CLASSROOM LAW PROJECT proudly presents the 36th annual statewide

# 2021 – 2022 Oregon High School Mock Trial Competition

CLASSROOM LAW PROJECT®

## State of Oregon, Prosecution
## v.
## Bronnie Parker, Defendant

**co-sponsored by**

**Lewis & Clark Law School**
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CLASSROOM LAW PROJECT®



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September 2021

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

Welcome to the 36th annual mock trial competition!

We are delighted to bring you another unique and fun mock trial case this year. Inspired by a modern day western, this case involves two bank robberies, a home mortgage, and casino winnings – as well as use of GPS and cell phone monitoring to track locations related to the alleged crime. The case was authored by our dedicated volunteer committee made up of expert lawyers and teachers experienced in high school mock trial.

As we navigate another year of uncertainty and challenges, we once again 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.

When we think of mock trial, here at Classroom Law Project, we envision a unique opportunity to practice important life skills such as teamwork, oral advocacy, on-the-spot creativity and applying a deep knowledge of our legal system in realistic courtroom scenarios. We will be doing all we can to afford this year's participants a return to the type of mock trial experience as in year's past. With that being said, we understand that the world can change on a dime and are preparing for all outcomes. We will be planning for the coordination of in-person competitions, with the knowledge that, if need be, we can seamlessly pivot to a virtual competition. If that becomes necessary, we'll build on the success of last year and utilize the technology, modified trial rules and protocols and trainings that provided such a rich and robust virtual competition format for teams from across the state. As always, 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 only about a quarter 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. You can find information about giving on 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.*

# 2021 – 2022 Oregon High School Mock Trial

*State of Oregon v. Bronnie Parker*

## Table of Contents

# 2021 – 2022 OREGON HIGH SCHOOL MOCK TRIAL COMPETITION

## I. Introduction

This packet contains the official materials student teams need to prepare for the 36th annual Oregon High School Mock Trial Competition. The case materials and rules have been modified to accommodate the possibility of either an in-person or virtual competition experience for the 2021-22 competition season. Please review the materials *carefully* as they reflect the various competition scenarios.

Each participating team will compete in a regional competition which may be either in-person or virtual depending upon the region and feasibility of live competition in February 2022. The regional competitions will be held throughout **February 2022**. No regional winners will be announced until all teams have competed. Regional winners will advance to the **State Competition on March 12th-13th, 2022**. The State Competition format (i.e., in-person or virtual) will be determined and announced by December 20, 2021. The winning team from the State Competition will represent Oregon at the National High School Mock Trial Competition in May of 2022.

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. In virtual 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, 2022**.

**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

On Monday August 9, 2021, the quiet town of Dullsville experienced a first. On that day, as the bank employees of the Dullsville branch of the Cascade Community Bank opened for business a person dressed in a black mask, hoodie, black gloves, jeans, and white sneakers entered the facility, pointed a silver handgun at the bank manager and gave instructions via a note, "Put Everything Behind the Counter in the Bag." When all was said and done the masked person fled the scene with roughly $3,000. For the first time that anyone could remember, a Dullsville bank had been robbed. Local authorities were stumped and had little to go on other than eyewitness descriptions. The bank's security cameras were not operational that morning due to a scheduled service upgrade. It seemed that this robbery may remain an open case.

Two days later, on Wednesday, August 11, 2021, a similar event took place not too far from Dullsville. This time the Randolph River branch of the Cascade Community Bank was the target. As with the robbery two days earlier, a person in a black mask, hoodie, black gloves, jeans, and white sneakers entered the facility early in the day, pointed a silver handgun at those inside and handed a teller a note instructing them to put everything behind the counter into a paper bag. This time the robber escaped with just over $5,000. Once again, the cameras, due to service upgrades, were inoperable and no footage of the event was captured. When local police officers and detectives arrived, it seemed that they were once again without much to go on for their investigation, yet this time something was different. A teller at the Randolph River branch had placed a GPS tracking device into the robber's bag amongst the stolen cash. The authorities tracked that GPS signal all the way to an off ramp just off Interstate 4 and near the Chalmer's Casino.

On Thursday, August 12, 2021, Bronnie Parker walked into the Dullsville branch of the Cascade Community Bank and handed over a check for $5,212.14 to make Bronnie current on Bronnie's mortgage payment. Since being fired from Bronnie's former employer, Dewing Security, back in January 2021, Bronnie had been having a difficult time paying the monthly mortgage, missing payments from March to July. Bronnie's payment came at just the right time, as the bank was set to foreclose on Bronnie's house that week. The check made out to the bank for the exact amount due was issued by Chalmer's Casino the day prior, August 11, 2021.

Following Bronnie's visit to the bank, the branch manager, Lolo Baldwin, called Detective Elliot Kress to report the interaction with Bronnie and some uneasy feelings about the entire situation. Bronnie had mentioned that a lucky night in the casino was the origin of the sudden cash windfall and Lolo began to draw connections between Bronnie and Monday's robbery, including Bronnie's involvement in scheduling the bank's security camera upgrades when still working for Dewing Security. After a brief investigation by Detective Kress, Bronnie Parker was arrested and indicted on two charges of robbery in the first degree for both the August 9th and August 11th robberies at the respective Cascade Community Bank branches.

## A. Witness List

### Prosecution Witnesses:

1) Elliot Kress

2) Lolo Baldwin
3) Allie Pinkerton

**Defense Witnesses**
1) Bronnie Parker
2) Pat Hurst
3) Dolray Mapp

**B.** List of Exhibits

**Exhibit 1**: Bank GPS Location Map
**Exhibit 2**: Parker's August Mortgage Check
**Exhibit 3**: Parker's Car Title
**Exhibit 4**. Dullsville Branch Mortgage Foreclosure Letter to Parker
**Exhibit 5**. Area Map – Parker's Google Location Data

**C.** Indictment, Stipulations, Jury Instructions

**IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR CASCADE COUNTY**

| | |
|---|---|
| THE STATE OF OREGON,<br>Plaintiff,<br>*v.*<br>BRONNIE PARKER,<br>Defendant. | No. 21CR06118<br>**INDICTMENT – Secret** |

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

Count 1: ROBBERY IN THE FIRST DEGREE (FSG = 10; A Felony; ORS 164.415)

Count 2: ROBBERY IN THE FIRST DEGREE (FSG = 10; A Felony; ORS 164.415)

committed as follows:

COUNT 1:
The defendant, on or about August 9, 2021, in Cascade County, Oregon, in the course of committing theft, and while armed with a deadly weapon, did unlawfully threaten the immediate use of physical force upon another person with the intent of preventing or overcoming resistance to the taking of the property and to retention thereof immediately after the taking, and of compelling another person to deliver the property and to engage in other conduct which might aid in the commission of the theft.

COUNT 1:
The defendant, on or about August 11, 2021, in Cascade County, Oregon, in the course of committing theft, and while armed with a deadly weapon, did unlawfully threaten the immediate use of physical force upon another person with the intent of preventing or overcoming resistance to the taking of the property and to retention thereof immediately after the taking, and of compelling another person to deliver the property and to engage in other conduct which might aid in the commission of the theft.

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

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

Dated: August 26, 2021

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

Elliot Kress
Lolo Baldwin
Allie Pinkerton

A TRUE BILL
*s/Isabella Goodwin*
Foreperson of the Grand Jury

GEORGIA ANN ROBINSON, District Attorney
*s/Mary Sullivan*
Mary Sullivan, OSB No. 011916
Deputy District Attorney

**IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR CASCADE COUNTY**

| | |
|---|---|
| THE STATE OF OREGON,<br>Plaintiff,<br>*v.*<br>BRONNIE PARKER,<br>Defendant. | No. 21CR06118<br>**STIPULATIONS** |

The parties stipulate and agree to the following:

1. Each witness testifying at trial has waived and agreed not to assert his or her right against self-incrimination, whether arising under the Fifth Amendment to the United States Constitution, Article I, Section 1, Clause 12 of the Oregon Constitution, or otherwise.

2. For purposes of Rule of Evidence 609(b), the state has given the defense reasonable written notice of its intent to offer the prior conviction of Pat Hurst, such that, should the government ultimately choose to offer it, the defense has had a fair opportunity to contest its use.

3. On both August 9, 2021, and August 11, 2021, each branch of Cascade Community Bank was in the process of upgrading its security system, which means that neither of the robberies that occurred on those dates were captured on any video or audio recording system. A deadly weapon was used during the course of each robbery.

4. Exhibit 5 accurately depicts data obtained from Bronnie Parker's Google account concerning the date, time, and physical location of an Android mobile device associated with the account. The account contains no data indicating that the device was in Randolph River at any time on August 11, 2021. Both parties have waived all objections arising under Rules of Evidence 801-805 to any of the foregoing information.

**IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR CASCADE COUNTY**

| | |
|---|---|
| THE STATE OF OREGON,<br>Plaintiff,<br>*v.*<br>BRONNIE PARKER,<br>Defendant. | No. 21CR06118<br>**FINAL JURY INSTRUCTIONS** |

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

## EVALUATING WITNESS TESTIMONY

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

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

## INFERENCES

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

## INNOCENCE OF DEFENDANT—PROOF BEYOND A REASONABLE DOUBT

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

## VERDICT—FELONY CASE

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

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

## DIRECT OR CIRCUMSTANTIAL EVIDENCE

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

## WITNESS FALSE IN PART

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

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

## CRIMINAL CHARGES

Oregon law provides that a person commits the crime of robbery in the first degree if:

(1) The person is armed with a deadly weapon; and

(2) In the course of committing or attempting to commit theft, the person uses or threatens the immediate use of physical force upon another person with the intent of:

  (a) Preventing or overcoming resistance to the taking of the property or to retention thereof immediately after the taking; or

  (b) Compelling the owner of such property or another person to deliver the property or to engage in other conduct which might aid in the commission of the theft.

## EXPERT OPINION EVIDENCE

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

# PROSECUTION WITNESS STATEMENTS

## AFFIDAVIT OF ELLIOT KRESS

Howdy, folks. The name's Elliot Kress, and I'm 45 years old. I'm a detective with the Cascade County Sheriff's Office (the "CCSO"), where I've worked for the last 22 years. I grew up right here in Cascade County and graduated from Coho High School in 1994.

I've wanted to be a detective since high school. It was there that I discovered the "hard boiled" school of detective fiction, and I haven't looked back since. I thought for a while about becoming a private investigator—a sort of modern-day Sam Spade or Philip Marlowe—but I found pretty quickly that I was drawn to public service. (Plus, I'd look a little strange walking around Coho City in pinstripes and a fedora…) So, when I arrived at Oregon State University, I decided immediately to major in sociology with an emphasis in criminology and penology. I earned my bachelor's degree in that field in 1998.

Then, like every good cop I know, I had to start at the bottom and work my way up. In 1999, I became a patrol officer with CCSO. In that role, I handled my fair share of "the usual" sorts of calls—shoplifting, vandalism, that sort of thing—but, here in Cascade County, our law enforcement needs are sometimes pretty unusual. One time, I remember, an ol' codger named Rayyan Adeeb called us with what he thought was the crime of the century. He had discovered a pile of fish guts in his hydrangeas, and he was certain that his neighbor Finley MacPherson had dumped them there. It turned out, though, that Rayyan had gone fishing the day before and left his catch in a cooler by the side of his house. As the paw print in the garden proved, a black bear had smelled dinner, helped herself, and didn't bother to clean up. Needless to say, Rayyan was pretty embarrassed. (Didn't he and Finley have another fish-related kerfuffle a few years later?)

Anyway, by 2009, I was cracking cases like that one on the regular, and the higher-ups took notice. That summer, Sheriff Esparza promoted me to a position in CCSO's Detective's Bureau. I've worked in that role ever since, with my office right here in Coho City.

Cascade County is a pretty safe place, but, over the years, I've investigated my fair share of "major" crimes. For the most part, those crimes have been homicides, but I've got experience investigating other types of offenses, too. For example, back in 2017, an anonymous tipster informed us that Gartowski Auto Plaza, a sketchy used car lot just north of Coho City, was running a secret auto theft ring. The lead was pretty thin, but I had long suspected there was something off about that lot; its owner, whom I knew from the lot's ubiquitous (and rather annoying) TV commercials, had always struck me as a slippery character. I decided to follow my instincts, and it turned out Gartowski Auto was at the center of the largest network of chop shops in the state. Now, thanks to my work, its sleazebag owner is where he belongs: in a jail cell for at least the next eight years. That case reaffirmed what I've always known about

being a detective: sometimes, you've just got to let your instincts lead the way.

As far as I'm aware, this case is Cascade County's first bank robbery. On the morning of Monday, August 9, 2021, I had just settled in at my desk and was catching up on some paperwork when I got a call from a 911 dispatcher. She told me there had just been a robbery at the Dullsville branch of Cascade Community Bank and asked me to high tail it down there as fast as I could. As I was running to my car, I was puzzled. Why in the world would someone rob a bank in Dullsville, of all places? Dullsville is one of the smaller towns in the county, which means a bank teller there probably isn't going to be sitting on a huge pile of cash. Plus, in terms of what's in the vault, Cascade Community Bank isn't exactly Fort Knox. Like the name implies, it is (by banking standards, anyway) a tiny operation with just two branches, one in Dullsville and the other about 30 minutes east in Randolph River.

I arrived in Dullsville at about 9:30 a.m. A CCSO patrol officer had secured the scene and was talking with two witnesses who, I learned, were the bank's manager and assistant manager. I interviewed each separately. I began with Lolo Baldwin, the manager. Though understandably somewhat shaken, Lolo was composed during the interview, and answered each of my questions clearly. Everything Lolo told me is reflected in Lolo's affidavit, which I have reviewed.

When I finished with Lolo, I spoke with Johnnie Connolly, the bank's assistant manager. Unlike Lolo, Johnnie was nervous wreck. While we talked, his eyes kept darting back and forth, he stuttered, and he couldn't seem to focus on my questions; "Sorry, I'm in shock, that was just too much! Too far!" he said. Johnnie's recollection of the robbery was the same as Lolo's—with one exception. When I asked for a physical description of the robber, Johnnie estimated that the robber was five or six inches taller and 30 or 40 pounds heavier than the person I now know to be Bronnie Parker. The difference in Lolo and Johnnie's accounts of the robbery didn't bother me, because it seemed clear that Lolo's description was the more reliable one. I've spoken with plenty of eyewitnesses in my years as a detective, and I know the psychological effect that shock can have on a person's memory. You see, the stress of a traumatic event like a robbery can make someone's memory a bit fuzzy, even just a few minutes after the event occurs, some people's memories get all hazy and they can't remember details all that well.

Unfortunately, at that point, we hit a bit of a dead end. The bank hadn't captured the robbery on camera, and though we searched up and down, we couldn't locate any usable fingerprints. At that point, the older, light blue sedan was our only lead. (Talk about a needle in a haystack… I've seen quite a few of those around Cascade County!) For about the next 48 hours, there wasn't much we could do but hope for a breakthrough.

On Wednesday morning, we got one—sort of. That morning, I was in the office poring over what little evidence we had when I got another call from another 911 dispatcher. I couldn't believe it: he told

me there had just been a bank robbery at the other Cascade Community Bank branch in Randolph River. I sprinted to my car and got there about 35 minutes later, at 9:40 a.m. When I arrived, a CCSO patrol officer had secured the scene and was talking to five witnesses. The patrol officer indicated to me that two were tellers and three were customers.

I spoke first with one of the tellers, who told me his name was Chris Parrucci. He was visibly shaken by the robbery and was breathing into a paper bag when I approached him. When I approached him, he blurted out, "I can't believe that just happened! I thought I was going to die!" I tried to calm him down, but it didn't seem to work. He told me—his voice shaking—that he and his co-teller had opened the bank at 9:00 a.m., and three customers had just walked in, when a masked robber burst loudly through the front doors, brandished a silver handgun, and shoved a note in front of Chris demanding that he put "everything behind the counter" into a paper bag. Chris did so, he said, packing a little over $5,000 from the tills and a small safe into the bag. He handed it to the robber, who, Chris remembered, then sped away in an older, light-blue sedan (the make and model of which he didn't recognize, and whose license plate he didn't see). According to Chris, the robber didn't say anything. His voice still quivering, Chris gave the same physical description of the robber as Lolo (white sneakers, blue jeans, a black hoodie, a black mask, and black gloves) and indicated that the robber was approximately the same height and weight as Bronnie Parker. Chris also explained that, like the Dullsville branch, the bank was in the process of upgrading its security system, which meant the robbery wasn't captured on video.

When I finished with Chris, I turned to one of the customers. A minute or two into that conversation, though, Chris tapped me on the shoulder. He seemed much calmer than before; "Sorry about that, detective," he said coolly, "I just needed a minute. I'm better now." He said he wanted to tell me two more things. First, Chris said, he was a little unsure of the physical description he had given me just a moment earlier; the robber, he indicated, actually might have been taller and heavier than his original statement suggested. Second, he had forgotten to tell me that, as he was putting the money in the bag, he had slipped a small GPS device in with the bills. We could access it, he said, using a cloud-based computer program, the login information for which he gave me on a scrap of paper. I dropped everything—we had a chance to catch the robber! I immediately called Allie Pinkerton, the CCSO Detective Bureau's computer forensic specialist, and relayed the login information. A moment later, Allie told me, "Looks like your robber's heading north on Interstate 4 toward Rowe. Go!" I jumped in my car with a patrol officer, flipped on the siren, and sped away.

Rowe is about an hour north of Randolph River. We had almost caught up to the tracker when, to my dismay, Allie called me back. "Looks like your robber dumped the tracker," he said with a groan. "It's on the exit ramp to Zell Avenue." We sped to the ramp, and about halfway down the ramp, we located the

device on the side of the road. I was beside myself. We had lost what might have been our only chance to catch this robber! I paused for a moment and looked over the ramp's barrier at Chalmer's Casino, which is located next to the highway and just off the exit ramp. (Exhibit 1 shows the ramp, the place where I found the GPS device, and the casino. The distances indicated on the exhibit are accurate.)

I thought we had hit another dead end. I drove back to Randolph River and interviewed the remaining witnesses, none of whom were able to tell me anything useful about the robber. And, like the Dullsville robbery, we weren't able to locate any usable fingerprints in the bank itself.

The next day, though, we caught the break that ended up solving the case. Out of the blue, Lolo called me and told me that one of the bank's customers, Bronnie Parker, had just come into the Dullsville branch and paid off Bronnie's mortgage in full. "So what?" I asked. "Well," Lolo said, "Bronnie's been delinquent in paying for months now. If Bronnie hadn't gotten current by Friday, we were going to foreclose on the property. Bronnie told me that Bronnie had won the money at Chalmer's Casino, but I don't believe it." In that moment, it all clicked: Bronnie had robbed the bank to avoid losing Bronnie's property. I drove down to Dullsville and collected the check that Bronnie had used to pay off the mortgage, which had been issued from Chalmer's Casino. (A copy of that check is shown in Exhibit 2.) I knew then that I had to talk directly with Bronnie. I looked up Bronnie's address and drove over there.

When I arrived, I saw a small house on what looked like an average sized lot. I walked up, knocked on the door, and Bronnie answered. "What's this about?" Bronnie asked abruptly. I thought that was odd; I was wearing plainclothes, and I hadn't yet identified myself as a cop. I didn't want to tip my hand before taking Bronnie's temperature, so, after identifying myself, I told Bronnie that we had received a report that a car had been stolen in the area—an old, light blue sedan, to be exact. Had Bronnie seen a car matching that description? "Well, um…" Bronnie seemed to hesitate. "I used to own an old, light blue Lincoln, but I sold it earlier this week." I asked to whom Bronnie had sold it. "Well, uh…" Bronnie hesitated again. After a beat, he said, "I can't remember. It was just some guy I connected with on Craigslist." It was then that I knew I had to make my move. "Where were you on Monday morning?" I said. Bronnie's eyes widened at that question. "M-Monday?" Bronnie stammered. "I, uh… I was at home." "Anyone with you? Anyone who can verify that?" I continued. "I mean… no, I guess not. I was at home watching TV the whole morning," Bronnie said weakly. I asked Bronnie the same question about Wednesday morning and got the same answer. "Look," Bronnie said, "I really need to get going. Can you come back later?" Bronnie then abruptly shut the door in my face; Bronnie never asked why I wanted to know Bronnie's whereabouts on Monday and Wednesday.

I did come back later—with warrants for Bronnie's arrest and to search the house. In the house, in a desk drawer, we found the title to a blue 1991 Lincoln Town Car, a copy of which is shown in

Exhibit 3. We also found a black hoodie, jeans, and black leather gloves. We didn't find white sneakers, a mask, or a gun, but I figured Bronnie had just ditched those. We also didn't find any cash, but Bronnie must have just spent it.

I'm sure Bronnie is our robber. We never looked at anybody else for the crime, but why would we? Just to confirm his eyewitness account, I wanted to talk more with Johnnie Connolly about his physical description of the robber, but I wasn't able to locate him. I visited both his apartment and the Dullsville bank, but he had stopped coming to work a few days after the robberies. As far as I could tell, he disappeared. Doesn't matter, though—Bronnie is guilty.

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/Elliot Kress*
Elliot Kress
Dated: October 4, 2021

Subscribed and sworn before me on October 4, 2021.

*s/Roberta Bost*
Roberta Bost

## AFFIDAVIT OF LOLO BALDWIN

Hi there! I'm Lolo Baldwin, and I'm 55 years young. I live in Dullsville, where I'm the manager of Cascade Community Bank. I work out of the main branch, which also is located in Dullsville.

Cascade Community Bank is a small operation, but we like to think we're an important part of the community. We've been around for close to a hundred years, and since then, we've helped countless people in Cascade County buy a home, start a business, or get through a rough patch financially. Our first loan, actually, was made in 1936 to the founders of Feldman Seed Farms. Believe me, that was a tough time to be making loans, but our founder thought that ol' J.P. Morgan had it right: the first thing when it comes to credit is character, before money or anything else. Our founders had been friends with the Feldmans for years, and they knew that their farm would turn out to be a success. They repaid the loan in full and on time, and Feldman Seed Farms has been one of our valued clients ever since.

I've known Bronnie Parker—truth be told, just saying that name gives me chills—for a couple of years, I guess. The bank has long used a company called Dewing Security LLC to manage our security system, and every couple of months, they send a technician to each of our two branches to make sure everything's working as it should. I can't remember exactly when but beginning at some point in 2015 or 2016 (or maybe it was 2014?), Bronnie became our technician. I liked Bronnie well enough, but Bronnie was typically pretty quiet and businesslike. When Bronnie conducted Bronnie's inspections, a teller would let Bronnie back behind the counter, where Bronnie surely would've seen the cash, we've typically got back there.

In 2018, Bronnie was wrapping up an inspection when Bronnie popped into my office. "Hey Lolo," Bronnie said, "I'm thinking about buying this beautiful little house on the edge of town. Do you think I would qualify for a mortgage?" I was glad to help Bronnie, and we ended up loaning Bronnie the money that Bronnie needed. Bronnie had gone on and on in my office about how the house was Bronnie's "dream home," and—at the time, anyway—I was happy to have been a part of it. For a time, everything went smoothly. Bronnie made Bronnie's monthly payments in full and on time and continued visiting us every couple of months to inspect our security system.

Toward the end of 2020, I recall an odd interaction I had with Bronnie. Sometime in November or December—I can't remember when, exactly—Bronnie was wrapping up an inspection and flagged me down in the hallway. "Hey," Bronnie said, "your video cameras are looking pretty old. If you want, we can get you some upgraded cameras with much better resolution." Bronnie quoted me a price, which I thought was reasonable. I said "ok," in response to which Bronnie said: "Okay, great. I'll get the installation scheduled. There's a lot of demand for these, so it may be delayed until July or August." We

ended up scheduling the installation for August of this year, which is why the banks did not have cameras working on the days of the robberies.

In January, we had an inspection scheduled, but it wasn't Bronnie who showed up. The new inspector—her name was Beth, I think—said that Bronnie had been let go from Dewing Security. "Bronnie had been stealing from the company, I heard," she told me. I didn't follow up, but I found that pretty concerning. After all, Bronnie had access to basically all the secure areas of our branches when performing inspections. Had Bronnie ever lifted a few dollars from a teller's counter without us knowing?

Bronnie made Bronnie's February mortgage payment, but in March, all we got from Bronnie was radio silence. Bronnie then missed the April and May payments as well. I tried calling Bronnie toward the end of April, but I got a prerecorded message indicating that the line had been disconnected. In mid-May, I decided to drive out to Bronnie's house in person to see what was going on. When I got to the house, it was looking pretty dilapidated; the grass hadn't been cut for what seemed like several weeks, Bronnie's mailbox was stuffed to the brim, and there was a huge pile of trash accumulating in front of the garage, which was closed. (I didn't see a vehicle on the property, but I assumed it was in the garage.) I knocked on the front door, and Bronnie answered, looking surprised and a little worried when Bronnie saw it was me. Bronnie looked just as dilapidated as the house; there were huge bags under Bronnie's eyes, and Bronnie's hair was unkempt. "Hey, Bronnie," I said, "I've tried calling, but I haven't been able to get through. Is everything okay?" "Well, uh," Bronnie replied sheepishly, "I lost my job at Dewing back in January, and I've been in sort of a rough patch. Money-wise, I've just really been in a jam, a bad one." I wanted to be as compassionate as I could: "Well, we do need to talk about your mortgage, but we also want to be reasonable. Do you think you'll be able to resume your payments soon?" "Um," Bronnie stammered, "about that… I'm looking for work, but there just seems to be nothing out there." "Well," I said, "normally, we'd begin foreclosure proceedings after 120 days on nonpayment, which would put us at about June 1st. But I think we can be flexible. Do you think you'll be able to get back on track by July 1st?" "I'll do my best," replied Bronnie halfheartedly. I thanked Bronnie and walked away hoping for both of us that Bronnie would soon get back on Bronnie's feet.

Unfortunately, though, July 1st came and went, and we still hadn't received a cent from Bronnie. I drove out to Bronnie's house again mid-month, but when I knocked on the door, nobody answered, although I'm positive I heard footsteps inside. (The mailbox, I noticed, had been emptied.) At that point, we were basically out of options; we're a small bank, and we had "floated" Bronnie for as long as we could. On July 26th, I sent Bronnie a letter indicating that we could begin foreclosure proceedings on August 13th if Bronnie hadn't caught up on Bronnie's payments by then. A copy of the letter I sent to

Bronnie is shown in Exhibit 4. Sending letters like that is undoubtedly the worst part of my job, but unfortunately, it's an unavoidable reality in the banking business.

On the morning of August 9th, I had pretty much forgotten about Bronnie. I arrived at our Dullsville branch a little before 9:00 a.m. to open things up. Johnnie Connolly, our assistant manager, arrived at the same time, and we had just unlocked the bank's front door when I heard rapid footsteps behind us. When I turned around, I froze. I saw a person dressed in white sneakers, blue jeans, a black hoodie, a black mask, and black gloves. The person was approximately the same height and weight as Bronnie, though, given the disguise, I couldn't have said with absolute certainty that the person *was* Bronnie, at least not at that time. Truth be told, though, the person's physical appearance wasn't what I was focused on. The person was pointing a small, silver handgun directly at my chest. With the person's other hand, the person threw a paper grocery bag and a crumpled note at my feet, which, when I unfurled it, read in computer-printed font: "PUT EVERYTHING BEHIND THE COUNTER IN THE BAG." The person didn't say anything but gestured with the gun toward the door when I looked up. Both of us shaking, Johnnie and I opened the door, moved behind the counter, and emptied the tills and the contents of a small safe behind the counter into the bag, which I then placed on the ground in front of the person. I'd estimate that we put a little over $3,000 in the bag. As soon as the bag hit the floor, the person grabbed it, ran outside, jumped into what looked like a light blue sedan, and sped away. I didn't catch the make, model, or license plate number; I was in shock! What's more, it occurred to me in that moment that we wouldn't have video of the robbery; our new hi-res cameras had been put up on the walls, but we were still waiting for a different technician to come by and activate the system. Now that I think about it, Bronnie was the one who had scheduled the activation date.

As soon as I could compose myself, I reached under the teller's counter and hit our alarm. A patrol officer from the Cascade County Sheriff's Office arrived about 20 minutes later. (I guess they had to drive all the way down from Coho City; Dullsville is small enough that it's only got two cops in its police department, and neither seemed to be on duty that morning.) A detective named Elliot Kress arrived a few minutes after that, and I told the detective everything that had happened. I also mentioned—with a note of frustration in my voice—that Dewing Security was in the process of replacing our security cameras, so nothing was caught on video.

In the day or so that followed, I still couldn't believe it. Why would someone rob a small community bank like ours? It just seemed so senseless. You can only image my shock when I heard from Detective Kress on Wednesday that our other branch had been hit by the same robber. What was happening? I couldn't imagine who would do such a thing.

On Thursday morning, though, it all came into focus. At about 10:00 a.m. that morning, Bronnie Parker walked into the Dullsville branch. I was surprised, given Bronnie's prior lack of communication. "Bronnie!" I said with a smile. "What brings you in today?" "Hi Lolo," Bronnie said nervously, "Um, I have this for you." Bronnie handed me a check for $5,212.14—which was the exact amount that Bronnie owed on Bronnie's mortgage at that point, including late fees. That check is shown in Exhibit 2. (Presumably, Bronnie had been receiving the paper mortgage statements we send in the mail each month; that's the only way we communicate that sort of information to our customers.) At first, I was elated. "Wow, Bronnie!" I said. "Mind if I ask how you came up with it?" "Just had a lucky night at the casino," Bronnie replied with a smirk. I laughed, didn't think much of it, and shook Bronnie's hand as hard as I could.

As Bronnie walked out the door, though, a darker thought came over me: was Bronnie the robber, and was Bronnie paying us back with our own money? Immediately, I called Detective Kress and recounted what had happened. Detective Kress came by to collect Bronnie's check, and, well, the rest is history.

There's not a doubt in my mind that Bronnie robbed us. I mean, how else could Bronnie have come up with that much money so fast? In September, Bronnie paid Bronnie's monthly mortgage payment—a little over $600—in cash, mostly in $5, $20, and $50 bills. Unfortunately, we don't have the technology to determine whether those bills are the same ones that were behind our counters on the days of the robberies, but I can tell you that most of the cash we keep behind the counter is usually in those denominations. The next month, shortly before Bronnie's payment was due, we received direct deposit authorization paperwork from a place called Hehnke's Espresso House. Since then, we've received regular mortgage payments from Bronnie via direct deposit. (I guess someone gave Bronnie a job?)

A few days after the second robbery, I arrived at the bank for work, and Johnnie was nowhere to be found. That was really odd, I thought. I've always thought Johnnie was a little shifty, but, then again, he also was as punctual as pie, and had been a thoroughly reliable employee. Johnnie hasn't returned, and I haven't heard from him, since then. For a moment, I was tempted to wonder whether Jonnie was in on the robbery, particularly because Johnnie and Bronnie seemed to be pretty friendly whenever Bronnie stopped by for an inspection. In fact, a few times, I heard the two them talking together about how much they liked the movie *Butch Cassidy and the Sundance Kid*. But the thought that Johnnie would've actually committed a robbery in real life? That's ridiculous. Sure, Johnnie can have a temper—I've had to talk with him a few times about speaking a bit too aggressively with disgruntled customers—but I just can't see him having a hand in this. He was one of the victims, after all!

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/Lolo Baldwin*
Lolo Baldwin
Dated: October 1, 2021

Subscribed and sworn before me on October 1, 2021.

*s/Roberta Bost*
Roberta Bost

## AFFIDAVIT OF ALLIE PINKERTON

I'm Allie Pinkerton, and I'm 31 years old. I work in the Detective's Bureau of the Cascade County Sheriff's Office (the "CCSO") as a computer forensic specialist. I grew up, and I now live and work, right here in Coho City.

I'll say it loudly and proudly: I'm an all-purpose computer nerd. When I was a little kid, my parents bought me a copy of *Myst*, the old computer game, and I was completely entranced. It was like I had been dropped into a totally new world! It didn't take long for me to wonder how games like that were built, and before long, I was learning to code in Java and C++. When I was 11 years old, I managed to program my own text-based version of *Myst*—I called it *Fogg*—and by the time I was 17, I had a regular side-hustle as a freelance coder.

I still code for fun, but by the time I got to college, I had become curious about the electrical technology underlying the coding platforms on which I was doing most of my work. So, after a period of vacillating, I decided to double major in physics and computer science. I earned my bachelor's degree in those fields from Stanford University in 2012. Right after college, I worked for a bit as a coder at Ringading, a social media platform based down in Palo Pequeño, California, but I grew bored of that pretty quickly. (You can only watch so many cat videos before going completely bonkers, you know?) After about a year and a half, I handed in my notice and returned home to Coho City. I took me a minute to figure out what I wanted to do next, but I have a friend named Frankie Zapata who works up in the Chinook County Sheriff's Office. Frankie ended up putting in a good word for me here at CCSO, which, it turns out, was in need a computer forensic specialist. In 2014, I accepted their offer, and I've worked here ever since. In 2019, I completed a continuing professional education course at the University of Oregon in cybersecurity and computer forensics, as a result of which I earned a CompTIA Security+ certification. ("CompTIA" is short for the Computing Technology Industry Association, which is one of the information technology industry's leading trade associations.)

My day-to-day is pretty diverse. If it's computer-related, and if it's involved in some sort of criminal enterprise, chances are I've worked on it. You'd be shocked—or maybe you wouldn't—how often criminals rely on things like text messaging and social media when committing crimes. To this day, I find that surprising because it's *way* easier than most people realize for me to dig up computer forensic evidence on a person's laptop or smartphone. Think your Google searches simply disappear after you hit "Enter"? Think again. In fact, a few years ago, I helped Frankie out on a case in which the defendant had done searches for "criminal penalties for threats" on her smartphone before posting a bomb threat on

Facebook. Frankie and I extracted that data from her phone, and she ended up getting prosecuted. Some people, you know? (I heard through the grapevine that she was acquitted, though.)

Anyway, this case involves global positioning system or "GPS" technology, with which I've got plenty of experience. In college, I attended several lectures given by Professor Bradford Parkinson, who developed much of the technology underlying the GPS system in the 1970s. That technology, as well as its various law enforcement applications, was also a key topic covered during my classes at the University of Oregon. And, maybe most saliently, I've worked several times with GPS technology in my career at the CCSO. For the most part, I've used the technology to locate automobiles that officers believe are or will imminently be involved in criminal activity. All of the work I've done with GPS systems—including my work in this case—has been based on what I consider to be sufficient facts and data. It's similarly based on what are widely accepted as reliable principles and methods, all of which I have applied reliably in the cases I've worked on.

On the morning of August 11, 2021, I was sitting at my desk tinkering with an infrared camera when I received a call from Detective Elliot Kress. "Allie," barked Detective Kress, "grab a pen. We've got another robbery down at Cascade Community Bank, and it looks like one of the tellers managed to slip a GPS device into the bag of cash." I practically fell out of my chair. I had heard around the water cooler of the first robbery, and I knew from Detective Kress that we basically had zero leads. Detective Kress told me that the GPS device was one manufactured by a company called 4XT Security Systems, a company based in Pennsylvania. I'm familiar with those systems—in fact, the CCSO has used them in other contexts before—and was glad to know that I'd be working with technology with which I was familiar, and which I consider to be especially reliable.

Let me pause for a moment, though, to explain how GPS technology works. It involves two basic components: a "receiver," which is the tracker whose position we're monitoring on the ground, and satellites, which orbit the earth and are used to determine the receiver's position with precision. The basic concept is fairly simple: the satellites broadcast electromagnetic waves to the receiver, which are modulated to convey information concerning the time at which the signals are transmitted. Unsurprisingly, these are called "time of transmission" or "TOT" values. Then, when it receives the signal, the receiver calculates the signal's time of arrival (a "TOA" value) based on its own internal clock. The difference between those values is called the "time of flight" or "TOF" value. Since the speed of those waves is, as a matter of physics, always going to be constant, the TOF value will be proportional to the distance between the satellite and the receiver at that moment. Using a similar process, the system can independently determine each satellite's position at each TOT, so, based on that data and the receiver's

TOF value, the receiver can calculate exactly how far away from the satellite it is at that moment. Sounds simple enough, right?

Well, it's actually a little more complicated. In order to accurately determine the real position of the receiver, you need to calculate *four* separate values. After all, if I simply told you that I was a hundred feet away from you, you wouldn't know exactly where I was based on that information alone, would you? Are you a hundred feet in front of me? Behind me? Above me? The first three values correspond to what are commonly known as Cartesian coordinates, *i.e.*, latitude, longitude, and height relative to the geoid (which essentially means height above sea level). The fourth has to do with the difference between the satellites' clocks and the receiver's clocks. While the satellites all have extremely reliable atomic clocks, it's usually going to be impractical to put an atomic clock into a receiver—particularly one as small and inexpensive as the one we're discussing here. That means there will almost always be small differences between the receiver's clock and the satellites' clocks, which, in order to accurately calculate the receiver's position, need to be accounted for.

So, four values means that a receiver needs four satellites in order to calculate its location accurately. Based on those four values, the receiver then can calculate its position, which a user than can see in an overlaid map; think of what you typically see on your phone when you open your "Maps" app.

GPS technology, including the 4XT system that I was using on the 11th, is *extremely* reliable. There currently are 32 GPS satellites orbiting the earth in different positions, which means it's virtually impossible for a receiver anywhere in the world to have access to fewer than the required four at any given time. In fact, a given receiver often has access to between six and ten satellites at any given moment; that extra data makes the positioning process even more reliable.

Like any computer system, though, the GPS system isn't 100% perfect. There are two primary aspects of it that can lead to small imperfections, although I have to emphasize that such errors are usually only a matter of a few feet, if that. First, in some cases, GPS satellites will sometimes "drift" in their orbits, leading to miniscule errors in the way we calculate their position here on earth. Such errors are corrected on a daily basis, but, if you've got a TOT value that's off by a microsecond, it's possible that you'll end up with a GPS location that's slightly off. Again, though, we're usually talking about no more than a few feet, if not inches. And the fact that there are usually more than four satellites connected to a receiver at any given time makes this a *really* remote possibility, although it is theoretically possible.

Second, we've got to keep in mind that, in this case, the receiver I was tracking wasn't in a static position; it was moving. That adds another layer of complication, because the continuous movement you see when you open your "Maps" app on your smartphone when you're riding in a car is actually a little misleading. In that case, the GPS system isn't tracking your location on a continuous basis; rather, it's

collecting a series of data points over time that happen to be close together. What's key here is that the software underlying the program isn't just doing retrospectively. Instead, it's using that data—as well as artificial intelligence—to *predict* where it thinks the receiver will go next. Take a simple example: if you detect a receiver at one point on a road at 11:45:30, and then the receiver moves 100 feet east on the same road at 11:45:31, the system is going to predict that the receiver will be 100 feet further east on the same road at 11:45:32. Sometimes, this can lead to small errors. Take the same example let's say you're in the car and you've made a right turn at 11:45:31. For a brief moment, your "Maps" app might show incorrectly that you're continuing straight, rather than turning right, because that's what the prior two data points suggest.

Anyway, back to this case. After logging into the 4XT online system and entering the login information that Detective Kress gave me, I saw a blue dot traveling northward on Interstate 4, from Randolph River toward Rowe. "It's going to Rowe on the four—get after 'em!" I yelled into the phone to Detective Kress. I said I'd call back with any updates and hung up the phone. About 35 minutes later, I was watching the blue dot approaching the Zell Avenue exit, just outside of Rowe. The dot appeared to pass just beyond the exit, but then, it reappeared at a location on the exit ramp, off the highway. I thought it might just be a temporary error with the system, but alas, the dot stopped moving there. Exhibit 1, which is a screenshot of the map that I saw on the screen at that moment. I've indicated in a red marker the last place on the highway that I saw the blue dot before it came to rest on the exit ramp.

I would have liked to try to confirm that the blue dot I saw on the screen actually was Bronnie Parker, but given the information I had, I wasn't able to do that. The only real way I could have done that with certainty would have been to run a geofence search, but we weren't able to acquire any sort of electronic identifier unique to Bronnie that would have allowed us to do that. Our best bet would've been Bronnie's personal email address, but we weren't able to locate that.

Regardless, in my expert opinion, the data I viewed while watching the blue dot on the 4XT online system compels the conclusion that the car exited the highway at Zell Avenue, rather than continuing along the highway. True, the blue dot did appear briefly at a point beyond the exit, but that's likely due to the predictive technology I discussed above; after all, the car had been moving continuously northward on Interstate 4 for about 30 or so minutes beforehand, and, in my experience as a coder, I'd say it'd be natural for that or any other software program that incorporates predictive technology to predict that the car would simply continue along on the same road. To be fair, I can't say exactly how it got to the place where Detective Kress ultimately found it. Given the data I saw on the screen, it's possible, I suppose that a driver threw it out of the window while continuing along the highway. But, in that case, it's likely that I would've seen the blue dot move once or twice along the exit ramp as it bounced down the pavement. The

data is much more consistent with a scenario in which the driver exited the highway, slowed down, and simply dropped the device out of the window. Plus, I'm not sure about you, but think about how far a throw that would've been—I certainly couldn't have done that!

I did submit a geofence search warrant to Google for any accounts that were present at both robberies, but it was of no investigative use. First, Google didn't respond to the search warrant until about a week ago. They are always so late, claiming they don't have the resources to respond in a timely manner, which seems pretty sketchy. Second, Google said there weren't any devices that were present at both robberies. This is not that unusual. You always hope for a home run with a geofence warrant, but people are a lot better these days about controlling their location settings on their mobile devices. I was hoping that we would find Bronnie's cellphone when Bronnie was arrested, but we were never able to find one. (Often the phone will have more location information than we can glean from Google.) I couldn't do anything else because I didn't know Bronnie's phone number, email account, or anything else that would allow me to seek more location information. So that was all pretty much a dead end.

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/Allie Pinkerton*
Allie Pinkerton
Dated: October 4, 2021

Subscribed and sworn before me on October 4, 2021.

*s/Roberta Bost*
Roberta Bost

# DEFENSE WITNESS STATEMENTS

## AFFIDAVIT OF BRONNIE PARKER

Uh, hello. My name's Bronnie Parker, and I'm 37 years old. I live in Dullsville near the baseball field.

There's really not much to tell about me, I guess. I was born in Rowe and graduated from Hamilton High School back in 2002. Back then, I was interested in two things, playing baseball and music. I was a pretty good pitcher, some scouts checked me out, but music was my real passion. So, when I graduated, I figured I'd try to join a band. I'm a bass player, so I figured it'd be easy. (We're supposed to be in high demand, you know?) As it turned out, though, the first few years were kinda rough; I waited tables, worked odd jobs, and did my best to save money while I was looking for a permanent gig. I have to say, I hated being constantly short of cash. I ended up having to borrow money a few times from my friends, and on more than one occasion, I ended up "forgetting" to pay the money back. The thought of being such a deadbeat still makes me sick to my stomach, but, at the time, I didn't really have any other options. Still, nobody likes a deadbeat.

In 2005, I finally landed a permanent place in a rock band called "Marlo Hubbard and the New-Age Knuckleheads." It was led by a guy named Marlo Hubbard, who, in retrospect, was a real piece of work. Marlo imagined himself—and yes, these were his exact words—as "Don Felder reincarnated." I reminded him often that Don Felder wasn't actually dead, but Marlo didn't seem to let that minutia bother him. In one respect, though, Marlo's image of himself was spot-on: he was a tried-and-true egomaniac, and it led to dysfunction that would make the Eagles look like a bunch of Gregorian monks by comparison. Marlo basically exercised dictatorial control over every aspect of the band; he chose the songs, picked the gigs, decided who got to solo, and—most irritatingly, to me—controlled the money. As if that wasn't enough, he was always needling me with jokes about bassists, which definitely aren't funny. ("What do a bassist and a lawsuit have in common? Everyone feels a lot better when the case is closed!") My last straw came when, following a gig, Marlo tried to dock my pay because he thought I had been out of tune for the second half of the show. I was already making peanuts, and I more or less snapped. "Marlo," I yelled, "I'm not going to let you take any more money out of my pocket!" At that point, I'm ashamed to say, Marlo and I got into a bit of a scuffle. I gave it to him pretty good and was able to lift a couple of twenties out of his wallet before I stormed out of the theater; I figured I earned a parting bonus, and, in any event, it was what I was owed before Marlo cut my pay.

Anyway, that was pretty much the end of my music career. By 2009, I was still living in Rowe, waiting tables and working odd jobs, and still just barely scraping by. I figured it was time for a change, so I packed up what little I had and drove down to Coho City. After a week or two in a motel, I found an

apartment, and a few weeks after that, I found a job as a landscaper at the Coho Community Association. It was hot, hard work, but I enjoyed being outside and liked working with my hands. At night, I attended computer security classes at Coho Community College, and I ended up earning my Associate's degree in that field in 2014. A few weeks after that, I got a job at Dewing Security, a small company based in Coho City that installs and manages security systems across the state. After years of living paycheck-to-paycheck, things were finally looking up for me!

As a Dewing technician, I had a regular rotation of companies at which I'd perform periodic inspections. One of those companies was Coho Community Bank, a small place with branches in both Dullsville and Randolph River. During my first few years as their security specialist, I got to know Lolo Baldwin, the bank's manager, reasonably well. I liked Lolo well enough, I suppose, but, in my opinion, Lolo is definitely a penny-pincher—and is willing to shade the truth if it can help Lolo make an extra buck. More than once, I've performed services or installed upgrades at the bank that Lolo has verbally approved in advance. Then, when my office would get the bill, Lolo would tell us that Lolo didn't approve those expenses and wouldn't be paying for them, even though Lolo knew perfectly well that the bank owed us the money. Speaking of which, I don't remember ever suggesting to Lolo that the bank install a new security system, much less scheduling any such installation, but frankly I'm surprised Lolo would have agreed to it, on account of Lolo's aversion to spending money. Regardless, scheduling the installation sounds like something I might have done, I guess—I had regularly done it with other customers—but I just don't recall ever doing it with Cascade County Bank.

Still, Lolo isn't all bad. Back in 2018, I had just finished up an inspection at the bank and popped my head into Lolo's office. See, I had finally saved up enough money for a down payment on a house; it had been my dream to own a home since I arrived in Cascade County, and I had recently found this wonderful little property near the city park in Dullsville. It was small, but it was (and is) my dream house! It has two bedrooms, and wonderful kitchen, and a great deck that backs up the baseball field. Even better, it's a short walk, like maybe ten minutes, to my favorite coffee shop, Keira's Yogurt and Coffee. I go there just about every morning to get my day going.

I needed a mortgage to finance what the down payment wouldn't cover, so I asked Lolo if the bank would be able to help. When I popped the question, Lolo smiled and said, "Sure! Come have a seat, and we'll see if we can figure something out." I gave Lolo my personal information, and Lolo ran a credit check right then and there. I thought I saw Lolo frown for a moment, but Lolo's face quickly brightened. "Look," Lolo said, "your credit isn't exactly stellar, and so this isn't something we'd normally do, but for you, we'll make an exception." Lolo concluded with a wink and a grin: "Just don't make me look bad." I signed the paperwork the next day, and before I knew it, I was living in my dream home. I had never been

happier! Finally, I felt like I had made something of myself, and I was living my American dream, you know?

Things went fine for a while. The money I was earning from Dewing was good, and I made my monthly payments each month on time and in full. In late 2020, I even started a DIY construction project to expand my back deck. In January, though, I got blindsided. Just after the new year, my boss Amy Jamieson called me into her office and delivered what turned out to be horrible, shocking news: Dewing Security was firing me, effective immediately. I couldn't believe it! "Wh… I… Why?" I stammered. "We've received a report that you've been embezzling money from us," Amy replied coldly. "We're just going to let it go but suffice to say this isn't going to work out any longer. Please go and collect your things from your cube." Still in shock, I stumbled out of Amy's office. What she was telling me was absolutely, positively untrue. I had never stolen anything from anybody, and, to this day, I have no idea why I was let go. As I trudged into the parking lot with my things, I felt tears welling up in my eyes. My mind wandered pretty quickly to my house, and to my mortgage. What was I going to do?

I had spent most of my savings on the materials I needed for my new deck, and, if I still wanted to eat and pay the utility bills, I had enough money left for one month's mortgage payment. I paid the February payment, but come March, I just couldn't scrape enough together. I was trying as hard as I could to get a new job, but since I obviously wasn't going to get a reference from Dewing, my options were limited. March, April, and May passed, and I didn't make my payments. In retrospect, I wish I had reached out to the bank to talk things through—Lolo had been so kind to me, I now feel like maybe I owed Lolo that—but I was just too embarrassed to pick up the phone. Plus, in May, the phone company disconnected my landline for non-payment of my monthly fees, which is the only number I had given to the bank. I still had a Google "Android" cellphone, so I didn't think it was a big deal to lose the landline. You can't get by these days without a cellphone, and I take it everywhere with me. But I don't pay too much attention to it or the settings on it. I know "big data" and the government can track me regardless of what I do, so I don't worry too much about it.

Sometime toward the end of May, I heard a knock on my door, and when I answered, it was Lolo. Lolo asked if everything was okay, in response to which I explained that I had lost my job and was going through a bit of a hard time. Lolo asked if I'd be able to resume payments soon, and I said I'd do my best. Lolo smiled and said, "Look, Bronnie, this can't go on forever, but we're going to find a way to figure this out. Just don't worry." Lolo definitely didn't say anything about a July 1st deadline. Following Lolo's visit, I remember feeling reassured in a way I hadn't in months; I was having a tough time, but Lolo and the bank were looking out for me.

That was the last I heard from Lolo until I was arrested. I definitely didn't see the letter shown in

Exhibit 4 until the state produced it in discovery in this case, and I wasn't aware that the bank was going to begin foreclosure proceedings on August 13th if I didn't pay. After all, Lolo had made it sound like the bank was going to take care of me. Maybe the letter was in my mailbox, but I don't check my mail that often—I try to do everything electronically—and I'm positive I didn't see it until sometime in November or December.

Still, by August, I was starting to feel worse and worse about my mortgage situation. Lolo had shown me good faith, and I wanted somehow to return the favor. I tried to go and talk to Lolo on the 8th, but it wasn't until I got to the bank that I realized it was closed. I didn't like it, but eventually, I knew what I had to do: I would sell my car and get current on my mortgage payments, even if I still didn't know how I was going to make the rest of them. I had held off on selling the car because I really needed a way to get around—I live in what's known as a "food desert," and it's a three-and-a-half-mile hike from my front door to the nearest grocery store (thanks a lot, Amazon!)—but I figured I was out of options. I put an ad on Craigslist on the morning of August 9th, and within an hour I had a buyer. The car wasn't anything special—it's an old, 1991 Lincoln Town Car—but I was able to get $5,000 for it, which is about double the bluebook value. (The car, by the way, was dark blue, not light blue.) I don't remember the name or anything else about the person who came and bought it, other than that he paid cash, small bills which was definitely annoying, and said he was a collector. I guess I forgot to give him the title, but he didn't ask, so I figured it wasn't a big deal.

I was feeling pretty good at that point, so, later that day, I decided to head up to Chalmer's Casino near Rowe to see whether I could turn my five grand into a little more. I've been playing poker since my music days, and, at risk of sounding like I'm bragging, I'm really good. Since I didn't have my car anymore, I took a bus up there and arrived around 4:30. I remember chatting with Pat Hurst in the cage before I hit the floor, and I told Pat that I had just sold my car. I wasn't going to risk all my money, so I only decided to play with $2,000. That's way more than I usually would play with—I usually limit myself to a few hundred bucks at the most—but, like I said, I was feeling good. I had a great night and came away with something like three or four grand. I gave Pat my chips and asked for my money back in cash. (I was thinking about opening a new bank account and wanted to be able to make a cash deposit for that purpose.) I then took a bus home. Other than Pat, the poker dealer and the guy who bought my car, I didn't see or talk with anyone else that day.

I had been planning on making my mortgage payment the next day but given how well I had done at the casino, I was wondering whether I could make even more money at the poker table before doing so. Sure, it was a dumb idea, but hindsight's 20-20, you know? The next day, I sat around the house and worked a bit on the deck—I didn't see or talk to anyone all day—and the next day, August 11th, I decided

to take a late morning bus back up to Chalmer's Casino. I got there right when they opened at noon. That was a little unusual for me, but I was unemployed, so it's not like I had anything else to go. I followed the same routine as before; I played about $2,000, did relatively well, and a few hours later decided to cash it in at about $3,000. I don't remember what I talked about with Pat when I was trading in my chips, other than mentioning something about needing to pay back the bank and asking that Pat issue me a check for $5,212.14 that I could give to the bank. (That was the amount due on my mortgage, which I had seen on my most recent mortgage statement.) I gave Pat the extra cash that would go into the check, got it printed, and left the casino at about 3:30 p.m. and headed home.

The next day, I walked down to the bank's Dullsville branch and gave Lolo the check, which is shown in Exhibit 2. Lolo seemed really happy; Lolo asked how I came up with the money, and I mentioned something about the casino. I didn't think anything of it, other than feeling good about getting current on my payments. After all, why would I?

That afternoon, though, I received yet another shock: a Cascade County Sheriff's Detective whom I now know to be Elliot Kress showed up at my door and started asking me a bunch of really aggressive questions. I don't remember all the details, but I do remember the detective asking about a stolen car that sounded like the one I had just sold. I told the detective that I had just sold a *dark* blue car, not a light blue one, but the detective didn't seem to care. I told the detective that I sold it to some guy on Craigslist and that I didn't know exactly who he was, and that I had been at home alone on both Monday and Wednesday mornings. The detective was making me really uncomfortable, so at that point, I said, "Look, I really need to get going. Can you tell me what's going on?" "Not yet," said the detective, "but you'll find out." That irritated me; I shut the door in the detective's face.

Next thing I know, I'm in handcuffs. I know some of the facts look bad but let me say in no uncertain terms that I had nothing to do with the two robberies, which I read about in the newspaper. I just hope I can clear my name.

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/Bronnie Parker*
Bronnie Parker
Dated: December 9, 2021

Subscribed and sworn before me on December 9, 2021.

*s/Roberta Bost*
Roberta Bost

## AFFIDAVIT OF PAT HURST

Hi there, people. Where should I begin? Oh yeah, I guess my name would be a good start: I'm Pat Hurst. I'm 67 years old, and I live in Brothers, Oregon.

I've bounced around quite a bit over the years, I guess. I grew up in the San Francisco Bay Area. My parents were big, fancy businesspeople who owned a bunch of newspapers all around the country. That life really wasn't for me, though. Remember, when I graduated from Piedmont High School in 1972, things were really *happening* down there. My parents wanted me to follow them into the newspaper business, but the idea of leading such a starched, boring existence made me sick to my stomach. All around me, people were taking it to the streets, trying to throw off the cultural shackles that had bound them for generations, you know? It was totally exhilarating to me. I ended up running in a few different circles—mostly social clubs, a few bands, one or two secret societies, things like that. Ever heard of the Paranoids, the music group? I was their bassist for a while. What about Inamorati Anonymous? No? Well, I guess the point of being anonymous is that you're not supposed to know who we are—I mean, who we were. Yeah, definitely, who we were. Anyway, it was a wild time.

Unfortunately for me, I ended up falling in with a particularly bad crowd when I was in my mid-20s. Through a friend of a friend of a friend, I ended up becoming a regular, card-carrying member of Trystero, a secret society dedicated to the overthrow and destruction of all postal monopolies. (Whenever we wanted to send a message, we used a network of hidden wastebins, rather than the mail. I admit, it was a little weird, even for me.) Like any secret society, we needed funding for our operations, and we ended up getting it by running an elaborate check-kiting scheme; we'd open small bank accounts, write one check for way more than we had in the account, write another check from another under-funded bank account to cover the first check, and so on. We ended up being pretty successful—over a couple of years, we accumulated something like $10,000—but, of course, what we were doing was fraudulent. Uncle Sam ended up catching on, and in 1981, I was convicted following a trial of multiple counts of bank fraud. I served 5 years in prison and was released in 1986. That whole thing was a sobering experience, and I've been squeaky clean ever since. Still, to this day, I don't want to go near a bank if I can avoid it. I mean, was what we were doing *really* all that bad? The banks were federally insured, after all, so it wasn't like we were hurting anyone…

Anyway, after I got out, things were pretty tough. Especially back then, it was really hard for a recently convicted felon to find work, so I worked lots of odd jobs. I was a gardener, a delivery driver, a waiter… I can't even remember all the jobs I've had over the years.

In 1995, I decided it was time for a change, so I moved up to Rowe from the Bay Area and told

myself I needed to make a new start. That year, it turned out, was when Chalmer's Casino opened just outside of town. I started as a janitor that year. Since then, I worked my way up to the casino's assistant floor manager. They asked on the application whether I'd ever been convicted of any crimes, and this time, I decided I'd simply write "no." I'd been honest about my conviction before, and the only thing it had gotten me was rejection letters. I figured I'd take a chance and see if the casino would follow up on it. As far as I know, they never did, and I got the job.

As the floor manager, I divide my time between the "cage" and the floor itself. The cage is the area where customers come to exchange their money for chips, which they can then use to play poker, blackjack, and many of our other games. It's a pretty routine job—the customer gives me the money; I count it and then give them the chips—but someone's got to do it.

It was primarily in the cage that I met Bronnie, who's been a regular at the Casino since, I don't know, maybe 2011? Since then, Bronnie has visited us about once a month. Bronnie has told me before that Bronnie's game is poker—Texas Hold 'Em, to be precise—and from what I can tell, Bronnie is a really good player. A number of times over the years, Bronnie has come to the cage with only $50 or $100, and then come back at the end of the night with $2,000 or $3,000 in chips. Of course, that doesn't happen every time; sometimes Bronnie more or less breaks even, and sometimes Bronnie loses money, but overall, I'd say that Bronnie seems to win more money than Bronnie loses.

You want to know about August 9th? Yeah, I think I remember that. It was a busy night, and I was alternating between the cage and the floor. At about 4:30 p.m.—which is earlier than Bronnie usually comes in—Bronnie showed up at the cage with a wad of cash in a paper bag. It was a lot more than Bronnie usually brings. "Wow," I said, "looks like someone just won the lottery." Bronnie chuckled. "No, Pat," Bronnie replied, "I just sold one of my old cars and wanted to try my luck." I definitely counted the money, but to be honest, I can't remember exactly how much Bronnie gave me. (I count cash like that dozens of times every night I'm working, and it all bleeds together pretty easily.) It could've been as little as $2,000, and it could've been as much as $2,500, somewhere in between there. I do remember, though, that it was mostly twenties and fifties that Bronnie gave me, along with a few fives. Bronnie seemed relaxed for the whole interaction; if you had told me that Bronnie had just robbed a bank, I'd be surprised. Bronnie was wearing blue jeans and a t-shirt. (I didn't see Bronnie's shoes.) There were *plenty* of people there on the floor that night wearing dark hoodies; after all, it's a pretty good way to protect your poker face.

Bronnie grabbed Bronnie's chips and headed straight to the poker table. I didn't see Bronnie again until later in the evening, when Bronnie came back to cash in Bronnie's chips. I *do* remember counting those—they're much easier to count than cold, hard cash. Bronnie's take-home added up to a little over $3,000. "Good going, my friend! Looks like you won some," I said absentmindedly. "Yeah," Bronnie

replied, "it was a good night." Bronnie still seemed relaxed; the whole evening had been perfectly ordinary, as far as I was concerned. "How do you want your money?" I asked. "Can you do it in cash?" Bronnie asked. I counted out the money mostly in fifties and gave it to Bronnie.

I saw Bronnie again on August 11th. I remember that day a little more clearly because Bronnie came in at about 12:15 p.m., right after we opened. Bronnie was the first person up at the cage, again with a paper bag full of cash. I was a bit taken aback, only because Bronnie had just been in the previous Monday and, as far as I can remember, has never come in this early. "What gives?" I asked. "Oh, it's my day off," Bronnie said with a shrug. "Thought I'd try my luck again, seeing as how well I did last time." I counted the cash, but, again, I don't remember exactly how much Bronnie gave me—only that it was somewhere between about $4,000 and $5,000 and that it was mostly in twenties and fifties, with a few fives thrown in for good measure. "You sell another car?" I asked while I was counting. "No," Bronnie said with a chuckle, "this is just the rest of what I got for the first one." As on the 9th, there were a few people who came in later in the afternoon wearing dark hoodies. From what I remember Bronnie was dressed similarly to the previous visit, jeans, t-shirt, but this time Bronnie was also wearing a hoodie, dark hoodie I believe.

Bronnie came back an hour or two later with Bronnie's chips, which I counted, and which amounted to something just under $5,000—I don't remember precisely. "How do you want it?" I asked. Bronnie paused, and a sad look seemed to come over Bronnie's face. "Look," Bronnie said, "I was kidding you, earlier. I actually lost my job a while ago, and I'm behind on my mortgage. The car was the last thing I had, so I really need to pay the bank. If I give you the rest in cash, can you make out a check to Cascade Community Bank for $5,212.14?" "Sure," I said. Bronnie gave me the rest—mostly in what looked like the same fifties I had given Bronnie on Monday—and I made out the check. "Thanks, Pat," said Bronnie plaintively. "You're a real friend." As on Monday, Bronnie seemed relaxed for our entire interaction.

I later read about the bank robberies in the Coho Chronicle, but if you ask me, I don't think Bronnie is the one who did them. Bronnie seemed totally calm on both nights; I mean, how would you be if you had just robbed a bank? If anybody's robbing anybody, it's the bankers themselves. I've had a mortgage with that same bank since 2002, and I can't believe how high my monthly payments are. The way I see it, it's them who've been robbing me for 20 years.

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/Pat Hurst*

Pat Hurst
Dated: October 26, 2021

Subscribed and sworn before me on October 26, 2021.

*s/Roberta Bost*
Roberta Bost

## AFFIDAVIT OF DOLRAY MAPP

Hello! My name is Dolray Mapp. I live in Coho City. I'm 44 years old, and I work as a private investigator. I was hired by Bronnie Parker's defense team to conduct an investigation into the bank robberies that took place on August 9th and August 11th. In my opinion, given the shoddy work by the Cascade County Sheriff's Office (the "CCSO"), I'm really the first person to meaningfully investigate these robberies.

I grew up in Coho City and attended the University of Oregon, where I studied criminal justice. When I graduated in 1999, tech companies were hiring everyone they could. You didn't even need a background in computer science to get a good-paying job at one! So, I started my career as a designer at MapQuest in 1999. It was really exciting being at the forefront of computer mapping and navigation, but I didn't work on any code or anything. I mostly worked on the look and "feel" of the site. We were all thrilled the next year when AOL bought us out, but the good times didn't last, and I was let go when the tech bubble burst in 2001. It was tough at first, but I realized that my termination had been a blessing in disguise when I found my true calling — being an investigator for criminal defense lawyers. I opened my own investigative agency in 2002, and I've worked there ever since.

Over the years, I've taken a number of continuing education courses at Coho Community College on GPS and location technology, which comes up in my work more often than you might realize. I also have a certification in GPS and location technology from the Defense Institute of Continuing Education, which I obtained in 2016. I've worked on dozens of cases and have previously testified as an expert witness in both state and federal court on GPS and location technology (among many other subjects). I've always testified for the defense. Maybe I just like rooting for the little guy, you know?

Bronnie Parker's attorneys showed me the affidavit of Allie Pinkerton, who I understand to be a computer forensic specialist with the CCSO and asked me to comment on Allie's conclusions. I cannot question Allie Pinkerton's general mode of analysis, but I don't agree with the ultimate conclusion that the robber's car must have exited the freeway at Zell Avenue. Now, to be fair, I haven't actually been to the location where the tracking device was found, but it just seems odd to me that you could make any conclusion as to whether the device was thrown from the freeway or dropped out of the window on the exit ramp; in my experience with GPS technology and based on the readings that Allie describes in Allie's affidavit, either scenario is equally possible. Allie's conclusion is definitely not one that I think is based on any kind of peer reviewed analysis or scientific method. No offense to Allie, but, in my opinion, Allie's conclusion is nothing more than conjecture.

The way I see it, because the tracking data on which the government relied doesn't tell us very much—including, most importantly where Bronnie was at the time of the robberies—I decided that I needed more information. So, I asked Bronnie if Bronnie had a cellphone. Bronnie told me that Bronnie had an Android device, which is great. See, anyone with an Android device is automatically connected to a Google account. So, depending upon the privacy settings you have setup on your phone, Google can and will collect location information on your device anytime you access a Google service. Heck, sometimes it will collect location information even if you're not explicitly using a Google App, like it will collect that information in the background of your device. (By the way, this doesn't apply just to phones with the Android operating system. If you have an Apple device on which you've installed a Google app, Google can collect your location information in that way, too.) What's the upshot of all that? Well, if you know where to look, a savvy investigator can use location data from Google to "break a case wide open," as they say. I remember one case years ago in which I used location data not only to prove that my client was not guilty, but also to help the police find and arrest the true culprit. Now that's what I call a win-win!

When it comes to location data, though, it's important to know that the technology is generally very reliable but not foolproof. The location data we get from Google tells us only that the user's device sent information to Google at a particular time and from a particular location—but not that the device's user *actually* was present at that location at that time. "Virtual private networks," for example, can mask a user's real location by hiding the user's real IP address (from which a user's location is sometimes determined). That said, Bronnie had no such software installed on Bronnie's phone, which I inspected.

Now, I understand that Allie Pinkerton sent a search warrant to Google directing it to provide information on any Google accounts associated with devices that, according to any saved location data, were present at the times and locations of *both* robberies. I must applaud Allie Pinkerton on the narrowness of the request; some investigators would have sought information concerning devices present at *either* robbery, which would lead to the collection of a huge number of innocent people's location information. As Allie testified in Allie's affidavit, they got no results in response to that request. That, I think, is an indication that Bronnie is not the robber, because Bronnie told me that Bronnie always carries Bronnie's phone. But I didn't want to stop there; I wanted to see if I could prove Bronnie was somewhere else at the time of the robberies.

I decided to go straight to the source: I wanted to see if Google could tell us where Bronnie Parker actually *was* at the time of the robberies. Bronnie told me that Bronnie's email address was "br0nni3@gmail.com," and that Bronnie's password was "dillinger1934." I was a bit puzzled by this and asked Bronnie why, but Bronnie just laughed and said, "I guess I'm just a history buff. I change my password all the time for security reasons, so it's only been that for a day or so."

Anyway, using that information, I accessed Bronnie's Google account. Because of a couple of new data protection laws, Google now is required to allow users to access and download all their personal information. I downloaded the data and reviewed Bronnie's location information from the mornings of August 8, 9, 11, and 12, 2021. (I included a day before the first robbery and a day after the second robbery just for context.) I then filtered the data such that it included only information related to the immediate surroundings (a few blocks) of the two robbery locations. There was a lot of other location data showing Bronnie elsewhere, like at Chalmer's Casino, but I didn't bother analyzing any of that information because I didn't think it was important. I was just focused on any location data near the robberies around the time of the robberies. That information provided sufficient facts and data for me to form an opinion concerning Bronnie's whereabouts around the time of each robbery. My evaluation in that regard was based on reliable principles and methods applicable to virtually all types of location data analysis, all of which I have applied reliably in this case.

I began by considering the Randolph River robbery. That part of my analysis was straightforward: none of the location data I reviewed showed Bronnie near Cascade Community Bank's Randolph River branch around the time of the robbery on August 11th. In fact, none of the data suggested that Bronnie had been anywhere in Randolph River on any of the four days I examined.

The Dullsville Robbery was a slightly different story, although in the end it showed the same thing: I examined the data, and lo and behold, none of it showed Bronnie at the site of the robbery in Dullsville on August 9th, either. There was, however, location data showing Bronnie in other parts of the Dullsville area on each of the four days I considered. I plotted those points on a map, which is shown in Exhibit 5.

Now, by itself, does this data prove beyond all doubt that Bronnie wasn't the robber? No. It's theoretically possible that Bronnie could have turned off Bronnie's phone or the phone's "location services" function; it's also possible that Bronnie simply did not connect to any Google services at the time of the robberies. In any of those cases, Bronnie's location data wouldn't track Bronnie's actual movements. But, in my opinion, the location data we have makes it unlikely that Bronnie is the robber. First, Google tracked Bronnie's location when Bronnie was at the Dullsville branch on August 8th and 12th, and also tracked certain of Bronnie's other movements, so I can say with certainty that Bronnie does allow location tracking, at least sometimes, on Bronnie's device. Further, I know that Google makes it very, very difficult to manage your privacy settings, especially when it comes to third-party apps. I have read many peer reviewed studies showing that, over the years, Google can continue to track your location even if you think you have turned off certain location settings. On top of all that, I just don't think Bronnie ever would have turned off Bronnie's phone. I guess I can't really say why Bronnie would have had Bronnie's phone on at all times, but it's just my hunch, having talked to Bronnie a few times.

I'm so confident in my opinion that I was hoping to resolve this case short of trial. To that end, I presented the evidence discussed above, as well as Exhibit 5, to Detective Kress, but Detective Kress just blew me off. "Look Dolray," Detective Kress grumbled, "I don't need your help in my investigation. I've been doing this a long time, and I know a criminal when I see one." I was bothered by that statement, and it only confirmed my suspicion that Detective Kress's investigation was troubled from the start.

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.

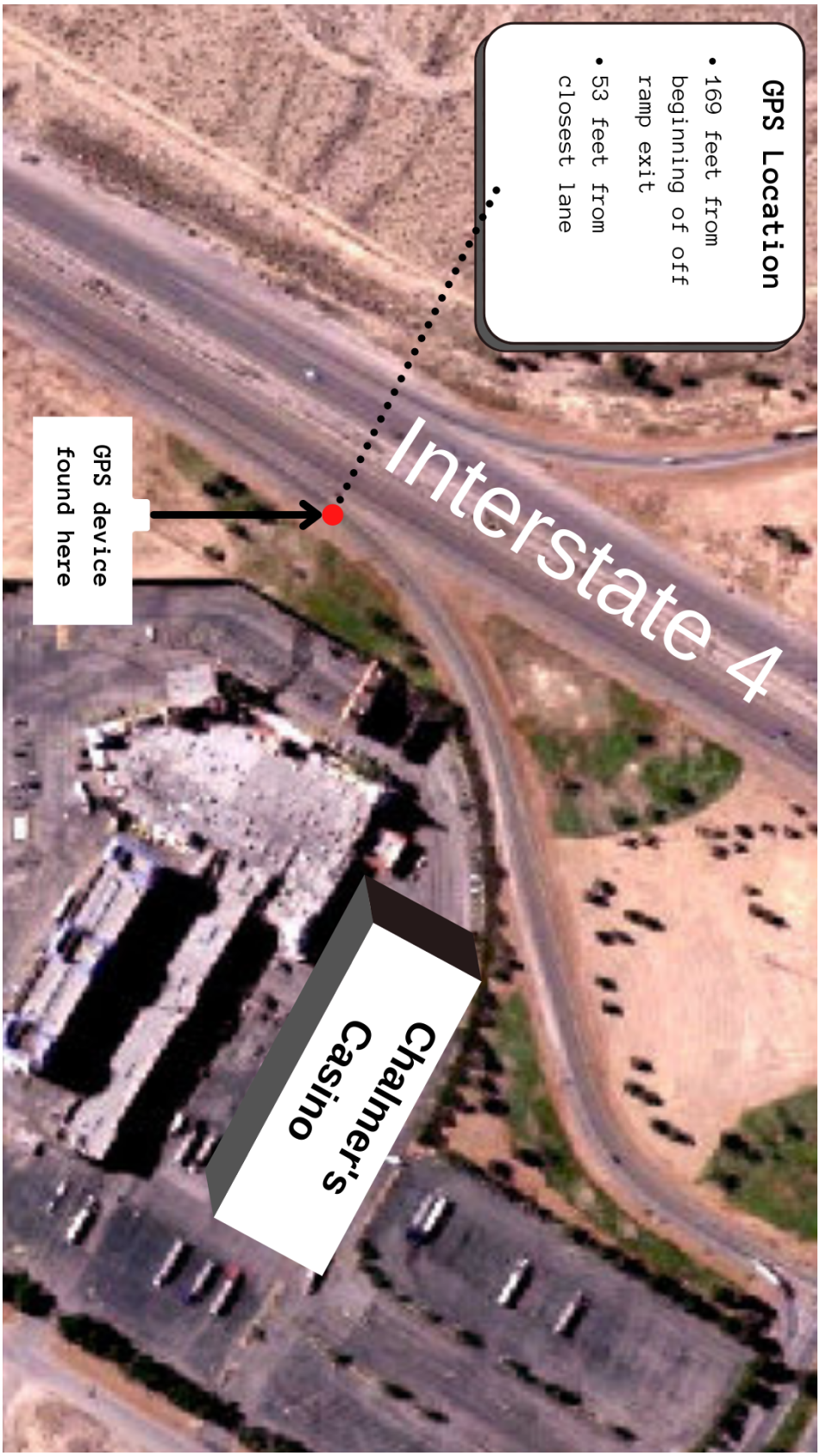
*s/Dolray Mapp*
Dolray Mapp
Dated: October 29, 2021

Subscribed and sworn before me on October 29, 2021.

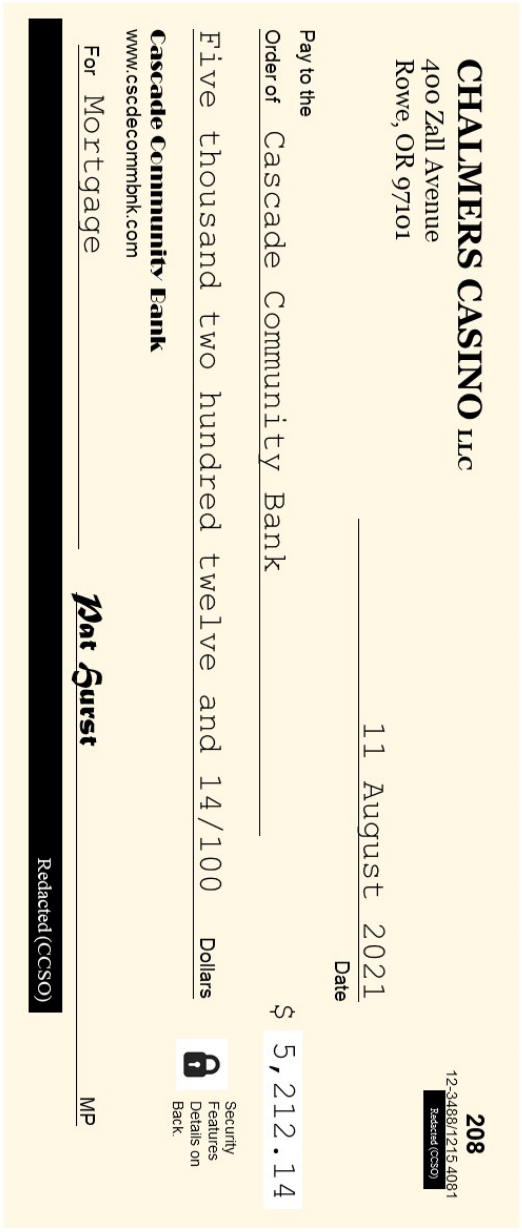
*s/Roberta Bost*
Roberta Bost

# EXHIBITS

**EXHIBIT 1: Bank GPS Location Map**



## EXHIBIT 2: Parker's August Mortgage Check



**CHALMERS CASINO LLC**
400 Zall Avenue
Rowe, OR 97101

208
12-3488/1215 4081
Redacted (CCSO)

11 August 2021
Date

Pay to the Order of Cascade Community Bank $ 5,212.14

Five thousand two hundred twelve and 14/100 Dollars

Security Features Details on Back

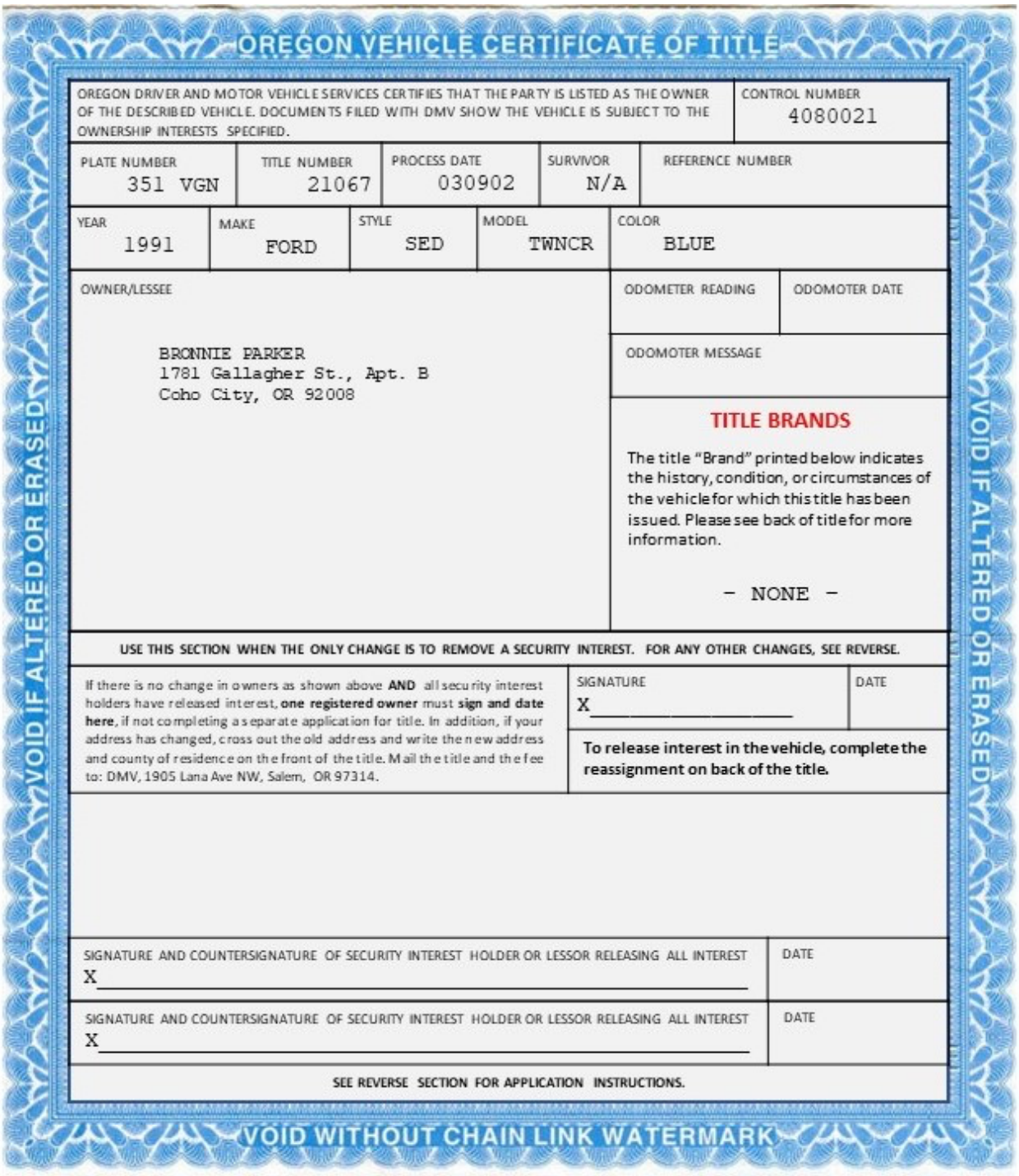
**Cascade Community Bank**
www.cscdecommbnk.com

For Mortgage Pat Hurst

MP

Redacted (CCSO)

## EXHIBIT 3: Parker's Car Title



OREGON VEHICLE CERTIFICATE OF TITLE

VOID IF ALTERED OR ERASED

OREGON DRIVER AND MOTOR VEHICLE SERVICES CERTIFIES THAT THE PARTY IS LISTED AS THE OWNER OF THE DESCRIBED VEHICLE. DOCUMENTS FILED WITH DMV SHOW THE VEHICLE IS SUBJECT TO THE OWNERSHIP INTERESTS SPECIFIED.

CONTROL NUMBER: 4080021

| PLATE NUMBER | TITLE NUMBER | PROCESS DATE | SURVIVOR | REFERENCE NUMBER |
|---|---|---|---|---|
| 351 VGN | 21067 | 030902 | N/A | |

| YEAR | MAKE | STYLE | MODEL | COLOR |
|---|---|---|---|---|
| 1991 | FORD | SED | TWNCR | BLUE |

OWNER/LESSEE

BRONNIE PARKER
1781 Gallagher St., Apt. B
Coho City, OR 92008

ODOMETER READING

ODOMOTER DATE

ODOMOTER MESSAGE

**TITLE BRANDS**

The title "Brand" printed below indicates the history, condition, or circumstances of the vehicle for which this title has been issued. Please see back of title for more information.

– NONE –

USE THIS SECTION WHEN THE ONLY CHANGE IS TO REMOVE A SECURITY INTEREST. FOR ANY OTHER CHANGES, SEE REVERSE.

If there is no change in owners as shown above **AND** all security interest holders have released interest, **one registered owner** must **sign and date here**, if not completing a separate application for title. In addition, if your address has changed, cross out the old address and write the new address and county of residence on the front of the title. Mail the title and the fee to: DMV, 1905 Lana Ave NW, Salem, OR 97314.

SIGNATURE
X_____

DATE

**To release interest in the vehicle, complete the reassignment on back of the title.**

SIGNATURE AND COUNTERSIGNATURE OF SECURITY INTEREST HOLDER OR LESSOR RELEASING ALL INTEREST
X_____

DATE

SIGNATURE AND COUNTERSIGNATURE OF SECURITY INTEREST HOLDER OR LESSOR RELEASING ALL INTEREST
X_____

DATE

SEE REVERSE SECTION FOR APPLICATION INSTRUCTIONS.

VOID WITHOUT CHAIN LINK WATERMARK

**EXHIBIT 4: Dullsville Branch Mortgage Foreclosure Letter to Parker**

# Cascade Community Bank

*Serving your needs since 1936*

| ***Main branch*** | ***Randolph River branch*** |
|---|---|
| 1721 Harrington Ave. | 880 Atwood St. |
| Dullsville, OR 97125 | Randolph River, OR 95089 |
| (541) 807-2234 | (541) 674-5899 |

July 26, 2021

Bronnie Parker
26 Piper Lane
Coho City, OR 92008

Dear Bronnie:

I write regarding your mortgage with Cascade Community Bank. As we have discussed, we have not received a payment from you since February of this year. Your current outstanding balance, including all applicable late fees, is $5,212.14.

Regrettably, if we do not receive payment in full by August 12, 2021, we will have no choice but to initiate foreclosure proceedings the following day.

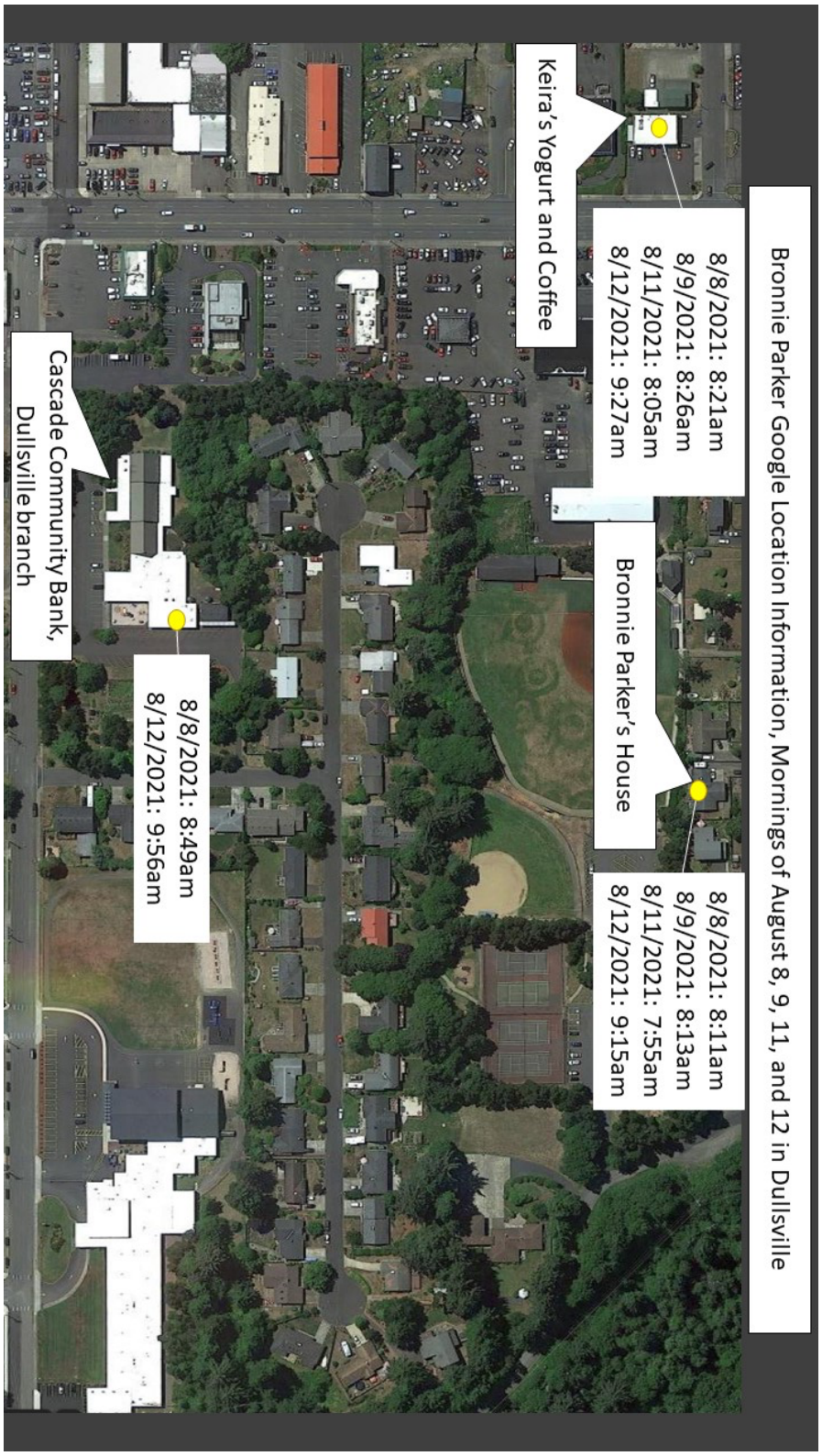
If there is any way in which we might assist you in paying down your balance, please let us know as soon as possible. On behalf of all of us at Cascade Community Bank, I wish you all the best.

Sincerely,

Lolo Baldwin

Lolo Baldwin
Manager, Cascade Community Bank

## EXHIBIT 5: Area Map - Parker's Google Location Data



## II. The Form and Substance of this Criminal Trial

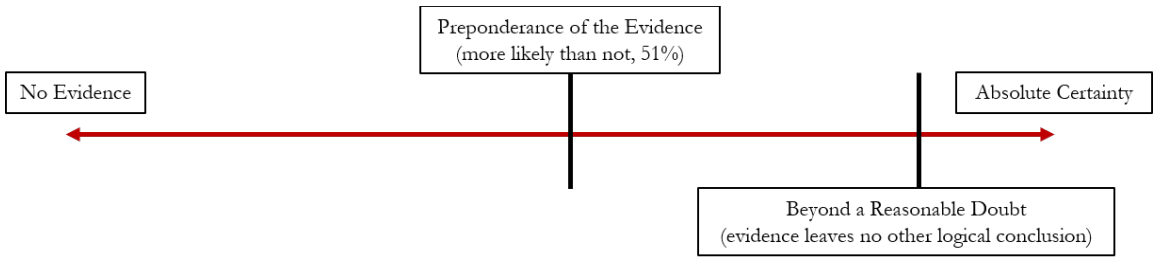
### A. The Elements of a Criminal Case

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

### B. Presumption of Innocence, Proof Beyond a Reasonable Doubt

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

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




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

The defendant in this case, Bronnie Parker, is charged with two counts of robbery in the first degree, one charge for the August 9, 2021 robbery and a separate charge for the August 11, 2021, robbery. Parker has pled not guilty. A not guilty plea puts each element of the crime with which Parker has been charged in issue. A plea of not guilty requires the State to prove each element of the crimes.

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

To prove robbery in the first degree, the Prosecution must show that Parker "was armed with a deadly weapon," and in the course of committing the August 9th and/or August 11th robberies "used or threatened the immediate use of physical force upon another person with the intent of preventing or overcoming resistance to the taking of the bank's property, or threatened someone immediately after the taking of the bank's property" or "compelled the bank employees to deliver the bank's property or to engage in other conduct which might aid in the commission of the theft." For Parker to be proven guilty of both charges, the Prosecution must demonstrate the previously stated criteria for both the August 9th and August 11th robberies. It is possible for Parker to be found guilty of first degree robbery in one charge, while innocent in the other, if the Prosecution has not moved the trier of fact beyond a reasonable doubt in one of the two charges.

## **C.** Statutes

### ORS 164.415 – Robbery in the First Degree

(1) A person commits the crime of robbery in the first degree if the person violates ORS 164.395 (Robbery in the third degree) and the person:

(a) Is armed with a deadly weapon;

(b) Uses or attempts to use a dangerous weapon;

(c) Causes or attempts to cause serious physical injury to any person.

(2) Robbery in the first degree is a Class A felony. [1971 c.743 §150; 2007 c.71 §51]

### ORS 164.395 – Robbery in the Third Degree

(1) A person commits the crime of robbery in the third degree if in the course of committing or attempting to commit theft or unauthorized use of a vehicle as defined in ORS 164.135 (Unauthorized use of a vehicle) the person uses or threatens the immediate use of physical force upon another person with the intent of:

(a) Preventing or overcoming resistance to the taking of the property or to retention thereof immediately after the taking; or

(b) Compelling the owner of such property or another to deliver the property or to engage in other conduct which might aid in the commission of the theft or unauthorized use of a vehicle.

(c) Causes or attempts to cause serious physical injury to any person.

(2) Robbery in the first degree is a Class C felony. [1971 c.743 §148; 2003 c.357 §1]

## **D.** Role Descriptions

### Attorneys

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

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

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

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

Attorneys on both sides will:

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

## Attorneys – Opening Statement

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

One way to begin your opening statement could be:

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

Proper phrasing in an opening statement includes:

> "The evidence will indicate that..."
> "The facts will show that…"
> "Witness (use name) will be called to tell…"
> "The defendant will testify that…"

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

## Attorneys – Direct Examination

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

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

Attorneys call a witness with a formal request:

> "Your Honor, the Prosecution/Defense would like to call _____ to the stand."

The witness will have been sworn in by the Presiding Judge at the beginning of the trial or the clerk will swear in the witness before you begin asking questions. It is good practice to ask your witness some introductory questions to help the witness feel more comfortable. Appropriate introductory questions might include asking the witness's name, residence, present employment, etc.

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

> "Could you please tell the court what occurred on _____?"
> "How long did you remain in that spot?"
> "What happened while you waited?"

Conclude your direct examination with:

> "Thank you _____. I have no further questions, your Honor."

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

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

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

- For redirect and recross, see explanation and note to *Rule 24* and *Rule 611*.
- For closing, see explanation to *Rule 25*.

## Witnesses

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

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

It is the responsibility of the attorneys to make the appropriate objections when witnesses are asked to testify about something that is not generally known or cannot be inferred from the witness statement. If an objection is not made, the testimony will stand.

# IN-PERSON COMPETITION

## Court Clerk and Bailiff

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

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

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

## Duties of the Clerk – Provided by the Prosecution

When the judge arrives in the courtroom, the clerk should introduce him/herself and explain that he/she will assist as the court clerk. The clerk's duties are as follows:

1. **Roster and rules of competition:** The clerk is responsible for bringing a roster of students and their roles to each trial round. The clerk should have enough copies to be able to give a roster to each judge in every round, one for the opposing team, and some extras (5-6 copies per round). The roster form contained in this packet should be used. In addition, the clerk is responsible for bringing a copy of the "Rules of Competition" to each round. In the event that questions arise and the judge needs clarification, the clerk shall provide this copy to the judge.

2. **Swear in the Witnesses:** The clerk should swear in each witness as follows:

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

   Witness responds, "I do."

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

3. **Provide Exhibits:** The clerk should provide copies of the exhibits for attorneys or judges if requested (both sides should have their own copies of the exhibits, however, a well-prepared clerk has spare copies).

4. **Extra Duties:** A clerk may also be asked to perform other duties to assist the judges or Competition Coordinator. A clerk should be prepared to assist in whatever way possible to help the competition run smoothly.

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

## Duties of the Bailiff – Provided by the Defense

When the judge arrives in the courtroom, the bailiff should introduce him/herself and explain that he/she will assist as the court bailiff. The bailiff's duties are to call the court to order and to keep time during the trial.

1. **Call to Order:** As the judges enter the courtroom, the bailiff says, "All rise. The Court with the Honorable Judge _____ presiding, is now in session. Please be seated and come to order." Whenever the judges leave or enter the courtroom, you should ask the audience to rise.

2. **Timekeeping: The bailiff is responsible for bringing a stopwatch to the trial.** The stopwatch cannot be a cell phone; no electronic devices are permitted. A bailiff should practice with the stopwatch and know how it works before the competition. Time limits are provided for each segment of the trial. The bailiff should keep track of time used and time remaining for each segment of the trial using the timesheet provided in this packet.

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

After each witness has finished testifying, the bailiff should announce the time remaining in the segment. For instance, if after direct examination of two witnesses, the Prosecution has used 12 minutes announce, "Ten minutes remaining." (22 minutes total allowed for direct/redirect, less the 12 minutes already used). After each witness has completed his/her

testimony, the bailiff marks the timesheet the time to the nearest 10 seconds. When three minutes remain, the bailiff holds up the "3 minutes" card, followed by the "1 minute" and "0" cards. When time has run out for a segment, the bailiff announces, "Time." The bailiff should make certain the time cards are visible to all judges and attorneys when they are held up.

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

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

## Team Manager and Unofficial Timer

### Team Manager (optional)

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

### Unofficial Timekeeper (optional)

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

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

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

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

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

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

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

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

Time shall be stopped during a timekeeping request.

## VIRTUAL COMPETITION

### Swearing in of the Witnesses

In virtual competitions, 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?"

All witnesses respond, "I do."

Subsequently, the attorneys for each side will ask each witness to "state your name for the court, and spell your last name" as the first question when the witness begins their testimony.

### 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. General Rules of the Competition (Virtual & In-Person Applicable)
## 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 their 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 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.

**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.

### 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 but are inadvertent. 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 region in which their school or organization is physically 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 the month of February 2022.** 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's "2021-2022 Oregon High School Mock Trial Hub" microsite.

All teams participating at the regional level must be prepared to compete at the state level should they finish among the top teams 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, 2022**.

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 whether 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.

For a virtual competition, 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. For in-person competition, a mock trial team will be an entity that includes attorneys

and witnesses for both the Plaintiff and Defense (again, students may play roles on both sides if necessary), a clerk and a bailiff.

All mock trial teams must submit a Team Roster listing the team name and all coaches and students to the Competition Coordinators 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 Classroom Law Project's "2021-2022 Oregon High School Mock Trial Hub" microsite.

## 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

In a virtual competition, 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?"

In an in-person competition, the clerk, provided by the Prosecution, swears in each witness as they are seated, using the same oath.

## 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. 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.

For in-person competitions, Three- and One-Minute card warnings must be given before the end of each segment. Students will be stopped by the bailiff at the end of the allotted time for each segment. The bailiff will also time the judges' scoring time after the trial. The judging panel is allowed 10 minutes to complete their ballots. The bailiff will notify the judges when time has elapsed.

In virtual competitions, 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 (each team will be allowed three observers per round in a virtual competition) 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 communicate among themselves during trial, however, no disruptive communication is allowed. In virtual competitions, communication shall not occur in the Zoom courtroom chat area. Performing students may communicate among themselves by other means (Google Chat, text message, etc.) as long as the notifications are silent, and the communication is not disruptive.

In virtual competitions, only team members participating in the round and coaches may be in the same physical room with the performing students. Spectators and non-performing team members must not be in the same physical room as performing team members during the trial.

For in-person competitions, everyone in the courtroom shall turn off all electronic devices except stopwatches being used by the timekeeper(s). Non-team members, alternate team members, teachers and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in the round may sit inside the bar.

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. Before the Trial

### Rule 18. Stipulations
Stipulations shall be considered part of the record and already admitted into evidence.

### Rule 19. The Record
No stipulations, pleadings, or jury instructions shall be read into the record.

### Rule 20. Motions Prohibited
The only motion permissible is one requesting the judge strike testimony following a successful objection to its admission.

### Rule 21. Objection During Opening Statement, Closing Argument
No objections shall be raised during opening statements or during closing arguments.

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

## D. Presenting Evidence

### Rule 22. 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 23. Procedure for Qualifying Expert Witnesses

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

1. Ask the expert to describe factors such as education, professional training, work experience, special skills, or publications they have authored.
2. Ask the Court to qualify the witness as an expert in a particular field.

3. Once qualified, ask for witness's expert opinion on__.

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

**Attorney**: "Dr. Jones, what is your occupation?"

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

**Attorney**: "Where did you attend medical school?"

**Witness**: "I graduated from OHSU Medical School in 1985."

**Attorney**: "Where did you do your internship?"

**Witness**: "I did a two-year internship in Cardiology at Johns Hopkins University from 1985-1987."

**Attorney**: "Did you then specialize in any particular field of medicine?"

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

**Attorney**: "Have you published any books or articles on the topic?"

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

**Attorney**: "Do you hold any professional licenses?"

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

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

**Judge**: "Any objections?"

### Rule 24. Redirect, Recross

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

## E. Closing Arguments

### Rule 25. Scope of Closing Arguments

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

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

A closing argument should:

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

## F. Critique

### Rule 26. 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.

## G. Judging and Team Advancement

### Rule 27. Decisions

All decisions of the judging panels are FINAL.

### Rule 28. 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.

### Rule 29. 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 30. 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 31. 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 three rounds of regional competition will advance to the state competition. At the state competition, pairings for the first round will once again be selected randomly and the two teams emerging with the strongest records from the first three rounds will advance to the championship round, round, where the winner will be determined by the ballots from the championship round only.

Power matching provides that:

1. Pairings for the first round of competition at both the regional and state levels 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 32. Merit Decisions

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

## Rule 33. 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. Once Round 3 is completed, the average ballots initially used by bye teams or default winners will be replaced with the average of their own ballots and points from the 2 rounds in which they competed.

For the purposes of advancement and seeding (not final scoring), a team that forfeits Round 1 will be given a loss and, temporarily, the average number of ballots and points earned by all Round 1 losers. A team that forfeits Round 2 will be given a loss and, temporarily, the average number of ballots and points earned by all Round 2 losers. A team that forfeits Round 3 will be given a loss and the average number of ballots and points earned by that team in Rounds 1 and 2. Once Round 3 is completed, the average ballots and points initially used by forfeiting teams will be replaced with an average of their own ballots and points from the 2 rounds in which they competed.

## H. Dispute Settlement

### Rule 34. 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 34 challenge. If any team has serious reason to believe that a material rule 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 34 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 35. Dispute Resolution Procedure

At the conclusion of the trial, the Presiding Judge will ask both teams if they have Rule 34 challenges for *material* rule or ethical violations.

In a virtual competition, 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.

In an in-person competition, the Presiding Judge will review the written dispute and determine whether the dispute deserves a hearing or should be denied. If the dispute is denied, the Presiding Judge will record the reasons for denial, announce the decision to the Court, and retire along with the other judges to complete the scoring process.

If the Presiding Judge determines the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the Presiding Judge, the Presiding Judge will ask each team to designate a spokesperson. Spokespersons will have 5 minutes maximum to prepare their arguments, after which the Presiding Judge will conduct a hearing, providing each spokesperson three minutes to present their argument. Spokespersons may be questioned by the judge. At no time during the process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the Presiding Judge will adjourn the court and retire to consider a ruling on the dispute. That decision will be recorded on the dispute form with no further announcement.

### Rule 36. 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 37. 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 37 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 7.

## IV. Virtual Mock Trial Rules of Procedure

### Rule 38. 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 39. 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 40. 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 41. 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 42. 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. (Accommodations may be made for student attorneys)
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 43. 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.

# A. Presenting Evidence

## Rule 44. 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 45. 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.

## V. In-Person Mock Trial Rules of Procedure

### A. Before the Trial

### Rule 46. Team Roster

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

### Rule 47. Courtroom Setting

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

### B. Beginning the Trial

### Rule 48. Jury Trial

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

### Rule 49. Standing During Trial

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

## C. Presenting Evidence

### Rule 50. Procedure for Introduction of Exhibits

The following steps effectively introduce evidence:

**Introduce the Item for Identification**

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

**Offer the Item into Evidence**

1. Offer the exhibit into evidence. "Your Honor, we offer Exhibit ___ into evidence at this time. The authenticity of the exhibit has been stipulated."
2. Court: "Is there an objection?" If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.
3. Opposing counsel: "No, Your Honor," or "Yes, Your Honor." If yes, the objection will be stated on the record. Court: "Is there any response to the objection?"
4. Court: "Exhibit ___ is/is not admitted."

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

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

### Rule 51. Use of Notes, No Electronic Devices

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

# VI. 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 these 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

1. 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:
    a. a guilty plea that was later withdrawn;
    b. a nolo contendere plea;
    c. a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
    d. 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.

2. Exceptions. The court may admit a statement described in Rule 410 1.c. or d.:
   a. 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
   b. 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 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 called *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.

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.

**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."

## 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 23.

## 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.

# VII. 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 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
8. 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 28.

## B. Virtual Competition - 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 and sworn in. 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**: Bank GPS Location Map
**Exhibit 2**: Parker's August Mortgage Check
**Exhibit 3**: Parker's Car Title
**Exhibit 4**: Dullsville Branch Mortgage Foreclosure Letter to Parker
**Exhibit 5**: Area Map – Parker's Google Location Data

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 34 motion. If so, resolve the matter as indicated in Rule 35. 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. In-Person Competition - 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. If so, ask each side to provide each judge with a copy of its Team Roster. Then, ask each member to rise and state their name, role and team letter code (not school name).
2. If video or audio recorders are present, inquire with both teams whether they have objectives to recording of the round.
3. Ask if there are people in the courtroom who are connected with other schools in the competition not performing in your courtroom. If so, they should be asked to leave. They may contact the Competition Coordinator to determine the location of the courtroom in which their school is performing.
4. Remind spectators of the importance of showing respect for the teams. Ask spectators to silence electronic devices. Judges may remove spectators who do not adhere to proper courtroom decorum.
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 bailiff will signal you as the time for each segment progresses. Three-minute, one minute and zero-minute cards will be held up by the bailiff. At the end of each segment attorneys and witnesses will be stopped when time has run out, regardless of completion of the presentation.
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**: Bank GPS Location Map
**Exhibit 2**: Parker's August Mortgage Check
**Exhibit 3**: Parker's Car Title
**Exhibit 4**: Dullsville Branch Mortgage Foreclosure Letter to Parker
**Exhibit 5**: Area Map – Parker's Google Location Data

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 34 motion. If so, resolve the matter as indicated in Rule 35. 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.

## D. 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 notetaking 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. If online ballots are not available, ballots shall be completed and given to the Clerk for delivery to the scoring room immediately following competition of the round and before the 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.**

## E. 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.

# VIII. Appendices

## **A.** Often Used Objections in Suggested Form

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

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

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

1. **Leading Question**. See Rule 611.

> **Example:**
> Attorney 1 (on cross-examination): "So, Mr. Smith, you took Ms. Jones to a movie that night, didn't you?" (This question calls for a yes or no answer.)
>
> Attorney 2: "Objection! Counsel is leading the witness."
>
> Attorney 1: "Your Honor, leading is permissible on cross-examination."
>
> Judge: "Objection is overruled."
>
> **OR**
>
> Attorney 2 (on direct examination): "So, Mr. Smith, you took Ms. Jones to a movie that night, didn't you?"
>
> Attorney 1: "Objection! Counsel is leading the witness."
>
> Attorney 2: "I'll rephrase Your Honor. Mr. Smith, where did you and Ms. Jones go that night?" (This question is open-ended and does not call for a yes or no answer.)

2. **Relevance**. See Rule 402.

> **Example:** In a traffic accident case defendant is accused of intentionally hitting her ex-husband's car. Her defense is that she had no intention of hitting her ex-husband, but couldn't stop in time to avoid the collision.
>
> Plaintiff's Attorney (on cross-examination): "You are divorced from the Plaintiff, correct?

Defendant: "Yes."

Plaintiff's Attorney: "And the Plaintiff was your 4th husband, right?"

Defendant's Attorney: "Objection, Your Honor. My client's past marriages are not relevant here."

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

Judge: "I'll allow it, but Counsel please lay a better foundation for the question."

3. **Hearsay**. See Rules 801 – 805.

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

Defense Attorney: "So, then what happened?"

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

Prosecutor: "Objection, Your Honor. The woman's statement is hearsay."

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

Judge: "Overruled. The statement is admissible."

4. **Personal Knowledge**. See Rule 602.

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

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

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

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

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

5. **Opinions**. See Rule 701.

> **Example:**
>
> Attorney 1: And what happened when you went home from the Emergency Room?"
>
> Witness: "I figured out the doctor put my cast on incorrectly. That's why I have a limp now."
>
> Attorney 2: "Objection, Your Honor. The witness is not a doctor and can't offer an opinion on the sufficiency of his cast."
>
> Attorney 1: "The witness can offer his opinion about his own cast."
>
> Judge: "The objection is sustained. The witness does not have the expertise to evaluate his cast or whether it caused him to limp."

6. **Outside the Scope of Mock Trial Materials/Rules**. See Rule 4.

> **Example:** Witness's statement says that she is a mother of eight children and works two jobs.
>
> Attorney 1 (on cross-examination): "So, you have *eight* children?"
>
> Witness: "Yes."
>
> Attorney 1: "And you work *two* jobs?"
>
> Witness: "Yes."
>
> Attorney 1: "So, you must be pretty exhausted most days."
>
> Attorney 2: "Objection, Your Honor. Question asks witness to testify to information not contained in the mock trial materials."
>
> Attorney 1: "Your Honor, she would be making a reasonable inference from her witness statement."
>
> Judge: "Objection is overruled. It is reasonable to infer from the mock trial materials that the witness might be tired."

**B.** Timesheet

**OREGON HIGH SCHOOL MOCK TRIAL**

# Time Sheet (Criminal Case)

**ROUND: _____**

**Prosecution Team Code _____ v. Defense Team Code _____**

| | Prosecution Time Used | | Defense Time Used | |
|---|---|---|---|---|
| | **Opening:** 5-minute maximum<br>Used: _____ | | **Opening:** 5-minute maximum<br>Used: _____ | |
| | **Direct* + Redirect* = Used**** | **22:00** | **Cross* + Recross* = Used**** | **11:00** |
| W1 | ____ + ____ = ____ > | – _____<br>= _____ | ____ + ____ = ____ > | – _____<br>= _____ |
| W2 | ____ + ____ = ____ > | – _____<br>= _____ | ____ + ____ = ____ > | – _____<br>= _____ |
| W3 | ____ + ____ = ____ > | – _____<br>= _____ | ____ + ____ = ____ > | – _____<br>= _____ |
| | **Cross* + Recross* = Used**** | **11:00** | **Direct* + Redirect* = Used**** | **22:00** |
| W4 | ____ + ____ = ____ > | – _____<br>= _____ | ____ + ____ = ____ > | – _____<br>= _____ |
| W5 | ____ + ____ = ____ > | – _____<br>= _____ | ____ + ____ = ____ > | – _____<br>= _____ |
| W6 | ____ + ____ = ____ > | – _____<br>= _____ | ____ + ____ = ____ > | – _____<br>= _____ |
| | **Closing: 5-minute max.**<br>Used: _____<br>Unused: _____<br>Rebuttal: _____ | | **Closing: 5-minute max.**<br>Used: _____<br>N/A<br>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 |
|---|---|
| **PROSECUTION TEAM** | |
| Witness – | |
| Witness – | |
| Witness – | |
| Attorney – Opening Statement | |
| Attorney – Direct Examination of Witness | |
| Attorney – Direct Examination of Witness | |
| Attorney – Direct Examination of Witness | |
| Attorney – Cross-Examination of Defense Witness | |
| Attorney – Cross-Examination of Defense Witness | |
| Attorney – Cross-Examination of Defense Witness | |
| Attorney – Closing Argument | |
| Clerk | |
| **DEFENSE TEAM** | |
| Witness – | |
| Witness – | |
| Witness – | |
| Attorney – Opening Statement | |
| Attorney – Direct Examination of Witness | |
| Attorney – Direct Examination of Witness | |
| Attorney – Direct Examination of Witness | |
| Attorney – Cross Examination of Plaintiff Witness | |
| Attorney – Cross Examination of Plaintiff Witness | |
| Attorney – Cross Examination of Plaintiff Witness | |
| Attorney – Closing Argument | |
| Bailiff | |

**Oregon High School Mock Trial**
**Ballot 2021-2022**

**Round (circle one): 1 2 3 4**

**Prosecution Letter Code:** _____

**Defendant Letter Code:** _____

| Witness Scores | | Attorney Scores | |
|---|---|---|---|
| | | Prosecution Opening Statement | Defendant Opening Statement |
| | | | |
| Prosecution Witness One | Name: | Direct Examination One: | Cross Examination One: |
| Direct | Cross | | |
| | | | |
| Prosecution Witness Two | Name: | Direct Examination Two: | Cross Examination Two: |
| Direct | Cross | | |
| | | | |
| Prosecution 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<br>☐ The theme/theory of the case was identified<br>☐ Mentioned the key witnesses<br>☐ Provided a clear and concise description of their team's evidence and side of the case<br>☐ Stated the relief or verdict requested<br>☐ Discussed the burden of proof<br>☐ Presentation was non-argumentative; did not include improper statements or assume facts not in evidence<br>☐ Professional and composed<br>☐ Spoke naturally and clearly | ☐ Properly phrased and effective questions<br>☐ Examination was organized effectively to make points clearly; questions had clear purpose<br>☐ Used proper courtroom procedures<br>☐ Handled objections appropriately and effectively<br>☐ Did not overuse objections<br>☐ Did not ask questions that called for an unfair extrapolation from the witness<br>☐ Demonstrated an understanding of the Modified Federal Rules of Evidence<br>☐ Handled physical evidence appropriately and effectively<br>☐ Professional and composed<br>☐ Spoke confidently and clearly | ☐ Properly phrased and effective questions<br>☐ Examination was organized effectively to make points clearly; questions had clear purpose<br>☐ Used proper courtroom procedures<br>☐ Handled objections appropriately and effectively<br>☐ Did not overuse objections<br>☐ Did not ask questions that called for an unfair extrapolation from the witness<br>☐ Used various techniques to handle a non-responsive witness<br>☐ Properly impeached witnesses<br>☐ Demonstrated an understanding of the Modified Federal Rules of Evidence<br>☐ Handled physical evidence appropriately and effectively<br>☐ Professional and composed<br>☐ Spoke confidently and clearly | ☐ Theme/theory reiterated in closing argument<br>☐ Summarized the evidence<br>☐ Emphasized the supporting points of their own case and mistakes and weaknesses of the opponent's case<br>☐ Concentrated on the important facts<br>☐ Applied the relevant law<br>☐ Discussed burden of proof<br>☐ Did not discuss evidence that was not included in the trial presentation<br>☐ Persuasive<br>☐ Use of notes was minimal, effective, and purposeful<br>☐ Contained spontaneous elements that reflected unanticipated outcomes of this specific trial<br>☐ Professional and composed<br>☐ Spoke naturally and clearly |
| **WITNESS SCORING CRITERIA** | | ☐ Responses consistent with facts<br>☐ Did not materially go outside case materials<br>☐ Understood witness statements and exhibits<br>☐ Used exhibits to enhance testimony<br>☐ Voice was clear, audible, confident and convicted<br>☐ Performance was compelling<br>☐ Characterization was engaging and drew you in<br>☐ Recovered after objections<br>☐ Took command of courtroom without being overbearing<br>☐ Responses were spontaneous and natural | ☐ Responses consistent with facts<br>☐ Did not materially go outside case materials<br>☐ Understood witness statements and exhibits<br>☐ Used exhibits to enhance testimony<br>☐ Voice was clear, audible, confident and convicted<br>☐ Performance was compelling<br>☐ Characterization was engaging and drew you in<br>☐ Recovered after objections<br>☐ Answered cross questions responsibly<br>☐ Stayed in character during cross | **Scoring Guide**<br>**9-10**: **Excellent, Amazing**: mastery or near mastery of the criteria at all times<br>**7-8**: **Good, Very Good**: proficiency with the criteria nearly all of the time<br>**5-6**: **Fair, Average**: meets the criteria much of the time<br>**3-4**: **Weak, Needs Practice**: developing the criteria, but inconsistent/poorly executed<br>**1-2**: **Poor, Unprepared**: unpracticed; does not meet criteria |

**F.** Rule 34 Reporting Form

**RULE 34 - 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 37 Reporting Form

**RULE 37 - 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