

Civics Learning Project proudly presents the 38th annual statewide

2023 – 2024 Oregon High School Mock Trial Competition



United States of America, Prosecution v. Tommi Wright, Defendant

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

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

Welcome to the 38th annual mock trial competition!

As many of you know, an enthusiastic team of Civics Learning Project volunteers bands together each year to write the case that you prepare and ultimately present in court. Some are themselves alumni, both recent and not-so-recent, of CLP's high school Mock Trial program. Particularly with criminal cases, it's no small task to write a problem that (we hope) simultaneously interests, entertains, and educates, but the magnitude of the work is fully commensurate with the fun we have in doing it. As you digest this year's case, we hope you'll keep a few things in mind.

First, while entirely fictional, this year's case is based loosely on a real federal criminal prosecution called [*United States v. Kirst*](#).

We encourage you to read and discuss the decision amongst yourselves in class, at practice, or whenever else time permits, both to understand the parallels between it and the materials that follow and to appreciate that the gap between Mock Trial and real-life lawyering is not nearly as great as you may think. There are, as usual, more than a few "easter eggs" buried in the following pages. Some may remind you of a great film or two. As you prepare, though, we encourage you to keep in mind that your work is an exposition of ancient and vitally important concepts — due process, rigorous and open debate, the jury system, and judicial independence, to name just a few — core to our democratic system. In other words, even though the case you'll be preparing so diligently for is a wholly fake dispute, your work on this case still matters quite a bit.

Second, we chose to write this case in part for more timely pedagogical reasons. For the most part, the federal obstruction statutes are invoked by prosecutors relatively rarely. Obstruction cases arising out of plane crashes are, to say the least, even more uncommon. But the events of January 6, 2021 gave rise to a torrent of federal criminal prosecutions in which many of the government's primary charges arose under a provision within the family of federal obstruction statutes on which this year's case is based. The events of that day should play no noticeable role in your presentations. (After all, it appears nowhere in the case materials.) But, as you prepare, we encourage you to reflect on the importance of our various democratic processes, as distinguished from the results — this or that policy, program, or rule — to which those processes lead. Like the courts themselves, the federal obstruction statutes are meant to protect "proceedings," not outcomes.

Finally, and most importantly, remember to have fun. That goes as much for coaches, teachers, parents, judges, and volunteers as it does for students. Maybe it's just us, but we think there's simply nothing quite as exhilarating as being in a courtroom in which a bona fide legal dispute (even a fake one) happens to be unfolding. We know you won't be able to ignore your scoresheets entirely, but we urge you not to let the numbers get in the way of the joy of presenting testimony, questioning, and argument that you've spent months preparing and perfecting.

Good luck! We can't wait to see you bring the case to life.

Sincerely,

The Civics Learning Project Mock Trial
Case Writing Committee

2023-2024 Oregon High School Mock Trial

United States of America v. Tommi Wright

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Civics Learning Project
2023 – 2024 Oregon High School
Mock Trial Competition

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 2023-24 competition season. Please review the materials carefully as they reflect the various competition scenarios.

Each participating team will compete in a regional (or divisional) competition which may be either in-person or virtual depending upon the region and feasibility of live competition in February or March 2024. The regional competitions will generally be held on February 24, 2024, with the possibility of them being held on March 2, 2024. Regional/Divisional winners will advance to the State Competition on March 16th-17th, 2024. The winning team from the State Competition will represent Oregon at the National High School Mock Trial Competition on May 2nd-5th, 2024.

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, Civics Learning Project (formerly 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.

Program Objectives

For the students, the mock trial competition will:

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

For a school or organization, the competition will:

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

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.

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.

The Case

Case Summary

Longtime friends Tommi Wright and Taran “Merlin” Hawkins met in flight school. They both loved adventure, adrenaline, and being in the sky. As their bond grew, they decided to open a business together. The two ace pilots started Jobby Charter Flights together in the 1990s. The business mainly centered on taking customers on nature tours around Oregon. Clients would experience all the natural splendor Oregon has to offer from the unique vantage point of a small and nimble aircraft. Business was strong.

In 2008, Jamie “Goose” Henderson was invited to experience one of the flights Jobby had to offer. Goose was a photographer looking to find supplemental income, as steady revenue was hard to find. Goose, at the behest of the travel companions that extended the offer, took photographs of the wildlife and beautiful scenery from the aircraft Tommi Wright was flying. The photos were a big hit, and a new business arrangement was born. Goose would market the flights Tommi was chartering, while also promoting Goose’s own services for aerial photographs to commemorate the moment. Additionally, Tommi would advertise Goose’s photography services to customers, and would-be customers interested in taking home more than memories from these wildlife ventures. The partnership yielded great success, making both Goose and Tommi financially secure in a business that can be anything but.

Tommi’s flying, Jobby Charter Flights, and the business relationship between pilot and photographer were all going well until tragedy struck. On July 11, 2023, Tommi Wright had a flight scheduled with old business partner/friend Goose and a new friend of Goose’s Mike “Cobra” Metcalf. Mike, a retired Navy pilot, was incredibly interested in all these nature excursions and jumped at the chance for a wildlife flight. Tommi was equally as excited, as it was clear Mike had the potential of being a longtime returning customer. Not only were the prospects of repeat business of interest to Tommi, also was the idea of impressing a former Navy pilot, something that Tommi loved to do any time the opportunity arose. One of the great joys Tommi received from flying was impressing fellow pilots with maneuvers and moves only the very best pilots could pull off.

On July 11, 2023, in the afternoon, the three individuals proceeded to fly a route that Tommi and Goose had done countless times prior. During the trip, Mike spotted an animal and was hoping that they could do another pass to obtain a better view. Tommi, already traveling quite low to the terrain saw this as an opportunity to impress the former pilot with some skilled flying and turned the aircraft right around. In an attempt to give Mike a show, Tommi flew even closer to the ground, despite regulations that the type of aircraft that Tommi was flying must stay at least 500 feet in elevation. Shortly after Tommi switched course, the plane banked hard right and crashed. Goose survived without significant injuries, Tommi experienced severe injuries from the crash, and Mike Metcalf died from the injuries he sustained.

The National Transportation Safety Board (NTSB) immediately initiated an investigation and sent an investigator, Treat Mitchell, to the scene. In the aftermath of the crash, there is now controversy around several of Tommi Wright’s actions. First is the question of whether Tommi was flying at the appropriate elevation prior to the crash. The second issue, and heart of this case, is whether Tommi Wright obstructed justice by misleading the NTSB investigation and/or if Tommi used threats or intimidation against Goose to impend Mitchell’s investigation into the origins of the July 11th crash.

Witness List

Prosecution Witnesses:

1. Treat Mitchell
2. Jamie “Goose” Henderson
3. Sunny Marshall

Defense Witnesses:

1. Tommi Wright
2. Taran “Merlin” Hawkins
3. Dallas Lin

List of Exhibits

1. Exhibit 1: Tommi Wright’s FAA Permit
2. Exhibit 2: GPS Flight Log
3. Exhibit 3: Map of Crash Site
4. Exhibit 4: National Transportation Safety Board Investigative Process
5. Exhibit 5: Tommi’s Note
6. Exhibit 6: Tommi Wright’s Prescription
7. Exhibit 7: Dallas Lin’s CV

Charging Documents, Stipulations, Jury Instructions

Shannon T. Schmidt (OSB No. 714520)
United States Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
ROWE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOMMI WRIGHT,

Defendant.

Case No. 3:23-cr-00101-CC

INDICTMENT

18 U.S.C. § 1505

JURY TRIAL DEMANDED

INDICTMENT

The Grand Jury charges:

Introductory Allegations

1. The National Transportation Safety Board (“NTSB”) is an independent agency of the United States. Among other things, NTSB investigates civil aviation accidents in the United States, as well as major incidents involving other modes of transportation.
2. On or about July 11, 2023, Defendant TOMMI WRIGHT was piloting a small passenger aircraft near Mount Dominic, in the area of the border between the Oregon counties of Chinook and Cascade.
3. At one point during the flight, Defendant TOMMI WRIGHT descended below 500 feet in altitude, contrary to regulations of the Federal Aviation Administration (the “FAA”) governing such flights. The aircraft then crashed near Mount Dominic, in an area known as Esparza Shelf.
4. Immediately following the crash, NTSB initiated an investigation into the crash.
5. Following the crash, Defendant TOMMI WRIGHT engaged in a scheme to conceal from the NTSB the fact that Defendant TOMMI WRIGHT had descended the aircraft below 500 feet in violation of applicable FAA regulations. Defendant TOMMI WRIGHT lied at least twice to an NTSB investigator in response to direct questioning about the aircraft’s altitude leading up to the crash.

Defendant TOMMI WRIGHT further threatened to withhold business from a passenger in the aircraft unless the passenger repeated the same lie to the same NTSB investigator, which the passenger did.

COUNT ONE: (18 U.S.C. § 1505—Obstruction of Proceedings before National Transportation Safety Board)

6. Paragraphs 1 through 5 are realleged as if fully set forth herein.

7. Beginning on or about July 11, 2023, Defendant TOMMI WRIGHT did corruptly influence, obstruct, and impede, and corruptly endeavored to influence, obstruct, or impede, and any applicable combination, the due and proper administration of the law under which a pending proceeding was being had before a department or agency of the United States, namely, NTSB and its investigation into the cause of the July 11, 2023 crash, all in violation of Title 18, United States Code, section 1505.

DATED:

A TRUE BILL.

October 14, 2023

s/Charlie MacGillis

Shannon T. Schmidt
United States Attorney

s/Alvin Beach
Alvin Beach (OSB No. 913209)
Assistant United States Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
ROWE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOMMI WRIGHT,

Defendant.

Case No. 3:23-cr-00101-CC

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. The parties stipulate to each exhibit's authenticity, though not to any exhibit's admissibility.
3. Defendant Tommi Wright has fully recovered from the broken pelvis and other injuries that Defendant Wright suffered as a result of the plane crash that is the subject of this case. Defendant Wright is in the same physical condition that Defendant Wright was in before the crash.
4. Treat Mitchell is a federal NTSB investigator and was lawfully investigating the plane crash that is subject of this case. Investigators Mitchell's investigation qualifies as a proceeding pending before a department or agency of the United States within the meaning of 15 U.S.C. § 1505.
5. Jerrie Mock is deceased and may not be a witness in this trial. She died in the time between the events on July 11, 2023 and the start of this criminal case.
6. The parties stipulate that the National Transportation Safety Board's Aircraft Accident Report will not be submitted as evidence. The parties stipulate that the affidavit given by NTSB investigator, Treat Mitchell, covers all the relevant pieces of the Accident Report.
7. Per the Mock Trial performance, the handwriting demonstrated in Exhibit 5 will be agreed upon by all competition teams as the true and faithful handwriting of the witness playing Defendant, Tommi Wright.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
ROWE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOMMI WRIGHT,

Defendant.

Case No. 3:23-cr-00101-CC

FINAL JURY INSTRUCTIONS

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

EVALUATING WITNESS TESTIMONY

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

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

INFERENCES

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

INNOCENCE OF DEFENDANT—PROOF BEYOND A REASONABLE DOUBT

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

VERDICT—FELONY CASE

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

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.

OBSTRUCTION OF JUSTICE: ELEMENTS

18 U.S.C. § 1505 reads, in relevant part, as follows:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

Thus, an offense under 18 U.S.C. § 1505 has three essential elements. First, there must be a proceeding pending before a department or agency of the United States. Second, the defendant must be aware of the pending proceeding. Third, the defendant must have intentionally endeavored corruptly to influence, obstruct, or impede the pending proceeding. The term “corruptly” means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information. The defendant’s obstruction need not be successful; the jury may convict one who “endeavors” to obstruct such a proceeding.

Prosecution Witness Statements

Affidavit of Treat Mitchell

Good afternoon, y'all. The name's Treat Mitchell, and I'm an investigator with the National Transportation Safety Board, or the "NTSB" for short. We're an independent federal agency that investigates every civil (that is, anything other than military) aviation accident in the United States, as well as major incidents involving other modes of transportation. If you want the legalese, the Code of Federal Regulations directs us to "establish the facts, circumstances, and cause or probable cause of" civil aviation accidents, which are what I focus on.

I've been an NTSB investigator since 2007, when I was honorably discharged from the United States Navy after about a decade of service. In the Navy, I was a fighter pilot and later an instructor at the Naval Strike and Air Warfare Center (which now is called Naval Aviation Warfighting Development Center) in Fallon, Nevada. I'll admit, during my time there, I acquired a reputation as a bit of a risk-taker, and more than once my supposed carelessness resulted in safety incidents. I can't remember exactly how many incidents occurred, but I do recall having to eject on at least two occasions. In fact, it was because I ended up buzzing the tower one too many times that I ended up leaving the Navy. My JAG lawyer got getting me an honorable discharge even though I was being investigated for insubordination—which is to say he got me an incredibly sweet deal—but I still ended up having to leave. Having been involved in a few plane crashes myself over the years, the NTSB seemed like a natural fit.

I've worked at NTSB since then and, I must say, I've put together what I think is a fairly stellar record. Since 2007, I've investigated 41 civil aviation incidents. I've "cleared" all of them, meaning in each investigation I was able to determine the cause or probable cause of the incident. Those incidents have included 29 airplane crashes, 11 of which involved fatalities. My work on the 2016 crash involving Buddy Gartowski's private jet that occurred just outside of Rowe International Airport won me the NTSB Board Chair's Award for Excellence the following year, and led to major changes in the safety inspections to which private jets are routinely subject. (Turns out Mr. Gartowski had directed his subordinates to cut some major safety-related corners in the way the plane was maintained.)

Even though I'm no longer a professional pilot, I've kept up my pilot's license and regularly fly small planes for fun. I actually own a Piper Aircraft PA-46R-350T, which is a small, single-propellor hobby aircraft that's similar to, although admittedly not exactly the same as, the aircraft that the Defendant was flying at the time of the crash. I've flown the route that the Defendant was flying during the crash probably a dozen times.

As laid out in Exhibit 4, the NTSB initiated an investigation into the Defendant's crash within an hour after it occurred. As I was just about to wrap up my day, I was notified of and assigned to investigate the crash shortly after 5:00 p.m. on July 11, 2023. I received a call at that time from the NTSB leadership indicating that a small plane had just gone down on the southwestern side of Mount Dominic, right around the border between Chinook County and Cascade County. My office is situated at Rowe International Airport, which is a little less than an hour from the crash site. I grabbed my kit, hopped in my truck, made a call to the family telling them I was going to be late, and was approaching the crash site roughly 10 minutes after 6:00 p.m.

During the dispatch call I was informed that the Defendant had departed from a local airport in Silver Sky. It is a small airfield used by hobbyists and the like, no large commercial airliners like the ones you would find in PDX or SEA-TAC. The call also indicated that the Defendant had been on what's known as a "135" flight, a flight in which a pilot carries passengers in exchange for compensation that's named for the Federal Aviation Administration (the "FAA") regulation from which it comes. During a 135 flight, pilots are required by law to maintain a distance of at least 500 feet from all terrain, both in altitude and in horizontal

distance on each side of the plane. Before I left the airport, I was able to pull the Defendant's FAA permit to conduct 135 flights, which, through the Defendant's signature, indicates that the Defendant was well aware of that requirement. That permit is shown in Exhibit 1.

When I arrived at the crash scene, I observed the wreckage of a Cessna 172 Skyhawk, a four-seat, single-propellor aircraft made by the Cessna company. The wreckage was situated near the bottom of Mount Dominic, just beyond the Esparza Shelf, which is a plateau that lies between the southwest of Mount Dominic and the southeast of Harrington Butte. The Skyhawk was first built in 1955, and since then, it's been one of the most common types of aircraft in existence. There have, of course, been several crashes and other types of safety incidents over the years involving the Skyhawk. However, given the comparatively enormous number of flights that have occurred in that aircraft without incident, it's one of the safest and most reliable planes out there. I've flown Skyhawks on a handful of occasions, and my experience aligns with its reputation. I found it intuitive, responsive, and easy to use—much easier than even my own plane, in fact.

At the crash site, the plane itself was mostly, but not entirely, intact. The front and right-side landing gear were crushed (I assume) on impact, and the right wing had broken in half. The plane was leaning on its right side, with the pilot-side door on the left side up in the air. There were emergency responders on the scene, tending to the plane's passengers and pilot. As the injured were being assisted, I announced to all those at the scene who I was and what I was there to do. I cannot say for sure if everyone heard me, but I always introduce myself before doing one-on-one interviews, so I didn't pay it much mind at the moment. I initially connected with an emergency worker who wasn't actively working on any of the injured and asked them to identify the crash victims. They identified the pilot (the Defendant) who happened to be closest to me when I arrived and announced myself, the passenger sitting behind him at the time of the crash (who I later identified to be Goose Henderson), and the passenger sitting next to the pilot (who I later identified as Mike Metcalf), were still at the scene. I chose to speak to the Defendant first.

I approached the Defendant as the Defendant was lying in a stretcher in the back of an ambulance receiving medical attention. The Defendant was lucid and communicative at all times during our conversation, even though it was obvious to me that the Defendant was in a tremendous amount of pain. As I attempted to personally re-introduce myself, the Defendant talked over me and said, seemingly to nobody in particular: "Well, there goes all my insurance. In fact, there goes my entire business! How could I have been so stupid?" I urged the Defendant to try to calm down and asked the Defendant to confirm the seating layout that the emergency responder had given me, which the Defendant did. I then asked what happened. "I don't know," the Defendant said excitedly, "I just don't know what the heck happened. Did I come in too low? These downdrafts are just deadly!"

The reference to a downdraft immediately caught my attention. In a nutshell, a downdraft is an air mass that moves in a downward direction, and they can cause sudden but almost always manageable drops in altitude. Minor downdrafts are quite common in aviation, and provided a pilot is familiar with an aircraft's basic controls and is flying at a high enough altitude, they almost never cause accidents. Downdrafts are, by their nature, temporary events, so provided a pilot has enough room to maneuver, it's relatively easy to course correct once a downdraft ends. That said, you do need enough room to maneuver in order for that to happen; provided that's the case, a downdraft causing a crash is essentially a one-in-a-thousand sort of event. It's certainly not impossible, but it's extremely unlikely if an aircraft is flying high enough. Given that the day of the crash was calm, clear, and windless, the notion that a downdraft alone would've caused the crash struck me as unlikely.

95 It was with that in mind that I then asked the Defendant: “So, you’re saying it was a downdraft. How high
96 were you flying?” At that, the Defendant grimaced—it seemed like an act, if I’m being honest—and said,
97 “Oh, uh, it all happened so fast I’m not really sure. I definitely wasn’t below deck, though. Ask Goose.” The
98 last part of that statement struck me as pretty odd, since it was the Defendant—and not Goose
99 Henderson—who was piloting the plane. Regardless, I took the Defendant up on that offer and next
100 approached Henderson, who was sitting in the back of an emergency responder’s SUV. Henderson seemed
101 far less banged up than the Defendant, but seemed nervous when I initiated a conversation. I asked: “Do
102 you have an idea of how high you were flying right before the crash?” At that, Henderson paused for what
103 struck me as an awkwardly long time. Finally, Henderson said, “Well, we were definitely high enough. We
104 were definitely above deck, yeah.” I asked whether that meant the plane was above the 500-foot threshold
105 for a 135 flight. “Oh yeah,” Henderson said, “for sure Above deck.” Henderson then departed, indicating
106 that Henderson was heading to the hospital for a medical treatment.

107
108 That might’ve been the end of it, had I not then spoken with Mike Metcalf. Metcalf was lying in a stretcher
109 in another ambulance, and it was a tough sight to see. Metcalf had what looked like a major head wound,
110 and as far as I could tell was barely conscious. As I approached, I heard an emergency responder tell him,
111 “Okay, Mike, we’re giving you something for the pain now. You’re going to be just fine.” In response,
112 Metcalf gave a weak thumbs up. Sensing that I might not have much time, I re-introduced myself and cut
113 right to the chase. I asked: “Mr. Metcalf, how high was the plane flying right before the crash?” The
114 response was a barely audible whisper, but I could make out Metcalf’s words clearly: “too low!” At that
115 point, I was shooed away by the emergency responder, but at that point I knew there was more to this story
116 than either the Defendant or Henderson was telling me.

117
118 Regarding the plane’s altitude, my only other real lead at that point was the plane’s navigation system. I
119 made my way over to the plane’s cockpit and saw what I recognized to be a Garmin 370 GPS device on the
120 dashboard. It’s a common, albeit rudimentary, navigation device among pilots of small planes; in fact, I have
121 one in my own plane. It records, among other things, a plane’s flight path, ground speed, and over-the-
122 ground altitude once every ten seconds. I’ve encountered it and other similar Garmin-made devices at least a
123 dozen times over the course of my career as an NTSB investigator, and between that experience, my own
124 personal experience using the device, and my review of the technical and scientific literature concerning
125 Garmin GPS systems, I can reliably say that the device generally provides an accurate measure of altitude to
126 within about 50 or 100 feet.

127
128 I collected the Garmin device and transported it back to my office. I reached out to the Defendant’s
129 company, Jobby Charter Flights, to acquire the login information. There was a bit of phone tag, but a couple
130 of days later I was using login information that the Defendant’s lawyer provided to me voluntarily. I printed
131 the flight log shown in Exhibit 2 directly from the Defendant’s Garmin device. As you can see, that log
132 showed that in the minutes before the crash, the Defendant descended suddenly from 550 feet to about 400
133 feet, at which point the Defendant stayed for about 30 seconds. It was at that point that the data ended,
134 which I surmised, is when the crash occurred.

135
136 I knew that I had been lied to the moment I saw that data. So that same morning I printed a copy of the
137 flight log data and rushed to the hospital, where I found Henderson. I confronted Henderson with the GPS
138 data, in response to which Henderson broke down in tears. Henderson spilled the beans, so to speak: in the
139 wake of the crash, Henderson said, the Defendant had demanded that Henderson lie about the plane’s
140 altitude to anyone who later might ask. I have reviewed Henderson’s affidavit in this case, and the contents
141 of that affidavit reflect everything Henderson told me during our second interview at the hospital.

142 I tried to give an opportunity for the Defendant to come clean as well. After I finished up with Henderson,
143 I visited the Defendant, who happened to be in the same hospital. I went to the Defendant's room and
144 repeated my questions about the plane's altitude prior to the crash. The Defendant was evasive and
145 combative, but, from what I could tell lucid. The Defendant didn't really give a straight answer, just a lot of
146 yelling things like "I don't know", "I'm... I was high enough...", "Get out of here...", and shooing me away
147 with their arms. This didn't surprise me, because of course someone is going to be angry when they are
148 clearly caught in their own lie. I thought nothing of the half answers and lashing out. What was a little odd
149 about that exchange was as I was leaving, the Defendant just kept repeating, "downdraft, downdraft,
150 downdraft", presumably at or to me, but I already got what I came to the hospital for, and since the
151 Defendant was being so uncooperative, it was pointless to continue the 'conversation'.
152

153 Ultimately, based on both my experience investigating airplane crashes for the NTSB and my own personal
154 experience as a pilot, it's my belief that the Defendant was flying below 500 feet, experienced a downdraft,
155 and that's what caused this crash. If the Defendant had been flying at a proper altitude — i.e., above 500
156 feet — there's no way that even an unusually strong downdraft would have caused a crash like this. In my
157 opinion, the Defendant broke the rules, caused a horrible accident as a result, and then lied to a federal
158 investigator about it, and tried to have others cover up their lying, too. For that sort of thing, there simply
159 need to be consequences.
160

161 I hereby attest to having read the above statement and swear or affirm it to be my own. I also swear or
162 affirm to the truthfulness of its content. Before giving this statement, I was told it should contain all relevant
163 testimony, and I followed those instructions. I also understand that I can and must update this affidavit if
164 anything new occurs to me until the moment before I testify in this case.
165

166 s/Treat Mitchell
167 Treat Mitchell
168 Dated: October 3, 2023
169
170
171

172 Subscribed and sworn before me on October 3, 2023.
173

174 s/Roberta Bost
175 Roberta Bost
176
177
178
179
180
181

Affidavit of Jamie “Goose” Henderson

Hiya, folks. I’m Goose Henderson. My real first name is Jamie, but people have called me “Goose” for pretty much as long as I can remember. And for good reason, some might say: when I was a kid, I got a few steps too close to a migrating Canada goose during a weekend hike at the lake, and I ended up getting bit. Anyway, that experience, painful as it was, didn’t dampen my enthusiasm for nature and wildlife of all kinds, with which I’ve been obsessed for my entire adult life. I grew up here in Rowe and attended college at the University of Oregon, where I earned a degree in fine art in 2004. Since then, I’ve made my living as a wildlife photographer. I work mainly as a freelancer, selling my work to magazines, websites, and pretty much anybody else who’s as interested in the great outdoors as I am!

I’ve known Tommi Wright for about the last 15 years, and up until the crash, I considered Tommi to be a friend, a friend with benefits. But I might be using that phrase wrong, I don’t know. We met when the family of a college friend hired me to accompany them on one of Tommi’s nature flights as a photographer. It was a little outside my wheelhouse—after all, at the time, I was used to being stationary when I was taking pictures—but, because I was still relatively new in my photography career and struggling to make ends meet, I said yes.

The flight turned out to be a major hit, and not just for my friend’s family. As it turns out, Tommi and I ended up making a great team and continued working together. For our initial meeting, I knew Tommi and I were very different. Tommi’s a bit older and maybe more of a thrill seeker than I am, but I always thought Tommi was deep down a good person. There was also the added benefit of our arrangement. Sometimes Tommi would contact me with clients interested in an aerial photographer, and sometimes I would contact Tommi with clients interested in seeing nature from the air. Either way, once we were in the air, I would snap pictures, and Tommi’s passengers would end up with a great series of mementos to remind them of their excursion. Typically, Tommi would fly around Mount Dominic, where we would often see elk and sometimes bears, truly gorgeous landscape. It was, you might say, a mutually beneficial business relationship. From my perspective, anyway, it was great; my business exploded after I met Tommi, and I was finally able to develop a bit of a nest egg—which, you might guess, is rare for an artist! Financial security is huge, especially in this economy!

As I mentioned, I did come to realize that Tommi was occasionally a bit of an “extreme” pilot, you might say. During our flights, we’d often get pretty low to the ground. I never felt truly unsafe, but it just struck me as odd to be what seemed like only 150 or 200 feet above the landscape and wildlife we were observing. Tommi also was extremely responsive to passengers’ requests. One time a year or so before the crash, I recall, a passenger claimed to see a moose behind and slightly to the right of the plane. Tommi immediately banked hard to the right—so much so that it felt almost as if we were perpendicular to the ground. It was a stomach-churning moment, but neither then nor at any other time did I ever really feel unsafe in Tommi’s plane. We always made it back to the hangar, so I trusted Tommi to do the right thing.

Until the crash, that is. July 11, 2023 is a day I’ll never forget, as long as I live. I was scheduled to go on a flight that afternoon with Tommi, and a guy I had started to become friendly with named Mike Metcalf. Mike and I met a couple of months prior to the flight. I knew Mike as a sweet, gentle nature lover. We actually met at a wildlife charity event. It was a fundraiser to help local organizations support wildlife impacted by the recent wildfires. We bonded over our love of the natural world, so of course I mentioned Tommi’s flights. Mike’s face lit up when I suggested the idea. Lo and behold, not only was Mike an avid lover of nature, but he was also a former pilot. Navy, I believe. He said he’d been in a couple of nature-

48 viewing flights since his retirement, but it had been far too long since he'd been up in a bird, especially one
49 looking over the majestic nature that Oregon has to offer. I took that as the okay to book another trip with
50 Tommi, though now I can't regret it enough.

51
52 The day of the flight, we all met at the airfield a bit earlier than usual and I could tell Mike was excited.
53 Tommi arranged the earlier time to give Mike the hard sell on the services Jobby has. (Jobby Charter Flights
54 was the name of Tommi's business) It was clear to me that Tommi wanted Mike as a long time customer,
55 and was very pleased that I was bringing in 'new business'. The flight started out like any other—which is to
56 say, it was fine. The day was warm, clear, and, as far as I could tell, completely windless. I didn't notice any
57 turbulence or other in-flight disturbances at any time before the crash. Tommi was sitting in the pilot's seat,
58 in the front-left part of the plane. I was sitting directly behind Tommi, and Mike was sitting in the front-
59 right passenger seat. We set out on the routine Mt. Dominic route I've done with Tommi, a number of
60 times previous. It was always a crowd pleaser.

61
62 About 30 minutes into the flight, we were flying southeast over a flat area known as Esparza Shelft,
63 between Mount Dominic to the east (our left) and Harrington Butte to the west (our right). Suddenly, Mike
64 exclaims, "Look, Goose! I think I saw a bear down on the plateau behind us! Can we circle back and take a
65 look?" "You got it," said Tommi, and swung the plane 180 degrees around and began to descend. Though it
66 wasn't my favorite thing to endure, I didn't think much of it, as it's something Tommi's done before.
67 We were then heading northwest, now with Mount Dominic to our right and Harrington Butte to our left. I
68 couldn't see any bears, and I think I would've if they were there. It seemed like we were really close to the
69 ground. I chimed up to Tommi, sharing my two cents about how close we were to the ground, much to
70 Tommi's dismay, like always. I don't know that I can really give an estimate in terms of feet, but maybe it
71 was a couple of hundred or so? I'm really not sure, but it seemed really close. The plane was definitely below
72 Mount Dominic—I could only see it by looking up through the plane's window, to my right—and it seemed
73 like the plane was also below Harrington Butte on our left. I can't say how far below Harrington Butte we
74 were, but I couldn't see the summit through the window to my left, even by looking up.

75
76 Then, after a handful of seconds at that altitude, the plane suddenly banked hard to the right and dropped
77 like a rock falling out of the sky. It felt like an air pocket, like when you're in a big plane and there's
78 turbulence, and your stomach does a loop-de-loop. It was absolutely terrifying, and I closed my eyes
79 instinctively. The next time I opened my eyes, we were on the ground.

80
81 Amazingly, I seemed to be mostly okay, relative to the others. My ankle was busted and I had cuts, scrapes
82 and the like, but was able to get myself out of the plane and lean up against a near by fallen tree. Mike was
83 not nearly as lucky. Mike had a visible head injury that looked serious, and did not seem conscious. I was
84 calling out, asking him if he was okay and wasn't getting much response back other than some grunts and
85 slight movement. Tommi was groaning in what seemed like agony, but was awake and seemed to realize
86 what had happened. Tommi tried to get out of the plane but couldn't, and I was of no use because of my
87 busted ankle.

88
89 We waited around for what seemed like forever, and then two campers appeared. They let us know that help
90 was on the way, something about a ham radio to save the day. They asked me if I was okay, I shook my
91 head and instructed them to help the others. They made their way to the plane and helped Tommi out of
92 the pilot seat and placed Tommi down not too far away from me on the ground, leaning up against this
93 rock. The whole time Tommi was screaming, yelling, clearly in true pain. I tried to talk to Tommi, to see
94 what was wrong and what I could do, but the pain seemed too great for any of that.

95 Then, Tommi did something really weird: Tommi turned such that Tommi was directly facing me, and
96 through clenched teeth growled: “Goose, we were high enough. We were above deck, and it was a
97 downdraft that caused this crash. It was a really, really big downdraft.” I was taken aback; I mean, what a
98 time to be worrying about something like that! “Um, Tommi,” I replied, “I don’t know what the rules are,
99 but we seemed like we were pretty low looking for that bear. I—” Tommi cut me off. “Goose,” Tommi
100 snapped, “if you ever want another business referral from me ever again, if you want that nest egg to grow,
101 we were flying high, and it was a crazy-big downdraft. Got it?” I was stunned and didn’t reply. Sometime
102 later emergency services arrived, the campers left, maybe because they didn’t feel needed anymore, and the
103 emergency workers began checking in on Mike, Tommi, and myself.
104

105 About an hour or so later, an NTSB investigator showed up and introduced themselves as Treat Mitchell
106 and talked to a couple of folks, I think, and then came over to me. Mitchell asked me point-blank how high
107 we were flying at the time of the crash. I was taken aback, and—thinking of my business—I tried to waffle
108 as much as I could. Ultimately, I said we were definitely high enough, or some such thing. I knew it was
109 wrong, but I felt at the time like I needed to put food on my table!
110

111 Ultimately, I ended up in the hospital to treat my ankle and to make sure there was nothing else wrong with
112 me. The day after the crash, Tommi’s business partner Taran showed up to my hospital room. Taran and I
113 were friendly enough, but it was clear Taran didn’t like me much, I think I always made Taran feel
114 uncomfortable. Tommi was one thing with flying low and wild, Taran was a whole other story. Taran made
115 Tommi look like a by-the-book pilot by comparison, and I know that because I’ve flown with Taran twice;
116 believe me, given how crazily Taran banked, climbed, twice was enough. Even with our weak relationship it
117 was nice that Taran came to see how I was doing. We exchanged pleasantries, talked about how I was
118 feeling. Then Taran shared with me that Taran had just come from seeing Tommi, and Tommi had a
119 message for me. Taran then proceeds to take out a note and hand it to me. Up until that point, things were
120 light and breezy, well as much as they could be under the circumstances, but when I read the note. Things
121 changed. I unfold the note and I swear it says, “I’m so sorry, but remember what I said, and you’ll be okay!”
122

123 That really shook me, because I immediately remembered Tommi’s face after the crash. I asked Taran to
124 leave and crumpled up the note. Unfortunately, it only occurred to me after I threw it out and got stains and
125 liquid all over it that I might need it. A photocopy of the note is represented as Exhibit 5.
126

127 The next day I was feeling sick to my stomach. I learned that Mike had passed away, and I felt somehow
128 responsible. I also was trying to process all these threats Tommi made after the crash. And I was torn up
129 over lying to the NTSB investigator. Then later that day, the same investigator, Mitchell, came and
130 ambushed me at the hospital with what Mitchell said was flight data showing that we were really low right
131 before the crash. Mitchell seemed upset and implied that we were (or were going to be) in a lot of trouble. I
132 immediately came clean and told the investigator that we were no more than a few hundred feet off the
133 ground. When the investigator asked if I thought we were more or less than 500 feet above the ground, I
134 told the honest truth: it was definitely less than 500, and Tommi had essentially asked me to lie about that.
135

136 I feel horrible about telling the initial lie to the investigator, but what can I say? I was worried about my
137 business. It ended up being okay, though, because I’ve agreed with the government that, in exchange for my
138 testimony here, I won’t be prosecuted for telling that lie. My friendship with Tommi, though, is 100% over.
139 And most importantly, Mike is no longer here.
140

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

143 testimony, and I followed those instructions. I also understand that I can and must update this affidavit if
144 anything new occurs to me until the moment before I testify in this case.
145 s/Jamie “Goose” Henderson
146 Jamie “Goose” Henderson
147 Dated: October 2, 2023
148
149
150
151 Subscribed and sworn before me on October 2, 2023.
152 s/Roberta Bost
153 Roberta Bost
154

Affidavit of Sunny Marshall

Ok, everyone, my name is Sunny Marshall. I am glad to be able to provide this statement, because oh, boy do I have a tale to tell. But let me step back a minute and tell you a little about myself.

First, I should tell you about my two favorite hobbies: camping in the great outdoors and ham radios, because both relate directly to my involvement in this case.

As far as camping, I love to get out there, and I mean really out there, under the stars and away from all the craziness of life in the city. See, I live right in the heart of Portland, so whenever I can, I try to balance myself by returning to nature. That's why I was camping at the foot of the gorgeous Mount Dominic, right there on Esparza Shelf on the day of the plane crash, July 11, 2023. I had hiked in and set up my tent at the edge of a clearing the day before with a buddy of mine named Jerrie Mock. The Esparza Shelf sits about 3500 feet above sea level and has areas of both trees and clearings. It is really beautiful there. The flora is amazing with plenty of different things to see throughout the year, and the fauna too. I've spotted all sorts of critters and big animals. And the views, the views are something else because it sits under Mount Dominic and Harrington Butte. Between those two peaks is a pass, Cook Pass, just above the Esparza Shelf. The two peaks rise up on either side of the pass. As you can imagine, waking up and going to sleep to that view, is quite different from the hustle and bustle of the big city. We were having a great time, and even saw a bear, maybe two, off in the distance that morning.

That brings me to my other favorite thing, a hobby that Jerrie and I both share, ham radio. Amateur Radio, more commonly known as ham radio, is a popular hobby and a service that brings people, electronics and communication together. People use ham radio to talk across town, around the world, or even into space (I have to admit, I have tried to contact aliens on occasion-I mean they're real. It was on the news, the military said so!!), all without the Internet or cell phones. Jerrie and I have a whole set up that lets us power our radios, even when we are off the grid. Although a base ham radio has a range of only like 5 miles, we've added equipment and accessories to extend our range all around the world. Like I said, we're real into ham radios. It's fun, social, educational, but it is a type of radio, which means it is regulated by the federal government. The FCC (Federal Communications Commission) has allocated certain radio frequencies as "amateur bands" for ham radio operators to use and you have to have a license to operate one. I of course keep my license current, not just for the fun of it, but because a ham radio can be a lifeline during times of need. If this here incident has solidified anything, it's that ham radios can be real lifesavers.

That's why ham radios aren't just a hobby. As soon as Jerrie and I saw that plane go down, we notified emergency personnel to send rescuers and medics, which probably helps explain why more people didn't die at the hands of that inept pilot. I mean, what a piece of work! Completely reckless and irresponsible. But I'm getting ahead of myself again.

Jerrie and I were just cooking up some food on my little camp stove when we heard a plane buzzing our way. Initially we didn't think too much of it, as planes are definitely known to fly around the Pass and Shelf, I mean, have I mentioned how pretty it all is? Then we both got a bit concerned by the fact that the plane seemed to be flying real low through Cook Pass and then stayed low over the Esparza Shelf. We both looked up as the plane came skimming over the treetops above us, and Jerrie shouted, "Shoot, that plane is flying way too low!" I don't know much about flying, but Jerrie has a pilot's license, and from what I heard has been regarded as a real ace, so I trust that if Jerrie said the plane was too low, then that's probably true. That aside, it seemed low to me too and of course, it crashed, so there's something!

47 After the plane flew low over our campsite, it started climbing pretty sharply. We were a bit shaken, but
48 quickly brushed it off as some hot dog that doesn't know any better. Still, we kept tabs on the plane while it
49 was still in sight. Then we saw the darndest thing, the plane started heading back in our direction. We didn't
50 see it, but apparently it did a complete 180! This time, it seemed to me like it was flying even lower than
51 before; it must've been only a few hundred feet off the ground. Then, just when it started to look all good,
52 like it was going to be fine, the plane suddenly kind of spun right and plummeted to the ground. One of the
53 most remarkable and terrifying things I have ever witnessed.

54
55 Jerrie and I looked at each other for a beat and without saying a word jumped into action. I ran for my ham
56 radio and called in the crash. Jerrie started packing some water and things we could use as rags and the like
57 into a small pack we had at our campsite. Then Jerrie and I started running to the crash site to see if we
58 could help. The crash site was a little ways away from where we were, so I'd say we were there maybe 20-30
59 minutes from when the plane hit the ground. As you can imagine, we were a bit gassed by the time we
60 found the plane, and the folks inside. As Jerrie and I were making our way through the trees and such, I just
61 kept imagining the most horrid scenes that we were going to be met with when we got to the site.
62 Thankfully, when we arrived, things were not nearly as bad as I'd imagined.

63
64 Initially, we had seen one person, who I now know as Goose Henderson, already out of the plane and next
65 to a tree not too terribly far from the wreckage. I went to check on Henderson and see how we could be of
66 assistance, and Jerrie went to check out the folks in the plane. Henderson seemed okay, definitely injured,
67 but not critically, so I made my way over to the plane to assist Jerrie. In the plane was a gentleman in the
68 passenger seat looking real, real bad. I observed a significant head injury and the man wasn't really
69 responding to us calling out or asking him questions. Just sort of silent? You know who was the opposite of
70 silent? The pilot, the Defendant, this Tommi Wright character. Wright was wailing and yelling about the
71 pain, and demanding we get 'em out of the plane. Real bossy-like.

72
73 Jerrie and I, the best we can, dislodged Wright from the plane and maneuvered around the debris and
74 wreckage to a spot to lay Wright down. It was clear that Wright was in real bad shape. There was lots of
75 cussing, and screams of agony, maybe so much that Wright wasn't all there in those moments. We were
76 trying our best to transport Wright gingerly, through all the bellowing, Wright says something to the effect
77 of, "I should have known better... bad weather... mistake to go low..." And all I can think is, "you think?"
78 Finally, we rested Wright near Henderson, and Jerrie went back to check on the injured gentleman still in
79 the plane.

80
81 At this point I was completely spent, from the running for 30 minutes, the adrenaline, and gas fumes leaking
82 out from the plane. I took a moment to catch my breath and compose myself. I was trying to regulate my
83 breathing, get my head back on straight and finally turn to check on Jerrie. As I was walking back towards
84 the plane, I can't help but catch a bit of what Wright and Henderson were saying. Wright, still in lots of
85 pain, starts saying something about the business, or Henderson's business, or something - I couldn't hear all
86 of the words. Whatever it was, it clearly wasn't sitting well with Henderson, as it had the tone of a threat.
87 That part was undeniable.

88
89 As I got to Jerrie and the last passenger, I saw ambulance lights and heard sirens approaching. Jerrie, who
90 seemed completely deflated from being unable to help the injured man stuck in the plane, just lowered her
91 head. She advocated that we hightail it out of there. Jerrie didn't want to be mixed up in whatever nonsense
92 this was, I think being at the site of a plane crash did not sit well with her. I obliged, as I wasn't too keen on
93 being mixed up in anything either (but look at me now!). Before the emergency workers parked and got out
94 of their vehicles, we were already headed back to our campsite. It was getting late, anyways.

95 That night at our campfire, Jerrie kept talking about what caused the crash. Jerrie said maybe the plane went
96 into a stall because it was climbing too steeply. Apparently this can happen in a climb that is so steep that a
97 plane loses its lift and crashes. Jerrie said every pilot is trained to avoid this situation, and planes are
98 equipped with “stall warning systems” horns that sound before a stall actually occurs. Again, this is just what
99 Jerrie said. I don’t really know about flying. Jerrie also mentioned that something didn’t sit well with her
100 about the pilot. She recounted that when she went to check on the plane when we initially got to the crash
101 site, she overheard Tommi yelling at that seemingly unconscious man. She said she heard Wright say “Look!
102 Mike! Same page Mike. I was flying high. It’s all on the line okay, you got me. Downdrafts. We say...
103 downdrafts.”
104

105 I don’t really know what that meant. What I do know is that the air currents in that area can be really
106 treacherous. I have heard lots of stories over the ham radio of near crashes in that area due to sudden shifts
107 in the air and severe downdrafts. In the late afternoon on the Shelf, you can feel the air flowing down the
108 sides of the Harrington Butte and Mount Dominic as the sun passes to the other side and the Shelf side
109 becomes shaded. And let me tell you something else. One thing ham operators love to talk about is the
110 weather. On the day of the crash, there was a bunch of chatter on the radio about unstable air currents and a
111 coming storm, which would certainly make flying even tougher in that already rugged area.
112

113 It seems pretty simple to me that in that kind of unpredictable weather, pilots should stay nice and high to
114 make sure they have time to correct for the unexpected. Likewise, it seems pretty obvious to me that,
115 whatever else went wrong for that plane that day, the pilot certainly wasn’t playing it safe.
116

117 I hereby attest to having read the above statement and swear or affirm it to be my own. I also swear or
118 affirm to the truthfulness of its content. Before giving this statement, I was told it should contain all relevant
119 testimony, and I followed those instructions. I also understand that I can and must update this affidavit if
120 anything new occurs to me until the moment before I testify in this case.
121

s/Sunny Marshall

Sunny Marshall

Dated: October 3, 2023

122
123
124
125
126
127 Subscribed and sworn before me on October 3, 2023.

s/Roberta Bost

Roberta Bost

Defense Witness Statements

Affidavit of Tommi Wright

Hey, how're ya doing. Nice to meet you. I'm Tommi, Tommi Wright, 53 years young. I don't love meeting under these circumstances, but hey, I'll be straight and tell you what I know.

I started flying back in the 90's. I enrolled in flight school as soon as they'd let me—right after getting my degree from Cascade State University in engineering. I aced flight school, read all there was, memorized all the handbooks front and back, and graduated near the top of my class. After school, I worked on and off as a flight instructor and did contract work for the government doing aerial mapping. I got at least 1,000 hours of aerial mapping in my first five years. I also worked as a contract pilot for some small companies that did several 135s for tourists, before my decades doing 135s with Merlin and Jobby Flights. (A 135 flight is a flight where the pilot carries passengers for money.) Sorry-but-not-sorry to say, I'm one of the most experienced pilots I know.

Speaking of Jobby Flights, I've known Taran Hawkins for a few decades, now. Though I know Taran as Merlin, wizard of the skies or whatever. Merlin's a good friend. We came up together as pilots in flight school. We started as rivals. You can imagine those young, wannabe-stunt-pilot, adrenaline-junkies: well, that was us to a T. We were always trying to one-up each other, impress our classmates, teachers, and each other. But soon enough, we realized that we had lots in common—we both just loved the sky. So after we graduated we started coordinating aerial stunts on a freelance basis. We got pretty good, too. One of our favorite stunts was dual skywriting. Merlin would start at one end of the line, I'd start at the other, and we'd meet in the middle, keeping enough distance of course to avoid too much danger. (Naturally, as the better pilot, I'd always be the one who wrote backwards!) We'd do this bit for wealthy folks. You know, fancy marriage proposals, congratulations-for-selling-your-startup, that sort of thing. It was fun for a while.

The skywriting thing gave us the idea to formally go into business together. We loved working together, but we soon realized it'd be difficult to make a career out of skywriting. So, we decided to open a charter flight business together. And with that Jobby Charter Flights was born.

Our business took off immediately. We mostly did 135 flights, which is the FAA's name for tourist or commercial charter flights. These are super popular in Oregon thanks to our state's great natural beauty. We got forests, deserts, rivers, canyons, beaches, an ocean, valleys, grasslands, and, of course, the mountains. I've spent thousands of lovely hours flying over breathtaking mountain passes and snowy peaks, all (until July 11, 2023) without any serious safety incidents.

Like any business, we have both regulars and newbies. Regulars are often outdoor enthusiasts, and sometimes thrill-seekers, who enjoy the rush of being in a small buzzing aircraft a few hundred feet above ground. Some regulars are wildlife nerds, not that that's a bad thing. These people just want to see animals in their natural habitat, not locked up in some zoo with no room to roam. Sometimes the clientele are a bit of both, or the best kind, those who also have piloting experience themselves. It's especially fun to have former pilots as customers—there's nothing like impressing another pilot. I'm no Rooster or anything (in aviation, a "Rooster" is a pilot who's overly reckless), but I do like making sure my more sophisticated clientele enjoy their flight, if you know what I mean.

Speaking of nerds, some of Jobby's most solid business came from aerial wildlife tours in which a photographer was onboard to capture the moment. That photographer, for quite some time, was typically Goose Henderson. Goose and I got connected a while back, when Goose and some others took one of my

nature flights. Goose went on that booking because the others hired Goose to take photos of what they were all seeing. Mementos of their great time flying with Tommi. See Goose was a struggling photographer and after that flight, we each saw a real business opportunity. I'd do the hard work of flying around the state, and Goose would sit there with the other passengers clicking a camera, taking pictures to sell back to the customers. It worked just about as well as it could. When folks booked nature flights with Jobby, space permitting, I'd suggest Goose and the photos as an add-on, and Goose would sell my flights, and the photography services to anyone interested. A real nice win-win there for a while.

The day of the crash, July 11th, was supposed to be just another one of those win-win days. It was standard, Goose met a nature-hugger who wanted a flight and some photographs. And I wanted the business, and this business sounded like it was going to be some regular business to count on for the future as well. Apparently Goose met this customer, Mike "Cobra" Metcalf, as they called him in the forces, at some dog show or something. Mike was a nature lover, but that wasn't why I was so extra stoked for this trip, making it anything but standard. As I mentioned, Mike told me, he was a former Navy pilot and from what I heard a pretty darn good one at that. When I talked to Mike before the flight, he mentioned he loved two things: the great outdoors and flying. This was music to my ears, as I knew Mike and I were going to get along great and have many, many flights together in our future. I knew that, given Mike's experience, Mike wouldn't necessarily come back if we flew so high that wildlife looked like ants, not that that was ever my style. So, for this flight, I was going to make sure he knew I was enough of an ace to help him get the photographs he wanted.

The trick was, Goose was there too. Goose is one of the most anxious flyers I have ever encountered. Goose really hates flying close to anything and is always asking, "Can we be this low?" "Is this allowed?" I always respond, "Yes, relax Goose, it isn't a problem." And it never is. You see, a standard regulation for 135s is that we're required to maintain an altitude of at least 500 feet above ground and horizontally at all times. Goose squawks whenever we go below 800. I mean, for having a name like Goose, Goose doesn't love being in the air.

The charter flight we decided to do was to be over Cook Pass. Of all my regular flights, that might be the one I know best. It's gorgeous and has great wildlife. I can almost fly it in my sleep. I know the elevations well: Cook Pass climbs from 3,500 feet (at Esparza Shelf) to 4,500 feet between the peaks of Mount Dominic (7,000 feet) and Harrington Butte (5,500 feet). The altimeter tells all, of course, but I often can estimate my altitude accurately by just eyeballing the distance between my bird and the mountain tops, or simply where my sea level altitude is compared to my ground altitude.

On the day of our flight, it was pretty gusty at the hangar for about an hour. It seemed to calm down after lunch, though. While it was the summer, there was lots of snow on the mountain tops. (there's global warming for ya) When we got cloud-side, I could see snow particles sparkling in the sun and moving with the wind. We took off around 3:45 PM. We had no problems at takeoff or approaching the Pass, despite encountering some light winds at 5000 feet as we approached.

I like flying high on the approach over the flat areas; it can be just a wonderful view. There's not much wildlife to see there anyway. As we approached the mountains, I descended a little to be low enough to see any animals. At this point, as predicted, Goose began worrying. I said "Chill, Goose. This isn't a commercial jet. We can get lower than you think. It's not a problem. Besides, ya'll are here to see the wildlife. How will we see anything from up there?"

I recall we were flying between 800 and 900 feet above the ground when we approached the Pass. We then started climbing so we could stay over the ground at roughly a constant altitude as the ground inclined. I of course knew I had to maintain at least my 500 feet, but I wanted to make sure I didn't ruin Mike's time. I was trying to thread the needle between about 500 and 600 feet above ground. As we left the Pass and found ourselves in the Esparza Shelf Mike yelled out "Bear! I think I see a bear family over there. Can we turn this around!?" This was a real opportune time for me to show my skills to the Cobra, so I tight turned the bird around so Mike could get a better look, and hopefully Goose could make it a Kodak moment.

At that moment, I was flying along and aiming for just between 500 and 550 feet. I knew this would require climbing steeper right after buzzing, that's flying directly overhead, the animal, as we're headed back towards the Pass. I knew my plane could handle it, she's one of the most reliable flyers out there.

All of a sudden, my bird banked right and descended. It felt like an air pocket or a downdraft. I have experienced downdrafts before - every pilot has - but this one felt different and much, much bigger than anything else I can remember. We dropped and banked so hard it made me a bit dizzy.

I honestly don't remember much else. The next thing I knew, we were on the ground, and my bird is banged all sorts of up. Parts were missing, parts were dislodged, and I was in the most excruciating agony I've ever felt. My hip felt like it had been crushed by a hydraulic press. I was screaming.

I think some campers were the first to help us, but I was pretty groggy and don't remember much. I think one of them might have helped me get out of the plane, I'm not really sure. I recall being leaned up on a rock or something hard (not doing my hip any favors) when the emergency responders started to arrive. Goose might have been nearby as well, I don't remember specifics, but I remember asking whether Goose had happened to feel any gust or downdraft and being irked by more of Goose's nonsense. When the ambulances arrived, I was put in one. Soon, the pain compounded with all the anxiety I began feeling as I grappled with the reality of having been in a crash. I remember thinking, "My insurance will be unaffordable. No one will want to fly with us anymore. We'll lose our business, our livelihood. Merlin and I, Jobby Flights, are through!"

When I was still in the ambulance, someone named Mitchell started asking questions. I don't remember much, but I know I was still upset. I think I said I had no idea what happened, and it might have been the downdrafts. Mitchell tried to calm me, but I don't recall it working. I might've said that we were above 500 feet at the time of the crash, which, so far as I knew and know now, was the truth.

I was taken to the hospital, and they confirmed what I already knew, my pelvis was completely pulverized and recovery was going to take a heck of a long time. To deal with the excruciating pain the hospital had given me some pretty intense painkillers. The prescription bottle to those painkillers is represented by Exhibit 6. Maybe it was because of the painkillers, or the whole ordeal freshly on my mind, or the fact that my lower half was space dust, but my time in the hospital is a bit fuzzy.

I can only recall, and only really spotty, a couple of things. At some point, my buddy Merlin showed up to see how I was doing. Class act that Merlin. I can't speak to the particulars of our conversation, as I don't remember much, but I'm pretty sure I asked how Goose and Cobra were. It's hazy, but they were definitely on my mind. I'm told I wrote Goose a note while Merlin visited that day, that tracks as I was definitely concerned about my passengers wellbeing, but I don't recall. The handwriting on the note (marked Exhibit 5) definitely looks like mine, but I can't say for sure if it's mine or what I wrote on it, if I wrote it in the first place.

143 The only other thing I can recall is that I know Mitchell came to see me again while I was laid out in the
144 hospital. Again, the details are foggy, but I remember Mitchell coming in real hot, accusing me of all sorts of
145 things. Mitchell was shoving charts, graphs, maps or pictures or some such in my face like that's supposed to
146 help me somehow. I didn't take too kindly to the hostile treatment and told Mitchell to scram in so many
147 words. Clearly this whole crash was a freak accident, and the downdraft did us in. There was nothing I could
148 have done against mother nature, but Mitchell wasn't hearing it that day, or any day.

149
150 Fortunately, Goose made it out okay, and recovered pretty quickly. Though it was a long, long journey, I
151 recovered some months later. Unfortunately, Mike didn't make it. I felt (and still feel) terrible about it. I
152 console myself by reminding myself he died doing what he loved. And I try not to blame myself, but it can
153 be hard. Every so often, an unfortunate combination of events can converge and ground pilots in the worst
154 of ways. I knew it and Mike knew it. We keep flying because we love it.

155
156 It grinds me that the Government can't just see things as they are—instead, they need to point fingers at
157 someone. Mitchell, and now Goose of all people, are now suggesting I said things I never did (or, if I did, I
158 definitely didn't mean them among all the pain and confusion). They even took the GPS recorder from my
159 bird (may she rest in peace) to show I caused the accident. I don't know what Mitchell did to get those
160 numbers, but I just know I don't remember seeing the numbers Mitchell is talking about. This whole
161 accident has gotten a lot of attention, so maybe Mitchell is exaggerating things to make "Mitchell" a known
162 name. And that anxious Goose, showing true colors, is just looking out for Goose and Goose's business.
163 Some are like that, but not me. I just want this mess to finally be over.

164
165 I hereby attest to having read the above statement and swear or affirm it to be my own. I also swear or
166 affirm to the truthfulness of its content. Before giving this statement, I was told it should contain all relevant
167 testimony, and I followed those instructions. I also understand that I can and must update this affidavit if
168 anything new occurs to me until the moment before I testify in this case.

169
170 s/Tommi Wright

171 Tommi Wright

172 Dated: October 10, 2023

173
174
175
176 Subscribed and sworn before me on October 10, 2023.

177 s/Sam Kang

178 Sam Kang

Affidavit of Taran “Merlin” Hawkins

Hi there. My name is Taran Hawkins. I’m a lifelong adrenaline junkie and career pilot. I’ve been flying tourist and charter aircraft for more years than I can count. Most folks in the biz just call me “Merlin” because I’m a bona-fide wizard in the sky. I run Jobby Charter Flights with my business partner, Tommi Wright. Over the years, we’ve really made a name for ourselves by giving our clients some once-in-a-lifetime experiences that other flight companies aren’t bold enough to create. I couldn’t be more proud of the business we’ve built, especially considering where I started. It’s a true American dream, a turnaround story.

Growing up, I loved planes, but it wasn’t something I ever thought I could actually do. I grew up in sort of a rough area, around a lot of folks with questionable morals and views on the law, sort of speak. My friends and I would find ourselves in scraps, maybe shoplifting here or there, nothing too serious at the time, but certainly nothing I’m proud of. Things took a turn though when I was a young teenager. My friends boosted a few cars and sold them for parts. I had nothing to do with the stealing but knew all about it. These so-called friends got caught, and I got caught up. Long story short, I’m made a witness against my friends in the trial about the cars. I do what every good friend would do and protect my friends. Thing is, it didn’t sit well with me, so I came clean, and what do I get for my honesty? Perjury charges. In maybe the rarest of cases, I was convicted of perjury as a juvenile. Wild right? After the ordeal, I knew it was time to get my life right. So, I followed my dreams, and made sure I could be around planes for the rest of my life.

As soon as I could, I attended flight school, that is where Tommi and I first met. I could tell right away that Tommi was a little threatened by me—it’s not every day you see someone with the kind of innate skills I bring to the table, and Tommi worked extra hard to match me. It didn’t really bother me too much. I was always less worried about book learning and more interested in getting up in the sky, so Tommi (who was always the most prepared and most knowledgeable) ended up being top of our class. I don’t think there’s a single “rule of the air” that Tommi doesn’t know by heart. Tommi had all the rules and regulations down stone cold, FAA, NTSB, state law, you name it, Tommi could recite it from memory.

At first I thought Tommi might just be a bit of a goodie-two-shoes, but once I saw Tommi in the air a few times I realized there was some real potential there. Tommi’s got great sight and instinct behind the controls. I decided to take Tommi under my wing (ha-ha) to practice and do some sky writing gigs together. We’d get ourselves into some mischief from time to time trying wild stunts, but it was all in good fun. I never met anybody as willing to push their limits as I am until I met Tommi. Eventually, we decided we could make a living out of this and started our company together.

At Jobby Charter Flights we fly 135s. Not only are they the most fun for a pilot, they’re also pretty lucrative, especially here in Oregon. The scenery here is magical, so there’s tons of demand, but the topography is truly challenging. Not too many pilots have the precision and composure it takes to venture through some of the tricky passes, so we don’t have much competition. Plus, you’d be shocked at what some of our wealthier clients are willing to pay for a unique flight experience. That sort of clientele doesn’t care what the FAA says. They want to get up close and personal, and we’re here to make it happen. There have been a few times where I’ve gotten radio warnings for “dangerously” low altitude, and a complaint or two from customers who realized too late that they weren’t as adventurous as they thought. Nothing ever came of it, and for good reason... everyone knows how good we are!

That reputation, and our services have done us well. We even helped out others in our business. Take Goose for example. I remember that when Tommi first started working with Goose, I was a bit hesitant,

48 Goose always struck me as someone a bit too timid for the sky, a bit too artsy to be around aces like Tommi
49 and me. I told Tommi right away that Goose was going to be a thorn in our side. One time with Tommi out
50 of state, I took Goose up on a flight with a couple of customers and that was all I could handle of flight
51 time with Goose. I don't need some scaredy cat chirping in my ear about "regulations" when I'm out here
52 trying to show folks an unforgettable time. Tommi, of course, was the bigger person and knew how to ease
53 Goose's worries, as much as anyone can. Plus, the business arrangement worked just so well for us. We'd
54 get so many referrals from Goose and Jobby would get some of the proceeds from the photographs Goose
55 sold from our nature rides. As much as I wasn't a fan, Goose was good for the bottom dollar, and I could
56 live with that.

57
58 July 11, 2023, I remember the day of the crash really clearly. I stopped by the hangar before the crew took
59 off and recall it was a little bit breezy, but nothing we haven't handled a hundred times. Tommi loves flying
60 Cook Pass, so I figured the trip would be a piece of cake even if Goose was on board. Goose brought a
61 buddy along too, Mike Metcalf. From what I could gather, Mike was a real thrill seeker, I think ex-military
62 and a former pilot. Tommi and I were both hoping Mike would become a regular customer after that flight,
63 so I told Tommi to "go all out" before I left for the day. Tommi was using one of our best planes, and I had
64 zero concerns that their flight would go anything other than perfect. As I was driving home that day, I recall
65 thinking by tomorrow, we'd have a new repeat customer to add to our roster and even more revenue
66 coming through the doors. Real American dream stuff.

67
68 When I got the phone call from the hospital about the crash, I thought I must have been dreaming. Tommi
69 loves adrenaline just as much as I do but would never intentionally do something that could jeopardize the
70 business like that. I asked to see Tommi right away, but the hospital told me I'd have to wait until visiting
71 hours were open, which was going to be the following day, July 12, 2023.

72
73 As soon as visitations were allowed, I was through the doors and bursting into Tommi's room to see how
74 Tommi was holding up. Tommi was certainly not themselves, there was some spacey-ness to Tommi's
75 answers. Lots of long pauses or trailing off when sharing an answer. At first, I wanted to make sure my
76 friend was okay, and Tommi, and the nurses, assured me that Tommi, with lots of time and rehab, was
77 ultimately going to be okay. This was such a relief, sure Jobby is important, but Tommi has been a buddy
78 for a real long time. I'll admit, once I knew Tommi was going to be okay, I was curious as to what
79 happened. I knew it wasn't going to be Tommi's fault, but I had to know what the heck went on. I felt like
80 getting this information was doubly important. One, knowing what happened will make sure that neither of
81 us ever encounter anything like it again, or at least we know what to do for next time. Second, I needed to
82 be prepared in case the press, customers, or prospective customers start calling us up and asking around
83 about the crash.

84
85 Like I said, Tommi's responses to what happened were a bit vague, Tommi would say "umm.. Definitely
86 downdrafts or winds, maybe some pockets". Tommi didn't really sound like Tommi, but then I saw the
87 medications and thought, okay well this definitely explains the weirdness in Tommi's answers. Though
88 Tommi was mainly vague in answering my questions, there were definitely times Tommi was clear. For
89 example, Tommi was quick to bring up some insurance policy details as they pertained to the crash, once a
90 bookworm, always a bookworm. Tommi was also pretty present when talking about Mike and Goose. At
91 the time, I didn't know about Mike, but I knew Goose was also staying at the hospital, not too far from
92 where Tommi was staying. Tommi perked up, a little bit, when hearing about Goose and asked me to grab a
93 piece of paper and pen laying on the desk next to the bed. I handed Tommi the pen and paper and asked
94 what it was for. Tommi mentioned writing a note to Goose and asking me to deliver it. As much as I am

95 not in the Goose fan club, I thought it was a really nice gesture from Tommi, sending a personalized note
96 like that to a friend.

97
98 Tommi finished up writing a sentence or two and handed me the paper. Tommi then asked me to fold it up
99 and when we were done chatting to deliver it to Goose. I said no problem. I recall glancing down at the
100 note before folding it up in my pocket. I believe it said something like "I'm so sorry..." "hoping everyone
101 will be okay", but I can't say for certain, it was a quick look, and I was trying to be respectful of their
102 privacy. Once Tommie and I wrapped up, I headed on over to Goose's room.

103
104 Goose was definitely in much better shape than Tommi. Goose was fully with-it, gave clear answers, looked
105 me in the eyes as we spoke and shared a lot more details about what led up to the crash: citing air pockets
106 and a possible downdraft, and recounting the prognosis the doctors gave about Goose's ankle. I must say, it
107 was probably one of the more tolerable interactions I had ever had with Goose out of all the years the two
108 of us have interacted. Since things were going so well, I figured then was as good a time as any to keep the
109 positive energy going. So, I grabbed Tommi's note from my pocket and shared it with Goose, letting Goose
110 know that Tommi wrote it, and asked me to deliver it. Goose's reaction was not what I expected. The slight
111 smile on Goose's face sort of faded away and Goose asked me to leave. I was unsure what was going on,
112 but figured I would quit while I was ahead. It was a positive interaction overall and I figured Goose must
113 have been tired or something. I said my goodbyes, Goose thanked me for stopping by and I headed out. At
114 no point during that interaction did Goose ever tell me anything at all about the plane flying too low. As I
115 was walking out, I passed someone wearing an NTSB cap, who was making their way into Goose's room. I
116 now know that person to be Treat Mitchell, the NTSB investigator.

117
118 I still can't wrap my head around the accident. The plane Tommi used was in perfect shape, and Tommi is a
119 pro. I can only conclude that this GPS stuff is faulty, bogus, or totally misunderstood. In fact, the data is
120 clearly incomplete with all those missing time signatures, so how in the world can it be relied upon? Flying
121 isn't easy, especially in the wilderness with unpredictable conditions. I have zero doubts in my mind that
122 Tommi isn't to blame here. It's terrible what happened to Mike, but threatening our livelihood surely isn't
123 the answer.

124
125 I hereby attest to having read the above statement and swear or affirm it to be my own. I also swear or
126 affirm to the truthfulness of its content. Before giving this statement, I was told it should contain all relevant
127 testimony, and I followed those instructions. I also understand that I can and must update this affidavit if
128 anything new occurs to me until the moment before I testify in this case.

129
130 s/Taran Hawkins

131 Taran Hawkins

132 Dated: October 10, 2023

133
134
135
136 Subscribed and sworn before me on October 10, 2023.

137 s/Sam Kang

138 Sam Kang

Affidavit of Dallas Lin

Good day to you all. My name is Lt. Dallas Lin. My CV can be found as Exhibit 7. I am a licensed pilot and a reserve combat pilot for the Royal Canadian Air Force. I like to say I have been a pilot my entire life, ever since I tried to fly by jumping off dining room chairs as a toddler. But to be more precise, I began taking pilot lessons when I could reach the controls. I received my student pilot permit on my 14th birthday (the first day I could). I joined the Royal Canadian Air Force as soon as I could and flew the CF-188 Hornet (the RCAF version of the US Navy F/A-18 Hornet). I thought I would switch to the F-35 before I retired and was certified on that plane as well through training. But we all know about the delays in that boondoggle. On my personal time over the years, I have flown a number of civilian aircraft, including the model flown by the Defendant, Tommi Wright in this case.

I thought I would stay with the Royal Canadian Air Force forever, but that changed when Air France Flight 358 crashed in 2005. I was driving on Highway 401 in Toronto when I saw the plane make a terrible approach to the runway. I saw it hit the shortest runway at the airport about halfway in, and I knew the plane was not going to make it. I watched it skid into the ravine and feared the worst. I pulled over and ran to the plane and watched in shock as everyone on the plane evacuated safely. It truly was the "Miracle of Toronto." Because I was a firsthand witness, I was interviewed by the investigators for the Transportation Safety Board of Canada. I was so impressed with their work, and they must have liked me too because one of the investigators gave me a card and told me to look him up when I left the military! I knew at that point I had to become an investigator to hold the bad pilots accountable, like those on Flight 358, and to conduct fair and neutral investigations.

I worked as an investigator with the Transportation Safety Board of Canada for ten years and then retired. Between my military service and my government service, I thought I had enough to retire on. But, obviously I didn't, I didn't account for inflation being what it is. I now work as an expert witness and am paid by defense attorneys to conduct investigations and testify in cases involving aviation. Even though I am paid, I still always approach cases from the same fair and neutral standpoint I did as an investigator. I want bad pilots to lose their licenses as much as anyone.

Back to this case, I heard about the crash in the news before I was even hired. I know how difficult it can be to fly in mountain passes given the frequent and uncertain downdrafts, so I immediately thought this was simply an accident and the pilot was not at fault. But, of course, I had to do my investigation to confirm my suspicion.

The first thing I reviewed was the Garmin GPS data which is shown in Exhibit 2. While I agree that such data is generally accurate, and I note that there are recordings below the 500-foot floor that should have been maintained, I also saw some gaps in the data. I know from my experience as an investigator that this could indicate a problem with the recording on the device. There are a number of situations in which GPS flight data such as that pulled from the Garmin can be affected or temporarily corrupted. For example, with basic models, such as the one used on the flight in question, the GPS device may simply need to reboot itself, as would any device being used on a fairly regular basis. If this reboot happens during a flight, the equipment won't connect to the satellites and no data may appear. Another scenario that may affect transmitting is something as simple as a heated windshield, or a heated section of an aircraft. If the device becomes overheated due to its location on the plane, and the plane's temperature in that particular area, the device itself may not transmit properly.

47 An even more likely scenario given the flight path in question is that the terrain itself may have blocked the
48 connection between the GPS device and the satellites tracking the device's location. This will most often
49 occur when flying in valleys. The mountainous terrain acts as a sort of barrier to the GPS signal and makes it
50 more difficult for the connection to stay consistent. This inconsistency can present as inconsistent data on
51 the flight's path. Essentially, bad data in, bad data out. Typically, once the GPS device is over the
52 mountains, the connection will once again resume (or become stronger, so to speak). Unfortunately for the
53 flight in question, that aircraft never made it out of the valley. And even if it had, the data during the time
54 the plane was in the valley would still run the risk of being inaccurate or nonexistent.

55
56 I cannot say with any certainty that one of these scenarios applies to the GPS data to become inaccurate, or
57 if the GPS data demonstrated in Exhibit 2 is, itself, inaccurate, but it certainly raises a question in that
58 regard. These uncertainties and questions are compounded by the fact that the gaps in the data make the
59 plane's altitude at several points in advance of the crash.

60
61 This leads me to the likelihood of downdrafts. To understand downdrafts, it is good to first appreciate the
62 mountain wave. Air flowing across a mountain range usually rises relatively smoothly up the slope of the
63 range, but once over the top, it pours down the other side with considerable force, bouncing up and down,
64 creating powerful "waves" that may extend for great distances downwind of the mountain range. The
65 mountain wave phenomenon is not limited to only high mountain ranges, think the Rockies, but these
66 waves are also present to some degree in smaller mountain systems, and even in lines of small hills, or in this
67 instance, buttes.

68
69 These mountain waves can be of concern to pilots for a number of reasons. For one, downdrafts of 2,000
70 feet per minute are common and downdrafts as great as 5,000 feet per minute have been reported. They
71 occur along the downward slope and are most severe at a height equal to that of the summit. This effect can
72 become more pronounced if there are several ridges in succession, or continuously rough terrain. An
73 airplane caught in a downdraft, can be grounded (another word for "crash"), depending upon the force of
74 the winds, the location of the plane, and trajectory of the winds and aircraft within seconds or minutes.
75 Federal regulations require many flights, including so-called "135s" - that is, flights in which pilots carry
76 passengers for money - to maintain minimum altitude, a downdraft still can ground you if it's especially
77 strong. It's rare, I admit, but it has happened.

78
79 Moreover, downdrafts can come in a sequence, sometimes as a type of microburst. A microburst is a small,
80 concentrated downburst that produces an outward burst of the typical strong winds at or near the surface.
81 Microbursts are small and short-lived lasting only minutes with maximum wind speeds sometimes going up
82 to or beyond 100mph. A dry microburst, as they are called, can be common in places like high plains and
83 the intermountain West. Though some indications of a higher likelihood microbursts are available for wet
84 microburst, like heavy participation, a dry microburst can occur with little to no precipitation reaching the
85 ground, or simply, without much warning.

86
87 The effects of downdrafts grounding planes is not uncommon. In 2020, Flying Magazine recounted a story
88 of a Texas pilot leaving Colorado's Leadville airport, the highest public airport in North America. The pilot
89 was flying 600 feet above a ridge when they were hit by a downdraft. The downdraft immediately pointed
90 the aircraft's nose straight down and within seconds the aircraft had crashed to the ground. What followed
91 was a harrowing story for the poor pilot but a true example of the speed and danger of downdrafts. As the
92 story goes on to state, there have been dozens of aircraft that met similar ends due to the downdrafts, and
93 that is just in three Passes within Colorado.

This is all to say that the likelihood of a strong downdraft being fully or mainly responsible for the crash of the Tommi Wright's aircraft is quite high. The terrain the aircraft was traversing over was of the exact type in which downdrafts are a common occurrence. The aircraft was flying inside the valley of Mount Dominic and Harrington Butte, flying over the rough terrain of Esparza Shelf and finally headed up towards the downslope of Cook Pass. As the Tommi Wright stated, they were in the process of climbing, as they were traversing Cook Pass when flying by a bear. It is well known within the aviation community that even if you have full power and the best angle of climb, this may not necessarily be enough to level off (gain control following a downdraft) or end a rapid rate of descent if your aircraft is caught within a downdraft. Frankly, there aren't many options for a pilot caught in a strong enough downdraft, and certainly not many for one in the Tommi Wright's circumstances leading up to the crash on July 11, 2023. Though I have to admit, I don't know why any pilot flying in that particular area would ever be close to 500 feet. I may be more cautious than most, but I would always stay at 750 feet to be safe, especially on any day when the weather was turbulent and unpredictable.

To the credit of Wright, neither Wright, nor the NTSB investigator noted that there were any tell-tale signs of likely downdrafts in the forecast, for example, lenticular clouds. From all accounts the weather was clear that day. The winds were forecasted at very low levels, well below the typical caution of 25 knots. As Wright reports, Wright has also flown this path hundreds of times, without incident, leading me to believe that a downdraft, or series of downdrafts caused the crash and the elevation of the Wright's plane, is truly unknowable.

In addition to my review of the Flight Path GPS data, NTSB Accident report, and other information related to the cause(s) of the July 11th crash, the defense had also asked me to investigate any and all alleged statements made by Wright after the crash. To this end, I reviewed the affidavits of Treat Mitchell, the NTSB investigator assigned to the incident, Goose Henderson, a passenger in the plane, and Taran Hawkins, Wright's business partner. Tommi Wright's statements as Mitchell recounts them are consistent with someone in shock. Shock may result from a number of factors, including poisoning, heatstroke, blood loss, severe infection, heart episodes, or as I have commonly seen it, trauma. In my time as an investigator, I interacted with dozens of individuals in shock following plane crashes and am familiar with various literature on how trauma can induce shock.

Shock, as we know it, is when a person does not have enough blood in their organs or oxygen in their organs. Symptoms can vary, but will typically include some combination of cool, clammy skin; pale skin; rapid pulse; rapid breathing; nausea or vomiting; enlarged pupils; weakness or fatigue; dizziness or fainting; or changes in mental status or behavior, such as confusion, agitation, or anxiousness. These, of course, are symptoms of physical shock, which can lead to long-lasting effects or even death. Psychological shock, such as witnessing something traumatic or being in an accident can present different symptoms within a person.

Some symptoms that may present during psychological or "emotional" shock may include a surge of adrenalin in the body; feeling foggy, or an inability to think clearly; feeling like the person is 'out of their body'; or feeling intense anger and a desire to scream or yell. As I have stated, I have interviewed dozens of people after aircraft incidents, and they almost always are in some shock about what happened, many times physically, almost always psychologically. From my experience, that does not stop them from telling the truth. Though an inability to think clearly is a possible symptom of shock and changes in mental status or behavior are symptoms of physical shock, any accident investigator worth their salt can get to the heart of the matter with the right questions and correct approach.

Based upon my review, it was clear that the Tommi Wright was in a continuous state of shock from the time of the crash through at least the time of Mitchell's interview in the hospital, and not in a state of mind that would allow for the forethought and mental acuity to concoct lies or advocate that others lie so closely after the crash. The clear and acute pain Wright was in, coupled with the internal bleeding, let alone the sheer confusion, agitation and intense feelings Wright was having, demonstrate that Wright would not be able to purposefully mislead a questioner. Immediately after the crash, Wright had sustained severe enough injuries that extreme medical measures were necessary once the hospital was involved. The combination of the crash and those injuries means that Wright may not have necessarily been truly conscious of what Wright was saying to Mitchell and others for at least 48 or more hours after the crash, if not more.

Days later, while at the hospital, I would say that the likelihood of the Defendant saying anything they knew to be false was also extremely low. An accident of this nature, with a seasoned professional in a crash, a crash with fatalities is something that doesn't see shock dissipate within a day or two. Additionally, as the Defendant has recounted, the Defendant was on medications for the injuries sustained.

I also saw the prescription that Wright was on after the crash shown in Exhibit 6. I am trained as a combat flight medic and also as an EMT. I am also trained on the effects of drugs on pilots from my time in the military and working as an investigator. I am no doctor, but I have a lot of experience with what some drugs do, and I am very familiar with warnings on drug bottles. The drug in question that Wright was on when at the hospital, at the time of the conversation with NTSB investigator Treat Mitchell, was called Organox (Exhibit 6). Though the prescription bottle tries to make the drug seem like a harmless pill meant to alleviate a patient's pain. With only the possible side effects of mild dizziness or drowsiness, this medication is known to cause significant drowsiness that typically leads to confusion or discombobulation. At the time of the encounter with Mitchell, the Wright had already been taking this drug for days, which only added to the likelihood that these severe side effects had taken hold. As demonstrated by the Hawkins affidavit, Wright was acting erratically, unable to keep coherent thoughts or sustain a meaningful conversation. Frankly, according to all the reporting, it was clear that Wright was not lucid at any relevant time. Again, this may partly be from the continued effects of the shock from the crash, but based upon my experience it could very well have also been because of the Organox.

In summary, based upon my investigation into this case, through reports, interviews, and years of training and experience, I have determined that 1) the Defendant, in all likelihood was above the 500 feet threshold while flying on July 11, 2023 and even if they were not, there is no reliable evidence to demonstrate otherwise. 2) The Defendant in no way could have purposefully misled any questioner investigator in the immediate aftermath of the plane crash, as the Defendant was not in sound mind to answer questions in an manner that the Defendant would have known to be telling untruths.

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/Dallas Lin

Dallas Lin

Dated: November 1, 2023

189 Subscribed and sworn before me on November 1, 2023.

190

191

192

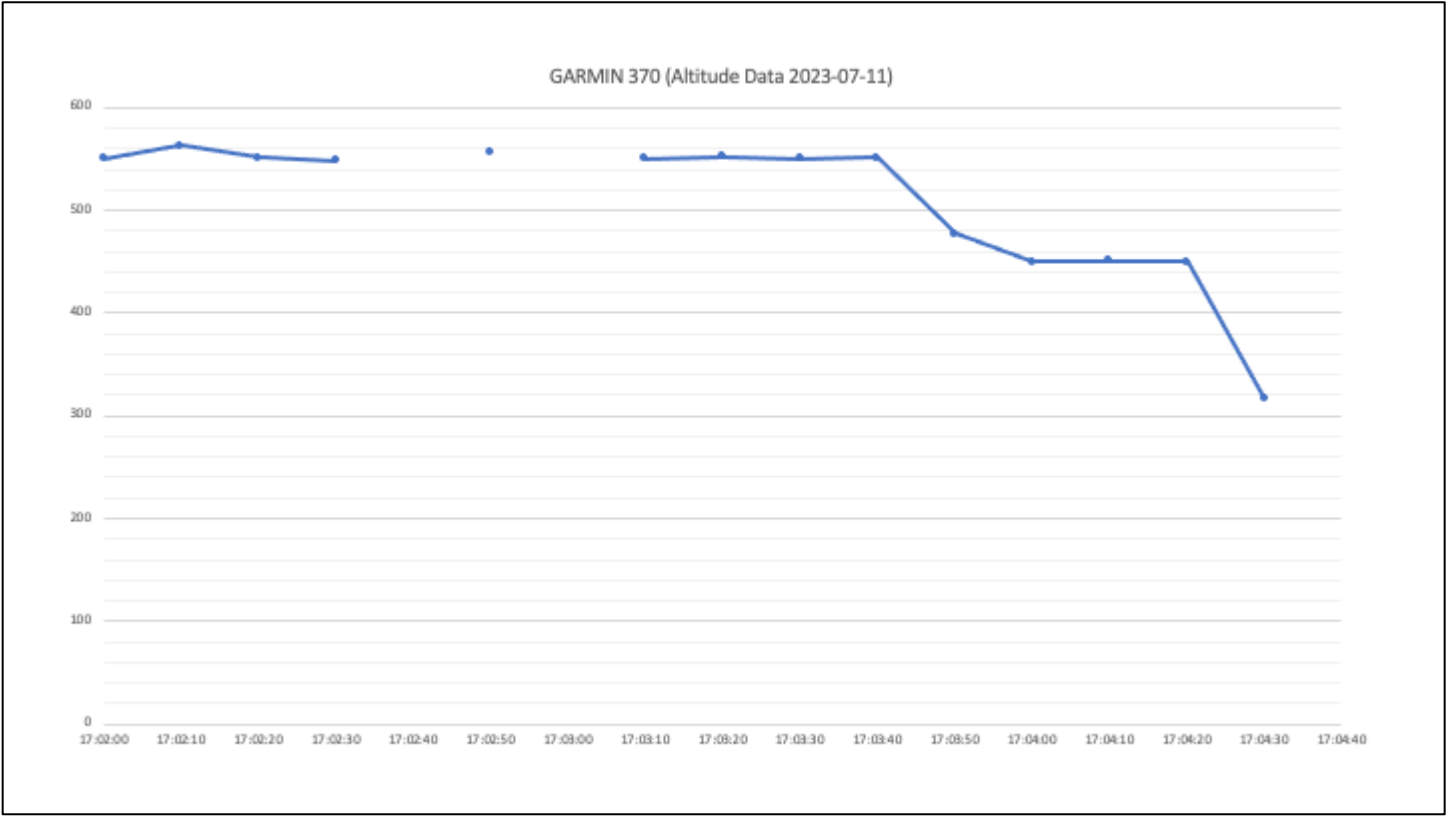
s/Sam Kang
Sam Kang

Exhibits

Exhibit 1: Tommi Wright's FAA Permit

I UNITED STATES OF AMERICA		XI	
DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION			
			
IV NAME	Tommi Wright		
V ADDRESS	12173 KITTY HAWK AVE ROWE, OR 21859		
VI NATIONALITY	USA	HEIGHT	WEIGHT
Iva D.O.B.	12/17/1971	EYES	HAIR
IX HAS BEEN FOUND TO BE PROPERLY QUALIFIED TO EXERCISE THE PRIVILEGES OF			
II COMMERCIAL PILOT			
III	CERTIFICATE NUMBER	FAA8663489230	
X	DATE OF ISSUE	12/17/2020	
			
XIV	<i>Tommi Wright</i>		
VII	ADMINISTRATOR		

Exhibit 2: GPS Flight Log



GARMIN 370 (Altitude Data 2023-07-11)
RAW DATA

Time	Altitude (ft)
17:02:00	550
17:02:10	563
17:02:20	551
17:02:30	548
17:02:40	
17:02:50	556
17:03:00	
17:03:10	550
17:03:20	552
17:03:30	550
17:03:40	551
17:03:50	477
17:04:00	450
17:04:10	451
17:04:20	450
17:04:30	317
17:04:40	

Exhibit 3: Map of Crash Site

Note: This is an artist rendering of the July 11, 2023 crash. The images presented are not to scale and only represent the general flight path and crash site.

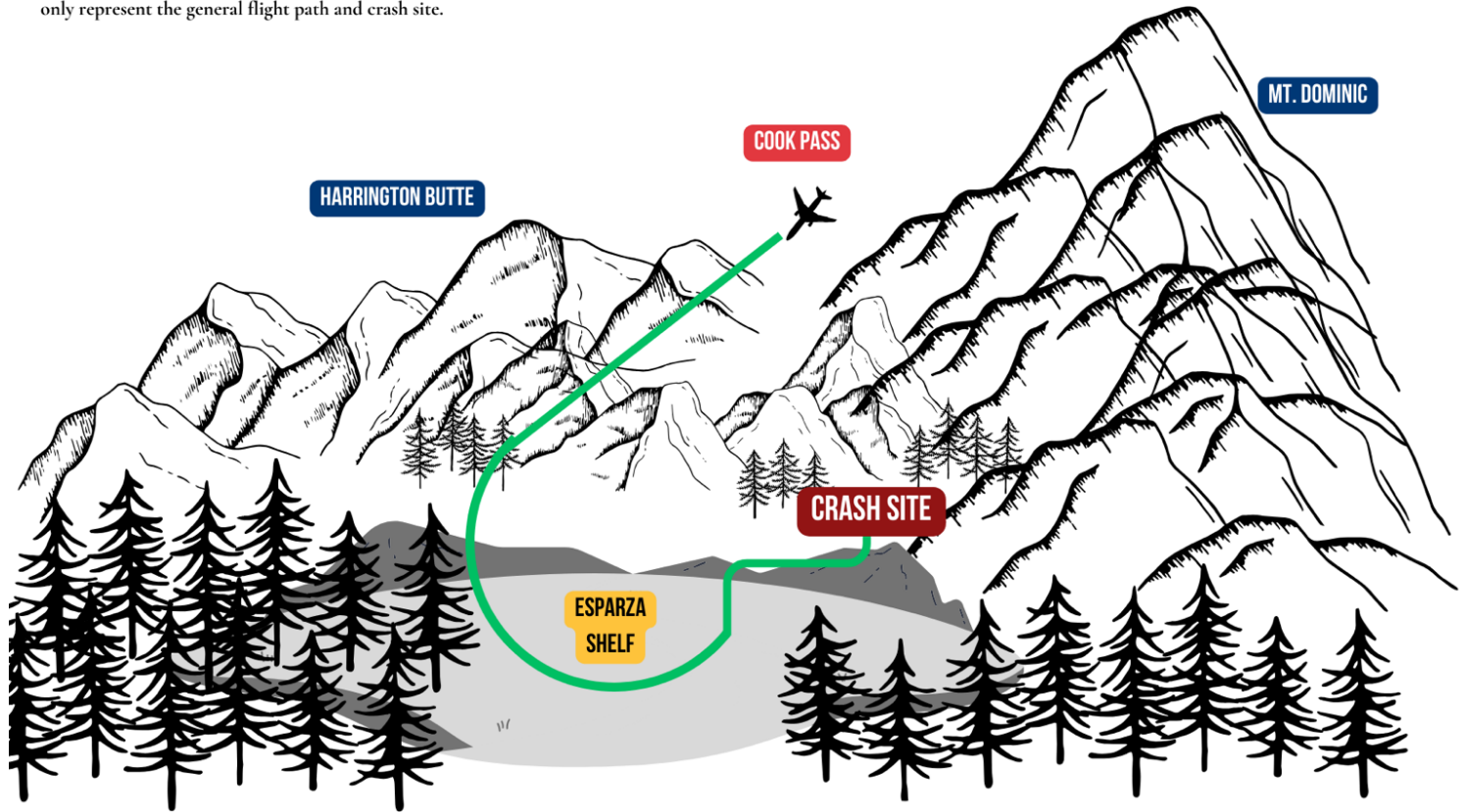


Exhibit 4: National Transportation Safety Board Investigative Process

10/4/23, 8:34 PM

The Investigative Process



The Investigative Process

While the exact scope and extent of any specific investigation depends on the nature of the accident being investigated, every NTSB investigation goes through the same general process, which involves:

- the initial notification and decision to investigate;
- on-site fact gathering;
- analysis of facts and determination of probable cause;
- acceptance of a final report; and
- advocating for the acceptance of safety recommendations arising from the investigation.

This process is not strictly linear, and phases overlap. For example, investigators may be waiting for log books while they are analyzing weather information, or their analysis of engine performance data may prompt them to request additional information from the manufacturer.

The timing between the beginning of an investigation and a probable cause determination and report varies based on the complexity of the investigation and the workload of the agency's investigators. In general, the NTSB tries to complete an investigation within 12 to 24 months, but these and other factors can greatly affect that timing.

|| Decision to Launch

This phase begins when the NTSB is notified of a transportation accident and modal leadership decides to launch an investigation. In most cases, this will be in the immediate aftermath of the accident, although in some instances our involvement will come as critical safety issues are identified during an investigation by another authority. For marine investigations, the US Coast Guard is typically lead for investigations and we support from a safety investigation standpoint.

In cases of suspected criminal activity, other agencies may participate in the investigation. We do not investigate criminal activity. Our focus is solely on transportation safety and determining probable cause. If a transportation tragedy is determined to be a criminal act, local law enforcement or the FBI becomes the lead investigative body.

The NTSB's investigative authority relates to accidents that occur on U.S. territory or in international waters when U.S. Flag vessels or U.S.-registered aircraft are involved. Information about the NTSB's role in foreign aviation investigations can be found [here](#).

|| On-Scene & Fact Gathering

During this phase, NTSB investigators gather the data and information needed to analyze the accident and determine a probable cause. This includes when an NTSB investigator or investigative team (the [Go Team](#)) travels to the accident site, as well as time spent gathering additional information from outside of the accident scene itself, such as flight logs, maintenance records, and personal interviews.

The [Party System](#) allows the NTSB to designate other organizations or companies as parties to the investigations, and allows the Board to leverage its resources to investigate about 1,200 aviation accidents and incidents a year, and about 60 accidents in the other modes of transportation: rail, highway, marine, and pipeline. In some cases, NTSB decides to hold an [Investigative Hearing](#) to assist with determining facts about the transportation accident.

|| Analysis of Findings

During this phase, NTSB specialists analyze the information gathered to piece together a sequence of events and determine what happened to cause the accident. The team, including a writer-editor experienced with the technical terminology of that mode of transportation, then writes the draft report. This report provides a description of the accident, a review of the investigative analysis, and a determination of probable cause. The report is then brought forward for either the modal office director approval (under a delegated authority) or to a public Board meeting with our Board Members for adoption.




|| Final Reports & Documents

Once the final accident investigation report has been adopted, the final copy of the report will be prepared for public release.

Exhibit 5: Tommi's Note



Exhibit 6: Tommi Wright's Prescription

 Cascade Pharmacy 1300 NE Bronnie Street, Cascade, OR 97771		Tommi Wright Date Filled: 7/12/23 Discard After: PSCBR: A. Graham MFR: T. Scott		Patient Address 72 Central St. Silver Sky, OR, 97772	
RX: 001425417679					
Tommi Wright ORGANOX 25 MG This is a ROUND and ORANGE tablet. To be taken once in the morning, and once at night.					
Claim RX: 0014254					
Refills 1					
4157978367		Btl 1 of 1 QTY: 60/60			
		BG 4 HPR221245 R0025645			
		Discard unused medications			
				REFILL PHONE: 800-555-0199	
		May cause dizziness		May cause drowsiness, dizziness. Careful using vehicles or other heavy machinery. Take with plenty of water.	
		Prior to taking this medication, please consult the prescribing physician and all accompanying literature to learn about side effects.		CAUTION: Federal law prohibits the sale or transfer of this drug to any person other than the patient whom it was prescribed.	

Dallas Lin - Licensed Pilot & EMT

515 SW Max Blvd. | DallasLin@RCAE.ca | (898)-867-5309

EDUCATION

McGill University, Montreal, Quebec
B.S., Psychology May 1990, *Summa Cum Laude*
Embry-Riddle Aeronautical University, Daytona Beach, FL
M.S., Aviation, May 2007, *Magna Cum Laude*,
PLC Pilots, Vancouver, Washington
Private and Commercial Pilot's License (Current)

EXPERIENCE

Transportation Safety Board of Canada (March 2013 - May 2023)
Lead Investigator (June 2017 - May 2023)
Accident Investigator (March 2013 - June 2017)
Royal Canadian Air force (August 1990 - March 2013)
Reserve Combat Pilot (December 2001 - March 2013)
Active Duty Combat Pilot (August 1990 - December 2001)
Combat Medic / EMT (April 1992 - March 2013)

PROFESSIONAL ORGANIZATIONS

International Association of Private and Commercial Pilots, *Member*
Oregon College of Expert Witnesses, *Member and Treasurer*
Oregon Conference of Aviation Professionals, *Founding Member*

PUBLICATIONS

"Post Air Crash Trauma: How Tragedy Impacts The Brain." Dallas Lin, *Aviation Monthly*, October 2020
"Downdrafts and Upstarts: Meteorological Patterns and the New Pilot." Dallas Lin, et al., *Oregon Journal of Meteorological Science*, January 2018
"GPS Data as a Legal Defense: Why Oregon Attorneys Should Consult Instruments." Dallas Lin, *Aviation Policy Review*, May 2015

TESTIMONY EXPERIENCE

Laufman v. Delta., Testified for the defense that GPS data was faulty.
Virtue Airlines v. Shubin., Testified for the defense in a suit alleging pilot error caused an engine malfunction while in air.
Parrucci v. World Inc.., Testified for the defense in a suit alleging improper maintenance of in flight instruments

The Form and Substance of a Trial

The Elements of a Criminal Case

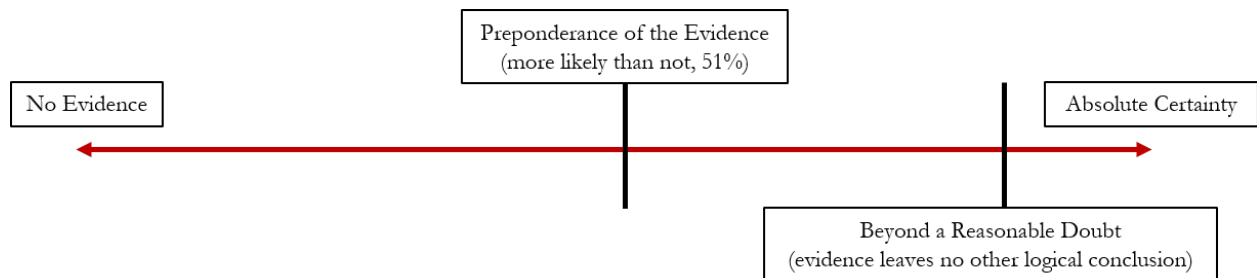
Criminal statutes generally define two aspects of every crime: (1) the physical act (actus reus), and (2) the mental state of the actor (mens rea). Most crimes are composed of some physical act, such as firing a gun in a crowded room, plus a guilty or culpable mental state, such as the intent to commit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

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

Presumption of Innocence, Proof Beyond a Reasonable Doubt

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

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



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

The defendant in this case, Tommi Wright, is charged with obstruction of justice. Wright has pled not guilty. A not guilty plea puts each element of the crime with which Wright has been charged in issue. A plea of not guilty requires the State to prove each element of the crime beyond a reasonable doubt.

Wright 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 obstruction, the Prosecution must show that Wright, either corruptly, or by threats of force or by any threatening communication, influencing, obstructing, or impeding the National Transportation Safety Board's (NTSB) investigation of the July 11, 2023 aircraft crash. The statute defines the term "corruptly" to mean "acting

with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.

General 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 United States will try to prove Tommi Wright's guilt beyond a reasonable doubt.

The Defense attorneys will present the case of the defendant, Tommi Wright. 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.

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

Attorneys on both sides will:

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

Opening Statement

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

One way to begin your statement could be as follows:

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

Proper phrasing in an opening statement includes:

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

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

Direct Examination

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

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

Call for the witness with a formal request:

“Your Honor, I would like to call (full name of witness) to the stand.”

The clerk will swear in the witness before you ask your first question.

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

Proper phrasing of questions on direct examination include:

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

Conclude your direct examination with:

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

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

Cross Examination, Redirect, Re-Cross, and Closing

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

For redirect and re-cross, see explanation and note to *Rule 25* and *Rule 611*.

For closing, see explanation to *Rule 26*.

Witnesses

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

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

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

In-Person Competition Roles

Court Clerk and Bailiff – Best Practices

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 themselves and explain that they will assist as the court clerk. The clerk's duties are as follows:

- **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.
- **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.”
- **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).
- **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 the clerk's performance.

Duties of the Bailiff – Provided by the Defense

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

- **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.

- **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, "Eight minutes remaining." (20 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 timecards 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 timecards.

A proficient bailiff who times both teams in a fair manner is critical to the success of a trial.

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 Logistics & Special Roles

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 “8:00 remaining” in the chat area. (20 minutes total allowed for direct/redirect, less the 12 minutes already used). After each witness completes their 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 (Virtual)

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.

Rules of the Competition

General Rules of the Competition (Virtual & In-Person)

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. Civics Learning Project and Regional Competition 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 Civics Learning 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: In cross-examination, anticipate what you will be asked and prepare your answers accordingly. Isolate all the possible weaknesses, inconsistencies, or other problems in your testimony and be prepared to explain them as best you can. Be sure that your testimony is never inconsistent with, nor a material departure from, the facts in your statement. 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:

- no extrapolation has occurred;
- an unfair extrapolation has occurred;
- the extrapolation was fair; or
- 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 Witness

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 any gender. Teams are requested to indicate members' gender pronouns on the Team Roster for the benefit of judges and opposing counsel.

Rule 6. Student Accommodations (Students with Disabilities)

The Rules of Competition will be interpreted and administered consistent with all applicable laws. Accordingly, should any applicable law require variance from these rules or accommodation of any competitor for any reason, including a legally recognized disability, that team member or their coach may apply to Civics Learning Project for accommodation, and such reasonable accommodation shall be granted. Civics Learning Project will consider all requests and conduct an individualized assessment of the student with a disability's request, to determine what reasonable accommodations can be made that will enable the student to participate to the fullest extent possible in Civics Learning Project programming (i.e., Mock Trial). These accommodations may include adjustments of the

Rules of Competition and program policies and practices, where appropriate. Civics Learning Project will consider the reasonableness of the accommodations; a request will not be granted that fundamentally alters the program. The timeliness of the request for accommodation may be material to whether an accommodation is granted. If a team is competing against a team for which an accommodation was granted, and the accommodation requires an alternation that impacts the opposing team, the team will be informed in advance of the accommodation, when possible, but will not be informed of the specific student nor their disability that led to the accommodation.

The Trial

Rule 7. 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 Civic Learning Project’s Mock Trial Team-specific webpage.

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. 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, Civics Learning Project will designate an alternate team based upon scores of the teams who competed in the Regional/Divisional Competition. If there are an odd number of teams that qualify for the state Competition, Civics Learning Project will invite a wild card team, based upon scores of the teams who competed in the Regional/Divisional Competitions who did not originally qualify for the state competition. **The state competition is scheduled for March 16th – 17th, 2024.**

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

Numbers of Teams Competing in Region/Division	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 Civics Learning Project

Rule 8. Team Composition

A mock trial team must consist of **a minimum of six (6) and a maximum of eighteen (18) students**, all from the same school or organization, unless otherwise granted an exception. The timekeeper is not counted as a team member. Civics Learning 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 their 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 Prosecution 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 Prosecution 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, team code 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 Civics Learning Project prior to the competition. Notification of the letter code assignments will be made via email to the appropriate team.

Rule 9. Team Presentation

Teams must present both the Prosecution/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 Prosecution/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 10. Team Duties

Team members should divide their duties as evenly as possible.

Opening statements must be given by both sides at the beginning of the trial. The attorney who will examine a particular witness on direct is the only person who may make objections to the opposing attorney's questions of that witness's cross-examination, and vice versa.

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

Rule 11. Swearing in the Witnesses

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 12. Trial Sequence and Time Limits

Each side will have a maximum of 45 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)	20 minutes per side
Cross and Re-Cross (optional)	15 minutes per side
Closing Argument	5 minutes per side**
Judges’ Calculations and Score Finalizing	7 minutes total
Total Competition Time Per Side	45 minutes

*Not included in 45 minutes allotted for each side of the case.

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

The Prosecution delivers its Opening Statement and Closing Argument first. The Prosecution may reserve a portion of its closing argument time for rebuttal. The rebuttal is limited to the scope of the Defense’s closing argument. 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 13. 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 7 minutes to complete their ballots. Note the judges should not confer with one another until their ballots are completed. 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 7 minutes to complete their ballots. The timekeepers will notify the judges when time has elapsed.

Rule 14. Time Extensions and Scoring

The Presiding Judge has sole discretion to grant time extensions, though they should be rare. If time has expired and an attorney continues without permission from the Court, the scoring judges may account for overruns in time in their scoring.

Rule 15. Supplemental Material, Illustrative Aids, Costuming

Teams may refer only to materials included in these trial materials. No illustrative aids of any kind may be used unless provided in the case materials. No enlargements of the case materials will be permitted unless a necessary accommodation for a participant's disability. In accordance with *Rule 6*, 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 Civics Learning Project. Use of easels, flip charts, and the like is prohibited. Violation of this rule may result in a lower team score.

Rule 16. Trial Communication

Coaches, non-performing team members, alternates, and observers (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 17. Viewing a Trial

Team members, alternates, coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except those authorized by the Competition Coordinator, are *not* allowed to view other teams in competition, so long as their team remains in the competition. Courtroom artists may compete in a courtroom that is not associated with their school or organization.

Rule 18. Videotaping, Photography, Media

Any team has the option to refuse participation in videotaping, audio recording, still photography, or media coverage. However, media coverage shall be allowed by the two teams in the championship round of the state competition. Trials may be recorded by participating teams as long as the opposing team approves.

Before the Trial

Rule 19. Stipulations

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

Rule 20. The Record

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

Rule 21. Motions Prohibited

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

Rule 22. Objection During Opening & Closing Statements

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.

Presenting Evidence

Rule 23. Objections

i. 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?"

ii. 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.

iii. Assuming Facts Not in the 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*).

iv. 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."

v. 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.

vi. 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 24. Procedure for Qualifying Expert Witness

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' 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."

Rule 25. Redirect, Recross

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

Closing Arguments

Rule 26. 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;

Critique

Rule 27. 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.

Judging and Team Advancement

Rule 28. Decisions

All decisions of the judging panels are FINAL.

Rule 29. 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 the Presiding Judge to score a ballot if there are only two judges to score. Alternatively, if there are only two judges to score a trial and the Presiding Judge does not complete a scoring ballot, the third ballot will be an average of the two scoring judges' scores.

Rule 30. 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 their 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 31. 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 32. Power Matching

Pairings for the first round of each regional/divisional 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 four rounds will advance to the championship 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/divisional 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 33. 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 34. Effect of Bye, Default, or Forfeiture

A bye becomes necessary when an odd number of teams compete in a region and a Bye-Buster team cannot be assembled. 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.

If a Bye-Buster team can be created for a round of competition, the Bye-Buster team will be the opponent of team that qualified for the bye. The Bye-Buster team will be made up of competitors from various teams, who are not performing in that specific round of competition. The Bye-Buster team members must be from teams and schools other than the team that qualified for the bye round (i.e., the opposing team). Bye-Buster team members will be chosen on a voluntary basis, but, if a Bye-Buster team requires members, and not enough volunteers come forward, the Competition Coordinator can task a non-competing student to participate in the Bye-Buster team.

The Bye-Buster Team will not have their score added to their overall team score and will only serve as a live competitor for the team that qualified for the Bye. The team that qualified for the Bye will, per the pre-existing rules, be awarded a win, regardless of trial outcome, but will be awarded the total number of Ballots and Points, based upon the Judges' scores. Meaning, at the end of the round, the team that qualified for the Bye will have a Win, and their total Ballots and Points applied to their overall competition score and rankings.

Dispute Settlement

Rule 35. 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 35 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 35 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 36. Dispute Resolution Procedure

At the conclusion of the trial, the Presiding Judge will ask both teams if they have Rule 35 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 37. 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 38. 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 38 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 Rule 35.

In-Person Mock Trial Rules of Procedure Before the Trial

Rule 39. 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 40. Courtroom Setting

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

Beginning of the Trial

Rule 41. 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 42. Motions Prohibited

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

Rule 43. Standing During Trial

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

Rule 44. Objections During Opening & Closing Statements

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

Presenting Evidence

Rule 45. Procedure for Introducing 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 46. 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.

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 $10 \times 10 = 100$ or that there are 5,280 feet in a mile.
3. The court must take judicial notice if a party requests it and the court is supplied with the necessary information.
4. The court may take judicial notice at any stage of the proceeding.
5. A party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed.
6. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

Article IV. Relevancy and Its Limits

Rule 401. Definition of “Relevant Evidence”

Evidence is relevant if:

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

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

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

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

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.

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

1. 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.
2. 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

1. 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:
 - a. 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
 - b. 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.
2. 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

1. 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.
2. 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:
 - a. the witness; or
 - b. 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

1. In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
 - a. for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
 - i. 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
 - ii. 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
 - b. 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.
2. 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.

3. Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible if:
 - a. 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
 - b. the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
4. Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule only if:
 - a. it is offered in a criminal case;
 - b. the adjudication was of a witness other than the defendant;
 - c. an adult's conviction for that offense would be admissible to attack the adult's credibility; and
 - d. admitting the evidence is necessary to fairly determine guilt or innocence.
5. 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

1. Control by Court; Purposes. The Court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
 - a. make those procedures effecting for determining the truth;
 - b. avoid wasting time; and
 - c. protect witnesses from harassment or undue embarrassment.
2. 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.**

3. 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:
 - a. on cross-examination; and
 - b. 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?"

4. 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.

5. 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’ 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

1. 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.
2. 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:

1. rationally based on the witness’s perception;
2. helpful to clearly understand the witness’s testimony or to determining a fact in issue; and
3. not based on scientific, technical, or other specialized knowledge with the scope of Rule 702.

Example:

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

Admissible Lay Opinion Testimony: “He seemed to be driving pretty fast for a residential street.”

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise. See Rule 40.

Rule 703. Bases of Opinion Testimony by Experts

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

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

Rule 704. Opinion of Ultimate Issue

1. In General – Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.
2. 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:

1. Statement. “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct if the person intended it as an assertion.
2. Declarant. “Declarant” means the person who made the statement.
3. Hearsay. “Hearsay” means a statement that:
 - a. the declarant does not make while testifying at the current trial or hearing; and
 - b. a party offers in evidence to prove the truth to the matter asserted.
4. Statements that are not Hearsay. A statement that meets the following conditions is not hearsay:

- a. A Declarant Witness's Prior Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
- 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;
 - 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
 - identifies a person as someone that 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."

- b. An Opposing Party's Statement. The statement is offered against an opposing party and:
- was made by the party in an individual or a representative capacity;
 - is one the party manifested that it adopted or believed to be true;
 - was made by a person whom the party authorized to make a statement on the subject;
 - was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
 - 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.
9. 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.
- 10. Statements in Ancient Documents. A statement in a document that is at least 20 years old and whose authenticity is established.
- 11. 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.
- 12. Reputation Concerning Character. A reputation among a person's associates or in the community concerning a person's character.
- 13. 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

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

2. The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:
 - a. Former Testimony. Testimony that:
 - i. was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
 - ii. 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.
 - b. 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.
 - c. State Against Interest. A statement that:
 - i. 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
- ii. 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.
- d. Statement of Personal or Family History
 - i. 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
 - ii. 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.
- e. 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.

Notes to Judges

Judging Guidelines

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

The Mock Trial competition differs significantly from a real trial situation in the following ways:

- 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.
- 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.
- 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.
- 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.
- 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.
- Each trial round should be completed in less than two hours. To keep the competition on schedule, please keep within the time limits set out in Rule 12. Objections stop the clock, so please be as efficient as possible when ruling while still allowing students to argue the objections.
- Judges shall not give an oral critique at the end of the trial. At the conclusion of the trial, each judge may offer a general congratulatory comment to each team. Substantive comments or constructive criticism should be included in the judges' ballots, at their discretion. Ballots will be shared with teams following the competition. See Rule 44. Additionally, judges shall not offer a verdict on the merits.

Each courtroom will be assigned a panel of three Scoring Judges. In extenuating circumstances, a courtroom may have only two Scoring Judges. See Rule 20.

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 11.
8. Only the following exhibits may be offered as evidence at the trial:

Exhibit 1: Tommi Wright's FAA Permit

Exhibit 2: GPS Flight Log

Exhibit 3: Map of Crash Site

Exhibit 4: National Transportation Safety Board Investigative Process

Exhibit 5: Tommi's Note

Exhibit 6: Tommi Wright's Prescription

Exhibit 7: Dallas Lin's CV

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 35 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.

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 11.
8. Only the following exhibits may be offered as evidence at the trial:

Exhibit 1: Tommi Wright's FAA Permit

Exhibit 2: GPS Flight Log

Exhibit 3: Map of Crash Site

Exhibit 4: National Transportation Safety Board Investigative Process

Exhibit 5: Tommi's Note

Exhibit 6: Tommi Wright's Prescription

Exhibit 7: Dallas Lin's CV

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

Evaluation Guidelines

All teams will compete in all three rounds unless a team has a bye. Teams are randomly matched for Round 1 and power-matched based on win/loss record, total ballots, and total number of points.

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

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.**

Penalty Points

Penalty Points should be assigned if a team member:

- ☐ uses procedures beyond the Mock Trial rules (with intent, not mistakenly);
- ☐ goes beyond the scope of the Mock Trial materials (with intent, not mistakenly);
- ☐ does not follow mock trial rules in any other way (with intent, not mistakenly);
- ☐ 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.
- ☐ 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.

Appendices

Time Sheet

OREGON HIGH SCHOOL MOCK TRIAL Time Sheet (Criminal Case)

ROUND: _____

Prosecution Team Code _____

v. Defendant Team Code _____

	Prosecution Time Used		Defense Time Used	
	Opening: 5-minute maximum Used: _____		Opening: 5-minute maximum Used: _____	
	Direct* + Redirect* = Used**	20:00	Cross* + Recross* = Used**	15:00
W1	_____ + _____ = _____ > - _____ = _____		_____ + _____ = _____ > - _____ = _____	
W2	_____ + _____ = _____ > - _____ = _____		_____ + _____ = _____ > - _____ = _____	
W3	_____ + _____ = _____ > - _____ = _____		_____ + _____ = _____ > - _____ = _____	
	Cross* + Recross* = Used**	15:00	Direct* + Redirect* = Used**	20:00
W4	_____ + _____ = _____ > - _____ = _____		_____ + _____ = _____ > - _____ = _____	
W5	_____ + _____ = _____ > - _____ = _____		_____ + _____ = _____ > - _____ = _____	
W6	_____ + _____ = _____ > - _____ = _____		_____ + _____ = _____ > - _____ = _____	
	Closing: 5-minute max. Used: _____ Unused: _____ Rebuttal: _____		Closing: 5-minute max. Used: _____ N/A N/A	
Judges' Deliberation: 7 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

Team Roster

OREGON HIGH SCHOOL MOCK TRIAL

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	

Scoring Ballot

Round (circle one): 1 2 3 4

Scoring Ballot

Prosecution Letter Code: _____

Defendant Letter Code: _____

Opening Statement			
Prosecution [BLUE] Opening Statement Score		Defense [ORANGE] Opening Statement Score	
<i>Write name of the character –</i> Prosecution Witness 1 Name:			
Witness 1's Direct Score	Witness 1's Cross Score	Direct Exam Attorney's Score	Cross Exam Attorney's Score
<i>Write name of the character –</i> Prosecution Witness 2 Name:			
Witness 2's Direct Score	Witness 2's Cross Score	Direct Exam Attorney's Score	Cross Exam Attorney's Score
<i>Write name of the character –</i> Prosecution Witness 3 Name:			
Witness 3's Direct Score	Witness 3's Cross Score	Direct Exam Attorney's Score	Cross Exam Attorney's Score
<i>Write name of the character –</i> Defense Witness 1 Name:			
Witness 1's Direct Score	Witness 1's Cross Score	Direct Exam Attorney's Score	Cross Exam Attorney's Score
<i>Write name of the character –</i> Defense Witness 2 Name:			
Witness 2's Direct Score	Witness 2's Cross Score	Direct Exam Attorney's Score	Cross Exam Attorney's Score
<i>Write name of the character –</i> Defense Witness 3 Name:			
Witness 3's Direct Score	Witness 3's Cross Score	Direct Exam Attorney's Score	Cross Exam Attorney's Score
Closing Statement			
Prosecution Closing Statement Score		Defense Closing Statement Score	

Prosecution Feedback	Defense Feedback
P Witness 1 Feedback	D Witness 1 Feedback
P Witness 2 Feedback	D Witness 2 Feedback
P Witness 3 Feedback	D Witness 3 Feedback
Opening Attorney Feedback	Opening Attorney Feedback
Direct & Cross Attorneys Feedback	Direct & Cross Attorneys Feedback
Closing Attorney Feedback	Closing Attorney Feedback

Scoring Rubric

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

Rule 35 – 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 4** **Pros/Plaintiff:** team code _____ **Defense:** team code _____

Grounds for Dispute: _____

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

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

Reason(s) for Denying Hearing: _____

Initials of Opposing Team's Spokesperson: _____

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

Signature of Presiding Judge

Rule 38 – 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