CLASSROOM LAW PROJECT proudly presents the 35th annual statewide

2020 – 2021 Oregon High School Mock Trial Competition

CLASSROOM LAW PROJECT®

Jersey Jackson, Plaintiff
v.
Marlowe Navarro, Defendant

co-sponsored by

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CLASSROOM LAW PROJECT®

September 2020

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

Welcome to the 35th annual mock trial competition!

We hope you'll find this case to be as interesting as we do. It explores what happens when one person's exercise of their First Amendment rights intersects with a police officer doing his/her job. The case was authored by a committee made up of expert lawyers and teachers experienced in high school mock trial.

As we face a year of uncertainty and, for many, hardship, we hope that mock trial can offer some continuity and stability for students, teachers, coaches, and supporters. As you 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. We are working hard to make this year's mock trial experience as rich as years past. We will be competing virtually this year and have modeled our competition on a very successful virtual competition held at a national level in May. We have invested in the required technology, modified the mock trial rules and protocols, produced a series of training videos for volunteer judges, and planned for rehearsal with teams prior to the competition. We will be available throughout the season to provide facilitation and support for teams, coaches, and supporters.

We would also like to ask for your help in continuing this successful program by making a donation to Classroom Law Project, the primary sponsor of the Oregon High School Mock Trial Competition. The program costs more than $50,000 per year, with less than one-third of that 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 we hope that you will consider how valuable this program is to the young people in your life. Any amount you can give is truly 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.

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2020 – 2021 Oregon High School Mock Trial

Jersey Jackson v. Marlowe Navarro

Table of Contents

2020 – 2021 OREGON HIGH SCHOOL MOCK TRIAL COMPETITION

I. Introduction

This packet contains the official materials student teams need to prepare for the 35th annual Oregon High School Mock Trial Competition. The case materials and rules have been modified to accommodate virtual competitions for the 2020-21 competition season. Please review the materials *carefully* as they have changed extensively.

Each participating team will compete in a virtual regional competition. The regional competitions will be **held over three weeks between February 2nd and February 18th, 2021**. Each team will compete on at least two competition days during the three-week competition period. No regional winners will be announced until all teams have competed. Regional winners will advance to the **State Competition on March 12th-13th, 2021**. The State Competition will also be virtual. The winning team from the State Competition will represent Oregon at the National High School Mock Trial Competition in May of 2021.

The mock trial experience is designed to teach invaluable skills to participants using a civil or criminal trial as the framework. Students will gain confidence and poise through public speaking, learn to better collaborate with others, develop critical-thinking and problem-solving skills, and become quick, precise thinkers.

Each year, Classroom Law Project strives to provide a powerful and timely educational experience by presenting an original case addressing serious matters facing society and young people. It is our goal that students will conduct a cooperative, rigorous, and comprehensive analysis of the materials with the guidance of their teachers and coaches.

II. Program Objectives

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

A) Increase proficiency in reading, speaking, analyzing, reasoning, listening, and collaborating with others;
B) Teach students to think precisely and quickly;
C) Provide an opportunity for interaction with positive adult role models in the community; and
D) Provide knowledge about law, society, the Constitution, the courts, and the legal system.

For a **school or organization**, the competition will:

A) Promote cooperation and healthy academic competition among students of varying abilities and interests;
B) Demonstrate the academic achievements and dedication of participants to the community;
C) Provide an avenue for teachers to teach civic responsibility and participation; and
D) Provide a rewarding experience for teachers.

III. Code of Ethical Conduct

The Code of Ethical Conduct should be read and discussed by students and their coaches as early as possible. **The Code governs participants (both students and adults), 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.

Attorney and other non-teacher coaches shall not practice or meet in-person with mock trial participants unless with a teacher or as part of a class with a teacher present. Teacher coaches will comply with their school's guidance on in-person meetings with students. Attorney and other non-teacher coaches shall not have one-on-one digital contact with students participating in mock trial. Two adults should be present during any digital interactions with students.

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 competition. If students are allowed to gather for their competition performance, only coaches may be in the same room as the performing students. Inappropriate communication between coaches and teams during a virtual trial will result in disqualification from the competition. Currently performing team members may communicate among themselves during the trial, however, no disruptive communication is allowed. Non-performing team members, teachers, and spectators must remain in a separate room from performing team members. No one shall contact the judges with concerns about a round; rather, these concerns should be taken to the Competition Coordinator. These rules remain in force throughout the entire competition.

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. Violation of this rule will result in disqualification of the team associated with the person violating this rule. Except, the public is invited to view the state championship round on **March 13th, 2021**. The championship round will be live-streamed on a separate platform.

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 competition **in spirit or practice.**

Coaches agree to focus attention on the educational value of the mock trial competition 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. Coaches should ensure that students understand and agree to comply by 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. 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.

I. The Case

A. Witness List

Plaintiff Witnesses:

1) Jersey Jackson
2) Danger Smith
3) Trini Redbird

Defense Witnesses

1) Marlowe Navarro
2) Camden Buchanan
3) Eden Saab

B. List of Exhibits

Exhibit 1: Photograph of Rock found in Jersey Jackson's hand
Exhibit 2: Rowe Police Dept. Crowd Management/Crowd Control Policy
Exhibit 3: Audio from January 15, 2020 – recorded by Camden Buchanan
Exhibit 4. Map excerpted from Officer Navarro's police report after Jersey Jackson's arrest

C. Complaint, Answer, Stipulations, Jury Instructions

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

ROWE DIVISION

JERSEY JACKSON, an individual, Plaintiff, v. MARLOWE NAVARRO, in Navarro's official capacity as an officer of the Rowe Police Department, Defendant.	Case No. 3:20-cv-00101-CC **COMPLAINT** 42 U.S.C. § 1983 JURY TRIAL DEMANDED

I. INTRODUCTION

1. Plaintiff Jersey Jackson ("Jackson") brings this action against Marlowe Navarro ("Navarro") for violating Jackson's clearly established constitutional rights. On January 15, 2020, Navarro, an officer of the Rowe Police Department ("RPD"), wrongfully arrested Jackson during a demonstration in downtown Rowe. Navarro did so in violation of Jackson's Fourth Amendment rights and in retaliation for Jackson's protected exercise of Jackson's First Amendment rights. Jackson seeks compensatory damages, punitive damages, and other relief.

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II. JURISDICTION AND VENUE

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

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

III. PARTIES

4. Jackson is an individual who resides in Rowe, Oregon.

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

IV. FACTS

6. Jackson is a journalist employed by *The Rowegonian*.

7. On December 20, 2019, Jackson attended a public demonstration at the Digby Theater in downtown Rowe. The demonstration concerned the Rowe City Council's decision authorizing the theater owner to demolish the building, which is an historic landmark. Jackson attended the demonstration because Jackson had recently written a story about the theater's demolition and was continuing to report on the matter.

8. At the demonstration, Jackson approached a protester named "Danger" Smith, who appeared willing to provide a quote to Jackson about the reasons for the demonstration.

9. Navarro was on duty for RPD at the demonstration. A few seconds after Jackson began speaking with Smith, Navarro approached them and threatened to arrest Smith.

10. As far as Jackson was aware, Smith was doing nothing illegal. Jackson said as much to Navarro, in response to which Navarro became angry. Navarro turned toward Jackson and yelled: "You're blocking traffic, you're blocking these bulldozers, and now you're interfering with my job as police officer!" Navarro then threatened to arrest Jackson as well. Like Smith, Jackson was doing nothing illegal.

11. A few moments later, word came down that the Rowe City Council had decided to postpone its authorization of the demolition; due to Jackson's reporting, the City had decided to investigate a number of irregularities in the inspection that had led it to authorize the theater owner's plans.

12. Several weeks later, the Rowe City Council issued another decision criticizing the original inspection but reaffirming its approval of the demolition.

13. The City's decision sparked another public demonstration, which occurred outside the Digby Theater on January 15, 2020. Again, because Jackson was continuing to report for *The Rowegonian* on the matter, Jackson attended the demonstration. Jackson wore a bright blue t-shirt with the word "Press" emblazoned in yellow on both the front and back.

14. Smith was again participating in the demonstration. Shortly after the demonstration began, Jackson heard Smith yell: "Let's barricade ourselves in! They can't knock it down if we're inside!" Smith then grabbed a rock from the ground and started to move toward the Digby's front door, which is made of stained glass. It looked to Jackson like Danger was going to smash the window. Jackson ran over to Smith, yelled "Stop!" and grabbed the rock out of Smith hand. At no point during the January 15th demonstration did Jackson do anything illegal.

15. A moment after Jackson grabbed the rock from Smith, Navarro tackled Jackson and arrested Jackson. Navarro knew that Jackson was doing nothing wrong, but Navarro arrested Jackson anyway. As Navarro tackled Jackson, Navarro said: "You again, huh? And I expect you'll say you were doing nothing illegal either?"

16. Jackson was released within a few hours. The Chinook County District Attorney's Office charged Jackson with disorderly conduct but dropped the charges shortly afterward.

V. CLAIM FOR RELIEF

42 U.S.C. § 1983—Retaliatory Arrest in Violation of First Amendment

17. Jackson incorporates and realleges each of the preceding paragraphs as if fully set forth herein.

18. As described above, Jackson engaged in protected speech, both when Jackson challenged Navarro's threat to arrest Smith and otherwise.

19. Navarro later took action against Jackson by arresting Jackson.

20. As evidenced in part by Navarro's comments to Jackson during the arrest, Jackson's protected speech was a substantial or motivating factor in Navarro's decision to arrest Jackson.

21. Navarro arrested Jackson without probable cause. Navarro also declined to arrest other similarly situated individuals who were not engaged in the same sort of protected speech, even though Navarro had ample opportunity to do so.

22. Navarro was acting under color of law when Navarro arrested Jackson.

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

24. Pursuant to 42 U.S.C. § 1988, Jackson is entitled to recover the attorneys' fees and costs that Jackson incurs in bringing this action.

VI. PRAYER FOR RELIEF

WHEREFORE, Jackson prays for relief as follows:

a) An award of economic, non-economic, and punitive damages against Navarro in amounts to be determined at trial;

b) An award of the reasonable attorneys' fees and costs that Jackson incurs in bringing this action; and

c) Such other relief as may be just and proper.

DATED: August 24, 2020.

CARLYLE, POLLARD & SCHMIDT LLP

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

ROWE DIVISION

JERSEY JACKSON, an individual, Plaintiff, v. MARLOWE NAVARRO, in Navarro's official capacity as an officer of the Rowe Police Department, Defendant.	Case No. 3:20-cv-00101-CC **ANSWER**

ANSWER

Defendant Marlowe Navarro ("Navarro") responds to Plaintiff Jersey Jackson's ("Jackson") complaint as follows:

1. In response to paragraphs 2 and 3, Navarro admits that jurisdiction and venue are proper in this Court.

2. Navarro admits paragraphs 4-8, 11-13, 16, 18-19, and 22.

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3. Except as expressly admitted herein, Navarro denies each of the allegations in the complaint.

WHEREFORE, Navarro prays that Jackson's complaint be dismissed, that judgment be entered in Navarro's favor, and that the Court enter an order awarding Navarro the costs and disbursements that Navarro incurs in defending this action, in addition to any other relief as may be justified.

DATED: September 14, 2020.

Respectfully submitted,

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

ROWE DIVISION

JERSEY JACKSON, an individual, Plaintiff, v. MARLOWE NAVARRO, in Navarro's official capacity as an officer of the Rowe Police Department, Defendant.	Case No. 3:20-cv-00101-CC **STIPULATIONS**

Plaintiff Jersey Jackson ("Jackson") and Defendant Marlowe Navarro ("Navarro") hereby stipulate and agree to, and respectfully request that the Court enter and order reflecting, the following:

1. The Rowe Police Department had the lawful authority to order the dispersal of the individuals at the Digby Theater on January 15, 2020, and to arrest those individuals who refused to disperse following two (2) clear verbal warnings.

2. The parties each have conducted reasonable searches and, save for Exhibit 3, have located no pertinent audio or video of the events that occurred at the Digby Theater on December 20th, 2019 and January 15, 2020.

3. Navarro is not entitled to qualified immunity on any of Jackson's claims.

4. During testimony, no witness will be entitled to assert any 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.

5. The first phase of the trial shall deal with Navarro's potential liability only. If necessary, a determination as to damages and any other relief to which Jackson may be entitled will be made in a separate proceeding.

6. All exhibits included in the following case materials are authentic. All signatures on witness affidavits and other documents are authentic.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

ROWE DIVISION

JERSEY JACKSON, an individual, Plaintiff, v. MARLOWE NAVARRO, in Navarro's official capacity as an officer of the Rowe Police Department, Defendant.	Case No. 3:20-cv-00101-CC **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 plaintiff has prevailed in proving the plaintiff's claims against each defendant.

PREPONDERANCE OF THE EVIDENCE

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

RETALIATORY ARREST IN VIOLATION OF FIRST AMENDMENT

Under the First Amendment, a citizen has the right to free expression. In order to prove the defendant deprived the plaintiff of this First Amendment right, the plaintiff must prove the following elements by a preponderance of the evidence: (1) the plaintiff engaged in speech protected under the First Amendment; (2) the defendant took action against the plaintiff; and (3) the plaintiff's protected speech was a substantial or motivating factor for the defendant's action. A substantial or motivating factor is a significant factor.

In this case, the plaintiff contends that the unlawful action taken against the plaintiff by the defendant was an arrest. Accordingly, the plaintiff must also prove (4) that the arrest occurred without probable cause, or that other similarly situated individuals who were not engaged in the same sort of protected speech were not arrested.

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.

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.

PLAINTIFF WITNESS STATEMENTS

AFFIDAVIT OF JERSEY JACKSON

Jersey Jackson, here, coming to you live from Rowe, Oregon! Before we get into the meat of my story, let's start with some background. I'm 31 years old, and I was born right here in Rowe. I've lived here all my life. I went to college at Rowe State University, where I earned a B.A. in journalism in 2012. I've worked as a reporter for *The Rowegonian* for the last year and a half or so.

I've been obsessed with journalism for basically my whole adult life. During my freshman year of high school, I read *All the President's Men*, which totally mesmerized me. (The movie was almost as good, although I couldn't quite get past the terrible '70s fashion...) Isn't it incredible to think that a reporter can change the course of history with nothing more than a pen, paper, and a dogged commitment to uncovering the truth? Right then and there, I decided to follow Woodward and Bernstein's example. I would become a professional muckraker, exposing corruption and injustice wherever I found it.

My first few years in journalism were pretty lean; for a reporter, at least, journalism isn't exactly what I'd call a "lucrative" business. To me, though, that didn't matter. I loved what I did, and, most of the time, I felt like I was really making a difference. I started my career at *What's Up Rowe?* — a weekly publication that, in fairness, you might call a "rag" — writing about whatever scandals I happened to dig up. My biggest stories during that time included an exposé on how a group of students at Burrough High School drugged their rival school's star basketball player before a big tournament; an investigation into recurring thefts from the till at Buddie's Burgers, one of Rowe's most popular fast-food joints; and a three-part story about an environmental conflict between a sustainable fishing business and a community association out in rural Cascade County.

One of the most important lessons I learned during my time at *What's Up Rowe* was that good journalism requires a journalist to push boundaries — and that it's sometimes hard to tell where to draw the line between what's appropriate and what's not. When I began my investigation into the scandal at Burrough High School, I felt at first like I was getting nowhere. A source had assured me that I was onto something, though, and a stakeout, I thought, would give me the best chance of catching the culprits in the act. The scandal had to do with basketball, so I figured the best place to watch for trouble would be the Burrough High School gym. I wasn't authorized to be in the gym, but I didn't let that stop me. One night, I used a nail file to pick the gym's lock and let myself in. I didn't see any illicit activities, but, unfortunately for me, I crossed paths with a security guard, who called the police. The Rowe Police Department arrested me that night, and it was the scariest night of my life. I was handcuffed, jammed into the back of a squad car, and hauled off to Rowe PD's headquarters, where I spent the night alone in a jail cell. Suffice to say I *never* want to go through that sort of thing again.

It took until the morning for me to convince the detective that I had come to the gym in my capacity as a journalist, and that I was only there to record video evidence of what I expected to be a major scandal. As she pointed out, though, that didn't change the fact that what I had done was illegal. The detective also noted that the nail file I had used to break the gym's lock was arguably a "burglary tool." I thought that was a little ridiculous, but, eventually, I realized they had the goods on me. In exchange for a promise that I wouldn't receive any jail time, I agreed in 2015 to plead guilty to a single count of burglary in the first degree. I was glad to put the whole thing behind me. None of that is to say I won't continue to push the journalistic envelope, but since then I've been a lot more careful when I do.

I was excited beyond words when *The Rowegonian* agreed to hire me in early 2019. Obviously, *The Rowegonian* is Rowe's flagship newspaper. It's been around for about a century, and it's broken all of Rowe's biggest stories during that time. I mean, what journalist wouldn't want to work there? I had submitted three or four prior applications to *The Rowegonian* over the years, and, each time, they told me to check back when I had more experience. Finally, in early 2019, they decided to "take a chance" on me, to use my editor's exact words. I knew this was my opportunity to prove myself and I wasn't going to let my editor down.

For the rest of 2019, things were pretty slow, and I was getting more and more worried. What would Jessica Gallagher (my editor) think if I couldn't dig up something juicy by the end of the year? Fortunately, in December 2019, I caught a break. My friend and fellow journalist Jett Jones gave me a scoop about the fate of the Digby Theater, which just a few months earlier had been the scene of an unspeakable tragedy. There had been an explosion, Jett reminded me, and a young music fan had been trampled to death in the ensuing stampede. Following the explosion, the Digby's owner, Camden Buchanan, had decided to demolish the theater and replace it with a newer, shinier building. There was just one problem: the Digby had been listed in the National Register of Historic Places since 1991. For that reason, Jett explained, Oregon law required Rowe's City Council to determine that the Digby was structurally unsound before it could approve of Camden's plan. It had done so a few days ago, Jett told me, based on a report presented by a building inspector named Ari Frankel. There was something fishy about Ari's report, and Jett suggested I should follow up on it. (Jett didn't want to touch the story herself — something about being "too close to the action," as she put it — so she gave me the lead instead.)

I dug in immediately. And, after what seemed like an endless review of old newspaper clippings, public records, and court filings, I finally figured it out: Ari was a *de facto* employee of Camden, and had been for some time. In other words, Ari stood to gain financially from a decision by the City Council in Camden's favor. Moreover, neither Ari nor anyone else had revealed that fact to the City Council, to whom Ari had testified in no uncertain terms that the inspection had been done "independently." *The*

Rowegonian published a short piece by me outlining those revelations on December 18, 2019, two days before the Digby's demolition was scheduled to take place.

I'm proud to say that my story caused an uproar over Camden's tactics. Camden and Are hadn't exactly lied to the City Council, but they hadn't been entirely truthful, either. On December 19th, dozens of social media posts were tagging my story and calling for a protest the next day. People were really worked up, it seemed! If I was going to continue my coverage, I would have to attend the protest in person.

I arrived at the Digby at about 9:30 a.m. (30 minutes or so before demolition was scheduled to begin) on December 20th. When I got there, things were peaceful but tense. The Rowe Police Department had apparently been tracking the social media firestorm over my story, and, like me, they seemed to be anticipating trouble. A row of about a dozen police officers had positioned themselves just outside the chain-link fence that surrounded the Digby. About the same number of protesters were milling around in a group about 30 or 40 feet in front of the line of police; some were holding large signs that read "Save the Digby!" A couple of bulldozers and some other heavy construction equipment were parked in an empty lot across the street.

When 10:00 a.m. rolled around, several construction workers appeared in the lot and began powering up the construction equipment. That seemed to set the protesters off. In what seemed like an instant, they linked arms and formed a line between the Digby and the construction equipment. They began chanting: "Don't Demolish the Digby!" This, I knew, was my chance to develop another story. I approached the line of protesters, hoping for a quote. Most of them, unfortunately, seemed to ignore me.

As I got toward the end of the line, though, one protester beckoned for me to come nearer. That protester was "Danger" Smith, whom I know as a barista at Rowe's "Freedom Cup" coffee shop (which I visit regularly). Smith began speaking into my phone, but before I could make out what Smith was saying, I felt a hand slam down on my shoulder. I heard a stern voice from behind me. "Don't make me arrest you, Danger," the voice said. "Just clear out of the street right now and we won't have a problem." As soon as I heard the voice, I spun around to find myself staring at a police officer whom I now recognize as Marlowe Navarro. I was shocked! Neither Smith nor I were doing anything wrong, but Officer Navarro was right in Danger's face. "Officer," I asked, "what in the world are you doing? That person isn't doing anything illegal at all! You can't arrest this person!" In an attempt to try to cool things down, I tried to position myself between Officer Navarro and Danger, but Officer Navarro spun around and started yelling at me. "You're blocking traffic, you're blocking these bulldozers, and now you're interfering with my job as a police officer," Officer Navarro yelled at me. "Clear out now before I arrest you!"

I backed away, startled. I definitely didn't want a repeat of my experience in the Burrough High School gym. Fortunately, after a moment, the construction equipment powered down, in response to which

the crowd went totally wild. They seemed to think that their protest had singlehandedly turned away the bulldozers. Later that day, though, I read in *The Rowegonian* that Rowe's City Council had — in response to my story — ordered another inspection of the Digby before its demolition. I was elated! Never before had any of my journalism produced such an important and tangible impact.

My elation, it turned out, was short-lived. As I read later in *The Rowegonian*, the second inspection heavily criticized Frankel's work, but it came to the same conclusion: the Digby was structurally unsound. The City reaffirmed its approval of Camden's plan, this time in a way that seemed more unimpeachable. The Digby's demolition was rescheduled for January 15, 2020. As soon as the news broke of the City Council's decision, Digby's fans on social media became just as agitated as they had been before. I knew there would be another protest on the day of the demolition, and, again, I knew I had to be there.

I arrived at the Digby on January 15th at around 9:45 a.m., about fifteen minutes before the bulldozers were scheduled to move in. Unlike the last protest, things were anything but calm. A group of about 30 or 35 protesters — more than last time, but not many more — had already linked arms and were leaning with their backs against the fence surrounding the Digby. This time, none were holding signs or chanting. Instead, they were screaming, yelling, and (in some cases) cursing at a line of police officers that had formed in front of them. It was hard to say how many police officers were there, but there were definitely more of them than last time. Plus, unlike last time, the police officers were decked out in what looked like riot gear.

At 10:00 a.m., the bulldozers powered up. At the same time, the police moved closer to the protesters and began talking to them; I was far enough away at that point that I couldn't hear exactly what they were saying, but it didn't look friendly. A moment later, I saw a police officer by the bulldozers say, with a megaphone: "You are trespassing on private property. Disperse now or you will be subject to arrest!" That prompted a yell from the protesters, only two or three of whom dispersed. The police then moved closer and began arresting the protesters who remained on the fence.

At that point, I had to make a journalistic decision. On one hand, I knew that I'd risk getting caught up in the bedlam if I moved toward the protesters. On the other hand, though, I believed that I had a right to be there (*i.e.*, on the sidewalk near the Digby) and to report on what I saw, which, by that point, I was sure would be a major story. It also should have been easy for the police to distinguish me from the protesters themselves: I was wearing a bright blue t-shirt with the word "Press" emblazoned in yellow on both the front and back. My story wouldn't be complete without a comment from one of the protesters — I needed to hear directly from them about why they were there — so I steeled myself and began walking toward the fence.

As I approached the protesters, I saw a familiar face: Danger Smith. Danger seemed to be backing away from the line of protesters, and it soon became clear why. I heard Danger yell through the crowd: "Let's barricade ourselves in! They can't knock it down if we're inside!" What I saw next horrified me. Danger picked up a rock from the ground and turned toward the Digby's immense front door, which is made of vintage stained glass. It looked to me like Danger was going to throw the rock over the fence and smash the window, so I ran over to Danger — I was yelling "Stop!" as I ran — and grabbed the rock out of Danger's hand. A true and correct image of that rock is shown in Exhibit 1. I was facing the Digby's front door, but I was turned very slightly to the left, such that the door was slightly to my right. I recall that I had the rock in my right hand as I was talking to Danger.

I started saying something to Danger (I don't remember what), but a second or two later, someone grabbed me from behind and forced me to the ground. I heard a familiar voice: "You again, huh? And I expect you'll say you were doing nothing illegal either?" It was Officer Navarro, who arrested me and hauled me off to Rowe Police's headquarters. I was released within a couple of hours, and the Chinook County District Attorney ultimately charged me with disorderly conduct. I couldn't believe it: I had done *nothing* wrong, nor was there any conceivable reason for Officer Navarro to suspect as much. The charges were dropped a week or so afterward, which should tell you something about how absurd they were.

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

s/Jersey Jackson
Jersey Jackson
Dated: October 9, 2020.

Subscribed and sworn before me on October 9, 2020:

s/Roberta Bost
Roberta Bost

AFFIDAVIT OF DANGER SMITH

Okay, here I am! My name's Danger Smith, and I'm 52 years old. I work at a groovy little coffee house called "Freedom Cup" on Unity Street in Southeast Rowe. I've been there about ten years, give or take, and it's totally far out.

Of course, nobody goes to Freedom Cup for the coffee, which, to be honest, tastes a little like diluted diesel fuel. Instead, it's our clientele that makes us so psychedelic. Every day, we serve writers, journalists, activists, and deep thinkers of just about every variety imaginable. It's a great vibe, you know? Some people congregate in groups on our old, worn-out couches and hatch plans to change the world; others just plant themselves alone at tables or on one of our bean-bag chairs and lose themselves in writing projects. There's been a rumor going around for years, actually, that Ken Kesey wrote part of *One Flew Over the Cuckoo's Nest* in our back corner. I'm pretty sure it isn't true, but it's a neat thought, isn't it?

Anyway, Jersey Jackson asked me to testify on Jersey's behalf, which I'm glad to do. Jersey is one of my regulars at Freedom Cup, actually. For a couple of years, Jersey has been dropping by every once in a while in the afternoons for a mug or two while Jersey writes. I've always gotten the sense that Jersey wants to be a bigger, more famous journalist than Jersey currently is. Why? Well, I can't point to anything specific, I guess, but Jersey often just seems sort of frustrated. One time about a year or two ago, on a day when Jersey seemed especially sullen, I asked Jersey, "Hey, what's up with the frown?" Jersey told me that Jersey was tired of working at a "rag." "I'm ready for the big-time," Jersey sighed, "and I really need a big scoop to get me there." I don't know that I'd consider Jersey a "friend," technically, but I like Jersey personally and hope that Jersey gets justice in this case.

It was Jersey, actually, who first told me about the shenanigans with the Digby's demolition. One day back in December, Jersey bolted into Freedom Cup and was so excited that Jersey could barely get the words of Jersey's order out. "Whoa! Slow down, there," I said, "what gives?" "It's the Digby!" Jersey blurted out. "You know the plan to demolish it?" I didn't, but the thought of such a beautiful, historic building being turned into rubble made me furious. "Well," Jersey said, "the inspection that's allowing that to happen is bogus. The inspector is a friend of the owner!" Jersey kept blabbing about something to do with the City Council, but that was all I needed to hear. For as long as I can remember, whenever I've seen an injustice in the world, I've protested it — publicly and usually very loudly. And this, I knew, would be a huge injustice. I had only ever been to the Digby to see the Grateful Dead a few times in the '80s, but I know that the theater has an even broader and more important place in Rowe's civic history and culture. "Well, what are we waiting for?" I asked Jersey. "Let's head down there and give the theater owner a piece of our minds!" Jersey told me that there was talk on social media of an organized protest

that would occur the next day, on December 20th. I cancelled my morning shift at Freedom Cup and made plans to be there.

I got to the Digby a few minutes before 10:00 a.m., which, Jersey told me, was when the protest was scheduled to begin. I saw a line of police by the chain-link fence that surrounded the Digby; I didn't count them, but there must have been forty or fifty of them in all. A couple of dozen feet in front of them, a group of about the same number of protesters was huddled and, I presumed, getting ready to begin demonstrating. I walked over to the group, introduced myself, and asked what we'd all be chanting when the protest started. Apparently, they had already landed on "Don't Demolish the Digby!" That, I thought, was nicely alliterative but a little boring. I wanted to show the theater owner and the public that we meant *business*, you know?

Anyway, at 10:00 a.m., the bulldozers that were parked in a lot next to the theater revved up, and the protest began. The other protesters and I linked arms, formed a line between the bulldozers and the Digby, and began chanting. A minute or two later, I saw Jersey making Jersey's way down the line of protesters and toward me. Jersey seemed to be asking the protesters questions. Jersey caught my eye, and I beckoned Jersey with a nod and a smile. Jersey walked right up to me and asked, "So, Danger, care to provide a quote for my biggest story yet?" "Sure," I began, "Rowe's fat cats want to tear down an irreplaceable piece of our —" At that moment, though, a face appeared behind Jersey that I recognized and know well: Marlowe Navarro.

I've been arrested probably a half-dozen times over the years at protests — that sort of thing comes with the territory, I suppose — and, most recently, it was Officer Navarro who arrested me. The arrest happened back in 2017, during a protest outside a State Senator's office in Rowe's über-trendy "Topaz" neighborhood. To be honest with you, I can't remember what we were protesting, exactly, but I *do* remember that at one point a couple of us decided to lay down side-by-side in the street and block traffic. Somebody called the cops, and Officer Navarro was one of the officers who responded. When we refused to move, Officer Navarro arrested me. "C'mon," I complained as Officer Navarro was handcuffing me, "why do you have to be such a buzzkill?" I thought that might annoy Officer Navarro, but Officer Navarro was actually very nice about the whole thing, and chuckled when I said the word "buzzkill." I remember Officer Navarro telling me politely that Officer Navarro actually agreed with the protesters. "But what you're doing just isn't safe," Officer Navarro told me, "and it's my job to make sure that you and your friends can protest without someone getting hurt."

That wasn't the Officer Navarro that I saw behind Jersey, though. This time, Officer Navarro looked annoyed. Officer Navarro slapped Officer Navarro's hand down on Jersey's shoulder, and, looking at me, said, "I hope I don't have to arrest you again, Danger. Just get out of the way and we won't have a

problem." At that point, Jersey spun around and got right in Officer Navarro's face. "What in the world are you doing!" screamed Jersey, who then was about an inch away from Officer Navarro's nose. "Danger isn't doing anything illegal! Just go away!" Officer Navarro seemed taken aback at first, but then Officer Navarro collected themselves and responded: "Look, you're blocking traffic, you're blocking these bulldozers, and now you're interfering with my job as a police officer. Clear out now before I arrest you!" Officer Navarro seemed really irritated, but Officer Navarro didn't raise Officer Navarro's voice. A moment or two after that, the bulldozers powered down, in response to which the other protesters and I let out a wild cheer. Our protest had saved the Digby! At that point, both Officer Navarro and Jersey walked away, and that was the end of the whole thing.

Or so I thought. In early January 2020, I read on social media that the Digby's owner was trying again to demolish it, and that the City Council had okayed it. That made me furious! Fortunately, I also learned via social media that another protest had been scheduled for January 15, 2020 in front of the Digby, the day when the demolition was supposed to take place. Obviously, I had to be there. It seemed like it'd just be a repeat of the last one, hopefully with the same result.

Was I ever wrong! When I arrived at the Digby on the 15th, things were already tenser than they had been the last time. I got there at about 9:30 a.m., at which point a dozen or so protesters had positioned themselves in a line against the chain-link fence surrounding the Digby. Naturally, I joined them. In retrospect, I can't say I'm proud of this, but, following the other protesters' lead, I started taunting the police officers. We were telling them — sometimes in language that I probably shouldn't repeat in court — to go home, to stop working for Rowe's fat cats, things like that. The officers didn't respond to us; in fact, they didn't even really seem to notice us. The officers were wearing riot gear that obscured their faces, and I was too far away to see their badges or name-patches, but (because Officer Navarro arrested Jersey a few minutes later) I assume that Officer Navarro was among them.

At about 10:00 a.m., a police officer by the bulldozers in the lot next to the Digby picked up a megaphone and announced to the crowd of protesters: "You are trespassing on private property. Disperse now or you will be subject to arrest!" A few of us, including me, laughed; we knew the drill, and we weren't going anywhere until we were sure the Digby was safe. A few seconds after that, the bulldozers powered up, and the officers approached us and began telling us that we had to leave or that we'd be arrested. A few of the protesters loudly refused to leave, and the police began arresting them. The other protesters seemed to be committed to keeping things peaceful, and nobody resisted arrest. Like I said, we knew the drill.

A minute or two later, I noticed Jersey, who was wearing a bright blue t-shirt with the word "Press" printed in yellow on the front and back. Jersey was dodging between the protesters and the police with

Jersey's phone in Jersey's hand. (I assumed that, like last time, Jersey was trying to get a quote.) None of the police officers there seemed to care about or even notice Jersey, who seemed to be trying really hard to stay out of their way. As Jersey was approaching my spot on the line, though, I noticed a familiar face. Officer Navarro was walking briskly from the lot with the bulldozers toward Jersey. Officer Navarro wasn't running, but Officer Navarro also wasn't taking Officer Navarro's time. Jersey's back was to Officer Navarro, so I don't know for sure whether Officer Navarro recognized Jersey. Also, because Jersey was no more than 30 or 40 feet away from me, it's possible that Officer Navarro was really headed toward me, but I just can't be sure. Exhibit 4 is a true and accurate representation of Officer Navarro's location before Officer Navarro started heading toward me and Jersey. At the same time, three or four other protesters who had been on the line with us apparently had decided that an arrest wasn't worth it and started walking away from the theater. Officer Navarro walked right by them without saying a word.

At the same time, it was beginning to dawn on me that our protest in its current state wasn't going to save the Digby. I decided that we had no choice but to up the ante. In hindsight, this was a *really* dumb idea, but I thought we'd stand a better chance of deterring the bulldozers if there were real, live human beings inside the theater, and I yelled as much to the crowd. (That sort of thing worked for the Free Speech Movement at Berkeley the '60s, after all, right?) I knew I'd have to find a way to get inside the theater, though, so I picked up a rock and turned toward the Digby's front door, which is made of stained glass. Better to break a window, I thought at the time, than to destroy the entire building.

As I was turning, I felt a hand on my wrist. It was Jersey. "Danger, stop!" Jersey pleaded, and grabbed the rock out of my hand. I turned back toward Jersey, such that I was facing away from the theater and Jersey was facing toward it. I remember the next part clearly. "Danger," Jersey began to say, "I'm sorry, but breaking into the theater is a terrible —" Then, all of a sudden, Officer Navarro appeared behind Jersey, grabbed Jersey's hand, and forced Jersey to the ground. Jersey let out a surprised yell but didn't resist. "You again, huh?" said Officer Navarro when Jersey was on the ground. "I expect you'll say you were doing nothing illegal?" By that time, most of the protesters had moved away from the Digby's fence, but three or four of us remained. Officer Navarro had startled me, though, and I decided that it was probably time for me to leave. I walked away, and neither Officer Navarro nor any other officer tried to stop me. I was never arrested and never charged with any crime arising out of my attendance at the day's protest.

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

s/Down with the system!
Danger Smith
Dated: October 9, 2020.

Subscribed and sworn before me on October 9, 2020:

s/Roberta Bost
Roberta Bost

AFFIDAVIT OF TRINI REDBIRD

Hello! My name is Trini Redbird. I'm 44 years old, and I'm from Cascade County, Oregon. I've got what I consider to be the coolest job in the entire world: I'm a medical doctor and scientist specializing in audiology. I earned my bachelor's degree in physics from the Oregon State University. After that, I attended Stanford Medical School, which I earned an MD and a PhD in audiology and hearing sciences. After I completed graduate school, I accepted a position on the faculty at the Rowe College of Health & Medical Sciences, where I've been a professor and researcher ever since. I regularly publish scholarly work in audiology-related medical journals, and I routinely speak at well-known medical conferences on similar topics. I've also testified as an expert in about a half-dozen civil trials over the course of my career, in each case as an expert witness for the defense in cases alleging medical malpractice. I've never testified in a civil rights case, but I'm looking forward to doing so. Who knows, maybe it'll lead to more opportunities for me to testify in other similar cases?

As a branch of medicine and science, audiology is about much more than just making sure folks can hear the TV from across the room. It's an incredibly rich field that focuses broadly on hearing, balance, and a range of related disorders. It's as much about physics (*i.e.*, what happens to sound when it's entering the human ear) as it is about psychology and neuroscience (*i.e.*, what happens to sound after it's entered the ear). Especially given the latter features of the discipline, it's an inherently inexact science. That, however, is part of what makes the field so exciting: practically every day, it seems, we're discovering new and exciting things about how humans capture and process the sounds around them.

Jersey Jackson's lawyers asked me to provide expert testimony in support of Jersey's claims against Officer Marlowe Navarro, which I'm glad to do; from what I've read about this case in the news, it sounds like Jersey was pretty badly mistreated. Jersey's lawyers asked me to evaluate whether an average human being in Officer Navarro's physical position would be able to hear the statement that Danger Smith made just before Jersey's arrest about entering the Digby Theater. I based my analysis the description given by Officer Navarro in Officer Navarro's affidavit of Officer Navarro's position relative to various other individuals and objects at the protest that occurred at the Digby on January 15, 2020, as well as the other statements in that affidavit and the additional observations outlined further below. The principles and methods that I applied are reliable and well-accepted in the field of audiology, and I applied each of them reliably in this case.

In a case like this, the best place to start is with the sources of the relevant sounds themselves. Here, Officer Navarro has testified that Officer Navarro was standing 50 feet away from a couple of bulldozers when Officer Navarro supposedly heard Danger's comment. The two most relevant sounds,

then, are the sound of the bulldozers — which almost certainly would've been the loudest noise around Officer Navarro at that time — and the sound of Danger's comment itself. I wasn't able to locate any recordings of that moment in the protest that were relevant and sufficiently reliable, but, fortunately, each type of sounds has a fairly consistent decibel level. (A decibel, by the way, is the standard unit we use to measure a sound's loudness.) If you're standing, say, six feet away from a bulldozer, the sound of its engine will range from 100 to 120 decibels. For purposes of my analysis, then, I assumed a decibel level for the bulldozer of 110. Danger's voice is a little harder to pinpoint, but, in general, the sound of a human yell will range from 70 to 90 decibels. (Again, that's assuming you're about six feet away.) For purposes of my analysis, I assumed a decibel level for Danger's yell of 80 decibels. Those estimates are well-grounded in the relevant scientific literature, which is actually quite voluminous; audiologists have been measuring the intensity of those sorts of common sounds for quite literally decades.

That's just the starting point, though. When it comes to sound, distance is key, because the volume of a sound decreases the farther away you get from it. In normal circumstances, a sound's intensity will decrease by about six decibels every time you double the distance from its source. That principle (which is based on a well-established principle of physics called the "inverse square law") allows us to approximate the relative intensities of the sounds of the bulldozers and Danger's comment from Officer Navarro's perspective. Officer Navarro, we know, was about 50 feet away from the bulldozer. If at six feet the bulldozer's sound was 110 decibels, at 12 feet it'd have been approximately 104 decibels; at 24 feet, approximately 98 decibels; and at 48 feet, approximately 92 decibels. Officer Navarro also testified that Officer Navarro was about 100 feet away from Danger at the time Officer Navarro heard the comment. By comparison, then, if the sound of Danger's yell at six feet was 80 decibels, at 12 feet it'd have been approximately 74 decibels; at 24 feet, approximately 68 decibels; at 48 feet, approximately 62 decibels; and at 96 feet, approximately 56 decibels.

One key thing to know about the decibel system is that it's logarithmic. In other words, the difference between sounds of 30 and 40 decibels is *not* the same as the difference between sounds of 40 and 50 decibels; in real terms, the latter difference is much greater. That in mind, it's important for me to put the numbers I've just given you in context. The quietest sound that the human ear is able to detect is usually somewhere around 20 decibels. (Think of autumn leaves rustling in the wind…) The loudest sound that a human brain is meaningfully able to process is somewhere around 120 or 130 decibels, at which point you're risking permanent damage to your hearing. (Imagine you're standing on a runway while a jet takes off…) What's in between? Well, a whisper is usually about 30 or 40 decibels, and most people's normal speaking voices are somewhere in the neighborhood of 50 or 60 decibels. At around 80 decibels,

you get to about the level of a bustling city street, a busy playground, or perhaps even something like a subway station at rush hour. At 100 or 110 decibels, you're at about the level of a jackhammer.

Of course, it bears emphasizing that all of those examples are approximations. It's equally important to note that the specific circumstances in which a sound occurs can have a major impact on how easy it is to hear. If you're driving in a car or meeting a client in a small conference room, for example, the sound of your conversation will reflect and carry in a way that doesn't occur in more open areas. Even if you're not inside, your surroundings can have a similar impact, depending on the degree to which they reflect or dampen sound.

Still, because none of those circumstances were present here, I'm able to come to a reliable conclusion about how easy it would've been for an average human being in Officer Navarro's position to hear Danger's comment. As I suggested above, from where Officer Navarro was standing, the sound of the bulldozer would've been louder than a busy subway station but not quite as loud as a jackhammer. At the same time, the sound of Danger's comment would've been about as loud as someone talking in a normal speaking voice. It's also noteworthy that Officer Navarro testified that a number of other people (mostly protesters, it seems) were yelling and shouting in the same general area. It's difficult to say exactly how that would've impacted Officer Navarro's hearing — to do that, I would have needed to conduct an analysis on-site, which I wasn't able to do — but it's safe to say that it wouldn't have made Danger's comment any clearer. All that in mind, it's my expert opinion that, given the circumstances that Officer Navarro describes in Officer Navarro's affidavit, it would've been very difficult for Officer Navarro to have heard Danger's comment. After all, if you're walking down the sidewalk with a friend and pass by a jackhammer, what's the likelihood that you'll still be able to make out what your friend is saying? As we all probably know from experience, not much.

Now, can I say with certainty whether Officer Navarro *actually* heard the comment? No, and it's possible that Officer Navarro did. I'm not a mind reader, and every person's hearing works a little differently. In particular, it's important to remember that the human ear generally is better at picking up higher frequencies than lower frequencies. "Frequency" refers to a sound's pitch, *e.g.*, whether it's high-pitched (like a whistle), low-pitched (like the sound of a bass guitar), or somewhere in between. The pitch of a human voice can vary quite a bit, but it's basically always going to be higher than a bulldozer's engine. But, a difference in pitch alone definitely won't guarantee that the human ear will pick up on a particular sound.

Additionally, I can't speak at all to the issue of Officer Navarro's comprehension of Danger's statement. It's one thing for a person to hear a series of spoken words; it's quite another for the person to understand them. It's theoretically possible that Officer Navarro heard Danger's comment in the sense

that the comment's soundwaves reached Officer Navarro's ear, but that Officer Navarro misheard them as something else. Have you ever listened to a song, looked up the lyrics, and realized that you completely misunderstood what the singer was saying? That's the sort of thing I'm talking about. I can't speak to that issue here because I didn't seek to interview Officer Navarro prior to providing this affidavit; in order to evaluate comprehension, I'd need at minimum to conduct an in-person interview with the subject. (In retrospect, perhaps I should've done that.)

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

s/Trini Redbird
Trini Redbird
Dated: October 16, 2020.

Subscribed and sworn before me on October 16, 2020:

s/Roberta Bost
Roberta Bost

DEFENSE WITNESS STATEMENTS

AFFIDAVIT OF MARLOWE NAVARRO

My name is Marlowe Navarro, and I'm 33 years old. I'm a police officer with the Rowe Police Department, where I've worked for the last eight years. I come from a family of police officers. My father and grandfather were each cops in and around Flint, Michigan, and my aunt is a homicide detective in Seattle. I moved to Oregon to go to college — I went to the University of Oregon, where I majored in history, on a full scholarship — and I've been here ever since. When I graduated from college, I put in an application at the Rowe Police Department, which ended up hiring me. I've had a great career with RPD so far and I hope to continue for as long as they'll have me.

Chalk it up to my family, I suppose, but I've wanted to be a cop ever since I was a little kid. I grew up near Flint and saw firsthand how police officers can make positive differences in their communities. If you were expecting someone like John McClane, you'd be sorely disappointed if you met any of the cops in my family. My grandfather made sure my aunt and father knew, and my father made sure I knew, that a good cop does *not* see the world as irreconcilably divided between law-abiding citizens and hardened criminals. Rather, a good cop sees, understands, and does her best to become an active participant in her community. My grandfather, for example, was on a first-name basis with most of the people he'd run into on his beat every day. Building that sort of trust is an absolutely essential part of the job: as a cop, you'll commonly encounter people who are having the worst day of their lives, and approaching those interactions from a place of empathy, patience, and understanding will go a long way toward resolving an otherwise bad situation. The cops in my family burned those principles into my brain at a young age, and I do my best to live by them whenever I'm in uniform.

Of course, none of that is to say that cops are perfect. Cops are human beings, and, like all human beings, they occasionally lose their cool and make mistakes. There's honor in keeping calm under pressure, but I know from personal experience that it isn't always easy. I made a small but significant mistake toward the end of my first year on the job, when I was responding to a report of a trespasser at Buddie's Burgers. It turned out to be a disgruntled former employee, who had picked the lock to the back door and was trashing the owner's office. My partner and I arrested him for burglary, and as we were leading him out to our squad car, he became verbally abusive. I did my best to ignore him, but when he threatened to sue me for wrongfully arresting him, I lost my composure. (To this day, that thought still annoys me a bit. I mean, we had caught the guy red-handed; what was he thinking?) Anyway, I made sure he bonked his head on our car as we placed him in the backseat. It was nothing serious, of course, but the suspect still filed an excessive force complaint against me. My partner at the time offered to tell the department's investigator that the guy was making it up, but, having come to my senses, I was having

none of it. Then as now, when I make a mistake, I own up to it. I was able to resolve things with the suspect by sitting down with him and offering an apology, which (having also come to his senses) the suspect accepted. The whole episode taught me a valuable lesson about conflict resolution, which I carry with me to this day.

One of the hardest parts of my job is responding to public demonstrations or protests that present a potential for violence. Of course, I know — and, in case someone forgets, RPD's policies expressly remind us — that everybody has a constitutional right to speak, associate, assemble, and petition the government. I also know that my fellow police officers and I are never allowed to discriminate against protesters (or, for that matter, anyone at all) based on their viewpoint or the content of their speech. I know that RPD would fire me in an instant if, for example, I asked a group calling for police reform to disperse while letting pro-police demonstrators remain in the same area. And, in those circumstances, RPD would be right to do so. The reason we respond to public demonstrations is to *protect* protesters' First Amendment rights, and if we're violating those same rights ourselves, we become part of the problem.

That's not really the hard part, though. The hard part usually lies in distinguishing between peaceful protest and criminal conduct, which, in the dynamic, rapidly evolving context of a protest, is often extremely difficult. Like it or not, it's common for individuals who are bent on committing crimes to use a crowd of demonstrators as "cover," since RPD's policy and practice is to involve itself as little possible in peaceful protests. Unfortunately, I see this sort of thing with my own eyes on a fairly regular basis: someone emerges from a crowd of protesters, throws a punch or breaks a window, and then disappears back into the crowd before we can catch up to them. Typically, all of that can happen in a split second, and it's often really hard to know when to intervene.

Exhibit 2 is a true and correct copy of RPD Directive 0635.10, which is our departmental policy regarding public demonstrations and which was in effect in December 2019 and January 2020. All officers are bound by it, and a violation of the policy can lead to discipline or even termination.

I was one of the RPD officers who responded to the protest at the Digby Theater on December 20, 2019. The owner of the theater, Camden Buchanan, called the department a day or two beforehand and alerted us that a protest likely would occur that day, when the theater was scheduled to be demolished. I was the officer that fielded the call, actually. Camden pointed me to a number of social media posts suggesting that the protesters would attempt physically to block the construction equipment that would be used in the demolition, so my sergeant assigned me and approximately 20 other RPD officers to monitor the scene. I had been following the news reporting on the theater pretty closely because I *love* the theater itself. In fact, I had attended a concert there just a couple of weeks before the "Can You Dig It?" festival

last year when that poor woman was trampled to death. If you ask me, it's a real shame that Camden is tearing the theater down.

When we arrived at the theater on the 20th, though, I knew I had to put those feelings aside. My colleagues and I gathered outside the theater at about 0900 hours that morning, an hour before the demolition was scheduled to begin. By about 0915, a number of what we guessed were protesters began arriving and were milling around on the sidewalk. Then, at 1000 hours, when the demolition crew began turning out the construction equipment, the protesters marched into the street, linked arms, and formed a line between the equipment and the theater. It was basically what Camden had warned us about, and while it required a police response — traffic had started to back up behind the protesters — it wasn't anything major. Along with a couple of my colleagues, I approached the line of protestors and planned on asking them to move out of the street. When I got closer, though, I recognized one of the protesters: Danger Smith. I arrested Danger a couple of years ago at a protest in the Topaz neighborhood, and I had seen Danger a couple of other times since then, both at protests and at the Freedom Cup coffeehouse. To be honest, I like Danger — Danger is kind of a '60s radical, and is usually pretty fun to talk to — so, figuring I'd be able to communicate best with a protester I already knew, I decided to start by asking Danger to move out of the street.

When I got close to Danger, a person I didn't recognize darted between us. I now know that person to be Jersey Jackson. At first, I was startled, but then I realized that Jersey was asking Danger for what sounded like a journalistic comment. That was fine, but Jersey, Danger, and the other protesters were still blocking traffic. To get Jersey's attention, I put my hand on Jersey's shoulder. I did so gently, in the way you would interact with a friend. In retrospect, that was probably a bad idea, since I didn't know Jersey, but the situation seemed relatively calm, Jersey had practically run me over a moment ago, and I didn't think much of it at the time. At the same time, I said, "Don't make me arrest you, Danger," and winked at Danger. I was kidding, obviously; Danger smiled and seemed to get the joke. I don't remember exactly what I said next, but I reminded Danger that Danger was blocking traffic and asked Danger to move.

Those words had barely left my mouth when Jersey spun around and started yelling at me. Again, I don't remember exactly what Jersey said, but it was something about how I had no right to arrest Danger because Danger wasn't doing anything wrong. I tried at first to explain that I wasn't going to arrest Danger unless Danger refused to move, but Jersey wouldn't let me get a word in edgewise. It seemed, then, that I would have to be a little sterner. "Look," I said steadily, "you're blocking traffic, you're blocking these bulldozers, and now you're interfering with my job as a police officer. Clear out, or we're going to have to start making arrests." That seemed to do the trick; Jersey and Danger began walking back toward the sidewalk. A moment later, the bulldozers powered down. The crowd cheered and, a few minutes after that,

began to disperse on its own. I remember feeling really good about how we handled ourselves that day. We had dealt with a potentially hazardous situation without interfering with any of the protesters' rights, and, to top it all off, the protest had seemed to work! The Digby would live to see another day.

I had forgotten all about that first protest when the Department got another call from Camden in early January. (Again, I fielded that call.) According to Camden, it was basically the same deal as before: the demolition had been rescheduled, social media was buzzing about a protest, and there were rumors that some of the protesters were going physically block the demolition from happening. My sergeant dispatched the same group that had responded to the last protest, along with a few additional officers for backup. We were instructed to put on our RPD protective gear (helmets, protective vests, knee and elbow pads, etc.) to ensure our safety, but that wasn't my decision. Had it been up to me, I would've focused instead to trying to deescalate things. Our protective gear, which can make us look a little ominous, often has the opposite effect.

We arrived at the Digby on the morning of the protest to find that a group of demonstrators had positioned themselves against the chain-link fence that surrounded the theater. I found that a bit worrisome — they'd eventually have to move — but, because they weren't doing anything wrong, we let them be for the moment. At 1000 hours, though (when the demolition was scheduled to begin), the demolition crew powered up its equipment, and the protesters by the fence began yelling at them. We responded as we had during the last protest: we approached them and began asking them to move out of the way. This time, though, the entire crowd seemed totally unwilling to budge. They were really getting in our faces, too. One protester who told me her name was "Cari" made an oinking sound at me and asked whether I could sleep at night knowing that I work for "the man." That was ridiculous, of course — I was just as upset about the Digby's demolition as she was — but I didn't respond.

After a few minutes, it became clear that the protesters were going nowhere. Some of them, I noticed, had even begun locking themselves to the fence. My fellow officers and I relayed that information to our incident commander, and the "IC" (as we call her) decided to declare an unlawful assembly. She grabbed a megaphone and announced to the line of protesters: "You are trespassing on private property. Disperse now or you will be subject to arrest." Only one or two of them left the fence. Our IC then directed us to move toward them and to begin making arrests. To be honest, I was disappointed that it had come to that, but, as police officers, we don't get to pick and choose which laws to enforce. The protesters *were* trespassing, after all, and we had given them ample opportunity to move away from the Digby.

My colleagues and I were walking toward the Digby when I heard someone on my left call out, "Let's barricade the inside! Then they can't knock it down!" I turned and saw someone wearing a bright blue t-shirt with yellow lettering. At that time, I was about 100 feet away from the person, and about 50

feet away from the bulldozers that were powering up in the empty lot. Exhibit 4 is a true and accurate representation of everyone's relative location as I remember it at that moment, though not to scale. I couldn't make out the lettering on the person's shirt, and, to be honest, that's not what I was focused on. The person, I saw, had a rock in their right hand, and was standing directly in front of the Digby's front door, which is made of stained glass. A true and correct image of the rock I saw is shown in Exhibit 1. The person was just standing there with the rock, but, in the moment, it seemed clear to me that the person was about to throw the rock at the door. Immediately, I started running toward the person, and as I got closer, I recognized that it was Jersey Jackson. I also saw that Danger Smith was standing right next to Jersey. In the moment, though, I didn't have time to think things through any further: I grabbed Jersey's hand and arrested Jersey. I don't recall whether I said anything to Jersey during the arrest, but it's possible that I did.

My prior interaction with Jersey had nothing whatsoever to do with my decision to arrest Jersey. I arrested Jersey solely because I thought Jersey was about to throw a rock through the Digby's window, and not for any other reason. I didn't arrest anyone else that day, even though I could have, because, in my view, that would've run the risk of inflaming things even further. In total, my colleagues and I made only five arrests, at which point the crowd began to disperse. True, a number of the protesters remained in the area after our IC had given the order to clear out, but because they weren't in the way, I decided that any further arrests wouldn't serve any useful purpose. I feel terrible that Jersey thinks I arrested Jersey because of Jersey's earlier comments to me, but that's simply not true. I arrested Jersey for one and only one reason: Jersey was holding a rock and looked like Jersey was about to throw it at the Digby's stained-glass window.

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

s/Marlowe Navarro
Marlowe Navarro
Dated: October 9, 2020.

Subscribed and sworn before me on October 9, 2020:

s/Roberta Bost
Roberta Bost

AFFIDAVIT OF CAMDEN BUCHANAN

Hi there! The name's Camden Buchanan. I'm 54 years old, and I'm the founder and chief executive officer of Buchanan Properties LLC. Our company's mission is simple: we buy decrepit buildings, renovate them while keeping their basic charms and style intact, and then either lease them out or sell them. Sure, it's business, and I do pretty well for myself, but I like to think I'm also making a difference, you know? We give new leases on life (so to speak) to structures that most people have long forgotten, and I like to think that Rowe's skyline is better for it.

The Digby Theater, which we acquired in 2012, is one of our finest properties, but it's also turned out to be one of the trickiest to manage. The theater has been around since the 1920s, and, in my opinion, it's the single most gorgeous building in Rowe. I've *never* seen stained glass as beautiful or as intricate as that in the windows on the theater's enormous front doors. It's basically right in the center of Rowe, so it gets a ton of foot traffic, and it's long been Rowe's go-to venue for concerts, speeches, political rallies — you name it, and it's probably happened at the Digby. The problem, though, is that the Digby has been listed in the National Register of Historic Places since 1991, and that's really limited what we've been able to do with it. For years, I've been trying to convince Rowe's City Council to let us redo the theater to make it safer, brighter, and more durable than the current structure, which, as anybody who's ever visited the theater can tell you, is on its last legs.

Tragically, the explosion and stampede at last year's "Can You Dig It?" festival proved my point; a young music fan was trampled to death in part because the building has so few exits. After that — and following a presentation by my friend Ari Frankel on the Digby's structural unsoundness — the City Council ended up seeing things my way. Ari has worked for Buchanan Properties for quite a while; whenever we're thinking about buying or selling a property, we have Ari inspect it, so we've paid Ari a good chunk of change of the years. Naturally, we paid Ari to deliver the presentation to the City Council, too. Ari showed me a draft of the presentation before she delivered it, and she had characterized her inspection as an "independent" analysis of the Digby's structural soundness. I thought that was a little misleading, but I told Ari to go ahead and deliver it anyway. I mean, the City was going to make its decision based on Ari's findings, not on the label she attached to her remarks. In the end, who cares, right?

Anyway, once the City Council issued its decision permitting our renovations, things went swimmingly — for a time, at least. Our plan was to keep the Digby's basic architectural skeleton, but to redo the interior layout and exterior completely. The renovations were set to begin in mid-December when, just a few days before we broke ground, a reporter at *The Rowegonian* named Jersey Jackson published a story claiming that Ari had lied to the City Council when giving her presentation. The whole thing was

balderdash, but, within a day, it became clear that the public was buying it. Both in the online comments to Jersey's story and on social media, I started seeing calls for a protest at the Digby. I didn't think much of it at the time, but, just to be safe, I called the Rowe Police Department and asked that they send a couple of officers to the scene to make sure things proceeded in an orderly fashion. I didn't attend the renovation myself, though. (I had an appointment that day out in Cascade County.)

The morning of when the renovations were supposed to begin — December 20, 2020, I recall — I received a call from my office manager Erin Esparza, who told me that, in light of Jersey's article, the City Council had decided to suspend its authorization of our project. I was flabbergasted! How could the City pull the rug out from under our feet just because of one measly article? It was absolutely ridiculous. Fortunately, we were able to smooth things over with the City; we hired a second inspector who, unsurprisingly, confirmed Ari's findings. I then worked with our contractors to reschedule the renovations for January 15, 2020, and this time, I made sure to be there in person. I wanted to be 100% certain that everything went off without a hitch. Like I did the last time, I called the Rowe Police Department and asked that they send some officers to make sure things didn't get out of hand with any protesters.

Right away, though, I knew we were going to have a problem. The protesters had lined up against the chain-link fence surrounding the theater and had linked arms. At 10:00 a.m., the construction equipment in the lot next to the theater powered up, and that really seemed to set the protesters off. I was standing in the lot across the street, but I had a pretty good view of what was going on: the protesters were yelling in my general direction, and some even appeared to be locking themselves to the fence. I got out my phone and recorded some of the sounds I was hearing. (I wanted to send the recording to *The Rowegonian*; the last story had been so one-sided!) A true and correct copy of that recording is in the file labeled Exhibit 3.

A moment or two later, I heard a police officer on a bullhorn announce: "You are trespassing on private property. Disperse now or you will be subject to arrest." That seemed to have the opposite of its intended effect. I didn't see a single protester leave, and when the police officers surrounding me saw what little their announcement had done, they moved toward the protesters. A few moments after that, I heard one of the protesters yell something about barricading themselves inside. It took me a second to figure out where the voice was coming from, but I then noticed someone in a blue t-shirt standing in front of the fence by the Digby's front door with what looked like a brick in the person's hand. I started to yell: "Hey! That person is about to break down the door!" There was a beat, and then, fortunately, a police officer grabbed the person by the wrist and appeared to arrest the person.

The police officer, whom I now know and recognize as Marlowe Navarro, walked the person, whom I now know and recognize as Jersey Jackson (I had never met or seen Jersey's face before), right

by the place where I was standing. I heard the two of them talking as they went. "It wasn't me!" complained Jersey, "I took that rock out of Danger's hand!" "I'm sure you did," said Officer Navarro, politely but with a definite note of sarcasm, "but we told you all to clear out and you didn't." Officer Navarro then pushed Jersey into a squad car and started walking back toward the remaining protesters. By that point, only two or three of them were still there, and Officer Navarro's colleagues seemed to be trying to pry them away from the fence. Officer Navarro started walking back toward the fence, but by the time Officer Navarro got there, all of the protesters had either left or had been arrested.

The whole episode was pretty stressful. Fortunately, our contractors were able to reach the Digby, which is scheduled for its grand re-opening in mid-2021. I'm grateful to Officer Navarro for saving the Digby's front door, which we've retained in our remodel. Who knows what would've happened if Officer Navarro hadn't taken that rock out of Jersey's hand?

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

s/Camden Buchanan
Camden Buchanan
Dated: October 9, 2020.

Subscribed and sworn before me on October 9, 2020:

s/Roberta Bost
Roberta Bost

AFFIDAVIT OF EDEN SAAB

I'm Eden Saab, and I'm 51 years old. In my day job, I teach history and social studies at Burrough High School here in Rowe. That's not quite why I'm here, though. For the last 15 years, I've been the chair of Chinook County's Citizen Review Committee, which we call the "CRC" for short. I've long had an interest in how the police operate, in both an academic sense and, tragically, a personal sense. When I was seven, my mother was driving home from work one evening, turned onto the highway, and found herself caught in the middle of a high-speed police chase. She ended up getting run off the road and sustained a serious spinal injury. Thankfully, she made a full recovery, although it took several years. We never were able to figure out exactly what happened — that was long before the days when news helicopters would film those sorts of things — but, ever since, I've found myself wondering whether the police could've done something to prevent the accident. In a nutshell, that's why I decided to join the CRC.

The CRC's basic role is simple: we're an independent quasi-governmental body that conducts civilian oversight and investigates allegations of misconduct involving Chinook County's police, including (but not necessarily limited to) the Rowe Police Department. Following an investigation, we issue findings and, if we decide that misconduct has occurred, we recommend disciplinary measures for the officer or officers involved. We're an independent body, and when I say we're "independent," I mean it: the CRC is a creature of the Chinook County Commission (it was created as a result of a resolution they passed back in 2001) and not the Rowe Police Department itself. That means we answer not to the police, but rather to the County Commissioners and, indirectly, to the citizens who elect them. Also, we're all volunteers, so it's not like we've got a financial stake in any of the findings we issue.

I'd say I'm pretty well-qualified for my role as the CRC's chair. I have a B.A. and an M.A., each from the University in Oregon and each in history. My master's thesis focused on the emergence of "modern" American police forces in the early 1900s. As I'll explain further in a moment, I also regularly provide training to police departments around Oregon, including the Rowe Police Department, on conflict-resolution strategies and community-based approaches to policing. I'm also intimately familiar with the academic literature on best practices for policing, and, in fact, I've occasionally contributed to it. Articles I've written have appeared both in scholarly journals like The American Journal of Police as well as major newspapers like The Rowegonian. Beyond that, I've testified as an expert witness seven times in civil trials involving allegations of police misconduct; in six of those cases, I testified for the defense, and in the other, I testified for the plaintiff. The only caveat to all that, I suppose, is that I've never actually worked as a police officer myself. Still, though, since I've been thinking, writing, and teaching about best practices for police

departments for the better part of three decades, I'm confident that my views on the subject are reliable and well-grounded in fact.

I became involved in this case when Jersey Jackson filed a complaint with the CRC regarding Jersey's arrest by Marlowe Navarro. Jersey's basic complaint was that Officer Navarro had arrested Jersey in retaliation for Jersey's exercise of Jersey's First Amendment rights. Right away, we let Jersey know that we couldn't come to a conclusion one way or the other on that specific issue; we're not lawyers, and more importantly, we really aren't able to determine what was going on in Officer Navarro's head at the time of the arrest. (For that reason, I can't give an opinion one way or the other on whether Jersey's prior comments to Officer Navarro had anything to do with the subsequent arrest.) Still, the CRC is there to serve the community, so we agreed to investigate the arrest in a more general sense, with the goal of determining whether there was anything improper or irregular about it.

In conducting our investigation, I personally interviewed Jersey, Officer Navarro, Danger Smith, and Camden Buchanan. During those interviews, they informed me of the facts that appear in their affidavits in this case, and nothing more. In my opinion, those interviews provided me with sufficient information for my analysis. The principles and methods that I used to analyze those facts are reliable and well-accepted among those who advise police departments on best practices, and I applied them reliably in this case.

Before I get into the nitty-gritty of this case, it's important to understand two general principles. First, since about the 1980s, it's become clearer and clearer as a statistical matter that community-based policing leads to better overall results. "Community-based policing" is a loose term, but it refers generally to an approach to policing in which officers hold themselves out as partners with the communities they serve. They're there not simply to arrest people who commit crimes, but rather to take a proactive approach to solving problems. To put that in concrete (if overly simplistic) terms, a good police officer doesn't just sit and wait on a street corner hoping to catch a litterer in the act; instead, she ensures that the public waste bins on the corner remain clean and unobstructed. And, if the officer happens to catch someone littering, the officer might simply engage the person in polite conversation and ask her to pick up her trash, rather than issuing her a full-blown ticket.

Second, however, context matters quite a bit when it comes to community policing. It's relatively easy to implement community policing when it comes to petty crimes and minor violations like littering or jaywalking. It becomes a much harder job, though, in more volatile circumstances, of which making an arrest in crowd is a prime example. Especially in a raucous setting like a protest, a concert, or a sporting event, the specific circumstances in which the crowd has gathered can have a huge impact on the degree to which an officer who makes an arrest is perceived as a community partner, rather than as an adversary. Consider, for example, a sporting event in which a fan becomes unruly and begins to threaten others seated nearby. In

those circumstances, it's likely that the other sports fans will want their unruly compatriot removed. By comparison, consider a public protest against misconduct by the police themselves. Even if a police officer has probable cause for an arrest — say, for trespassing — and conducts the arrest appropriately, it's nevertheless likely that the officer's intervention would be perceived as hostile and, in turn, escalate the situation.

Where should officers draw the line? That's an extraordinarily difficult question, but it's one on which the Rowe Police Department's policies offer an eminently reasonable middle ground. RPD Directive 0635.10 sets forth a procedure for its officers to follow when there arises a potential need to disperse a crowd. A true and accurate copy of that policy is set out in Exhibit 2. The policy divides police action in group settings into two basic categories. On one hand, for crimes that pose no reasonable risk of violence or damage to property, Officers may make arrests only after giving the subject or subjects of the arrests at least two clear verbal warnings and if there exists "no reasonable alternative" to de-escalate the situation. On the other hand, for crimes that do pose such a risk, Officers may make only those arrests that are "reasonably necessary" to protect the safety of others in the crowd. There's a common thread that runs between each of those rules: when it comes to crowd control, RPD officers may take only those actions that are needed to ensure the safety of the crowd.

As it turns out, I'm intimately familiar with RPD Directive 0635.10, because I recently delivered a training session to a group of RPD officers how best to implement it. The training occurred on January 7, 2020. Officer Navarro was in that group and seemed actively engaged during our entire session. During the training, I went over the full contents of RPD Directive 0635.10 in detail, went over the same points about community policing that I make above, and discussed how that concept should influence the way in which RPD officers implement the directive. I also explained that RPD Directive 0635.10 was an official RPD policy and that an officer's failure to abide by it could lead to official discipline. During a question and answer session toward the end of the training, I recall that Officer Navarro offered a comment and a question. "You know," Officer Navarro said, "we had a protest at the Digby last month, and some of the protesters really got in our faces. What's the best way to de-escalate that sort of verbal abuse?" Officer Navarro seemed calm and genuine in asking the question. In response, I indicated that RPD officers should generally keep their distance, except in cases where an officer perceives a threat of violence or property damage. Officer Navarro nodded thoughtfully and indicated that Officer Navarro understood and appreciated my response.

In my expert opinion, Officer Navarro's conduct during the January 15th protest complied with both RPD Directive 0635.10 and more generally with the principles of community policing outlined above. By all accounts, the crowd at the Digby was in an impassioned state, and Officer Navarro appropriately carried out the advice I had given during our training session by politely asking them to move, rather than immediately

arresting them. Moreover, assuming Officer Navarro truly believed that Jersey was about to throw a rock through the Digby's stained-glass window, Officer Navarro's arrest of Jersey in that moment was appropriate given the setting and context of the larger protest. In particular, as I explained to Officer Navarro and the others during our training session, violence and property damage are all but certain to enflame the overall situation, whereas petty offenses and technical violations of law are not. I also explained that RPD expects its officers to respond promptly to the former and to decline to make arrests or use force in regard to the latter; RPD, I noted explicitly, requires its officers to approach crowd management with de-escalation as their first and most important goal. Based on my review of multiple accounts of the January 15th protest, Officer Navarro embodied those principles well.

I delivered my findings in May 2020 in oral testimony to Rowe's City Council. During my testimony, I explained that there was nothing obviously improper about Officer Navarro's arrest of Jersey Jackson, but emphasized that I couldn't say one way or the other whether Officer Navarro made the arrest in response to Jersey's prior comments or any other of Jersey's First Amendment activities. I also noted that the other RPD officers, including the incident commander on the scene, appeared to have violated RPD Directive 0635.10 by beginning to make arrests after giving the protesters only one warning. (As I noted above, RPD policy required that officers provide a minimum of two warnings.) Many of the protesters began to disperse when the arrests began, which tells me that the arrests themselves might ultimately have been unnecessary. At any rate, I'm just glad the situation didn't turn out any worse.

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

s/Eden Saab
Eden Saab
Dated: October 16, 2020.

Subscribed and sworn before me on October 16, 2020:

s/Roberta Bost
Roberta Bost

EXHIBITS

EXHIBIT 1: Photograph of rock found in Jersey Jackson's hand

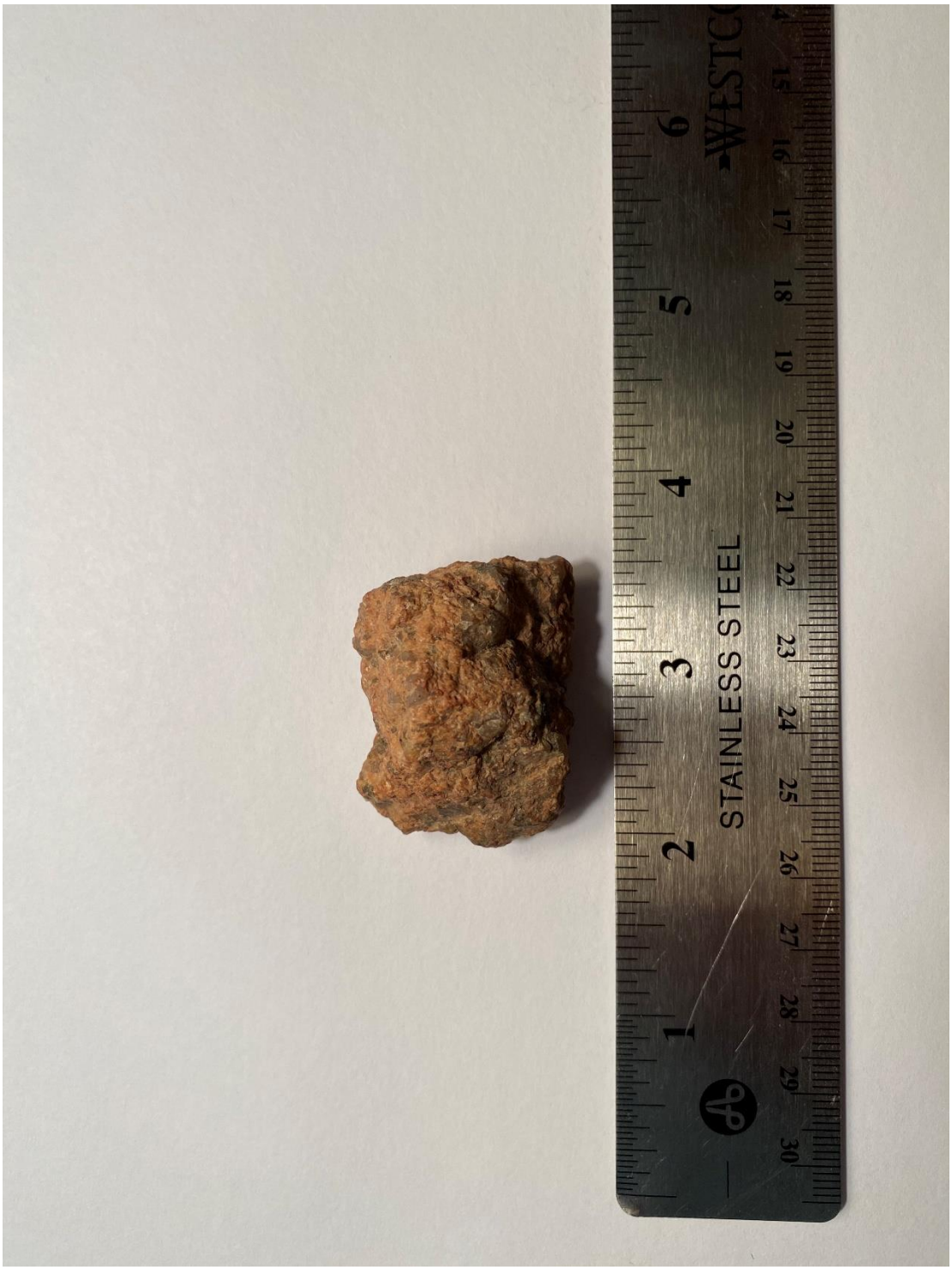


EXHIBIT 2: Rowe Police Dept. Crowd Management/Control Policy

Rowe Police Department
Directive 0635.10
CROWD MANAGEMENT/CROWD CONTROL

Policy:

1. ***Purpose.*** The purpose of this Directive is to provide guidance for demonstrations, special events, the managing of crowds during demonstrations, and controlling crowds during civil disturbances.

2. ***Free Speech & Assembly.*** The Rowe Police Department recognizes that Rowe has a tradition of free speech and assembly. It is the responsibility and priority of the Rowe Police Department not to unduly impede the exercise of First Amendment rights and to provide for the safe and lawful expression of speech, while also maintaining the public safety, peace and order. A police response that impedes otherwise protected speech must be narrowly tailored to serve a significant government interest. The content of the speech does not provide the basis for imposing limitations on First Amendment rights. While the First Amendment provides broad protections for the expression of speech, it does not provide protection for criminal acts including, but not limited to, riot, disorder, interference with traffic upon the public streets, or other immediate threats to public safety, peace or order.

3. ***Nature of Police Responses.*** The Rowe Police Department recognizes that demonstrations and events are dynamic in nature. Accordingly, Officers will monitor the crowd throughout the event to assess the level of risk posed to both demonstrators and the public at large, with the goal of minimizing potential violence, injury or damage to property. Officers' response should be commensurate to overall crowd behavior, and Officers should differentiate between groups or individuals who are engaging in criminal behavior or otherwise posing a threat to the safety of others and those in the crowd who are lawfully demonstrating. Officers will strive to maintain a diplomatic presence to dissuade participants from engaging in civil disturbance and to encourage crowd self-monitoring.

4. ***Specific procedures.*** For suspected crimes that occur during demonstrations that pose no reasonable risk of violence or damage to property, Officers may make arrests only (i) after giving the subject or subjects of the arrests at least two clear verbal warnings and (ii) if there are no reasonable alternative measures for de-escalation or resolution. For suspected crimes that occur during demonstrations that pose a risk of violence or damage to property, Officers may make only those arrests that are reasonably necessary to ensure public safety and must carry out such arrests in the least disruptive manner possible.

An Officer who violates any part of this policy is subject to discipline up to and including termination.

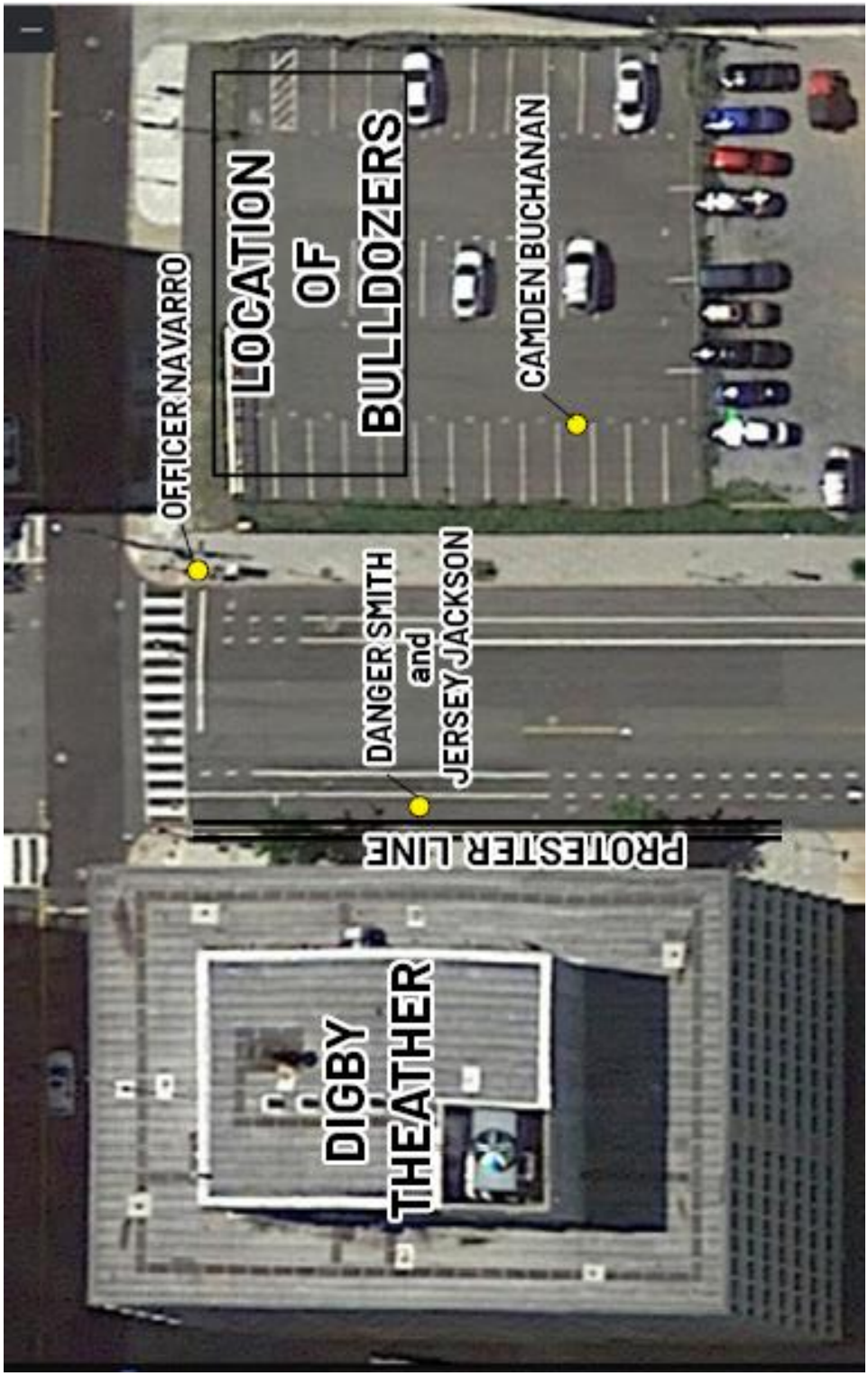
EXHIBIT 3: Audio Recording from January 15, 2020

This audio recording was made on January 15, 2020 by Camden Buchanan.

Link to Audio: https://drive.google.com/file/d/1UFCSIl0iHtmu-wJTIrtS3bDeUnmsNPsv/view?usp=sharing

EXHIBIT 4: Area Map – January 15, 2020

This map was excerpted from Officer Marlowe Navarro's police report filed after the arrest of Jersey Jackson. The map depicts the scene prior to Jackson's arrest. The map is not to scale.



II. The Form and Substance of this Civil Trial

A. The Elements of a Civil Case

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

B. Preponderance of the Evidence

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

C. Claims and Legal Foundation

RETALIATORY ARREST IN VIOLATION OF FIRST AMENDMENT

Under the First Amendment, a citizen has the right to free expression. In order to prove the defendant deprived the plaintiff of this First Amendment right, the plaintiff must prove the following elements by a preponderance of the evidence: (1) the plaintiff engaged in speech protected under the First Amendment; (2) the defendant took action against the plaintiff; and (3) the plaintiff's protected speech was a substantial or motivating factor for the defendant's action. A substantial or motivating factor is a significant factor.

In this case, the plaintiff contends that the unlawful action taken against the plaintiff by the defendant was an arrest. Accordingly, the plaintiff must also prove (4) that the arrest occurred without probable cause, or that other similarly situated individuals who were not engaged in the same sort of protected speech were not arrested.

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.

The Plaintiff's attorneys present the case for the plaintiff, Jersey Jackson. By questioning witnesses, they will try to convince the jury that the Defendant, Marlowe Navarro, is liable by a preponderance of the evidence.

The Defense attorneys will present the case of the defendant, Marlowe Navarro. They will offer their own witnesses and evidence to show their client's version of the facts. They may undermine the Plaintiff's case by showing that the Plaintiff'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 Plaintiff.

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 Plaintiff 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 plaintiff/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 Plaintiff/Defense would like to call _____ to the stand."

The witness will have been sworn in by the Presiding Judge at the beginning of the trial. 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 41* and *Rule 611*.
- For closing, see explanation to *Rule 42*.

Witnesses

All witnesses will be sworn in by the Presiding Judge as a preliminary matter. The Presiding Judge will use the following oath:

> "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."

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.

Timekeepers

Both teams will provide a timekeeper to keep time throughout the trial. Timekeepers are responsible for providing their own timekeeping devices. Time limits are provided for each segment of the trial. The timekeeper should keep track of time used and time remaining for each segment of the trial using the timesheet provided at the end of 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.

Times should be announced by both timekeepers in the chat area of the Zoom courtroom. After each witness has finished testifying, the timekeepers should announce the time remaining in the segment. For instance, if after direct examination of two witnesses, a team has used 12 minutes, the timekeepers should type "10:00 remaining" in the chat area. (22 minutes total allowed for direct/redirect, less the 12 minutes already used). After each witness completes his/her testimony, the timekeepers mark their timesheets with the time to the nearest 10 seconds. The timekeepers will announce a 3 minute, 1 minute, and TIME warning in the chat area of the Zoom courtroom. If the TIME announcement goes unnoticed, the timekeepers should unmute and announce TIME aloud.

Timekeepers are responsible for keeping time and providing time information if requested by performing students. Time should be stopped during a timekeeping request. Major discrepancies between the timekeepers should be settled by the Presiding Judge. The

Presiding Judge will choose how to adjust the time in order to remedy the discrepancy. Minor time differences should not be brought to the Presiding Judge. Frivolous complaints concerning timekeeping will be considered by judges when scoring for the round.

Team Manager

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 timekeeper if needed. This position is not required for the competition.

III. 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 statements 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' 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 one of seven regions when registration is complete. Every effort is made to allow teams 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 during a three-week period starting February 2nd, 2021 and ending February 18th, 2021. Teams should be aware that the regional competition dates are subject to change by the Competition Coordinator due to scheduling requirements, availability of courtrooms, the needs of teams, or inclement weather. If dates change, teams will be notified through the Classroom Law Project Mock Trial Q&A webpage.

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. **Teams advancing to the state competition will not be announced until after all teams have competed at their regional competitions.** 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 12th – 13th, 2021**.

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 six** and a **maximum of 18** students all from the same school or organization. The timekeeper is not counted as a team member. 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, court reporters, and news reporters. However, none of these roles will be used in the competition.

> **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 Plaintiff and Defense (students may play roles on both sides if necessary) and a timekeeper.

All mock trial teams must submit a Team Roster listing the team name and all coaches and students to the Competition Coordinators two weeks prior to the beginning of the regional competitions. If a team fails to submit a Team Roster by the deadline, the team will forfeit their space in the competition. Once rosters have been submitted, students may not be added or substituted in a role. If there is an emergency causing a student to be absent from the competition, students must follow the emergency absence procedure contained in these materials. **If a school or organization enters more than one team in the competition, 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 Plaintiff and Defense sides of the case. All team members must be available to participate in all rounds. The Competition Coordinators will make certain that both the Plaintiff and Defense sides of each team will have at least one opportunity to argue its side of the case at competition.

> **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. 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 10. Swearing in the Witnesses

The Presiding Judge will swear in all witnesses before the trial begins as a preliminary matter using the following oath:

> "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?"

Rule 11. 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/Swearing-In of Witnesses	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.
**Plaintiff 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 Plaintiff delivers its Opening Statement and Closing Argument first. The Plaintiff may reserve a portion of its closing argument time for rebuttal. The rebuttal is limited to the scope of the Defense's closing argument. Objections are not allowed during the Opening Statement or 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 12. Timekeeping

Time limits are mandatory and will be enforced. Both teams will provide a timekeeper for each trial who will time the trial simultaneously. Timing will stop during objections or extensive questioning from a judge. Timing will **not** stop during the admission of evidence unless there is an objection by opposing counsel.

Three- and One-Minute warnings must be given before the end of each trial segment in the chat area of the Zoom courtroom. Both timekeepers should announce the time warnings. When time has expired, timekeepers will state TIME in the chat area. If the TIME call goes unnoticed, timekeepers will unmute and announce TIME aloud. The timekeepers will also **time the judges' scoring time** after the trial. The judging panel is allowed 10 minutes to complete their ballots. The timekeepers will notify the judges when time has elapsed.

Rule 13. 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 account for overruns in time in their scoring.

Rule 14. 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 unless a necessary accommodation for a participant's disability. The Competition Coordinator should be made aware prior to the competition of any accommodation needed. 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 15. 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. Communication shall not occur in the Zoom courtroom chat area. Students may communicate by other means (Google Chat, text message, etc.) as long as the notifications are silent and the communication is not disruptive.

Only team members participating in the round and coaches may be in the room with the performing students. Spectators and non-performing team members must not be in the same room as performing team members during the trial.

Communication in violation of these rules is grounds for disqualification from the competition. Competition Coordinators may exercise their discretion in deducting points if they find a complaint is frivolous or the conversation was harmless.

Rule 16. 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 17. 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. Trials may be recorded by participating teams as long as the opposing team approves.

C. Judging and Team Advancement

Rule 18. Decisions

All decisions of the judging panels are FINAL.

Rule 19. Composition of Panel

The judging panel will consist of four individuals: one Presiding Judge and three scoring judges. All scoring judges shall score teams using the sample ballot provided in these materials. The Presiding Judge shall not cast a ballot, but provide a tiebreaker score to be used in case of a tie ballot. The

scoring judges shall cast ballots based on the performances of the student attorneys and student 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 third ballot will be an average of the two scoring judges' scores.

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 20. 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 all team members' performances. Each judge completes his/her own ballot. Fractional points are not allowed. The team that earns the most points on an individual judge's ballot is the winner of that ballot. In the instance of a tie ballot, the Presiding Judge's tiebreaker score will be used to determine the winner of the ballot. The team that wins the majority of the three ballots wins the round. The winner of the round shall not be announced during the competition.

Rule 21. 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. Points accumulated through Point Comparison system;
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 22. Power Matching

Pairings for the first round of each 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 23. 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 24. 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 25. 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 bring a Rule 25 challenge. 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 bring a challenge. The student attorney may communicate with co-counsel and student witnesses before lodging the notice of a challenge 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 challenge procedures.** Teams filing frivolous challenges may be penalized.

Rule 26. Dispute Resolution Procedure

At the conclusion of the trial, the Presiding Judge will ask both teams if they have Rule 25 challenges for *material* rule or ethical violations.

Any team bringing a challenge will have **3 minutes** to complete the online violation form and place the link in the Zoom chat area. The judge will not provide the link to the blank form. If both teams have challenges, they should complete their forms at the same time.

The Presiding Judge will review the challenge and determine whether or not it merits a hearing. If the challenge is deemed not to merit a hearing, the Presiding Judge will deny the challenge outright.

If the Presiding Judge decides the challenge merits a hearing, the hearing will be held in open court. Each team will have **2 minutes** to argue the challenge. After arguments, the Presiding Judge will determine whether or not there was a *material* violation.

The Presiding Judge's decision **will not** be announced.

The timekeepers MUST time these proceedings. Time should not be extended or estimated.

Rule 27. 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 28. 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 28 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 25-28.

IV. Virtual Mock Trial Rules of Procedure

Rule 29. Team Roster

Teams shall complete and submit the online Team Roster two weeks prior to the Regional Competition. Rosters will indicate student names, gender pronouns, and the roles they will portray. Changes may not be made to rosters after submission. In the event of technical difficulties during the trial, students may substitute another student according to the Emergency Absence Policy in these materials. Rosters will be shared with the Presiding Judge, Scoring Judges, and the opposing team prior to each round.

Rosters should not identify a team's school or organization, only its team letter code.

Rule 30. Stipulations

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

Rule 31. The Record

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

Rule 32. Zoom Security

1) Students, coaches, observers, and judges will log in to a main Zoom room prior to being placed in their Zoom courtrooms.
2) Each competing team will be allowed a maximum of 16 logins broken down as follows:

a) 2 or fewer coaches;
b) 11 or fewer performing students; and
c) 3 or fewer observers.

3) Observer logins may be distributed as each team sees fit. Observers will remain muted and not shown on video throughout the entire trial. Unused student or coach logins **may not** be used to add observers to a Zoom courtroom. Abuse of these limitations will result in disqualification from the competition.
4) Upon entering the main Zoom room, users will rename themselves as follows:
   a) Performing Student Attorney: **LETTERCODE - (P/D) First and Last Name**

      Example: QR - (P) Harry Potter

   b) Performing Student Witness: **LETTERCODE - (P/D) First and Last Name playing Witness Name**

      Example: QR - (P) Hermione Granger playing Bellatrix Lestrange

   c) Coach: **LETTERCODE - COACH First and Last Name**

      Example: QR - COACH Albus Dumbledore

   d) Judge: **SCORING/PRESIDING JUDGE - First and Last Name**

      Example: SCORING JUDGE - Minerva McGonagall
      PRESIDING JUDGE - Cornelius Fudge

   e) Observer: **LETTERCODE - OBSERVER First and Last Name**

      Example: QR - OBSERVER Arthur Weasley

5) Breakout rooms will be used as Zoom courtrooms. Zoom courtrooms will be locked at the beginning of each round. No user will be allowed to come and go from the Zoom courtroom without Competition Coordinator approval.
6) Zoom room links may not be shared with anyone who is not a team member, coach, or observer. Do not post links on social media or other platforms.
7) Violation of the Zoom Security rules will result in disqualification from the competition.

Rule 33. Use of Exhibits and Affidavits

1) Judges and Teams will be provided with digital versions of all exhibits and affidavits prior to the competition.
2) If used during trial, exhibits or affidavits will be shared on-screen by a student attorney **other than** the performing student attorney using the document.
3) Text contained in exhibits or affidavits may be highlighted for clarity using the Zoom annotation tools. Yellow highlighting must be used. No other marks may be made on exhibits or affidavits.

Rule 34. Use of Notes

Student attorneys may use notes. Student witnesses may not use notes. Student witnesses must be seated at a distance from the screen while testifying. Unauthorized use of notes by witnesses may be grounds for disqualification from the competition.

Rule 35. Other Zoom Protocols.

1) Students and judges should have as neutral a background as possible. Only solid black or white virtual backgrounds may be used.
2) Student attorneys will stand while performing the Opening Statement, Closing Argument, Direct Examination, or Cross Examination.
3) Student attorneys will sit for introductions, preliminary matters, and objections.
4) Only one person will be allowed per screen at one time. Multiple students may utilize a particular screen throughout the trial but should rename when switching and only show the currently performing student.
5) All participants will mute audio and video when not performing. Coaches and observers will remain muted without video throughout the entire trial. Scoring Judges will mute audio but not video. Presiding Judge will mute audio when not speaking, but not video.
6) Zoom chat is for use by timekeepers only. This includes private chat. Performing students may communicate with one another throughout the trial by other electronic means with notifications on silent or vibrate.
7) Teams may determine their location according to local guidelines. If students are allowed to gather in one location, the one student per screen rule still applies. It is preferable for screens to be in separate rooms to avoid microphone feedback, echo, or other sound issues.

Rule 36. Emergency Absence and Technical Difficulties

It is possible that students or judges may encounter technical difficulties during a trial such as loss of internet connection or video. If so, the following protocol should be followed:

1) Should a student encounter technical difficulties during a trial, **they will be given 1 minute to rectify the problem**. The timekeepers will time the 1 minute. If the problem cannot be fixed in that 1 minute, another student will be allowed to take that student's place.
2) **Loss of video will not be considered a technical difficulty as long as the performing student is still able to be heard.**
3) Should a Scoring Judge encounter technical difficulties during a trial, they should contact the Competition Coordinator immediately. If they are able to be rejoined to the trial, they will do so. If not, the trial will continue with the remaining judges.
4) If the Presiding Judge encounters technical difficulties during the trial, one of the Scoring Judges will take over the Presiding Judge role until the Presiding Judge is able to rejoin or until the trial is complete.

V. Presenting Evidence

Rule 37. 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 38. Procedure for Introduction of Exhibits

The following steps effectively introduce evidence:

Introduce the Item for Identification

1. Screen share the exhibit.
2. Ask 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 noted by the Presiding Judge.

When the attorney is finished using the exhibit, the student sharing the screen will stop screen share.

Rule 39. Qualification of Expert Witnesses

Unless otherwise provided in the case materials, formal qualification of a witness as an expert in a specific field of expertise is not required nor permitted. Attorneys and witnesses should develop expertise and lay foundation through appropriate questioning based on the case materials provided. Judges may entertain any appropriate objections to expert witness qualifications and opinions.

Rule 40. Use of Electronic Devices

See Rule 15 for Trial Communication Rules. Timekeepers **may** use a mobile phone or any other timing device to keep time.

Rule 41. Redirect, Recross

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

VI. Closing Arguments

Rule 42. 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 Plaintiff 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).

VII. 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 X 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 coconspirator 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. Exhibits should not be admitted into evidence merely because they are contained in the Mock Trial materials. Objections to admission of exhibits should be heard and argued.
4. Mock Trial rounds are timed. Each team provides an official timekeeper for a trial for two total official timekeepers per trial. Timekeepers time all phases of the trial, including the final remarks.
5. 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 Scoring Judges as the jury.
6. 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 11. Objections stop the clock, so please be as efficient as possible when ruling while still allowing students to argue the objections.
7. 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 43. Additionally, judges shall **not** offer a verdict on the merits.

Each courtroom will be assigned a panel of three Scoring Judges. In extenuating circumstances, a courtroom may have only two Scoring Judges. See Rule 19.

B. Introductory Matters (Presiding Judge)

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

1. Ask each side if it is ready for trial. Remind non-performing participants that their video and audio should be muted. Then, ask one team member from each team to state their team members' names, roles, and the team letter code (not school name).
2. Inquire of both teams whether they have objections to recording of the round.
3. Ask if there are people in the Zoom courtroom who are connected with other schools in the competition not performing in your courtroom. If so, they should be asked to leave the Zoom courtroom and be reassigned from the main Zoom room.
4. Remind observers of the importance of showing respect for the teams. Observers must remain muted with no video throughout the entire trial.
5. Remind teams that witnesses are permitted to testify only to the information in the fact situation, their witness statements, and what can be reasonably inferred from that information.
6. Remind teams that they must complete their presentations within the specified time limits. The timekeepers will signal you in the Zoom chat area as the time for each segment progresses. Three-minute, one minute, and TIME warnings will be posted by both timekeepers. At the end of each segment attorneys and witnesses will be stopped when time has run out, regardless of completion of the presentation.
7. All witnesses must be called. If a team fails to call a witness penalty points will be assigned. See Rule 10.
8. Only the following exhibits may be offered as evidence at the trial:

Exhibit 1: Photograph of rock found in Jersey Jackson's hand
Exhibit 2: Rowe Police Dept. Crowd Management/Control Policy
Exhibit 3: Recording of Audio from January 15, 2020

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 25 motion. If so, resolve the matter as indicated in Rule 26. 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, judges will immediately submit them before 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 the link to the online ballot. Ballots shall be completed and submitted **immediately** following completion of the round and before 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.

Judges shall assign a score of 1-10 in each section of their ballots. 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

Judges will be provided with a performance evaluation rubric for each role being evaluated. A good way to approach assigning points is to start each performance at a 5-6 (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 (Civil Case)

ROUND: _____

Plaintiff Team Code _____ **v.** **Defense Team Code _____**

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

Judges' Deliberation: 10 min. max Time Used: _____

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

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

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 pronouns for each student.

MOCK TRIAL ROLE	STUDENT NAME/PRONOUNS
PLAINTIFF 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
Ballot
2020-2021

Round (circle one): 1 2 3 4
Plaintiff Letter Code: _____
Defendant Letter Code:_____

Witness Scores		Attorney Scores	
		Plaintiff Opening Statement	**Defendant Opening Statement**
Plaintiff Witness One	**Name:**	**Direct Examination One:**	**Cross Examination One:**
Direct	**Cross**		
Plaintiff Witness Two	**Name:**	**Direct Examination Two:**	**Cross Examination Two:**
Direct	**Cross**		
Plaintiff Witness Three	**Name:**	**Direct Examination Three:**	**Cross Examination Three:**
Direct	**Cross**		
Defendant Witness One	**Name:**	**Cross Examination One:**	**Direct Examination One:**
Direct	**Cross**		
Defendant Witness Two	**Name:**	**Cross Examination Two:**	**Direct Examination Two:**
Direct	**Cross**		
Defendant Witness Three	**Name:**	**Cross Examination Three:**	**Direct Examination Three:**
Direct	**Cross**		
		Plaintiff Closing Argument	**Defendant Closing Argument**

E. Scoring Rubric

	OPENING STATEMENT	DIRECT EXAMINATION	CROSS EXAMINATION	CLOSING ARGUMENT
ATTORNEY SCORING CRITERIA	☐ 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	☐ 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	☐ 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 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	☐ 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 facts ☐ Applied the relevant law ☐ Discussed burden of proof ☐ Did not discuss evidence that was not included in the trial presentation ☐ Persuasive ☐ Use of notes was minimal, effective, and purposeful ☐ Contained spontaneous elements that reflected unanticipated outcomes of this specific trial ☐ Professional and composed ☐ Spoke naturally and clearly
WITNESS SCORING CRITERIA		☐ Responses consistent with facts ☐ Did not materially go outside case materials ☐ Understood witness statements and exhibits ☐ Used exhibits to enhance testimony ☐ Voice was clear, audible, confident and convicted ☐ Performance was compelling ☐ Characterization was engaging and drew you in ☐ Recovered after objections ☐ Took command of courtroom without being overbearing ☐ Responses were spontaneous and natural	☐ Responses consistent with facts ☐ Did not materially go outside case materials ☐ Understood witness statements and exhibits ☐ Used exhibits to enhance testimony ☐ Voice was clear, audible, confident and convicted ☐ Performance was compelling ☐ Characterization was engaging and drew you in ☐ Recovered after objections ☐ Answered cross questions responsibly ☐ Stayed in character during cross	**Scoring Guide** **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 much of the time **3-4**: **Weak, Needs Practice**: developing the criteria, but inconsistent/poorly executed **1-2**: **Poor, Unprepared**: unpracticed; does not meet criteria

F. Rule 25 Reporting Form

RULE 25 - REPORTING RULES VIOLATION FORM

FOR TEAM MEMBERS INSIDE THE BAR

(PERFORMING IN THIS ROUND)

THIS FORM WILL BE ELECTRONIC FOR THE VIRTUAL MOCK TRIAL.

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

G. Rule 28 Reporting Form

RULE 28 - 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