence:

Introduce the Item for Identification

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

Offer the Item into Evidence

1. Offer the exhibit into evidence. “Your Honor, we offer Exhibit ___ into evidence at this time. The authenticity of the exhibit has been stipulated.”
2. 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.
3. Opposing counsel: “No, Your Honor,” or “Yes, Your Honor.” If yes, the objection will be stated on the record. Court: “Is there any response to the objection?”
4. Court: “Exhibit ___ is/is not admitted.”

The attorney may then proceed to ask questions. If admitted, Exhibit ___ becomes a part of the Court’s official record and, therefore, is handed over to the Clerk. The exhibit should not be left with the witness or taken back to counsel table.

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

Rule 40. Procedure for Qualifying Expert Witnesses

Only a witness who is qualified as an expert may give an opinion as to scientific, technical, or other specialized knowledge in the area of their expertise. The following steps will effectively qualify an expert:

1. Ask the expert to describe factors such as education, professional training, work experience, special skills, or publications they have authored.
2. Ask the Court to qualify the witness as an expert in a particular field.
3. Once qualified, ask for witness’s expert opinion on _____.

Example: The wife of Harold Hart is suing General Hospital for malpractice. She claims the hospital did not treat Mr. Hart for an obvious heart attack when he was brought to the hospital. Mrs. Hart’s lawyer is examining the hospital’s expert witness, Dr. Jones:

Attorney: “Dr. Jones, what is your occupation?”

Witness: “I am a heart surgeon at the Oregon Health & Science University Knight Cardiovascular Institute.”

Attorney: “Where did you attend medical school?”

Witness: “I graduated from OHSU Medical School in 1985.”

Attorney: “Where did you do your internship?”

Witness: “I did a two-year internship in Cardiology at Johns Hopkins University from 1985 – 1987.”

Attorney: “Did you then specialize in any particular field of medicine?”

Witness: “Yes, I specialized in the treatment of heart attacks and cardiothoracic surgery.”

Attorney: “Have you published any books or articles on the topic?”

Witness: “Yes, I have written several chapters in medical texts on heart surgery and care for patients after heart attacks.”

Attorney: “Do you hold any professional licenses?”

Witness: “Yes, I am certified by both the Oregon and Washington Boards of Medical Examiners to practice medicine in both states.”

Attorney: “Your Honor, I ask that Dr. Jones be qualified as an expert in the fields of cardiothoracic surgery and heart attack care.”

Judge: “Any objections?”

Opposing Attorney: “No, Your Honor.”

Judge: “Let the record reflect that Dr. Jones is qualified to testify as an expert in the fields of cardiothoracic surgery and heart attack care.”

Rule 41. Use of Notes; No Electronic Devices

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

Rule 42. Redirect, Recross

Redirect and recross examinations are permitted, provided they conform to the restrictions in [Rule 611\(d\)](#).

D. Closing Arguments

Rule 43. Scope of Closing Arguments

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

MVP Tip: A good closing argument summarizes the case in the light most favorable to your position. The Prosecution delivers the first closing argument and should reserve time for rebuttal before beginning. The closing argument of the Defense concludes that side’s presentation.

A closing argument should:

- be spontaneous and synthesize what actually happened in the court;
- be emotionally charged and strongly appealing (unlike the calm, composed opening statement);
- review the witnesses’ testimony and physical evidence presented, but not raise new facts;
- outline the strengths of your side’s witnesses and the weaknesses of your opponent’s witnesses;
- isolate the issues and describe briefly how your presentation addressed these issues;
- attempt to reconcile any inconsistencies in your presentation;
- reiterate your claim for relief (what you’re asking the court to do).

E. Critique

Rule 44. The Critique

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

VIII. Federal Rules of Evidence – Mock Trial Version

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the mock trial team to know the Mock Trial Rules of Evidence and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence. **The numbering of some rules does not match the Federal Rules of Evidence and some rule numbers or sections are skipped because those rules were not deemed applicable to mock trial procedure.**

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 is appropriate.

Article I. General Provisions

Rule 101. Scope

The *Mock Trial Rules of Competition* and these *Federal Rules of Evidence – Mock Trial Version* govern the Oregon High School Mock Trial Competition.

Rule 102. Purpose and Construction

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

Article II. Judicial Notice

Rule 201. Judicial Notice of Adjudicative Facts

1. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
2. The court may judicially notice a fact that is not subject to reasonable dispute because it is a matter of mathematical or scientific certainty. For example, the court could take judicial notice that $10 \times 10 = 100$ or that there are 5,280 feet in a mile.
3. The court must take judicial notice if a party requests it and the court is supplied with the necessary information.
4. The court may take judicial notice at any stage of the proceeding.
5. A party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed.

6. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

Article IV. Relevancy and Its Limits

Rule 401. Definition of Relevant Evidence

Evidence is relevant if:

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

Rule 402. General Admissibility of Relevant Evidence

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

Example: Questions and answers must relate to an issue in the case. The following is likely inadmissible in a traffic accident case: “Mrs. Smith, how many times have you been married?”

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, etc.

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

Rule 404. Character Evidence; Crimes or Other Acts

a) Character Evidence

1. Prohibited Uses. Evidence of a person’s character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
2. Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:
 - A. a defendant may offer evidence of the defendant’s pertinent trait, and if the evidence is admitted, the prosecution may offer evidence to rebut it;
 - B. a defendant may offer evidence of an alleged victim’s pertinent trait, and if the evidence is admitted the prosecution may:
 - i. offer evidence to rebut it; and
 - ii. offer evidence of the defendant’s same trait; and
 - C. in a homicide case, the prosecution may offer evidence of the alleged victim’s trait of peacefulness to rebut evidence that the victim was the first aggressor.
3. Exceptions for a Witness. Evidence of a witness’s character may be admitted under Rules [607](#), [608](#), and [609](#).

b) Crimes, Wrongs, or Other Acts

1. Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
2. Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Rule 405. Methods of Proving Character

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

Rule 406. Habit, Routine Practice

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

Rule 407. Subsequent Remedial Measures

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

1. negligence;
2. culpable conduct;
3. a defect in a product or its design;
4. a need for a warning of instruction.

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

Rule 408. Compromise Offers and Negotiations

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

Rule 409. Offers to Pay Medical and Similar Expenses

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

Rule 410. Pleas, Plea Discussions, and Related Statements

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

Rule 411. Liability Insurance (civil cases only)

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

Article V. Privileges

Rule 501. General Rule

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

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

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may

consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under [Rule 703](#). See [Rule 3](#).

Example: Witness knows that if Harry tends to drink a lot at parties and often gets drunk. Witness was not at the party and did not see Harry drink.

Attorney 1: "Do you think Harry was drunk at the party?"

Witness: "Harry gets drunk all the time, so yes he was probably drunk."

Attorney 2: "Objection, Your Honor. Lack of personal knowledge. Witness was not at the party and can't know if Harry was drunk or not."

Judge: "Sustained. The jury will disregard the witness's answer."

Rule 607. Who May Impeach

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

MVP Tip: An effective cross-examiner tries to show the jury that a witness should not be believed. This is best accomplished through a process call *impeachment* which may use one of the following tactics: (1) showing that the witness has contradicted a prior statement, particularly one made by the witness in an affidavit (see example below); (2) asking questions about prior conduct of the witness that makes the witness's truthfulness doubtful (see [Rule 608](#)); or (3) asking about evidence of certain types of criminal convictions (see [Rule 609](#)).

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

1. Introduce the witness's affidavit for identification (See [Rule 39](#));
2. Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit.

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

Mrs. Burns: "Yes."

3. Ask the witness to read the portion of the affidavit that contradicts the testimony.

Attorney: "Mrs. Burns, will you read Line 18 of your affidavit?"

Witness: Reading from affidavit, "Harry and I decided to stay in town and go to the theater."

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

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

Witness: "Yes."

Attorney: "Yet, in your affidavit, you said you were *in* town, did you not?"

Witness: "Yes."

Rule 608. Evidence of Character and Conduct of Witness

- a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

Example:

Attorney 1 (on cross-examination): "Isn't it true that you once lost a job because you falsified expense reports?"

Witness: "Yes, but..."

Attorney 1: "Thank you."

Attorney 2 (on redirect): "Did you do anything to mitigate the falsified reports?"

Witness: "Yes, I paid back all of the money and entered a program for rehabilitation."

Attorney 2: "And how long ago was this?"

Witness: "25 years."

Attorney 2: "And have you successfully held jobs since then that required you to be truthful and to be trusted by your employer?"

Witness: "Yes."

- b) Specific Instances of Conduct. Except for a criminal conviction under [Rule 609](#), extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:
1. the witness; or
 2. another witness whose character the witness being cross-examined has testified about.

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

Rule 609. Impeachment by Evidence of Conviction of Crime

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

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

- a) Control by Court; Purposes. The Court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
1. make those procedures effecting for determining the truth;
 2. avoid wasting time; and
 3. protect witnesses from harassment or undue embarrassment.
- b) Scope of cross-examination. The scope of cross-examination **shall not** be limited to the scope of the direct examination, but **may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences** that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.

MVP Tip: Cross-examination follows the opposing attorney's direct examination of a 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 the fact pattern;
- use leading questions which are designed to get "yes" or "no" answers (see examples below);
- 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.

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

- c) Leading questions. Leading questions should not be used on direct examination except as necessary to advance the witness's testimony. Ordinarily, the court should allow leading questions:
1. on cross-examination; and
 2. when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

Example:

Attorney 1 (on cross-examination): "So, Mr. Smith, you took Ms. Jones to a movie that night, didn't you?"

- d) Redirect/Recross. 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 recross, but such questions must be limited to matters raised on redirect examination and should avoid repetition. **For both redirect and recross, attorneys are limited to two questions each.**

MVP Tip: Following cross-examination, the counsel who called the witness may conduct redirect examination. Attorneys redirect to clarify new or unexpected issues or facts brought out in the immediately preceding cross-examination only; they may not bring up new issues. Attorneys may or may not want to redirect. 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. Attorneys should pay close attention to what is said during cross-examination to determine whether it is necessary to conduct redirect.

If the credibility or reputation for truthfulness of the witness is attacked on cross-examination, the direct examining attorney may wish to “save” the witness on redirect. If so, the questions should be limited to the damage the attorney thinks was done and should enhance the witness’s truth-telling image in the eyes of the court. Work closely with your coaches on redirect and recross strategies. Remember that time will be running during both redirect and recross and may take away from the time you need for questioning other witnesses.

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

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

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

Rule 613. Witness’s Prior Statement

- a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness’s prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party’s attorney.
- b) Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness’s prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision 2. does not apply to an opposing party’s statement under [Rule 801 4.b.](#)

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

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

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

Example:

Inadmissible Lay opinion testimony: "The doctor put my cast on incorrectly. That's why I have a limp now."

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. See [Rule 40](#).

Rule 703. Bases of Opinion Testimony by Experts

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

MVP Tip: 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, 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 of Ultimate Issue

- a) In General – Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.
- b) Exception. In a criminal case, an expert must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

Article VIII. Hearsay

The following scenario will be used in all of the hearsay or hearsay exception examples below:

Mary is on trial for manslaughter. She allegedly drove after drinking, jumped a curb, and hit a pedestrian on the sidewalk. The pedestrian later died from his extensive injuries. Mary claims at trial that she was not driving – her boyfriend, Nate, was – and he swerved to miss a dog in the street. Several bystanders saw the accident and told the police that Mary was driving.

Rule 801. Definitions

The following definitions apply under this article:

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

Example: Mary's attorney calls Mary's friend Susan to testify.

Mary's Attorney: "And was Mary driving the car in question?"

Susan: "Well, Nate told me that he was driving, not Mary."

Nate's statement is hearsay. Nate (the declarant) made an oral assertion to Susan. The statement was not made while testifying and Mary's attorney is (assuming no other facts) offering it to prove that Nate, not Mary, was driving (the truth of the matter asserted).

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

Example: Prior to Mary's criminal trial, the victim's family sued Mary for wrongful death and won. Nate was a witness in the civil trial and has now been called as a witness in Mary's criminal trial.

Prosecutor: "Nate, you say you were driving the vehicle before it hit the curb, correct?"

Nate: "Yes."

Prosecutor: "And you swerved and hit the curb because...?"

Nate: "I swerved to miss a dog."

Prosecutor (after properly introducing civil trial transcript for identification):
"Nate, will you read Line 18 of this page?"

Nate: "Witness (Nate): 'I swerved to miss a giant pothole.'"

Mary's Attorney: "Objection! That statement is hearsay."

Prosecutor: "Your Honor, this is a prior statement made by the witness and is not hearsay."

Judge: "Objection is overruled. Witness's prior statement under oath is not hearsay and is admissible."

2. An Opposing Party's Statement. The statement is offered against an opposing party and:

- A. was made by the party in an individual or a representative capacity;
- B. is one the party manifested that it adopted or believed to be true;
- C. was made by a person whom the party authorized to make a statement on the subject;
- D. was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
- E. was made by the party's conspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under iii.; the existence or scope of the relationship under iv.; or the existence of the conspiracy or participation in it under v.

Example: Prosecutor is cross-examining Susan, Mary's friend.

Prosecutor: "Mary actually called you after the accident, didn't she?"

Susan: "Yes."

Prosecutor: "And Mary told you all about the accident didn't she?"

Susan: "She talked about the accident, yes."

Prosecutor: "And Mary told you during that call that she'd driven her car into a person, right?"

Mary's Attorney: "Objection! Mary's statement to Susan is hearsay."

Prosecutor: “Your Honor, Mary’s statement is an Opposing Party’s statement.”

Judge: “Objection overruled. Mary’s statement is not hearsay and is admissible.”

Prosecutor: “So, Mary told you she’d driven her car into a person, right?”

Susan: “Mary said, ‘I can’t believe I drove my car into a person.’”

Rule 802. Hearsay Rule

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

Rule 803. Exceptions to the Rule Against Hearsay – Regardless of Availability

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

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

Example: Mary’s attorney calls a bystander who was at the scene of the accident to testify.

Mary’s Attorney: “Were you present when the accident occurred?”

Bystander: “Yes, I was across the street.”

Mary’s Attorney: “And what do you remember about the accident?”

Bystander: “I was across the street looking for an address. I had my back turned to the street and I heard an engine revving. Then, someone behind me said, ‘That car is going really fast.’”

Prosecutor: “Objection! That statement is hearsay.”

Mary’s Attorney: “Your Honor, the statement is a present sense impression and is excepted from the hearsay rule.”

Judge: “Objection overruled.”

Mary’s Attorney: “So you heard someone behind you say...”

Bystander: “That car is going really fast.”

2. Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement that it caused.

Example: Mary's attorney continues to question the bystander.

Mary's Attorney: "So, then what happened?"

Bystander: "I started to turn toward the street and as I turned I heard a woman yell, 'Oh my God, that man's car is out of control!'"

Prosecutor: "Objection, Your Honor. Hearsay."

Mary's Attorney: "Your Honor, the woman's statement is an excited utterance. She made the statement while watching the car drive out of control and it is related to the event."

Judge: "Overruled. The statement is admissible."

3. Then-Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

Example: Mary's attorney continues to question the bystander.

Mary's Attorney: "Then what did you see?"

Bystander: "By the time I turned around, both people were out of the car. The man from the car staggered into a woman and she said, 'Oh my God, he reeks of alcohol!'"

Prosecutor: "Objection! Hearsay!"

Mary's Attorney: "Your Honor, the declarant's statement was a sensory condition. She smelled alcohol when my client's boyfriend fell into her and said so."

Judge: "The objection is overruled."

4. Statement Made for Medical Diagnosis or Treatment. Statements made for the purpose of medical diagnosis or treatment.
5. Recorded Recollection. A record that:
 - A. is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
 - B. was made or adopted by the witness when the matter was fresh in the witness's memory; and

C. accurately reflects the witness's knowledge.

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

6. Records of Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:
 - A. the record was made at or near the time by – or from information transmitted by – someone with knowledge;
 - B. the record was kept in the course of regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
 - C. making the record was a regular practice of the activity;
 - D. all these conditions are shown by the testimony of the custodian or another qualified witness; and
 - E. the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.
7. Absence of Regularly Conducted Activity. Evidence that a matter is not included in a record described in Rule 803.6. if:
 - A. the evidence is admitted to prove that the matter did not occur or exist;
 - B. a record was regularly kept for a matter of that kind; and
 - C. the opponent does not show that the possible source of information or other circumstances indicate a lack of trustworthiness.
8. Public Records. A record or statement of a public office if:
 - A. it sets out:
 - i. the office's activities;
 - ii. a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personnel; or
 - iii. in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
 - B. the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.
10. Absence of a Public Record. Testimony that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:
 - A. the record or statement does not exist; or
 - B. a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.
16. Statements in Ancient Documents. A statement in a document that is at least 20 years old and whose authenticity is established.
18. Statements in Learned Treatises, Periodicals, or Pamphlets. A statement contained in a treatise, periodical, or pamphlet if:
 - A. the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
 - B. the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.
21. Reputation Concerning Character. A reputation among a person's associates or in the community concerning a person's character.
22. Judgment of a Previous Conviction. Evidence of a final judgment of conviction if:
 - A. the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

- B. the conviction was for a crime punishable by death or by imprisonment for more than one year;
 - C. the evidence is admitted to prove any fact essential to the judgment; and
 - D. when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.
- The pendency of an appeal may be shown but does not affect admissibility.

Rule 804. Hearsay Exceptions; Declarant Unavailable

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

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

- b) **The Exceptions.** The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:
- 1. **Former Testimony.** Testimony that:
 - A. was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
 - B. is now offered against a party who had – or in a civil case, whose predecessor in interest had – an opportunity and similar motive to develop it by direct, cross-, or redirect examination.
 - 2. **Statement Under the Belief of Imminent Death.** In a prosecution for a homicide or in a civil case, a statement that the declarant, while believing the declarant’s death to be imminent, made about its cause or circumstances.
 - 3. **State Against Interest.** A statement that:
 - A. a reasonable person in the declarant’s position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant’s proprietary or pecuniary interest or had so great a tendency to invalidate the declarant’s claim against someone else or to expose the declarant to civil or criminal liability; and
 - B. is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.
 - 4. **Statement of Personal or Family History**

- A. the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or
 - B. another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.
5. **Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.**
A statement offered against a party that wrongfully caused – or acquiesced in wrongfully causing – the declarant's unavailability as a witness and did so intending that result.

Rule 805. Hearsay Within Hearsay

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

IX. Notes to Judges

A. Judging Guidelines

Mock Trial is most successful when judges are familiar with the witness statements and the rules of competition. Please take time before the competition to review both of these sections of the materials. Being prepared is the best way to honor the time and effort the students have given to the Mock Trial. Note that Mock Trial rules often differ from the rules in an actual court of law. Particularly, the evidence rules are simplified and modified.

The Mock Trial competition differs *significantly* 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 to request a bench conference (to be held in open court from counsel table) to ask the students to find where the information is included in the case materials.
3. Mock Trial rounds are timed. The student Bailiff, provided by the defense team, is the official timekeeper. The Prosecution/Plaintiff provides the Clerk. Bailiffs time all phases of the trial, including the final remarks. The Prosecution/Plaintiff may provide an unofficial timer if they choose. See [Team Roles, Unofficial Timer](#).
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 Attorney and Witness Judges as the jury, 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](#). Objections stop the clock, so please be as efficient as possible when ruling while still allowing students to argue the objections.
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 should be included in the judges' ballots, at their discretion. Ballots will be shared with teams following the competition. [See Rule 44](#). Additionally, judges shall **not** offer a verdict on the merits.

Each courtroom will be assigned a panel of three judges. In extenuating circumstances, a courtroom may have only two judges. See [Rule 20](#). The Presiding Judge will sit at the bench and the remaining two judges will sit in the jury box.

B. Introductory Matters (Presiding Judge)

The Presiding Judge should handle the following introductory matters before beginning the trial:

7. Ask each side if it is ready for trial. If so, ask each side to provide each judge with a copy of its Team Roster. Then, ask each member to rise and state their name, role, and team letter code (not school name).
8. If video or audio recorders are present, inquire of both teams whether they have objections to recording of the round.
9. Ask if there are people in the courtroom who are connected with other schools in the competition not performing in your courtroom. If so, they should be asked to leave. They may contact the Competition Coordinator to determine the location of the courtroom in which their school is performing.
10. Remind spectators of the importance of showing respect for the teams. Ask spectators to **silence electronic devices**. Judges may remove spectators who do not adhere to proper courtroom decorum.
11. Remind teams that witnesses are permitted to testify only to the information in the fact situation, their witness statements, and what can be reasonable inferred from that information.
12. Remind teams that they must complete their presentations within the specified time limits. The bailiff will signal you as the time for each segment progresses. Three-minute, one minute, and zero-minute cards will be held up by the bailiff. At the end of each segment attorneys and witnesses will be stopped when time has run out, regardless of completion of the presentation.
13. All witnesses must be called. If a team fails to call a witness penalty points will be assigned. See [Rule 10](#).
14. Only the following exhibits may be offered as evidence at the trial:

Exhibit 1: Agreement Between Cy Miles and Marlo Hubbard

Exhibit 2: Digby Theater Floorplan

Exhibit 3: Social Media Post

Exhibit 4: Report from ForensicMagician

Exhibit 5: Facebook Subscriber Information

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 shall be in effect. See the [Code of Ethical Conduct](#). 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 motion. If so, resolve the matter as indicated in [Rule 27](#). Then, judges will complete their ballots. **Judges shall NOT inform the students of results of their scores or results from their ballots.** Judges should also **not** announce a verdict on the merits. Once ballots are complete, the clerk will immediately deliver them to the score room while final remarks are made.

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 power-matched based on win/loss record, total ballots, and total number of points.

You should use your team rosters (provided by each team) for note-taking and reference when evaluating performances.

Judges will be provided with individual ballots. Ballots shall be completed and given to the Clerk for delivery to the scoring room **immediately** following completion of the round and before and final remarks. Judges will **not** provide oral critique. Comments may be written on ballots. Teams will be provided with copies of their ballots after the competition. Scoring duties among the judges will be distributed as follows:

- The Presiding Judge shall score based on overall strategy and performance – the big picture – and the clerk and bailiff.
- The Attorney Judge shall score the student attorneys' performances.
- The Witness Judges shall score the student witness's performances.

Judges shall assign a score of 1-10 in each section of their ballots. The sections should be added and the total should be written at the bottom of the ballot. Scoring is broken down as follows:

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

The back of each ballot will have a list of criteria for each role being evaluated. A good way to approach assigning points is to start each performance at a 5 (average). Then, the performance can either drop below or exceed average. This helps to avoid score inflation. Remember: a score of 1 OR 10 should be rare.

D. Penalty Points

Penalty Points should be assigned if a team member:

1. uses procedures beyond the Mock Trial rules (with intent, not mistakenly);
2. goes beyond the scope of the Mock Trial materials (with intent, not mistakenly);
3. does not follow mock trial rules in any other way (with intent, not mistakenly);
4. talks to coaches, non-performing team members or other observers. This includes during breaks and recesses, if any should occur, in the trial. This violation, if determined to be harmful, carries a mandatory **2-point penalty** to be indicated on the Presiding Judge's ballot.
5. does not call all witness. This violation carries a mandatory **2-point penalty** to be indicated on the Presiding Judge's ballot.

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

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

X. Appendices

A. Often Used Objections in Suggested Form

This appendix 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 materials. Impermissible objections are those not related to the Mock Trial rules (example: hearsay exception for business records). That is to say, an objection must be based on a rule found in the Mock Trial materials, not based on additional rules even if they are commonly used by lawyers in real trials.

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

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](#).

Example:

Attorney 1 (on cross-examination): “So, Mr. Smith, you took Ms. Jones to a movie that night, didn’t you?” (This question calls for a yes or no answer.)

Attorney 2: “Objection! Counsel is leading the witness.”

Attorney 1: “Your Honor, leading is permissible on cross-examination.”

Judge: “Objection is overruled.”

OR

Attorney 2 (on direct examination): “So, Mr. Smith, you took Ms. Jones to a movie that night, didn’t you?”

Attorney 1: “Objection! Counsel is leading the witness.”

Attorney 2: “I’ll rephrase Your Honor. Mr. Smith, where did you and Ms. Jones go that night?” (This question is open-ended and does not call for a yes or no answer.)

2. **Relevance.** See [Rule 402](#).

Example: In a traffic accident case defendant is accused of intentionally hitting her ex-husband’s car. Her defense is that she had no intention of hitting her ex-husband, but couldn’t stop in time to avoid the collision.

Plaintiff’s Attorney (on cross-examination): “You are divorced from the Plaintiff, correct?”

Defendant: “Yes.”

Plaintiff’s Attorney: “And the Plaintiff was your 4th husband, right?”

Defendant’s Attorney: “Objection, Your Honor. My client’s past marriages are not relevant here.”

Plaintiff’s Attorney: “Your Honor, this line of questioning goes toward showing the Defendant’s motive and a pattern of behavior based on her past divorces.”

Judge: “I’ll allow it, but Counsel please lay a better foundation for the question.”

3. **Hearsay.** See [Rules 801 – 805](#).

Example: Defense attorney questions bystander in a traffic collision case resulting in a death.

Defense Attorney: “So, then what happened?”

Bystander: “I started to turn toward the street and as I turned I heard a woman yell, ‘Oh my God, that man’s car is out of control!’”

Prosecutor: “Objection, Your Honor. The woman’s statement is hearsay.”

Defense Attorney: “Your Honor, the woman’s statement is an excited utterance. She made the statement while watching the car drive out of control and it is related to the event.” (This is an explanation of the exception/exclusion which the attorney asserts applies to the statement.)

Judge: “Overruled. The statement is admissible.”

4. **Personal Knowledge.** See [Rule 602](#).

Example: Witness knows that Harry tends to drink a lot at parties and often gets drunk. Witness was not at the party and did not see Harry drink.

Attorney 1: “Do you think Harry was drunk at the party?”

Witness: “Harry gets drunk all the time, so yes he was probably drunk the night of the party.”

Attorney 2: “Objection, Your Honor. Lack of personal knowledge. Witness was not at the party and can’t know if Harry was drunk or not.”

Judge: “Sustained. The jury will disregard the witness’s answer.”

5. **Opinions.** See [Rule 701](#).

Example:

Attorney 1: “And what happened when you went home from the Emergency Room?”

Witness: “I figured out the doctor put my cast on incorrectly. That’s why I have a limp now.”

Attorney 2: “Objection, Your Honor. The witness is not a doctor and can’t offer an opinion on the sufficiency of his cast.”

Attorney 1: “The witness can offer his opinion about his own cast.”

Judge: “The objection is sustained. The witness does not have the expertise to evaluate his cast or whether it caused him to limp.”

6. **Outside the Scope of Mock Trial Materials/Rules.** See [Rule 4](#).

Example: Witness’s statement says that she is a mother of eight children and works two jobs.

Attorney 1 (on cross-examination): “So, you have *eight* children?”

Witness: “Yes.”

Attorney 1: “And you work *two* jobs?”

Witness: “Yes.”

Attorney 1: “So, you must be pretty exhausted most days.”

Attorney 2: “Objection, Your Honor. Question asks witness to testify to information not contained in the mock trial materials.”

Attorney 1: “Your Honor, she would be making a reasonable inference from her witness statement.”

Judge: “Objection is overruled. It is reasonable to infer from the mock trial materials that the witness might be tired.”

B. Timesheet

OREGON HIGH SCHOOL MOCK TRIAL
Time Sheet (Criminal Case)

ROUND: _____

Prosecution Team Code _____

v.

Defense Team Code _____

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

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

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

C. Team Roster

OREGON HIGH SCHOOL MOCK TRIAL TEAM ROSTER

Team Code: _____

Submit copies to: (1) Competition Coordinator before trials begin; (2) Each of 3 judges in each round; and (3) Opposing team in each round (19 total copies not including spares). For the benefit of judges and the opposing team, please indicate preferred pronouns for each student.

MOCK TRIAL ROLE	STUDENT NAME
PROSECUTION TEAM	
Witness –	
Witness –	
Witness –	
Attorney – Opening Statement	
Attorney – Direct Examination of Witness	
Attorney – Direct Examination of Witness	
Attorney – Direct Examination of Witness	
Attorney – Cross-Examination of Defense Witness	
Attorney – Cross-Examination of Defense Witness	
Attorney – Cross-Examination of Defense Witness	
Attorney – Closing Argument	
Clerk	
DEFENSE TEAM	
Witness –	
Witness –	
Witness –	
Attorney – Opening Statement	
Attorney – Direct Examination of Witness	
Attorney – Direct Examination of Witness	
Attorney – Direct Examination of Witness	
Attorney – Cross Examination of Plaintiff Witness	
Attorney – Cross Examination of Plaintiff Witness	
Attorney – Cross Examination of Plaintiff Witness	
Attorney – Closing Argument	
Bailiff	



OREGON HIGH SCHOOL MOCK TRIAL

Presiding Judge Ballot

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

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

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

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

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

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

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

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

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

Feel free to take notes on the reverse. These notes, along with your ballot, will be shared with the coaches (and potentially students).

Presiding Judge Notes:

Prosecution

theme/theory/strategy

clear and coherent portrayal

all characters memorable in their performances

attentive and collaborative

knowledge, flexibility, and spontaneity

confidence, poise, and professionalism

Defense

theme/theory/strategy

clear and coherent portrayal

all characters memorable in their performances

attentive and collaborative

knowledge, flexibility, and spontaneity

confidence, poise, and professionalism



OREGON HIGH SCHOOL MOCK TRIAL

Attorney Ballot

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

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

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

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

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

		Prosecution Score 1-10 points		Defense Score 1-10 points
	Prosecution Opening:		Defense Opening:	
Prosecution First Witness	Prosecution Direct:		Defense Cross:	
Prosecution Second Witness	Prosecution Direct:		Defense Cross:	
Prosecution Third Witness	Prosecution Direct:		Defense Cross:	
Defense First Witness	Prosecution Cross:		Defense Direct:	
Defense Second Witness	Prosecution Cross:		Defense Direct:	
Defense Third Witness	Prosecution Cross:		Defense Direct:	
	Prosecution Closing:		Defense Closing:	
	TOTAL POINTS Prosecution (up to 80 points, NO TIES):		TOTAL POINTS DEFENSE (up to 80 points, NO TIES):	

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

Outstanding Attorney for the **Prosecution**: _____

Outstanding Attorney for the **Defense**: _____

Scoring Guidelines for Opening Statement, Directs, Crosses, & Closing Argument

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

Opening Statement

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

Direct Examinations

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

Cross Examinations

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

Closing Argument

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



Witness Ballot

The Witness Judge shall score the performances of the witnesses only.

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

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

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

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

Witnesses for the Prosecution		Prosecution's Witnesses Score 1-10 pts	Witnesses for the Defense		Defense's Witnesses Score 1-10 pts
Prosecution First Witness	Direct		Defense First Witness	Direct	
Name: _____	Cross		Name: _____	Cross	
Prosecution Second Witness	Direct		Defense Second Witness	Direct	
Name: _____	Cross		Name: _____	Cross	
Prosecution Third Witness	Direct		Defense Third Witness	Direct	
Name: _____	Cross		Name: _____	Cross	
TOTAL POINTS Prosecution (up to 60 points, NO TIES):			TOTAL POINTS DEFENSE (up to 60 points, NO TIES):		

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

Outstanding Witness for the **Prosecution**: _____

Outstanding Witness for the **Defense**: _____

Scoring Guidelines for Witnesses

9-10: Excellent, Amazing

- Character was carefully created to strongly reflect values, manners, knowledge and personality consistent with the trial context.
- Remained consistently and convincingly in character.
- Fluent, persuasive, clear, understandable.
- Showed mastery of the case and materials; adhered to the content of the affidavit.
- No errors in testimony or inconsistencies in the story line.
- Used no notes; used no unfair assistance in testifying.
- Convincing spontaneity was demonstrated in responses to questions.

7-8: Good, Very Good

- Character was created to reflect values, manners, knowledge and personality mostly consistent with the trial context.
- Remained consistently and convincingly in character.
- Fluent, persuasive, clear, understandable.
- Showed solid understanding of the case and materials; adhered to the content of the affidavit.
- Testimony may have contained some minor errors in testimony or inconsistencies in the story line.
- Used no notes; used no unfair assistance in testifying.
- May have had minor problems handling unexpected questions.

5-6: Fair, Average

- Character was created to reflect values, manners, knowledge and personality mostly consistent with the trial context.
- May at times have slipped slightly out of character.
- May have been minor problems understanding witness testimony.
- Showed understanding of the case and materials; may have deviated in minor ways from the affidavit.
- Some errors in testimony or inconsistencies in the story line.
- Used no notes; used no unfair assistance in testifying.
- May have had some problems handling unexpected questions.

3-4: Weak, Needs Practice

- Character only weakly reflected values, manners, knowledge and personality consistent with the trial context.
- Problems remaining in character.
- Witness was difficult to understand.
- Witness seemed somewhat unprepared or deviated from the affidavit; may have been impeached.
- Significant errors in testimony or inconsistencies in story line.
- Used no notes; used no unfair assistance in testifying.
- Witness struggled with unexpected questions.

1-2: Poor, Unprepared

- Character was largely undefined and witness did not stay in character
- Witness was difficult to understand.
- Witness seemed unprepared, used notes, showed misunderstanding of the case and materials, or was impeached.
- Errors or inconsistency in testimony that fundamentally detracted from the team's case.
- Witness was unable to answer unexpected questions.

E. Rule 26 Reporting Form

**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

F. Rule 29 Reporting Form

**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

G. Courtroom Diagram

