

2015 MiniMock Trial

State of Oregon

v.

Jesse Caufield

**A criminal case involving a seventeen-year-old
charged with assault, robbery in the first degree
and unlawful use of a vehicle**

Volunteer Coordinator

Kenneth Russell, Attorney

in cooperation with

Classroom Law Project

ACKNOWLEDGMENTS

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2015 MiniMock Trial

This packet contains the official materials that student teams will need to prepare for the 2015 MiniMock Trial event.

This case is provided to allow schools interested in competing in the 2015-16 High School Mock Trial Competition a chance to “get their feet wet” before the regional competition on February 27, 2016.

The mock trial is designed to clarify the workings of our legal institutions for young people. In the mock trial, students portray each of the principals in the cast of courtroom characters. As the student teams study a hypothetical case, conduct legal research, and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, they acquire a working knowledge of our judicial system. Students participate as counsel, witnesses, court clerks, and bailiffs.

Since teams do not know which side of the case they will present until shortly before the event begins, they must prepare a case for both the prosecution and the defense. All teams will present both sides of the case.

Although the MiniMock will not be scored there will be an opportunity for the judges to critique the performance of the teams. Accordingly, there are a few things that teams should keep in mind as they prepare.

The phrase, “beauty is in the eye of the beholder,” points out the differences that exist in human perceptions. That same subjective quality is present in the critiquing of MiniMock performances. Even with rules and evaluation criteria for guidance, as in real life, not all judges evaluate a performance identically.

Your sponsors and volunteers wish for and work towards a positive, fun learning experience for all. Enjoy!

IN THE CIRCUIT COURT OF THE STATE OF OREGON

State of Oregon)
)
 v.) MT - 97
)
Jesse Caufield)

STIPULATED FACTS

At 9:00 PM on April 15, 2013—a dark and stormy night—Cooper Chase pulled into the parking lot of the Minit Mart in the small town of Arcadeville, Oregon. Cooper grabbed his/her wallet and cell phone from the passenger seat of his/her 2009 Honda Civic and walked into the store. Cooper went over to the beverage section of the store. At the counter, a youth in baggy clothing wearing a Mariners baseball cap backwards was trying to borrow some money from the clerk. Ignoring pleas of not wanting to be caught in the storm, the clerk told the youth to leave. A loud beep near the door signaled the youth's departure.

Another customer purchased some breath mints and departed. Cooper selected a bottle of Snapple and walked over to the counter. At the register, Cooper emptied the contents of his/her pocket, placing the phone, keys, and wallet on the counter. Cooper pulled a fresh \$20 out of the wallet and paid for the drink. Cooper placed the change into his/her pocket, and left carrying the drink, keys, phone and wallet in his/her hands. Rain had begun to pelt against the glass doors of the store. As Cooper juggled the objects and struggled to pull open the door, the keys dropped. Cooper bent down, picked them up, and ran through the rain to his/her car.

Once inside the unlocked vehicle, Cooper placed the items on the passenger seat and inserted the key into the ignition. Before Cooper turned the key, Cooper felt a cold, hard object pressed into his/her neck. A figure wearing a baseball cap backwards sat in the back seat behind the driver, hidden in the shadows. Cooper saw the flash of the gun in the rearview mirror. Cooper also caught a quick glimpse of the intruder. The intruder then smacked Cooper on the right side of head with the gun, pushed Cooper out of the car, and sped out of the parking lot into the street and disappeared into the storm.

At 9:30 PM Cooper staggered back into the store, soaking wet and smeared with dirt. The right side of Cooper's face was cut and badly bruised; Cooper's right eye had swollen shut. At 9:32 PM, the clerk called the police from the phone behind the counter stating that a customer had been robbed. The clerk offered to call an ambulance but Cooper declined, preferring instead to call a friend.

A police officer arrived at the store at 9:45 PM. Officer Taylor Hernandez first inquired into the condition of the victim and determined that Cooper was able to give a statement. The officer then took down a description of the vehicle and of the assailant from the victim. Cooper reported that his/her wallet, containing four \$20 bills, had been in the vehicle. The money in Cooper's pocket was still there. The officer then took down a

description of the youth from the clerk. Officer Hernandez then placed an All-Points-Bulletin out on the car.

At 7:30 AM the following morning, Cooper's car was located by another officer on Magnolia Drive, less than two miles from the convenience store. Officer Hernandez, the officer assigned to the case, was notified and went immediately to the site. The officer knocked on the doors of several houses in close proximity to the location of the vehicle, to ask the residents if they had any knowledge of the automobile. No one was home at the first residence; an elderly woman answered the door of the second house and said she knew nothing of the automobile. At the third house, the door was opened by an individual who matched the description of the youth given by the clerk. The officer asked the youth if he/she could search the house, and the youth consented. The officer noticed a soggy wallet on the coffee table and opened it. Seeing that it belonged to Cooper Chase, Officer Hernandez arrested the youth, Jesse Caufield. Caufield was properly Mirandized and declined to make a statement.

STIPULATIONS

Prosecution and defense stipulate to the following:

1. Jesse Caufield was properly Mirandized.
2. The search and seizure of Jesse Caufield's house was legal.
3. Wendell LaFave and Les Tribe are qualified experts.
4. Both experts had an opportunity to examine the defendant's clothing, the car and the victim's dog.

CHARGES

The prosecution charges Jesse Caufield with three counts:

Count 1: Assault in the first degree, pursuant to ORS 163.185.

Count 2: Robbery in the first degree, pursuant to ORS 164.415.

Count 3: Unauthorized use of a motor vehicle, pursuant to ORS 164.135

The State urges the judge to find Jesse Caufield guilty of these offenses.

WITNESSES TO APPEAR BEFORE THE COURT

For the State:

- Cooper Chase, victim of the alleged assault, robbery and unauthorized use of a vehicle
- Officer Taylor Hernandez, police officer who investigated the incident
- Wendell LaFave, hair and fiber expert
- Frankie DaKine, Minit Mart employee

For the Defense:

- Jesse Caufield, Defendant
- River Palsgraf, Jesse's friend
- Sejanus Graves, customer at the Minit Mart
- Les Tribe, retired FBI hair and fiber expert

EVIDENCE

Exhibit 1 – Map of the scene

Note: Only evidence in the form provided in the mock trial materials may be used, as stipulated in Rules of the Competition, VII (3). No guns, knives, or facsimiles are allowed in the courthouse at any time.

STATUTORY LAW

ORS Code 163.185: Assault in the first degree (1) A person commits the crime of assault in the first degree if the person intentionally causes serious physical injury to another by means of a deadly or dangerous weapon.
(2) Assault in the first degree is a Class A felony.

ORS Code 164.415: Robbery in the first degree (1) A person commits the crime of assault in the first degree if the person violates ORS 164.395 (Robbery in the third degree) and the person:
(a) Is armed with a deadly weapon; or
(b) Uses or attempts to use a dangerous weapon; or
(c) Causes or attempts to cause serious physical injury to any person.
(2) Robbery in the first degree is a Class A felony.

ORS Code 164.395: Robbery in the third degree (1) A person commits the crime of robbery in the third degree if in the course of committing or attempting to commit theft the person uses or threatens the immediate use of physical force upon another person with the intent of:
(a) Preventing or overcoming resistance to the taking of the property or to retention thereof immediately after the taking; or
(b) Compelling the owner of such property or another person to deliver the property or to engage in other conduct which might aid in the commission of the theft.
(2) Robbery in the third degree is a Class C felony.

ORS Code 164.015 **Theft** (1) A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:
(a) Takes, appropriates, obtains or withholds such property from an owner thereof.

ORS Code 164.005 **Appropriate property** (1) “Appropriate property of another to oneself or a third person” or “appropriate” means to:
(a) Exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of such property.

ORS Code 164.135: Unauthorized use of a vehicle (1) A person commits the crime of unauthorized use of a vehicle when:
(a) The person takes, operates, exercises control over, rides in or otherwise uses another’s vehicle, boat or aircraft without consent of the owner.
(2) Unauthorized use of a vehicle, boat or aircraft is a Class C felony.

ORS Code 161.085: Definitions with respect to culpability (7) “Intentionally” or “with intent” when used with respect to a result or to conduct described by a statute defining an offense, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.

ORS Code 161.015: General definitions. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires otherwise: (1)
“Dangerous weapon” means any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.
(2) “Deadly weapon” means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.
(8) “Serious physical injury” means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

ORS Code 137.707: Adult prosecution of 15, 16 or 17 year old offenders; mandatory minimum sentences; lesser included offenses; transfer to juvenile court (1) Notwithstanding any other provision of law, when a person charged with aggravated murder, as defined in ORS 163.095, or an offense listed in subsection (4) of this section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after April 1, 1995, the person shall be prosecuted as an adult in criminal court.
(4) The offenses to which this section applies are:
(f) Assault in the first degree, as defined in ORS 163.185.
(q) Robbery in the first degree, as defined in ORS 164.415.

NOTES

WITNESS STATEMENT

Prosecution Witness
COOPER CHASE

On my way home from my workout at about 9:00 PM, I stopped at the store to get something to drink. I grabbed my wallet and phone from the seat—I didn't want to leave them in the car. I was still wearing my gym clothes and I stuffed my wallet and phone into my shorts pocket. I stepped inside the store and walked towards the beverage section. I overheard another customer at the counter saying, "Aw, come on, I just need some money for a cab. Please, I'm good for it, I can't walk home now, the storm is just about to break."

I looked over at the counter but could only see the person's back—I couldn't tell if the person was male or female—just young and thin, clad in baggy clothing and a backwards green and blue baseball cap emblazoned with a white "S". I also noticed an irritated look on the clerk's face as the clerk told the kid to get lost. Then I heard the buzzer at the door sound but I didn't look up, nor did I actually see the person leave. I wasn't aware of anyone else in the store, but I guess I did hear the door buzz more than once—so someone else must have left before I paid for my drink.

I found some Snapple, grabbed a bottle and approached the counter. I reached for my wallet, but ended up pulling everything out of my pocket. I pulled a \$20 out of my wallet, paid the clerk, and put the change in my pocket. I carried everything else in my hands. As I reached for the door, my keys dropped. I picked up the keys as the sky opened with a crack of lightning and the rain began pouring down. I ran out to my car.

I got in and dumped my stuff on the passenger seat. Then I heard a voice from the back seat. "Evening," said the voice and then a gun was thrust into the back of my neck. I scanned my rearview mirror and saw the glint of metal from the gun. Then I caught a quick glimpse of my assailant: I saw a backwards baseball cap, but not much else. The voice told me to cooperate and nothing would go wrong. The voice was familiar, hard to say if it belonged to a male or female, but I knew it was the same voice I had just heard inside the store. I knew it was that kid. Then I felt a rush of pain across the right side of my head. I felt sick and blacked out.

The next thing I remember is coming to in the parking lot. I was soaked and dirty and my head was throbbing. I could not see out of my right eye because it was so swollen. I guess I had been out for about 20 minutes or so. Rain was still sheeting down. I went back inside the Minit Mart and the clerk called the police. The clerk suggested calling an ambulance, but I called a friend to pick me up instead. When the police officer arrived, I gave a description of my car and the kid. I also told the officer that my wallet had been in the car, on the passenger seat. There was \$80 in the wallet.

The following morning, the police called to report that my car had been found and so had the youth.

The police asked me about dog hairs found in my car. I told them that I own a 10-month-old Weimaraner named Greta; she often rides in the car with me, either on the front passenger seat or the back seat.

WITNESS STATEMENT

Prosecution Witness
OFFICER TAYLOR HERNANDEZ

On the night in question, I received a call from the dispatcher to proceed to the Minit Mart convenience store. It was a miserable night, raining cats and dogs. When I arrived at the scene of the crime, the victim, one Cooper Chase, had a severe injury to the head but was able to give a fairly clear account of what had happened. The victim told me that someone had been lying in wait for him/her in the victim's car. Chase was struck on the side of the head by the gun, stunned, and pushed out of the automobile. The intruder then took off in the victim's car. The victim stated that his/her wallet was in the car. The victim believed the perpetrator to be the youth who was in the store earlier. Because the victim had only seen the youth from behind, I received a limited description of the youth from the victim. I also obtained the requisite facts regarding the stolen vehicle.

I next spoke to the clerk. The clerk had seen the youth from the front and was able to give a full description of the individual. The clerk described the youth as being about 17 years old, of medium height and a thin build. I radioed in an All-Points-Bulletin on the vehicle.

At 7:30 AM the following morning, I received word from the station dispatcher that the car in question had been located. Another officer had reported the location of the vehicle. As the officer in charge of the case, I proceeded directly to the premises. I examined the car which was unlocked. A container of Snapple was on the passenger seat, the cellular phone was between the seats, and the keys were in the ignition. I began to knock on the doors of the houses in close proximity to the vehicle. The first two residences yielded nothing: no one was home at the first residence and an elderly woman answered the door of the second house, but said she knew nothing about the vehicle. At the third house, the defendant, Jesse Caufield, who met the clerk's description from the night before, opened the door. I recognized the defendant from a previous field contact. I asked if I could conduct a search. Caufield said, "Sure, come in, I have nothing to hide." I knew he was bluffing. As I entered the dwelling, I noticed a somewhat soggy wallet on the coffee table. I picked up the wallet, flipped it open and discovered it belonged to Chase. I then arrested the youth in accordance with the laws of this state and read the Miranda warnings.

After taking Jesse down to the station, I obtained a search warrant for Caufield's home. In the course of the search, I collected the clothing the defendant had worn the night before. The articles were laying in a heap on the couch by the coffee table. I am confident that it was the clothing from the night before because of the description given by the clerk and Chase and by the fact that the articles of clothing were still damp.

I first met Jesse Caufield three years ago. I was walking the beat and I had stopped to get a cup of coffee, when I noticed two kids loitering in front of the store. It was a school day and I wanted to know why they were not in school. I recognized one of the youths as a known truant, but I was unfamiliar with his/her companion, who turned out to be Jesse Caufield. I started talking to them, but Jesse didn't like the way I was treating his/her friend, so Jesse started smarting off to me. Jesse had a real "attitude" that day. Kids these days just have no respect for the law. Well, I tried to set Jesse straight. A few days later, I was called before the Board of Inquiry because that kid's parents had written a letter stating that I had harassed the two youths. The Board members talked about community relations and building ties with young people and all that. I was put on a desk job for a while– but that incident was a long time ago. Sure, I was angry at the time, but I would never let that experience color the performance of my job. I treated Jesse as I would any suspect.

WITNESS STATEMENT

Prosecution Witness
WENDELL LAFAVE

I hold a Masters degree from Oregon State University where I studied genetics and chemistry. I have been a hair and fiber expert for the county of Arcadeville for two years. Because I work for the city, I do not charge a fee.

In this case, the clothes of defendant and the car seat were searched for physical evidence, specifically hairs and fibers. A hair is a filament growing out of the skin of a mammal, while a fiber is the smallest unit of textile material. Hairs have been aiding crime-solvers for over 150 years. Fibers, on the other hand, did not enter the crime fighting world in any significant way until the post-World War II boom in the production of synthetic fibers. This type of physical evidence is useful because of the high probability that, during the commission of a crime, the perpetrator takes some hair and fiber away on his or her person or leaves some hair or fiber at the crime scene.

In doing an investigation of this nature, I looked for three things: first, the transfer of fiber from the victim, or as in this case, from the victim's car to the suspect; second, the persistence of the fiber, that is the frequency with which the fibers or hair particles are found; and third, the uniqueness of the fibers.

The search of the car seat yielded nothing substantial as the fibers, a white cotton T-shirt and blue jeans, are so commonly found. However, two distinct pieces of physical evidence were located on Jesse Caufield's clothing: dog hair and fibers from the car's interior. Let me begin with the small dark grey dog hairs. These small hairs are the hairs of a dark grey Weimaraner. Apparently, the dog rides in the back seat of the vehicle and, consequently, many of these hairs can be found scattered about the car. In scanning the defendant's clothing, we found some of the hairs of the dog on the shirt and pant legs. Hair was found both on the front and back of the defendant's clothing.

The carpet and seat fiber of the 2009 Honda Civic was found only on the back of the defendant's shirt and pant legs. While these fibers are not unique, it is significant that the car fibers identical to the 2009 Honda should be found on the defendant's person. There are over a

thousand manmade fibers currently being manufactured. There are more than 7,000 different dye formulations. Manufacturers closely guard their dyes because they are trade secrets. The chances that two dyed synthetic fibers from different sources would match are statistically zero.

It is possible, however, that these fibers could have come from another 2009 Honda Civic with the same interior coloring.

WITNESS STATEMENT

Prosecution Witness
FRANKIE DAKINE

I have lived in Arcadenville most of my life and I've worked at the Minit Mart for 5 years.

On that night, I was suspicious of the kid, Jesse Caufield, from the beginning. The kid came in and made a small purchase, but seemed intent on just hanging around, hassling customers. The kid would follow some folks outside or stop them on their way in—but not all of them, just the folks who were either small in size or older. I couldn't hear what the kid was asking but I was sure the kid was up to no good. I had been thinking about calling the cops. Then the kid asked *me* for money; I told the kid to leave.

I didn't actually see where Jesse went after he/she walked out the door. It was dark and raining pretty hard by that time. I was just glad the kid was gone. Besides, I had two other customers in the store to worry about.

Generally, I do not hesitate to call the police. I believe in providing a safe shopping environment for my customers. I became more sensitive to this issue several years ago when I was working the night shift and got held up by some young punk. I had tried to fight the kid and, as a result, I spent some time in the hospital. Now, at night I take the precaution of locking one side of the doors so only one customer can enter at a time. It also makes the person leaving the store pull the door open, rather than just push it open. After that incident, I have also been more willing to call the cops. On this particular occasion, of course, I wish I had called the cops—that kid gave me the creeps from the very beginning.

I am sure that kid has been in my store before. A few months back, in broad daylight, I caught the same kid peering in the car of one of my customers. I didn't get a good look at the car or what the kid was doing, I just yelled out to the kid, "Get away from that car!" Then the kid took off.

WITNESS STATEMENT

Defendant
JESSE CAUFIELD

I am a junior at Arcadenville High and I am 17 years old. The afternoon before I got arrested, I was with River Palsgraf at the Parklands, a neighborhood park where kids go to play Frisbee or let their dogs run around. River and I were tossing a Frisbee and a dark grey, short haired dog came over and tried to catch the disc. She didn't seem to have an owner anywhere nearby and she wasn't wearing any kind of collar. I played with the dog for a while, but then she just took off. River told me he/she had to go home, because some people were coming over that night to his/her house. River's family had been out-of-town for a week, and River's house became the sort of designated "hang-out" house.

I went home to do some school work. I worked for a while and then decided to walk to the store and get some ice cream. I figured I'd walk, thinking I could beat the storm. It takes about 10–15 minutes from my house. But once I got there I knew I couldn't make it back home without getting drenched. So I starting asking people for a ride. Of course I was selective about who to ask; you never know what type of crazies are out there. The store clerk acted all nervous and uptight, like I was going to do something wrong. Finally, I just asked the clerk if I could borrow some money for a cab because I had only brought enough money for the ice cream. I figured it was worth a shot. But this made the clerk even more mad and the clerk told me to get out or he/she was going to call the cops. I left the store and walked around to use the bathroom. I decided to walk over to River's house because it was closer than my house. Because it was raining so hard, I took the short-cut through the alleyway, rather than walk along the street.

As I cut across the parking lot I stepped on something kind of soft and when I bent down, I found a wallet. I looked around but didn't see anybody, and I sure didn't want to go back into the store and deal with that crabby old clerk. I picked it up and figured I'd call whoever it belonged to in the morning. Then I jogged over to River's house.

When I got to River's house I asked him/her if I could borrow some clothes because I was completely soaked. It was about 9:30 PM and the second half of N.C.I.S. had just started. A bunch of guys were huddled around the television. I changed clothes and put my clothes by the

door so I wouldn't forget them. Later, we ordered some pizza, but I asked my friend to float me some money because I didn't have my wallet.

I got a ride home from River's house around 1:00 AM and before I left, I bundled my clothes under my arm. They were still pretty wet. I went home and went to bed. Then at the crack of dawn, I heard someone pounding at my door. I opened the door with the chain still on it and there was Officer Hernandez. He/she was asking about some car. I didn't know what he/she was talking about. I knew the cop had it in for me from the incident a few years ago but I hadn't done anything wrong so, when Hernandez asked to do a search, I said, "Sure." I opened the door and said, "Come on in. I have nothing to hide." Hernandez noticed the wallet I found the night before. Hernandez picked it up, looked at the ID in the wallet and then arrested me. Hernandez read me the Miranda rights; I declined to say anything.

I go to the store fairly often, but the clerk there doesn't like me too much. I don't think that clerk likes kids in general because, when I've gone with friends before, the clerk always seems hostile. One time I was there a few months back and saw someone had left his car lights on. It was daylight so it wasn't completely noticeable. I peered into the car to see if the doors were locked; they weren't. I was just about to open the door when the clerk came out screaming. I just left; I didn't think it was a big deal.

I know that I have made some mistakes in the past; I got in with the wrong crowd for a while. My parents were fighting a lot and I didn't know what to do with myself. I was drinking a lot and one time these guys challenged me to rob someone. So I pretended like I had a gun, and robbed someone in a store parking lot. I almost got caught that night. That really woke me up, and I made a commitment to turn my life around.

WITNESS STATEMENT

Defense Witness
RIVER PALSGRAF

I am 19 years old and I am a freshman at Arcadenville Community College. I have known Jesse since grade school. We played sports together for a while in high school, but then we drifted apart. I decided I wanted to go to college and Jesse started hanging with a pretty rough crowd. Recently, though, we met up and started to hang out again.

That Saturday, Jesse and I had gone to the park to toss a Frisbee. There were a lot of dogs at the park. One dog in particular kept trying to catch the Frisbee, a cool-looking grey dog with short hair; I think she was a Weimaraner. Jesse played with the dog for a while but then the dog just took off. It's funny; that was the only time I ever saw that dog at the park. I have asked around, but no one remembers her. We hung out at the park for about an hour but then I had to get back home.

I told Jesse to come by later that night because I was having people over. My parents were still out-of-town. They had been away for about a week. I had a couple of parties in their absence, no major blow-outs or anything, just some friends hanging out, watching television or a movie and playing around. On that night, a friend, who was 21, brought a few beers over, but nothing much was going on. We were watching N.C.I.S. During all those commercials in the middle, we heard someone pounding on the door: it was Jesse, all wet and out of breath. There was a fierce storm outside that night and I couldn't believe Jesse had been out in it.

Jesse said he/she had tried to get a ride but couldn't get one, and just sprinted over from the Minit Mart. Jesse was soaked to the skin. I gave Jesse some dry clothes to put on. Jesse put the wet clothes by the door. Later that night when the rain started to ease up, someone offered to get some pizza. We were all pitching in some money but Jesse didn't have any. Jesse said he/she had left his/her wallet at home. That is classic Jesse, never having any cash. The party broke up around 1:00 AM.

WITNESS STATEMENT

Defense Witness
SEJANUS GRAVES

That night I was on my way over to a pick up a friend. My friend didn't like to be kept waiting but I had to stop and get some breath mints. I figured I would call my friend from the store and say I was running late. It was just about to rain and it looked like it would be a doozy of a storm. As I was walking into the store, a young person in a baseball cap and baggy clothes asked me for a ride. The youth said he/she had walked over to the store and, since the storm was about to break, he/she didn't want to walk home. I said I couldn't because I was already running late to pick up a friend.

Inside the store, as I was looking at the breath mints, I overheard the clerk talking to the young person who had just approached me. Then I heard the door buzz and another customer walked in. I looked up briefly and saw Cooper Chase (although he/she was unfamiliar to me at the time). Jesse was trying to get the clerk to loan him/her some money for a cab. I was thinking how mean the clerk was to the youth—the clerk just seemed so hostile. I remember looking outside and seeing that the weather looked ominous. I sure wouldn't have wanted to be out walking around in that weather. I would have given Jesse a ride, I just couldn't that night. I was already really late.

I left the store just after Jesse. I looked around for Jesse, wondering what direction he/she might be headed, but I didn't see him/her. Once I got into my car I called my friend to say I was on my way. There was a great crack of lightening and then it starting pouring. I was waiting for my friend to answer the phone when I saw someone rushing out of the store, juggling several objects. I saw something drop, but the person didn't notice or slow down or anything. The person just made a bee-line for his/her car.

I was still waiting for my friend to answer the phone, when I thought I saw someone coming across the parking lot from the right side of the building. Before I could get a clear glimpse of the person, I got distracted. My friend answered and started whining about my being late. This conversation went on for a while. I had been facing the front of the store, but once my friend started going off, I started to just stare out into space. While my friend was still going on I remember looking up briefly and I am pretty sure I saw someone run from the street off to the

side of my car across the left-hand side of the parking lot. I couldn't see very clearly, of course, because of the weather, but the person was in dark clothing and was wearing a baseball cap, or some kind of hat. I didn't see where the person went. When I finally got off the phone, about ten minutes later, I walked back to where I had seen something drop. I didn't see anything, but by this time the rain was really coming down, and it was almost impossible to see anything. I went back to my car, ate a breath mint, and left to go get my friend.

WITNESS STATEMENT

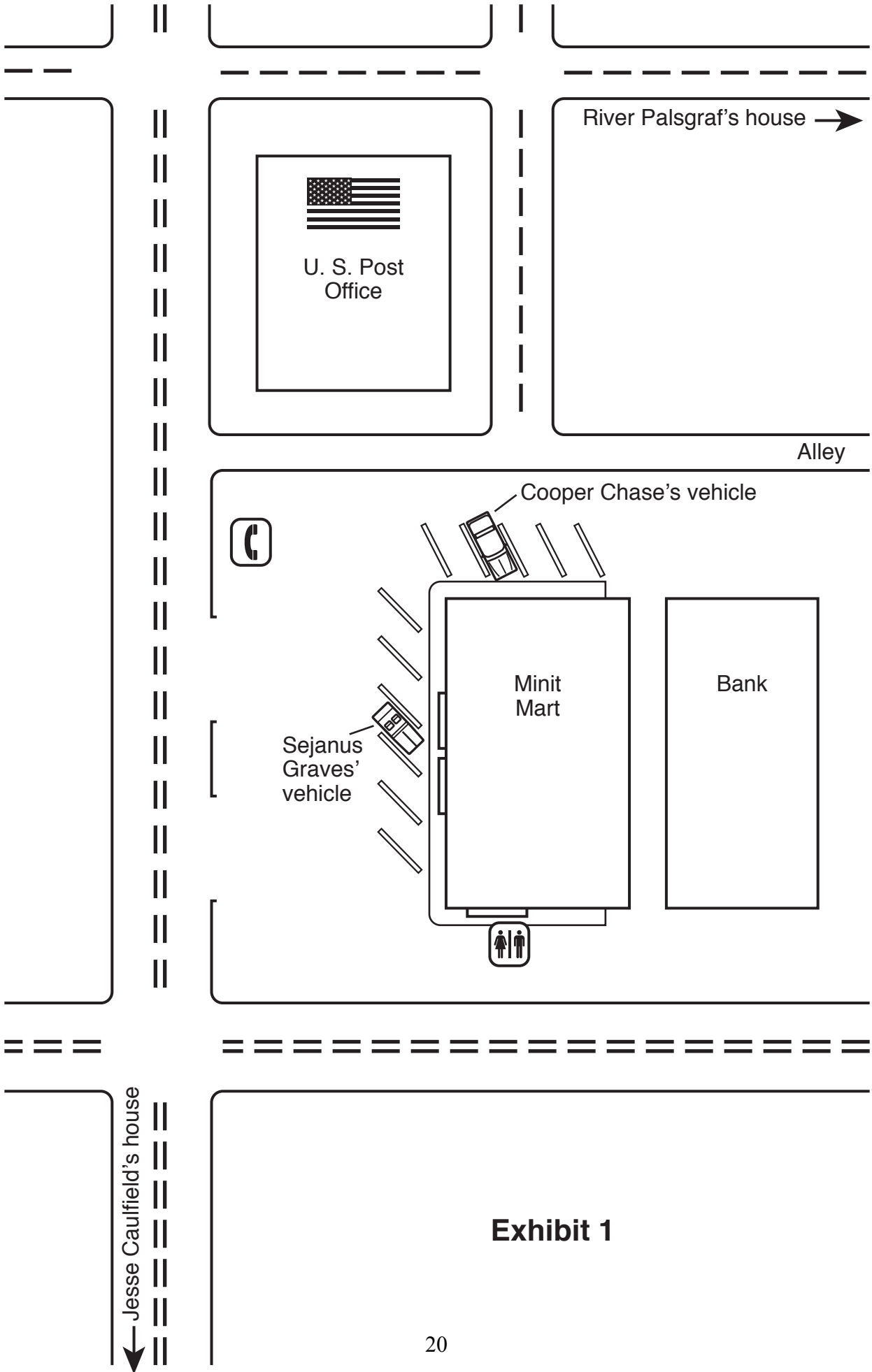
Defense Witness
LES TRIBE

I am a retired FBI hair and fiber expert. I did my undergraduate work at University of Oregon and majored in physics. Then I joined the FBI. After training, I started working in the hair-and-fiber division. I worked there for over thirty years. The success of a hair-and-fiber expert lies in that individual's experience; it cannot be learned from a textbook. The only way to learn about hair and fiber is to work with hair and fibers day after day and year after year after year.

I will begin by stating that I did examine the Honda Civic and the victim's dog. Hairs can be transmitted in a number of ways, particularly animal hairs. By petting an animal, we can shake loose hairs that may fall on our clothing. Playing with a dog and brushing up against it—or a dog jumping up on an individual—hairs will be transported from the animal to the human. The hairs found on the defendant are hairs that came from a dark grey Weimaraner. But it is impossible to testify that the two hairs came from the same animal. Moreover, it is impossible to say exactly when the hair transfer took place – whether it was in the afternoon or later in day. Based upon my extensive experience, the dog hair found on the defendant is not sufficiently unique to assert that there is high probability that the defendant was at the crime scene.

As for the fibers in the car, there are many Honda Civics out there. The victim's car is a 2009 Civic, yet Honda used the same interior fiber for several years. Thus, any Civic from 2000 - 2013 with a blue interior would have the same fiber. While the fibers and the particular dyes may indeed be unique to Honda, given the number of these cars on the road today, it is very likely that the defendant could have picked up these fibers while riding in someone else's car.

I have known Jesse's mother for a long time. Years ago, she was working in Washington, D.C., while she and her husband were considering getting a divorce. I was a friend and comfort to Barbara, and, in the end, she chose to return to her life in Arcadville. We stayed in touch for a while, but then our communication ended. Since I moved to Arcadville after I retired, I have seen Jesse's mother and father occasionally. I was pleased when she called upon me to testify but, of course, I know her choice was based upon my extensive knowledge of hair and fiber evidence. Since I have retired from the business and I am aware of the Caufield's poor financial situation, I have waived my normal fee. I am doing this case *pro bono*.



The Form and Substance of a Trial

A. Elements of a Criminal Case

The criminal code generally defines two aspects of every crime: (1) the physical part, and (2) the mental part. Most crimes specify some physical act, such as firing a gun in a crowded room, plus a guilty or “culpable” mental state. The intent to commit a crime and a reckless disregard for the consequences of one’s actions are examples of culpable mental states. Bad thoughts alone, however, are not enough. A crime requires the union of thought and action.

The mental state requirements prevent the conviction of an insane person. Such a person cannot form criminal intent and should receive psychological treatment. Also, a defendant may justify his/her actions by showing a lack of criminal intent. For instance, the crime of burglary has two elements: (1) breaking and entering (2) with intent to commit a crime. A person breaking into a burning house to rescue a baby does not commit a burglary.

B. Presumption of Innocence

The U.S. 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 guilt beyond a reasonable doubt.

C. Proof Beyond a Reasonable Doubt

Despite its use in every criminal trial, the term “reasonable doubt” is hard to define. The concept of reasonable doubt lies somewhere between probability of guilt and a lingering possible doubt of guilt. A defendant may be found guilty beyond a reasonable doubt even though a possible doubt remains in the mind of the judge or juror. Conversely, triers of fact might return a verdict of not guilty while still believing that the defendant probably committed the crime. “Beyond a reasonable doubt” is considered to be proof of such a convincing character that one would be willing to rely and act upon it without hesitation in the most important of one’s own affairs.

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

D. Application to this Case

The defendant, Jesse Caufield, is charged with Assault in the First Degree, Robbery in the First Degree and Unauthorized Use of a Motor Vehicle. The defendant has pled not guilty.

A *not guilty* plea puts in issue each element of the crimes with which the defendant has been charged. A plea of not guilty requires the State to prove each element of the crimes beyond a reasonable doubt. Caufield 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 the charge of Assault in the First Degree (ORS 163.185), the prosecution must show that Caufield intentionally caused serious physical injury to Cooper by means of a deadly or dangerous weapon.

Robbery in the First Degree (ORS 164.415) requires the prosecution to show that Caufield was (a) armed with a deadly weapon, (b) used or attempted to use a dangerous weapon, or (c) caused or attempted to cause serious physical injury to any person.

Caufield committed the crime of Unauthorized Use of a Vehicle (ORS 164.135) if it is shown beyond a reasonable doubt that Caufield took, operated, exercised control over, rode in, or otherwise used Cooper's vehicle without Cooper's consent.

ROLE DESCRIPTIONS

1. Attorneys

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

The prosecution presents the case for the State of Oregon. By questioning witnesses, they will try to convince the jury that the defendant, Jesse Caufield, is guilty beyond a reasonable doubt.

The defense attorneys present the case for the defendant, Jesse Caufield. They will offer their own witnesses to present their client's version of the facts. They may also undermine the prosecution's case by showing that their witnesses cannot be depended upon or that their testimony makes no sense or is seriously inconsistent.

Demeanor of **all attorneys** is very important. On direct examination it is easy to be sympathetic and supportive of your witnesses. On cross-examination it is not 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 and re-cross if necessary;
- make appropriate objections (note: only the direct and cross-examining attorneys for a particular witness may make objections during that testimony);
- be prepared to act as a substitute for other attorneys; and
- make opening statement and closing arguments.

a. Opening Statement

The opening statement outlines the case as it is intended to be presented. The prosecution delivers the first opening statement.

One way to begin your statement could be as follows:

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

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.

Proper phrasing in an opening statement includes:

- "The evidence will indicate that ..."
- "The facts will show that ..."

- “Witnesses (full names) will be called to tell ...”
- “The defendant will testify that ...”

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

b. Direct Examination

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

Direct examination should:

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

Call for the witness with a formal request:

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

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

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

Proper phrasing of questions on direct examination include:

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

Conclude your direct examination with:

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

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

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

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

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

For closing, see explanation to *Rule 41*.

2. Witnesses

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

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

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

3. Court Clerk, Bailiff, Team Manager

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

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

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

a. Duties of the Clerk – Provided by the Prosecution

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

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

Witness responds, "I do."

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

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

b. Duties of the Bailiff – Provided by the Defense

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

1. Call to Order: As the judges enter the courtroom, say, "All rise. The Court with the Honorable Judge _____ presiding, is now in session. Please be seated and come to order."
Say, "all rise" whenever the judges enter or leave the room.
2. Timekeeping. The bailiff is responsible for bringing a stopwatch to the trial. Be sure to practice with it and know how to use it before the competition. Follow the time limits set for each segment of the mock trial and keep track of the time used and time left on the time sheet provided in the mock trial materials.

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

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

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

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

**c. Team Manager, Unofficial Timer – optional
Team Manager (optional)**

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

Unofficial Timer (optional)

Teams may, at their option, provide an unofficial timer during the trial rounds. The unofficial timer can be a Clerk or a currently performing attorney from prosecution's attorney side. This unofficial timer must be identified before the trial begins and may check time with the bailiff twice during the trial (once during the prosecution's case-in-chief and once during the presentation of the defense's case). When possible, the unofficial timer should sit next to the official timer. Any objections to the bailiff's official time must be made by the unofficial timer during the trial, before the judges score the round. The presiding judge shall determine if there has been a rule

violation and whether to accept the Bailiff's time or make a time adjustment. Only currently-performing team members in the above-stated roles may serve as unofficial timers.

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

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

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

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

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

Be sure not to interrupt the trial for small time differences; your team should determine in advance a minimum time discrepancy to justify interrupting the trial. The unofficial timer should be prepared to show records and defend requests.

Time shall be stopped during the period timekeeping is questioned.

MINIMOCK RULES

A. Administration

Rule 1. Rules

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

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

Rule 2. The Problem

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

Rule 3. Witness Bound By Statements

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

facts at issue, the information is subject to objection under Rule 4, Unfair Extrapolation.

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

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

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

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

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

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

Rule 4. Unfair Extrapolation

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

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

Attorneys for the opposing team may refer to *Rule 4* when objecting, such as "unfair extrapolation" or "outside the scope of the mock trial materials."

Possible rulings a judge may give include:

- a) no extrapolation has occurred;
- b) an unfair extrapolation has occurred;

- c) the extrapolation was fair; or
- d) ruling taken under advisement.

The decision of the presiding judge regarding extrapolation or evidentiary matters is final.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings (see FRE 602 and Rule 3).

Rule 5. Gender of Witnesses

All witnesses are gender neutral. Personal pronouns in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender. Team Rosters, exchanged between teams before the round begins (Rule 31), indicate witnesses and their gender so that references to them can be made correctly during trial.

B. The Trial

Rule 6. Team Eligibility, Teams to State *not applicable*

Rule 7. Team Composition *not applicable*
MiniMock teams may be any size.

Letter codes shall not be used; using school names to identify teams is appropriate.

Rule 8. Team Presentation

Teams must present both the prosecution and defense sides of the case. All team members must be present and ready to participate in all rounds.

MiniMock teams will argue the prosecution side once and the defense side once.

Rule 9. Emergencies

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

Rule 10. Team Duties

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

Each team must call all four witnesses. Witnesses must be called by their own team and examined by both sides. Witnesses may not be recalled by either side.

Rule 11. Swearing In the Witnesses

The following oath may be used before questioning begins:

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

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

Rule 12. Trial Sequence and Time Limits

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

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

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

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

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

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

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

Rule 13. Timekeeping

Time limits are mandatory and will be enforced. The official timekeeper is the **bailiff** and is provided by the **defense**. An optional unofficial timer may also be provided by the prosecution according to the directions in Section V.E.3.c. Unofficial Timer.

- Timing will halt during objections, extensive questioning from a judge, and administering the oath.
- Timing will **not** halt during the admission of evidence unless there is an objection by opposing counsel.
- Three- and one-minute card warnings must be given before the end of each trial segment.
- **Students will be automatically stopped by the bailiff at the end of the allotted time for each segment.**
- *The bailiff will also **time the judges' critique** after the trial; the judging panel is allowed 10 minutes (3 minutes per judge). When the time has elapsed, the bailiff will hold up the "0" card. Presiding judge should limit critique sessions to the 10 minutes allotted.*

Rule 14. Time Extensions and Scoring

The Presiding Judge has sole discretion to grant time extensions.

Rule 15. Supplemental Material, Illustrative Aids, Costuming

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

Rule 16. Trial Communication

Coaches, non-performing team members, alternates and observers shall not talk, signal, communicate with or coach their teams during trial. **This rule remains in force during any recess time** that may occur. Performing team members may, among themselves, communicate during the

trial, however, no disruptive communication is allowed. There must be no spectator or non-performing team member contact with the currently performing student team members once the trial begins.

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

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

Rule 17. Viewing a Trial

MiniMock team members and their supporters may watch any trial (this differs from the competition where watching others is prohibited).

Rule 18. Videotaping, Photography, Media

Any team has the option to refuse participation in videotaping, tape recording, still photography or media coverage.

C. Judging and Team Advancement

Rule 19. Decisions

All decisions of the judging panel are FINAL.

Rule 20. Composition of Panel

MiniMock judging panels *may* consist of three individuals: one presiding judge, one attorney judge, and one educator/community member judge.

Rule 21. Ballots *not applicable*

Rule 22. Team Advancement *not applicable*

Rule 23. Power Matching *not applicable*

Rule 24. Merit Decisions

Judges are not required to make a ruling on the legal merits of the trial. However, during the critiquing process, judges may inform students of a hypothetical verdict.

Rule 25. Effect of Bye, Default or Forfeiture *not applicable*

D. Dispute Settlement

Rule 26. Reporting Rules Violation – Inside the Bar

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

Rule 27. Dispute Resolution Procedure

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

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

Rule 28. Effect of Violation on Score *not applicable*

Rule 29. Reporting Rules Violation – Outside the Bar

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

RULES OF PROCEDURE

A. Before the Trial

Rule 30. Team Roster

MiniMock teams should provide judges and opposing counsel with copies of their Team Roster.

Rule 31. Stipulations

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

Rule 32. The Record

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

Rule 33. Courtroom Seating

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

B. Beginning the Trial

Rule 34. Jury Trial

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

Rule 35. Motions Prohibited

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

Rule 36. Standing During Trial

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

Rule 37. Objection During Opening Statement, Closing Argument

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

Note: It will be the Presiding Judge's responsibility to handle any legally inappropriate statements made in the closing.

C. Presenting Evidence

Rule 38. Objections

1. **Argumentative Questions:** An attorney shall not ask argumentative questions.
Example: during cross-examination of an expert witness the attorney asks, "you aren't as smart as you think you are, are you? "
2. **Lack of Proper Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.
3. **Assuming Facts Not In Evidence:** Attorneys may not ask a question that assumes unproven facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by the evidence (sometimes called a "hypothetical question").
4. **Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for specific answer.
Example: "tell us what you know about the case."
5. **Non-Responsive Answer:** A witness' answer is objectionable if it fails to respond to the question asked.
Warning: this objection also applies to the witness who talks on and on unnecessarily in an apparent ploy to run out the clock at the expense of the other team.
6. **Repetition:** Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

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

Rule 39. Procedure for Introduction of Exhibits

As an *example*, the following steps effectively introduce evidence:

Note: Steps 1 - 3 introduce the item for identification.

1. Hand copy of exhibit to opposing counsel while asking permission to approach the bench. "I am

handing the Clerk what has been marked as Exhibit X. I have provided copy to opposing counsel. I request permission to show Exhibit X to witness _____ .”

2. Show the exhibit to the witness. “Can you please identify Exhibit X for the Court?”
3. The witness identifies the exhibit.
Note: Steps 4-8 offer the item into evidence.
4. Offer the exhibit into evidence. “Your Honor, we offer Exhibit X into evidence at this time. The authenticity of the exhibit has been stipulated.”
5. Court, “Is there an objection?” If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.
6. Opposing Counsel, “no, your Honor,” or “yes, your Honor.” If the response is “yes,” the objection will be stated on the record. Court, “Is there any response to the objection?”
7. Court, “Exhibit X is/not admitted.”

The attorney may then proceed to ask questions.

8. If admitted, Exhibit X becomes a part of the Court’s official record and, therefore, is handed over to the Clerk. *Do not* leave the exhibit with the witness or take it back to counsel table.

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

Rule 40. Use of Notes

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

Rule 41. Redirect, Re-Cross

Redirect and re-cross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Federal Rules of Evidence (Mock Trial Version). **For both redirect and re-cross, attorneys are limited two questions each.**

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

If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, during re-direct the attorney whose witness has been damaged may wish to “save” the witness. These questions should be limited to the damage the attorney thinks has been done and should enhance the witness’ truth telling image in the eyes of the court. Work closely with your

attorney coach on re-direct and re-cross strategies. Remember that time will be running during both re-direct and re-cross and may take away from the time needed to question other witnesses.

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

D. Closing Arguments

Rule 42. Scope of Closing Arguments

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

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

A good closing should:

- be spontaneous, synthesize what actually happened in court rather than being re-packaged;
- be emotionally charged and strongly appealing (unlike the calm opening statement);
- emphasize the facts which support the claims of your side, but not raise any new facts, by reviewing the witnesses' testimony and physical evidence;
- outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses;
- isolate the issues and describe briefly how your presentation addressed these issues;
- summarize the favorable testimony;
- attempt to reconcile inconsistencies that might hurt your side;
- be well-organized, clear and persuasive (start and end with your strongest point);
- the prosecution should emphasize that it has proven guilt beyond a reasonable doubt;
- the defense should raise questions that show elements of the crimes not met; and
- weave legal points of authority with the facts.

Proper phrasing includes:

"The evidence has clearly shown that ..."

"Based on this testimony, there can be no doubt that ..."

"The prosecution has failed to prove that ..."

"the defense would have you believe that ..."

Prosecution should conclude the closing argument with an appeal, based on the evidence, to find the defendant guilty beyond a reasonable doubt. And the defense should say the prosecution has failed to meet its burden of proof and, therefore, must find the defendant not guilty.

E. Critique

Rule 43. The Critique

The judging panel is allowed **10 minutes for critiquing**. The bailiff will monitor the critique following the trial. Judges shall limit critique sessions to 10 minutes total (~3 minutes per judge) time allotted.

Note: Judges' 10 minutes is not included in 40 minutes allotted to each side of the case.

FEDERAL RULES OF EVIDENCE – Mock Trial Version

To assure each party of a fair hearing, certain rules have been developed to govern the types of evidence that may be introduced, as well as the manner in which evidence may be presented. These rules are called the “rules of evidence.” The attorneys and the judge are responsible for enforcing these rules. Before the judge can apply a rule of evidence, an attorney must ask the judge to do so. Attorneys do this by making “objections” to the evidence or procedure employed by the opposing side. When an objection is raised, the attorney who asked the question that is being challenged will usually be asked by the judge why the question was not in violation of the rules of evidence.

The rules of evidence used in real trials can be very complicated. A few of the most important rules of evidence have been adapted for mock trial purposes. These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. The burden is on the mock trial team to know the Federal Rules of Evidence (Mock Trial Version) and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of MiniMock, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence, and its numbering system. **Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure.** Text in italics represents simplified or modified language.

Not all judges will interpret the Rules of Evidence (or procedure) the same way and mock trial attorneys should be prepared to point out specific rules (quoting if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate.

The mock trial Rules of Competition and these Federal Rules of Evidence - Mock Trial Version govern the Oregon High School Mock Trial Competition.

Article I. General Provisions

Rule 101. Scope

These Federal Rules of Evidence - Mock Trial Version govern the trial proceedings of the Oregon High School Mock Trial Competition.

Rule 102. Purpose and Construction

These Rules are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.

Article IV. Relevancy and Its Limits

Rule 401. Definition of “Relevant Evidence”

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence

Inadmissible

Relevant evidence is admissible, except as otherwise provided in these Rules. Irrelevant evidence is not admissible.

Explanation: Questions and answers must relate to an issue in the case; this is called “relevance.” Questions or answers that do not relate to an issue in the case are “irrelevant” and inadmissible.

Example: (in a traffic accident case) “Mrs. Smith, how many times have you been married?”

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, if it confuses the issues, if it is misleading, or if it causes undue delay, wastes of time, or is a needless presentation of cumulative evidence.

Rule 404. Character Evidence Not admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character Evidence. – Evidence of a person’s character or character trait, is not admissible to prove action regarding a particular occasion, except:

(1) Character of accused. – Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;

(2) Character of victim. – Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;

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

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

Rule 405. Methods of Proving Character

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

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

Rule 407. Subsequent Remedial Measures

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

Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is

likewise not admissible. This rule does not require the exclusions of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct investigation or prosecution.

Rule 409. Payment of Medical or Similar Expenses

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

Rule 411. Liability Insurance (civil case only)

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

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

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

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

Rule 607. Who May Impeach

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

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

Witness statements in the Mock Trial materials are considered to be affidavits.

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

Step 1: Introduce the affidavit for identification (see Rule 38).

Step 2: Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit.

Example: "Now, Mrs. Burns, on direct examination you testified that you were out of town on

the night in question, didn't you?"
Witness responds, "yes."

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

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

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

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

"Yes."

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

"Yes."

Rule 608. Evidence of Character and Conduct of Witness

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

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

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

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General rule. For the purpose of attacking the character for truthfulness of a witness,
(1) evidence that a witness other than an accused been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.

Rule 610. Religious Beliefs or Opinions. Not applicable.

Rule 611. Mode and Order of Interrogation and Presentation

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

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

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

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

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

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

Cross examination should conclude with:

"Thank you Mr./s _____ (last name). That will be all, your Honor."

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

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

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

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

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

Explanation: A short re-direct examination will be allowed following cross-examination if an attorney desires, and re-cross may follow re-direct. But in both instances, questions must be on subjects raised in the immediately preceding testimony. If an attorney asks questions on topics not raised earlier, the objection should be “beyond the scope of re-direct/cross.” See Rule 44 for more discussion of redirect and re-cross.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.

Explanation: Unless a witness is qualified as an expert in the appropriate field, such as medicine or ballistics, the witness may not give an opinion about matters relating to that field. But a witness may give an opinion on his/her perceptions if it helps the case.

Example - inadmissible lay opinion testimony: “The doctor put my cast on wrong. That’s why I have a limp now.”

Example - admissible lay opinion testimony: “He seemed to be driving pretty fast for a residential street.”

Rule 702. Testimony by Experts

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

Note: The usual mock trial practice is that attorneys qualify a witness as an expert by asking questions from the list suggested above. After questioning the witness in the above manner, the attorney then asks the judge to qualify the witness as an expert.

Note: In criminal cases, witnesses, including experts, cannot give opinions on the ultimate issue of the case, that is, whether the defendant was guilty. This is a matter for the judge or jury to decide.

Rule 703. Bases of Opinion Testimony by Experts

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

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

Rule 704. Opinion on Ultimate Issue

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

Note: In criminal cases, witnesses, including experts, cannot have opinions on the guilt or

innocence of the defendant. This is a matter for the judge or jury to decide.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

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

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

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

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

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

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

- (2) Admission by a party-opponent -- The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a

statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

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

Rule 802. Hearsay Rule

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

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

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

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

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

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

(3) Then existing mental, emotional, or physical conditions -- A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory of belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of a declarant's will.

Example: A witness testifies, "Mary told me she was in a lot of pain and extremely angry at the other driver."

(4) Statements for purposes of medical diagnosis or treatment -- Statements made for the purpose of medical diagnosis or treatment.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity.

(21) Reputation as to character. Reputation of a person's character among associates or in the community.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

Example: A police report contains a notation written by the officer, “Harry told me the blue car was speeding.” The report might be admissible as a business record but Harry’s statement within the report is hearsay.

NOTES TO JUDGES

A. Note to Judges

To ensure that the mock trial experience is the best it can be for students, please familiarize yourself with both the case materials and the rules. Mock trial rules sometimes differ with what happens in a court of law. Particular attention should be paid to the simplified rules of evidence. The students have worked hard and are disappointed when judges are not familiar with the case materials.

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

1. Students are prohibited from making objections or using trial procedures not listed in the mock trial materials. Students should request a bench conference (to be held in open court from counsel table) if they think the opposing attorneys are using trial procedures outside the rules.
2. Students are limited to the information in the witness statements and fact situation. If a witness invents information, the opposing attorney may object on the grounds that the information is beyond the scope of the mock trial materials. The presiding judge is encouraged to request a bench conference (to be held in open court from counsel table) and to ask students to find where the information is included in the case materials.
3. Bailiffs are the official timekeepers. The defense team is responsible for providing the bailiff (prosecution provides the clerk). Bailiffs time all phases of the trial *including the 10-minute judges' critique (~3 minutes per judge)*.
4. Students have been instructed to address their presentations to the judge and jury. The students will address the presiding judge as the judge in the case and the other judges as jurors since they are in the jury box.
5. Each trial round should be **completed within two hours**. To keep the competition on schedule, please keep within the time limits set out in Rule 12. **Do NOT allow critiques to go overtime.**

Each courtroom may be assigned a panel of three judges:

- The presiding judge will sit at the bench and will be responsible for conducting the trial, including ruling on objections.
- The other two judges will sit in the jury box and will have primary responsibility for evaluating and scoring student performances.

The judging panel will usually be comprised of two representatives from the legal field and one educator or community representative.

B. Introductory Matters

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

1. Ask each side if it is ready for trial. Ask each side to provide each judge with a copy of its Team Roster. Ask each member of a team to rise and identify himself/herself by name and role. Students are to identify their team by their assigned letter designation and not by school name.
2. If video or audio recorders are present, inquire of both teams whether they have approved the taping of the round.
3. Remind spectators of the importance of showing respect for both teams. **Silence electronic devices.** Judges may remove spectators who do not adhere to appropriate courtroom decorum.
4. Remind teams that witnesses are permitted to testify only to the information in the fact situation, their witness statements, and what can be reasonably inferred from the information.
5. Remind teams that they must complete their presentations within the specified time limits. The bailiff will signal you as the time for each segment of presentation runs out (3 and 1 minute warning and then 0 minute cards will be held up). At the end of each segment you will be stopped when your time has run out whether you are finished or not.
6. All four witnesses must be called.

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 including the teams before you. Should there be a recess at any time during the trial, the communication rule shall be in effect.

If there are no other questions, begin the trial.

At the end of the trial, the presiding judge shall ask teams if either side wishes to make a Rule 26 Violation. If so, resolve the matter as specified in Rule 27.

MiniMock is not scored. Judges may provide a very brief – limited to 3 minutes per judge – oral critique. The Presiding Judge *may* announce a ruling on the merits of the case – that is, which side would have prevailed if the trial were real.

C. Evaluation Guidelines

Teams should provide Team Rosters to each judge. The rosters are helpful for note-taking, identifying gender of witnesses and providing critique at the end.

The following evaluation guidelines should be used to provide comments to the students during the debrief and determine the overall team presentation points:

EVALUATION GUIDELINES

Although MiniMock is not scored, the following criteria may be used by judges when considering their brief critiques:

- 1-2 pts Not effective.** Unsure, illogical, uninformed, unprepared, ineffective communication skills.

- 3-4 pts** **Fair.** Minimally informed and prepared; passable performance but lack of depth in terms of knowledge of task and materials. Communication lacked clarity and conviction.
- 5-6 pts** **Good.** Good, solid but not spectacular; can perform outside script but with less confidence; logic and organization adequate but not outstanding. Grasp of major aspects of case, but no mastery. Communications clear and understandable but could be more fluent and persuasive.
- 7-8 pts** **Excellent.** Fluent, persuasive, clear, understandable; organized material and thoughts well and exhibited mastery of case and materials.
- 9-10 pts** **Outstanding.** Superior in qualities 7-8 above. Demonstrated ability to think on feet, poised under duress; sorted out essential from nonessential, used time effectively to accomplish major objectives. Demonstrated unique ability to utilize all resources to emphasize vital points of trial. Team members were courteous, observed proper courtroom decorum, spoke clearly and distinctly. All team members were involved in the presentation and participated actively in fulfilling their respective roles, including the Clerk and Bailiff. The Clerk and Bailiff performed their roles so that there were no disruptions or delays in the presentation of the trial. Team members demonstrated cooperation and teamwork.

D. Penalty Points

Penalty points are not assigned in the MiniMock event. Judges and team members should, however, be aware of circumstances that would warrant a penalty if this were a competition.

Points should be deducted if a team member:

1. Uses procedures beyond the mock trial rules.
2. Goes beyond the scope of the mock trial materials.
3. Does not follow mock trial rules in any other way.
4. Talks to coaches, non-performing team members or other observers. This includes breaks or recesses, if any should occur, in the trial: mandatory 2-point penalty.
5. Does not call all witnesses: mandatory 2-point penalty.

Judges may assign the number of penalty points at their discretion except where otherwise indicated. Rate each team on overall presentation using 1-10 points. Use whole numbers only (no fractions!). A unanimous decision among the three judges is not required.

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

The judges' decision is final.

E. Tips for Critiquing

Each judge may offer a **few, short (limited to 3 minutes each)** comments. Providing one useful comment to a student is better than a generic, "well done" to all.

Because it is impossible for each of the three judges to offer comments to every team member within the time allotted, it is recommended that judges divide the team members among the themselves so that every team member gets at least one comment but the critique time is honored:

- the educator judge should critique the witnesses, bailiff, and clerk;
- the presiding judge should critique on trial strategy and overall presentation; and

- the other judge should critique the attorneys.

Suggested critique might include comments such as:

"The content of your opening statement laid a clear strategy for your case – well done. A little more volume and it would have been even better." *or*

"You asked good, specific questions on direct that went to the heart of your team's strategy – that made you and your team look great. Be ready to defend your questions when objections are made."

The bailiff shall time the critique. Critique is limited to 10 minutes total – about three minutes per judge. **When the bailiff holds up the "0" minutes card, the critique is over.**

Once the critique has concluded, the presiding judge should make certain that the courtroom is cleaned before the teams are dismissed.

##

APPENDICES

Often Used Objections in Suggested Form

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

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

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

1. Leading Question (see Rule 611)

Objection: "Objection, Your Honor, counsel is leading the witness." (Opposing Attorney)

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

2. Relevance (see Rule 402)

Objection: "Your Honor, this question is irrelevant to this case."

Response: "Your Honor, this series of questions will show that Mrs. Smith's first husband was killed in an auto accident, and this fact has increased her mental suffering in this case."

3. Hearsay (see Rules 801, 802, 803, 805)

Objection: "Objection, Your Honor, this is hearsay."

Response: "Your Honor, this is an exception/exclusion to the hearsay rule." (Explain applicable provisions.)

4. Personal Knowledge (see Rule 602)

Objection: "Your Honor, the witness has no personal knowledge of Harry's condition that night."

Response: "The witness is just generally describing her usual experience with Harry."

5. Opinions (see Rule 701)

Objection: "Objection, Your Honor, the witness is giving an opinion."

Response: "Your Honor, the witness may answer the question because ordinary persons can judge whether a car is speeding."

6. Outside the Scope of Mock Trial Materials/Rules (see Rule 4)

Objection: "Objection, Your Honor. The witness is testifying to information not found in the mock trial materials."

Response: "The witness is making a reasonable inference."

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

Team Roster

~complete both sides~

Submit copies to: (1) every judge in every round, and (3) opposing team in each round For the benefit of judges and the opposing team, please indicate gender by including Mr. or Ms.

Prosecution

Opening Statement

attorney - student's name

P Witness #1

witness' name

student's name

Direct exam of W#1

attorney - student's name

P Witness #2

witness' name

student's name

Direct exam of W#2

attorney - student's name

P Witness #3

witness' name

student's name

Direct exam of W#3

attorney - student's name

P Witness #4

witness' name

student's name

Direct exam of W#4

attorney - student's name

Cross examining D's W#1

witness' name

attorney - student's name

Cross examining D's W#2

witness' name

attorney - student's name

Cross examining D's W#3

witness' name

attorney - student's name

Cross examining D's W#4

witness' name

attorney - student's name

Closing Argument

attorney - student's name

Clerk

student's name

Team Roster, continued,

Defense

Opening Statement

attorney - student's name

Cross examining P's W#1 _____
witness' name

attorney - student's name

Cross examining P's W#2 _____
witness' name

attorney - student's name

Cross examining P's W#3 _____
witness' name

attorney - student's name

Cross examining P's W#4 _____
witness' name

attorney - student's name

D Witness #1 _____
witness' name

student's name

Direct exam of W#1

attorney - student's name

D Witness #2 _____
witness' name

student's name

Direct exam of W#2

attorney - student's name

D Witness #3 _____
witness' name

student's name

Direct exam of W#3

attorney - student's name

D Witness #4 _____
witness' name

student's name

Direct exam of W#4

attorney - student's name

Closing Argument

attorney - student's name

Bailiff

student's name

Time Sheet

Plaintiff/Pros.	v.	Defense
Opening Statement: 5 minutes per side		
P	5 minutes	___ minutes used
D	5 minutes	___ minutes used
Plaintiff/Pros.: Direct/Re-direct—20 minutes total		
Start	20 minutes	
Witness #1:	time used ___ less	___ minutes ___ minutes unused
Witness #2:	time used ___ less	___ minutes ___ minutes unused
Witness #3:	time used ___ less	___ minutes ___ minutes unused
Defense: Cross/Re-cross—10 minutes total		
Start	10 minutes	
P witness #1:	time used ___ less	___ minutes ___ minutes unused
P witness #2:	time used ___ less	___ minutes ___ minutes unused
P witness #3:	time used ___ less	___ minutes ___ minutes unused
Defense: Direct/Re-direct—20 minutes total		
Start	20 minutes	
D witness #1:	time used ___ less	___ minutes ___ minutes unused
D witness #2:	time used ___ less	___ minutes ___ minutes unused
D witness #3:	time used ___ less	___ minutes ___ minutes unused
Plaintiff/Pros.: Cross/Re-cross—10 minutes total		
Start	10 minutes	
D witness #1:	time used ___ less	___ minutes ___ minutes unused
D witness #2:	time used ___ less	___ minutes ___ minutes unused
D witness #3:	time used ___ less	___ minutes ___ minutes unused
Closing Argument: 5 minutes per side		
Plaintiff/Pros.	time used ___ less	___ minutes ___ minutes left for rebuttal
Defense	time used ___ less	___ minutes
Judges' Scoring:	10 minutes total	___ minutes used

**Rule 26 - Reporting Rules Violation Form
FOR TEAM MEMBERS INSIDE THE BAR
(PERFORMING IN THIS ROUND)**

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

Round (circle one) **1 2** **Pros/Plaintiff:** school _____ **Defense:** school _____

Grounds for Dispute: _____

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

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

Reason(s) for Denying Hearing: _____

Initials of Opposing Team's Spokesperson: _____

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

Signature of Presiding Judge

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

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

Date: _____ **Time Submitted:** _____

Person Lodging: _____ **Affiliated With:** (School) _____

Grounds for Dispute: _____

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

Notes From Hearing: _____

Decision/Action of Coordinator: _____

Signature of Competition Coordinator

Date /Time of Decision

DIAGRAM OF A TYPICAL U.S. COURTROOM

