TURNING COURTROOMS INTO CLASSROOMS
Washington YMCA Mock Trial 2018 – 2019 Kit and Case

Photo Source: http://www.courthouses.co/us-states/v-z/washington/chelan-county/
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Program Information
YMCA YOUTH & GOVERNMENT PROGRAM OVERVIEW

FOUNDED IN 1947, YMCA Youth & Government provides opportunities for teens statewide to find their voice on the issues facing society today. Offered in local YMCA’s, schools, and community groups, students are empowered to assume the role of leaders in their communities. By providing access to teens and encouraging their participation in the judicial, legislative and executive branches of our government, Y&G programs empower students to address concerns in their communities by understanding issues from multiple points of view.

MOCK TRIAL
Teens in the YMCA Mock Trial program acquire the leadership, team building and public speaking skills that lead to the development of active and engaged citizenship. Mock Trial provides an opportunity for students to participate in a competitive, high drama courtroom showdown between teams from around the state. Through researching case law, working with team members and arguing legal issues in front of real judges and lawyers, teens are provided hands-on learning opportunities that will assist in the development of the confidence, knowledge and skills needed to lead the next generation.

YOUTH LEGISLATURE
Students explore the meaning of civics and democracy in our nation by assuming the roles of various Washington State elected officials, researching and drafting creative policy solutions to community problems and engaging in service-oriented activities. Delegates learn and practice tolerance, understanding, and peer mentorship while putting to use real-world skills for a lifetime of civic involvement.
HISTORICAL REVIEW OF MOCK TRIAL
1987-2019

For many years, the YMCA Youth Legislature included an appellate court component that allowed students to write and present a legal brief before a model state Supreme Court. In 1989, in order to reach more students with a law related educational program, the Youth & Government Board of Directors decided to phase out the appellate court, and run a separate Mock Trial Competition.

The Mock Trial program was originally a bi-centennial project that was sponsored through local ESDs. In 1987, Youth & Government began to co-sponsor Mock Trial. The program had other sponsors and was supposed to be self-sustaining through fees and donations. Mock Trial suffered from continual funding problems and a high rate of coordinator turn over which made fundraising difficult. In 1990 the Board voted to bring the Mock Trial Program under the wing of the Board financially. The Board agreed to pick up the program’s deficit and raise the money to cover it. The Seattle YMCA graciously carried this deficit for us until we could raise the necessary funds. In 1994, after another funding and staffing crisis with Mock Trial, the Board took full responsibility for the program, placing the Mock Trial coordinator and the successful functioning and funding of the program under the Board and the Executive Director.

Mock Trial teams from high schools throughout the state work with a teacher-advisor and an attorney-coach to present a hypothetical legal case before a real judge in an actual courtroom. The vast majority of teams come from public and private high schools around the state, however there are occasionally other groups that form teams and become involved. An example of this is the Seattle Parks and Recreation team who began competing in the King County District Competition in 2006.

Since our inception, Washington's YMCA Mock Trial teams have consistently placed in the top 20 at Mock Trial Nationals. Our state has produced three National Championships from two of our schools: Franklin High School (2000, 2018) and Seattle Prep (2014).

For several years, YMCA Mock Trial students from across the state have come together to participate in the YMCA National Judicial Competition in Chicago. In 2017, students from Wenatchee High School, The River Academy, and The Bush school came together to form two teams for the competition. One of our teams finished 1st overall for our state's first victory in the NJC competition.

Participants in the Mock Trial Program learn critical thinking and dispute resolution, practice oral advocacy, and experience planning and preparing a team effort. They develop a feel for the meaning of justice as they learn to sift truths from untruths and how to evaluate both sides of an issue before making a decision. The mock trial program adds a special dimension to citizenship education in our state, one that makes students aware of the importance of the law and it’s far reaching impact on our lives.
## Case and Competition History

<table>
<thead>
<tr>
<th>Year</th>
<th>Type</th>
<th>Case</th>
<th>Case Subject</th>
<th>Teams At State</th>
<th>Championship Round (winner in bold)</th>
<th>Presiding Judge</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>Civil</td>
<td>Robinson et. al v. Adams School District</td>
<td>High school drug testing policy</td>
<td>8</td>
<td>Franklin vs. Port Angeles</td>
<td>Supreme Court Justice Charles Smith</td>
</tr>
<tr>
<td>1993</td>
<td>Civil</td>
<td>State v. Kruse</td>
<td>Malicious harassment</td>
<td>16</td>
<td>Ft. Vancouver vs. University Prep</td>
<td>Elaine Houghton and Steven DeForest</td>
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<tr>
<td>1995</td>
<td>Crim</td>
<td>State of Washington v. Mel Dobson</td>
<td>2nd degree burglary and malicious mischief</td>
<td>15</td>
<td>Ft. Vancouver vs. Walla Walla</td>
<td>Supreme Court Justice Charles Smith</td>
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<tr>
<td>1997</td>
<td>Crim</td>
<td>State of Washington v. Haines</td>
<td>Self defense or murder</td>
<td>16</td>
<td>Franklin vs. University Prep</td>
<td>Supreme Court Justice Richard B. Sanders</td>
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<tr>
<td>1998</td>
<td>Crim</td>
<td>State v. Jones</td>
<td>Domestic violence</td>
<td>18</td>
<td>Franklin vs. Ridgefield</td>
<td>Supreme Court Justice Richard Guy</td>
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<tr>
<td>1999</td>
<td>Civil</td>
<td>Noble v. Katiesburg School District</td>
<td>Sexual harassment in schools</td>
<td>22</td>
<td>Franklin vs. University Prep</td>
<td>Supreme Court Justice Barbara Madsen</td>
</tr>
<tr>
<td>2000</td>
<td>Civil</td>
<td>Alex Williams, Marty Graves, and the Cedar County Board of Educ.</td>
<td>First Amendment case for injunctive relief</td>
<td>20</td>
<td>Franklin (National Champions) vs. University Prep</td>
<td>Supreme Court Justice Gerry Alexander</td>
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<tr>
<td>2001</td>
<td>Crim</td>
<td>State v. Tag Montague</td>
<td>Free Speech and Graffiti</td>
<td>20</td>
<td>Franklin (3rd at Nationals) vs. Franklin</td>
<td>Supreme Court Justice Tom Chambers</td>
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<td>2002</td>
<td>Crim</td>
<td>State v. Ogden Browne</td>
<td>Vehicular Homicide</td>
<td>20</td>
<td>Franklin (6th at Nationals) vs. University Prep</td>
<td>Supreme Court Justice Susan Owens</td>
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<td>2003</td>
<td>Crim</td>
<td>State v. Taylor Garrison</td>
<td>Sports Assault</td>
<td>20</td>
<td>Seattle Prep (6th at Nationals) vs. Franklin</td>
<td>Supreme Court Justice Susan Owens</td>
</tr>
<tr>
<td>Year</td>
<td>Type</td>
<td>Case</td>
<td>Case Subject</td>
<td>Teams At State</td>
<td>Championship Round (winner in bold)</td>
<td>Presiding Judge</td>
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<tr>
<td>2005</td>
<td>Crim</td>
<td>State of Washington v. Whislea Dwight</td>
<td>Accomplice liability/felony murder</td>
<td>20</td>
<td>University Prep (10th at nationals) vs. Fort Vancouver</td>
<td>Supreme Court Justice Jim Johnson</td>
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<tr>
<td>2006</td>
<td>Crim</td>
<td>State of Washington v. Lin Pauling</td>
<td>Controlled substance homicide</td>
<td>19</td>
<td>Seattle Academy (16th at nationals) vs. Franklin (3rd at AMTI)</td>
<td>Supreme Court Justice Susan Owens</td>
</tr>
<tr>
<td>2009</td>
<td>Civil</td>
<td>Tisby Hark v. Cedar County School District</td>
<td>Employment Law</td>
<td>20</td>
<td>Seattle Prep (3rd at nationals) vs. University Prep (9th at AMTI)</td>
<td>Supreme Court Justice Jim Johnson</td>
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<td>2010</td>
<td>Crim</td>
<td>USA v. Cuyahoga Rivers</td>
<td>Eco Terrorism</td>
<td>20</td>
<td>Seattle Prep (5th at nationals) vs. Franklin High School</td>
<td>Supreme Court Justice Barbara Madsen</td>
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<tr>
<td>2011</td>
<td>Crim</td>
<td>State of WA v. Kenley Kadich</td>
<td>Manslaughter by a Police Officer</td>
<td>22</td>
<td>Seattle Prep(10th at Nationals) vs Seattle Prep JV</td>
<td>Supreme Court Justice Debra Stephens</td>
</tr>
<tr>
<td>2012</td>
<td>Civil</td>
<td>Evening star life &amp; casualty insurance company, INC. v. Ithacus solutions</td>
<td>Insurance Claim</td>
<td>22</td>
<td>Seattle Prep(5th at Nationals) vs. Franklin</td>
<td>Supreme Court Justice Susan Owens</td>
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<tr>
<td>2013</td>
<td>Crim</td>
<td>The Last Ferry</td>
<td>Domestic Terrorism</td>
<td>22</td>
<td>Seattle Prep (6th at Nationals) vs. Kings High School</td>
<td>District Court Judge Robert Lasnik</td>
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<td>2014</td>
<td>Crim</td>
<td>That ‘Drood’ Dude</td>
<td>Rendering Criminal Assistance</td>
<td>20</td>
<td>Seattle Prep (National Champions) vs. Archbishop Murphy High School</td>
<td>Supreme Court Justice Debra Stephens</td>
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<tr>
<td>2015</td>
<td>Crim</td>
<td>Cedar Confidential</td>
<td>Computer Trespass</td>
<td>24</td>
<td>Seattle Prep (15th at Nationals) vs. Franklin High School</td>
<td>Supreme Court Justice Mary Yu</td>
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<tr>
<td>2016</td>
<td>Civil</td>
<td>Ex-Con Oration</td>
<td>Wrongful Conviction/Compensation</td>
<td>24</td>
<td>Seattle Prep (10th at Nationals) vs. Franklin High School</td>
<td>Supreme Court Justice Mary Yu</td>
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<tr>
<td>2017</td>
<td>Crim</td>
<td>Otto Blotto</td>
<td>Manslaughter by Unmanned Vehicle</td>
<td>24</td>
<td>Seattle Prep (12th at Nationals) vs. Franklin High School</td>
<td>Supreme Court Justice Sheryl Gordon McCloud</td>
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<td>2018</td>
<td>Crim</td>
<td>Won’t Back Down</td>
<td>Stand Your Ground</td>
<td>24</td>
<td>Franklin High School (National Champions) vs. Seattle Prep</td>
<td>Supreme Court Justice Steve Gonzalez</td>
</tr>
</tbody>
</table>
PROGRAM INFORMATION

STATE OFFICE

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Mailing Address:
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Olympia, WA  98507

Youth & Government on the web:
www.youthandgovernment.org
YMCA YOUTH & GOVERNMENT
BOARD OF DIRECTORS

Sam Reed | Chair
Secretary of State Emeritus

Kevin Hamilton
Perkins Coie

Kelly Evans | Treasurer
Soundview Strategies

Lucy Helm*
Starbucks Coffee Company

Krystal Starwich* | Secretary
WA State Charter School Commission

Tom Hoemann
Secretary of the WA Senate, retired

Gabriella Alvarez
Youth Governor

Judge Robert Lewis
Clark County Superior Court

Marty Brown
State Board for Community and Technical Colleges, retired

Dan McGrady
PEMCO

Holly Chisa
Lobbyist

Ahlam Nur
Mock Trial Student Representative

Jeanne Cushman*
Attorney/Lobbyist

Gloria Ochoa-Bruck
City of Spokane, Director of Multi-Cultural Affairs

Mike Egan*
Microsoft

Neil Strege
Washington Roundtable

David Fisher
Fisher-Jurkovich Public Affairs

Sung Yang*
Pacific Public Affairs

Marta Fowler
Government, Business, Events Consultant

*Alumni of Youth & Government
MOCK TRIAL TESTIMONIALS

“It is Mock Trial’s ability to inspire passion that makes the program what it is. Whether it is a passion for the law, a passion for acting, or maybe just a passion for argument, you would be hard pressed to find a student in Mock Trial who isn’t passionate about something. It is this passion that makes the Mock Trial world so real. Without it, we would just be a bunch of kids talking about imaginary people allegedly doing imaginary things that may or may not be against the law.”

Scott Ferron, student

“Mock trial is not just debate, it is not just theatre, and it is not just law. Mock Trial is a mental battle, fought in a court room, combining elements of theatre, law, debate, and speech. It is a melting pot of individuals, combining the legal community, with some of the brightest high school students in Washington; and it is the single best experience of my High School career.”

Louis Brotherton, student

“The YMCA Mock Trial Program invigorates participants as well as their family and friends, basically our community, with knowledge of and passion for the justice system. Furthermore, participants learn fundamental social skills such as negotiation, public speaking, leadership, teamwork, critical thinking, creative problem solving, and civic involvement.”

Dubs Ari Tanner Herschlip, WSBA Young Lawyer Program Volunteer

“I help facilitate Mock Trial in our county because it is one of the most energizing things I can do. I am constantly amazed at the resourcefulness and competence of the students who participate and I think it teaches them so many skills that they won't get elsewhere.”

Honorable Charles Snyder, Whatcom County Superior Court District Convener

“The best thing about working with the YMCA Mock Trial program is the opportunity to observe so many talented high school students putting so much effort in to their presentations. All of the teams were impressive and, clearly, had spent many hours preparing for their trials.”

Honorable Linda Krese, Snohomish County Superior Court District Convener
ACKNOWLEDGEMENTS

Without the generous support of the following people and organizations the Mock Trial Program would cease to exist. Their continued support has allowed the program to flourish. A quality learning experience has been provided to over 14,830 past participants who have entered society with training and skills that will enhance any adult role they seek to fulfill.

First of all we would like to thank our Board of Directors. It is only because of their time, energy, vision, and passion that the Mock Trial Program continues to enhance the lives of Washington’s youth.

Many thanks also go to the staff at the Administrative Office of the Courts for their dedication and service to the Mock Trial Program.

We would also like to thank Program Chair, Judge Robert Lewis of the Clark County Superior Court for his time and dedication to the civic education of Washington’s youth. He has also been kind enough for donating his time and creative energy over the past year in creating Flyspecking, this year’s civil case. His time and dedication, alongside the time and dedication of volunteers like him, continues to set Washington’s Mock Trial program apart from other programs around the nation who look to our state for some of the best mock cases in the country.

We are also grateful for the expertise and time of hundreds of volunteers from the legal community who serve as judges, court administrators, district conveners, audience raters, and attorney coaches; each year their collective volunteer hours number into the thousands. This contribution to the lives of young people is immeasurable.

And finally, thanks to the scores of teachers and volunteer coaches willing to embrace the mock trial concept and put forth the commitment to prepare mock trial teams for competition. They inspire excellence in their students and provide an experience in democracy they will remember for a lifetime.
VISION STATEMENT

New generations of ethical and informed, public-minded citizens

MISSION STATEMENT

Teach Democratic values and skills to youth through hands-on experiences

SPECIFIC PROGRAM GOALS:

- To foster the development of citizen responsibility
- To develop social competence, problem-solving ability, and communication skills
- To encourage self-reliance and a sense of purpose for youth
- To provide training and experience through active participation in the three branches of government: Legislative, Executive, and Judicial
- To stimulate careful deliberation of social issues and their possible resolutions
- To create opportunities to hear and respect varying viewpoints
- To inspire young people to be responsible & act with integrity
- To apply ethical values in making public policy
- To teach the YMCA core values of Honesty, Caring, Respect, and Responsibility

MOTTO

“Democracy must be learned by each generation.”
SECTION 2

Coaches Handbook
## YMCA YOUTH & GOVERNMENT
### 2018–2019 PROGRAM CALENDAR
#### MOCK TRIAL

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SEPTEMBER</strong></td>
<td>30</td>
<td>Online &quot;Delegation/Team Information&quot; forms due, including Kit and Case Order</td>
</tr>
<tr>
<td><strong>OCTOBER</strong></td>
<td>20</td>
<td>Mock Trial Case Release</td>
</tr>
<tr>
<td></td>
<td>20</td>
<td>Coaches and Advisor Training – Olympia, WA</td>
</tr>
<tr>
<td><strong>NOVEMBER</strong></td>
<td>1-30</td>
<td>Middle School Registration</td>
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<tr>
<td></td>
<td>3</td>
<td>Coaches and Advisor Training – Richland, WA</td>
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<td></td>
<td>6-Dec 16</td>
<td>High School Regular Registration</td>
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<td></td>
<td>16</td>
<td>Mock Trial Financial Assistance Application Deadline</td>
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<tr>
<td></td>
<td>30</td>
<td>Mock Trial Financial Aid Awarded</td>
</tr>
<tr>
<td></td>
<td>30</td>
<td>Mock Trial Final Team Count Due (forms will be emailed and on website in October)</td>
</tr>
<tr>
<td><strong>DECEMBER</strong></td>
<td>1-15</td>
<td>Mock Trial Middle School Late Registration (contingent on availability)</td>
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<tr>
<td></td>
<td>3</td>
<td>Case Clarification Question Form Released</td>
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<tr>
<td></td>
<td>16</td>
<td>Case Clarification Question Form Closes</td>
</tr>
<tr>
<td></td>
<td>Nov 6-Dec 16</td>
<td>Mock Trial High School District Regular Registration</td>
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<tr>
<td></td>
<td>17-Jan 11</td>
<td>Mock Trial High School District Late Registration (contingent on availability)</td>
</tr>
<tr>
<td><strong>JANUARY</strong></td>
<td>Dec 17-Jan 11</td>
<td>Mock Trial High School District Late Registration (contingent on availability)</td>
</tr>
<tr>
<td></td>
<td>15</td>
<td>Case Questions Answered</td>
</tr>
<tr>
<td></td>
<td>TBD</td>
<td>Mock Trial Middle School Tournaments</td>
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<tr>
<td><strong>FEBRUARY</strong></td>
<td>TBD</td>
<td>Mock Trial High School District Tournaments</td>
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<td><strong>MARCH</strong></td>
<td>1-15</td>
<td>Mock Trial High School State Tournament Registration</td>
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<td>22-24</td>
<td>Mock Trial High School State Tournament Olympia</td>
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<td><strong>APRIL</strong></td>
<td>TBD</td>
<td>YMCA National Judicial Competition (NJC) Applications Due</td>
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<tr>
<td><strong>MAY</strong></td>
<td>16-18</td>
<td>National Mock Trial Competition – Athens, GA</td>
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<tr>
<td><strong>JULY</strong></td>
<td>July 29-Aug 1</td>
<td>YMCA National Judicial Competition – Chicago, IL</td>
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REGISTRATION FEES AND REFUND POLICY

HIGH SCHOOL

DISTRICT REGISTRATION FEES

Registration: November 6-December 16
$60 per Student
$30 per Coach

Late Registration: December 17-January 11
$70 per Student
$35 per Coach

*NO registration accepted after January 11th

STATE FINALS REGISTRATION FEES

Registration: March 1-March 15
$125 per Student
$125 per Coach

*NO registration accepted after March 15th

MIDDLE SCHOOL DISTRICT REGISTRATION FEES

Registration: November 1-November 30
$30 per Student
$15 per Coach

Late Registration: December 1-December 15
$40 per Student
$20 per Coach

*NO registration accepted after December 15th

FINANCIAL ASSISTANCE APPLICATIONS
At the Y everyone is welcome. Financial Assistance is available through the state Youth & Government office and an application form can be found on our website. All individual Mock Trial participants are eligible to apply for financial assistance. Money is distributed based on family’s financial situation and special circumstances are taken into consideration when appropriate. If you have questions about this process please contact us at (360) 357-3475.

REFUND POLICY
There are no refunds or credits on District or State registration fees.

REGISTRATION COSTS
Student and coach registration fees may be shared between schools or obtained from student body associations, individual students, donations from local bar associations, service groups and fund-raising projects.
YMCA Youth & Government provides financial assistance to the extent possible to those in need. Eligibility is determined by comparing your gross annual household income to the Housing & Urban Development (HUD) Income Guidelines for King County. We also take into consideration the number of people supported by your income. Once submitted, your application will be reviewed and you will be notified within one week. Assistance will be granted on a first come, first serve basis. Assistance will be granted for the duration of the program year. You can reapply to receive continued assistance in the following year.

The following steps will guide you through the application process. Unfortunately, we cannot process incomplete applications. If you have questions, please contact our office at 360.357.3475.

**Assistance Request**

<table>
<thead>
<tr>
<th>Student First Name</th>
<th>Middle Initial</th>
<th>Last Name</th>
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</table>

<table>
<thead>
<tr>
<th>Delegation / Team / School</th>
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</table>

| Program(s) applying for (circle all that apply): | YOUTH LEGISLATURE | MOCK TRIAL | CONA |

**Parent / Guardian information (applicant)**

<table>
<thead>
<tr>
<th>First Name</th>
<th>Middle Initial</th>
<th>Last Name</th>
</tr>
</thead>
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<table>
<thead>
<tr>
<th>Address</th>
<th>Apt#</th>
<th>City/St</th>
<th>Zip</th>
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<table>
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<tr>
<th>Primary Phone</th>
<th>Primary Email</th>
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| How would you like to receive award notification? (circle all that apply): | PHONE | EMAIL | MAIL |

**Income Verification**

<table>
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<tr>
<th>Is the student on free or reduced lunch?</th>
<th>YES (Which School? ______________________)</th>
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<table>
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<tr>
<th>Is the student receiving financial assistance through a local YMCA for Y&amp;G or another program?</th>
<th>YES (Which School? ______________________)</th>
<th>NO</th>
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**Please list your household’s monthly income – Include all sources including assistance and child support**

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<thead>
<tr>
<th>Applicant</th>
<th>$ /month</th>
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<table>
<thead>
<tr>
<th>2nd Adult</th>
<th>$ /month</th>
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<table>
<thead>
<tr>
<th># Adults supported by income</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th># Children supported by income</th>
</tr>
</thead>
</table>

- If you have special circumstances that you feel would impact your need for assistance, please submit a letter including your specific circumstances and why you feel you qualify for financial assistance.

I certify that the above information is true and complete to the best of my knowledge. I understand the above agreement and my obligations. I further understand that the YMCA’s policy for payment applies to this agreement.

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Date:</th>
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**For Y&G Office Use Only**

<table>
<thead>
<tr>
<th>Program:</th>
<th>Approved?</th>
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<table>
<thead>
<tr>
<th>Aid Amount:</th>
<th>Date:</th>
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YMCA Youth & Government / 360.357.3475 / youthandgovernment.org
PROGRAM POLICIES/BOARD EXPECTATIONS

Washington YMCA Youth & Government is governed by a Board of Directors. The following are guidelines and policies adopted by the Board:

Adult Leadership Policy
All phases of the Mock Trial program include adult responsibilities. To ensure adequate supervision and leadership for students, adult leaders function in the following capacities:

- As advisors and facilitators assisting students
- As a responsible adult acting on behalf of the students’ parents, the local YMCA or high school, and the statewide organization of YMCA Youth & Government

All adult coaches and program volunteers are expected to maintain appropriate relationships with their students. Personal relationships with individual students are strictly prohibited.

Drug, Alcohol & Tobacco Policy
The YMCA commitment to a healthy spirit, mind and body requires consistent enforcement of the Youth & Government drug, alcohol, & tobacco policy as follows:

- There will be no tolerance of drug, alcohol or tobacco use in any form during Youth & Government events and activities.
- Failure to comply with this policy could result in immediate expulsion from the program. Delegates may be sent home at their own expense.
COACHING RESPONSIBILITIES

Coaching Requirements

A ratio of one adult to every ten participants (1:10) is to be in place at all Youth & Government activities on the local, district, and state level. At least half of the coaches from each team must be at least 21 years of age. Program alumni are required to be at least two years out of high school to volunteer as a team coach. Alumni interested in volunteering who are less than two years out of the program should contact the state Youth & Government office to learn about additional opportunities.

Each delegation must have one “Lead Coach” for their group. This individual will be the main point of contact for the state office and be responsible for providing leadership and direction for the team at all levels of the program. It is also the responsibility of this individual to ensure that the following responsibilities are taken care of (either by themselves or by another advisor in the group).

It is the coach’s role to provide appropriate adult leadership and direction for high school age delegates. Please be clear with your students about your role as a coach and that you maintain a professional manner in dealing with them and their parents.
COACHES LIABILITIES AND RESPONSIBILITIES YMCA
Youth & Government

Delegation/Team Name: ___________________________________________

CONTACT INFORMATION:

Sponsoring Organization: _________________________________________

Head Coaches:
Name: ___________________________  Head Coaches Supervisor:
Name: ___________________________
Cell: ___________________________  Cell: ___________________________

Additional Coaches and Volunteers:
Name: ___________________________  Name: ___________________________
Cell: ___________________________  Cell: ___________________________
Name: ___________________________  Name: ___________________________
Cell: ___________________________  Cell: ___________________________

LIABILITY:

The sponsoring organization listed above has conducted a Washington State criminal background check on all adult coaches and volunteers working with our local group within the past year.

We have reviewed the Code of Conduct and Coaches Responsibilities with all Adult leaders and volunteers associated with our delegation.

The head coaches will have medical release and emergency medical information for all students and adults registered with this group during all local, regional, and statewide Youth & Government events.

We have an emergency communication plan in place that includes communication to parents/families, Youth & Government staff, and our sponsoring organization in the event of any emergency during a Youth & Government activity or event.

Head Coaches Signature: ___________________________  Date: _________

Supervisors Signature: ___________________________  Date: _________
YMCA MOCK TRIAL ADULT CODE OF CONDUCT

PROGRAM PURPOSE

The purpose of Washington YMCA Mock Trial Program is to develop within youth a dedication to the values of democracy, informed advocacy, and character development. With this purpose in mind, the following ground rules have been established. Your cooperation in acting within these ground rules is expected, and will help to ensure continuation of the privileges we enjoy in using courthouse and other facilities.

CONDUCT EXPECTATIONS AT COMPETITIONS

1. A ratio of 1 adult to 10 students should be maintained at all times.
2. All school or sponsoring organization rules regarding offsite events and activities apply during competitions. This includes policies regarding alcohol consumption, driving, student relationships, etc.
3. Adults should place the highest value on excellent preparation, presentation and good sportsmanship. Adults agree to exhibit the core values of the YMCA – honesty, caring, respect and responsibility.
4. Adults agree to exhibit the highest standards of conduct and fair play, showing respect for all participants in the competition and other Mock Trial volunteers and personnel.

I agree to abide by the YMCA Mock Trial code of conduct. I understand that if I violate the rules, my school or sponsoring organization will be notified, and it may result in expulsion from competition.

Signature ___________________________ Team ___________________________

Print Name ___________________________ Date ___________________________

PHOTO, VIDEO & INFORMATION RELEASE

Permission is granted for photographs and video of me taken during my participation in the Youth & Government program as well as my information (including but not limited to name organization) to be used for purposes that may include publicity. Further, this information may be used without compensation.

Signature ___________________________ Date ___________________________
YMCA MOCK TRIAL PARTICIPANT CODE OF CONDUCT

PROGRAM PURPOSE
The purpose of Washington YMCA Mock Trial Program is to develop within youth a dedication to the values of democracy, informed advocacy, and character development. With this purpose in mind, the following ground rules have been established. Your cooperation in acting within these ground rules is expected, and will help to ensure continuation of the privileges we enjoy in using courthouse and other facilities.

PROGRAM GROUND RULES
No alcohol. No drugs. No sexual activity. No tobacco products. No offensive language, dress, or behavior. No violent behavior. Any violation of this code of conduct may result in immediate expulsion from the program, and the violator will be sent home at his or her own expense.

CONDUCT EXPECTATIONS AT COMPETITIONS
1. Students must follow school or sponsoring organization policies and procedures.
2. Students should place the highest value on excellent preparation and presentation and good sportsmanship. Students agree to exhibit the core values of the YMCA – honesty, caring, respect, and responsibility.
3. Students agree to exhibit the highest standards of conduct and fair play, showing respect for all participants in the competition and other Mock Trial volunteers and personnel in and out of the courtroom.
4. Students are professionally dressed while competing.
5. Students will not willfully participate in tactics known to be unfair, unsportsmanlike, or in violation of the Mock Trial rules.
6. Students will respect food and drink restriction in the courtrooms and agree to dispose of any trash appropriately inside and outside of the facility.

I agree to abide by the YMCA Mock Trial code of conduct. I understand that if I violate the rules, my parents and my school will be notified, and I may be sent home at my own expense.

Student Signature ___________________________ Team ___________________________
Print Name ___________________________ Date ___________________________

Parent Signature ___________________________
Print Name ___________________________ Date ___________________________

PHOTO, VIDEO, & INFORMATION RELEASE
Permission is granted for photographs and video of my child taken during his/her participation in the Youth & Government program as well as his/her information (including but not limited to name, grade and school) to be used for purposes that may include publicity. This information may be used without compensation.

Parent Signature ___________________________ Date ___________________________
Words of Wisdom from Successful Coaches...

- After you get the kit, set aside a block of time to read the kit materials and the case thoroughly. Recruiting an attorney to advise you and your students is really helpful. Many teachers who don’t know much about law have coached teams. They learn along with their students. Having an attorney to help assists the teacher as much as the students!

- Competitive Mock Trial takes commitment. Two other important attributes are responsibility and teamwork. It takes hours of preparation and good organizational skills. Students must attend practice and spend outside time preparing their witness or attorney roles. Lay out your expectations from the get-go and have students commit. If students don’t show up they let their team down, whittle away team morale, and decrease their chances of success and fun at this endeavor.

- Start early enough or if you plan to start January 1st, have a grueling schedule planned with students who’ve already been recruited and have parts that they’ve studied over the holidays. After the case is analyzed and memorized, plan to spend a month working on oratory and presentation style. Don’t give this process short shrift – it makes all the difference when attorneys score the teams in competition. Get the speech teacher as well as the attorney to advise you and the students at this level.

- Don’t let the temptation to help the students override the purpose of the program – their learning and their accomplishment. If you write the material or even work it over a lot, it becomes less their product and more yours. Don’t allow students to adopt another team’s material – it is unethical. We are teaching teen how to honest, civic-minded leaders in Youth & Government programming.

- Assign alternates in case a member drops out. If an attorney has to be replaced, it will usually be with someone familiar with the case – most likely a witness. Move the witness into the attorney role and fill the witness position with an alternate.

- Mock Trial is not drama. It has elements of drama in the portrayal of witnesses, but too much melodrama will hurt your team. Witnesses must know the facts of the case very well. Well-rehearsed answers will look stale and overwrought demonstrations of emotion will backfire. Subtle characterizations can still be very effective – a tilt of the head, a shuffle to the walk, a slight accent, a mannerism that’s unique, a stutter...

- Don’t over-practice. The trial will unfold with its share of surprises – a team should be wary of becoming complacent with their version of the case. Mock
trial’s best teams know how to think their way out of a tough situation or when the trial takes a direction they didn’t expect.

- Instruct your students to observe courtroom decorum – never chew gum or eat during the trial. Attorneys should wear conservative clothing – dark sport coats or dresses or a jacket and skirt. Wear small jewelry or none at all. While attorneys need to dress more formally, witnesses should dress appropriately for their role without obvious costuming. Do not move furniture or disturb courtroom equipment, approach the witness, or touch exhibits or papers without permission from the judge. Observers of the trial should be quiet and attentive. No side-talking.

- Instruct students to control their facial expressions and body language. They can put on a calm and poised face even if they’re feeling a range of emotions or even turmoil inside. A composed and unruffled team will impress the judge and the attorney raters. Never treat a member of a team or the judge with bias as to gender, age or race – i.e. don’t be condescending or over-bearing or interrupt or over-object. Never raise your voice or argue with the judge. A rush of whispers among team members will make you look bad. Do not display a negative facial or vocal reaction to a judge’s decision. Create practice scenarios where you learn to stay composed under pressure.

- Organize your cases and prepared questions in plastic. Laminate the objections and keep them nearby for reference unless they are committed to memory. Each attorney should have a notepad. Closing and opening statements should be memorized. Visuals (within the rules) can help to focus attention to the key points.
## Mock Trial Frequently Asked Questions

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What is a mock trial?</strong></td>
<td>High school students portray a part in a cast of courtroom characters. Much of mock trial’s fascination lies in its dramatic role-play possibilities. Students can become, for a time, a fiery prosecutor or a dedicated defense attorney, a righteous defendant or an elusive witness. Each year students study a new hypothetical case relevant to today’s issues. They receive guidance from volunteer attorneys in courtroom procedure, oratory, and trial preparation.</td>
</tr>
<tr>
<td><strong>Where do I get the case for the year?</strong></td>
<td>The Mock Trial Kit (includes the case and supporting materials) is provided by the Mock Trial Program in mid-October. No other materials other than those provided may be used. This places the emphasis on interpreting and formatting information into a convincing case rather than researching obscure legal precedents.</td>
</tr>
<tr>
<td><strong>Who organizes and pays for the Mock Trial Program?</strong></td>
<td>The YMCA Youth and Government program funds a Professional Staff to administer the Mock Trial Program. Our operating costs come from donations, grants, and volunteer support. Participant fees make up the additional costs it takes to make this program possible. Public and private high school teachers and attorneys take on the task of preparing students for competition. They may receive a stipend from their individual schools.</td>
</tr>
<tr>
<td><strong>Who can form a mock trial team?</strong></td>
<td>A teacher at any high school, public or private and/or an attorney volunteer can be a coach. All participants (grades 9–12) must be enrolled at the same school district, preferably in the same high school, or the same private high school, or be a pre-existing member of a youth group in existence for a minimum of 3 years with a constitution or bylaws. Home school and other youth groups may also participate. With the approval of the state coordinator, exceptions can be made to help new teams get started.</td>
</tr>
<tr>
<td><strong>What happens during the trial?</strong></td>
<td>Teams present their case in a two-hour trial before a real judge in a real courtroom. At district competition, each team gets at least two opportunities to argue the case. At State finals each team</td>
</tr>
</tbody>
</table>
goes to trial four times (twice to prosecution, twice for the defense, if possible). During the trial, each side presents the pre-trial motion. Next, they give their opening statements. Later, each of the four witnesses for both the prosecution (or in a civil case, the plaintiff*) and the defense are questioned by both sides on direct and cross-examination. Then the attorneys make their final case in closing arguments. At least two practicing attorneys critique and score student performances in each trial. Volunteer judges preside over the trial, and volunteer raters score the teams and comment on their performances.

* Any future references to prosecution should read plaintiff in a civil case.

When are the competitions?

In February, teams of attorneys and witnesses meet at county courthouses all over the state to argue their cases. On the last weekend in March, the winners of their respective districts meet at the state competition for two days to compete with other teams from all over the state. The state champion represents our state at Nationals held in May.

What does it cost to participate?

The District Competition cost is $60 per student and $30 per coach. The State Finals cost is $125 per student and $125 per coach, plus lodging and transportation.

How do teams finance their competition fees?

ASB funds, local bars and/or legal firm donations. Our program has a small scholarship fund for teams and individuals. Most teams do additional fundraising. Scholarship forms and fundraising ideas are included in the kit.

How is mock trial taught?

There are a lot of successful formulas. Advisors may run mock trial as an extracurricular club meeting regularly October through February (for Districts) and until the end of March if they go to State. Other advisors run mock trial during first semester class then organize into an extracurricular club until the season is over. A few recruit and select mock trial members from their classes and hit the case really hard in January through Districts in February. This plan would be difficult for a new or inexperienced team.
When does the mock trial season start and end?

The year’s case is available in October, on the date set by the Mock Trial Program Chair. Districts occur mid to late February. State is usually the last weekend of March. Nationals are held at the beginning of May in a different city each year. The competition season fits into the winter sports season and ends before spring vacation. The District Convener determines the district competition date in February. State Finals are often held the same weekend as State Knowledge Bowl but usually don’t conflict with Debate events. Many teams spend the fall learning legal terminology and trial techniques. During this time, many practice on other mock trial cases and may organize informal competitions with nearby schools.

How much time does it take to prepare a team for mock trial?

For extracurricular arrangements, most teams will meet one to three times a week from October through January. Usually teams meet 3–5 times a week during February to prepare for Districts. Attorney coach time commitments vary. In February and March they may spend up to several sessions a week preparing for District and State competitions. A session may be one-half hour to four hours long during lunch, class, before or after school. When offered through a first semester class, students have the benefit of more frequent instruction depending on other curriculum demands. For classroom situations, extra time will be required outside of class in February and March. Students often spend some vacations learning their parts.
How does a team get an attorney to help out?

Many teams will recruit a parent who practices law to volunteer. You can call or e-mail your District Convenor for suggestions. This is the organizer for your region – often a judge or a member of the legal community. The Mock Trial Kit contains a list of District Conveners. The state director may also be able to provide a few names of attorneys in your area who have expressed interest. More than one attorney may help a team. Volunteer attorneys don’t receive compensation or continuing legal education credits for their time, but they do it because it’s rewarding. Students must attend practice sessions with attorneys or they should be removed from the team. A $100- $200 per hour attorney won’t continue to volunteer time if students don’t show up. Younger attorneys with fewer family commitments will do it as a way to give to their community. Established attorneys may be busier, but may want to volunteer during their own children’s high school years. Finding an attorney coach is really a big help! Often they will find other attorneys to assist them once they’re hooked on mock trial!

How many students does it take to participate?

It takes 7–15 kids and a school may field more than one team. A full team would have fifteen students with three student attorneys and four witnesses for both the prosecution and defense. Under this scenario, seven students learn the prosecution’s case and seven learn the defense case. The fifteenth student fills the role of bailiff. For teams with fewer students, it is possible for students to double up on roles with a set of six students learning and arguing both sides. One of the attorneys for each side would also present the pre-trial motion in addition to an opening or closing statement and witness examinations. When doubling up, a student may be a witness for the prosecution’s case (for instance) and an attorney for the defense. They cannot play both witness and attorney for the same side. The team that competes at Nationals is limited to eight members.

How are team members recruited?

Start by recruiting from students in business law, civics, U.S. government classes and from debate, drama or speech clubs. Post flyers around the school and hold an informational meeting. Write a short article for the school and local newspaper to inform students of upcoming auditions or meetings.

How is a team created?

Again there are many ways to do this. Some teachers recruit specifically from competitive Debate, Speech, and Drama teams for their experience. Others allow anyone who commits the time to
participate. Some teachers conduct auditions for witness and attorney roles; others select their students and assign them a role.

**How does a team get to compete?**

Any team that pays the registration fee by the deadline is allowed at Districts. The size of the district will determine how many teams from each District Competition will attend the State Event in late March.

**What’s involved in preparing for Competition?**

- Educate students on elements of a trial and legal terminology.
- Recruit an attorney to help you.
- Take a tour of the local courthouse.
- Make copies of witness statements.
- Conduct auditions or otherwise assign roles.
- Read the case and work on a case analysis.
- Break down each witness statement into statements of fact.
- Weed out irrelevant details that have no bearing on the case.
- Separate the facts that are good/bad for the prosecution and for the defense.
- Create a timeline of events in the case.
- Choose a theme to each side of the case.
- Practice how to phrase questions that cannot be successfully objected to.
- Write questions for each witness’s examination and cross-examination.
- Help the witnesses rehearse their answers to the above questions.
- Have attorneys start writing their opening and closing statements.
- Review and practice how to make effective objections.
- Show attorneys how to submit exhibits and how to introduce their team.
- Train students in proper courtroom decorum, dress and demeanor.
- Predict the opponent’s possible objections and how you’ll respond.
- Teach and practice elements of effective oratory and presentation.
- Conduct practice scrimmages. Ask a judge to come in to critique.
# Budgeting 101

When creating a program budget there are two main things to consider. **Expenses** are things that will cost money, and **revenue** is money being brought in. In the end your expenses and revenue should balance – or your revenue should be just a little more than your expenses so you come out positive. The following tables outline some things you will need to consider in terms of expenses and revenue when creating your budget for Youth Legislature or Mock Trial.

<table>
<thead>
<tr>
<th>Expenses:</th>
<th></th>
</tr>
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<tbody>
<tr>
<td><strong>Staffing</strong></td>
<td>In high schools this may take the form of a teacher stipend. In YMCA’s it may be a percentage of an employee’s total salary (based on the amount of time spent running the Y&amp;G program. It may also include a small portion of an administrative person or supervisor’s salary.</td>
</tr>
<tr>
<td><strong>Training</strong></td>
<td>Both Youth Legislature and Mock Trial advisors/coaches are encouraged to attend annual training/orientation events. The fees for these trainings are listed in your program materials.</td>
</tr>
<tr>
<td><strong>Volunteer support</strong></td>
<td>Account for any thank you gifts or meals for volunteers during Y&amp;G events, trainings or meetings.</td>
</tr>
<tr>
<td><strong>Transportation</strong></td>
<td>Account for the cost of gas or mileage reimbursement or the amount to rent a school or charter bus when planning for statewide events. District events may also require a transportation budget if students are not able to transport themselves to events.</td>
</tr>
</tbody>
</table>
| **Lodging** | Some things to keep in mind when shopping for hotels:  
• # of students per room (usually 4 is OK for students)  
• # of adults per room (usually 1-2)  
• Is the hotel in walking distance to event  
• Is breakfast included (decreasing $ needed for meals) |
| **Food** | Know in advance what meals you will provide during events and what students will be responsible for. Make sure students can get at least one nutritious meal each day (something other than fast food or pizza is good). Also make sure to budget some snack money for meetings – this is a great way to make sure kids show up! |
| **Facilities** | $ needed for meeting/practice facilities |
| **Program Materials** | If you will print handbooks for your students, team/delegation t-shirts or bags; if you’re going to do a fundraiser make sure to include the cost of materials needed |
| **State Program Fees** | These are listed in your program materials |
| **District Program Fees** | Check with your district coordinator or convener to see if there are additional fees to pay for facilities/food/materials at district events. |
| **Revenue:** |  |
| **Program fees** | It’s important for students to pay at least a small amount of the cost of the program. |
| **Fundraisers** | Make sure to get student input before planning fundraisers. Having students set their own goals for fundraising is usually a great way to start. |
| **Sponsorships / donations** | Have students write letters to local business people about supporting your program. Invite sponsors to attend an “open house” with your team/delegation. |
| **Grant/foundation support** | If applying for a grant keep in mind that all applications are not successful and many applications may take 6-8 months for a foundation to process. |
| **Y&G Scholarships** | All students are encouraged to apply for financial assistance. Forms are available online. |
| **ASB funding** | If your program is set up through a school there may be ASB or other funds available. |
| **Local YMCA support** | Whether or not your program is set up through a local YMCA, local Y’s may be interested in offering support in the form of scholarships, staffing, facilities, fundraising opportunities or a donation. |
Fundraising Ideas

Fundraising is a large job for many delegations. It is important to start early and have a clear goal in mind. It also works well to find a fundraiser that works well for your delegation and stick with it year after year. People will begin to expect and plan for it, and prepare to support you in your endeavors.

Listed below are several fundraising ideas that have worked for local delegations:

- **YMCA Kids Night Out:** Kids night out is an opportunity for parents to drop off their youngsters at the YMCA for an evening of fun and games. Several Y&G delegations around that state plan and staff these events and take in the profit that is made. Planning a Kid’s Night Out takes time and commitment form students and Advisors alike, but has been shown to work well for several groups from around Washington.

- **New Year’s Eve Overnight:** A popular night for a Kids Night Out is New Year’s Eve. Parents all want to go out and need trustworthy individuals to watch their children.

- **Concessions:** During big events at Y’s or school’s delegations can run the concession stand. You can also create your own by making snacks and bringing soda to sell at the door. At many places there is a sign up process and groups must get on the list to do this so make sure to follow proper procedure.

- **Snack Bar:** One day/week turn off the vending machines in your YMCA/school and sell concessions instead.

- **Letter writing:** Local community groups such as the Lions Club and Rotary have money that they want to give away to worthy local programs. Have students write a letter to these groups explaining your program and outlining the costs and benefits involved (a sample letter can be found in this section of your handbook). Most groups will then want you to bring your students to present on the program at one of their meetings.

- **Community Night:** Invite parents and community members to one of your delegation meetings. Provide snacks/drinks, and encourage them to participate in debate. During the evening have a raffle or simply ask for donations.

- **Raffles:** At any of your events you can sell raffle tickets and solicit local vendors for prizes. This is great because it is at no cost to you! Make sure to check with your organizations to make sure you’re following all state and local regulations regarding gambling when organizing a raffle.

- **Teen Phone Night:** Compile a list of past program supporters, Y members, parents, etc. to solicit for donations. Prepare a script for students and have them practice a few times. Set them up on phones spend the evening calling individuals and asking for donations. Make sure you approve your call list so that it does not conflict with other fund raising campaigns going on in your organization.

- **Personal Ads:** Sell advertisements in your school newspaper or YMCA bulletin.
Sample Fundraising Letter

Tips on writing a fundraising letter:

- make it personal by telling your story
- make a contact and let them know to expect a letter from you student
- students should write letters, not advisors
- follow up the letter with a phone call 3-5 days later
- research the giving organization to find out what is important to them and incorporate that into your letter
- let them know what you are going to do with the money they give you

Dear Hawks Prairie Rotary,

I am a delegate in the Washington State YMCA Youth & Government Program and a member of the local delegation here at the South Sound Family YMCA. For the past 3 years I have been learning about how our state government works by actually participating in it.

After spending the week as a page in the House, watching debate and meeting individuals from around the state, I was hooked. Since then I have sponsored 4 bills ranging in topic from cancer research to requirements for building in planned communities. Last year I attended Leadership Training and lead debate at the state event as a Committee Chair. I learned from that experience how much I truly love parliamentary procedure and the process of sending an idea through the legislature.

In order to continue my participation in this program I need your help. I ask that you support me in my efforts by donating $200 to cover my program fees for the year. In addition to these funds, I am also responsible for my transportation costs, district fees, meals, and campaign costs over the course of the next year.

This year I am taking the next step and running for Lieutenant Governor. I want to take every opportunity that I can to give students new to the program the encouragement that I received as a young delegate. Through my involvement in Youth Legislature I have realized the importance of our legislative branch and gained a respect for my democracy that I could not have achieved without actually being part of it.

I would like to ask you to help support me in my efforts to bring a love of the democratic process to my peers around our state. As I move along in my journey through the Youth & Government Program I am realizing that with more opportunities come more costs.

Throughout the year I will be traveling around the state to campaign as well as to support delegates in their efforts to get their voice heard.

I thank you for your time.

Sincerely,

Joan Schmoe
SAMPLE MONTHLY PLANNER

September
Advisors recruit students, conduct auditions, and select team members
Formation & Group Building
  o Topics to cover:
    ▪ U.S. Constitution
    ▪ Democracy

October
Release and distribution of Mock Trial Kit & Case
Work out student practice schedule in addition to meetings with attorney coach
Advisors and attorney coaches begin to study the case and prepare for trials
  o Topics to cover:
    ▪ The Common Good vs. Individual Interest
    ▪ The Responsibilities of Citizenship
    ▪ Courtroom procedure and legal terminology
    ▪ Servant Leadership

November
District Conveners set date and start planning for district competitions
Submit request for purchase order or check for district competition
Submit district scholarship application form(s) if needed
  o Topics to cover:
    ▪ The Trial Process
    ▪ Steps in a Trial
    ▪ Introduction to the Case
    ▪ Fund Raising Project Planning (if needed)

December
Arrange for transportation to district competition
  o Topics to Cover:
    ▪ Strategy and Case Analysis
    ▪ Witness Examinations and Closing Arguments
    ▪ Rules of Evidence
    ▪ Service Project

January
Begin collecting signed student consent forms and complete registration for districts
Submit required district materials by deadline to State Office
Fine tune case and work on oratory and presentation skills
Plan and hold practice mock trials with neighboring schools

February
District events
Submit state scholarship application form(s) if needed
Submit required state materials by deadline to State Office
Arrange for transportation to state competition

March
Guest speaker/Field trip to close year or prepare for state competition
Host a Community Night
TEACHING MOCK TRIALS

The following materials may provide some ideas that advisors can use in teaching students and youth group members about short mock courtroom trials. They may be adapted to best suit your local educational goals.

These materials were written for use with brief classroom mock trials involving all students in the classroom, which is different than the mock trial described in the latter pages of this kit. The case presented in this kit includes a longer, more involved mock trial with up to three attorneys per side, four witnesses, and no jury.

However, these materials can be used with an entire class, from which the competition team can then be formed. When the in-class activities are completed, the competition team can practice outside of class. This mock trial program can also be used with extra-curricular groups such as school debate teams or youth groups including scout troops, YMCA Youth & Government groups, teen church groups, homeschoolers etc. Students on each team must be from the same high school or a pre-existing member of the same youth group.

Much of the material in these lesson plans was developed by what was formerly the National Institute for Citizen Education in the Law.

EDUCATIONAL BENEFITS OF THE MOCK TRIAL PROGRAM

Participation in this educational opportunity demands quite a bit of time from teachers and attorneys, but the benefits will make it worthwhile.

Some of the educational benefits for students are:

- Knowledge of practical law and trial procedure and education about the legal profession.
- Increase in student motivation to excel and participate fully.
- Development of research, organization, planning and preparation skills.
- Development of oral advocacy skills.
- Enhancement of communication skills -- speaking, listening, writing.
- Enhancement of reasoning, critical thinking and analytical skills.
- Development of self-confidence and self-esteem.
- Knowledge of strategies for conflict resolution.
- Experience in team effort.
- Substantive knowledge about the issues presented in the case.
INTRODUCTION – TRIALS AND AMERICAN SOCIETY

Whether the issue is teaching evolution in school, the kidnapping of the baby of a famous couple, or a Hollywood lovers' fatal quarrel, Americans have long relished the spectacle of the courtroom trial.

In the past fifty years, crowds have strained against police barriers, hoping to get into courtrooms where presidential counselors were being tried as part of the Watergate conspiracy. They have packed the courtroom where a school mistress was on trial for the murder of her lover, a famous physician. They have sat watching while the psyches of a would-be presidential assassin or the most private details of a famous athlete charged with murder were exposed to the world. In some recent cases, courtrooms have been replaced by highly public hearings by special counsels on the doings of a President and his friends and the Department of Justice itself. The names of the parties to cases like these move into American legal and popular history: John Ehrlichman and Robert Haldeman, Michael Jackson, John Hinckley, O.J. Simpson, Bill Clinton and Waco.

Then, too, the names of the most prominent role-players among the judges and attorneys edge into daily conversation, at least for a time: John Sirica, Barrington Parker, F. Lee Bailey, E. Bennett Williams. Scores of reporters, and, in recent years, miles of videotape - even inside some courtrooms - feed this public fascination. Perhaps the media’s role in heightening the public’s contact with the trial process is most clearly underscored by the fact that many of the nation’s most well-known trial celebrities are Hollywood creations or more recently, judges turned into public icons like Judge Judy!

Media hype aside, there are important reasons for the public attraction to the trial process, and these are undoubtedly inherent in the nature of our government and legal system. Perhaps the most basic of these reasons is the public’s perception of the trial as one of society’s principal vehicles for the achievement of justice for all citizens, a belief which is the cornerstone of our American legal system. In these times, apparent widespread distrust of the trial process surfaces whenever members of the public loudly protest a verdict, as happened in the John Hinckley and O.J. Simpson cases. Yet, all in all, Americans still cling to the belief that each citizen should have his or her own “day in court.” Statistics on the rising number of case filings in civil court underscore the exercise of this right of access to the courts.

Some of the public fascination with trials also flows from the nature of a trial as great human drama. In the common view, few secrets can remain cloaked in a trial, or few emotions remain unraveled under the intensity of skillful examination of witnesses.
MOCK TRIAL – “THE ULTIMATE ROLE-PLAY”
Many teachers have discovered that American society's attraction to the trial process can be used to an educational advantage. More and more courts are implementing formal visitation programs for students. Bar associations, individuals attorneys, and judges willingly lend their time to teachers and students. Significantly, during the past twenty years the use of mock trials has taken root in schools’ curriculum.

Two main reasons can be cited for this teaching phenomenon. One is the great public popularity of trials, already mentioned. The second (more significant educationally) is the recognition of the mock trial as a versatile, multi-dimensional teaching device. Because of the number of students a mock trial can involve in working toward the achievement of a wide variety of skills objectives, the mock trial as a teaching device might well earn a reputation for being the “ultimate role-play.”
PLANNING FOR A MOCK TRIAL

CONDUCTING MOCK TRIALS
A teacher new to the use of mock trials may hesitate to undertake a trial for reasons of time and complexity. Trial simulation is actually a flexible device, capable of being compacted into one or two classroom periods or expanded into a full unit several weeks in length. On a competitive level, attorneys statewide volunteer each year providing legal advice and training to mock trial teams and their advisors.

Mock trials may be based on historical events, cases of contemporary interest, school situations, or hypothetical fact patterns. The format of the mock trial can be formal or informal, depending on the objectives of the class and the skills and sophistication of the students. Most mock trials use some general rules of evidence and procedure, an explanation of the basic facts, and a brief statements for each witness.

There is a range of mock trial formats. Freewheeling activities can be done where rules are created by the student participants (sometimes on the spot) and no scripts are used. Or more serious attempts to simulate the trial process can be based on simplified rules of evidence and procedure. They also can be used to re-enact dramatic historical trials in which scripts are relied upon heavily.

Usually, however, scripts are not used. Instead, the students are given a statement of facts and legal issues. They may also be given a set of witness statements, which are not scripts, but affidavits on which the witnesses and attorneys build their witness examination questions and answers. Relevant documentary evidence (e.g. a contract) might also be included in the packet of trial materials. Analysis of the packet of materials and strategic design of each step in the trial represent the most important parts of the student learning experience in the mock trial. For this reason, teachers should avoid scripting the material or doing most of the question and statement preparation for the students.

Simplicity in approaching a mock trial is critical, particularly for a teacher who has not used the device previously. The skills-building objectives should always be in the forefront of the teacher’s activities in the mock trial. While real-life simulation is certainly desirable to a point, teachers should be aware that too much legalizing over the issues, too much jargon, too much emphasis on the rules of evidence and procedure tend to diminish the learning value of the mock trial by stifling student interest and making the process too cumbersome for all involved.

TIME FACTORS
A successful mock trial can be a largely impromptu event taking place right in the classroom and occupying one or two class periods at most. It can also be an intricately planned event with class preparation taking a full week or even more and trial presentation requiring two or more complete class periods.
Both types of mock trials, and many variations on them, have demonstrated their value as strategies for learning in the high school classroom. Each teacher needs to exercise discretion in selecting which approach to use. A key criterion is the amount of time available for this activity. Another is the specific learning objectives the teacher is aiming for at that particular point.

The lesson plans provided in this manual are built around the time sequences for each activity that have proven realistic on the basis of experience with hundreds of mock trials of all kinds. Throughout, the references to class periods assume 50-minute lengths of time.

A natural prelude to or follow-up activity for the mock trial are trips to local courts to observe real attorneys, witnesses and judges in action. In addition, many attorneys, law students and judges are happy to volunteer to come into classrooms to help students prepare, act as judges and/or debrief the trial.

**STUDENT INVOLVEMENT**

A mock trial project should involve every student in the class for the entire unit. Careful planning is essential to achieve this goal of total involvement. Students not assigned specific, active roles quickly lose interest. However, not every student in a large class can play an attorney or a witness. Realistically, then, in classes larger than fifteen or twenty, how can every student be actively involved? To a large extent, the answer depends on the individual teacher and the classroom situation.

Suggestions to aid teachers in arranging total involvement include:

- **a. Number of Attorney and Witness Roles**
  In each mock trial case, each side uses two witness roles and six possible attorney roles. In sum, there are sixteen principal roles.

- **b. Alternates**
  Alternate witnesses are essential to safeguard against last-minute absences. Since attorneys can usually cover for each other, teachers can also assign alternate attorneys. With alternates for each attorney and witness role, as many as thirty-two students could be assigned roles.

- **c. Teams**
  Cooperative learning is one of the important objectives of the mock trial process. The team and small group activities essential to mock trial preparation provide the vehicles for cooperative learning.

- **d. Role Assignments**
  Note that specific role assignments for attorneys and witnesses are not mentioned until Lesson Plan #4. Unless the mock trial is to be a fairly short, informal classroom event, there is no need to rush into role assignments. The longer every student remains a candidate for any role, the higher the level of student interest in the mock trial preparations will be.

*Lesson Plan #3 provides instructions for dividing the class into teams. For the purposes of active involvement in trial preparation, every student...
should be assigned to one team or the other, and should then be expected to participate fully in the small group discussions and team strategy sessions. The lesson plans call for small groups at certain points and also indicate which principal roles are involved at each stage. The principal role players and alternates, as well as, other students to assist them, should all be assigned to small groups and participate in them.

e. Juries
In large classes it may be preferable to include all unassigned students on the jury. (Note, however, possible other roles, under f.) Using a jury is a good way to keep all students actively involved during the actual trial. However, during the trial preparation stage, students who will be serving on the jury should be assigned to work with the teams. Even though real life jury members start a trial impartially with no prior knowledge of the case, the educational value of having jury members assist with case preparation outweighs the need to simulate reality.

Activities designed to demonstrate the importance of an impartial jury are valuable. (One way is to conduct a role-play of a “voir dire” exercise--this is when lawyers or the judge ask prospective jurors questions to gauge their impartiality. A lawyer could help us with this.) If the class strongly desires a truly impartial jury for their trial, another class can be invited to sit as the jury.

f. Other Roles
The trial itself has room for roles other than attorneys and witnesses. These roles include:

1. Judge or Judges
2. Formal Observers
3. Court Artist
4. Clerk or Bailiff
5. Members of the Jury
6. Reporters from the media

Again, the goal is to involve every student. All students in the class, whatever their eventual role in the trial, should participate on trial preparation teams.

PREPARATION OF MATERIALS FOR STUDENTS

The student materials in this manual include an Introduction to the Trial Process, Steps in a Trial, Simplified Rules of Evidence, and Case Materials. Before starting the mock trial unit, teachers need to determine which materials to give the class and when. The teacher may copy and distribute the entire packet at once or give out only sections at a time. A few suggestions that can help with this decision:

a) The Trial Process is a general introduction for students who have not previously studied trials in detail, or for those needing refresher reading. It is a good first handout.

b) Steps in a Trial is a guide designed to assist students with their preparation for mock trial roles.
c) **Simplified Rules of Evidence** is recommended for distribution only to classes in which the teacher plans to devote a substantial amount of time to trial preparation. For the sake of time and simplicity, teachers may prefer not to use these rules for short, informal mock trials.

d) **Case Materials** are separate packets with the facts and pieces of evidence for the specific trial the class will conduct. All students should receive a copy of this material.

**LEGAL ASSISTANCE**
The mock trials presented in the cases include hypothetical laws appropriate for use in any classroom. However, teachers may prefer to use a law actually on the books in the jurisdiction where the school is located.

To obtain information about an appropriate law that would work for a mock trial, teachers should consult with a local attorney or attorneys. The Bar Association in the area can often assist teachers in identifying attorneys who could help out.

Attorneys and law students are also valuable resources to assist students in the actual preparation for a mock trial. When using attorneys or law students as class presenters, team advisers, or judges, the teacher must take the time to brief them so that they understand the educational objectives of the program and recognize that the class will necessarily be using simplified procedures and rules of evidence.

**JUDGING**

Two important early decisions for the teacher are who will judge the trial and whether to use a jury. These decisions are influenced by time and learning objectives, as well as by class size. A few suggestions might help with this decision:

a) If the judge is to be a student, he/she should be able to learn the trial process well, have the capacity to be decisive, and be able to give directions to other students.

b) The teacher may choose to serve as the judge in situations where substantial control over the actual process is important. Such situations may apply with the very first trial, where everyone is a novice; where time is unusually tight; or where the teacher wants to have a free hand in interrupting to explain or drill witnesses during the trial.

c) An attorney, law student (preferably beyond first year), or local judge may be invited to act as the judge. This arrangement is most appropriate for the more formal trial where the class has spent much time preparing. As with other situations using an outside resource person, the teacher should make arrangements well in advance. A full week is minimal. The resource person
agreeing to take the judge’s role will need to know the date, time, and place. Equally important, the judge needs to gain a thorough familiarity with the educational objectives of the class and with the simplified procedures that will be used in the mock trial. It is also advisable to pass the actual trial facts and statements onto the judge prior to the trial date.

d) With a large class, the teacher may wish to place the students who are not participants in the trial on a “jury.” The jury then has the task of deciding the outcome of the case. When the time comes for jury deliberations, the teacher may find it advantageous not to have the jury go out but have it deliberate fishbowl style right in the classroom. This gives non-jurors the opportunity to observe the decision-making process, but of course they may not participate in the juror’s discussion.

CLASSROOM ARRANGEMENT

For the actual trial, the room should be arranged as follows:

If the trial will attract a sizable group of spectators, a teacher might wish to hold the proceedings in a larger room or auditorium. Such larger rooms will usually require microphones at the attorney’s lectern, judge’s bench, and the witness box. All such details should be firm several days before the trial, and audio equipment should be tested and adjusted before the trial.

SELECTING AND INSTRUCTING THE BAILIFF
Every trial should have a bailiff (often called a clerk) who takes care of announcing the entrance of the judge, calling the case, keeping time, marking evidence, and swearing in witnesses. The teacher should instruct the student selected at least one day before the actual trial. A section entitled “Clerk’s Directions” is included as part of Lesson Plan #7: The Mock Trial. See Bailiff/Courtroom Host explanation in the Competition Procedures section of this kit.

PREPARING THE OBSERVERS
Because there may be more students that can have attorneys and witness roles, or that can assume such other roles as bailiff, the teacher may wish to designate overseers. This is not just a “catchall” role. The observers will be valuable in debriefing the trial. They will have the job of observing the trial as it unfolds, of looking for good points and errors and deficiencies, and of making notes that can be referred to afterwards when it comes time to analyze the event.

Lesson Plan #6 reminds the teacher to hand out the Mock Trial Observation Sheet to each observer before the trial begins.
MOCK TRIAL ADMINISTRATIVE CHECKLIST

These are tasks the teacher should check off as accomplished. Some are noted as “optional” – all others are necessary for successful trials.

______ Trial Selected
______ Time-frame Determined (dates for each lesson and trial itself)
______ Lesson Plans Adapted
______ Materials Selected for Students
______ Materials Copied for Students
______ Student’s Preparation Begun
______ Court Field Trip Date Set (optional)
______ Attorneys (or Law Students) Identified to Help (optional)
______ Attorneys Invited (optional)
______ Attorneys Briefed (optional)
______ Judge Identified
______ Judge Invited (actual judge, attorney, teacher, or students)
______ Judge Briefed and Provided Materials
______ Room Selected
______ Microphones ordered (for larger rooms only)
______ Invitations (other classes, administrators, parents, etc.) (optional)
______ Observation Sheets Copied and Handed Out (optional)
______ Jury Selected/Instructed (optional)
______ Clerk Selected/Instructed
______ Judge’s Robe obtained (an academic gown will suffice)
______ Gavel, etc. obtained (optional)
______ Students’ Preparation Completed
______ Trial Conducted
______ Trial Debriefed
LESSON PLAN 1
INTRODUCTION TO DISPUTE RESOLUTION AND THE TRIAL PROCESS
(One to two fifty-minute periods; more, if trip to court is undertaken)

OBJECTIVES:
As a result of the activities in this lesson, the students will be able to:
• Explain the purpose of the trial process.
• Describe at least one alternative to the trial process.
• List and explain the major steps in the trial.
• Name the parties to a case in both a civil and a criminal trial.
• Explain the roles of attorneys, judge and jury in the trial process.

ACTIVITIES:
1. Reading Assignment: Either for homework or in class, the students should read “The Trial Process” section (immediately following these lesson plans) in this manual.
2. Vocabulary Exercise: The teacher might ask students to list at least five new words in “The Trial Process” section for vocabulary building. Alternatively, the teacher might begin a class discussion by listing key words and phrases on the board, e.g. “adversary system,” “prosecution,” “defendant,” “evidence,” etc., and eliciting definitions from the class. (10 min.)
3. Small-Group Discussion Exercise: Divide the class into groups of 3-5. Ask them to develop at least two examples of non-criminal disputes that might wind up in a trial. Ask them to discuss alternative methods of dispute resolution (such as those listed in “The Trial Process”) for each case, and to identify when a trial might be the only solution. (20 min.)
4. Discussion Exercise and Homework Assignment: Ask students to bring in an article from the local newspaper concerning an incident that might result in a trial. In class, discuss why the disputes arose. Identify a possible way to settle the cases out of court. Ask the students: If the parties go to court, what would they hope to accomplish? (20 min.)
5. Field Trip to Court: (A half-day or one full day)
   a. Make arrangements through the clerk of the local court or an attorney for a visit by the class. Different courts handle student trips differently, but good communication with the staff at the local courthouse usually will ensure a worthwhile visit. You will need to find out what phase of a trial the students are likely to be observing, and whether it will be a civil or a criminal proceeding. If your mock trial will be a civil case, you may prefer to observe a civil trial.
b. If the clerk can give you specific information about the case or cases the class will be observing, spend some time in class the day before reviewing the characteristics of the civil or criminal process as appropriate.

c. As a homework assignment immediately after the field trip, direct the students to write several paragraphs answering these questions:
   - What kind of trial was observed, and what portion?
   - Who were the most important people in the courtroom, and what did they do?
   - What facts did the class learn during their observation?
   - What do you think happened after the class left?
   - Did this process seem like a good way to deal with the particular problem involved? What alternatives would you recommend? (You may wish to design a form for students to fill in for this purpose.)

d. Discuss the field trip, based on the homework responses, in large or small groups during the next class.

6. **Guest Speakers:** Having an attorney or a judge visit in class is a good alternative or in addition to a field trip to court. In arranging for such a speaker, be sure that person is adequately briefed regarding (a) the grade level, age and prior legal knowledge of the class; (b) your objectives for the speaker’s visit; (c) particular subject areas the class desires to discuss; (d) details of any activity you plan to conduct while the speaker is present. The better you handle preparation with the guest speaker, the better that class period will turn out. (One class period.)

7. **Distribute Mock Trial Materials and Assign Reading:** At this point, the mock trial case and related materials can be distributed and assigned for homework reading.
LESSON PLAN 2
STEPS IN A TRIAL

OBJECTIVES:
As a result of the activities in this lesson, the students will be able to:
• List and explain the major steps in the trial.

ACTIVITIES:
  a. Have students state the order of events in a trial and list them on the blackboard or give large sheets of paper to small groups and ask them to develop their own lists of trial procedure. After full class discussion, discuss ways in which the class’s ideas about trial procedure match or vary from the actual procedure. Which is better? Why? (15 min.)

  b. Homework assignment: Direct students to make personal charts of the trial process. Ask students to clip articles about a trial currently in the news and to identify what particular steps in a trial are referred to in the articles.

  c. Quiz.- See Review #1, duplicate and pass out the quiz. The correct answers are:

     1. C 6. I
     2. N 7. B
     3. J 8. A
     5. K 10. F

Main Steps In A Trial:

1. Opening statement by prosecution.
2. Opening statement by defendant.
3. Direct examination of prosecution’s witnesses.
5. Direct examination of defendant’s witnesses.
7. Closing statement (argument) by prosecution.
8. Closing statement (argument) by defendant.
LESSON PLAN 3
INTRODUCTION TO THE CASE
(One to Two Class Periods)

OBJECTIVES:
As a result of the activities in this lesson, the student will be able to:
• Identify the type of case, court, and division of the court.
• Identify the parties to the case.
• Describe what each party to the case wants.
• Describe the stipulated facts on a timeline.
• Write one paragraph summarizing the facts of the case and the legal issues involved.

ACTIVITIES:
1. Reading Assignment: The case packets should be distributed to be read for homework in advance of the first class. On the first day of class discussion of the case, the teacher should ask a student to read aloud the introduction to the case and the Statement of Facts. (15 min.)
2. Factual Summary Timeline: Draw a line across the board as shown below. As in the example below, put important dates from the case on the timeline. Ask the class a series of questions, e.g.
   o What happened on each date given?
   o What happened during the intervening periods?
   o What information is missing?
   o How does the missing information affect the case?
   o Where can that information be found?
   The timeline may be used as a means of review and as a quiz. On each day of trial preparation, until the students know the facts thoroughly, a student could be called to the board to fill in the events on the timeline. A timeline could also be distributed as a quiz, with instructions to the students to fill it in as indicated. (30 min.)
3. Initial Case Analysis: With the whole class, elicit facts favorable to the prosecution and facts favorable to the defendant, and list them on the board in columns. (30 min.)
4. Homework: Ask students to write a paragraph summarizing the facts and legal issues. Alternatively, ask students to make two lists, one indicating facts favorable to the prosecution, and other facts for the defense.
LESSON PLAN 4
STRATEGY AND CASE ANALYSIS: OPENING STATEMENTS
(One Class Period)

OBJECTIVES:
As a result of the activities in this lesson plan, the students will be able to:
• Describe the main arguments in favor of each side of the case.
• Identify the facts that support or weaken each major argument.
• Summarize the evidence that will be presented on each side of the case.
• Write an opening statement for one side of the case.

ACTIVITIES:
1. Assignment to Sides of the Case: Once the preliminary factual analysis has been completed, the time is appropriate to assign students to prosecution or defense teams. The specific role assignments (e.g. attorney, witness) need not be given yet. However, having a particular point of view will help the students begin to engage in strategic analysis of the case.

Once students are divided into prosecution and defense teams, the teacher might also find it advantageous to designate team captains. (Appoint or elect, perhaps two for each side, as appropriate for the class.) These students can then be made responsible for leading the small group discussions and later on, directing the team’s specific case preparation. (This is optional; some teachers prefer not to have student leaders.) (10 min.)

2. Strategic Analysis by Teams: Split the class into the two main groups (prosecution and defendant). Each team is directed to discuss the following points: (15 min.)
What does our side want to achieve in this case?
How will we accomplish this goal?
What evidence do we have to help us? ...Hurts us?
What can we claim we will prove in the opening statement?

3. Team Brainstorming for Opening Statement: After about fifteen minutes of the discussion described in #2, the students can set about the task of brainstorming the general framework for their opening statements. For this exercise, it might be useful to have the students gather their teams at the blackboard or to equip them with butcher paper. (25 min.) Discussion should focus on:
   o What are the most important facts we want to tell the judge in our opening statement?
   o What evidence will we present that we should stress?
   o What kind of ruling do we want from the judge?
o How will we ask for that?

4. **Homework Assignment:** Once the students have had sufficient time to strategize and brainstorm, they will be ready to write individual opening statements for homework. On the day the assignment is due, each student should get a chance to read the prepared statement to the team, and the team should decide which statement is best, or which portions of various statements might be used in combination.
LESSON PLAN 5
PREPARATION OF PROSECUTION AND DEFENSE CASES:
WITNESS EXAMINATIONS AND CLOSING ARGUMENTS
(Two to Three Class Periods)

OBJECTIVES:
As a result of the activities described in this lesson plan, the students will be able to:
• As examining attorneys, write a logical sequence of direct or cross-examination questions (depending upon student assignments) designed to achieve the purpose of the witness examination.
• As attorneys assigned to the closing arguments, outline the high points of the ideal closing argument for their respective sides.
• As witnesses, recall from memory the important points made in the witness affidavit, and respond correctly to possible direct and cross-examination questions.

ACTIVITIES:
1. Role Assignments: Prior to the lesson, the teacher should assign students to specific roles. These are the available roles for the trials in this packet:
   Witnesses - Each side has two witnesses, alternates should be appointed for each role.
   Attorneys - Each side may use up to six attorneys to take each available speaking part; however, teachers may find it advantageous to use only three of four attorneys for each side, assigning more than one speaking part to each. Note that during the trial each side gets to carry out direct examination of its own witnesses and to cross-examine the opposing witnesses.
2. Reading Assignment: Once the roles are assigned, students should be instructed to read the case materials again and study the particular parts of the case materials applicable to their specific roles.

ROLE ASSIGNMENT CHECKLIST

Witnesses:
Witness #1 ________________ ________________
(Alternate) ________________ ________________
Witness #2 ________________ ________________
(Alternate) ________________ ________________

Attorneys:
3. **Small Group Preparation #1:** (One Class Period) Separate the class into prosecution and defense teams. Divide each team into three working groups as follows

<table>
<thead>
<tr>
<th>PROSECUTION TEAM</th>
<th>DEFENSE TEAM</th>
</tr>
</thead>
<tbody>
<tr>
<td>P1 Witnesses and Alternates</td>
<td>D1 Witnesses and Alternates</td>
</tr>
<tr>
<td>P2 Examining Attorneys</td>
<td>D2 Examining Attorneys</td>
</tr>
<tr>
<td>P3 Attorneys assigned to make opening and closing statements</td>
<td>D3 Attorneys assigned to make opening and closing statements</td>
</tr>
</tbody>
</table>

**INSTRUCTIONS FOR THE GROUPS**
(First Drill) Witness Groups (P1 and D1):

The purpose of this session is to drill the witness and alternates on their knowledge of the facts and their witness statements. Through taking turns drilling each other, students will begin to acquire information about all other witness statements.

Witness #1 is the first to be drilled. Starting with “State your name, please” and proceeding through the witness statement, witness #1 is asked every conceivable question by the other students in the group. Witness #2 and then the alternates follow suit.

The questioning drill continues around the circle until each student can answer the questions without looking at his or her statement.

Once the initial knowledge is acquired, the Witness Group should focus on style and characterization. Going around the circle again, the students should help each other try to develop a specific type of character and responses to fit their roles.

**EXAMINING ATTORNEY GROUPS**
(P2 and D2)

During this session, the attorneys conducting each direct examination begin designing the questioning strategy for each witness in consultation with the other attorneys in the group. The group should start with Witness #1, and,
as a group, outline the basic series of direct exam questions needed for that witness. They then do the same for Witness #2. Attorneys should write out the examination questions for homework.

ATTORNEY GROUP FOR STATEMENTS
(P3 and D3)

The purpose of this group is to brainstorm the principal points to be included in opening statements and closing arguments. After the outlines are planned together, the students then work independently to write the statements. (They can also be drafted for homework.) Once the statements are written, the students reconvene to hear and critique each other’s statements.

4. **Small Group Preparation #2:** (One Class Period) This phase of class preparation for the mock trial helps students to rehearse and refine their case presentation. Reorganize the team groups as follows:

<table>
<thead>
<tr>
<th>PROSECUTION TEAM</th>
<th>DEFENSE TEAM</th>
</tr>
</thead>
<tbody>
<tr>
<td>P1 Opening and Closing Attorneys</td>
<td>D1 Opening and Closing Attorneys</td>
</tr>
<tr>
<td>P2 Witness &amp; Direct Exam Attorneys</td>
<td>D2 Witness &amp; Direct Exam Attorneys</td>
</tr>
<tr>
<td>P3 Cross-examination Attorneys</td>
<td>D3 Cross-examination Attorneys</td>
</tr>
</tbody>
</table>

INSTRUCTIONS FOR THE GROUPS
(Second Drill)

**OPENING AND CLOSING ATTORNEYS** (P1 and D1)
Each attorney delivers the prepared statement. The others in the group critique.

**WITNESSES AND DIRECT EXAMINATION ATTORNEYS** (P2 and D2)
Using the direct examination questions developed earlier, the attorneys rehearse the examination with the witnesses and make changes as necessary.

**CROSS-EXAMINATION ATTORNEYS** (P3 and D3)
The attorneys responsible for cross-examination for each side can assist each other in trying to project what testimony might be given on direct exam, thus showing what material might be appropriate for cross-examination. Attorneys can plot out a series of possible cross-examination questions and ask each other the questions to see how they will work. (These students do need to remember that they will have to alter their prepared material, to some extent, based on what happens in the direct examination.)
LESSON PLAN 6
THE RULES OF EVIDENCE AND PROCEDURE
(Two to Three Class Periods)

Depending upon the complexity of the trial and the amount of time available, teachers may choose to reduce the scope of this lesson plan. So that students will understand the relationship between these rules and the evidence they plan to present, teachers should use this lesson plan only after teams are well involved with the case preparation.

OBJECTIVES:
As a result of the activities described in this lesson plan, the students will be able to:
• Explain the purpose of the rules of evidence.
• Recognize leading questions, hearsay, irrelevant testimony, and opinions.
• Make proper objections to violations of the rule of evidence.
• Know how to respond to an objection.
• Correctly introduce a piece of evidence.
• Explain the concept of “impeachment.”
• Give an example of impeachment.

ACTIVITIES:
1. Reading Assignment: Teacher may choose to assign students to read the rules of evidence for homework, or have them read aloud in class. (15 min.)
2. General Discussion: What is the purpose of the rules of evidence? What might happen without them? What situations have students encountered in their lives that had specified rules of procedure? What would have happened without these rules? Are there situations from their everyday lives where these rules come up? (e.g. would a parent punish a child who said, “I think my sister did it?”) (20 min.)
3. Discussion of Examples: Taking each rule of evidence, teacher repeats what the rule is. Teacher asks for an example of a rule violation, other than one given in the text. What harm would come if the particular rule did not exist? Is this a useful rule? Are the rules given sufficient to make the trial fair? What rules would the class add? (30 min.)
4. Team Drill: Return the class to prosecution and defense teams. Ask one attorney to start direct questioning of a witness in the case you are preparing. All others in the group listen for violations of rules of evidence, and make objections as appropriate. (20 min.)
5. **Individual Drill:** On the board, write steps for introduction of physical evidence. Drill each attorney individually. (20 min.)

6. **Discussion of Impeachment:** Ask the class for their understanding of the concept of impeachment. Explain how the concept is applied in a trial to shake the credibility of a witness. (e.g., an attorney on cross-examination might show a witness a prior statement which contradicts testimony just made on direct examination.) For homework, ask each attorney/witness team to develop one example of possible impeachment for that witness. Demonstrate the examples in the next class. (20 min.)

7. **Review #2(a): Evidence Exercise:**

   Hand hypothetical Review Exercise 2(a) (look ahead five pages) to students and discuss. (15 min.) Answers are as follows:

   a) This is allowed as a statement by a party (the defendant here) as an exception to the general rule against hearsay. The defendant is present and can of course deny having made the statement.
   
   b) This is a leading question as it has the answer the attorney wants in the question and cannot be asked on direct examination. (It could be asked on cross-examination.)
   
   c) Yes, this is not leading.
   
   d) No, this is not relevant to the contract issue.
   
   e) Yes, this may be relevant to issues in a divorce case.
   
   f) Yes, if the witness could not remember he may be shown a written statement to refresh his recollection. The attorney does not have to introduce the statement into evidence.
   
   g) Yes, this is proper, to impeach the credibility of a witness.
   
   h) No, on cross-examination an attorney may only bring up issues raised on direct examination, this is called a question outside the scope of the direct examination.
   
   i) Yes, if Herb is first certified as an expert witness through being questioned about his prior training and experience.
   
   j) No, not as an expert, but he can testify to the fact that the victim appeared to be in pain or to other facts from his direct observation.
   
   k) No, one can testify only to things one knows from direct knowledge.

8. **Review #2(b): Evidence Drill.**

   This review exercise (five pages from this one) will help the students recognize improper questioning in a trial. They will also understand better the rationale for evidentiary rules and will get valuable practice in conducting
proper introductions of evidence. Attorneys could be asked to come in to help with this exercise.

To prepare for this exercise, the teacher will need to do the following:

1. Read over the Evidence Cases. Teacher will need to decide how to assign witness and attorney roles for each case. (There will be eleven witnesses and eleven attorneys. If the class is smaller than 22 students, some can get more than one assignment.)
2. Duplicate the Evidence Case pages at least twice (more, if needed.)
3. Cut the cases apart. For the eleven students who will act as witnesses, black out or cut off the lower part of the slip that describes the lawyer’s job. (Otherwise, the witness will have advance knowledge of what the lawyer is going to try.) Only each lawyer gets the entire slip.
4. Hand out the slips as appropriate. Tell students not to disclose their roles to the other students.
5. Teacher calls out the case number at random and reads the facts portion to the entire class. Student who has that case performs the lawyer’s role as instructed on the slip. The witness responds appropriately. (Teacher should see that this exchange is kept brief so as not to have too much material for the class to react to.)
6. Teacher instructs the other students to observe each lawyer’s action, and to make appropriate objections, if warranted. The student who volunteers an objection must explain the objection. For example, he or she should not merely call out “hearsay” but should indicate “hearsay, because…” Also, when making objections, students should practice using the proper form of address. For example, “Your Honor, I object to (type of objection) (because)” or “Your Honor, objection! The attorney is (type of objection) (reason). “
7. If the questioning can be done differently to avoid the evidence problem, the student playing the lawyer should rephrase the question properly.
8. Repeat as necessary with the remaining cases.
9. Debrief each case, encouraging discussion of the rationale for each kind of objection.
   (Amount of time for drill above will vary.)
LESSON PLAN 7
THE MOCK TRIAL
(One to Two Class Periods)

OBJECTIVES:
As a result of the activities described in this plan, the students will be able to:
• Conduct a mock trial, correctly following the sequence of steps in a trial and employing good technique for each role.
• Make complex prepared oral presentations as attorneys and witnesses.
• Demonstrate skill in listening, rapid critical analysis, and extemporaneous speech.
• Demonstrate knowledge of the rules of evidence and procedure.
• Demonstrate knowledge of the law applicable to the case.

ACTIVITIES:
Conduct the Mock Trial. Prior to the date of the Mock Trial, the teacher should be sure to have accomplished most of the tasks described in the “Mock Trial Administrative Checklist.” Be sure each formal observer has a copy of the Mock Trial Observation sheet at the start of the trial. Follow the steps in a trial listed in the Students' Guide: Section B.

BAILIFF’S DIRECTIONS:
A student should be selected to serve as the court bailiff (referred to as the “clerk” in many courts). This student should announce the opening of the court by stating “all rise” as the judge enters and then stating “please be seated” when the judge is seated. The bailiff then calls the name of the case, e.g. “Your honor, our case for today is St. Clair vs. St. Clair.”

As witnesses are called the bailiff requests them to raise their right hands and asks, “Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth?” Witness responds: “I do.” “Please be seated and state your name for the court, and spell your last name.” When attorneys have documents (such as an affidavit or another piece of evidence), they should first hand them to the bailiff who marks it “Prosecution’s Exhibit A, B, C. etc.” and Defendant’s Exhibit A, B, C etc.” depending on which attorney is presenting it.

Further details about the bailiff’s handling of items for identification can be found under “Special Procedures” in the “Simplified Rules of Evidence” section of the Students' Guide.
LESSON PLAN 8
DEBRIEFING AFTER THE MOCK TRIAL
(One Class Period or Less)

OBJECTIVES:
As a result of the activities described in the lesson plan, the students will be able to:
• Analyze the strong and weak points of each case presented in the trial.
• Identify the person or persons whose performance in the trial made a difference in the case.
• Critique the trial from the standpoint of its success in achieving justice.

ACTIVITIES:
1. Observers: Any student who was designated as an observer for the trial should have completed an Observation Sheet. After the trial is completed, the observers make reports of their observations to the class.
2. Teams: After hearing the reports of the observers, or in lieu of observer reports, prosecution and defense teams should re-form as small groups to discuss these questions:
   - What were the strong points in our presentation?
   - What were our weak points? How could they have been avoided?
   - Were our attorneys prepared correctly?
   - Did we make good objections?
   - Was the trial conducted in a fair manner?
   - Did we achieve our goal? Why or why not?
   - Even if we achieved our goal, could we have accomplished it in a different manner?
3. Large-Group Discussion: After the small groups have completed this discussion, summaries of their responses to these questions should be given to the whole class, with any appropriate additional discussion led by the teacher or an attorney, if one was present at the trial. An attorney (or judge) can be especially effective in debriefing a mock trial by comparing what went on to what usually occurs in real courts.
4. Written Assignment: In class or as homework, have students write a brief essay telling whether or not the trial was a sensible way to achieve justice in this particular case, and whether justice was in fact, achieved.
**REVIEW #1**  
(from Lessons 1 and 2)  
**TRIAL PROCESS AND STEPS IN A TRIAL**

From Column B place in the blank the letter for the word or phrase that most closely matches the definition in Column A.

**COLUMN A**

1. Trier of fact  
2. The burden of proof in a civil case  
3. Process of sharing information before trial  
4. Adversary process  
5. Written statement made by witness examination  
6. One type of defense in a criminal case  
7. Final step in the trial before the judge’s decision  
8. Person who represents the government in criminal cases  
9. What each party needs to present to prove their facts  
10. One way to settle a dispute without going to trial

**COLUMN B**

a. prosecutor  
b. closing argument  
c. jury  
d. evidence  
e. direct  
f. negotiation  
g. prosecution  
h. civil cases  
i. alibi  
j. discovery  
k. affidavit  
l. defendant  
m. trial  
n. preponderance of evidence

**LIST IN ORDER THE MAIN STEPS IN A TRIAL:**

1. _____________________________ 5. _____________________________
2. _____________________________ 6. _____________________________
3. _____________________________ 7. _____________________________
4. _____________________________ 8. _____________________________
Please note comments about each presentation; include things that could have been done differently or improved upon.

Observer’s Name: ___________________________ Date: ___________________________

<table>
<thead>
<tr>
<th><strong>PROSECUTION TEAM</strong></th>
<th><strong>DEFENSE TEAM</strong></th>
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<tbody>
<tr>
<td>Pre-Trial Motion</td>
<td>Pre-Trial Motion</td>
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<tr>
<td>Opening Statements</td>
<td>Opening Statements</td>
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<td>Direct Exam of First Prosecution Witness</td>
<td>Direct Exam of First Defense Witness</td>
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<td>Direct Exam of Second Prosecution Witness</td>
<td>Direct Exam of Second Defense Witness</td>
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<td>Cross Exam of First Defense Witness</td>
<td>Cross Exam of First Prosecution Witness</td>
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<td>Cross Exam of Second Prosecution Witness</td>
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<td>Objections</td>
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<td>Procedures for Using Documents</td>
<td>Procedures for Using Documents</td>
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<tr>
<td>Closing Arguments</td>
<td>Closing Arguments</td>
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</table>
a. Doug told me he killed his brother and Doug is on trial for the murder. Should I be able to testify to what he told me?

b. During direct examination, the attorney wants to show that the witness, David, was at school on November 30. Can he ask, “You were at school on November 30, isn't that correct?”

c. Same situation as in b. Can the attorney ask David, “Where were you on November 30?”

d. Harry’s being sued in a civil trial for breach of contract. Can the prosecution introduce evidence that Harry has been unfaithful to his wife?

e. Can Harry’s unfaithfulness be introduced in a contested divorce case?

f. John made a sworn statement two days after the automobile accident that he had witnessed. When the case finally comes to trial and he is called as a witness, John cannot remember what happened. Can his attorney show John the statement that may help him remember? Must the attorney introduce the statement into evidence?

 g. Same situation as in f, only John does remember and testifies on direct examination. However, his testimony contradicts his earlier sworn statement. On cross-examination, can the other attorney bring up the inconsistencies?

h. Mary is in a car accident and she sues the other driver. On her direct examination, damage to the car is never mentioned. Can the defense, on cross-examination, ask about the repair costs of the car?

i. Herb is a doctor. The attorney has Herb testify to this when Herb is on the stand. Can Herb testify that in his expert opinion, the victim was suffering from a fracture of the right leg?

j. Can Joe, a plumber who worked with the victim, testify that the victim was suffering from a fracture of the right leg?

k. Kevin has never seen Amy with her baby. Can Kevin testify that Amy is a terrible mother?
REVIEW #2(B)
THE EVIDENCE CASES

1. **The case:** A delinquency proceeding in juvenile court resulting from serious assault on a student on a school playground.
   **The witness on the stand:** The mother of the victim.
   **Your job as an ineffective lawyer:** Ask the witness a HEARSAY question.

2. **The case:** A dispute over the amount of money owed under a written contract.
   **The witness on the stand:** One of the parties to the contract.
   **Your job as an effective lawyer:** You want to have the written contract introduced into evidence as an EXHIBIT. Ask the witness questions to identify the contract and move the exhibit into evidence.

3. **The case:** A lawsuit brought by a woman who fell on spilled pickle juice at 9:30 p.m. in a grocery store.
   **The witness on the stand:** The prosecution (the woman who fell).
   **Your job as an ineffective lawyer:** Ask the witness an IRRELEVANT question.

4. **The case:** A medical malpractice suit. A doctor prescribed medicine for a pregnant woman and the baby was born retarded.
   **The witness on the stand:** The father of the child.
   **Your job as an ineffective lawyer:** Ask the witness an objectionable OPINION question.

5. **The case:** A contested marital dissolution (divorce) in which the wife is accused of being a chronic alcoholic.
   **The witness on the stand:** The wife.
   **Your job as an ineffective lawyer:** BADGER the witness with questions.

6. **The case:** A dispute over the custody of two children.
   **The witness on the stand:** The mother of the children. (She is being questioned by her lawyer.)
   **Your job as an ineffective lawyer:** Ask your client on the stand a LEADING question.

7. **The case:** A department store sues a customer for failing to pay the bill.
   **The witness on the stand:** The customer.
   **Your job as an ineffective lawyer:** Ask the witness an objectionable question about his CHARACTER.
8. **The case**: Criminal trial for purse snatching.  
**The witness on the stand**: An eyewitness testifying for the defense; she just testified that the defendant looks like the person who committed the crime.  
**Your job as an effective lawyer**: IMPEACH (destroy the credibility of) your witness.

9. **The case**: A criminal trial for burglary, the defendant claims he was in Florida on the day of the crime.  
**The witness on the stand**: The defendant.  
**Your job as an ineffective lawyer**: Ask the witness an objectionable CHARACTER question.

10. **The case**: A suit for emotional distress suffered by a man who found a dead mouse in his soda.  
**The witness on the stand**: The man who found the mouse.  
**Your job as an ineffective lawyer**: Ask the witness BADGERING questions.

11. **The case**: A dispute between a customer and a TV seller resulting from the failure of the seller to repair the set.  
**The witness on the stand**: The consumer.  
**Your job as an ineffective lawyer**: Ask the witness a HEARSAY question.
THE TRIAL PROCESS

THE PURPOSE

“Equal Justice Under Law” are the words carved deep into the stone above the entrance to the Supreme Court of the United States. This statement reflects the primary purpose of law in the United States: to ensure that every person in this country has the freedom and security to enjoy the benefits of life in a democratic society.

According to the democratic principles on which American society is built, every person should have a free and equal opportunity to pursue individual goals and desires. However, so that one individual’s pursuit of happiness does not infringe upon another’s, the citizens of this country, through the electoral and legislative processes, agree upon certain guidelines for their behavior. These guidelines comprise our system of law.

However, at times individuals come into conflict with one another, in spite of the system of laws. The reasons for conflict are varied. Laws do not cover every possible situation. Often individuals involved do not know or understand the law. In certain cases an individual deliberately chooses to break the law.

Whenever a dispute arises between individuals or between an individual and the government, or whenever an individual offends the general will of the people by breaking the law, a solution must be found that is in harmony with the principles of our society.

Several solutions might be considered:
1. a clarification of the rights of the parties;
2. a determination of right and wrong, or guilt and innocence;
3. a direction to one individual to take certain actions to make up for harming another's rights; or
4. even a fine and/or a sentence as punishment for breaking the law.

A trial is a widely recognized means for settling such disputes. However, going to court usually should be the last resort in seeking a solution. People should try to work out their problems first in one-to-one communication or with a third person.

Three common ways of settling disputes without going to court are:
1. negotiation, in which the parties talk face-to-face;
2. mediation, in which the parties talk through a third person called a “mediator” who helps them find a common ground on which they can agree to a solution; and
3. arbitration, a process less formal than a trial, in which a third party hears the complaints and makes a decision that the parties have agreed in advance to abide by.
However, when these methods fail, parties to the dispute sometimes go to a trial to find a solution. A trial is an “adversary process.” This means that two or more persons who are in conflict present their arguments and their evidence before a third party not involved in the dispute who then renders a decision. The “impartial” third party that renders the decision can be a judge or a jury. The judge or jury functions as the “Trier of fact.”

THE PARTIES

A trial revolves around an argument involving two or more people. The people who bring their argument to the trial are called the “parties” to the case.

A civil trial involves one person complaining about something another person did or failed to do. The person who does the complaining is called the “prosecution,” and the person who is the object of the complaint is the “defendant.”

In a criminal trial, a person is accused of a particular act that the law calls a crime, such as murder, robbery, or fraud. The person who does the accusing is the “prosecutor.” The prosecutor speaks on behalf of the government, which in turn represents the people of the state or nation. The person who is accused of the crime is the “defendant.”

Except in a few special circumstances (most notably small claims court cases in which lawyers frequently are not involved), both parties will hire and instruct lawyers to prepare their respective cases and to make their arguments in court.

THE FACTS OF THE CASE

Long before a trial actually takes place, some argument or incident occurs. Perhaps there is a traffic accident; a husband and wife decide they can no longer live together; someone is robbed at gunpoint. The argument or incident involves many facts, which together make up the “case” Persons on opposite sides of a case often will view the facts quite differently. This disagreement over the facts of an incident forms the basis for a trial.

In a trial, the parties present their differing versions of the facts before an impartial “trier of fact,” a judge or a jury. The job of the trier of fact is to decide which facts are correct.

THE EVIDENCE

While the description of the facts of the argument or incident as presented by each party is important, the trier of fact usually needs a lot more information in order to make a decision. The version of the facts given by the parties may be incomplete, or affected by their emotional state at the time of the incident. Or, in a few cases, parties might even give false versions of the facts.
For all of these reasons, the trier of fact needs more information than just the stories of each party. In a trial, the attorneys for each side present all of the factual information they can gather to support their side of the case. This information is called “evidence.”

Evidence may take several forms including:
1. **Testimony**: a person, called a “witness,” tells the court what he or she saw, heard, did, or experienced in relation to the incident in question.
2. **Documents**: letters, notes, deeds, bills, receipts, etc., that provide information about the case.
3. **Physical Evidence**: articles such as weapons, drugs, clothing that can provide clues to the facts.
4. **Expert Testimony**: a professional person, someone not involved in the incident, who can give medical, scientific, or similar expert instruction to help the trier of fact decide the importance of the evidence presented.

**THE BURDEN OF PROOF**

To guarantee that the trial process is fair to everyone involved, certain legal principles govern the way parties present their evidence, and the way the judge or jury considers the evidence and makes a decision. One of the most important rules concerns which party must prove his or her version of the facts, and how convincing he or she must be. This rule is called the “burden of proof.”

In a civil case, the person who brings the case to court and does the complaining (the prosecution) has the burden of proof. Prosecutions must convince the judge or jury that these facts are correct “by a preponderance of the evidence,” meaning that their evidence is slightly more convincing than the defendants' evidence. Some refer to this as meaning that 51 percent or more of the evidence supports prosecutions' side.

In a criminal case, the burden of proof is considered to be much stricter, because the defendant may go to prison if the prosecutor proves the state’s case. Therefore, the prosecutor must convince the judge or jury “beyond a reasonable doubt” that the accused committed the crime. Some state that “beyond a reasonable doubt” means that the trier of fact (judge or jury) must be at least 95 percent sure that the prosecutor is correct.

**THE DEFENSE**

As described above, the complaining or accusing parties usually have the burden of proving their particular version of the facts. The job of the defense team is to present evidence which prevents the prosecution or prosecutor from meeting the burden of proof. Defense evidence should explain, disprove, or discredit the evidence presented by the other party. For example, in a traffic accident case, suppose the prosecution presents a witness who testifies that the defendant was speeding just prior to hitting the prosecution’s car in an intersection. The defense could then present a witness who tells the court that the prosecution, who was hit...
while making a left turn, failed to signal before making the turn. The defense could also try to show that the defendant was not speeding at all. This defense testimony weakens the prosecution’s case by presenting an alternative explanation for the accident.

In criminal cases, defendants try to discredit the evidence presented by the prosecutor in a variety of ways:

1. presenting evidence to show that the defendant was not present at the scene of the crime (called an “alibi”);
2. showing that the defendant was acting to protect him/herself (self-defense); and
3. Presenting medical evidence showing that the defendant was mentally deranged at the time of the crime (insanity defense).

**PREPARATION FOR TRIAL**

Attorneys are responsible for collecting all of the evidence that supports the side of the case they are representing and for deciding how to present that evidence at the trial. It is the attorney’s job, therefore, to work out a strategy for the trial.

In general, there should not be any surprises at the trial (contrary to popular belief) if the attorneys are well prepared. This lack of surprises is also due to the fact that the attorneys for the opposing sides must let each other know what evidence they have collected. This advance sharing of information is called “discovery.” Discovery enables both sides to prepare their cases as well as possible, to ensure that the trial is fair.

Before the trial, witnesses might make “affidavits,” which are written statements of the facts, made voluntarily and sworn to, usually in the presence of a notary or other person authorized to administer oaths. Witnesses might also be required to give a “deposition,” which is testimony given out of court. At a deposition, attorneys for both sides are present to question the witness, while a stenographer records the testimony for later use in court.

During this period before the trial, attorneys must also spend time preparing for what they will actually say and do at each step in the trial. These steps and suggestions for attorney preparation are contained in the next section.
STEPS IN A TRIAL

Note to Students: For a civil case, substitute the word “plaintiff” for the word “prosecution”.

A number of events occur during a trial, and most must happen according to a particular sequence.
(The sequence may vary slightly based on state or local rules or practice.)
1. The following is the basic sequence in the trial process:
2. Judge enters and takes the Bench
3. Bailiff calls the case.
4. Prosecution (Prosecutor in criminal case) makes an opening statement.
6. Prosecution presents case:
7. Prosecution calls first witness and conducts direct examination.
8. Defense cross-examines the witness.
9. Prosecution conducts redirect examination, if desired.
10. Steps a, b, and c completed for each of the prosecutions other witnesses.
11. Prosecution rests case.
12. Defense presents case in same manner as Prosecution in #5 above, with
   Prosecution cross-examining each witness.
16. Prosecution offers any rebuttal argument.
17. Jury instructions (if jury trial).
18. Jury and judge deliberations.
20. Order (civil trial); Sentence (if found guilty in a criminal trial).

The main steps in this trial sequence, before the judge or jury start deliberating, can be summarized as: (Note how the sides take turns.)
1. opening statement by prosecution;
2. opening statement by defense;
3. direct examination of prosecution’s witnesses,
4. cross-examination of prosecution’s witnesses;
5. direct examination of defense witnesses;
6. cross-examination of defense witnesses;
7. closing statement (argument) by prosecution; and
8. closing statement by defense.

In the following sections on the next four pages, the four most critical stages of the trial are highlighted.
THE OPENING STATEMENT

OBJECTIVE: To acquaint the judge with the case and outline what you are going to prove through the witness’ testimony and the admission of evidence.

DESCRIPTION:
The opening statement is the introduction to the case. This first impression is critical to the trial since it’s the first time the attorneys for each side get to tell the judge and jury about what happened to their clients. It “paints a picture” of the case. Your direct and cross-examinations work to reveal the picture’s details in the best possible light.

In the opening statement the attorney should:
1. Identify themselves, co-counsel and their client,
2. Summarize the case in less than 30 words using key facts according to your party’s case,
3. Summarize the evidence that will be presented at the trial,
4. Identify who has the burden of proof (the amount of evidence needed to prove a fact).
5. Tell the court what decision you want them to come to at the end of the trial.

STYLE POINTS:
1. Prosecution’s Attorney: Since this attorney speaks first, it is very important for the prosecution’s opening statement to include a good summary of the facts, presented in a light most favorable to the prosecution. If the opening statement presents a very convincing picture of the prosecution’s case, the defense team will have a much harder time changing the minds of the judge and jury.
2. Defense Attorney: The defense team has the task of showing that the prosecution’s version of the facts is not correct. The defense attorney prepares by predicting how much detail and what kind of emphasis the prosecution’s attorney will make in his/her opening statement. The defense attorney should be ready to make adjustments in his or her prepared statement while the prosecution’s attorney speaks. The defense attorney should highlight the facts that are in dispute and emphasize the kinds of evidence the defense will present to show that the prosecution is wrong.
3. Hot Tips:
   a. Know your case, inside and out. You will then appear confident in your case.
   b. Attorneys should make eye-to-eye contact with raters while speaking.
   c. Do not read your statement. The use of notes is discouraged and your score may reflect it. If necessary, however, do not read all the way through and look up as often as possible at the judge.
   d. Use the future tense in describing what you will do, for instance ‘The facts will show...’.
   e. Don’t emphasize evidence that might not get admitted. Never promise to prove something you can’t.
   f. Call your client by name, but refer to your opponent as plaintiff or defendant.
g. Don’t be wordy – use concise and specific language to cast your case in the most positive light.
h. Use an analogy, a phrase or word, or create some memorable image that you refer to in your closing.

THE DIRECT EXAMINATION

OBJECTIVE: To obtain information from favorable witnesses to prove the facts of your case.

DESCRIPTION:
After the opening statements, the process of witness examination begins – a chance for witnesses to tell their story. First, the prosecution’s team presents its witnesses, then the defense team. Each time a witness is called to the stand, the attorney who called the witness asks a series of questions called the direct examination. These questions reveal what the witness saw, heard, experienced or knew.

The questions must ask only for facts, not for opinions (unless the witness has been declared to be an ‘expert’ in a particular subject, such as a doctor or a police detective). When the direct examination is completed, an attorney for the other side then asks questions to show weaknesses in the witness’ testimony, a process called ‘cross-examination.’

STYLE POINTS:
1. Attorney Conducting Direct Examination:
   a. Before the trial decide the details each of your witnesses know that will help you prove the main points of your case. Then ask sequence questions in a logical manner that will reveal these details.
   b. The direct examination’s aim is to protect your witness.
   c. Avoid lengthy or complicated questions. Ask who, what, when, what, where, how questions.
   d. Leading questions cannot be used on direct examination. (See Rules of Evidence section.)
   e. Be prepared to rephrase questions in case the witness does not understand a question or fails to remember facts accurately, or in case the other side objects to a question. (Grounds for objections are discussed in the Rule of Evidence section.)

Be sure to have all documents marked for identification before you refer to them at a trial. Then refer to them as Exhibit A, etc. After you have finished using an exhibit, if it at all helps your case, ask the judge to admit it as evidence.

2. Opposing Attorney:
   a. Listen carefully to the questions and answers since cross-examination must be limited to subjects discussed in the direct examination.
   b. Listen for violations of the Rules of Evidence.
c. Be prepared to make good objections. It’s often more beneficial to you to take up ‘objectionable’ issues during cross-examination, rather than objecting too much. You don’t want to alienate the raters.

3. **Witness:**
   a. Know the questions that your side’s attorney will ask and prepare clear and convincing answers that contain the information that the attorney is trying to elicit from your testimony.
   b. The most important factor in the trial is the believability (often called “credibility”) of the witnesses.
   c. Witnesses should tell their stories clearly with as little hesitation as possible.
   d. It's important for witnesses to know the facts thoroughly.
   e. **NOTE:** The attorney who conducted the direct examination may do a ‘redirect’ at the close of cross-examination (see next section). A redirect examination follows the same rules as direct. However, the questions are limited to subjects discussed in the cross-examination. *Ask that time you don’t use in your direct be reserved for redirect.*

4. **Hot Tips:**
   a. **Attorney:**
      i. Focus the attention on the witness not on yourself.
      ii. Allow your witness to explain some facts that may be detrimental to your case. This will minimize the opposing counsel’s attempt to ‘sting’ you with it in cross-examination
      iii. Think quickly if the witness gives you an unexpected answer. Add a short follow-up to be sure you obtain the testimony you wanted and needed.
      iv. Do not make any statements about the facts, even if the witness says something wrong.
      v. If you need a moment to think, ask the judge if you can discuss a point with your co-counsel for a moment
   b. **Witness:**
      c. Know what your witness doesn’t know. Be very familiar with the facts.
      d. Direct your eye contact to the audience raters. They’re the ones you have to convince.
      e. Use gestures sparingly and strategically to emphasize key moments in your testimony.
      f. Don’t panic if the attorney or judge asks you a question you haven't rehearsed.
      g. Don’t argue with the attorney.
THE CROSS-EXAMINATION

OBJECTIVE: To make the other side’s witnesses less believable.

DESCRIPTION: The purpose of the cross-examination is to show the judge and jury that a given witness should not be believed. The attorney will try to cast doubt on the evidence and witness credibility. They’ll work to prove that the witness:
1. cannot remember facts;
2. did not give all of the facts in the direct examination;
3. told a different story at some other time;
4. has a reputation for lying;
5. has a special relationship to one of the parties (maybe a relative or close friend) or bears a grudge.

QUESTIONS TO ASK:
1. Witness credibility: Show that he has given a contrary statement at another time.
   a. Example: The witness testifies to the exact opposite of what he testified to during the pre-trial hearing. Ask the witness, “Did you make this statement on June 1st?” Then read it or show a signed statement to the witness and ask, “Is this your statement?” Then ask the witness to read part of it aloud or read it to the witness yourself and ask, “Did you say that?”
2. Witness competence or qualifications: Show that an expert witness or even a lay witness who has testified to an opinion lacks training or experience.
   a. Example: A psychiatrist testifying to the defendant’s need for dental work, or a high school graduate testifying that in his opinion the defendant suffers from a chronic blood disease.
3. Witness is lying: Show the contradiction.
   a. Example: The witness first testifies to not being at the scene of the accident and soon after admits to being there.
4. Witness is prejudiced or biased: Show the place in testimony where the witness showed bias.
   a. Example: The witness testifies that he has hated the defendant since childhood.
5. Witness opinion is questionable: This could be because of poor eyesight, hearing etc.
   a. Example: The witness with poor eyesight claims to have observed all the details of a fight that took place 500 feet away in a crowded bar.

STYLE POINTS:
1. Attorney Conducting Cross-examinations:
   a. This attorney must know precisely what kind of weaknesses he or she wants to show in the witness.
   b. Ask short, “leading” questions (discussed in the Rules of Evidence). For example, “Isn’t it true...?”
   c. Be brief. Don’t ask so many questions that well-made points are lost.
d. Pin down a witness by asking a question requiring a yes or no. Tactfully interject on an explanation which may hurt your case. Say “You may stop there, thank you,” or “That’s enough, thank you.”
e. Questions must be limited to subjects discussed in the direct examination or they can be objected to as “outside the scope of direct examination.”
f. Always listen to the witness’s answer.
g. Don't give the witness the opportunity to re-emphasize the strong points made during the direct exam.
h. Don't harass or intimidate or argue with the witness through your questions.

2. **Opposing Attorney**:
   a. Listen carefully for violations of the Rules of Evidence and be prepared to make objections.
   b. Listen carefully for the kind of attack the cross-examiner is making; decide if the attack is successful and what to do about it if it was damaging to your case.
   c. After the cross-examination, the opposing attorney may conduct a “redirect” examination, to give the witness a chance to explain or correct some points made in the cross-examination.
   d. Be relaxed and ready to adapt your prepared questions to the testimony that is actually heard during the direct examination.

3. **Witness**:
   a. Witnesses should try to give explanations whenever possible.
   b. Witnesses must pay close attention during cross-examination. The attorney may try to confuse them.
   c. Memorize the facts and make sure that any digression from your testimony is consistent with the facts.
   d. Be natural and in character emotionally and in your mannerisms and speech.
   e. Prior to the trial, isolate all possible weaknesses, inconsistencies, problems in your testimony, and be prepared to explain them.
   f. Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.
   g. Don't read or recite your witness statement word for word.

4. **Hot Tips**:
   a. **For attorneys**:
      i. Phrase your questions so you know how the witness will answer them. Ask the question in a different way if you don’t get the answer you were seeking.
      ii. Be quick to spell out to the raters through your questioning the times when the witness shows bias, contradicts their testimony, is lying or being uncooperative.
      iii. Make your presence so compelling that attention is focused on you rather than on witness’ answers.
      iv. Make sure you have the gender of the witnesses in mind when you refer to them as him or her.
v. Never ask the witness “How,” “Why” or “Could you explain” questions.

b. For witnesses:
   i. Know what your witness doesn’t know.
   ii. Direct your eye contact to the audience raters. Use gestures naturally and strategically for emphasis.
   iii. Don’t argue with the attorney. Cross-examination can be tough, so don’t get flustered.
   iv. Predict the opposing party’s cross-examination questions. You’ll know what to say and this will help you keep your composure under pressure.

**OBJECTIONS**

The purpose of objections is to protect your witness. You want to keep the court record clean of information that is out of bounds. When an attorney hears a question that is out of bounds, she/he stands and says, “I object, your honor.” Then the attorney must state what she/he is objecting to and the Rules of Evidence it violates (if they know it). The judge will often allow the opposing attorney to respond to the objection, before making a ruling.

**The Judge can say:**
- Objection Sustained – The question is thrown out. The attorney can rephrase the question or move on.
- Objection Overruled – The question does prevail. The questioning attorney can repeat the question to get back on track.
- Your Objection is Noted – The judge will listen to the answer, but take the objection into account.
- Objection Overruled as Made – The judge is overruling because the objection was made incorrectly. The objecting attorney should try to restate the objection correctly.

**Hot Tips:**
- Keep your objections impersonal. Try to resist clashing with your opponent.
- Some trials can get messy with lots of objections and even antagonism. This will pointlessly draw both teams away from the focus of the trial. Resist getting drawn into this type of engagement.
- It’s best to hide emotions based on the ruling of the judge. Never disagree with the judge.
- After the judge has made his/her decision, move on. When the judge overrules an objection, don’t lose heart and stop objecting. Just choose your objections carefully.
- Plan your strategy with your co-counsel. Predict opinion and hearsay objections. Plan what you’ll say when the opposing team makes a legitimate objection.
THE CLOSING ARGUMENTS

OBJECTIVE: Make your final case about what evidence is credible or not and which witnesses should be believed or not. Summarize the application of the law to your case and ask that your case prevail.

DESCRIPTION:
The purpose of the closing argument is to convince the trier of fact (judge or jury) that the evidence presented is sufficient to win the case for whichever side the attorney is representing. The closing argument should include:
1. a summary of the evidence presented that is favorable to the presenting attorney’s side,
2. a summary of the case, an
3. a legal argument showing how the law requires the judge or jury to interpret the facts, and why that law requires them to rule in favor of the side for which the attorney is arguing.

STYLE POINTS:
1. Prosecution Attorney:
   a. The prosecution has the burden of proving the facts in a civil case by a preponderance of the evidence. Tell the jury how you met that burden. Your compelling summary of the favorable evidence presented is extremely important.
   b. Be sure to avoid claiming evidence that was not, in fact, presented; similarly, do not emphasize evidence that the defense successfully attacked, except to give a firm response to such an attack.
   c. Cite the law clearly and correctly and make a clear argument regarding how the law requires the judge or jury to rule in the prosecution’s favor.
2. Defense Attorney:
   a. Summarize all of the evidence presented to weaken the prosecution’s case.
   b. Emphasize the inability of the prosecution to meet the burden of proof and stress that such inability must clearly lead to a decision in favor of the defendant.
3. Both Attorneys:
   a. Thank the judge and raters for their time and attention.
   b. Isolate the issues and describe briefly how your presentation resolved these issues.
   c. Review the witness testimony. Outline the strengths of your side’s witnesses and also the weaknesses of the other side’s witnesses. (Remember to adapt your statement at the end of the trial to reflect what the witnesses actually said as opposed to the anticipated weaknesses of the other side.)
d. Review the physical evidence. Outline the strengths of your evidence and the anticipated weaknesses of the other side’s evidence. (This section must be adapted at trial.)

e. State the applicable statutes and any cases to show it supports your side.

4. **Hot Tips:**
   a. Tie your opening and closing thematically together.
   b. Show adaptability/flexibility. If the opposing counsel successfully used an analogy, visual, or a turn of a phrase that can be twisted or adopted in your favor, do so in your closing.
   c. Don’t forget to request the verdict/remedy you desire.
TIPS FOR PREPARING
WITNESSES AND ATTORNEYS

This section outlines various areas of study essential to a team that enters competition.

PRACTICE, PRACTICE, PRACTICE:
• Deciding on which are the most important points to prove their side of the case and to make sure that proof takes place.
• Following the formality of court, e.g., standing up when the judge enters; or when addressing the judge, to call the judge “Your Honor,” etc.
• Telling clearly what you intend to prove in an opening statement and to argue effectively in your closing argument that the facts and evidence presented have proven their case.
• Phrasing questions on direct examination that are not leading (carefully review the rules of evidence and watch for this type of questioning in practice sessions).
• Not asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions that often lessen the impact of points previously made.
• Recognizing what questions are likely to require answers from the witness that will make good points.
• Learning to avoid pointless questions!
• Thinking quickly on their feet when a witness gives an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at the attorney or witness. (Practice sessions will help prepare for this.)
COURTROOM DECORUM

- Always be courteous to witnesses, attorneys, audience raters and the judge.
- Always stand when talking in court and when the judge enters or leaves the room.
- Dress appropriately. (If it's a formal competition trial, this may mean coat and tie for males and dresses or equivalent for females.)
- Prior to opening statements, ask the judge if you may present stipulations you would like him/her to consider.
- Do not stand in the view of the opposing counsel when you are examining a witness.
- Always say “Yes, Your Honor,” or “No, Your Honor,” when answering a question from the judge.
- Attorneys should try to make objections in a manner which allows the judge to hear the full question being asked, but not the responsive testimony.
- Judges and raters don't like attorneys who constantly make objections or attorneys who make objections without being able to explain the reason for the objections.
- Learn how to introduce evidence. Mark the evidence first. Show the evidence to the witness. Ask the witness to identify the evidence as authentic. Ask the judge that the evidence be admitted. The bailiff will give the evidence to the judge.
- If the judge rules against your objection, take the defeat gracefully and without showing emotion.
- Gum chewing is prohibited.
- The members of your team watching from the audience should not be talking during the proceedings.
- Coaches should not be talking to their team members sitting in the audience boxes.
CASE PREPARATION TIPS FOR ATTORNEY COACHES AND TEACHERS

- Teachers should duplicate and distribute to appropriate individuals, all student materials included in this manual.

- Case preparation can begin in class and move outside of class when the competition team is selected. Attorney coaches should try to attend 2-3 in-class sessions during initial preparation.

- Attorneys can be of assistance to the teacher in discussions of the following:
  - procedures in trials;
  - burden of proof;
  - rules of evidence (explain only simplified rules of evidence included in this manual);
  - the roles of each participant, i.e., attorney, witness;
  - law relevant to the competition case given in this manual.

- Brainstorming is a good teaching technique to use for case preparation. Attorneys should avoid lectures. Attorneys and the teacher should elicit ideas from students rather than spoon-feed them. Use this technique in reviewing steps of a trial, identifying important issues, developing arguments, deciding what should be included in opening and closing statements, questioning techniques.

- During group work, attorneys can take one group and the teacher the other.

- Teachers and attorneys must be thoroughly familiar with the rules of evidence and rules of competition.

- It is important to de-emphasize the competitive aspects of the experience and stress the educational benefits and enjoyment.

- Attorneys should be available to attend preparation sessions before the District Competitions.

- Attorneys and teachers can help students prepare their statements, but should avoid the temptation to help too much. Students should be encouraged to do as much of the writing as possible.
KEY POINTS TO REMEMBER

1. All participants should speak loudly and clearly. Practice this by having each student attorney stand at the far end of the room while questioning the student witness.
2. As soon as possible, student attorneys should begin formulating questions for use in examination of witnesses, and student witnesses should rehearse their testimony. Student preparation will progress more rapidly by simulating actual conduct of the trial than by merely conducting general classroom discussion of the steps in the trial.
3. Leading questions are not allowed on direct examination, but can and should be asked on cross-examination.
4. Courtroom etiquette and decorum should be stressed at practice and observed at trial (e.g., standing when addressing the court, calling the judge “Your Honor”).
5. Cross-examination should be short and to the point: questions on cross-examination are designed to elicit a particular response from the witness, asking open-ended questions which call for a narrative or explanation (e.g., “How,” “Why,” or “Could”) may result in testimony which is unexpected and harmful to the cross-examiner’s case.
6. Each attorney should be prepared to state the reasons for overruling an objection raised by the opposing counsel during questioning of the witnesses.
7. The witness statements should not be read verbatim in the trial. Witnesses will not be permitted to take their statements to the stand. They serve merely as a point of departure for oral testimony. However, testimony must not be inconsistent with facts set forth in the witness statements.
8. Credibility of witnesses is very important and therefore, students acting as witnesses should be encouraged to get into the roles and to attempt to think and dress like the person they are playing. These students should read over the statements many times and have other people ask them questions about the facts until they know them “cold.”
9. The witnesses’ performance will be taken into consideration when evaluating the team’s performance during the competition.
10. Witnesses are not permitted to refer to their statements during the trial, except to refresh recollection (direct) or impeach (cross).
11. Even though the class is representing one side during the first round of competition, during practice sessions students on the competition team should be assigned to play all witnesses. Use case preparation materials completed during classroom work so that your competing students have two sets of trial materials to work from.
12. During the practice rounds, you may wish to get students from another class to constitute the jury. The jury should not be allowed to read the statement of facts or witness statements prior to the trial in order to avoid predisposition, to simulate more precisely an actual trial and to more adequately determine your team’s effectiveness.
13. Opening statements and closing arguments should be written by students. Attorney and teacher coaches can assist with editing, but not the actual
writing of arguments. Coaches should not tell students to incorporate language the students do not understand. Closing arguments should not be totally composed before trial as they are supposed to highlight the important developments for the prosecution and defense that occurred during the trial.

14. It should be made clear to students that material or relevant facts cannot be changed from their witness statement. If they contradict this statement on the witness stand, the opposing attorney may use it to impeach the witness. Students also may not “invent” relevant medial facts or incidents that not in the statements. However, when an attorney on cross-examination asks a question the answer to which is not included in the statement of facts, the witness will be forced to respond with an answer consistent with his character and the facts. This should be a warning to cross-examiners to avoid asking questions which are not included in the statement of facts or witness statements, as the response will be accepted (see rules of competition).

15. Always conduct a debriefing session after a practice round in order to identify and correct possible deficiencies. Include questions such as:
   A. Was the opening statement an accurate picture of what the trial actually produced?
   B. Did the examining attorneys elicit all the necessary facts from the witnesses?
   C. Were the witnesses convincing and adequately prepared?
   D. Did the closing arguments effectively summarize the main points the witnesses made? Did they identify deficiencies of the opposing side’s case?

16. Some of the things most difficult to learn are:
   A. To phrase questions on direct examination that are not leading;
   B. To introduce documentary or physical evidence;
   C. To follow the formality of court;
   D. Not to ask so many questions on cross-examination that well-made points are lost. When they have contradicted a witness or made him/her otherwise look bad, student attorneys tend to ask additional questions which often lessens the impact of points previously made. Students should be encouraged to recognize what answers make good points so that they know when to stop;
   E. To tell what they intend to prove in an opening statement and, in the closing argument, to argue that the facts and evidence presented have proved their case.

17. Teams must be prepared to present both sides of the case, as attorneys for the prosecution or defendant.

18. In order to deter unfair extrapolations on redirect examination, re-cross examination is allowed, so long as the questioning is strictly within the scope of the redirect.
AWARDS AND RECOGNITION

DISTRICT COMPETITION

- Certificates will be sent to District Conveners for distribution to each participant following district events.
- Conveners may choose to award certificates for outstanding witness and attorneys for their local event.

STATE FINALS COMPETITION

- Certificates will be sent to teachers for distribution for each student who participates in the State Finals.
- Each participating team will receive an award.
- Trophies will be awarded to the State Final Champion and second through third place teams.
- Awards will be presented to the individual outstanding witness and student attorney for the both the competition overall and the Championship Round.
SECTION 3

Rules
INTRODUCTION

These rules are supplemented by any specific stipulations and comments provided in the current case. These rules are also supplemented by the Simplified Rules of Evidence and Trial Guidelines sections of the kit.

These materials should be interpreted to be consistent with one another. In the event of an actual conflict between different sections of the Mock Trial materials, the following order of precedence should be used: (1) current case stipulations and comments; (2) Simplified Rules of Evidence; (3) Mock Trial Competition Rules; (4) Trial Guidelines.

The Washington State Mock Trial Competition is sanctioned and governed by YMCA Youth & Government, and the Competition Rules set forth here. These rules are established in consultation with the YMCA Youth & Government Board of Directors, the Mock Trial Program Chair, and the Mock Trial Program Committee. They are designed to ensure excellence in presentation and fairness in scoring all trials and tournaments.

All participants are expected to display proper courtroom decorum, professional conduct, and appearance appropriate for the part they are to play during the trial.
PART 1. GENERAL TRIAL PROCEDURES

Rule 1.01 – Order of Events
In general, a mock trial round should follow this order of events:
   a) Before the round, teams confer and distribute rosters (see Rules 1.3 and 1.4)
   b) Teams introduce themselves (see Rule 1.5)
   c) Teams ask the judge to clarify any preliminary matters (see Rule 1.6)
   d) Pretrial motion
   e) Opening statements
   f) The timekeeper swears in all witnesses (see Rule 1.7)
   g) Examination of Plaintiff/Prosecution witnesses
   h) Examination of Defense witnesses
   i) Closing arguments
   j) Raters submit scores
   k) Raters and judge make brief comments

Rule 1.02 – Courtroom Setting
The Plaintiff/Prosecution team sits at the table closest to the jury box. The jury box should be on the same side of the courtroom as the witness stand. The first row of benches behind each counsel table are reserved for witnesses for that side. The student portraying the defendant may sit at counsel table with their attorneys.

Rule 1.03 – Teams Conferring Before Trial
Outside of extenuating circumstances, teams should arrive in their assigned courtroom fifteen minutes before the scheduled starting time of the trial. Opposing teams should meet before the trial begins to discuss the order that witnesses will be called, the preferred gender pronouns to be used for each witness, and any other matters that can be resolved ahead of time. Each team should show the other side any enlargements of exhibits or visual aids that may be used during trial to ensure there is agreement that they conform to Rule 5.4. Teams should confirm with the timekeepers that both sides understand when to stop and start time under Rule 2.2. Students may ask the judge to participate in this conference.

Rule 1.04 – Team Rosters
Before trial begins, teams should provide copies of their roster to the judge, the opposing team, and each of the raters. Rosters must include the team’s letter code, the side the team will present, the names of each student competing during the round, and the role each student will play during the trial. Unless prohibited by a team’s school or sponsoring organization, rosters should include photographs of each student to aid the raters identify who is who. Rosters should not include any words or pictures that could allow a rater or judge to infer the team’s school. An example of a team roster is included in the case materials.

Rule 1.05 – Team Introductions and Identification of Conflicts
At the beginning of the trial, teams may briefly introduce themselves to the judge and the raters. Teams should identify themselves by the side of the case they will present and not indicate their school or team name. Witnesses should indicate both their real name and the part they will play during the trial. Attorneys should not describe the specific parts of the trial they will present. These introduction should be kept as short as practicable. Following introductions, the judge should ask the raters and students whether they know of any potential conflict between the teams and the raters that could appear to bias the scoring. If a conflict is identified, the judge should immediately alert the tournament convener.
Rule 1.06 – Preliminary Matters
Following introductions, an attorney from each team may ask the court to note, clarify, or resolve any procedural issues before the trial gets underway.

Rule 1.07 – Swearing of Witnesses
The timekeeper provided by the Plaintiff/Prosecution team should swear in all witnesses before examinations. The following oath should be used: “Please stand and raise your right hand, as you are able. Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?”

Rule 1.08 – Stipulations
Stipulations are considered a part of the record and already admitted into evidence. Unless otherwise provided in the case materials, stipulations may be presented through the testimony of any witness.

Rule 1.09 – Motions Prohibited
The only motions permissible are the pre-trial motion included in the case materials and a motion requesting the judge to strike testimony following a successful objection to its admission.

Rule 1.10 – Bench Conferences
In exceptional circumstances an attorney may request a bench conference with the judge to clear up or protest a significant and urgent procedural issue, Competition Rule violation, or factual question. One representative from each team must be present for all bench conferences. It is the responsibility of the attorney requesting the bench conference to provide the page and number of any rule in question. Students are advised not to overuse this procedure.

Rule 1.11 – Outside Materials
Students are encouraged to read other cases, laws, materials, articles, etc., in preparation for the mock trial competition, but they may only cite to the materials given as part of the official mock trial problem, the Competition Rules, or the High School Mock Trial Rules of Evidence.

Rule 1.12 – Cell Phones and Electronics
No student competing in a round of mock trial may use or have in their possession a cell phone, computer, or any other device that can connect to the Internet. Teams may ask the judge to make an exception for medical necessity. Any exceptions made to this rule should be disclosed to the opposing team and the raters.
PART 2. TIMEKEEPING

Rule 2.01 – Time Limits
Subject to the time-stopping provisions in Rule 2.2, the following time limits apply to each part of the mock trial round:

a) Pretrial Motion:
   1. Moving party’s motion 4 minutes
   2. Non-moving party’s response 4 minutes
   3. Moving party’s rebuttal 2 minutes
   4. Non-moving party’s surrebuttal 2 minutes

b) Opening Statement:
   1. Plaintiff/Prosecution statement 5 minutes
   2. Defense statement 5 minutes

c) Witness Examinations:
   1. Plaintiff/Pros. direct examination 24 minutes total for all witnesses
   2. Defense cross examination 20 minutes total for all witnesses
   3. Defense direct examination 24 minutes total for all witnesses
   4. Plaintiff/Pros. cross examination 20 minutes total for all witnesses

d) Closing Argument:
   1. Plaintiff/Prosecution argument 6 minutes
   2. Defense argument 6 minutes
   3. Plaintiff/Prosecution rebuttal 2 minutes

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. Time spent on redirect and recross examinations counts against that team’s direct and cross examinations, respectively. Rater and judge comments after the trial should not exceed 5 minutes per person or 15 minutes total.

Rule 2.02 – Clock Stoppage
The following times do not count against the limits in Rule 2.1:

a) During the pretrial motion, the clock stops when the judge asks a question and does not resume until the attorney has finished answering that question. If the attorney has spent more than a minute answering a single question, the timekeepers should agree to restart the clock.

b) Objections
   1. District Competitions: In advance of a trial, as preliminary matter (see section 1.06), attorneys may ask the judge to establish a rule to stop the clock during objections. In this case, the clock will stop when the opposing party makes an objection and does not resume until the examining attorney asks their next question. The clock does not stop if the examining attorney makes the objection, unless the opposing party responds. The judge’s ruling on the request will be final. In the alternative, the judge may add time at the expiration of total direct or cross-examination time, upon the request of the affected team.

   2. State Championship Tournament: During witness examinations, the clock stops when the opposing party makes an objection and does not resume until the examining attorney asks their next question. The clock does not stop if the examining attorney makes the objection, unless the opposing party responds.

   c) Witness Impeachments: The clock will not stop for witness impeachments during direct or cross examinations.
Clock Stoppage, cont.
d) The judge may add additional time at the expiration of total direct or cross examination for inappropriate time wasting by the opposing team, upon the request of the affected team. The ruling of the judge on this request is final.
e) The clock stops for any other interruptions to the trial until the proceedings can resume. This includes any questions raised by the judge and the attorney’s answer. While objections and judge’s questions are not permitted during opening statements and closing arguments, any such interruptions should still stop the clock.

Rule 2.03 – Two Timekeepers
a) District Competitions: The plaintiff must provide a student timekeeper for the trial. It is suggested that the defendant provide a second student timekeeper for the trial. When there are two timekeepers for a trial, these students should sit near the judge, in a location visible to the teams. If allowed by the judge, the timekeepers may move to the jury box during opening statements and closing arguments for better visibility. Timekeepers should be properly trained, and must attend training if it is provided at their district competition.
b) State Championship Tournament: Each side must provide a timekeeper who is a student on the competing team and not playing any other role on that side of the case. Timekeepers should sit together near the judge, where they are visible to the raters. Timekeepers may move to the jury box during opening statements and closing arguments so that attorneys may better gauge the amount of time remaining. Timekeepers must attend the timekeeper training.

Rule 2.04 – Timekeeper Materials
Timekeepers are responsible for bringing:
a) At least two silent devices (preferably not cell phones) that can track time to the second;
b) A set of the time cards included in the case materials;
c) A form to keep track of the time spent on each portion of the trial;
d) A copy of these timekeeping rules; and
e) Something to write with.

Rule 2.05 – Timekeeper Duties
During the trial, timekeepers should act as a neutral entity to fairly and accurately track the time spent on each portion of the trial, stopping the clock for the reasons listed in Rule 2.02. The timekeepers must write down the time spent on each part of the trial, keeping track of each witness’s examinations separately. Time starts for an examination when the examining attorney asks their first question. When there is 15, 10, 5, 2, 1, \(\frac{1}{2}\), or 0 minutes left in a part of the trial (including raters’ comments after the trial), the Plaintiff/Prosecution timekeeper must hold up the corresponding time cards so that the attorney, judge, and raters have an opportunity to see it. The Plaintiff/Prosecution timekeeper keeps holding up the 0 time card until that part of the trial ends.

Rule 2.06 – Timekeeping Discrepancies
When two timekeepers are in use, the timekeepers should confer with each other throughout the trial to ensure there is no substantial difference between their times. Timekeepers should raise any differences of more than 15 seconds with the judge during a break in the proceedings (e.g., after an examination or speech is finished and the clock has stopped). The judge will determine how to resolve any discrepancies and the timekeepers should synchronize their stopwatches accordingly before the trial continues.
Rule 2.07 – Objections for Exceeding Time Limits
When the timekeeper raises the 0 time card during an examination, the witness should be allowed to finish their answer to the attorney’s final question. If raised during a speech, the attorney should be allowed to finish their sentence without objection. If the attorney starts a new question or sentence after the 0 card is raised, the opposing team may object that the attorney is out of time. The attorney must stop or request additional time from the judge.

Rule 2.08 – Time Extensions
If a team has less than two minutes left when starting the examination of a witness (either direct or cross examination), the judge must grant additional time so that the team receives at least two minutes for the examination of the witness. In all other cases, the judge has the sole discretion to grant time extensions. If the judge determines that a witness has given non-responsive, evasive, or unnecessarily long answers during cross examination, the judge should grant additional time to the cross examining attorney.
PART 3. PRETRIAL MOTIONS, OPENINGS, AND CLOSINGS

Rule 3.01 – Rebuttal and Surrebuttal
During the pretrial motion, both the moving party and the non-moving party receive a two-minute rebuttal and surrebuttal, respectively. During the closing argument, only the Plaintiff/Prosecution receives a two-minute rebuttal. There are no rebuttals during opening statements. The attorney who presents the initial argument must be the same attorney who presents any rebuttal or surrebuttal.

Rule 3.02 – No Objections
Objections are not allowed during the pretrial motion, opening statements, or closing arguments, except if the attorney starts a new sentence after exceeding their time limit as provided by Rule 2.07. Attorneys may not make “offers of proof” (stating objections that would have been made after opening statements and closing arguments).

Rule 3.03 – Division of Attorney Roles
The attorney who gives the opening statement is not allowed to also give the closing argument. Any attorney that examines witnesses must also present the pretrial motion, the opening statement, or the closing argument. Any attorney that presents either the opening statement or the closing argument must examine witnesses as provided for in Rule 4.13. An attorney is permitted to present only the pretrial motion and not conduct the examination of any witnesses.

Rule 3.04 – Timing of Opening Statements
Opening statements must be given by both sides at the beginning of the trial, before witness examinations.

Rule 3.05 – Use of Exhibits or Visual Aids
In general, exhibits or visual aids may not be used during the pretrial motion, but the attorney arguing the pretrial motion may give the judge a copy of any exhibits or witness testimony that the motion requests be excluded or suppressed, or that forms the factual basis of the motion. Admitted exhibits (or enlargements of admitted exhibits as provided by Rule 5.4) may be used during closing arguments. Simple charts outlining evidence or law may be used on closing argument or, in the discretion of the judge, opening statements; any such charts must conform to the format restrictions in Rule 5.4 and be shown to the opposing team before trial. No props are allowed during the pretrial motion, opening statements, or closing arguments.

Rule 3.06 – Position in Courtroom
To permit judges and raters to hear and see better, attorneys presenting the pretrial motion, opening statement, or closing argument should stand, as they are able. Attorneys should not leave counsel table or the podium without the judge’s permission.

Rule 3.07 – Scope of Closing Arguments
Closing arguments should be based upon the actual evidence and testimony presented during the trial.
PART 4. EXAMINATION OF WITNESSES

Rule 4.01 – Calling Witnesses
During trial, teams must call all witnesses included for their side of the case. All witness for the Plaintiff/Prosecution must be called before any Defense witnesses are called. Witnesses may not be recalled by either side. Direct and cross examination for every witness is required, while redirect and recross examination is at the discretion of the attorney pursuant to Rule 4.2.

Rule 4.02 – Redirect and Recross Examination
Redirect and recross examinations are permitted. The scope of redirect examination questions are limited to issues raised on cross examination. The scope of recross examination questions are limited to any information introduced on redirect examination, including any testimony on redirect examination that contradicts or is not included in the witness’s sworn affidavit.

Rule 4.03 – Witness Roles
Any student may play any witness, regardless of the character’s name, gender, or background as described by the case materials. Questions on cross examination attacking the credibility of a witness for any perceived inconsistencies between their portrayal and the physical description or ethnic origin of the character in the case materials are not allowed.

Rule 4.04 – Witness Attire
A student portraying a witness may dress in appropriate court attire consistent with how the character being portrayed would dress in a courtroom. However, no uniforms, costumes, or props are allowed.

Rule 4.05 – Witnesses Bound by Statements
Each witness statement in the case must be considered a sworn affidavit or declaration of that witness, made under penalty of perjury and intended by the witness to be accurate and complete. Each witness is bound by the facts contained in that witness’s own statement and any related documentation relevant to their testimony. A witness is not bound by facts contained in other witness statements. Conflicts between different witness statements may be brought out on cross examination or closing argument.

Rule 4.06 – Fair Extrapolations
Witnesses may use their own words to paraphrase or explain the facts in their statement, but they are bound by those facts.

a) A witness may also testify to limited additional facts, provided that the new information does not contradict anything in their own witness statement, that the new information is supported by a reasonable inference from a witness statement, and that the new information does not materially affect the witness’s testimony.

b) On cross examination, the witness may only testify to the additional facts in part (a) of this rule when directly responding to a question that asks for information not included in their witness statement.

Rule 4.07 – Unfair Extrapolations and Impeachment
If a witness testifies to facts contrary to those contained in his or her statement, the sole remedy is for the cross-examiner to impeach that witness’ credibility by questioning the witness regarding the contradiction.
Rule 4.08. – Objections
Only the attorney conducting the direct or cross examination of a witness may make or respond to objections while that witness is on the stand. Trial proceedings are governed by the High School Mock Trial Rules of Evidence. Other, more complex rules or objections may not be raised during trial.

Rule 4.09 – No Sequestration
Witnesses are not to be excluded from the courtroom, either physically or constructively, during the trial. Judges may not order that witnesses should be considered sequestered or excluded by trial participants.

Rule 4.10 – Notes
Witnesses are not allowed to have notes or read from any writing while testifying, unless questioned or cross-examined about a witness statement or an exhibit. Attorneys may use notes when examining witnesses, but the use of notes may impact their scores at the discretion of the raters. Attorneys may confer with each other at counsel table either verbally or through written notes.

Rule 4.11 – Expert Witnesses
Witnesses should not be “tendered” or “proffered” as expert witnesses. Attorneys should ask questions designed to demonstrate the training and experience that qualifies the witness to give expert opinions under Evidence Rule 702. Opposing counsel may object that particular opinions are outside the scope of the witness’s expertise.

Rule 4.12 – Voir Dire Not Allowed
Attorneys are not allowed to question (“voir dire”) witnesses when making or responding to objections. The judge may not ask witnesses any questions.

Rule 4.13 – Attorney Roles Examining Witnesses
Only one attorney per side may conduct the examination of each witness. Each attorney must conduct the direct examination of at least one witness and the cross examination of at least one witness, unless the attorney is solely participating in the pretrial motion as permitted by Rule 3.3, in which case the attorney must not conduct the examination of any witnesses.
PART 5. EXHIBITS

Rule 5.01 – Admissible Exhibits
The only exhibits which may be introduced into evidence during the trial are the original exhibits provided in the official case materials.

Rule 5.02 – Writing or Marking on Exhibits
Original exhibits cannot be marked on or otherwise modified before or during trial. During direct and cross examination, however, attorneys and witnesses may mark on copies of exhibits that have been entered into evidence. If a team wishes to add markings to an admitted exhibit, it must provide its own clean copy of that exhibit for this purpose before any markings are made. Such marked copies may be used as demonstrative aids during witness examinations and during closing arguments, but are not entered into evidence as exhibits. Any marked copy of an exhibit should be made available to the opposing side for reference during cross examination.

Rule 5.03 – Publishing Exhibits to the Jury
With the judge’s permission, an attorney may publish an original admitted exhibit to the jury or distribute clean copies of an admitted exhibit to the jury. No other materials may be handed to the jury.

Rule 5.04 – Enlargements of Exhibits
The exhibits provided in the case materials, or portions of an exhibit, may be enlarged and displayed on white poster board. The poster board should be of a standard type available at office supply stores. The poster board should be approximately 24 inches by 30 inches or less. Enlargements may only be in black and white, even if the original exhibit is in color. Exhibits may be enlarged either by direct copying or, if the exhibit is a written document, by retyping the enlarged section of the exhibit in a similar black font. All enlargements should be shown to opposing counsel before trial starts.

Rule 5.05 – Diagrams and Visual Aids
No diagrams or visual aids other than those provided in the case materials may be prepared before trial and brought to court, other than simple charts outlining law or evidence as permitted by Rule 3.5. While testifying, witnesses are allowed to draw diagrams, consistent with their sworn statements, in order to illustrate their testimony. Such diagrams may be used as demonstrative aids during witness examinations and during closing arguments, but are not entered into evidence as exhibits.
PART 6. SPECTATORS

Rule 6.01 – Spectators
Spectators include coaches, teachers, family, friends, teammates not competing in the current round, and any other observers of a trial. Spectators do not include the judge, the raters, the timekeepers, or the attorneys and witnesses competing in the current round.

Rule 6.02 – No Communication with Spectators
Spectators may not talk to, signal, communicate with, or coach any student competing during trial. This rule remains in force during any regular or emergency recess that may occur. Spectators must remain outside the bar and cannot sit in the jury box without the special permission of the mock trial tournament staff and the judge. Team members competing in the current round may, among themselves, communicate during the trial and during recess; however, no disruptive communication is allowed.

Rule 6.03 – Viewing a Trial
Mock trial participants who are not competing in a particular round may observe ongoing trials. However, scouting of other teams is prohibited. Coaches and advisors are responsible for ensuring that participants do not watch trials when observing could result in a competitive advantage. All courtroom observers are expected to maintain proper courtroom decorum, to respect the desire of family members and friends of the participating teams to observe and to display good, sportsmanlike conduct.

Rule 6.04 – Videotaping and Recording
Videotaping or tape recording during competition is not allowed without the express permission of the competitors being filmed or recorded. Ideally, coaches should confer before trial to address requests for permission. This rule does not apply to the championship round at the State Competition, which will be filmed and broadcast. In all cases, any permitted videotaping, recording, or photography should be silent and not disrupt the competition.
PART 7. JUDGES AND RATERS

Rule 7.01 – Judge’s Decisions
The decisions of the judge with regard to evidentiary rules, objections, and procedural matters are final. If the judge is unclear about the Competition Rules, the judge should consult with the timekeepers for assistance.

Rule 7.02 – Judge’s Questions and Interruptions
The judge may interrupt the pretrial motion to ask the attorney questions. The judge may not interrupt the opening statement or the closing argument unless the attorney is out of time, and an objection is raised. The judge may not interrupt witness examinations or ask the witness any questions.

Rule 7.03 – Judge’s Rulings on the Pretrial Motion
The judge should announce a decision on the merits of the pretrial motion after hearing the surrebuttal by the non-moving party, but before opening arguments.

Rule 7.04 – Judge’s Role in Scoring
The judge should avoid influencing the scoring decisions of the raters. The judge should not comment on the merits of the case or the performance of individuals until all scoring sheets have been collected from the raters by tournament staff. The judge should not participate in scoring the round unless there are only two raters and the judge is asked to serve as the third member of the rating panel at the beginning of the trial.

Rule 7.05 – Scoring Ballots
Raters score their ballots individually and should not consult with one another or the judge during this process. Raters should follow the scoring guidelines provided for the mock trial competition. The judge cannot rule that a particular score or penalty be assigned to a rater’s ballot.

Rule 7.06 – Ballot Secrecy
Scored ballots should be collected by tournament staff as soon as possible and not shown to any team member or any other person during the competition. Copies of the original ballots and rater comment sheets for each team will be distributed to the team’s coach after the competition is completed.
PART 8. TEAM COMPOSITION AND ROLES

Rule 8.01 – Grades
All teams must consist of students currently enrolled in grades 9-12.

Rule 8.02 – Approved Teams
a) All students on a team must be enrolled in the same school district. If a school district has more than one high school involved with the mock trial program, students are expected to be enrolled with the team from their primary high school. Teams may also be formed from students enrolled at the same private high school. A team may also be formed from pre-existing members of a youth group, or YMCA branch. The youth group must have been in existence for a minimum of three years and have a constitution or bylaws. Home school participants and other community groups may also participate and should contact the state office. Schools, approved youth clubs, and YMCA branches may enter more than one team in the competition, but a student cannot compete on more than one team.
b) Exceptions to this rule may be permitted at the discretion of the Youth & Government State Office.

Rule 8.03 – Roles
a) Teams will be composed of a minimum of 7 students and a maximum of 16 students.
b) The following roles are defined as:
   2 attorneys for pre-trial motion (Can be doubled up as a plaintiff or defense attorney)
   2 attorneys for plaintiff  2 attorneys for defendant
   4 witnesses for plaintiff  4 witnesses for defendant
   1-2 court bailiff(s) (If the bailiff is doubled up in a witness role, s/he may not play a witness and serve as plaintiff during the same round.)
c) Each team must use a minimum of two and a maximum of three attorneys in each trial. Four different students must be used to play the four witnesses. Each team should try to designate an alternate for each position. Schools may enter more than one team in the competition. However, if a school enters more than one team, the teams must have no members in common.

Rule 8.04 – Preparation
Teams are expected to be prepared to present both sides of the case (Plaintiff and Defense), and will present each side at least once during the competition. The side that each team will represent will be determined at the trial site just prior to the beginning of the trial.

Rule 8.05 – Participation
a) All student attorneys must participate with case presentation as follows:
   1. Each attorney must take part in the direct examination of at least one witness and the cross-examination of at least one witness. However, on a team with three attorneys representing a side (plaintiff or defense), an attorney on that side may be allowed to participate solely in the pre-trial motion and is not obligated to participate in the rest of the trial. This exception is made only for the pre-trial motion. The attorney may participate in the rest of the trial, but then must adhere to the rule of examining one witness per side.
   2. The attorney giving the opening statement will not be allowed to give the closing argument.
   3. Objections will be permitted by the direct or cross-examining attorney only.

Rule 8.06 – Witnesses
Each party must call all witnesses included in the kit for its side of the case.
PART 9. DISPUTE RESOLUTION

Rule 9.01 – Objections Based on Evidence Rules

Objections on any matters of law or rules of evidence should be made according to the Competition Rules and are within the sole discretion of the judge. The judge’s decisions in these matters is final.

Rule 9.02 – Allegations of Competition Rule Violations

a) Only attorneys may request bench conferences with the judge to clear up or protest a significant procedural, mock trial rule violation or factual questions. It is the responsibility of the attorney to state the page and rule number in question. One representative from each team should be present for all bench conferences. All disputes must be given to the judge before the trial’s end and before the judge and raters recess to discuss the trial. The decision of the judge is final. Students are advised not to overuse this procedure.

b) The decisions of the judge with regard to rules, challenges and all other matters are final. However, judges are not involved with, and may not rule upon, scoring decisions. If a judge is also separately serving as a member of the scoring panel (see rule 10.01-a), he/she should not announce scoring decisions, or attempt to influence the decisions of other panel members.

Rule 9.03 – State Championship Dispute Resolution

a) A more detailed dispute resolution process is under consideration, and may be piloted at the 2019 State Championship Competition. If a new dispute resolution process is selected to pilot at State this year, it will be distributed to all teams no later than January 15, 2019.

b) In the event a new dispute resolution process is not piloted at the state championship this year, dispute resolutions will adhere to the rules outlined in Part 9 above.
PART 10. TOURNAMENT ADMINISTRATION

Rule 10.01 – Raters and Scoring
a) Team scores are determined by a panel consisting of at least two, and preferably three, raters who are attorney members of the Washington State Bar. If only two raters are available, the trial judge may be asked to serve as the third member of the rating panel.
b) Raters score individual and team performances. Each rater fills out an individual ballot, and raters should not consult with one another during this process. The judge is not involved in performance scoring decisions. Teams should not ask judges to rule that an event during the trial should be assigned a particular score on rater ballots.
c) The criteria for scoring is discussed in separate documents titled “Guidelines for Raters” and “Guidelines for Presiding Judges.” These documents follow this document, and should be considered an extension of the rules.
d) NO COMPLETED SCORING SHEETS ARE TO BE VIEWED BY ANY TEAM MEMBER OR ANY OTHER PERSON DURING THE COMPETITION, in compliance with the educational goals of the Mock Trial program. These are to be returned to the tournament staff after the round has been concluded and the winning team recorded. Score and comment sheets for a team will be copied and distributed to that team’s coach after the competition is completed.
e) Tournament staff will check rater ballots for complete scoring and for improper scores. Whenever possible, raters will be asked to make any necessary corrections. When a rater cannot be located, or other circumstances prevent timely consultation with the rater concerning the ballot, the district or state convener or designated scorer will correct improper entries before the ballot is totaled, or take other appropriate action.
f) A rater’s decisions regarding scoring are final and cannot be appealed.

Rule 10.02 – District and State Tournament Procedures
a) The team’s advisers and coaches are responsible for enforcing mock trial rules, codes of conduct, and supervising their students at all times i.e. during formal mock trial events, free time, at the hotel (from when they leave to travel to the mock trials until their return).
b) Violations of the student and adult conduct agreements must be reported to tournament staff (preferably at the time of the violation and at the state finals, no later than 1 and a half-hour before the beginning of the second day of the competitions).
c) Unless otherwise directed by the tournament convener or YMCA Youth & Government State Office, the following scoring and ranking rules apply at district competitions:
   1. A team wins a rater’s ballot by receiving a higher point total on that ballot than the opposing team. If the teams have identical point totals on a rater’s ballot, then the tie breaker on that ballot will be used to determine the winner.
   2. A team wins a trial by winning the majority of the rater ballots for that trial.
   3. At the conclusion of the competition, teams will first be ranked according to their record of trial wins. Teams with identical win totals will next be ranked based upon the total number of ballots won in the competition. Teams with identical win totals, and total number of ballots won, will be ranked total point scored in the competition.
d) Conveners are encouraged to consult with the YMCA Youth & Government State Office to select a matching system that best fits their district needs. The tournament convener’s decisions concerning the round by round matching, and interpretation of the competition rules, procedures, and final rankings during that competition are final.
e) When applicable, for a championship round, the tournament convener shall determine the sides to be presented by each team. This will normally be determined by a coin flip, or by a reaching a consensus with the coaches of the affected teams. If the teams have previously competed against each other in the same tournament event, then each team shall present the opposite side of the case from the side that team presented in the previous trial.
Rule 10.03 – Individual Awards
Each scoresheet for each trial includes one nomination for Outstanding Attorney and one nomination for Outstanding Witness. At the conclusion of the tournament, any student nominated as an Outstanding Attorney or Witness should be recognized by the tournament conveners. Conveners may decide further to recognize the competition’s Most Outstanding Attorney, and Most Outstanding Witness.

Rule 10.04 – Team Selections for District and State Competitions
a) Teams will be assigned to district events after registration is closed and the total number of participants has been determined. Geographic location, district capacity, and numbers of teams fielded by a respective school, youth group, or YMCA branch will be considered when making district placement decisions. Whenever possible, a team will compete at an event in or near its home county. After initial placement, team assignments may be adjusted by YMCA Youth & Government State Office, after consultation with district conveners and affected teams.

b) After the completion of district events, the program chair and YMCA Youth & Government State Office will consult with district conveners regarding the results of each event, and the participating teams and programs. Coaches, advisors and other individuals with knowledge of the events may also be consulted. Invitations to the state tournament will then be extended by the State Office to eligible teams. In determining which teams will be invited to participate, the following factors may be considered:
   1. The team’s performance at a district event, including their ranking at the event, win/loss record, numbers of ballots, and total points.
   2. The number of teams and programs participating in each district event.
   3. The number of district events.
   4. The total number of teams and programs participating statewide.
   5. The need to promote geographic diversity, to ensure that mock trial remains a program that benefits students in all regions of Washington State.
   6. The need to promote program diversity, to ensure that students in multiple schools and programs benefit from the experience of participating in the state tournament. Except in unusual circumstances, no more than two teams will be invited from a single school or program.
   7. The need to encourage the growth of mock trial, both through creation of new programs and the establishment of new district events.

c) If a team declines an invitation, state staff will promptly extend an invitation to another team, after considering the factors described above.

Rule 10.05 – Publishing Results
a) At the end of every competition, the convener must promptly forward the following information to the Youth & Government State Office:
   1. All scoring ballots for each trial. This can be the originals, or copies as long as the copies are legible.
   2. A list of all participating team’s competition data in the following categories: total trial wins, total ballots won, and total points.

b) The Youth & Government State Office will audit the competition results, organize the data in a commonly branded format, and distribute that format to each team in that competition:
   1. Copies of the original scoresheets from each round for their team(s).
   2. Final rankings from the district competition that includes each team’s total trial wins, total ballots won, and total points scored.

c) At the conclusion of all district competitions, the Youth & Government State Office will publish the district results on the YMCA Youth & Government Website, along with a list of teams invited to that year’s YMCA Mock Trial State Championship Competition.
Rule 10.06 – State Championship Tournament Procedures

a) Due to the differing nature in size/scope of the State Championship Competition, and in an effort to increase transparency, a new articulation of the state tournament procedures is currently under consideration, and may be implemented for the 2019 State Championship Competition. The new language under consideration is designed to inform teams of the unique match-making procedures used to seed the respective rounds of the competition and should not impact how teams prepare for districts and/or the state competition during the season. **If a new written articulation is adopted for State, it will be distributed to all teams no later than January 15, 2019.**

b) In the event a new articulation of state tournament procedures is not adopted this year, the competition will be administered the same as 2018 in adherence to the rules outlined in Part 10 above.
RULES OF EVIDENCE
WASHINGTON Mock Trial Rules of Evidence

Introduction

In American trials, complex rules are used to govern the admission of proof (i.e. oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed incompetent, irrelevant, untrustworthy, unfairly prejudicial, or otherwise improper.

If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably admit the evidence.

The burden is on the mock trial team to know the Rules of Evidence and to be able to use them to protect or advance their cases and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. These evidence rules are based on the National High School Mock Trial Rules of Evidence, which in turn are based on the Federal Rules of Evidence, and its numbering system. Where Federal rule numbers or letters are skipped, those rules were deemed not applicable to mock trial procedure.

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

The Mock Trial Competition Rules and these Rules of Evidence govern high school mock trial competitions in Washington State.

The commentary sections are primarily based on commentary that has long been part of the Washington mock trial kit. The commentary was revised in the summer of 2004 to reflect Washington’s adoption of the National rules. These comments are not comprehensive, authoritative, or intended to address all applications of the evidence rules to mock trial fact patterns.

Sources for additional commentary include the Advisory Committee’s Notes for the Federal Rules of Evidence, the Emanuel’s Evidence Outline, and Lubet’s Modern Trial Advocacy (2d ed., NITA, 1997).
**Objections and Proper Question Form**

During the course of a trial, it is the right and the duty of an attorney to make objections to regulate the procedure for, and the admissibility of, evidence in accordance with the rules of evidence. Upon receiving an objection, the judge will immediately decide whether the objection is accepted or rejected. If the judge agrees with the objection, he or she will “sustain” it. If the judge disagrees with the objection, he or she will “overrule” it. An attorney may ask to be heard on the point. Some judges then allow brief argument for and against the admissibility of the challenged evidence. The attorneys are bound by the trial court’s rulings on objections. (In actual legal practice, evidentiary rulings may form the basis for a later appeal.)

Trial judges expect lawyers in their courtrooms to follow both the evidence rules and the customs of the trial courts. Attorneys must know how to phrase questions on direct examination and cross-examination. They must also know both when to object and how to object. Improperly phrased questions are objectionable.

(A) **Leading Questions Forbidden on Direct Examination.** Leading questions are not permitted during the direct examination of a witness except as may be permitted by the court to develop the witness’s testimony. Ordinarily, leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Comment: A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a “yes” or “no” answer. On direct examination, questions should be open ended and phrased to elicit facts from the witness. Courts will allow leading questions on direct examination of children, the elderly, and handicapped persons. Leading questions may be permitted to elicit background information which is not objectionable or to which no objection is made. Such questions save time and seek to elicit information that is not objectionable in most cases.

A proper direct question might be phrased, “Describe the defendant’s physical appearance just before midnight the night of the party.” An improper leading question might be phrased: “Did the defendant appear glassy-eyed and unsteady just before midnight the night of the party?”

(B) **Compound Questions Forbidden.** A question which is composed of two or more separate questions within the question is not permitted.

Comment: A compound question asks two or more questions at once. For example, “What time did you arrive at the party, whom did you go with and what did you do there?” is a compound question. Such questions are not permitted, primarily because they do not permit opposing counsel to interpose appropriate objections before the witness launches into what could be an improper response to one or more parts of the question. Another difficulty with compound questions is that if
the witness says “yes” (or “no”) in response, it is not clear if the witness is responding to all of the question or only part of it. Questions should be phrased to elicit one fact at a time, unless the subject matter under examination is not objectionable for any reason, such as very general background information.

(C) Narrative Responses Forbidden. Questions which call for long narrative responses are not permitted if they prevent opposing counsel from interposing timely objections.

Comment: While the purpose of direct examination is to get the witness to tell a story, the questions must not be so broadly framed that the witness is allowed to ramble or “narrate” a whole story. Narrative questions are objectionable. Opposing counsel must be permitted to interpose objections to improper questions and responses. Timely objections are prevented by the use of narrative questions and responses.

An example of a question which calls for a narrative response is: “Start at the beginning and tell me what happened the night of the party.” A proper objection to this question might be phrased: “Objection, the question calls for a narrative response.”

When a witness launches into a long narrative answer to an otherwise proper question, a proper objection should be made quickly and might be phrased as follows: “Objection, the response is beyond the scope of the question.”

(D) Argumentative Questions Forbidden. An attorney shall not ask argumentative questions.

Comment: An argumentative question typically occurs on cross-examination when the attorney asks the witness to agree to a particular interpretation or characterization of the evidence, as opposed to a particular fact. Attorneys learn the difference between proper aggressive cross-examination and improper argumentative questions.

(E) Questions Assuming Facts Not in Evidence Forbidden. Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a "hypothetical question").

Comment: The hackneyed example of the question that assumes facts not in evidence is, “Are you still beating your wife?” The question is improper because the questioner has not established that the witness ever beat his wife.

(F) Proper Foundation Required. Attorneys shall lay a proper foundation for testimony and prior to offering exhibits into evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.
Comment: The “foundation” requirement for evidence provides the jury the basis for the evidence being offered. Evidence that is premature or not adequately supported by prior testimony is said to “lack foundation.”

In mock trial, the parties usually stipulate to the authenticity of exhibits before trial, and the court’s ruling on the pretrial motion determines the admissibility of contested exhibits. Nevertheless, the attorney should establish that the witness has previously seen the item and can identify it before offering it into evidence. (See Introduction of Exhibits below.)

When an attorney objects for lack of foundation, he or she is using legal “shorthand” to complain to the judge that the question asks for testimony which is premature, i.e., which is not admissible yet because some other fact or facts must be elicited before this question can be asked. For example, before a witness can be asked to identify the defendant as the perpetrator of a crime, the witness must first testify that he was at the scene of the crime or has some other first-hand basis for identifying the defendant as the perpetrator. Similarly, before a witness to an intersection accident can testify to the collision itself, the attorney should ask questions establishing her presence at the scene and her opportunity to observe events as they occurred.

Before an expert witness can render professional opinions, he must first testify as to his qualifications and be accepted by the court as an expert in the field or specialty area in question. Thus, before a ballistics expert can offer an opinion as to whether a particular gun fired a particular bullet, the attorney should ask questions establishing the witness’s expertise, training, examination of the items, etc.

In either case, an opposing attorney would simply object to the lack of foundation as a way of saying the evidence might be admissible later but it surely is not admissible now. This objection may be overcome by asking more questions and eliciting more information about the bases for the witness’s testimony.

(G) Non-responsive Answers Objectionable. A witness’s answer is objectionable if it fails to respond to the question asked.

Comment: An attorney faced with an evasive hostile witness may move to strike the witness’s answer as “non-responsive.” Precise, narrowly phrased cross-examination questions reduce the witness’s opportunity to be evasive. Skilled attorneys develop various “witness control” techniques to keep a witness in line during cross-examination. In closing argument, some attorneys will draw attention to a witness’s evasiveness to attack the witness’s credibility.

(H) Repetitive Questions Objectionable. 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.
Comment: This objection is often phrased, “Asked and answered.” Note also that Rule 403 may be invoked to block the presentation of cumulative evidence.

(I) Timeliness Required. Objections must be made in a timely manner or they are deemed to be waived.

Comment: Attorneys should strive to make their objections after the opposing attorney asks the objectionable question but before the witness gives an answer. This way, the judge will have an opportunity to rule on the objection before the jury hears or sees the objectionable evidence. If an attorney is slow in making an objection, a favorable ruling made after the jury has already been exposed to the tainted evidence could be useless. It does little good to close the gate after the cows have escaped.

Sometimes, the basis for an objection does not become clear until after the witness starts to respond. For example, a witness may give an answer which is not responsive to an otherwise proper question. In those cases, the attorney should make the objection as soon as it becomes evident that a basis for objection exists, regardless of whether the jury has been exposed to the evidence. If the objection is sustained, the attorney who made the objection should follow up with a motion to strike the non-responsive testimony from the record of the trial. If no objection is made, the evidence will be deemed admissible and will be treated as any other evidence admitted at trial.

(J) “Opening the Door” to Inadmissible Evidence. By voluntarily raising a subject on direct examination, a party may waive any objection to cross-examination or rebuttal on that subject even though such cross-examination would not otherwise be permitted under the rules of evidence.

Comment: If an attorney examines a witness during direct examination on a subject that would be forbidden if the subject were first raised on cross-examination, the attorney is said to have “opened the door” to the subject and will not be permitted to object when the opposing party delves into the subject deeper on cross-examination. For example, the rules of evidence provide that in a criminal case only certain prior convictions may be introduced by the prosecution during cross-examination of the defendant to attack his or her character. However, if during direct examination the defendant testifies that he or she has led an exemplary life and would never think of shoplifting a leather jacket, the defense has opened the door to permit the prosecution to explore the defendant's criminal history far beyond the scope that would have been permitted if the defendant had not reported his exemplary record for good citizenship. It should be noted, however, that the court will always exercise its discretion to limit the scope of examination in such collateral matters so that the trial does not stray from its principal issues.

(K) Scope of Direct, Redirect and Cross-Examination. Direct and cross-examination may cover all facts relevant to the case of which the witness has first hand knowledge or has special training and knowledge sufficient to permit the
witness to offer an opinion, and any other matter permitted by these Rules of Evidence. Cross-examination is not limited to the scope of direct examination. Redirect examination is limited to the scope of the cross-examination. Recross examination is limited to the scope of redirect examination.

(L) Specificity Required. An objection must be specific.

Comment: Whenever possible, an attorney making an objection must state the specific basis for the objection by citing the rule of evidence or law which supports the objection, or by stating the basis in the form of a word or phrase which informs the judge of the basis. (See examples listed below.)

If a party's objection does not include a statement of the legal reason supporting it, e.g., when an attorney simply says, “Objection,” without telling the court why the objection was made, it is termed a “general objection.” General objections are not prohibited per se, but the court may, in its discretion, refuse to sustain an objection which is not specific. On the other hand, when general objections are made to questions which are obviously objectionable, the court will usually rule on them even without a statement of the specific basis. For example, the judge may not need to be informed of the specific basis to rule on a question which is obviously leading (“Would you say the car was going around 50 miles per hour?”) or one which obviously calls for a hearsay response (“What did Ms. Jones say to the police officer?”).

Objections to the “form of the question” and “lack of foundation” are acceptable specific objections. When an attorney objects to the form of the question, he or she may be complaining that the question calls for a narrative response, is compound, is too broad, is too complex, is argumentative, or is defective in some other general way. The purpose of the objection is to ask the court to require the examining attorney to ask a better, i.e. less objectionable, question.

Sample Objections

Following are examples of acceptable ways to make common objections. Objections are not precise formulas or magic words. Objections should be clear, succinct, and well-founded. They should state the legal basis for the objection. They should not be used as a ploy to bring impermissible material to the attention of the jury.

Irrelevant Evidence. “Objection, relevance.” Or, “I object, Your Honor. This testimony is irrelevant to the facts [issues] of this case.”

Leading Questions. “Objection. Counsel is leading the witness.” (Remember, this is only objectionable when done on direct examination.)

Narrative Question and/or Response. “Objection. Counsel's question calls for a narrative.” Or, “Objection. The witness is giving a narrative response.”
Improper Character Testimony. “Objection. The witness’s character or reputation has not been put in issue.” Or, “Improper character evidence under rule 404.”

Beyond the Scope of Cross-examination. “Objection. Counsel's question goes beyond the scope of the cross-examination.”

Hearsay. “Objection. Counsel's question calls for a hearsay response” (witness is about to testify to an objectionable out-of-court statement). Or, “Objection. The witness's answer is based on hearsay” (for example, witness is about to testify to facts in a newspaper article as if she had personal knowledge of them). (If the witness makes a hearsay statement, the attorney should also say, “and I ask that the statement be stricken from the record.”)

Improper opinion. “Objection, a lay witness may not testify as an expert.” Or, “Improper lay opinion.” (This objection is appropriate when the question calls for a response in the form of an opinion which the witness is not qualified to give.)

Lack of Personal Knowledge. “Objection. The witness has no personal knowledge that would enable him/her to answer this question.” Or, “Objection. Lack of foundation.” (This latter objection presupposes that the subject matter of the testimony could be admissible if the examiner first establishes through proper questioning that the witness has the requisite personal knowledge.)

Badgering/Argumentative. “Objection. Counsel is badgering the witness.” Or, “Objection. Counsel is arguing with the witness.”

Motion to Strike. If inadmissible evidence has been introduced before an objection can be timely made and the court sustains the objection, a follow-up motion should always be made to purge the record of the tainted evidence. “Your Honor, I move to strike the [nonresponsive] [inadmissible] portion of the witness's testimony from the record,” or, “Your Honor, I ask that the jury be instructed to disregard the witness’s last statement.”

Note: Teams are not precluded from raising additional objections which are available under the Washington Mock Trial Rules of Evidence.

Introduction of Exhibits

There is a formal procedure for introducing exhibits, e.g., documents, pictures, guns, etc., during an actual trial. The exhibit must be relevant to the case, and the attorney must be prepared to defend its use on that basis.

In mock trial, exhibits are usually pre-marked for identification, and the parties stipulate to their authenticity. In State competition, teams often use enlarged copies of the exhibits, but enlargements are normally not allowed under the National rules.
Below are the basic steps to use in mock trial when introducing a physical object or document for identification and/or use as evidence.

- Take the item, without showing it to the jury, and show it to opposing counsel. Then ask the court for permission to approach the witness.
- Hand the marked exhibit to the witness while stating, “I am now handing you [a document] [an item] previously marked for identification as Exhibit 1.” Ask the witness whether he or she knows or recognizes the exhibit, and then ask the witness what it is in order to identify it and establish its relevance.
- After laying this foundation, offer the exhibit into evidence. “Your Honor, I offer Exhibit 1.”

Opposing counsel will either object to the offering of the exhibit or say, “No objection.” If opposing counsel makes a specific objection as to why the exhibit is not admissible, the attorney offering the exhibit will be given an opportunity to respond. In many cases opposing counsel will simply object for lack of foundation, meaning that the attorney offering the exhibit has not asked enough questions to establish the witness’s personal knowledge of the exhibit, its identity, and its relevance.

If the court overrules the objection and permits the exhibit to be admitted, counsel may now hand it back to the witness and commence examination of the witness on matters related to the exhibit. If the court sustains an objection for lack of foundation, additional questions should be asked of the witness to identify the exhibit or establish its relevance.

The exhibit should not be displayed to the jury until it has been admitted into evidence.

National Mock Trial Competition Rule 4.20 offers a similar series of steps by way of example.
RULES OF EVIDENCE

Note -- All of following articles of the Federal rules have been omitted as inapplicable: Article II (Judicial Notice), Article III (Presumptions Civil Actions and Proceedings), Article IX (Authentication and Identification), and Article X (Contents of Writing, Recordings and Photographs).

Article I. General Provisions

Rule 101. Scope
These Rules of Evidence govern the trial proceedings of high school mock trial competitions in Washington State.

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

Comment: The rule creates a very minimal threshold of admissibility. "Any evidence which has a tendency" to establish a fact is relevant and therefore admissible. In a case based primarily on circumstantial evidence, the relevance of a particularly small circumstance may not be readily apparent when viewed in isolation, but if it is "of consequence" to the outcome of the action it will be admissible. It is the duty of an attorney to persuade the court of the relevance of evidence.

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 substantially outweighed by the danger of unfair prejudice, if it confuses the issues, if it is misleading, or if it causes undue delay, wastes time, or is a needless presentation of cumulative evidence.

Comment: This rule applies with equal force to direct examination and cross-examination and is to be applied in an evenhanded manner by the court to ensure
fairness. The rule is intended to exclude only evidence which creates "unfair" prejudice. After all, all evidence is prejudicial in the sense that it is offered to persuade the jury to believe more strongly in the case of the party offering it.

However, since it is considered to be an extraordinary remedy when the court excludes relevant evidence, the party seeking to have the evidence excluded bears a heavy burden of persuasion to convince the court that the probative value of the relevant evidence "is substantially outweighed by the danger of unfair prejudice." Judges will rule very cautiously on such motions to exclude relevant evidence. (Note: the National rules do not include the word substantially, but most judges will apply that standard because substantially outweighed is the phrase in the Federal rules.)

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, 608 and 609.

(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.

Comment: The term "character" as used in the rules of evidence refers to a person's general tendencies with respect to honesty, peacefulness, temperance, truthfulness, and similar traits. This rule is concerned only with preventing a party from attempting to introduce a character trait as substantive evidence. For example, this rule would exclude evidence that a person was an alcoholic if it were being offered as substantive evidence to prove that the person was intoxicated when he was involved in an accident on a particular date. This rule should not be confused with the rules pertaining to impeachment.

The 404(a)(1) exception permits an accused in a criminal case to offer evidence in his defense pertaining to his character if the character trait is relevant to his defense. For example, an accused may offer testimony concerning his good record for honesty at work where he handles large sums of money in a case where he is accused of theft. On the other hand, his record for honesty would not be relevant in a case where he was charged with assault or indecent exposure.
If the defendant opens up the subject of his character, the prosecution will be permitted to cross-examine him on the subject and introduce independent evidence which rebuts the defendant's testimony concerning his good character. For example, if a businessman defendant testifies about his wealth in an effort to persuade the jury that he has no need to steal money from his clients, the prosecution will be permitted to inquire about the defendant's income tax returns. However, just because a criminal defendant chooses to testify does not open up the issue of his or her character. The subject is opened up only when the accused voluntarily puts his or her character at issue by claiming to be a person of exemplary behavior.

The 404(a)(2) exception permits the accused to offer evidence of the victim's violent character in murder and assault cases in order to show that the victim was the first aggressor and the accused acted in self defense.

Rule 404(b) is based on the concept that the defendant is being tried for crimes alleged to have been committed in the present, not crimes or wrongdoing committed in the past. It is intended to prevent the prosecution from arguing that since the defendant has committed offenses in the past, he or she is more likely to have committed the offense with which he or she is currently charged, i.e., that the defendant is obviously a criminal or a “bad person.” The danger of unfair prejudice from the admission of such evidence far outweighs its relevance.

However, this evidence may be admissible for some other purpose. For example, evidence that the defendant and the deceased engaged in physical combat on several occasions in the past could prove that the defendant was hostile toward the deceased and, therefore, had a motive to commit murder.

Evidence which is admissible under this rule will often be ruled inadmissible under Rule 403 because the danger of unfair prejudice far outweighs its probative value. When the decision to admit or exclude evidence concerning prior wrongdoing is in doubt, judges usually rule in favor of excluding the evidence.

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 made 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.

Comment: Rule 405(a) allows a defendant to offer reputation or opinion evidence of his good character, but character witnesses for the defendant cannot testify as to specific incidents demonstrating the defendant’s good character. If the defendant
opens the door to his character, the prosecution may rebut the defendant’s claim of
good character through reputation or opinion evidence from other witnesses.

In addition, the prosecution may cross-examine the defendant’s character
witnesses about “relevant, specific conduct,” if the prosecution has a good faith
basis for believing that such conduct occurred. For example, if defendant is a bank
teller accused of embezzlement and puts a neighbor on the stand to testify that the
defendant has a reputation in the community as an honest person, the prosecution
may cross-examine by asking, “Would defendant’s reputation be different if it were
known that the IRS is investigating him for tax fraud?”

Rule 405(b) governs situations where character is an “essential element” of the
claim or defense. For instance, in a defamation suit, the plaintiff puts his character
and good reputation at issue by claiming that defendant damaged his reputation.
The defendant may offer prior “specific instances” of the plaintiff’s bad conduct to
show that plaintiff previously had a bad reputation.

Rule 406. HABIT; ROUTINE PRACTICE
Evidence of the habit of a person or the routine practice of an organization, whether
corroborated or not and regardless of the presence of eye-witnesses, is relevant to
prove that the conduct of the person or organization, on a particular occasion, was
in conformity with the habit or routine practice.

Comment: “Habit” refers to a person’s regular response to a repeated situation. It
is distinct from “character,” which is a general description of a person’s disposition.
For instance, assume an apartment building burns down and the cause of the fire is
in dispute. Landlord claims tenant caused the fire by leaving a coffeeepot on.
Tenant can testify that it is his habit to always turn off and unplug the coffeeepot
before leaving the apartment. This testimony would be admissible to support
tenant’s claim that he did not cause the fire.

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 of subsequent measures when
offered for another purpose; such as proving ownership, control, or feasibility of
precautionary measures, if controverted, or impeachment.

Comment: This rule serves public policy by encouraging property owners and
manufacturers to take corrective action after an accident occurs, without fear that
plaintiff will unfairly exploit that corrective action by claiming that the correction
shows that the defendant was at fault. For instance, if tenant slips on landlord’s
staircase, the landlord should then be able to install a safety tread on the staircase
(a "subsequent remedial measure") without tenant being able to point to the
absence of a tread to support tenant’s claim that landlord had negligently
maintained the stairs when tenant slipped on them.
The second sentence of the rule allows introduction of subsequent remedial measures for other purposes. In the example above, if defendant-landlord denied owning the apartment building, tenant could offer evidence that landlord installed the safety tread after the accident to support tenant’s claim that landlord owned or controlled the building.

**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 exclusion 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, negativing a contention of undue delay, or proving an effort to obstruct investigation or prosecution.

Comment: This rule serves public policy by encouraging parties to attempt to settle disputes and to be candid in settlement discussions. Statements made in settlement negotiations cannot be used to prove the weakness of an opposing party’s claim or defense. But the rule allows admission of such statements “for another purpose,” such as proving a witness’s bias or prejudice.

**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.

Comment: Rule 409 is similar to Rule 408. It prevents the injured party from using payment of his medical expenses as a basis for showing that the defendant was at fault. For instance, a motorist who injures a pedestrian might offer to pay the pedestrian’s medical expenses, but the pedestrian cannot use the offer to argue that the motorist is liable for his injuries.

**Rule 410. INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS**

Except as otherwise provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against a defendant who made the plea or was a participant in the plea discussions:

1. a plea of guilty which was later withdrawn;
2. a plea of nolo contendere;
3. any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
4. any statement made in the course of plea discussions made in the course of plea discussions with an attorney for the prosecuting authority.
which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Comment: Rule 410 applies the rationale of Rule 408 to plea negotiations. For instance, in plea negotiations with the prosecutor, a criminal defendant might admit to pulling the trigger and offer to plead guilty to manslaughter. If the prosecutor rejects the offer and tries defendant for murder, the prosecution cannot use defendant’s admission in plea negotiations against him. (A *nolo contendere* plea is a plea of “no contest.” Rule 11 of the Federal Rules of Criminal Procedure deals with types of pleas and the manner in which they may be made.)

**Rule 411. LIABILITY INSURANCE**

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.

Comment: This rule is designed to prevent a plaintiff from arguing that because defendant was insured, defendant had less reason to be careful. It is usually improper to refer to defendant’s insurance (or lack of it) in a personal injury case, as the jury might be affected by the argument that a “deep pocket” is available to compensate plaintiff for her injuries.

As in Rule 407, however, evidence of insurance may be admitted for another purpose, such as showing defendant’s control of a premises or vehicle.

**Article V. Privileges**

**Rule 501. GENERAL RULE**

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

(1) husband and wife;
(2) attorney and client;
(3) physician and patient; and
(4) priest and penitent.

Comment: Privileges exempt a witness from testifying about certain types of subject matter. Maintaining candor and privacy in certain types of relationships (spouses, doctor-patient, attorney-client, etc.) or situations (among grand jurors, state secrets, self-incrimination, etc.) is deemed to be so important that the courts will forgo testimony concerning statements made in a privileged context. The holder of the privilege may choose to waive it. Testimonial privileges, because
contrary to the judicial power to compel production of evidence, are strictly construed. (The wording of National Mock Trial Rule 501 differs slightly.)

**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's own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses.

Comment: A witness must testify only on the basis of facts which the witness has seen, heard or otherwise perceived through his or her senses unless the witness is qualified as an expert witness. (See also Rule 701.) For example, a witness could testify from personal knowledge that she saw the defendant drink 12 bottles of beer at the party, but she would not be permitted to testify, “Everyone at the party knew Joey was drunk.” Without laying a foundation to establish the basis for her knowledge about the thoughts of others, the witness has no first-hand knowledge about what all the other partygoers knew. Laypersons may give testimony in the form of opinions if the matters on which the testimony is based are matters of common experience and if the witness has first-hand knowledge of such matters. For example, a witness is entitled to give an opinion as to whether or not the defendant was intoxicated based on the witness's experience observing intoxicated persons.

In the mock trial context, this rule should be read in conjunction with Competition Rule 13a.

**Rule 607. WHO MAY IMPEACH**
The credibility of a witness may be attacked by any party, including the party calling the witness.

Comment: If a mock trial problem includes an adverse witness who must be called in a party’s case-in-chief, that party could attack the witness's credibility. Furthermore, that party could conduct the direct examination as a cross-examination, if the court makes a finding that the witness is a hostile witness.

**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 for 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.

Comment: Rule 608 allows opinion or reputation evidence of a witness’s character for truthfulness or untruthfulness, with certain restrictions. For example, if Ms. X observes an accident and testifies for plaintiff that the stoplight was red, the defense could offer testimony under 608(a)(1) from Ms. Y, her neighbor, that Ms. X is known to be a liar. Rule 608(a)(2) would then allow the plaintiff to call Ms. Z, another neighbor, to testify as to Ms. X’s truthful character.

Rule 608(b) is designed to avoid mini-trials on specific instances of a witness's truthfulness or untruthfulness. Thus, the details of a prior dispute between Ms. X and Ms. Y, in which Ms. X allegedly lied, are inadmissible “extrinsic” evidence. Similarly, if Mr. Q witnessed the accident, testified for plaintiff, and falsely claimed he was walking home from church at the time, defendant could not call the card dealer at the casino to testify that Mr. Q had actually been at the casino, not at church. Such attacks on the credibility of nonparty witnesses are of marginal relevance and consume too much time. Note, however, that on cross-examination of Mr. Q, the defense attorney could ask, “Isn’t it true that you were walking home from the casino?”

Rule 609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME; TIME LIMITS
(a) For the purpose of attacking the credibility of a witness in a criminal or civil case, evidence that the witness had been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and the court determines that the probative value of admitting the evidence outweighs the prejudice to the party against whom the evidence is offered, or (2) involved dishonesty or false statement, regardless of the punishment.

(b) Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the
adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon, annulment, or certificate of rehabilitation -- Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications -- Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

Comment: This rule governs the admissibility of prior convictions to attack a witness’s credibility. Some convictions are considered relevant to whether the witness’s testimony is believable. Felonies and all crimes of dishonesty are admissible, subject to the time limits in 609(b). For felonies, the judge must balance the conviction’s probative value against its prejudicial effect. But any crime involving “dishonesty or false statement” is admissible to attack credibility, even if it is a misdemeanor. Crimes of dishonesty or false statement include perjury, criminal fraud, embezzlement, counterfeiting, forgery, and filing false tax returns. Most crimes of violence (murder, assault, etc.) and many nonviolent crimes (drug offenses, prostitution) do not fall into this category. Courts disagree on whether theft, shoplifting, and the like are crimes of dishonesty. For instance, one federal decision calls bank robbery “a crime of violent, not deceitful, taking,” and therefore not covered by 609(a)(2).

Rule 609(b) reflects the view that the older a conviction is, the less probative value it has. The ten year period usually begins running when the individual is released from prison. The party seeking to attack the witness’s credibility must convince the judge that the relevance of the prior crime’s “specific facts and circumstances” substantially outweighs the conviction’s prejudicial effect. The party must also provide advance written notice to the other side.

Rule 610. RELIGIOUS BELIEFS OR OPINIONS
Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

Comment: This rule bars inquiry into the religious beliefs or opinions of a witness to show that the witness is (or is not) credible. It is impermissible to elicit testimony that the witness is an atheist in order to argue that the witness is not
credible. Similarly, it is impermissible to argue that if the nun, the minister, and the rabbi all claim the light was green, it must have been green because people in the religious life are more credible than others.

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) to 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.

(c) Leading questions -- Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.

(d) Redirect/Recross -- After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on recross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

Comment: This rule gives the judge broad authority to control the manner in which testimony comes into evidence. See the “General Comment – Objections and Proper Form of Questions” for guidance on this rule in a mock trial setting.

Rule 612. **WRITING USED TO REFRESH MEMORY**

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

Comment: This basic rule of fairness ensures that if the examining attorney shows the witness a document to refresh the witness’s recollection, the other side is entitled to see the document and cross-examine the witness on it. When the witness’s memory is refreshed with a document on direct examination, the proponent of the witness’s testimony cannot offer statements in the document for their truth. The document is not received into evidence. But the rule allows the adverse party to cross-examine the witness about the document and introduce
portions into evidence. (Compare Rule 803(5), the hearsay exception dealing with past recollection recorded.)

Rule 613. PRIOR STATEMENTS OF WITNESSES
In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same, and the opposite party is afforded an opportunity to interrogate.

Comment: This rule allows a cross-examining attorney to question a witness about the witness’s prior statement without showing the statement to the witness. The cross-examiner must show the statement to opposing counsel on request. Usually the cross-examiner seeks to attack the witness’s credibility by showing an inconsistency between the trial testimony and the prior statement. If “extrinsic evidence” of the prior statement is relevant and admissible (e.g. another witness’s testimony that the first witness made the prior inconsistent statement), the first witness must be provided an opportunity to “explain or deny” the statement. If the inconsistent statement concerns a “collateral matter,” the cross-examiner must take the witness’s answer; the cross-examiner may not introduce “extrinsic evidence” to discredit the witness. (See comment to 608(b) for an example of extrinsic evidence on a collateral matter.)

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.

Comment: As a general rule, the testimony of lay witnesses is restricted to a recitation of facts, and their opinions are not permitted. However, there is no clear demarcation between fact and opinion in some instances. Sometimes a fact sounds like an opinion and an opinion sounds like a fact. For example, when a lay witness testifies to prior experience observing intoxicated persons, then testifies that the defendant was “drunk” at the time of the accident, is this a statement of fact or an opinion? It is both. Therefore, this rule of evidence does not prohibit per se opinions offered by lay witnesses but simply expresses a preference for factual testimony. Lay witnesses are permitted to offer certain opinions concerning matters which are based on their own common experience, provided adequate foundation is laid. For example, a witness is generally permitted to offer an opinion about the value of his home or about the average miles per gallon achieved by his car.
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.

Comment: No expert opinion is permitted to be introduced in evidence until it is shown that the expert possesses the requisite skill, knowledge, experience, or education to be qualified to offer the opinion. Before any expert opinion is elicited from a witness, a foundation is laid by asking the expert witness questions that are intended to establish his or her expert qualifications. Expert witnesses come from all trades and professions, and there is no qualitative distinction between an expert who is a journeyman carpenter with 25 years of practical experience and an aerospace engineer who has had 19 years of formal education. Both are experts in their own areas of specialty.

In addition to the requirement that a proper foundation be laid to establish the qualifications of the expert witness, an expert opinion still may not be admissible unless the judge rules that the subject matter of the opinion is beyond the common knowledge and experience of the jurors, that the opinion “will assist the trier of fact” to understand the evidence or determine a fact at issue, and that the opinion does not exceed the recognized limits of the science or art involved. The trier of fact does not need the assistance of an expert to draw inferences and conclusions from facts that are of common knowledge and experience.

The current mock trial rule reflects the law before the U.S. Supreme Court’s decision Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). In response to Daubert, Federal Rule 702 was amended in 2000 to affirm the trial court’s role of gatekeeper and provide some general standards that the trial court must use to assess the reliability and helpfulness of the proffered expert testimony. The 2000 amendment added three factors to guide the judge’s decision: An expert “may” offer an opinion “if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.”

Proponents of expert testimony should be prepared to demonstrate the reliability of scientific expert testimony, to the extent possible in a mock trial format. Rejection of expert testimony is the exception, not the rule. Vigorous cross-examination and presentation of contrary evidence are traditional and appropriate means of attacking shaky but admissible expert evidence.

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.
Comment: This rule simply clarifies that the underlying facts and data used by the expert witness to form an expert opinion need not be admissible as evidence. If the expert customarily relies on such information, the information itself need not be admissible. The key to admissibility is the customary reliance by the expert on the information, not its independent admissibility. For example, to form an opinion concerning the weather on a certain date in March 2000, a meteorologist may rely on weather service maps which might be objectionable hearsay evidence if admitted at trial by themselves. Yet the information may form the basis for the expert’s opinion.

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.

Comment: Rule 704(a) allows lay and expert witnesses to offer opinions on issues to be decided by the jury. For example, in a medical malpractice case, an expert physician testifying for the plaintiff can opine that the treating physician’s conduct fell below professional standard of care. However, witnesses cannot offer opinions on how the case should be decided, nor can they offer opinions on questions of law. Rule 704(b) specifically bars opinion testimony on the mental state of criminal defendants.

Rule 705. **DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION**

The expert may testify in terms of opinion or inference and give reasons therefore without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Comment: Because Rule 703 allows the expert to base her opinion on otherwise inadmissible facts (if of the type reasonably relied on by other experts in the field), Rule 705 allows the expert to offer an opinion without disclosing the underlying facts or data. But the court has discretion to require disclosure on direct examination, and the opposing party can compel disclosure on cross-examination.

**Article VIII. Hearsay**

General comment: Rule 801 defines a “hearsay” statement as (1) an out-of-court statement, (2) made by someone other than the witness who is testifying to the contents of the statement, and (3) which is offered to prove the truth of the matters asserted in the statement. The easiest way to explain the rule is by example. If a witness testifies that he heard a man say, “I am Alexander the Great,” the testimony concerning the statement would be hearsay if it was being offered to prove the truth of matters contained in the statement, i.e., that the person making the statement was in fact Alexander the Great. On the other hand, if the statement was being offered in evidence to prove that the person making the
statement suffered from delusions, the statement would not be hearsay because it was not offered to prove the truth of matters contained in the statement.

A key to understanding hearsay is to focus on the purpose for which an out-of-court statement is being offered. The same statement can be hearsay or nonhearsay, depending on its purpose. For instance, assume X observes a traffic accident. Y comes to the scene a few minutes later. X tells Y, “The light was red.” Y’s testimony, “X said that the light was red” is hearsay, if offered to show the light was red. Suppose, however, that the issue was (1) whether X was blind, or (2) whether the traffic light was functioning at all. In those two situations, Y’s testimony, “X said the light was red” is not hearsay. The statement is offered to show (1) that X could see, or (2) that the traffic light was working. Therefore “the truth of the statement” (whether the light was indeed red) is not at issue, and the statement is not hearsay.

Hearsay is inadmissible because it relies on the credibility of the person who made the statement, and that person is not on the witness stand. Such evidence is deemed to be less credible and less reliable than evidence elicited through firsthand testimony from the person who actually made the statement.

Keep in mind that a nonparty witness’s own out-of-court statement can be hearsay, even when the witness testifies. Thus, in the traffic light example above, if X testifies, “I told Y that the light was red,” the statement is hearsay if offered to show the light was red. Of course, X can testify, “I was there and I saw that the light was red,” because X is testifying as to her own observations. Furthermore, out-of-court statements by witnesses who are parties to the case (or “speaking agents” of parties) are normally admissible under the 801(d)(2) exceptions.

Conduct can be a “statement” under the hearsay rule if it is intended to be an assertion. For example, if a person is asked, “Did Joe kill the bartender?” and the person nods his head in an affirmative response to the question, the nod is an assertion, and it would be hearsay for a witness to testify that he saw the person nod his head in response to the question just as it would be hearsay for the witness to testify that he heard the person say, “Yes, Joe killed the bartender.” Another example of conduct as hearsay is when one person points at another person as a means of identifying that other person when asked, “Who killed the bartender?” An example of conduct which is not hearsay is when a person shakes with fright when confronted by a police officer. The involuntary shaking is not intended to be a statement.

Unless the statement being testified to meets the definition of hearsay, the statement is not hearsay and is not inadmissible on that basis. The rules of evidence also contain many exceptions to the rule that hearsay is inadmissible. The exceptions to the hearsay rule which apply in mock trial are set forth below. Attorneys in mock trial should learn the differences between statements which are inadmissible as hearsay, statements which are admissible because they are not
hearsay, and statements which are hearsay but which are nevertheless admissible because they are recognized exceptions to the hearsay rule.

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.

(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 of a person made after perceiving the person; or
   (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 and in furtherance of the conspiracy.

Comment: Technically all of the 801(d) statements are "nonhearsay," as a matter of definition; they are not hearsay "exceptions" (see 803 and 804). Conceptually, the 801(d) statements function much like hearsay exceptions. Note also that the 801(d)(2) statements must be offered "against a party," not by a party on his own behalf.
Example, 801(d)(1)(A), (prior inconsistent statement under oath): In a declaration (sworn statement) given to the insurance investigator after an automobile accident, the driver said the light was green. At trial, the driver testifies that the light was yellow. Under this rule, the driver's prior statement is admissible.

Example, 801(d)(1)(B), (prior consistent statement offered to rebut a charge of recent fabrication): Three men are charged with theft. One of them makes a deal with the prosecutor and pleads guilty to a minor offense in exchange for his testimony against the other two defendants. During the trial, the defense attorneys for the other two men make allegations against the witness that the prosecution “bought his testimony.” In this situation, the prosecution would be entitled to use the witness's prior consistent statement to prove that he did not change his story after making the plea bargain deal.

Example, 801(d)(1)(C), (prior statement of identification): Just after a bank robbery the police put the suspect in a lineup and ask a witness if she can identify the robber. The witness identifies the suspect. At trial, the witness's out-of-court statement identifying the suspect is admissible.

Comment and example, 801(d)(2)(A), (admission by a party-opponent): Admissions made out-of-court by a party to the lawsuit are admissible. During a telephone conversation with the police, the defendant admitted being at the scene of a burglary. The statement is admissible. Similarly, the driver’s statement, “I didn’t see you in the crosswalk” is an admission in the pedestrian’s suit against the driver.

Comment 801(d)(2)(B), (adoptive admission): This rule most commonly deals with situations where X (the party) is present when Y makes a statement. If X agrees or acquiesces in Y’s statement, X may be deemed to have adopted Y’s statement. In that situation, Y’s statement is admissible as an admission against X.

Comment, 801(d)(2)(C), (authorized statement): Admissions made by a spokesperson are admissible. Admissions by a lawyer on the client’s behalf can be admissible against the lawyer’s client.

Comment and example, 801(d)(2)(D), (statement by a speaking agent): Assume a gas station pump explodes while plaintiff is filling her car. If the cashier tells injured plaintiff, “We’ve been meaning to get that pump fixed, but the corporate headquarters told stations across the country not to waste money on maintenance,” is that statement about the corporate policy admissible against the corporate defendant as an admission by a “speaking agent”? On those facts, probably not, because broad corporate policies are not “a matter within the scope of [the cashier’s] agency or employment.”

Comment, 801(d)(2)(E), (statement by a co-conspirator): Statements made by one co-conspirator are admissible against other co-conspirators, as long as the statement was made during the course of the conspiracy and in furtherance of it. The threshold question of the existence of the conspiracy is decided by the judge,
based on a preponderance of the evidence. The judge may admit a statement provisionally, based on a representation that the prosecution will “connect it up” later by laying further foundation that a conspiracy existed.

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.

(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.

(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 or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purposes of medical diagnosis or treatment

(5) Recorded Recollection -- A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, 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, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(18) Learned treatises -- To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject
of history, medicine, or other science or art, established as a reliable authority by
the testimony or admission of the witness or by other expert testimony or by
judicial notice.

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

(22) Judgment of previous conviction -- Evidence of a judgment finding a person
guilty of a crime punishable by death or imprisonment in excess of one year, to
prove any fact essential to sustain the judgment, but not including, when offered by
the government in a criminal prosecution for purposes other than impeachment,
judgments against persons other than the accused.

Comment and example, 803(1), (present sense impression): This exception is
commonly called the “present sense impression” exception. The rule presumes that
a spontaneous statement, i.e. one made before the declarant has had a chance to
think about the event he or she describes, reduces some of the risk of
misrepresentation. When the person who was just involved in a car accident says
to a witness, “Why didn't I put on my seat belt?” the statement is undoubtedly a
spontaneous utterance and is not objectionable as hearsay.

Comment and example, 803(2), (excited utterance): This exception is called the
“excited utterance” exception. A victim's telephone call to the police describing how
the defendant raped her and left her along the road several hours before the call
would probably be admissible as an “excited utterance.” The key to admissibility is
whether the declarant was still under the influence of the event (i.e., emotionally
charged from the effects of the event) at the time the statement was made. The
belief is that a statement made while the declarant is still under the influence of or
affected by the event is more reliable and less likely to be fabricated than one made
after the declarant has calmed down and taken the opportunity to think about the
event.

Comment and example, 803(3), (state of mind): Statements which describe the
declarant's then-existing state of mind fall within this exception. A statement of the
declarant's intent or plan also falls within this exception when offered to prove that
the intent or plan was later carried out by the declarant. However, the exception
does not apply to statements that describe past states of mind. A witness will be
permitted to testify that the victim of a spousal assault told her, “I fear my
husband” because it was a statement of the victim's state of mind at the time the
statement was made. On the other hand, the witness will not be allowed to testify
that the victim told her a week before the assault, "My husband threatened me and
I thought he was going to hurt me“ because that is a statement concerning a state
of mind which existed in the past when the threat was made. In other words, the
“state of mind” exception to the hearsay rule does not apply to statements of
memory or belief about past actions or events. But the state of mind exception
does apply to statements concerning the present status of a person's health or
physical condition. In a prosecution for murder by poison, the victim’s statement,
“My stomach hurts a lot“ would be admissible.
Comment and example, 803(4), (medical diagnosis): A doctor will be permitted to testify that his patient complained of a sore knee during an office visit. One issue that arises frequently is whether the patient’s description of the cause of the injury is admissible through the testimony of the physician or thorough the physician’s chart note. Under this exception, a patient’s statement that he was struck by a car might be admissible, but probably not his statement, “The other guy hit me when he ran the red light.”

Comment and example, 803(5), (past recollection recorded): A witness may make notes or a record of an observation, but then have forgotten it when called to testify months or years later. Rule 803(5) allows the witness’s statements of “recorded recollection” to be admitted for their truth, if the proponent lays proper foundation. A typical line of foundation questions will establish (1) that the witness once had personal knowledge of the event; (2) the witness has forgotten the event to some extent; (3) the witness previously made an accurate record of the event; and (4) the event was fresh in the witness’s memory when the witness made the record. In many situations, the past recollection recorded exception is similar to the business records exception (803(6)). But the past recollection recorded exception normally requires the maker of the actual record to testify, whereas the business record exception simply requires a “qualified witness” with knowledge of the enterprise’s general practices.

The past recollection recorded hearsay exception is sometimes confused with the practice of refreshing a witness’s “present recollection” under Rule 612. Rule 612 applies when a document, object, or picture will trigger a memory that had been forgotten; the item itself is an aid to memory and is not received into evidence. The witness testifies from her “refreshed recollection.” In contrast, Rule 803(5) applies when the witness cannot trigger a memory of the event, but did “record” the event when it occurred.

Comment and example, 803(6), (business records): Most records kept in the ordinary course of business are hearsay if offered to prove that their contents are true. For instance, entries in a bank’s loan register would be hearsay if offered to show the loan was not repaid on time. Records of any “regularly conducted activity” fall within this hearsay exception if proper foundation is laid. A typical line of foundation questions will establish that the record (1) was made at or near the time of the event; (2) was made by a person with knowledge; (3) was kept in the regular course of business; (4) was made as a part of the business’s regular practice. Note that the opposing party may be able to challenge admissibility of the business record on the grounds of “lack of trustworthiness.”

Comment and example, 803(18), (learned treatises): Statements in a treatise or other scholarly publication are admissible for their truth, if the proponent lays foundation that the publication is a reliable authority in the field. For instance, in a medical malpractice case, either side’s expert may read portions of a standard textbook in the field to establish that the treating doctor did (or did not) meet the applicable standard of care.
Comment and example, 803(21), (reputation in the community): Statements concerning a person's reputation in the community are not objectionable hearsay, so long as the statements do not exceed the scope of permissible character testimony and are elicited in the manner prescribed by Rule 405.

Comment and example, 803(22), (prior judgments): This rule allows admission of prior felony convictions in certain situations, even though the prior conviction would technically be hearsay. For instance, if D is convicted of murder, then Victim’s family brings a wrongful death civil suit on the same set of facts, D’s conviction is admissible for its truth, i.e. to show that D did indeed kill Victim. Victim’s family does not need to re-litigate the issue of whether D really did it.

Rule 804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE
(a) Definition of unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) Persist in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) Testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
(2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant, while believing that the declarant's death was imminent, and concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(6) Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Comment: All the hearsay exceptions under Rule 803 apply whether or not the declarant is “available” to testify in person. But another group of hearsay exceptions set forth under Rule 804 require that the declarant must be “unavailable” before the hearsay statement is admitted. Rule 804(a) defines situations in which a declarant is considered “unavailable.” Physical unavailability such as death or absence from the jurisdiction is not required. The unavailability requirement is also satisfied if the witness invokes a privilege, or refuses to testify in contempt of court.

Comment, 804(b)(1). Rule 804(b)(1) creates a hearsay exception for an unavailable person’s prior sworn statements.

Comment, 804(b)(2). Rule 804(b)(2) is the “dying declaration” hearsay exception. It creates a hearsay exception when the victim of a homicide says, “D shot me,” before victim expires.

Comment, 804(b)(3). This rule sets forth the “declaration against interest” hearsay exception. It rests on the notion that a person is unlikely to make a statement that
would get the person in trouble, unless the statement is true. The last sentence of
the rule places a “corroboration” requirement on statements by an unavailable
declarant that are offered to prove the innocence of a criminal defendant. For
instance, if D is charged with murder, and D’s brother Q is dying of cancer, Q might
make a false deathbed “confession” to exonerate D. If D wants to admit Q’s
“confession” into evidence through a nurse who heard it, the corroboration
requirement would have to be met.

Comment, 804(b)(4). Since one typically does not truly have “personal knowledge”
of his or her birth, parents’ marriage, ages of older siblings, etc., this rule creates a
hearsay exception to allow witnesses to testify facts of family history.

Comment, 804(b)(6). The “forfeiture by wrongdoing” exception would include
situations where a witness by a criminal case is unavailable because the defendant
made arrangements for the witness to “sleep with the fishes.” Because defendant’s
wrongdoing brought about the witness’s unavailability, hearsay testimony from
other witnesses about the unavailable witness’s statements are admissible against
the defendant.

Rule 805. HEARSAY WITHIN HEARSAY
Hearsay included within hearsay is not excluded under the hearsay rule if each part
of the combined statement conforms with an exception to the hearsay rule provided
in these rules.

Comment: This rule governs so-called double hearsay and multiple hearsay
situations. These situations pose challenging analytical problems. Generally the
proponent must show that every link in the chain of statements is admissible.
Arguments for admissibility may include the fact that one or more of the
statements is not offered for its truth, or comes in under a hearsay exception, or is
defined as non- hearsay, etc.

ARTICLE XI – Miscellaneous Rules

Rule 1103. TITLE
These rules may be known and cited as the Washington Mock Trial Rules of
Evidence
SECTION 4

Trial Guidelines
TRIAL GUIDELINES

Included in this Section:

Guidelines for Presiding Judges

Guidelines for Raters

Guidelines for Teams
GUIDELINES FOR PRESIDING JUDGES

BEFORE THE COMPETITION:

- Read these guidelines thoroughly. There are several important differences between real trials and high school mock trial. Being aware of these differences will prevent confusion and help the students get the most out of the experience.
- Become familiar with the general summary of the case and the other materials provided to you. This will help you rule on relevance objections and the pretrial motion.

KEY DIFFERENCES BETWEEN REAL TRIAL AND MOCK TRIAL:

- There are Competition Rules that everyone must follow. If there is a dispute between the teams about the Competition Rules, hold a private bench conference with a student attorney representative from each team. Refer to Part 9 of the Competition Rules for how to handle a dispute.
- You should allow and encourage argument on objections in open court so that the attorneys can demonstrate their knowledge of the rules of evidence to the raters.
- Students use the Mock Trial Simplified Rules of Evidence, which do NOT include every rule in the federal or state Rules of Evidence. Do not permit objections or arguments based on any rules excluded from this simplified set.
- In general, do NOT interrupt the trial if possible. You may not interrupt opening statements or closing arguments to ask questions. You may not question the witnesses yourself.
- You MAY (and ARE ENCOURAGED to) ask attorneys questions during the pretrial motion.
- Both sides receive a two-minute rebuttal during the pretrial motion. Only the plaintiff/prosecution receives a two-minute rebuttal during closing arguments.
- Both sides have time limits, which will be tracked by the two bailiffs. See the Competition Rules on time limits for more guidance on enforcement and granting extensions.
- Teams may request a brief recess after each side rests. Recesses should not exceed five minutes. Before the recess, remind all participants that they should not communicate with teachers, attorney coaches, family, or anyone else not competing in the round.

BEFORE TRIAL STARTS (SET UP):

- Introduce yourself to the bailiff(s). It is mandated that the plaintiff/prosecution side of the case supply a bailiff/timekeeper, but it has been encouraged that each side provide a bailiff/timekeeper if possible. Coordinate who will announce that trial is in session and who will swear in the witnesses (and when). Confer with the team captains before trial if you have any questions about the Competition Rules.
- Make sure there are three raters in the jury box before starting.
GUIDELINES FOR PRESIDING JUDGES

- Ask each team if it is ready for trial. Ensure that they have supplied photo rosters to you and to each rater. Teams should be identified by team letter only, not their school.
- After the bailiff has called the court to order, ask the teams to make brief introductions to the court and raters (plaintiff/prosecution first).
- After introductions from both sides, check whether there are any conflicts of interest. For example:
  "Members of the jury, do any of you have reason to believe there may be a potential conflict of interest that could call into question your ability to rate this trial impartially? For example, are any of you associated with either of these teams, now or in the past?"
  If a rater or a team identifies a potential conflict of interest, notify tournament staff immediately.
- Remind the spectators that:
  - Video or audio recordings are not allowed without the express permission of both teams. If anyone plans to record any part of the trial, they should speak up now and ask for permission.
  - There should be no communication between any spectator and a competitor until the end of the trial. This includes during any recesses.
- Ask both teams whether there are any other administrative or preliminary matters that should be addressed before the pretrial motion.

PRETRIAL MOTION:

- Ask whether one of the parties has a pretrial motion (students may or may not recognize the term “motion in limine”).
- The pretrial motion has four parts:
  1. The moving party has 4 minutes to make their initial motion.
  2. The non-moving party has 4 minutes for their initial response.
  3. The moving party (same attorney) has 2 minutes for a rebuttal.
  4. The non-moving party (same attorney) has 2 minutes for a surrebuttal.
- You are encouraged to ask the attorneys questions during their arguments. You may ask these questions at the end or during their presentation. Your questions (and their answers) do not count against their time.
- While you can interrupt the attorneys, please remember that the raters may not have read the pretrial motion materials at all. Before interrupting, please allow the attorney to at least explain what the motion is about and outline their argument for the raters’ benefit.
- Please limit your questions to the materials provided to the students; do not try to embarrass students by testing their knowledge of legal matters that were not included in their materials. They have not in fact gone to law school.
- Attorneys may make their motion from counsel table, at the podium, or in front of the bench.
- The best judges ask tough questions with a kind demeanor. Test their ability to think on their feet, not their ability to withstand public humiliation.
GUIDELINES FOR PRESIDING JUDGES

- You should rule on the motion at the end of oral arguments. Provide any clarification the teams need to proceed.

OPENING STATEMENTS
- Both sides have 5 minutes for their opening statements.
- No objections or interruptions are allowed unless the attorney starts a new sentence after their time is up.
- Both sides must give their opening statements at the beginning of trial (i.e., the defense CANNOT defer until after the plaintiff/prosecution’s witnesses).
- Please allow one (or both) of the bailiffs to move to the jury box for opening statements so that the attorneys may better gauge how much time remains.

WITNESS EXAMINATIONS
- The witness statements in the case materials should be viewed as signed affidavits made under penalty of perjury.
- Witnesses may be impeached during cross examination if they contradict or unfairly go beyond the facts in their written statement. You should NOT rule whether the witness testified consistently with their statement. That is for the raters to determine.
- The case often includes statements of fact and stipulations that have been agreed to by both parties and may be introduced by any witness.
- Only one attorney per side may question each witness.
- Witnesses are allowed to use black and white enlargements of admitted exhibits and in-court drawings to illustrate their testimony.
- In mock trial, attorneys generally receive permission to move about the well.

OBJECTIONS
- Only the attorney questioning the witness may make or respond to objections.
- Remember to allow arguments on objections if asked so that the attorneys can demonstrate their knowledge of the rules of evidence to the raters.
- Please see Rule 2.02 regarding clock stoppage procedures for objections.

CLOSING ARGUMENTS
- The attorney who delivered the opening statement may NOT also make the closing argument.
- Both sides have 6 minutes for their closing argument; the plaintiff/prosecution also receives an additional 2 minute rebuttal.
- No objections or interruptions are allowed unless the attorney starts a new sentence after their time is up.
- Please allow one (or both) of the bailiffs to move to the jury box for closing arguments so that the attorneys may better gauge how much time remains.

END OF TRIAL
- The raters’ scored ballots should be collected immediately after the trial by tournament staff.
YMCA MOCK TRIAL
GUIDELINES FOR PRESIDING JUDGES

● Do NOT comment on the students’ performances or the merits of the case until AFTER the raters have finished scoring and have submitted their ballots to tournament staff. Generalized praise for both teams is fine.

● AFTER raters have turned in their ballots, you and the raters may give the students comments, praise, and constructive critiques. You may also announce any verdict you would have reached or explain any rulings you made during the trial. The students may have questions about certain decisions.

● Time between trial rounds is limited, please ensure all post-trial comments must be limited to 15 minutes TOTAL (and 5 minutes per rater). Comments should be timed by one of the bailiffs.

● Remember to keep comments constructive and focused on trial advocacy techniques. Do NOT make comments about a student’s appearance or other traits not related to their skill. Please model professional behavior for the students.

● If you have written comments you’d like to share with the teams, either give them to the team’s coach after the trial or return them to the orientation room. They will be distributed to the teams after the competition is over. Make sure that you have labeled the comment sheets with the team’s letter code.

● Judges are requested to fill out the evaluation form on their mock trial experience and return it to the orientation room before they leave. We use your feedback to improve future competitions.
BEFORE TRIAL:
Make sure you have the score sheet, scratch paper for comments, and a pen. Fill out the team letters (for example, T v. Q) in the top corner of the ballot and any comment sheets. Before trial begins, teams should introduce themselves and distribute photo rosters. This is not part of the trial and should NOT influence your scoring decisions. Please do not engage in conversation with teams until after the trial is over and score sheets have been turned in. Inform the judge immediately if you have a conflict of interest (e.g., if you are associated with one of the teams or schools).

SCORING DURING TRIAL:
• Use a pen and PLEASE WRITE LEGIBLY. If you need to change a score, cross out the old score and write the new score next to it. Do NOT write over the old score with a new score - this will not be legible on the carbon copy of your ballot.
• Score each part of the trial on a scale of 1 to 10 (no fractions, ranges of points, or zeros). Score students based on the skill they demonstrate, not the underlying legal merits of the case facts. See the scoring rubric for details on skills.

<table>
<thead>
<tr>
<th>1 - 2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9 - 10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Poor</td>
<td>Mediocre</td>
<td>Fair</td>
<td>Average</td>
<td>Solid</td>
<td>Good</td>
<td>Excellent</td>
<td>Outstanding</td>
</tr>
</tbody>
</table>
• Assume each student starts at a 5 and works their way up or down from there. Avoid giving scores only in a narrow range (e.g., if every student gets a 7 or 8, it is very difficult to determine the relative strength of each team).
• Do not artificially lower points of a good team because they have a weaker opponent (or artificially award higher scores in “fairness” for having a stronger opponent). Try to use the scale above as objectively as possible.
• Teams should be able to present their case within established time limits. You should deduct points if a student does not appropriately manage their own time. You should deduct points if a student appears to be intentionally wasting their opponent’s time by giving unnecessarily long, evasive, or non-responsive answers.
• You should increase the score of a cross-examining attorney that successfully shows a witness has testified to material facts that contradict or are not included in the witness’s sworn affidavit. Decrease the witness’s score if they are successfully impeached with a prior inconsistent statement.
• Note that attorney’s speeches are worth more points (your score for the opening statement will be multiplied by 2, while the pretrial motion and closing argument scores will be multiplied by 3). These parts of the trial are weighted to reflect the additional effort required to prepare them.
• Keep up with scoring during the trial; it will be impossible to do it all at the end. Use a scratch ballot if you do not want to mark up the official ballot until the end.
END OF TRIAL:
● Do NOT confer with the other raters or the judge about how to score the trial.
● Double check to make sure you have legible scores for every part of the trial.
● Make sure to circle which team you thought won in the bottom-left corner of the ballot (remember: winning should be based on skill, NOT the legal merits).
● Make sure to write the names of the best attorney and the best witness (in your individual opinion) in the bottom-right corner of the ballot.
● Score sheet should be collected immediately after the trial by tournament staff. Keep your notes and comment sheets for the post-trial comments to the team.

POST-TRIAL COMMENTS:
● After score sheets have been turned in, raters have the opportunity to give comments and critiques to the teams. Comments should not exceed 5 minutes per rater or 15 minutes total. A timekeeper will inform you when your time is up.
● Remember to keep comments constructive and focused on trial advocacy techniques. Do NOT make comments about a student’s appearance or other traits not related to their skill. Please model professional behavior for the students.
● For many students, critiques are a very valuable part of the competition. Brief general comments are a good way to preface critiques. Students may see comments that are too general as unhelpful or simplistic, so keep most comments specific and follow them with suggestions on how to improve.
● Remember that teams might not have an opportunity to incorporate any suggestions before their next trial, so suggestions for major changes might be more demoralizing than helpful, especially at the state competition. Make sure comments are consistent with competition rules and the constraints of a closed-universe case packet.
● Give your comment sheets to a team’s coach after the trial or return your comment sheets to the orientation room and they will be distributed to the teams after the competition is over. Make sure that you have labeled the comment sheets with the team’s letter code.
● Raters are requested to fill out the evaluation form on their mock trial experience and return it to the orientation room before they leave. We use your feedback to improve future competitions.
SCORING RUBRIC FOR Raters

While confidence, poise, and elocution are essential to making a persuasive case, your scoring should reflect the **substance** of each student’s performance, not just their style. Listen carefully to what the students are saying and think critically about how well it helps their case. Here are some things to consider in your evaluation:

**Pretrial Motion:**
- Clearly articulates what is being asked of the judge
- Develops arguments that logically support the motion
- Makes points that are well-organized and easy to follow
- Supports their argument with legal precedent
- Demonstrates knowledge about relevant case law
- Maintains focus following judge’s questions and interruptions
- Thinks on their feet; able to discuss issues beyond scripted argument
- Effectively points out flaws in opposing counsel’s arguments

**Opening Statements:**
- Introduces the side’s theme and theory of the case
- Tells a clear story of the facts from the side’s point of view
- Provides a road map through the case with appropriate references to expected witness testimony and key exhibits
- Outlines the burden of proof and the requested relief
- Outlines evidence without drawing conclusions (non-argumentative)

**Direct Examination:**

<table>
<thead>
<tr>
<th><strong>Attorney</strong></th>
<th><strong>Witness</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Asks open-ended questions that allow witness to explain facts</td>
<td>Thoroughly knows and understands their character’s testimony</td>
</tr>
<tr>
<td>Orders questions to lay foundation and introduce facts effectively</td>
<td>Communicates key facts clearly</td>
</tr>
<tr>
<td>Avoids asking about irrelevant facts</td>
<td>Presents an interesting, engaging, and credible character</td>
</tr>
<tr>
<td>Follows proper protocol for introducing and using exhibits</td>
<td>Does not invent material facts that contradict the written affidavit</td>
</tr>
<tr>
<td>Demonstrates understanding of the rules of evidence</td>
<td>Properly uses any available exhibits to illustrate their testimony</td>
</tr>
<tr>
<td>Adjusts according to judge’s rulings</td>
<td>Adjusts according to judge’s rulings</td>
</tr>
<tr>
<td>Properly objects to cross-examiner’s questions and defends objection</td>
<td></td>
</tr>
</tbody>
</table>
SCORING RUBRIC FOR RATERS, cont.

Cross Examination:

<table>
<thead>
<tr>
<th>Attorney</th>
<th>Witness</th>
</tr>
</thead>
<tbody>
<tr>
<td>● Properly objects on direct examination and defends objection</td>
<td>● Maintains consistent character and credibility under cross examination</td>
</tr>
<tr>
<td>● Uses objections appropriately and not just to throw other side off</td>
<td>● Does not merely “roll over” in response to cross examination questions</td>
</tr>
<tr>
<td>● Adjusts according to judge’s rulings</td>
<td>● Does not give unnecessarily long, evasive, or non-responsive answers</td>
</tr>
<tr>
<td>● Asks leading questions to elicit helpful facts or undermine harmful facts</td>
<td>● Responds to questions, but does not contradict their written affidavit</td>
</tr>
<tr>
<td>● Organizes questions logically so they are easy to follow</td>
<td></td>
</tr>
<tr>
<td>● Listens to the witness’s responses and follows up as warranted</td>
<td></td>
</tr>
</tbody>
</table>

Closing Argument:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>● Carries theme through from opening</td>
<td>● Summarizes and highlights key evidence</td>
</tr>
<tr>
<td>● Summarizes and highlights key evidence</td>
<td>● Refers to jury instructions to outline law</td>
</tr>
<tr>
<td>● Refers to jury instructions to outline law</td>
<td>● Applies facts of case to the law</td>
</tr>
<tr>
<td>● Applies facts of case to the law</td>
<td>● Only uses evidence admitted during trial</td>
</tr>
<tr>
<td>● Only uses evidence admitted during trial</td>
<td>● States conclusion that follows logically from argument</td>
</tr>
<tr>
<td>● States conclusion that follows logically from argument</td>
<td>● Explains the burden of proof</td>
</tr>
<tr>
<td>● Explains the burden of proof</td>
<td>● Asks for a specific verdict or remedy from the jury</td>
</tr>
<tr>
<td>● Asks for a specific verdict or remedy from the jury</td>
<td>● Effectively answers and rebuts opponent’s strongest arguments (by rule, plaintiff/prosecution receives 2 minutes of rebuttal time)</td>
</tr>
</tbody>
</table>

For all parts of the trial, attorneys should be able to present without overly relying on **written notes**. When determining your score for a student’s part of the trial, you should take into account attorneys who fail to engage with the witnesses or the jury and simply read off a piece of paper.
Rate each category on a scale of 1–10, with 10 being the highest, in the score spaces provided below. Use only whole numbers; no decimals or fractions. Additional space is provided for attorney and witness names.

<table>
<thead>
<tr>
<th>PLAINTIFF / PROSECUTION</th>
<th>SCORE</th>
<th>DEFENSE</th>
<th>SCORE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pretrial Motion</td>
<td>(_______) _____×3</td>
<td>Pretrial Motion (_______) _____×3</td>
<td></td>
</tr>
<tr>
<td>Opening Statement</td>
<td>(_______) _____×2</td>
<td>Opening Statement (_______) _____×2</td>
<td></td>
</tr>
<tr>
<td>Defense is moving party for pretrial</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pl./Pros. Witness 1:</td>
<td>(_______)</td>
<td>Cross-Examination (_______)</td>
<td></td>
</tr>
<tr>
<td>Direct Examination</td>
<td>(_______)</td>
<td>Cross-Examination (_______)</td>
<td></td>
</tr>
<tr>
<td>Witness Performance</td>
<td>(_______)</td>
<td>Cross-Examination (_______)</td>
<td></td>
</tr>
<tr>
<td>Pl./Pros. Witness 2:</td>
<td>(_______)</td>
<td>Cross-Examination (_______)</td>
<td></td>
</tr>
<tr>
<td>Direct Examination</td>
<td>(_______)</td>
<td>Cross-Examination (_______)</td>
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<tr>
<td>Witness Performance</td>
<td>(_______)</td>
<td>Cross-Examination (_______)</td>
<td></td>
</tr>
<tr>
<td>Pl./Pros. Witness 3:</td>
<td>(_______)</td>
<td>Cross-Examination (_______)</td>
<td></td>
</tr>
<tr>
<td>Direct Examination</td>
<td>(_______)</td>
<td>Cross-Examination (_______)</td>
<td></td>
</tr>
<tr>
<td>Witness Performance</td>
<td>(_______)</td>
<td>Cross-Examination (_______)</td>
<td></td>
</tr>
<tr>
<td>Pl./Pros. Witness 4:</td>
<td>(_______)</td>
<td>Cross-Examination (_______)</td>
<td></td>
</tr>
<tr>
<td>Direct Examination</td>
<td>(_______)</td>
<td>Cross-Examination (_______)</td>
<td></td>
</tr>
<tr>
<td>Witness Performance</td>
<td>(_______)</td>
<td>Cross-Examination (_______)</td>
<td></td>
</tr>
<tr>
<td>Defense Witness 1:</td>
<td>(_______)</td>
<td>Defense Witness 1: (_______)</td>
<td></td>
</tr>
<tr>
<td>Direct Examination</td>
<td>(_______)</td>
<td>Defense Witness 2: (_______)</td>
<td></td>
</tr>
<tr>
<td>Witness Performance</td>
<td>(_______)</td>
<td>Defense Witness 2: (_______)</td>
<td></td>
</tr>
<tr>
<td>Direct Examination</td>
<td>(_______)</td>
<td>Defense Witness 3: (_______)</td>
<td></td>
</tr>
<tr>
<td>Witness Performance</td>
<td>(_______)</td>
<td>Defense Witness 3: (_______)</td>
<td></td>
</tr>
<tr>
<td>Direct Examination</td>
<td>(_______)</td>
<td>Defense Witness 4: (_______)</td>
<td></td>
</tr>
<tr>
<td>Witness Performance</td>
<td>(_______)</td>
<td>Defense Witness 4: (_______)</td>
<td></td>
</tr>
<tr>
<td>Defense Witness 4:</td>
<td>(_______)</td>
<td>Closing Argument (_______)</td>
<td></td>
</tr>
<tr>
<td>Direct Examination</td>
<td>(_______)</td>
<td>Closing Argument (_______)</td>
<td></td>
</tr>
<tr>
<td>Witness Performance</td>
<td>(_______)</td>
<td>Closing Argument (_______)</td>
<td></td>
</tr>
</tbody>
</table>

Closing Argument (_______) ____×3

Do not tally or multiply scores. All tabulation will be performed by tournament staff.

Tiebreaker: (Best overall team; one must circle one)

PL./PROS. or DEFENSE

Trial’s Best Attorney: ____________________

Trial’s Best Witness*: ____________________

*Student’s Name
TRIAL PROCEDURES

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom, the events that generally take place during a trial, and the order in which they occur. This section outlines the usual steps in trial.

COURTROOM LAYOUT

*Note: Jury box should always be on the same side of the courtroom as the witness stand. Unless otherwise directed by the judge, the plaintiff’s attorneys sit at the table closest to the jury (raters) box.

PARTICIPANTS:

The Judge

The Attorneys

Prosecutor - Defendant (Criminal Case) or
Plaintiff - Defendant (Civil Case)

The Witness

Prosecution - Defendant (Criminal Case) or
Plaintiff - Defendant (Civil Case)
TRIAL SEQUENCE & INFORMATION

As is true in any trial, this case presents a host of problems for team members. When to call a witness, what the witness should say, and how to cross-examine are just some of the issues that will be encountered. This outline should clarify the issues and solve some of those problems by placing the entire case in an understandable perspective for student attorneys and witnesses. Some of the material discussed in the outline below is described in more detail in the Simplified Rules of Evidence and Procedure section. Students should be familiar with all such material.

The trial is divided into three sections: (1) Opening Statements; (2) Examination of witnesses; and (3) Closing Arguments.

TRIAL SEQUENCE

1. **Opening Statement**: These are brief presentations to the judge/jury that are made by the attorneys. (5 minutes per side.)
   a. A Plaintiff Attorney will outline the case by briefly telling the judge (and jury) the facts of a case in a light which is favorable to his or her side. The legal points expected to be raised during the trial, and a statement of the result that he or she will seek at the close of the case. Note: The application of the law to the facts shall not be argued in the opening statement.
   b. The Defendant’s Attorney will do the same, highlighting those facts which will support his or her theory of the case. Opening may not be reserved.

2. **Examination of Witnesses**: (Each team will have 24 minutes for all their direct and redirect examinations and 20 minutes for all their cross and re-cross examinations.)
   a. Direct: The purpose of this segment of the trial is to allow your witnesses to tell their side of the story in a narrative manner. Witnesses should know their statements “cold.” Attorneys should be sure to listen to their witness's response so that if he or she forgets anything, you can make sure it gets into the record by asking the question again or rephrasing the question to elicit the response desired.
   b. Cross: At the close of every direct examination, the opposing counsel will cross examine that same witness before the next witness is called. The purpose of the cross-examination is to impeach the witness's credibility (believability); that is, to make him/her look bad in the eyes of
the judge/jury. This can be done by showing the witness is biased or prejudice, the witness doesn't remember just exactly what happened, or the witness did not actually see what happened.

Another purpose of cross-examination is to bring out any facts in the witness’s statement that are helpful to the opposing side. The attorney should focus on these specific points by asking the witness leading questions.

c. Redirect: the attorney who called the witness may ask follow-up questions about issues raised in the cross-examination.

d. Re-cross: Questions must fall within the scope of redirect. An attorney will normally use re-cross examination only when unfair extrapolations have been made during redirect examination.

3. **Closing Arguments**: These are concluding arguments made to the judge/jury by each side. (Each side has 6 minutes to make closing arguments. The Plaintiff has an additional 2 minutes for a rebuttal argument.)

It is always proper in final argument to refer to a witness’s interest in the outcome of the case, his appearance and conduct while testifying, and the character and credibility of parties and witnesses when the remarks are based on facts in evidence.

The closing argument should tie the whole case together, as if the attorney is closing a circle. The attorney should point out the most favorable things brought out in the trial in his/her favor and suggest weaknesses in the opponent’s case. Attorneys should not refer to facts which were not testified to by a witness during the trial.

a. The plaintiff, who always has the burden of proof, has the right to have the first closing argument. The attorney should always ask for a judgment or ruling in his/her client’s favor.

b. The defendant’s attorney then has an opportunity to argue his/her case. The attorney should urge the judge/jury to find that the plaintiff has not met its burden of proof, and should point out any facts which would lead the judge/jury to that conclusion. The attorney should always ask for a judgment or ruling for his or her client. Because the plaintiff has the burden of proof, its attorney is allowed the last word in rebuttal argument. Rebuttal should respond to issues raised during the defense closing argument, and should suggest why those points should not prevent a favorable ruling for the plaintiff.
BAILIFF/CLERK RESPONSIBILITIES

**Note:** Laminate this and keep it with you during each trial. Your job is vital to the conduct of this mock trial. You are in charge of the following duties: announcing the opening of the trial; keeping time to make sure that each part of the trial is within the time limits set and swearing in of witnesses.

Before the trial begins, introduce yourself to the judge and explain that you will help as the bailiff. The team that plays the plaintiff should supply the bailiff for each trial and shall be designated as the timekeeper during the trial. The defense team shall provide their bailiff to serve as courtroom host; this bailiff may also assist the defense team with keeping track of their time.

1. When the judge is about to enter the courtroom for the trial, stand up and announce: “All rise, the Superior Court for (name) County, State of Washington is now in session, the Honorable (name) presiding.” Everyone remains standing until the judge enters and is seated. After the judge has taken a seat, announce: “Please be seated.”

2. The judge will hear the pretrial motion first, not to exceed 6 minutes for each side.

3. The opening statements are next, not to exceed 5 minutes for each side.

4. After opening statements, the judge will ask that all 8 witnesses in the case stand to be sworn. The bailiff then says “Please raise your right hand. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth?” The witnesses should respond “I do.” The bailiff then says “Please be seated.”

5. Next are the witness examinations. Please keep track of the time the attorney uses for examination (direct, cross, redirect and re-cross) on the Time Tracking Form as provided in this kit. The Time Tracking Form is only used during the round; you are not required to turn it in to the judge after the trial is over. The judge has the discretion to extend the allotted time for direct and cross examinations, and to stop the clock during examination in certain circumstances.

6. The bailiff must keep accurate time. The bailiff brings a watch with a timer or a stopwatch and his/her own time cards as provided in the kit. (Be sure to practice with it and know how to use the watch before coming to the trials.) Using the pages supplied in this kit, laminate a set of 7 time cards. For each part of the trial that is timed, hold up the appropriate cards and be sure they are visible to the judge and the questioning attorney to let them know how much time is left.

7. Announce recesses and adjournment of the trial. For example, if at the end of closing arguments, the judge says, “I’m going to call a recess while I consider the case and will have a decision in a few minutes,” the bailiff should stand and says, “Court will be in recess: all rise.” When the judge re-enters following a recess, announce “all rise,” then “be seated” when the judge is seated.
8. The closing arguments are the final presentations by the attorneys. Arguments are limited to 6 minutes for each side. The plaintiff is allowed an additional 2 minutes to make a rebuttal argument. When closing arguments are over, the judge will recess.

9. Time is measured in whole second increments.

10. During the testimony of witnesses, bailiffs should not stop the clock for objections unless otherwise instructed to do so by the presiding judge. Some judges may advise the bailiff to automatically stop and start the clock when certain events occur (for example, when the judge asks for a response to an objection). Other judges may instruct the bailiff to start and stop the clock during specific questions or objections. And other judges may add examination time upon request, instead of starting and stopping the clock. The bailiff should meet with the judge at the beginning of the trial to discuss these procedures, and the attorneys should be advised of the judge’s practice.

11. During the argument of pre-trial motions, the judge may interrupt the attorneys to ask clarifying questions. The clock should be stopped at the beginning of the judge’s question, and should restart once the attorney’s answer to the question has been completed.
TIME GUIDELINES FOR MOCK TRIALS

These time guidelines should be used by all classes and teams in preparing their cases for trial. The team that plays the plaintiff should supply the bailiff for each trial and shall be designated as the timekeeper during the trial. The defense team shall provide their bailiff to serve as courtroom host and secondary time keeper during the trial. Judges will be notified of these time guidelines, and may choose to hold the students to them strictly. Whether or not these time limitations are strictly enforced, the students' ability to remain within these confines will be used as a scoring criterion on the score sheets.

The Time Tracking Form on the next page should be copied by the bailiff and brought to each trial so as to keep track of time used by each person in the trial. (A sample has been provided as an example of what a form would look like when used.)

(All times listed are for EACH team EXCEPT rebuttal argument)

**PRETRIAL MOTION** 6 minutes

**OPENING STATEMENT** 5 minutes

**DIRECT EXAMINATION** 24 total minutes for all witnesses, used as teams see fit. (Includes Redirect)

**CROSS-EXAMINATION** 20 total minutes for all witnesses, used as teams see fit.

**CLOSING ARGUMENT** 6 minutes

**REBUTTAL ARGUMENT (PLAINTIFF ONLY)** 2 minutes

**AUDIENCE RATER CRITIQUES** (Suggested time for each is under five minutes, at the judge’s discretion to lengthen if necessary.)

With these guidelines, trials (including critiques) should be concluded in approximately two hours. Because the trials may be scheduled back-to-back, and due to the scoring evaluations, every effort should be made to adhere to these guidelines.
## SAMPLE BAILIFF TIME TRACKING FORM

**Round ______ Courtroom _____________**

**Bailiff _____________________________**

**Plaintiff Team Letter ______________**

**Defense Team Letter _________________**

**Judge ______________________________**

**Rater ______________________________**

**Rater ______________________________**

**Rater ______________________________**

### Pretrial Motion (Record time used)

- _____ Plaintiff argument (4 minutes)
- _____ Plaintiff rebuttal (2 minutes)
- _____ Defense argument (4 minutes)
- _____ Defense rebuttal (2 minutes)

### Plaintiff’s Case in Chief

**Plaintiff Opening (5 minutes)**

- Plaintiff Witnesses (24 minutes)
- Defense Cross (20 minutes)

<table>
<thead>
<tr>
<th>Direct</th>
<th>_____</th>
<th>_____ Cross</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><strong>Witness</strong></td>
</tr>
<tr>
<td>Redirect</td>
<td>_____</td>
<td>_____ Re-cross</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Direct</th>
<th>_____</th>
<th>_____ Cross</th>
</tr>
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<tbody>
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</tr>
</tbody>
</table>

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**Plaintiff Closing (6 minute argument; 2 minute rebuttal)**

| Closing | _____ | _____ Rebuttal |

### Defense’s Case in Chief

**Defense Opening (5 minutes)**

- Defense Witnesses (24 minutes)
- Plaintiff Cross (20 minutes)

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**Defense Closing (6 minutes)**

| Closing | _____ | _____ Rebuttal |

| Closing | _____ | _____ (no rebuttal allowed) |
**BAILIFF’S TIMECARDS**

Please print the cards on next seven pages onto four 8 ½” x 11” sheets (one for each number) and laminate them for use during competition. One bailiff should display them during the trial so that the attorneys can manage their time allocations.

If your timekeeping device does not have a countdown function, you may use the following table as a reference for when to display each number. When your clock equals the number in left column, display the timecard with the number in the right column.

<table>
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TEAMS HELPING TEAMS
ENSURING A SMOOTH COMPETITION ROUND

Mock trial in the state of Washington is known for its spirit of respectfulness and collegiality. In order to continue this tradition, and to ensure that trials proceed smoothly, teams should take care of the following items of business when they arrive in the courtroom:

- Teams should double check that they are seated at the right tables—prosecution sits closest to the jury.

- Competitors introduce themselves to the other side, shake hands, and exchange rosters.

- Teams show each other their exhibits and demonstratives. If there are any disputes, try to resolve them.

- Confirm that when teams are introducing themselves to the judge and raters, the prosecution team goes first.

- Confirm time limits with bailiff; especially note that time stops during pretrial when the judge asks a question.
COURTROOM HOST RESPONSIBILITIES

Each team is expected to provide a courtroom host for their courtroom. At the end of the trial, the two hosts double check the room and are responsible for its final cleanliness. Their job is really easy if they are vigilant on the following items. Any room that is not left clean will result in sanctions against each team, which may include loss of points for the round.

- Maintain respectful behavior of courtroom spectators. Quietly warn those who are loud. If they must communicate in some way, they may quietly and very discreetly pass notes to a person sitting next to them (not across the room, for instance). If the disruption continues, ask them to take their conversation outside the courtroom, before the judge asks them!

- Do not allow any food or drink (this includes pop cans and cups of coffee) to be brought into the courtroom.

- Fill the water jugs from a fountain in the hall. Water and cups will be made available to the courtroom host. As a courtesy, fill the water jug if less than half full after your trial for next trial.

- Be responsible for locating the Mock Trial Director or designated staff member at the judge’s request for dispute resolutions during the trial. Go to the Mock Trial Competition Information Table, and the convener will be found to help you.

- Do not allow anyone to move any courtroom furniture or furniture from the halls. Each room has seating allowable by law and fire codes. Courthouse staff get really upset when they find the rooms are not as they were left and then have to rearrange them in order to resume trials on the Monday after our event. Respect of their environment ensures their continued support of our event.

- Remove all used paper cups from defense and prosecution tables. Remove paper from the wastebasket in the courtroom. Place litter in the large trash container located in the hallway.

- Stand by the courtroom door and monitor it to ensure quiet exits and entrances into the courtroom during the trial.
SAMPLE PICTURE ROSTER

Please create picture rosters similar to the example below. You need a separate picture roster for plaintiff and defense. Be sure your school name **IS NOT** included on the rosters. Bring at least 5 copies of the picture roster to each trial.

### Defense/Plaintiff Roster

<table>
<thead>
<tr>
<th>Attorney</th>
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<tr>
<td>Witness #1</td>
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<td>Witness #3</td>
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<td>(name)</td>
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ATTORNEY COACHES

Students and teachers benefit immensely from attorney practical experience and expertise. The involvement of trial attorneys in the mock trial program raises the bar of performance for teams. As role models to impressionable students, their involvement also improves the chances that students will form a positive opinion of legal professionals and the legal system.

Attorney coaches are asked to observe these guidelines in order to serve the students and teacher advisors in the most effective manner possible. As much as attorneys may want to help the students, they need to remember that students will develop a better understanding of the case and learn more from the experience if the attorney coaches do not dominate the student’s preparation for the mock trial. Attorney coaches should point students in the right direction, but allow them to do the research. The preparation phase of the contest is intended to be a cooperative effort of the students, teacher and attorney coaches.

The attorney coach is best described as the constructive observer listening, suggesting, guiding, and demonstrating techniques to the team. Sessions with the mock trial team should be devoted to the following:

- Answering questions that students may have concerning general trial practices.
- Explaining the reasons for the sequence of events/procedures found in a trial.
- Listening to the students’ approach to the assigned case, then provide guidance.
- Emphasizing key points, such as the elements to be proved, and the relevance and importance of available legal authority.
- Demonstrating proper questioning techniques by the student attorneys.
- Demonstrating the delivery of sound testimony by the witnesses.
- Encouraging students to do as much of their own preparation as possible. Attorney coaches should not prepare opening statements, closing statements or questions for the students.
- Explaining complicated legal terms and procedures if necessary.
SECTION 5

Case
FLYSPECKING

YMCA Youth & Government
2019 Washington State
Mock Trial Case

By Judge Robert A. Lewis
Clark County Superior Court
INTRODUCTION

“This is an odd flyspeck of a case.”


The word “flyspeck” has several meanings, all of them negative. No one is anxious to see an original example of the term, the droppings of a common fly, soiling a counter or window pane. Justice Stevens employs the word as a noun --to call something a flyspeck is to suggest that it is insignificant, not worthy of attention. Often used in legal parlance as a verb, to flyspeck a legal document is to examine it in ridiculous detail, to scrutinize every minor phrase and comma as if it is loaded with major significance.

But is that last meaning really a negative? The participants in this year’s lawsuit might have been better off to closely review the documents related to their real estate purchases, before they chose to live within a few acres of one another. Those documents were supposed to provide a better understanding of what each owner could (and could not) do on his or her property, to avoid the types of disputes that now plague the neighborhood like swarming flies.

In William Golding’s *Lord of the Flies*, one of the characters notes that “We’ve got to have rules and obey them. After all, we’re not savages.” The struggle between communal rules and unrestrained action ends tragically in that novel. Moonlight Estates has a similar problem – is happiness for their little society best achieved through personal liberty or through a system that restricts some of each person’s liberty for a common good.

All of the parties here just want to enjoy the lifestyle each planned when they built a home out in rural Pine County. They are not trying, as Grandma used to say, to make a blamed nuisance of themselves. Should the court uphold each person’s right to do as they please on their own parcel and tell them to leave the neighbors alone? Or is everyone freer if we have some restraints and boundaries, enforced through a system of law? And will nature observe those boundaries and restraints?

The solution is complicated and so is this mock trial case. Each team can approach their presentation from several angles, emphasizing the points they decide will be the most persuasive to the jury. The answer may be found in contract principles or nuisance law, in wind patterns or grazing units. The devil (and hopefully the fun) will be in those insignificant details.

The author would like to thank Brent Gaither and Erin FitzGerald for their assistance, especially with this year’s cover art. Good luck!

Robert Lewis, October, 2018
**Plaintiff’s Witnesses**

Jesse Applegate, Owner, Parcel 4, Moonlight Estates

Addison Javert, Homeowners Association President

Winslow Taylor, Farm Management Expert

Kit Keller, CEO, Marsh Side Dairy

**Defendant’s Witnesses**

Loren Greendrover, Owner/Manager, GreyEden Ranch

Ev Muska, Entomologist

Carrol Hawke, Trucker, Ranch Support Specialties

Kimball Arnold, Pine County Agricultural Enforcement Agent

**Exhibit List**

Exhibit 1 - Map of Moonlight Estates and Surrounding Area

Exhibit 2 - Declaration of Covenants, Conditions and Restrictions

Exhibit 3 - Photograph of Flies

Exhibit 4 - Table: Grazing Optimization Analysis

Exhibit 5 - Hammer/Keller/Greendrover Parcel A Deed

Exhibit 6 - Photograph of Murray Grey Cattle

**STIPULATIONS:**

The written statements of the witnesses were given under oath and certified as true and accurate to the best of that witness’ knowledge and memory.

The only relevant portions of the declaration of covenants, conditions and restrictions are reproduced in Exhibit 2 and the parties agree that the remainder of the declaration is not at issue in this litigation.

The participation of the Moonlight Estates Homeowners Association in this action was authorized by a majority vote of lot owners.

The exhibits have been authenticated and are admissible.
PLEADINGS
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PINE

JESSE AND JACKIE APPLEGATE, and  )
MOONLIGHT ESTATES HOMEOWNERS  )
ASSOCIATION,  )
 ) NO. 18-2-001227
 )
Plaintiffs,  ) COMPLAINT
 )
vs.  )
 )
LOREN AND RILEY GREENDROVER,  )
 )
Defendants.  )

Comes now the Plaintiffs, and for their claims and causes of action against the Defendants allege as follows:

1. Plaintiffs Jesse and Jackie Applegate are residents of Pine County and are the owners of that real property commonly known as Parcel 4 of Moonlight Estates.

2. Plaintiff Moonlight Estates Homeowners Association (the HOA) is the association charged with the enforcement of the Conditions, Covenants and Restrictions (the CCRs) imposed upon all parcels of real property within Moonlight Estates. The HOA is also responsible for maintenance and repair of the private roads within Moonlight Estates and for the imposition and collection of assessments from Moonlight Estates property owners as necessary to discharge its responsibilities.

3. Defendants Loren and Riley Greendrover are residents of Pine County and are the owners of that real property commonly known as Parcel A of Moonlight Estates. Immediately north of Parcel A, the defendants own real property commonly known as Parcel B, which is not a part of Moonlight Estates. Parcels A and B are sometimes collectively referred to as GreyEden Ranch.

4. Moonlight Estates is a Pine County, Washington real property development/subdivision containing 12 parcels as originally described in the CCRs, plus Parcel A of GreyEden Ranch. The development and the surrounding area are roughly depicted in Exhibit 1.
5. All of the Moonlight Estates parcels are benefited by 20 foot easements for ingress, egress and utilities over, under and through the “Lunar Sea” private roadways, as depicted on Exhibit 1. Parcel B of GreyEden Ranch is not benefited by these easements and any owner of that parcel has no right to use these private roads. The defendants’ use of the Lunar Sea roads for the benefit of Parcel B, and for any ranching activities on either property, is a trespass and a detriment to the plaintiffs’ use, enjoyment and value of their property.

6. After the creation of Moonlight Estates and the CCRs, the defendants commenced operation of a commercial cattle raising business on Parcel A of GreyEden Ranch. These activities were later expanded onto Parcel B. This business is operated in violation of the CCRs. In addition, the operation of the ranch overburdens and damages the easements appurtenant to the development and is in violation of the easement’s provisions and restrictions.

7. The defendants’ operation of GreyEden Ranch, and the feed lot that has been created by their business activities, is unreasonable and has created blighted and offensive conditions that substantially impact the visual (sight), olfactory (smell), auditory (hearing) and tactile (touch) senses of the plaintiffs and of other residents of Moonlight Estates. These conditions include:

   a. Noxious odors in the nature of waste and manure smell from the cattle and from the storage of piles of waste on their premises;

   b. Excessive numbers of flies that alight on, in and around the Plaintiffs, their property and their residence, thereby interfering with indoor and outdoor activities, including food preparation, and defacing and damaging inside and outside surfaces with fly waste, secretions, excretions and fly specks;

   c. Surface water pollution and contamination as a result of ground and rainwater flowing over and through the mess created by the defendants’ operations, and onto adjoining properties, fouling the adjacent wetlands and streams;

   d. Harsh, unpleasant and continuous noises in the nature of herd cattle, including the bull known as “Boscoe”, bellowing at all hours of the day and night, and in the nature of excess vehicle and truck noise; and

   e. Engaging in poor ranching practices, including over-grazing, improper storage of equipment, supplies and waste, which causes filthy and mud-covered or dust-covered conditions that are a health hazard and an eyesore.

8. These conditions constitute a public and a private nuisance and are a substantial and unreasonable interference with the Plaintiffs’ use and enjoyment of their residences and lands. The conditions are injurious to health and safety and significantly decrease the value of the property of the plaintiffs.
WHEREFORE the Plaintiffs demand relief against the Defendants in the form of a declaration by the court as follows:

1. That Parcel A of GreyEden Ranch is subject to all of the terms and conditions contained in the Moonlight Estates CCRs;

2. That Parcel B of GreyEden Ranch is not entitled to access the roads in Moonlight Estates and that the use of these roads to service said parcel is a trespass;

3. That the actions of the defendants in the operations at GreyEden Ranch are a substantial violation of the CCRs, an illegal public and private nuisance, and an improper and unreasonable burdening of the private roads within that development.

After the jury has made the declarations noted above, the court should, at a later date, determine the proper remedy for these violations, including damages and injunctive relief.

Dated October 1, 2018

BY /s/ ________________________________  
Attorney for Plaintiffs
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PINE

JESSE AND JACKIE APPLEGATE, and
MOONLIGHT ESTATES HOMEOWNERS
ASSOCIATION,

vs.

LOREN AND RILEY GREENDROVER,

Plaintiffs,

Defendants.

NO. 18-2-001227

COMES NOW THE DEFENDANTS, AND FOR THEIR ANSWERS AND AFFIRMATIVE DEFENSES TO THE CLAIMS OF THE PLAINTIFFS, ALLEGES AS FOLLOWS:

1. Defendants admit that they own Parcels A and B of GreyEden Ranch, but deny that any portion of their property is a part of the Moonlight Estates development or subject to its CCRs.

2. Defendants admit that Parcel A of GreyEden Ranch has the benefit of easements over, under and through the Lunar Sea roadways, but deny that Parcel B may not be serviced or benefitted by those easements.

3. Defendants admit that they operate a commercial cattle raising business on GreyEden Ranch, but deny that this operation is a “feedlot”. Defendants further deny that any of their farming or ranching practices are unreasonable, or that their operation creates or constitutes a public or private nuisance. The defendants further deny that their operations overburden or damage the Lunar Sea roadways.

4. By way of affirmative defense, the defendants assert the following:

a. The plaintiffs, Jesse and Jackie Applegate, assumed the risk of harm or loss by locating at or near the established cattle operation they now claim is a nuisance.

b. The plaintiffs, Moonlight Estates Homeowners Association, are estopped from (not permitted to) bring an action against the operations of the defendants, when they currently permit and have permitted
similar violations of the CCRs by other owners within the Moonlight Estates
development.

c. The agricultural activities on GreyEden Ranch are
protected from nuisance actions by the Right to Farm Act, RCW 7.48.305.

WHEREFORE, the Defendants respectfully demand that the plaintiffs’
claims be dismissed and for such other relief as the court deems just and
 equitable.

Dated October 15, 2018

BY /s/ ______________________
  Attorney for Defendants
JURY INSTRUCTIONS
Jury Instructions for Applegate & HOA v. Greendrover

Instruction No. 1

It is your duty to decide the facts based upon the evidence presented to you during this trial. You must apply the law from the instructions to the facts that you decide have been proved, and in this way decide the case.

You are the sole judges of the credibility of each witness, and of the value or weight to be given to the testimony of each witness. In assessing credibility, you must avoid bias, conscious or unconscious. You may properly consider these things: the opportunity of the witness to observe or know the things they testify about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown and the reasonableness of the witness's statements in the context of all of the other evidence.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

Instruction No. 2

The evidence that has been presented may be either direct or circumstantial. The term “direct evidence” refers to evidence that is given by a witness who has directly perceived something that is at issue. The term “circumstantial evidence” refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value. One is not necessarily more or less valuable than the other.

Instruction No. 3

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

A juror is not required to accept a witness’s opinion. To determine the credibility and weight to be given to this type of evidence, you may consider the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion, the sources of information used by the witness and the other factors already given to you for evaluating witness testimony.
Instruction No. 4

When it is said that a party has the burden of proof on any proposition, or that any proposition must be proved by a preponderance of the evidence, or the expression “if you find” is used, it means that you must be persuaded, considering all of the evidence, that the proposition on which that party has the burden of proof is more probably true than not true.

Instruction No 5.

The term “proximate cause” means a cause which in a direct sequence produces the injury or event complained of and without which such injury or event would not have happened.
There may be more than one proximate cause of an injury or event.

Instruction No. 6

Contracts, including documents agreed to as a part of a real estate transaction, are to be interpreted to give effect to the intent of the parties at the time they entered the contract.
You are to take into consideration all the language used in the document, giving to the words their ordinary meaning, unless the parties intended a different meaning.
You are to determine the intent of the contracting parties by viewing the contract as a whole, considering the subject matter and the purpose of the contract, all of the facts and circumstances leading up to its making, the subsequent acts and conduct of the parties to the contract, and the reasonableness of the interpretations offered by the parties.

Instruction No. 7

A trespasser is a person who enters or remains upon the premises of another without permission or invitation, express or implied.

Instruction No. 8

Nuisance is unlawfully doing an act or failing to perform a duty, which act or failure to act:
(1) Annoys, injures, or endangers the comfort, repose, health, or safety of others; or
(2) In any way renders other persons insecure in life, or in the use of property.
Instruction No. 9

A public nuisance is one that affects equally the rights of an entire neighborhood, although the extent of damage may be unequal. Every other nuisance is a private nuisance.

Instruction No. 10

Plaintiffs have the burden of proving each of the following propositions with respect to the nuisance claim:

1. That defendants acted unlawfully or failed to perform a duty; and
2. That the act or failure: (a) annoyed, injured, or endangered the comfort, repose, health, or safety of others; or (b) in any way rendered other persons insecure in life, or in the use of property; and
3. That the act or failure was a proximate cause of injury to plaintiffs or their property.

If you find from the evidence that each of these propositions has been proved, your verdict should be for the plaintiffs on the nuisance claim. On the other hand, if any of these propositions has not been proved, your verdict should be for the defendants.

Instruction No. 11

In determining whether the defendants have caused a nuisance, you must balance the rights, interests, and convenience of the defendants against the rights, interests, and convenience of the plaintiffs. The inconvenience, discomfort, or interference that the plaintiffs suffer must be measured according to what a person of ordinary and normal sensibilities would suffer.

There is no precise measure of the amount of discomfort that an act must produce in order to constitute a nuisance. Rather, the fundamental inquiry is whether the use to which the property is put is reasonable or unreasonable. An otherwise lawful action may still be a nuisance if it is an unreasonable use of property. In determining what is the reasonable use of the property, you must consider all of the surrounding facts and circumstances, including the character of the neighborhood, the social utility of the activity, manner of use, and circumstances of the activity.

Instruction No. 12

It is a defense to a nuisance action that the plaintiffs assumed the risk of harm or loss by locating near an established use of property. Though this fact, if proved, does not absolutely bar a nuisance claim, it is one factor to be considered. To establish this defense, the defendants have the burden of proving that the plaintiffs knew of the defendants’ use of property when the plaintiffs improved property, or elected to live on property, in close proximity. “Use of property” means the use that the plaintiffs now contend is a nuisance.
Instruction No. 13

A state statute provides that agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding nonagricultural activities, are presumed to be reasonable and shall not be found to constitute a nuisance, unless the activity or practice has a substantial adverse effect on public health and safety.

"Agricultural activity" means a condition or activity which occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to noise, odors, dust and fumes, the operation of machinery and roadway movement of equipment and livestock.
WITNESS STATEMENTS
THE PACIFIC NORTHWEST WAS OUR AVALON, THE PLENTIFUL ISLAND OF FRUIT TREES IN ARTHURIAN
LEGEND, WHERE THE GOOD LIFE REIGNED, EVEN WHEN IT RAINED. WE INVESTED A LOT OF TIME, ENERGY AND
MONEY TO BUILD OUR DREAM LIFE HERE, FAR FROM THE CROWDED HASSLE OF SANTA CLARA. BUT UNLESS THIS
COURT GIVES US JUSTICE, THAT DREAM WILL BE RUINED BY THE GREENDROVERS AND THEIR STUPID, BAWLING,
STINKING COWS.

EXCEPT FOR SOME TIME IN THE SERVICE, I'VE LIVED MOSTLY IN THE SAN FRANCISCO BAY AREA. MY
INTEREST HAS ALWAYS BEEN IN CUTTING EDGE COMPUTER PROGRAMMING AND ITS APPLICATIONS. THROUGH
THE DISCIPLINE AND WORK ETHIC I LEARNED IN THE MILITARY, I BUILT A SUCCESSFUL BUSINESS FEATURING
INTERACTIVE WHITEBOARD TECHNOLOGY, THE LATEST THING IN REMOTE COMMUNICATION. AND THROUGH A
STROKE OF LUCK, I MET MY SPOUSE JACKIE, ANOTHER (IN MY OPINION) BRILLIANT PROGRAMMER, WHO WAS
DEVELOPING IMPROVEMENTS TO VIDEO CONFERENCE.

DESPITE THE EXPENSE OF LIVING IN THE SILICON VALLEY, JACKIE AND I WERE ABLE TO AMASS A
CONSIDERABLE ESTATE, ALTHOUGH WE ARE NOT IN THE TECH-WEALTH STRATOSPHERE BY ANY MEANS. WITH
SOME OF THE TECHNOLOGY WE INVENTED, I REALIZED THAT MY BUSINESS COULD BE MANAGED FROM
ANYWHERE IN THE WORLD. SO WE DECIDED TO LEAVE THE "PRESSURE COOKER" AND FIND A PLACE WHERE
WE COULD ENJOY OURSELVES AND PURSUE OUR PASSIONS -- TENDING AN ORGANIC GARDEN FED BY CASTINGS
FROM A SMALL EARTHWORM "PLANTATION", FRUIT FROM AN HEIRLOOM ORCHARD AND OUTDOOR DINNER
PARTIES WITH FRIENDS, COOKED ON MY MASSIVE GAS GRILL.

OVER THE YEARS, WE MADE A NUMBER OF CONNECTIONS WITH LIKE-MINDED PEOPLE IN THE
PACIFIC NORTHWEST AND WE ALWAYS ENJOYED OUR TIME IN THIS BEAUTIFUL AREA. WE ESPECIALLY LIKED
THE ROLLING HILLS OF SOUTHERN PINE COUNTY, ITS BUCOLIC FIELDS ALTERNATING WITH VERDANT STANDS OF
EVERGREENS. THE COUNTRYSIDE WAS NEAT, OPEN AND QUIET, BUT CLOSE TO BUSTLING ALKI CITY, WITH ITS
INTERNATIONAL AIRPORT, VIBRANT ARTS SCENE AND ITS COMMUNITY OF YOUNG, TECH-SAVVY ENTREPRENEURS.
AND COMPARED TO CALIFORNIA, EVERYTHING BACK THEN WAS So MUCH CHEAPER!

LONG BEFORE WE WERE READY TO MAKE THE TRANSITION, WE COMBED THIS AREA FOR A PLACE TO
BUILD OUR HOME. I AM VERY FAMILIAR WITH USING TECHNOLOGY TO LOCATE AND RESEARCH POTENTIAL LAND
INVESTMENTS, AND I'VE DONE MY "DUE DILIGENCE" ON A NUMBER OF SUCCESSFUL REAL ESTATE DEALS. IT'S
BEEN A LUCRATIVE HOBBY. MOST OF MY ACQUISITIONS WERE COMMERCIAL PROPERTIES, BUT I'VE FLIPPED A
FEW HOUSES AS WELL. IT'S IMPORTANT TO LOOK FOR THE PROTECTIONS THAT KEEP PROPERTY VALUES UP AND
THE NEIGHBORHOOD DECENT -- RESTRICTIONS ON ADJACENT PROPERTIES AND HOMEOWNERS ASSOCIATIONS
TO ENFORCE THEM. MY BUSINESS REQUIRES SOME LEGAL BACKGROUND AND I'VE LEARNED WHAT TO LOOK
FOR AND HOW TO MAKE OTHERS HONOR THEIR COMMITMENTS. IT'S USUALLY DOESN'T REQUIRE LITIGATION UP
here -- these rural types are no match for those of us who have made it in the cutthroat world of California business.

We purchased Parcel 4 of Moonlight Estates in 2006 as a single lot. As part of the purchase, we were granted an easement across the Lunar Sea roadways, the private roads that service all of the lots in the development. Our lot fronts Serenity Drive, near its intersection with Cleverness Boulevard. The name "Boulevard" is an exaggeration. All of the roads were still gravel when we bought the land and even today they are narrow paved lanes, about 20 feet in total width, with wider circular areas like cul-de-sacs where the streets intersect or end.

After we purchased Parcel 4, we discovered that it was actually two separate tax lots. When we finally decided to build our home, we utilized the septic permit that had been obtained from the developer, Kit Keller, prior to the sale. Because the permit would have required the drain field to cross over the border of the two lots, we worked with Pine County to obtain a boundary line adjustment. As a result, our home and septic system are all on one tax lot. The back tax lot may be a separate buildable lot as a result -- we’re still working on that, so in 2014 we granted that lot a separate easement for utilities and a driveway to Serenity Drive. But that’s no big deal -- that part of our property was always included in the description of Moonlight Estates.

Our purchase of a lot in this development was with the knowledge that this area was transitioning from agriculture to residential uses. I reviewed the CCRS for these properties and even took them to my company’s lawyer, who told me that none of the properties near us could be used for anything but a residence. We purchased the land in reliance on those CCRs and on our ability to legally restrict improper uses and activities. We never anticipated that anyone would be permitted to run a commercial feed lot in Moonlight Estates or anywhere close to our home.

Of course, the area was still in the earlier stages of this transition when we bought the land. Parcel 4 and the other lots were still open pasture, mostly indistinguishable from the dairy farm next door. Only a couple of houses were being constructed and most of the lots were still on the market. Keller advised us that the property north and west of our lot would remain grazing area for the dairy for now, although retirement and the hoped-for success of this development would eventually change that. We weren’t concerned about the use of the land by our neighbors at that time, since we had no immediate plans to move to the area.

After the sale, I allowed Keller to graze four to six cattle on our land, in order to help control the grass and weeds. Keller agreed to spray the property for tansy ragwort and
Canadian thistle in exchange for the grazing rights. Since we weren't living near the property and didn't want the place to become an overgrown eyesore, we were happy to allow this transitional arrangement.

The initial grazing agreement with Keller ran from July 2006 to December 2008. Until October 2012, we didn't consent to anyone grazing cattle on our land. During this time we hired Jane McCormick, the owner of Parcel 6 and the operator of a business known as Reliable Field Maintenance, to mow our property and spray it for noxious weeds. I don't know McCormick's business address or where she keeps her equipment -- I met her one day in 2009 while I was up on one of our annual visits to the property. She was mowing one of the other fields in the development, next to her place.

It was during our annual visit in 2012 that I met the defendant, Loren Greendrover. Over the years, I had observed the "progress" of the Greendrover's home and barn, although both were left in an unfinished condition for years, with plastic tacked up over the open construction -- very unattractive. There were usually a few head of cattle, but it looked like a hobby operation to me. It was never more than just a few lazy bovines sunning themselves by the small barn or grazing in the far corners of the back field. The Greendrovers were not the tidiest neighbors, but I didn't see anything of real concern during my visits -- nothing that we couldn't fix once we moved up here.

Loren Greendrover made some preliminary small talk and then proposed a pasture lease, similar to the deal we had with Keller. In exchange for grazing rights, Greendrover would maintain the fences and spray my land for noxious weeds. The defendant never said anything about needing the pasture to expand a cattle operation. I thought the herd was small and the number of cattle about the same as Kit had run on the property. In addition, Greendrover agreed to arrange for the construction, and pay for half the cost, of a white plastic fence along our common border. This was something I proposed, because we were getting close to building our house and we wanted a fence of this type on all sides of the property eventually. The agreement was only for one year, since we hoped to be moving before the next growing season.

The fence was erected as planned, with a small electric guard fence on either side to keep the cattle away from it. The fence ended about 20 feet from our back line and Greendrover erected a gate to our property there, to allow the cattle to access our field. When I visited again in fall 2013, there were no cattle on our parcel, but it certainly looked like some had been there. The grass was gone and the land was dusty and scarred with hooves and manure. The defendants didn't do a very good job of spraying and the thistles were making a
comeback around the edges of the property. When Greendrover asked to renew the grazing
arrangement, I didn't raise these concerns. I simply declined because construction was almost
finished and I didn't want the cows around. The grass rebounded and a local farmer now cuts
and bales it for us in exchange for the hay.

We have never operated a commercial agricultural enterprise on Parcel 4 and we did
not profit monetarily from our arrangements with any farmer. I don't know why the County
had the property listed as agricultural, I suppose that is a holdover from Keller's ownership. I'm
trying to work out with Keller who will pay the back taxes, if the classification is changed. So
far, Kit doesn't seem that interested in shouldering the responsibility.

During our annual visits, we observed a few farm animals on various lots in Moonlight
Estates, which now had homes on all of the parcels. Again, this was hobby stuff, 4-H projects
like a single cow, a pair of riding horses and a few goats. Parcel 11 kept llamas, for reasons
known only to them. I didn't see the feeder cattle on Hawke's property, which is down in a part
of the development that is nowhere near my place. No one seemed to be using any lot for
commercial purposes, until the Greendrovers began to ramp up their cattle after we moved
into our home in the spring of 2014.

We were excited and anxious to begin a new chapter in our lives. That excitement was
almost immediately dampened when we saw the conditions on GreyEden Ranch. Things were
already shabbier and muddier than my previous fall visit, and more cattle were obviously
present, but fortunately the fence mitigated some of that view, at least from the lower level of
the house. That first summer was annoying, but tolerable. That spring was warm and wet and
the grass over there seemed to last well into the summer. We were so busy planting our
orchard and setting up the garden spot and worm farm that I didn't notice anything unusual.

Over the next three years, however, conditions steadily deteriorated as the size of the
Greendrover herd expanded significantly. The area around the barn became a sea of mud and
muck. This area of filth expanded after the defendants installed two round hay feeders and
then looked for someplace, anyplace to throw fodder that was not already covered with that
spreading sludge of wet dirt and manure. It is common to see Greendrover's precious Murray
Greys knee deep in brown goo-- I feel sorry for the poor things. I'm surprised PETA isn't
regularly down here picketing, not just for Boscoe but for all of the animals.

The deplorable conditions on the property assault every one of the senses when you are
outside. The smell emanating from GreyEden Ranch is nauseating -- especially when the breeze
comes in from the west, which is most of time. If you dare attempt to eat outside, you can
taste the foul dust that settles over everything. You can feel it on your skin, covering your hair and clothes with a patina of grime. When you are upstairs, or in the portions of our parcel not blocked by the fence, the piles of filth and detritus, the dirty cattle and the rusting, derelict manure spreader that hasn't moved in three years, are an eyesore.

And don't forget the noise, which is primarily from two sources. Once the grass runs out in the field -- which is often, because there are too many cows -- the trucks drive to and from the property 6 to 9 times a week. Hay trucks, stock trucks hauling cattle in and out, trucks bringing other supplies to this poor, beefy prison -- it's a constant parade. The drivers idle outside our driveway, blocking our access as they try to figure out a way to get turned around in the narrow space. And all spring and summer, there's the bawling, at all hours of the day and night. I don't know what causes it -- hunger, thirst, boredom, Boscoe's insatiable lust-- but it is impossible to sleep when the bawling starts.

We wanted to be good neighbors, so we put up with it for a while. But the swarms of flies were the last straw. Except in the coldest part of winter, the flies are a constant part of our lives now. They congregate near our doors and window, waiting for a chance to slip inside. When spring arrives and the winds blow in from the northwest, their numbers increase and they cover everything, buzz everywhere. If the defendants claim that they have seldom observed a swarm of flies on their property, then the spreader is being used more often than I think.

The fly specks are everywhere. These dirty secretions cover the siding of the house, the inside and outside of the windows and the formerly white plastic fence. Everything outside has to be power washed at least once a month and you can still see the old, faint stains peeking out from under the new leavings. I can't afford to paint the outside of the house after each season and I shouldn't have to do that to have a presentable home.

Remember our passions, our dreams of an active outdoor life? Forget all of that with the current conditions. The clothesline is gone, because hanging items outside guarantees you have to wash them again. The garden hasn't been tilled in two seasons, because I don't feel like wearing a surgical mask and constantly swatting flies while I tend it. I have no idea how the earthworms are doing. The thought of eating something we produced in our garden or orchard is nauseating now. Food preparation inside is almost as bad; Exhibit 3 shows a typical late fall swarm of flies and the interior is even thicker with the pests in other parts of the year. The table and counters are some of their favorite landing areas and they sit there, staring at the food, rubbing their disgusting legs together in anticipation of tainting another meal.
There have been a grand total of two outdoor dinner parties. The last one, a late spring soiree, included some of my best customers on the guest list. This important event was spoiled by a consistent breeze from the west, with its cargo of odors and flies. Everyone left early and hungry. Now we cannot stand to be on the patio for more than a few minutes at a time, unless we wanted to have a barbeque in January.

I keep saying "we," but the truth is Jackie couldn't put up with it anymore. After our last dinner party was ruined by the flies and their specks -- some actually flew into our guests' mouths when they tried to eat -- Jackie packed some clothes and went back to stay at the home we own in California. The Greendrover's blatant disregard for everyone else in Moonlight Estates has not only ruined my dream home - it's ruined my marriage.

I don't expect to live in a sanitary bubble -- I know that some flies and bugs are present in everyday life. But this is different and it is entirely attributable to the unreasonable way GreyEden Ranch is operated. There are too many cows and not enough effort to control the overgrazing, the mud, the manure. There are other people in this area with cattle or farm animals, but they have enough land or they limit the number of animals on their parcels. Something must be done to control the odor, the unsightliness and the flies.

These flies are coming from the defendant's property. No, I haven't installed little GPS tracking devices on them, but it is just common sense. When Greendrover did not have a lot of cows, we did not have swarms of flies. Since this lawsuit began, there are fewer cows on the property and the fly invasion is not quite as intense. But I don't want this problem temporarily lessened, I want it stopped. This illegal operation should be shut down and the property cleaned up and made presentable again. Then maybe Jackie will come back and we can get on with the normal life we have a right to expect in a residential area.
STATEMENT OF ADDISON JAVERT

The rules are there for a reason. Follow the rules and we will all be happier and healthier and there will be less conflict in our neighborhood, our country and our world. As president of the Moonlight Estates Homeowners Association for the last 4 years, it has been my mission to get everyone on these little streets to recognize the necessity -- and their legal obligation -- to obey the restrictions and covenants that we all agreed to when we purchased our properties. The Greendrovers and their cattle should not be treated any differently.

Our tastefully designed five bedroom bungalow sits gracefully on Parcel 2. The architectural style combines modern neo-Gothic elements with hints of a classic farmhouse from the Midwest in the 1880s. From our wraparound front porch, we can survey the entrance to our little piece of suburbia and the neatly kept lots adjacent to us and across Cleverness Boulevard. Our shaded back deck looks out on the immaculate garden, the pool and spa and the children's play area. Toward the back is our little red barn and our dear pet -- Bessy, a 14 year old Guernsey we saved a few years ago from the slaughter house. The kids love her and play with her just like she was a big friendly dog -- although she's not very good at fetch! Sorry, I know court is serious, but I couldn't resist that one bit of humor.

After years in the Alki City rat race, this peaceful life of space and leisure is the reason I'm willing to brave the lengthy commute to my office downtown every day. As a financial planner and investment banker, I also understand the value of preserving and protecting an asset once you've obtained it. In a high end development outside metropolitan zoning, that means two things -- stringent controls on the wrong kind of development that will reduce livability and property values and a homeowner's association willing to uphold and enforce even the smallest of those controls.

Let me tell you, it can be an ongoing struggle, especially when dealing with what I call the "exurb hippies." That's what I call those solitary types who move out to the country with an anything goes, live and let live attitude. Somehow, they don't understand that this place is beautiful and clean because people cannot come here and do what they like to trash it.

Fortunately, the exurb-hippies usually don't show up at homeowner's meetings, let alone run for HOA office. They make it difficult to take any major actions, where a supermajority is required by the CCRs. But they stay out of the way when it comes to most of the everyday stuff, so the residents who really care -- like me -- can take charge and prevent anarchy.
Ever since we purchased Parcel 2 in 2004, I have been vigilant in bringing CCR violations to the attention of the proper authority. At first that was Kit Keller, who made decisions as the developer while the lots were being sold. Keller was not that hot on correcting violations, since there weren't many people in the Estates at that time. But I convinced Kit that the lots would sell faster if problems were addressed promptly. So together we stopped the outdoor boat parking on Parcel 7, the non-standard paint color on Parcel 11’s home (pink? What is this, a John Cougar song?) and the unsightly antenna array perched on the Parcel 1 residence. Some of the exurbs got upset (Parcel 7 still doesn’t wave when she passes my house) but most of these folks are not outlaws -- just in need of education. They actually appreciated my reasoning and were willing to help in the effort.

Eventually, Keller sold the last of the lots and we formally established an HOA to deal with road maintenance and other issues. Initially, I served as secretary-treasurer, which wasn’t a very demanding job. The main function of the HOA back then, as then President McCormick saw it, was to repave the road, clear the ditches periodically and bill the parcel owners for their share. That wasn’t even necessary most years-- since there is no through traffic, the streets in Moonlight Estates did not get a lot of wear and tear. The few CCR violations I brought up were either dealt with informally or left unresolved. I still contend that the water feature on Parcel 10 was installed in blatant violation of Article IX, but the majority just decided to let it go. Oh, well, you can’t win them all.

The main lapse in enforcement of the CCRS involves commerical agricultural pursuits on the back portions of the larger lots. Parcels 6 and 8 each have several steers and I believe the owners acquire them in the spring, feed them until they reach a certain weight, then sell them for a profit. I’ve objected to these commercial practices but the numbers were so few and no animals are wintered over, so the HOA has refused to take action. These smelly places are far from my home, so I haven't been impacted enough to take private action - yet - although I have a perfect right to do so.

I did act when Parcel 9 used the field right across the road from me as home base for a herd of goats he rented out to others for brush clearing. The court found that the commercial use of the animals occurred off-site and so keeping the goats there occasionally was incidental and not a CCR violation. I was going to appeal that goofy decision, but fortunately the parcel changed hands about that time and the goats found another home.

After I assumed the HOA presidency, a majority of the owners backed my efforts to close down the horse boarding operation on Parcel 7, especially when the Lunar Sea roads were frequently used to access a trail to Lost Lake Park, which is across the main road near the
development. That case will be filed as soon as everyone pays the special assessment for litigation expenses. (The Greendrovers and three others have so far failed or refused to pay). No luck so far on enjoining the U-Pick blueberry patch that has now cropped up on Parcel 9, but I'm still working to convince everyone of the danger.

We all tried to welcome the Greendrover family to the neighborhood, but they were not that interested in socializing. At first, I wrote it off to their busy schedules. When they were not at work, they were always building something -- the house, the barn, fencing, all the other things needed to keep a couple of those dull-eyed cows they are so fond of. Whenever you met Loren, the conversation always turned to the Murray Greys, how easily they handled, how clean they were, on and on and on. People do dote on their pets -- we think Bessy is more intelligent than most dogs -- so I assumed that was all that was going on.

Around 2012, I realized the situation was more serious. As the number of animals increased, GreyEden Ranch looked progressively more dirty and unkempt, with rusting farm equipment and supplies parked by the buildings and occasionally out in the field. Down the property lines and around the corners, you can see mud everywhere, including all over those cows. The contrast to the tidy Applegate property next store is striking. The house and fence blocks the view of most of this from the road, but you can see it if you stand at the right angle and really look.

As the owners of the adjacent property on the east, the Applegates bear the brunt of the filth and decay. I've only been on Parcel 4 a dozen times and have seen flies and smelled odors on most of those visits. I didn't stay around long, just enough to take a few smelly breaths and to take a few swats at their other visitors. Once I received a bite on the back of my leg from a huge greenish-black fly while I was out on their patio. The bite was painful and red for several weeks – I finally had to see a doctor for antibiotics.

The Applegates have made me aware of their concerns in my official capacity. They don't strike me as the type of folks who would exaggerate the conditions. I cannot honestly say that I've noticed smells on my property, except when the goats lived across the street. We do have flies when the west wind blows, but not in the numbers that Jesse Applegate has described to me.

The entire development is affected by the constant clamor of calling cattle, especially since Boscoe arrived. It’s not enough that he bellows at all of the other Murray Greys on Parcels A and B -- and there are a lot of them to call to. He also has amorous intentions toward every other cow he can see or sense, including Bessy. She's not into that sort of thing anymore,
although she will answer him if he keeps at it, I suppose in an effort to be polite. When she
does, he just gets more excited and redoubles his bawling efforts.

I was at my kitchen table about a year ago when Boscoe seemed to be coming in louder
and clearer than usual. You can imagine my shock when I found him in our back field, after he
knocked over two fences and stomped through the flower garden. Fortunately, Bessy was in
our little barn, although I thought he was going to knock it over. She wanted nothing to do with
him - I could tell by the look of disdain in her eyes - but he was going crazy trying to get inside.
Loren showed up about that time, apologized and took Boscoe back over to their place with
some difficulty. The Greendrovers paid for the damage, but refused to cover the expense of
the strong fence we erected on our property. Loren said Boscoe was secured in a better
enclosure on Parcel A and that our fence wasn't necessary. Although we haven't had any
additional problems, I built the fence to protect Bessy and I may seek reimbursement in small-
claims court.

The biggest effect on the development caused by GreyEden Ranch is the truck traffic.
Before the cattle operation started on Parcel A, an occasional truck would come down the road
every couple of weeks. Now this traffic has increased to 1 or 3 large trucks a day, basically
every day from March to October. I'm not overestimating the problem -- it's steady even
during the winter. More cows in, more equipment for the cows, more fencing for the back
field, and hay, hay, hay -- the grass over there started running out earlier and earlier each
spring. Sometimes the cows go on summer vacation to who-knows-where. But mostly they
stay put and the food comes to them.

The road simply isn't built to handle all the traffic. Repeated trips with the defendant's
big pickup and long trailer are bad enough. But soon full semis started to use the road. I was
here when Carroll Hawke tipped the semi on the corner right in front of my house. It blocked
access in and out for everyone for a full day until a big tow truck managed to get them out. At
least six times, Hawke’s trailer has scraped a fence, knocked over a post or dug up a planting
strip when it tries to negotiate that corner. Each time, Loren has paid for the repairs, but that is
not the point. When the truck is loading or unloading, you have to wait. I've sent the
Greendrovers several letters on formal HOA stationary -- I can't reach them by phone and I
don't feel comfortable going over there now. Zero response to my concerns.

Other lot owners also bring in feed for their animals, especially since the last three years
have had earlier, drier summers. I even bring in a pickup load or two of hay bales every year,
when Bessy has worked over the field. But that is nothing compared to the constant stream of
trucks required to service the Greendrover feed lot. Because of the wear and tear on the road,
we now have to repave every year and we have done supplemental patching on three occasions. Loren still pays 1/13 of the cost of repair when billed, but I believe the feed lot should pay the entire cost until the operation is shut down, because that operation is doing the damage.

I say "shut down" because this commercial enterprise violates both the CCRs and the defendant's access easement. After reviewing the documents and consulting several legal textbooks, I am of the firm opinion that Parcel A was incorporated into the Moonlight Estate development and made subject to its CCRs by the language of the access easement. Those CCRs prohibit both significant commercial activity on these residential lots and commercial use and abuse of our roads. No other interpretation makes sense -- why limit everyone else using the road, then allow the one remaining lot to wreak havoc?

At first, I agreed that Parcel A was not part of Moonlight Estates, except for the use of the roads. As things got worse over there, however, I decided to do some investigation and I discovered the language in Exhibit 5, which explicitly refers to the CCRs. I called the original owner of Parcels 5 and A, Julius Hammer, and he told me that Keller insisted on including the parcel in the CCRs as part of a deal to give the Greendrovers a separate access easement to the road. He said Keller even slapped the defendant on the back when they all signed the paperwork and told Loren "Congratulations, you're a Moonie!" That's what Kit called everyone who bought a lot in Moonlight Estates, like we were some cult forming on the south side of the property.

And Parcel B doesn't have any legal access to the Lunar Sea roads. Loren should not be allowed to haul anything over the road to service cattle on that portion of the operation. I don't buy this argument that the stuff comes to Parcel A. Under this logic, Kit could ask Loren to ship supplies for the dairy through Parcels A and B and we couldn't do anything about it. This unlimited abuse of a limited privilege should be stopped immediately. The majority of responsible Moonlight Estate owners agrees with my interpretation and fully support this lawsuit.
Agriculture is a business, not a lifestyle. Like any business, there are profitable approaches and best practices. And there is stubbornness and a nostalgic clinging to "seat of the pants" methods that are rarely successful. My job as an agribusiness resource expert is, pardon the analogy, to separate the wheat from the chaff, using modern machinery instead of stones and wooden bats.

During my childhood in Wyoming cattle country, I saw many "old style" ranchers go under and I decided to devote my working life to helping this important industry embrace the future. So I obtained my bachelor's degree in Rangeland Management from Montana High Plains University. The school emphasized a multidisciplinary approach to sustainable agriculture. I was so impressed by their approach that I stayed for a Master's degree in Animal and Range Sciences. I served as a graduate assistant and taught several undergraduate classes. But my interest was not in academia -- I wanted to get my hands dirty, which is pretty easy in this job.

After employment as a soil tester or waste disposal advisor for several companies, I decided to start my own business. For the last ten years, I have been the chief analyst and owner of Sustainable Ranch Consulting, which is based in Spokane. Our firm advises some of the largest cattle operations in the intermountain region on best practices in all methods of feeding and grazing. Although my primary focus is on natural rangeland ranches, my qualifications allow me to critique any type of operation.

I have been asked to review the cattle farming practices of GreyEden Ranch and to compare those practices to the standards in this industry. Use of these best practices is essential to the health of the animals subjected to the conditions of a particular operation, as stress levels in animals affect their productivity in the same way stress affects humans. A reasonable operation also protects the surrounding environment and the safety and welfare of neighboring properties. A ranch that does not protect these values is, by definition, both unreasonable and offensive.

In order to express my opinion, I have reviewed the statements of other witnesses in this case and viewed the exhibits. I listened to several recordings made by the Applegates of bawling cattle, which they attributed to the animals on the Greendrover property. Finally, I visited the area on two separate occasions. The first was in late spring 2018, before this lawsuit was filed. I think the Applegates were still trying to reason with their neighbors then and were asking me for some advice they could pass along. I drove down the main roads into the area and along Serenity Drive, noting the conditions as best I could through my car windows. I spent a good deal of time on the Applegate property and walked down the road near the Marsh Side Dairy.

I walked over to the Greendrover place and Loren Greendrover graciously invited me to view the operations at GreyEden Ranch. I looked through the barn and tack shed and took a short video of Boscoe in his pen before my phone's batteries died. Unfortunately, someone hacked into my data base later and this video is now public, along with my opinion that his pen was inadequate. The hackers have created a "Free Boscoe" website, where anonymous thugs criticize and threaten the defendants (and to
make a buck on merchandise). I'm told a group even showed up to protest on the private road outside
the ranch, until Addison Javert promised to call the sheriff if they did not leave. So the second time I
observed the area, in November, 2018, I was not allowed back onto the Greendrover property. My visit
was limited to a discussion with Jesse Applegate (Jackie was no longer there) and a review of the
defendant's property through binoculars from the Applegate upstairs windows.

In the vast majority of cases, my work is in support of farmers and ranchers. They seek out my
opinion to make their operations better and I want to help them thrive and expand. Our business is
under siege as the result of developers and naturalists and our only chance of survival is the adoption of
methods which elevate us above criticism. I am very uncomfortable in this role of testifying against an
enterprise of this type, because a small operation is the best model for addressing local concerns.
However, I promised to provide my honest opinion of the situation, good or bad, so long as my $2,000
consultation fee was paid in advance.

Regrettably, GreyEden Ranch does not meet modern standards for a small feedlot and its
operations are unreasonable for the site on which it is located. I know that Loren Greendrover does not
like the term feedlot, but from an objective standpoint the classification is unavoidable. Before I discuss
why this feedlot is endangering its animals, its personnel and the surrounding area, I will demonstrate
why this is not a grazing operation.

Grazing operations require space and grass and there is not enough of either commodity on the
defendant's land, except for a few brief months of the year. To illustrate the problem, I have prepared a
chart that demonstrates the optimal number of animals per acre for various types of forage and
conditions. This chart, which is marked as Exhibit 4, assumes that the cows are adults, that they will
only be pastured on the acreage for 75 days and that the pasture will then be allowed to "rebound"
grow additional grass) for the period of time noted in Column C. Most of my consulting work for
grazing operations involves preparing this type of analysis. Follow its recommendations and you have a
sustainable operation with minimal supplemental feeding. Ignore the chart and be condemned to no
grass for most of the year, dusty or muddy conditions and nearly year-round supplemental feeding.

GreyEden Ranch is classified as standard grass, non-irrigated pasture in one of the more
temperate zones in the United States. Seasonal drought conditions are limited, although the last few
years were abnormal in this regard. Each of the two fields is approximately five acres in size, after
buildings and the fenced swale is subtracted. Exhibit 4 lists several possible soil types common to Pine
County. My analysis assumes that the soil is Swift sandy loam, the most common soil in this area
according to the National Resources Conservation Service soil map. For a major operation, I would test
soil samples and narrow in on the type of soil actually present, but that wouldn't be cost effective in the
case of a small property. The chart doesn't factor in the presence of fertilizers, organic and non-organic,
that may be present on the property. Again, that would be something that a soil test could take into
account.
In this microclimate, the optimal number of animals per acre on a field of this type varies between 1.4 and 1.8. The margin for error in this statistical analysis of field conditions is .2 animals per acre. Faced with a chart like this, a good cattle rancher has two choices. The first option is to populate the entire ranch with 14 to 18 head, allow them to graze for 75 days in the spring and then remove the entire herd to alternative pasture for a minimum of 60 days. (I'm using the midpoint of the grazing and rebound ranges). The second approach would be to allow 7 to 9 head to graze on the front field for 75 days, then relocate them to the back field for at least 60 days while the front field rebounds. Based on the conditions I observed, there is no indication that the defendants have adopted either of these approaches.

When I visited GreyEden Ranch in late spring, large bare patches were already present on both the front and back fields. The area around the feeders and the retention ditch was damp and muddy and the rest of the front field was dry and dusty. There was evidence that new hay was already being fed to the animals, a condition which would not occur if proper pasturing procedures were followed. The situation appeared to be no better in the fall, just muddier. Simply put, the cattle on this farm rarely have enough grass or forage to support them, because there are almost always too many of them. When cows rely on feed rather than grass for most of the year, they are living on a feedlot.

Loren Greendrover is on the right track when the cattle are temporarily pastured in other locations away from GreyEden Ranch. Even then, the number of animals on the property has to be limited. This is not a simple matter of pulling cows off sooner if there are more of them. Column D of Exhibit 4 lists the maximum animals per acre for any pasture when only a 14 day period of grazing is contemplated, followed by the removal of all cattle. By defendant's own statement, that number -- 24 head for 10 acres - has been exceeded on multiple occasions over the past few years.

So my opinion is that GreyEden Ranch is a commercial feedlot and not a grazing operation. What's wrong with that? The answer is nothing in the right location and using the right methods. A commercial feedlot can successfully co-exist with other rural businesses, even with residences, if a plan of operation for the site is developed and carried out. This plan must adequately account for the inevitable byproduct of this business -- mud.

So what is mud in the feedlot context? One part soil, two parts water, and one part manure. Manure holds the moisture it naturally possesses and draws in and retains water from the soil. Especially in high traffic areas, hooves loosen the topsoil to mix with the manure and compact the soil below. And as the soil becomes more compacted, rainwater is not able to percolate through and pools on top, creating more slop.

Mud harbors bacteria, fungi, and other pathogens. The continuous exposure to wet conditions can damage bovine hoof structure. Ingestion of dirt particles is common when cattle are fed hay on muddy ground and this can lead to serious digestive disorders. And mud is a breeding ground for insects and the diseases they carry. When your property is part of a natural drainage, all of these problems can
travel down the ditch or swale and into adjacent properties and waterways. Finally, the smell of this soup can be overpowering and that odor does not respect any human boundary lines.

The Greendrover land has a serious mud problem, which is enhanced when the cattle load is increased and the period of feeding is lengthened by overgrazing. Numerous publications describe various techniques GreyEden Ranch could use to lessen this serious condition, including reducing the herd. Unfortunately, most of the actions taken in response to the mud in this case are actually making matters worse. A few examples should be enough to illustrate this point.

The first response to mud around the feeders and buildings is to drop hay on top of the mess. But cattle don't distinguish between feeder hay and hay thrown on the ground. They try to eat it all and pick up the dirt particles and digestive infections previously described. And their hooves stomp the hay into the mud, creating ideal breeding conditions for certain species of flies.

Scraping and piling the mud for later disposal is a sensible strategy. But these piles must be placed on well drained ground away from surface water sources and covered against rain. Placement of these piles near barns and other wet areas simply moves the problem from one area to another. I observed one pile directly under the barn's eaves and another standing a few feet from the retention ditch that surrounds the feeding area. By the way, whoever thought this ditch was a good idea needs to go back to agricultural college, unless you are trying to raise mosquitos for a living.

Finally, spreading muck as fertilizer is an effective solution on only an occasional basis and only after it has been composted. Spreading untreated mud repeatedly throughout the growing season actually increases harmful runoff and defeats the purpose of fencing the swale. Given the contours of this pasture, using Parcel B as a dumping ground simply moves the noxious runoff closer to the swamp on Kit Keller's property.

The defendants could have a successful small operation at GreyEden Ranch, with fewer cattle and more pasturage in other locations. The reduced herd would allow mud to be effectively composted and even sold as a safe fertilizer to properties less connected to the local watershed. However, if current practices continue, then this operation is unreasonable and constitutes a hazard and a nuisance to anyone nearby or downstream.
STATEMENT OF KIT KELLER

Anyone who is nostalgic for life on the farm hasn't actually tried to make a living at it. The labor is still hard, even with machines to do most of the heavy lifting. The hours are long and most years you are lucky to break even. It takes a special type of bird and most of them are thinking about selling their nests and moving to town. That's why the old family operations are closing up and more and more of the fields out here in The Big Gap are disappearing under houses and stores.

Since the 1980s, my nest has been the Marsh Side Dairy in rural Pine County. I purchased a quarter section of land (160 acres) from old Farmer Randolph in 1985. He had been operating a dairy farm on the property since the 1950s, when milk production really ramped up during the baby boom era. I grew up on my family's dairy in Wisconsin and after a few years of finding myself, I decided to take my savings and settle into something I knew.

I didn't come up with the name of the dairy -- that was Randolph's doing. The northeast corner of the property is a reedy swamp, kept wet most of the year by runoff from the rest of the property and a small spring. That part of the place has been fenced off for years, to keep the cows from slogging around in the muck. From a farming standpoint, it's good for nothing but raising mosquitos, flies and other assorted bugs. But I'm told by Kimball Arnold that it is an important bio-filter for area salmon streams, so I can't do anything with it but let it alone.

Our house is in the northwest corner of the property, with the barns just to the east and south, so the westerly breezes will blow any smells away from the house. Of course, that strategy works both ways. My neighbor to the west, Win Lockmiller, has his chicken farm configured in a similar way and I catch a good whiff of his barns on windy days. Chickens! Smelly, noisy, rat attracting disease machines, if you ask me. But Win has been here as long as I can remember, so live and let live. You don't like the smell of farm animals, don't live in the country.

Dairy farming has its booms and busts, like any other business. A glut of production in one decade causes everyone to cull their herds, which leads to a shortage of milk in the next period. The size of my herd has varied from a high of 60 cows to a low of 10 udders and 4 calves. I almost got out of the business completely at one point, but something told me to hold on and that times would get better. Right now, I have about 30 head on my remaining 80 acres. Most of the milk goes to the local artisan cheesemakers that are springing up all over the county. So now I have to watch what's in the supplemental feed, so I can certify the milk as non-this and 100% that-free.
Flies? Sure, there are flies in the spring, and the summer and I suppose a good part of the fall, although you don't notice them by then. Can you name a place and a human occupation where flies do not congregate? There are several different types of flies and they bother the cows in different ways. Some go for the eyes, another group hangs around on their legs and the big ones bite them right on the back and leave miserable welts. I used to use pesticides to control the problem -- sprays, powders and some in the feed. But the artisan cheesemakers don't like that, so now we use the old standards. I spread the manure out over the fields or haul it off to the composting operation. The cows flick their tails and move around.

Farming's a good life while it lasts, but there's no pension plan and no savings account, except for the land and the cows. Nobody's looking to buy a farm this size anymore, at least not in one piece. But there are a lot of people looking to escape the city and work on their own little patch of ground, even if they have zero idea what to do once they buy it. So after the last milk glut, I decided to downsize my operation and to profit from my land, by platting a housing development on the south side.

The county fought me at first, along with the farmland preservationists. Most of those pontificators wouldn't try to make a go of farming if you guaranteed them a return, but they thought it was a great idea for me to keep at it. But after I hired a good land-use lawyer, who pointed out the developments starting to spring up all around me, I was allowed to offer large-lot "ranchettes," with the hope (by the county) that at least some of the folks who purchased a parcel would use part of it for agriculture.

In 2001, I hired a surveying firm to divide my south 80 acres for development as Moonlight Estates. (I'm an amateur astronomer and the moon is the only thing I can reliably make out in a telescope). All of the parcels, except part of what became Parcel 4, are located within the south half. Greendrover's Parcel A was originally supposed to be part of the development. But when I had an expert conduct septic percolation tests, Parcel A and Parcel 4 wouldn't pass for separate development. I expanded Parcel 4 with some acreage from the north half and got the bigger lot to perc, but that didn't work with Parcel A. No septic, no development, so I figured Parcel A would just have to stay pasture. I removed that parcel from the development and recorded the revised layout (the numbered lots in Exhibit 1) and the CCRs, including the provisions listed in Exhibit 2. The whole process cost a few bucks, so I started marketing the lots and, as the realtors say, aggressively priced them for sale.

Carrol Hawke bought the first place, Parcel 8, in 2002. Janie McCormick was next with Parcel 6 and then Julius Hammer purchased Parcel 5 in 2003. Hammer said he would only buy
the place if I also sold him Parcel A. I guessed he wanted to be an even bigger dude farmer than
his neighbors, so I went along. I told him specifically that the land did not perc and that the lot
was not buildable. Julius said that was fine, he just wanted a place to pasture his horses.

I built the private roads into Moonrise Estates from SE Green Acres Drive. The amateur
astronomer in me came out again, so I named the roads after some of the "seas" on the moon.
These roads are the only access into the development. It was supposed to be only for the lots
in the development and there was no plan to connect it to any other properties or roads,
including my northern parcel. I had my own access onto SE Marsh Land Drive, so I didn’t need
private road access to any part of my remaining property.

When I sold Hammer Parcel 5 and Parcel A, I had already recorded the CCRs, built the
road and sold a little more than half the lots. Some of the other parcels didn't sell as fast,
including Parcel 4, which was larger than most folks wanted to buy. So I still owned a few lots
in 2005. Then one day, Hammer called me out of the blue and insisted that I grant Parcel A
separate access to Serenity Drive and the other roads. I thought that was strange, because the
pasture sat right next to the parcel I sold him. When I asked what was going on, he reluctantly
asked to meet with me and some potential buyers for the field.

Imagine my surprise when Hammer told me that he had received a new, successful perc
test for Parcel A and that the lot was approved by Pine County for development as a separate
residential lot. He was pretty coy about when he received this new test, and I suspect that he
had it in hand when he bought Parcel A from me. Then he introduced me to the Greendrovers,
who were committed to buying the place until they learned there was no road access. I was
pretty sore about the whole thing and I gave Julius a hard time at first. But Loren Greendrover
was so excited about becoming a rancher and having a "big spread" like mine that you couldn’t
help but pull for those folks and what they wanted to do with the place.

I figured there couldn't be any harm in one more user on the roads, especially since
Parcel A was originally supposed to be part of Moonlight Estates. So Julius and I came to an
agreement that allowed me to graze cattle on his property until his house was done. We
drafted up a deed with joint grantors, to save the cost of recording two documents. Exhibit 5 is
a true and accurate copy of that deed. Julius Hammer was the "land grantor" and, as the
developer of Moonrise Estates, I was the "easement grantor". I granted the easements
conditioned upon the Greendrover’s acceptance of and compliance with the Road Use and
Maintenance provisions of the CCRs. Although I thought the language made Parcel A subject to
all of the conditions in the recorded document, I guess I could have worded that a little more
clearly. Loren and I never talked about that, but anyway, that was my intent.
Within a year of my deal with Hammer and the Greendrovers, I sold off the remaining lots that I owned in Moonlight Estates. The Applegates bought their place sometime in 2006, but they lived in California for a long time after that and only came up about once a year. For several years, most of the lots were mostly pasture, with a few houses and sheds sprouting on the corners of the fields. Addison Javert was one of the first people to make Parcel 3 look like a residential lot, with a fully finished home, a gazebo and landscaped grounds in the front. The place sure stood out at the time, a suburban oasis in the middle of a field.

The Applegates told me that their building plans were several years off. So I asked them if I could graze my herd on Parcel 4 in exchange for weed control and they agreed to that for several years. I had this same arrangement with most of the lot owners until their homes were developed. Most of the original purchasers are still there, except for Julius Hammer, who apparently bought Parcel 5 and Parcel A for land speculation purposes. If any of these folks, including the Applegates, had any problem with commercial cattle operations - dairy or beef - near their properties, they never mentioned it to me.

The Greendrovers were the first parcel owners to really try to make a go of farming on their land, although Carroll Hawke fooled around with feeder cattle from the beginning. They started building a house and barn at the same time, then left the residence partially unfinished while they worked to get a herd of cattle started. Loren Greendrover was always stopping over asking for advise on operations and seemed genuinely interested in doing things right. Loren was gaga over those Murray Grey cattle right from the beginning, always telling me about their superior qualities and temperament. I'll admit was a little alarmed when Boscoe arrived, because I have a fair number of purebred Holsteins in my herd and I didn't want problems with mixed dairy and beef breeding. But Loren assured me that the bull was as docile as the cows and I've never had a problem with any of the Murray Greys "visiting" my place. Given the propensity of all breeds of cows to knock over fences, this says something about the good management on GreyEden Ranch -- and about the strength of my barrier fence.

In 2010, Loren approached me about leasing or buying some of my land for grazing purposes, because the Greendrovers planned to expand the Murray Grey herd. I had surveyed five acres immediately north of Parcel A as a separate lot, back when I thought I could make that parcel perc by expanding it. That was when I was thinking about winding down my operation, maybe even dividing the north 80 into home sites. So I sold Loren the land, which is shown on Exhibit 1 as Parcel B. The price was reduced because the place was only useful as pasture for Parcel A and was only accessible through that property. I would have expressly granted Loren the right to access Parcel B from the Lunar Sea roads. But no one thought it was
necessary, given the way the parcels were laid out next to each other. Besides, I didn't own any property in Moonlight Estates at that time.

In 2013, I did have to approach Loren about the cruddy runoff from Parcel B onto my property and the Applegate parcel. There is a natural drainage from these parcels into the swamp and for part of the year it runs steady, like a little creek. The water is usually clear by the time it hits my land, but the Greendrover cattle were stomping around in the swale and the area was getting pretty gross. Loren didn't seem to know what do about it, or didn't care, so I made an anonymous call to the county. Kimball Arnold chewed the Greendrovers out and told Loren to fence off the drainage so the cattle couldn't get in. They finally complied and that largely solved the problem, although that silty loam soil still gets pretty rank once in a while, when the fields are soaked and full of Murray Greys.

Except for GreyEden Ranch, everyone else in the development just plays at being a farmer. Over the years, I've seen every kind of animal and crop you can imagine -- my favorite was the gaggle of free-range geese on Parcel 1, which unfortunately lasted all of six weeks before coyotes and cars wiped them out. Most folks try something for a couple of years, then give it up and try something else. I never saw the Applegates raise anything but a vegetable garden and a couple of fruit trees. Jesse told me once that they had started an earthworm plantation that they fed with compost, but I don't know how long that enterprise lasted.

Any smells and flies from the Greendrover place wouldn't come my way, except a couple of times in the summer when the wind shifts and comes in from the east. Their herd at times has been too big for the land they own. They should cut back on the cows, supplement the pasture with feed pretty much all year, or rent additional land. If Loren is interested in the last option, I might be able to spare some additional pasture -- for the right price.
STATEMENT OF LOREN GREENDROVER

I'll have to speak for my family during the trial. My spouse, Riley Greendrover, will be home keeping watch, trying to protect everything we've worked for from internet wackos and terrorists. Thanks to this lawsuit and the reckless actions of people like Winslow Taylor, we can never leave our place unattended. I never dreamed things would turn out like this.

Twenty years ago, I was working on a construction project on the edge of Barryton, one of the first apartment complexes to venture out onto the forested hills north of town. I was just an apprentice, trying to wedge my way into the journeyman program with the electrical worker's union. I had never been up on this particular hill and I was awed by the view on the other side -- small farmhouses next to groves of shade trees, cows lazing by huge red barns and open fields of tall, waving hay. That's the place to be, I thought. Although I knew nothing about it back then, I decided that farm living was the life for me.

The idea stuck with me through the years, even as I moved up in the electrical trade. I'll admit that I talked about it incessantly, although I didn't have much time to research what was really involved. Finally, my spouse and I were in a financial position to make the dream a reality. Riley was hesitant about the distance and the isolation. But I was convincing when I described all the advantages -- the kids would be better off, free to play in the yard, learning responsibility through chores, breathing the fresh air. I laid it on pretty thick.

We looked at a number of properties in The Big Gap -- that's what they used to call the area between Barryton and Alki City, back when there was a gap between them. There was a new development being offered every week, but most of them were small lots with postage stamp-sized lawns and a great view of your neighbor's window. That's not what I was looking for.

Then one day Riley noticed an ad for a single 6+ acre parcel, offered by a private party. The description noted that it was near Moonlight Estates and had access to their private roads and electricity through that developer. So we decided to take a look and immediately fell in love with the place (well, I did -- Riley thought it might be too far out from our jobs).

The owner, Julius Hammer, also owned the adjacent lot in Moonlight Estates and was just building a house on the northwest corner of that parcel. He had planned to use "Parcel A" as a pasture for his horses, but decided to obtain another soil test first. Hammer discovered that the site could be sold as a separate buildable lot. So he quickly opted for a bigger, fancier house and for fewer horses. Hammer pushed us hard to make a decision, telling us he had several potential buyers scouting the place and that we had to make up our minds. We put an offer on the place within a couple of days of viewing the property.

When we decided to take the plunge, we discovered that Parcel A was not part of Moonlight Estates and did not have legal access to the private road that ran right next to the south side of the property, Serenity Drive. So Hammer set up a meeting with Kit Keller, the original developer, who still owned a couple of lots in Moonlight Estates. Keller was surprised that Parcel A was now buildable and acted like Hammer had tricked Kit into selling the lot cheap. But Kit took a liking to our family, especially when I mentioned that I wanted to start a cattle business like Marsh Side Dairy. (At the time, I didn't know a beef steer from a dairy cow). Keller asked how much I knew about farming and roared with laughter when I admitted that my only experience was petting cows at the Pine County Fair. Kit said,
"Well, that's more contact than most people have!" and assured me that all the farming operations in the area would help me get started in any way that they could.

Keller had no problem with giving us access to the development's roads, although the first idea was a shared entry point with Hammer on the east side of his property. Julius objected to that, because his house was going to be at the other end of his land and he didn't want a long driveway. So Kit said I could have a separate access, as long as I agreed to pay my share of road construction, repair and maintenance, just like everyone else in the development. That was no problem and we have faithfully contributed to those costs whenever we were asked.

Nobody said anything about adding the property to Moonlight Estates or any conditions, covenants or restrictions. The deed referenced the CCRs in granting the easement, because Kit said that was where the division of road maintenance costs was described in the record. From our discussions, I learned that this system was very simple -- total cost divided by number of lots -- so I didn't bother to look it up.

Keller knew I had plans for a big operation like the dairy. So even though we didn't need permission, Kit implicitly approved the idea by granting the easement. Until Javert's letter and this litigation, no has ever suggested that my property was part of the Moonlight Estates development, or bound by the CCRs. Hammer told me that the parcel was not covered by development rules. And I've never been notified of any homeowner's association meetings or decisions.

We moved out to the place in 2005 while our home was still being built, and lived in a travel trailer and a camper. It was cramped, but we wanted to get the kids started at their new school. Things cost a little more than we anticipated and contractors were busy with other jobs in those boom years. I could do most of the electrical myself, but the rest of the house took more than a year to complete. We actually moved in while the work was ongoing and parts of the place were unfinished for several years.

Although we were strapped financially, I was anxious to start farming. Keller had convinced me that I didn't have enough land or start-up money for a dairy. So in 2007 I started my "cattle ranch" with 2 pregnant beef cows. I didn't know much about different breeds of cattle then, so I purchased a polled Hereford and a Murray Grey, a breed I'd never heard of before. Just watching the difference in the way the two animals acted, how they treated their calves and how they handled around our kids convinced me that this was a special stock. Murray Greys were the way to go and so I have dedicated my operation to breeding and raising these wonderful cattle.

According to Australian legend, the first Murray Grey was born in New South Wales in 1905, to a light roan Shorthorn cow and an Aberdeen Angus bull. This one cow gave birth to 12 off-color calves and "The Twelve" formed the basis for the pure genetic strains of the breed. In the late 1960s, cattle producers here were desperate to find larger, more efficient animals and first imported Murray Greys to America. Even now, most Western ranch operations still rely on the old standard breeds and only a few of us are smart enough to feature these remarkable creatures.

Why do I love Murray Greys? Let me count the ways. The varied shading of their mottled grey and blue skin protects them from overheating and helps keep away certain eye and skin problems. They calve easily and the cows are very good mothers with strong milk production for a beef breed. The young animals grow rapidly and use their feed very efficiently until they reach market weight. And best of all, this breed has a great temperament. Simply put, they don't get on each other's nerves and don't
get irritated when you work with them. Even the bulls are docile and easy to control. You can pack them into a barn or a small pasture area and they take it in stride. If only human neighbors were as easy to work with!

Most of my ranching knowledge is self-taught, with the help of others like Kit. One of the first things I've learned: it is hard work and requires a lot of initial investment and ongoing expense. Our story is a good example. We built a small barn early on, but quickly discovered that wasn't big enough. So that barn became the supply shed and we built a larger barn farther away from the house. We've purchased a tractor with a front loader, a tiller and a manure spreader. Then there are all the "little" things -- fencing, feeders, automatic watering system, chutes, halters -- the list goes on and on. Add hay and supplements and the gas and oil for the truck and equipment and you have a spendy proposition. In some years the ranch supports itself and makes a little money. But most of the time, my job as an electrician and Riley's work as a school teacher have to make up the difference.

Each year, more calves were born and I acquired more stock through purchase. And I decided to start my own breeding program -- that's why I acquired Boscoe, a purebred Murray Grey bull, in 2010. The herd would eat down the grass on Parcel A by late summer, so I would rent pasture from adjoining landowners, including the Applegates. As the development filled up, I started looking for more pasture in other parts of the county. And I convinced Keller, who was scaling down the dairy operation, to sell me some acreage north of my field.

Although the two properties are still separate tax lots, our family doesn't talk about Parcel A and Parcel B anymore. In 2011, we decided to call the place GreyEden Ranch, because the cows are so happy here. Parcel A has the house, outbuildings and the front field. When we acquired Parcel B from Kit Keller that same year, that property became the back field. Kit knew we were expanding our operation and complimented us on the growth of the business. There was no need to talk about a separate easement for the back field, since only farm vehicles and occasional truckloads of hay go back there. Anything we need for that area starts out on the front parcel and then gets moved to the back.

The number of cattle based on GreyEden Ranch increased annually until 2016. The head count on the home ranch varies by the time of year and the number of animals moved to the summer pasture. Based on my rough notes, here are the numbers for select years:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Cattle</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>2 - 4</td>
</tr>
<tr>
<td>2010</td>
<td>5 - 8</td>
</tr>
<tr>
<td>2013</td>
<td>16 - 20</td>
</tr>
<tr>
<td>2014</td>
<td>18 - 25</td>
</tr>
<tr>
<td>2015</td>
<td>19 - 29</td>
</tr>
<tr>
<td>2016</td>
<td>22 - 34</td>
</tr>
</tbody>
</table>

Domestic beef prices have picked up recently, so I decided to clear out some of the stock. Now, I have room to begin a program of increased calf production. Also, most of the off-site pasture that I used for years was recently developed into Barryton Landing, a mixed-use site with retail, single family dwellings and apartments. The contractors I work for were heavily involved in that job, so I made quite a bit off the project, although I was sorry to see the land paved over. So until I can arrange alternate summer grass, I've kept all the cattle on the home site and decreased the herd's size. In 2017, we had 18-23 head of cattle and since 2018 the number has held steady at 20 head, including Boscoe. That was
probably the number pastured there when Winslow Taylor paid a visit. Contrary to what others may think, the herd decrease has nothing to do with this lawsuit.

My operation is not a feed lot. A feed lot is an intensive feeding enterprise, where cattle are confined for six to eight months to gain weight quickly before slaughter. They don’t get to move much and there is barely room to lie down. They eat a specialized diet of feed with little grass and lots of weird supplements, hormones and antibiotics. This method of raising cattle is not ranching. Feed lots are messy, miserable and (in my opinion) inhumane. I would not subject my animals to these conditions and I resent any reference to my operation as a feed lot.

Like all ranchers, I have to feed my cattle during the months when the grass is not actively growing and weather forces them to be more confined to barns and shelters. But the primary food source for my herd during the spring and summer is natural grazing and that is why the herd has to be spread out to several locations. I know as well as anyone that there isn’t enough grass on the home ranch to feed the entire herd and that large numbers of ungulates in a confined area will suppress vegetation growth by beating it down under their hooves. The remaining cattle on the home ranch during the summer rotate between the front field near the barn and the back field on Parcel B. This gives the grass in each area time to rebound and lengthens the grazing season.

The last few years have been extra dry during the summer months and this has affected my operation, just like every other cattle producer in the area. The spring growth stops earlier and non-watered fields don’t produce grass as far into the summer. So we have started to feed hay more, and more often, in the summer months. That was another reason to thin the herd, although I don’t anticipate that the prolonged dry conditions will persist. The weather is cyclical, although it always causes a problem in agriculture -- a few years ago, persistent rains through the summer resulted in poor hay harvests.

So the cows and calves rotate between the various pastures. Boscoe has always been a special case and is even more so since the problem with Addison Javert and that precious Bessy. He used to be a free grazer like everyone else, although he stayed on the home place where I could keep an eye on him. Now he has a spacious secure pen on the back side of the barn with a nice view of the fields and a shaded area next to the building. When he’s here, he gets grain as well as hay. He’s living the good life and costing me a pretty penny. But he’s worth it -- renting him out for breeding purposes is the most consistent income we receive from the ranch.

And Boscoe doesn’t need to be freed; he gets around. (Can you imagine the uproar if we actually freed our cattle herd to roam wherever they wanted?) His services are in demand and I haul him to neighboring farms on a regular basis. He stays with those herds for 1-3 weeks, comes back here for a few days of R and R, and then he’s headed down the road, sometimes 100 miles from here. Although Boscoe would put up with squalid conditions like a trooper, the truth is he leads a pretty good life.

But reality means nothing to a number of people who use the internet on a regular basis. Ever since Winslow Taylor’s video of Boscoe in his pen went viral, I have received a constant barrage of harassing comments and threats from anonymous nut jobs. I had to take down the ranch’s web page and then somehow they found our personal accounts. You wouldn’t believe some of the things they say they will do to our ranch, and to us if they find us out in public. Some of them are even making money off the "cause", selling Free Boscoe shirts and hats.
The worst abuse comes from the Boscoe Unlimited Liberty League (BULL). I don't know how many people are in this terrorist group, but I am afraid that they intend to cause real harm. The front of the house was already vandalized once and a group of masked picketers stood out on Serenity Drive for a while, until Javert drove them off. They plan to disrupt this trial, plaster my face all over the place so I will be an easier target and use my absence during the trial to wreck our place and steal my poor bull. These people have to be identified and stopped.

Of all the people in our neighborhood, Riley and I have the biggest incentive to keep our operation clean and insect-free. We live right next door to the barns and fields and our kids would be insufferable if they could not play outside. So I try to follow best practices for animal care and field maintenance in my operations. I’m proud to say that our kids have exhibited our cows at the Pine County Fair with their local 4-H club and have won the herdsmanship award for their stalls three years in a row.

Sure, it gets muddy and messy sometimes. When that happens, I spread hay in the affected areas until conditions allow me to scrape the area with the loader blade and pile the muck for later distribution. I load the piles into the spreader and fertilize the back field on a regular basis. I followed all of Kimball Arnold’s suggestions for fencing and improving water quality, although I thought the citation I was given was unwarranted. I was in the process of complying when it showed up in the mail.

Murray Greys are not fly magnets like other breeds, but the pests do show up from time to time in the warm months. When that happens, we put out supplement blocks for the cows to lick with special pesticides. Sometimes, I set up a brush-off station the cows can walk through, with specially treated feed sacks. These chemicals, along with the natural defense of a tail, help repel the flies and keep them from pestering my herd. Usually after a few days, the swarm gets sick of the chemical smell and disappears. The conditions are not bad and no one in the development ever complained about them, until the Applegates moved up from California.

For years, I hauled supplies and cattle to and from the place using my own pickup and trailer. I still do that regularly, but it's been great to have Carrol Hawke close by to haul larger loads -- that actually cuts down on the number of trips I have to make. There have been a few mishaps when Hawke tried to fit the rig around tight corners -- although Carrol insists otherwise, our mailbox was an early casualty. When it happens, I make things right with the affected neighbor. I've never compensated Hawke for any damage to the rig, which is covered with dents and dings anyway. It's not that I wouldn't, but Carrol insists there have been no collisions during the trips into Moonlight Estates, so there is nothing to fix as a result.

Managing GreyEden Ranch has been a learning experience and the business is constantly changing. But I think we are running a good operation and new ranchers now contact me for advice. Other ranchers tell me this is one of the cleanest farms they have ever seen. It is not a nuisance and never has been. Our family has a right to do what we are doing on our land and we are not hurting anyone. I'm sorry the Applegates don't like it here in the country, but I am not the cause of their problems.
STATEMENT OF EV MUSKA

Would you like to be shunned at parties? Then do what I did, and study the fascinating world of entomology. At least, I find it fascinating, but my dinner guests rarely share my enthusiasm. That is especially true when I expound upon my subspecialty, the classifications, characteristics and habits of our constant companions, the flies.

My initial interest was medicine and I hoped to work with underserved populations to both cure and prevent the spread of various illnesses. During my initial studies, it quickly became apparent that disease prevention is really bug prevention. For example, the common housefly, found all over the world, can carry salmonella, staphylococcus and E. Coli bacteria. These little beggars are also a major transmitter of diseases such as typhoid fever, cholera, hepatitis, tuberculosis and dysentery. It didn't take long to realize that if I wanted to make a difference in people's lives, I needed to be in a field that focused on controlling these types of insects.

So I switched my major to biological studies and settled in at Montana State University, which allows you to earn a minor in entomology. After an unpaid internship with the Center for Disease Control, I obtained a master's degree in entomology from Washington State University. My area of specialization was the movement and dispersal patterns of various insects known to be carriers of infectious diseases. I believe that knowledge of where a bug comes from and how it gets around is essential in creating effective control measures. That is particularly true with flies. If you haven't eaten recently, my thesis on this subject is available online.

For the last 10 years, I have consulted with various organizations about their particular problems with flies. My list of clients includes landfills, commercial agricultural operations that generate large amounts of waste and municipalities hard hit by insect-borne disease. Unfortunately, these consultations often take place after the outbreak has come and gone. Nobody thinks to call the fly expert until after the screen door is opened.

It is unusual for me to consult in a case like this, involving neighbors in an isolated residential area. However, I was curious to see whether I could determine the type of flies plaguing the Applegates and the probable source of this infestation. Besides, I was between epidemics and the defendants were willing to pay my $275 hourly rate for a minimum of 15 hours to investigate the situation, do some research and write a report. This will be my first time testifying in court, and I'm nervous, so please don't fly off the handle at me.
To investigate the situation at Moonlight Estates, I reviewed the statements authored by other witnesses about conditions they observed. I paid particular attention to their descriptions of the flies they had seen, what they looked like and how they acted. I accepted these descriptions at face value, although I found Loren Greendrover's statement that there were very few flies around the cattle lot incredible. In the late spring and summer, you would expect to see a noticeable population of flies around an operation of this type, even if the owner was making a significant effort at insect suppression.

I also obtained weather and microclimate information for the area and studied prevailing wind patterns for southern Pine County. I researched the typical subspecies of flies that would be endemic to this region and noted their range of movement and behaviors. Finally, I visited the area in November and viewed the possible sources of fly infestation.

Admittedly, November is not prime fly season, but I went to the area as soon as I was retained. I directly accessed Kit Keller's property and the chicken ranch immediately west of the Marsh Side Dairy. I viewed the Greendrover property from their house, but I did not go out into the fields because I had forgotten my boots. The fields were pretty wet and sloppy and the cattle I observed were over their ankles in mud around the feeders. Since I would have to wade through that area to get to the back of the property, I decided to forego a trip to the greener, cleaner acreage in the back.

My opinion, to a reasonable degree of scientific certainty, is that GreyEden Ranch was not the primary source of the fly infestations that plagued the Applegate property. Most of their problem in the later parts of the year - late fall and winter - is self-created, the result of the earthworm "plantation". During the rest of the year, the flies come from a variety of sources, including several agricultural operations in the area and a swampy area immediately adjacent to their land. While the defendant's cattle lot does contribute to the problem, Boscoe and his harem cannot be said to be the principal source of insects and the level of swarm activity would be about the same during "fly season" even if that lot was free of cattle.

To understand my opinion, you have to remember that there are many different types of flies and that each has different food sources, behaviors and methods of procreation. Ideally, the best investigation would include collection of specimens during the infestation. Understandably, the Applegates did not keep any souvenirs of their fly problems, although some information could be obtained by studying the fly specks left behind. These specks are created by some fly species in two ways. Common house flies don't bite and chew, but they ingest food by vomiting on it to start breaking it down. Then they sponge it up with their mouths, but they don't pick everything up, leaving a speck behind. And flies spit out both ends when they land, if you get my meaning. So a speck can also be fecal matter. In addition to excreting and regurgitating, flies also have sticky pads on their legs that can carry debris (and disease organisms). If you really have some money to spend, you can obtain specific genetic information by collecting and DNA testing these specks. That sort of investigation would
The flies that plague the Applegates in the late fall and into the winter, based on their description and on Exhibit 3, are likely cluster flies, *pollenia rudis*. Cluster flies are slightly larger than house flies and can be recognized by distinct stripes behind the head and short golden hairs on the thorax. These slow-moving flies overwinter in protected areas between the inside and outside walls of a house or in the attic or basement. They love to hibernate in houses and then emerge to cluster in large numbers on windows and buzz around the interiors of homes.

The good news -- cluster flies do not present a health hazard because they do not lay eggs in human food. The bad news -- they are difficult to eradicate and annoying as all get out. The reason I believe this infestation was created by the Applegates is the food sources of cluster fly larvae. Cluster flies are strictly parasitic on earthworms; the females lay their eggs near earthworm burrows, and the larvae then infest the worms. So the worm raising activities on Parcel 4 are the most likely source of the problem here. Of course, other flies sneak inside homes for fall and winter when they can. The bite Addison Javert received from a fly in the fall is not consistent with cluster flies. Because various flies can co-exist in the same environment, I suspect that a few stable flies might be inside the Applegate home, but the predominant population was cluster flies. The specks on the windows and counters are consistent with these flies, even though these marks are more prevalent with spitting flies. They all leave their marks.

As for the rest of the year, Moonlight Estates is visited during fly season with the typical mix of these pests. Agricultural areas where humans and animals are present attract a host of flies, as do swamps and wetlands. Based on the descriptions provided, I identified at least four types of flies that were present during spring and summer:

The most common fly to visit this area was likely the house fly, a well-known cosmopolitan pest on both farm and home. This species is always found in association with humans or the activities of humans. It is the most common species found on poultry farms and is a real problem where chickens are kept in cages. The chicken farm next to Marsh Side Dairy would be a massive breeding ground. But the species has adapted well to feeding on any type of garbage or waste, so it is abundant almost anywhere people live.

The house fly overwinters in either the larval or pupal stage under manure piles or in other protected locations. Warm summer conditions are generally optimum for the development of the house fly, and it can complete its life cycle in as little as seven to ten days. Although this fly species does not bite, the control of house flies is vital to human health and comfort because of the pathogenic organisms they pick up and distribute.

Horse flies are bloodsuckers and can be serious pests of cattle, horses, and humans. An attack by just a few of these persistent flies can make outdoor work and recreation miserable. The larvae of most horse fly species develop in the mud along pond edges or stream banks,
wetlands, or seepage areas. So the marsh adjacent to Parcel 4 is the most likely source of these pests, although the drainage on Parcels A and B could be a secondary source, especially if cattle were churning up its edges. These flies are attracted to movement, carbon dioxide and warmth, so any person or animal outside is at risk.

The presence of cattle in several locations near the Applegate property, including GreyEden Ranch, would also suggest the presence of stable flies, another blood feeding fly species. In the U.S., stable flies feed mainly on large ungulates such as cattle and horses. However, they are known to feed on humans. On large animals, the flies congregate on the legs. Humans usually get bitten on the legs, behind the knees, and on the elbows. Stable flies have a great capacity for flight and can fly at speeds of 5 mph without wind. So stable flies on the Applegate property could have come from the dairy, Parcels 6 and 8, or even from Bessie, although in general the larger the number of cows, the greater the number of flies. By the way, one of the major larval development sites that contribute to their numbers is wasted feed near round bale feeders. Since just one of these sites can generate thousands of flies, regular clean-up around these feeders is essential to fly suppression.

Finally, face flies are widely distributed in the regions of the Northern hemisphere with moderate climate. Although face flies attack mainly cattle, they can also annoy horses and humans. Adult females lay eggs on fresh and humid cattle manure, so regular cleanup and herd dispersal will keep their numbers down. Adult flies feed on body fluids of cattle, particularly around the eyes and nose. Face flies are non-biting flies, but their sucking mouthparts are capable of scraping the host's skin to make it exude. They are highly annoying, mainly to cattle, and can transmit pink eye. For whatever reason, they tend not to be attracted to certain breeds of cattle, including Murray Greys. On the other hand, hungry flies are not that discriminating.

In any given year, there may be other flies visiting the Applegate parcel. Dead animal carcasses nearby may attract bottle or blow flies, which can disperse to other areas and food sources on a temporary basis. And cattle manure can attract horn flies, another blood-feeding ectoparasite, although that again would be more common with cattle breeds other than Murray Greys -- they prefer dairy cattle. But the primary populations, based on my research and the witness descriptions, are the four varieties I've discussed.

Based upon my observations, the Greendrover property does not contribute more to this fly problem than any other nearby property. The prevailing breezes in this area pass over several likely insect breeding grounds, including other properties in Moonlight Estates, Keller's dairy, the swamp and the chicken farm. The mix of pests suggests multiple sources, although each of these species can co-exist with the others. The problem here is caused by living in the country, not by one particular operation.

Of course, flies are lazy and like to conserve the energy they build up in their short lives. So they tend to stay close to home, especially if home is a filthy place with lots of food. In my line of work, the breeding sites closest to infestation are usually the most likely cause of the
problem. But I don't believe that is the case here, given the variety and the wind patterns, which are often the most important factor in dispersal. I could give a more definitive answer if I was at the properties during the infestation for several days, so I could collect samples and count enough specimens to statistically model the populations present. But that usually isn't possible and conditions change each year, so the infestation during one year may be entirely different from the next.

I do agree that all agricultural operations should work harder to control the conditions that allow flies to breed and thrive. This would include regular clean-up and removal of spent feed, mud scraping and dispersal and a reduction of the concentration of herds and flocks in small, confined areas. Humans also need to reduce waste, clean up their garbage and seal the containers it is kept in until disposal. It is essential that we all do our part to reduce the disease and misery caused by the propagation of these swarms, which only exist in these numbers because of our presence and activities. GreyEden Ranch is not pristine, but it is not the primary fly generator in this area.
STATEMENT OF CARROL HAWKE

Ten-four, good neighbor, what's your 20? Mine is Moonlight Estates Parcel Number 8, where the Hawkes built their nest over 15 years ago. My family was one of the original occupants of this development and we built the first house and the first barn. As with most good fortune, it helps if you know somebody, and Kit Keller and I had been friends for many years. Marsh Side Dairy was on my regular supply delivery route for a long time. So Kit gave me first crack at the lots and I naturally chose the one in the southwest corner, farthest from the main street and most of the other lots. The back and side of my acreage adjoins fields and patches of pine, a perfect buffer from prying eyes and wagging fingers. At least, I think it is -- I've heard rumors that some of those pastures may soon be surveyed and divided into lots. I may be a hypocrite, but when those developments are proposed, I'll be opposed. I've got mine now, so Farmland Preservation!

I'm not really doing anything on my place that you would want to look or wag at, anyway. It's just that I spent so many years cooped up in little apartments in Alki City that I got sick of keeping my shades drawn and my voice down. That's not the way to live -- I heard there was a shooting in the parking lot of my old apartment complex just last year. Fortunately, the guy recovered, but that could have been me.

So now things are simple. I have two fruit trees and a gooseberry bush. My riding lawn mower has a tiller to work up my vegetable patch every spring. The rest of the lot is fenced for feeder cattle. I buy 8 or 9 young steers in March and turn them loose on the grass. When they eat it down to nothing, we rent a neighbor's pasture or buy a few ton of hay. When they reach market weight in the fall, we load them up and sell them and (usually) make some money.

If that violates the Cs, Cs and Rs, no one has ever mentioned it to me. Who would buy a lot this large if they weren't able to do something with it? The footprint of the house and yard works out to half an acre at most. What does Applegate and Javert want us to do with the rest of it, open a nature preserve? Kit never expressed any reservations about what I was doing down here. When I was just starting out, that sly fox even sold me a few bony heifers for "feeders." I switched to steers after a couple of years. They put on the weight faster and have less incentive to roam, if you catch my drift.

I like all of the folks in our little neighborhood, to the extent that I see them. Until this whole lawsuit thing blew up, no one ever complained about what you were doing or how it might affect property values. My assessed value keeps going up every year and so do my property taxes. I was thinking about complaining, but then I called the assessor and he told me
that all of the property values in this area are on the rise, including the Applegates and Javert. So if everyone's property is more valuable every year, where's the beef?

Now that I think about it, I take back that comment about no one ever complaining before. Addison Javert would raise a stink every now and then at one of the homeowners association meetings about somebody's antenna or goat. It wasn't very often and we only met about once a year, to talk about the road. Whenever a subject other than road maintenance came up, President McCormick asked us to focus and quit worrying about things we couldn't legally do anything about. Janie was the best president this place ever had! That usually caused Javert to sulk in the corner and mutter about the rules for the rest of the meeting.

Although the cattle raising has been a nice supplement to my income most years, it doesn't pay the freight. My main employment is freight, as a truck driver for Ranch Support Specialties, a feed and farm supply company headquartered in the Yakima Valley. I haul alfalfa, clover and other good feed from the east side of the state over to operations in the West. On the return, I load up with imported supplies at the Alki City docks -- things like salt, feeders, irrigation systems, anything an operation might want -- and drag it over to Central for distribution by other rigs.

It's steady work, although it gets a little thin whenever the farm economy hits the skids. But I can do most of the runs in one day and be home for supper. The pay is decent, when you add mileage and the discount for my own supplies. And I get to fool around on the CB radio -- most of us veteran truckers still use it, although the lingo has been upgraded over time. (Nobody talks about Mama Bears anymore - they're all just Bears now). My handle is Hay Jockey, if you ever have your ears on.

As I mentioned, I met Kit when I hauled for another trucking outfit and Keller was well aware of what I wanted to do on my land. When I bought Parcel 8 I asked about the roads that were going to be built into the development. They were just narrow gravel tracks at first, although I could handle even that with my K-Whopper. I've been at this a long time. But I needed to be able to get in and out when I kept a long rig overnight, which happens once in a while. Kit assured me that the road would be big enough and that no one would have a problem with my hauling in and out of there, or storing the truck overnight.

Marsh Side Dairy wasn't my only customer out this way, although with all the developments going in, the major operations are getting fewer and farther between. I brought the truck home on a regular basis, although most of the time it was without a trailer. In the morning, I could pick up a full load closer to the docks, so there wasn't any reason to bring an
empty home with me. Occasionally I would haul my own supplies in, but that was usually in my
crew cab - I didn't need a flatbed full of stuff at a time. Nobody ever said a word or gave me a
dirty look, including Javert.

After Greendrover had his cattle lot up and running, GreyEden Ranch became one of my
regular stops. That herd grew like a weed, especially after Boscoe showed up. I counted 35
head one time, a lot more than I would ever try to graze on a patch like that. On the other
hand, I've seen feedlots with more steers than that on less space. Usually, they are not this
close to a bunch of houses because it can get messy and smelly. But Loren seemed to know
what the score was and it wasn't hurting me. Besides, it was nice to have the last stop so close
to home, if I figured my route right.

Even with my experience, I'll admit that hauling a loaded trailer left onto Tranquility
Street, up Cleverness Boulevard and down Serenity Drive can be a challenge. That's three 90s
in a relatively short space for a long vehicle. You barely get through one corner and the next
one appears. The width is not a problem and I keep close to the side when unloading. Anyone
who says they can't get around once I'm parked isn't trying, unless they are driving another
semi-truck and trailer.

It was mid-September the first time I brought Greendrover a full load and it had been
raining pretty hard for days, including that one. That softened up the side on the first corner,
probably because the road hadn't been properly chip sealed that summer. We had talked
about doing it, but decided to wait because Javert had convinced the group to start an action
against the horse boarding business on Parcel 7 and we were supposed to each pony up some
money for legal fees. I was against that idea and I'm still against it. But I'll probably pay my
share, since Javert is threatening to put a lien on my place if I don't follow the rules.

Anyway, back to my story. I got too close to the edge of the turn and then
overcorrected when the rig started to slide. I was driving a Pumpkin then, and I still contend
this never would have happened in my old K-Whopper. I jackknifed and ended up crossways in
Cleverness Boulevard, with the trailer on a dangerous teeter. I thought I was going to lose the
load, but the company sent out a couple of big tow rigs and straightened things out. I learned
my lesson that day and never had another problem hauling supplies into Moonlight Estates.

Javert stood there glaring at me during this whole episode, which I didn't think was very
neighborly. After that, Addison was constantly telling Loren that I had hit this or that and that
the defendant needed to pay for it. That's a bald-faced lie and an insult to my driving skills.
Maybe some other gear jammer couldn't handle the space, but I personally think Javert was
just trying to cause trouble for Greendrovers, which is also the whole point of this lawsuit. I
told Loren not to pay, but those folks were trying to keep the peace, so they went along with
Javert's demands and paid.

The truck traffic on the Lunar Sea roads is not causing any excessive wear to the road
bed. I would notice if it did. Big rigs let you know where every bump and pothole is located
and they are not located in Moonlight Estates. Addison Javert and Jesse Applegate have
convinced everyone else that there is a problem, so now we rip the road up and unnecessarily
repave it every year. If you ask me, the two of them are just trying to create a concern where
none exists, to help them out in this case.

Loren doesn't run the cleanest, most primrose-lined cattle operation I've ever seen.
Come to think of it, neither do I. But that feedlot smells and looks a lot better than most of
them. GreyEden Ranch is not a neighborhood nuisance, or even a problem for anyone, unless
that person is out looking for a problem. I am over and out.
Ah, the good old days, when a busy day for me was prodding a farmer to fix the fences near her pond, offering some pamphlets to a rancher about field rotation or giving a talk at the fairgrounds about maintaining water quality in local streams. Now I spend my time investigating supposed pollution from pesticide runoff, mediating disputes between neighbors and responding to constant complaints from newcomers about conditions on adjacent properties. Pine County has become the front line in the battle between those who want to keep doing what they’ve always done out here and those who think they know better than everyone else.

I have a bachelor’s degree in Environmental Sciences from NE Montana College and a master’s degree in ecological health and safety from the University of Montana. Most of my useful knowledge, however, comes from experience -- I’ve worked in this field for over 20 years. Pine County first employed me as a septic tank inspector and since then I’ve come up through the ranks, either directly dealing with environmental issues or supervising our very professional staff. I’ve seen just about every kind of mess people can make in conducting their lives and businesses. Many of the issues in southern Pine County relate to agriculture and the perception by some that it is being conducted improperly or unsafely. I find that in the vast majority of complaints that is simply not the case.

As the County’s chief agent for enforcement of environmental and zoning laws in our unincorporated areas, I am responsible for issuing citations for violations, and initiating public nuisance and enforcement actions when conditions warrant. I can ask our courts to enjoin illegal activities and to fine landowners and commercial operators, including restitution for repairs and recoupment of costs and legal fees. Within the limits of my budget, I respond to most of the serious problems. Private parties can also file lawsuits for nuisance, but if our office doesn’t think legal action is worthwhile, it probably isn’t.

In extreme instances, the county can seize control of property and directly initiate cleanup activities, billing the property owner after the fact. I’ve only initiated that type of action once, after discovering an illegal rendering plant operating on the shore of the Coho River. What a stench! Those conditions threatened the drinking water supply of several towns and required immediate action. In most cases, the situation is nowhere near as severe.

When there really is a problem, we can usually work with the operator to efficiently correct conditions. Most farmers and ranchers are the salt of the earth, committed to preserving the beauty of this area. After all, they’ve been here a lot longer than some of the
complainers. Californians are the worst -- have you seen what they've done to the resource
areas in their state? I've worked with the locals all my life, even grew up on one of the oldest
local dairy operations. You don't need to threaten or cajole these people to get them to comply
-- they will get around to it as soon as it is reasonably possible. In fact, many of them, including
the Greendrovers, voluntarily contribute to my initiatives on public education about rural living
by making monetary donations to some of the programs.

Nature has an amazing capacity to clean and regulate itself, without a lot of intervention
from well-meaning humans. Animals have been mucking around near streams and grazing in
pastures for a long, long time. Just follow a few simple guidelines about the distance between
creeks and cows and most areas will be good as new within a few months.

I have been to GrayEden Ranch on several occasions to answer questions about good
farming practices and stream protection. The first time was not voluntary -- I received a
complaint from Kit Keller that the Greendrover cattle were polluting the drainage swale that
flowed off of Parcels A and B and directly into the wetlands on the northeast corner of Marsh
Side Dairy. The drainage cuts across the corner of the Applegate place. This swamp, fed by
runoff and a couple of springs, is the headwaters of Turtle Creek, an important tributary of a
local trout and salmon stream. The muck and manure deposited in the drainage and on its
banks were too concentrated to be naturally dispersed, as the result of an increase in the
number of cattle confined to a relatively small area. The extra nutrients were causing algae
growth and a definite rise in the population of flies and mosquitos in the wetlands, which are a
buggy swamp even under normal conditions.

Loren Greendrover listened to my concerns and agreed to my suggestion that the
drainage be fenced off and that a retention ditch be excavated near the round hay feeders.
These feeders were the main source of murky runoff at the beginning of the drainage. The
defendant assured me the changes would be made as soon as time and money would allow.
That turned out to be longer than I anticipated, but I didn't think much of it until I received
another complaint -- I can't recall if it was from Keller again or from the Applegates. I issued a
citation to the Greendrovers, more as a gentle reminder that the work needed to be done than
anything else. Once a compliance deadline of 30 days was set, the work was done promptly
and an inspection by one of my staff showed that the problem was solved. I didn't go check on
it myself, but I have no reason to doubt what I was told. I have received no other complaints
about the quality of the runoff from this drainage.

As the cattle operation expanded, Loren voluntarily contacted me about several issues.
On one occasion, I suggested several methods of controlling and dispersing the mud and muck
around the feeders and in the areas of the back field where hay had been provided in the
winter. Another time, the defendant wanted a list of environmentally safe pesticides, to kill the
face flies that were pester ing the eyes of the cattle that were spending the summer on one of
his summer pastures. I assume that the Greendrovers followed my advice, but I didn't check to
see whether that was true. I wasn’t providing the information in the context of an investigation
or complaint.

I’ve received multiple complaints from the Applegates during the last two years, asking
me to investigate the presence of an excessive number of flies around their home. Initially,
these complaints did not claim that the flies were coming from any particular location, only that
the concentration of the insects made their lives unbearable. I visited their property the
second time they called (the first call was one day before, and I hadn't had time to respond). I
made my inspection two days after the second call and only observed a few flies. I thought this
was strange, but they insisted that the wind had shifted to the east in the last couple of days
and that always gave them temporary relief from insects. Jesse Applegate did show me a
couple of piles of dead flies under the outside porch lights. We walked the property and I told
them I thought the most likely source of the flies was the either the nearby wetlands or Keller's
property. They agreed and said they would discuss the issue with Kit Keller. No one mentioned
the Greendrover place and I don't remember anything unusual while standing by that property
line.

The complaints came in as a matter of routine after that, especially when it was warm or
the west winds were blowing. After a while, the Applegates fixated on Loren's cattle operation
as the source of the problem. I did not go back out to inspect the area, since the complaints did
not change and I was working on other, more important issues. I didn't send anyone else out
from my office to check on the situation. Instead, I explained to Jesse that flies were a common
problem during the warmer months and suggested that they hang yellow pest tapes in various
locations and screen their porch and patio. No one else in the development called me about fly
problems during this time.

After this litigation began, Loren Greendrover asked me to inspect Parcels A and B for
violation of environmental and other laws. I was allowed full access to the property during my
visit in early October. I remember the seasonal rains had just started the week before, after a
long, dry spell the previous two months. I wore my rubber boots, but it wasn't necessary as
most of the area was still hard, brown and dry, with just a couple of hoof puddles to step
around.
There were a few cows on site and Boscoe was secured in his pen. The defendants told me that the rest of the herd was still at larger summer pastures and wouldn't be returned here until a little fall grass came up or they could secure some more hay. The total herd was estimated at 25 head, not counting Boscoe, although they planned to take a few head to the sale barn if beef prices went up a little more. Loren mentioned that the herd might stay away a little longer than usual, to see if this "whole thing with the Applegates blows over".

The drainage fences were still secure and the retention ditch was still in place and barely damp. The area smelled like a cattle operation. There was a medium pile of scrapings by the corner of the barn, with a few flies lazily buzzing around the pile or settling on the legs of nearby cattle. I advised Loren to clear that off before the rains really started. The Greendrovers said it would be done as soon as time allowed. After a walk around the field perimeter and down the middle of the property, I was of the opinion that there were no ongoing environmental or public nuisance issues on either Parcel A or Parcel B.

My inspection was not focused on private nuisance issues. I suppose it would be better to visit the site on more than one occasion, both during the warmer months and following periods of prolonged rain. Conditions might be different if the rest of the cattle were back on the property. But frankly I haven't seen anything in my visits to the area that would cause me concern from a public perspective and I don't have time to keep running out to Moonlight Estates to see if there are flies there. Call me if you find an area of the county that doesn't have flies during the spring and summer.
EXHIBITS
The following reservations, conditions, agreements, covenants and restrictions (hereinafter CCRs) shall run with any land, parcel or lot in that development known as Moonlight Estates. The CCRs shall be binding upon and shall be for the benefit of all owners of property in the development, including successor owners and assigns, and all persons claiming any benefit through them. A reference to the CCRs shall be a part of all transfers and conveyances of the property within the boundaries of Moonlight Estates.

If it appears to the advantage of the Moonlight Estates development that these CCRs should be modified, then any modifications must be made by affirmative vote of 75 percent of the then owners of said property and evidenced by suitable instrument filed of public record.

A. RESTRICTIONS ON USE OF PROPERTY

A-1. No trade, business, profession, manufacturing or commercial activity of any kind shall be conducted or carried on upon any lot, nor shall any goods, supplies, equipment or vehicles used in connection with any such activity, wherever that activity may be conducted, be kept, parked, stored, dismantled or repaired on any lot or on any street within Moonlight Estates. No parcel shall be used for any purpose except for a private dwelling or residence and for accompanying outdoor recreation, gardening and reasonable, small-scale agriculture.

A-2. Notwithstanding Section A-1, the Developer may authorize specific home occupations at the time of the sale of a parcel, to be conducted if allowed by law and if such occupation will not, in the reasonable judgment of the Developer, cause traffic congestion or other disruption of the Moonlight Estates neighborhood. After the Developer has sold all lots in Moonlight Estates, the authority to allow new home occupations shall pass to the Homeowners Association.

A-3. Nothing shall be done on any residential lot or building site which may be or may become an annoyance or nuisance to the neighborhood.

A-4. No trash, garbage, or other waste or unsightly growths or objects shall be thrown, dumped or allowed to accumulate on any lot or street. Yards and grounds shall be maintained in a neat and sightly fashion at all times.

A-5. Any lot owner who has a drainage swale or creek running through the lot agrees to maintain a grassy ditch as needed for water dispersal and also agrees not to impede the flow of water in any way.
A-6. No unsightly antennas or transmission towers are allowed on any lot.

A-7. No parking or dismantling of inoperable vehicles, or storage of inoperable, unused, unkempt, rusting or dilapidated vehicles or equipment shall be permitted on any lot except in an enclosed building.

* * *

B. ANIMALS

B-1. No more than eight (8) of the following farm animals, possessed in any combination, are allowed to be kept or pastured on any single lot in Moonlight Estates:

- Horses
- Sheep
- Cattle
- Goats
- Llamas
- Alpacas

B-2. Other normal household pets are allowed, PROVIDED that outdoor swine and free-range chickens shall under no circumstances be considered pets.

B-3. Other farm animals will only be allowed with the consent and agreement of adjacent neighbors on all four sides.

B-4. All animals will be maintained in a healthy and sanitary manner and shall be appropriately confined and fenced, so that they do not constitute a nuisance to the neighbors.

* * *

C. ROAD USE AND MAINTENANCE

C-1. The “Lunar Sea” roadways throughout Moonlight Estates are for the full use and benefit of all owners and their invitees. No lot owner shall gate, fence or otherwise block or restrict access to any portion of these roadways.

C-2. The Developer shall initially pave the roadways and shall maintain the roadways until all lots are sold. After sale of all parcels, the responsibility for road maintenance shall be transferred to the Homeowners Association.

C-3. The individual owners of each parcel in Moonlight Estates shall share equally in the costs and expenses of maintaining and repairing the Lunar Sea roadways. The owners shall meet at least annually, to agree upon what maintenance and repairs shall be performed on the roadways in the coming year. A majority vote of the owners shall determine which projects are authorized.
C-4. The Homeowners Association president shall be responsible for arranging for performance of authorized work, for paying for this work from assessed funds and for calculating and assessing the share of each lot owner for maintenance and repair costs.

C-5. Should any owner, or group of owners, engage in activity which causes excess damage or deterioration to the roadways beyond normal wear and tear, said owner or owners shall be required, at their sole expense, to make immediate and appropriate repairs, as directed by the Homeowners’ Association President. Examples of activity which might cause excess damage may include building construction, large truck traffic or moving of heavy equipment. An owner’s obligation under this section is limited to restoring the roadway to its regularly maintained condition.

* * *

D. HOMEOWNERS ASSOCIATION

D-1. Each parcel owner shall be a Member of the Moonlight Estates Homeowners Association (the HOA). Each Member shall be entitled to one vote for each residential lot owned by such Member.

D-2. The HOA shall meet at least annually. Special meetings may be called by the HOA president, or by any three (3) Members. Proper notice of a special meeting shall be given in advance to all Members.

D-3. The Members shall elect a president, a secretary and a treasurer at each annual meeting. These officers shall constitute the Board of the HOA . . . . The president shall be the chief executive officer and have active charge of the management of the HOA, subject to control and approval by the Board.

D-4. The president shall have the authority to enforce the provisions of the CCRs by any legal method, when this action is authorized by a majority of the Members at a regular or special meeting or by any other proper method of determining the wishes of the Members, after due notice and consideration.

D-5. Actions taken by the president, the Board or by the majority of Members, are not binding upon any Member who did not receive proper notice and an opportunity to be heard and to vote prior to the action. No cost or assessment shall be imposed upon or collected from any Member who was not given an advance opportunity to object to the cost or assessment.
## EXHIBIT 4

### GRAZING OPTIMIZATION ANALYSIS - STANDARD GRASS

<table>
<thead>
<tr>
<th>Soil Type</th>
<th>A (Non-Irrigated)</th>
<th>B (Irrigated)</th>
<th>C (Rebound Time)</th>
<th>D (Maximum Animals/Acre)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Rainfall Only)</td>
<td>(Inc. Natural Streams)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Animals/Acre</td>
<td>Animals/Acre</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(75 day Graze)</td>
<td>(75 day Graze)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Swift Sandy Loam</td>
<td>1.4 - 1.8</td>
<td>1.9 - 2.4</td>
<td>60 days</td>
<td>2.4</td>
</tr>
<tr>
<td>Gee Silt Loam</td>
<td>2.0 - 2.4</td>
<td>2.4 - 3.0</td>
<td>50 days</td>
<td>3.7</td>
</tr>
<tr>
<td>Aschoff Gravelly Loam</td>
<td>1.2 - 1.5</td>
<td>1.5 - 2.0</td>
<td>65 days</td>
<td>2.2</td>
</tr>
</tbody>
</table>
STATUTORY WARRANTY DEED

The Land Grantor, JULIUS HAMMER, for and in consideration of ONE DOLLAR ($1.00) and other good and valuable consideration in hand paid, conveys and warrants to the Grantee, LOREN GREENDROVER AND RILEY GREENDROVER, the following described real property, situated in the COUNTY OF PINE, STATE OF WASHINGTON:

[Legal Description of Parcel A, attached to the original Deed]

FURTHER, The Easement Grantor, KIT KELLER, as Developer of MOONLIGHT ESTATES, for and in consideration of ONE DOLLAR ($1.00) and other good and valuable consideration in hand paid, conveys and warrants to the Grantee, LOREN GREENDROVER AND RILEY GREENDROVER, the following easements, which shall be appurtenant to and run with and for the benefit of the above-described real property, situated in the COUNTY OF PINE, STATE OF WASHINGTON:

A twenty (20) foot private road easement for ingress and egress, and a utility easement, over, under and across those roadways collectively known as the “Lunar Sea” roadways, as located and described in Exhibit 1 of the Moonlight Estates development and as legally described in the attachments to that Exhibit 1, which description is incorporated by this reference.

USE OF THE EASEMENTS granted above is conditioned upon the Grantee’s acceptance of and compliance with the Road Use and Maintenance provisions of the Declaration of Reservations, Conditions, Agreements, Covenants and Restrictions for Moonlight Estates, as previously recorded.

DATED: March 1, 2006.

____________________________________________
LAND GRANTOR, JULIUS HAMMER

____________________________________________
EASEMENT GRANTOR, KIT KELLER

[Notary Certifications on original Deed]
PRETRIAL MOTIONS
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PINE

JESSE AND JACKIE APPLEGATE, and
MOONLIGHT ESTATES HOMEOWNERS ASSOCIATION,
Plaintiffs,

vs.

LOREN AND RILEY GREENDROVER,
Defendants.

The Defendants move the court to adopt one or more of the following pretrial measures, which are necessary to protect the safety and health of the defendants and other trial participants, to promote a fair determination of the issues in this case, and to uphold the dignity of the proceedings and the due administration of justice:

1. An order closing the courtroom to all spectators who are members of or affiliated with animal rights groups, including the Boscoe Unlimited Liberty League (BULL), who plan to attend the trial to disrupt the proceedings and harass and threaten the defendants;

2. An order barring any spectator from wearing “Free Boscoe” shirts, buttons, headbands or similar paraphernalia, or displaying “Free Boscoe” posters, pictures or placards, in the presence of the jury.

3. An order barring any member of the public from photographing or recording Loren Greendrover during the defendant’s testimony or while in the courtroom or the area adjacent to the courtroom.

BY /s/ ____________________
Attorney for Defendants.

COMPLAINT
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PINÉ

JESSE AND JACKIE APPLEGATE, and )
MOONLIGHT ESTATES HOMEOWNERS  ) NO. 18-2-001227
ASSOCIATION, )
Plaintiffs, ) RESPONSE TO
vs. ) PRETRIAL MOTION
LOREN AND RILEY GREENDROVER, )
Defendants. )

The Plaintiffs oppose the pretrial motion and ask that all of the alternative
orders requested by the defendants be denied.

This honorable court retains the authority to deal with actual unruly
behavior by spectators in and around the courtroom. The drastic preemptive
measures suggested by the defendants are unnecessary and would violate the
plaintiffs’ and the public’s right to open court proceedings, as guaranteed by the
United States Constitution and by the Washington State Constitution.

BY /s/ __________________________
    Attorney for Plaintiffs.

COMPLAINT
Research Materials for Pretrial Motion

Washington State Constitution

Article I, section 10 – Justice in all cases shall be administered openly, and without unnecessary delay.

Court Rules

GR 16 -- COURTROOM PHOTOGRAPHY AND RECORDING BY THE NEWS MEDIA

(a) Video and audio recording and still photography by the news media are allowed in the courtroom during and between sessions, provided

(1) that permission shall have first been expressly granted by the judge; and

(2) that media personnel not, by their appearance or conduct, distract participants in the proceedings or otherwise adversely affect the dignity and fairness of the proceedings.

(b) The judge shall exercise reasonable discretion in prescribing conditions and limitations with which media personnel shall comply.

(c) If the judge finds that sufficient reasons exist to warrant limitations on courtroom photography or recording, the judge shall make particularized findings on the record at the time of announcing the limitations. This may be done either orally or in a written order. In determining what, if any, limitations should be imposed, the judge shall be guided by the following principles:

(1) Open access is presumed; limitations on access must be supported by reasons found by the judge to be sufficiently compelling to outweigh that presumption;

(2) Prior to imposing any limitations on courtroom photography or recording, the judge shall, upon request, hear from any party and from any other person or entity deemed appropriate by the judge; and

(3) Any reasons found sufficient to support limitations on courtroom photography or recording shall relate to the specific circumstances of the case before the court rather than reflecting merely generalized views.
Waller v Georgia, 467 U. S. 39 (1984)[Justice Powell]:

[Petitioners were indicted for violating gambling statutes. Prior to trial, petitioners moved to suppress evidence obtained, in part, as the result of wiretaps. The State moved to close the suppression hearing to the public, alleging that unnecessary "publication" of information obtained under the wiretaps would render the information inadmissible as evidence, and "involve" the privacy interests of some persons who were indicted but were not then on trial, and some who were not then indicted. The trial court ordered the suppression hearing closed to all persons other than witnesses, court personnel, the parties, and the lawyers. The suppression hearing lasted seven days, but only about 2 hours was devoted to wiretaps and few of them involved parties not then before the court. The Supreme Court reversed the convictions, concluding that the closure was not justified under the Sixth and Fourteenth Amendments]:

This Court has not recently considered the extent of the accused's right under the Sixth Amendment to insist upon a public trial….We are not, however, without relevant precedents. In several recent cases, the Court found that the press and public have a qualified First Amendment right to attend a criminal trial….We also have extended that right not only to the trial as such but also to the voir dire proceeding in which the jury is selected. ...[In] Gannett Co. v. DePasquale, 443 U. S. 368 (1979). . . a majority of the Justices concluded that the public had a qualified constitutional right to attend [suppression] hearings...

In each of these cases the Court has made clear that the right to an open trial may give way in certain cases to other rights or interests, such as the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information. Such circumstances will be rare, however and the balance must be struck with special care..."The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered."

Cosentino v Kelly, 102 F. 3d 71 (2d Circuit, 1996)(per curiam):

Magana and Cosentino challenge their state court convictions because certain of their family members, who had disrupted petitioners' first trial and precipitated a mistrial, were excluded from petitioners' second trial, at which they were convicted. We agree with Judge Conner that the state proceedings did not violate the petitioners' Sixth Amendment right to a public trial.

Magana and Cosentino each were charged with the crimes of murder in the second degree (two counts), ....The first trial in this case commenced on October 10, 1990 in Westchester County Court. The jury completed deliberations on October 31, 1990, and informed the court that it had reached a verdict. The jury was brought back into the courtroom and was asked by the court whether it had reached a verdict with respect to the first count charging Magana with murder in the second degree. When the jury foreperson responded, “Guilty, your Honor,” bedlam ensued. Family members and friends of the defendants began yelling, screaming, and
crying aloud, and many had to be physically restrained and removed from the courtroom. The foreperson proceeded to announce guilty verdicts for the remaining counts, but the court was then forced to order a recess to end the continuing disruption.

After the jury later returned to the courtroom, the court apologized for the disturbance. When at last the jury was polled, two of the jurors had changed their verdicts, and a third juror was unsure as to her concurrence in the verdict. Another juror told the court: “The jury has fallen apart at this particular time, Judge, because of what happened in this courtroom just now and that-none of us, I think, can right now give anything a fair answer of any kind. I'm sorry.”

[Before granting a mistrial], the court recorded for the record what had transpired:

“[A]t the time that the verdict was announced there were a great many members of the [petitioners'] family, friends here, I say 10 to 15 and not all of them but a good many of them just went absolutely off the wall yelling and screaming, several had to be physically restrained, taken out of the courtroom, we had quite a scene here.”

On January 11, 1991, the court informed the parties at a scheduled conference that petitioners' wives and Cosentino's son would be barred from the courtroom during the second trial due to their involvement in the courtroom disruption at the first trial. . . .After a second consolidated trial, each petitioner was convicted of murder in the second degree. . . .

The deciding principle of this appeal is stated in United States v. Fay, 350 F.2d 967 (2d Cir.1965):

The Sixth Amendment provision that ‘In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, . ’ has always been interpreted as being subject to the trial judge's power to keep order in the courtroom. Were this not so a public trial might mean no trial at all on the option of the defendant and his sympathizers.

We do not deprecate the importance of the public trial as “a safeguard against any attempt to employ our courts as instruments of persecution.” . . .The accused is entitled to a public trial so that “the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions.” . . . At the same time, “[i]t is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country. The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated.”

In this case, the trial judge was dealing with something more than a breach of decorum; a scene of pandemonium had directly caused a mistrial. The measure adopted by the trial judge—an order barring a handful of family members who had rioted at the first trial—struck a scrupulous “balance between the requirement that the actions of the courts be open to public scrutiny and the need to have the trial proceed in an orderly manner.” Fay, 350 F.2d at 971. The order allowed access to most members of the public (and press) and many members of the defendants' families, and only barred those individuals who, in the court's judgment, posed a threat to the orderly
conduct of the second trial. We therefore need not separately consider the factors enumerated
in Waller v. Georgia, 467 U.S. 39, 48, 104 S.Ct. 2210, 2216, 81 L.Ed.2d 31 (1984), which
governs the closing of the courtroom to peaceable individuals or to the public at
large…Affirmed.

United States v Akers, 542 F. 2d 770 (9th Circuit, 1976)(per curiam):

Appellants were convicted on a variety of charges stemming from the bombing of two military
recruiting stations in Portland, Oregon, in January 1973. We reverse the convictions under counts
charging violation of 18 U.S.C. § 924(c) (2), and affirm as to the other counts.

* * *

6. We cannot say that the trial court erred in excluding from the courtroom all persons except
appellants, their relatives, the attorneys, the press, and court personnel, when the verdicts were
returned. The court had been advised that the proceedings would be disrupted if the verdict was
unfavorable to the appellants. The court could properly conclude that the threat of harm dictated
partial closing of the proceedings. The right to a public trial does not preclude a limited
exclusion of spectators where necessary to avoid disorder, as it was here.

United States v Simmons, 797 F.3d 409 (6th Circuit 2015)[Chief Judge Cole]:

During Jason Simmons's criminal trial for drug conspiracy, the government moved to exclude
three of Simmons's co-defendants from the courtroom during the testimony of one of its
witnesses. The government argued that, due to certain comments made by Simmons and other
individuals outside the courtroom, the presence of the three co-defendants might make the
witness feel uncomfortable and intimidated even though the government conceded that none of
the statements were threatening and that it did not know whether they were made by any of the
three co-defendants it sought to exclude. The district court, reasoning that it had discretion to bar
any individual from the courtroom if there were any possibility that his or her presence might be
intimidating, granted the motion.

At issue is whether the district court violated Simmons's Sixth Amendment right to a public trial
when it excluded the three co-defendants from the courtroom without making factual findings
that adequately support its decision. We hold that it did.

Before [the testimony of Nixon, an associate of defendant’s who was now a witness for the
government], the prosecutor told the district court that three of Simmons's co-defendants... were
in the back of the courtroom. The prosecutor expressed concern that Nixon "might be intimidated
on that basis" and asked that they "at least" be excluded from the trial during Nixon's testimony.
He noted that "disparaging things," but "not threats," had been said to Nixon, though the
prosecutor conceded that he did not know if those comments were made by the three
codfendants. …The prosecutor acknowledged that he had not spoken to, or informed, Nixon
about the three co-defendants' presence in the courtroom or about the prosecutor's intention to
argue for their exclusion. . .
The district court did not ask Nixon whether he felt uncomfortable or intimidated due to the presence of the three co-defendants; it also did not inquire about the bases for the prosecutor's assertions or ask why statements that might have been made by other parties were relevant to the three individuals asked to leave the courtroom. Nevertheless, the district court said that it would "ask them to step out during [Nixon's] testimony." . . .[T]he district court reasoned that it had the discretion to exclude individuals from the courtroom "if there is any possibility that it would be intimidating or possibly if it would influence a witness's testimony." It stated that it would rather be cautious by "making sure that no one feels threatened or intimidated because of the presence of other people in the courtroom," so the district court asked the courtroom security officer "to quietly go back and speak to them and ask them to step out until [Nixon] completes his testimony." The three co-defendants left without objecting, and the jury was not present when these events occurred.

As we have explained in applying [the Waller test], "[b]ecause of the great, though intangible, societal loss that flows from closing courthouse doors, the denial of a right to a public trial is considered a structural error for which prejudice is presumed." . . . "Structural errors require automatic reversal, despite the effect of the error on the trial's outcome....

Waller did not distinguish between complete and partial closures of trials. . . .Nearly all federal courts of appeals, however, have distinguished between the total closure of proceedings and situations in which a courtroom is only partially closed to certain spectators. . . .All federal courts of appeals that have distinguished between partial closures and total closures modify the Waller test so that the "overriding interest" requirement is replaced by requiring a showing of a "substantial reason" for a partial closure, but the other three factors remain the same.

Here, the government expressed concern ... that Nixon could be intimidated by the presence of the three co-defendants in the courtroom, and the district court agreed that Nixon could feel "threatened or intimidated." The district court therefore identified a substantial reason to grant a partial closure of the courtroom, but never concluded that the interest being protected was "likely to be prejudiced[.]." . . . Instead, the district court mistakenly stated that it had discretion to exclude persons from the courtroom "if there is any possibility that [their presence] would be intimidating or possibly if it would influence a witness's testimony." (Emphasis added.) The district court therefore did not reach the conclusion necessary to satisfy the first prong of the modified Waller test.

[T]he closure order was not "properly entered" since the district court did not articulate any facts supporting its decision and simply relied on the government's assertions — assertions that would have been insufficient to support a partial closure even if true — and its erroneous understanding of its discretion to exclude the public from the courtroom. . . .[Reversed and remanded for new trial].

_US ex rel Orlando v Fay_, 350 F. 2d 967 (2d Circ, 1965)[Judge Lumbard]:

Philip Orlando attacks, by petition for a writ of habeas corpus [a] conviction . . . for robbery in the first degree. . . He alleges that he was denied a public trial because the state trial court excluded the public from the courtroom during most of the trial. . . [A federal district judge]
held a hearing and denied the application. We agree with his conclusion that there has been no deprivation of Orlando's constitutional rights.

Orlando's trial opened in Kings County Court . . . before Judge Goldstein. On the first full day of trial . . . Orlando interrupted an identification of him by the victim by exclaiming, "You never saw me before," "You liar," and "This man is not supposed to say that, your Honor," and was strongly admonished by the court.

The next day . . . the prosecution disclosed, out of the presence of the jury, that one prosecution witness had been threatened by two members of the electrical union to which Orlando belonged with loss of his job if he testified against Orlando, and that another prosecution witness had avoided what might have been a similar situation by telling the man who accosted her in a suspicious manner that she was someone else. In the absence of the jury, Judge Goldstein admonished all those present. . . . But Judge Goldstein's troubles had not ended, for later in the afternoon, [defendant further disrupted the proceedings and the following occurred]:

The Court: I will hold you in contempt of court if you continue in this manner. Do you understand that? You are not out on the street. You are in a court-room. At least you ought to show some respect for the court.

A woman [admittedly defendant's mother, who was a spectator at the trial]: May I say something? He is my boy. Listen to what they say.

The Court: I will clear the court-room of all spectators. Do not leave anybody in this court-room after this, except the witnesses when they are needed. Do you understand that?" [After one-half hour, the trial judge allowed members of the press and attorneys to enter the courtroom, but no other spectators].

. . . The right to a speedy and public trial has always been interpreted as being subject to the trial judge's power to keep order in the courtroom. . . . Thus, the public trial requirement is subject to the trial judge's power to prevent offensive evidence from being exhibited to the public . . . to prevent unnecessary pressures or embarrassment to a witness or a victim as in the rape of a young child . . . or to prevent young persons from attending a trial of a scandalous nature . . . And where, as in Orlando's trial, there is reason to believe that unrestricted admission of the defendant's sympathizers to the courtroom has made it possible for such sympathizers to see the witnesses and then threaten and intimidate them, and there is reason to believe that this might continue unless such persons are not permitted to see the witnesses, the trial judge has the power to bar access to the courtroom to such persons.

The guarantee of a public trial does not mean that all of the public is entitled under all circumstances to be present during the trial. It means only that the public must be freely admitted so long as those persons and groups who make up the public remain silent and behave in an orderly fashion so that the trial may continue. When the trial judge has reason to believe that any persons or any groups of spectators are disorderly and may continue to be so he may exclude individuals or groups as the occasion requires. . . .
Estes v. Texas, 381 U. S. 532 (1965) (Harlan, J., concurring):

Essentially, the public-trial guarantee embodies a view of human nature, true as a general rule, that judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret proceedings.

Cohen v Everett City Council, 85 Wn. 2d 385 (1975)[Justice Brachtenbach]:

The Everett City Council instituted an action to revoke the city license of a sauna parlor operator. . . At the licensee's request the hearing before the council was in closed session . . .After the council ordered revocation of the license, the licensee obtained a writ of certiorari to review the council decision and a transcript of the city council proceedings was filed in superior court. The licensee obtained an ex parte order of confidentiality, sealing the record subject only to the view of the presiding judge . . .

Thereafter the Everett Herald, a daily newspaper, intervened for the limited purpose of contesting issues relating to (1) whether or not the trial on the merits would be open or in camera, and (2) whether the evidence, including the transcript of proceedings before the council, would be sealed and unavailable to the press. . .The Everett Herald moved to have the order of confidentiality set aside, but the motion was denied . . .

We start with the proposition that any trial is usually an open, public proceeding. The United States Supreme Court has said that "A trial is a public event. What transpires in the court room is public property."

In criminal proceedings both the sixth amendment to the United States Constitution and article 1, section 22 of our state constitution provide the accused with a constitutional right to a public trial. . . The respondent contends that it is only in criminal proceedings that the public trial right exists. This argument overlooks article 1, section 10 of our state constitution which mandates that "Justice in all cases shall be administered openly . . ." This separate, clear and specific provision entitles the public, and as noted above the press is part of that public, to openly administered justice.

There are exceptional circumstances and conditions which justify some limitations on open judicial proceedings. For obvious reasons adoption matters are usually heard privately as authorized by statute. . .

Further, in the exercise of its inherent power, a court may limit attendance to prevent overcrowding of the courtroom, to prevent disorder, to avoid intimidation of witnesses and to prevent minors from hearing salacious testimony. Other conditions may justify similar restrictions. . .In this case however, the order of confidentiality stemmed from the trial court's concern that the transcript of the city council proceedings contained a serious and grave allegation by the sauna parlor licensee against a named individual who was not there present, not represented by anyone and not directly involved in the proceedings.
Holding as we do that our constitution mandates an open public trial in a civil case, absent any of the statutory exceptions or compelling reasons calling for exercise of the court's inherent power to control its proceedings, we must determine whether the trial court's action in this case had reached a stage where justice was being “administered” … Once the court reached the merits of the controversy, the testimony -- transcript -- had to be part of the public record. While the purpose of the trial court was laudable, there was no statutory basis for its action, and we conclude that the court's reasons for secret adjudication in this matter are not of sufficient public importance to justify exception to the requirement of Const. art. 1, § 10.

State v Bone-Club, 128 Wn. 2d 254 (1995)[Justice Dolliver]:

Whatcom County charged Defendant Joseph Bone-Club with possession with intent to deliver cocaine and delivery of cocaine. …[T]he trial court held a pretrial suppression hearing to decide the admissibility of Defendant's statements to police. During those proceedings, the court ordered closure of the hearing solely on the basis of the following exchange with the State:

[THE STATE]: Before the testimony of the next witness the State would request that the courtroom be cleared.

THE COURT: All right. All those sitting in the back, would you please excuse yourselves at this time.

(The courtroom was cleared.)

The court neither sought nor received an objection or assent from Defendant on the record. After the courtroom was cleared, Detective Frakes, an undercover police officer, testified he feared public testimony would compromise his undercover activities. The trial court denied Defendant's motion to suppress his statement to Frakes, while granting a motion to suppress a statement to another police officer. Frakes later testified at trial in open court. A jury found Defendant guilty as charged…

Defendant claims the temporary, full closure of his pretrial suppression hearing during the testimony of the undercover police officer violated his right to a "speedy public trial" as guaranteed by article I, section 22 of the Washington Constitution…. Although the court has recognized in three cases the potential for a conflict between the State's request for a closed hearing and a defendant's public trial right, the facts of those cases have not necessitated the articulation of a section 22 standard…. In contrast to the lack of precedent addressing the section 22 right, this court has developed a strict, well-defined standard for closing a hearing in opposition to the public's right to open proceedings under article I, section 10 of the Washington Constitution…. This series of section 10 cases, where media challenged closure of a hearing or court records, conceded the public's right to open proceedings is not absolute, but emphasized the high order of that constitutional protection mandated a trial court limit closure to rare circumstances… To assure careful, case-by-case analysis of a closure motion, the trial court must perform a weighing test consisting of five criteria:
1. The proponent of closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a "serious and imminent threat" to that right.

2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.

3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.

4. The court must weigh the competing interests of the proponent of closure and the public.

5. The order must be no broader in its application or duration than necessary to serve its purpose.

The section 10 guaranty of public access to proceedings and the section 22 public trial right serve complementary and interdependent functions in assuring the fairness of our judicial system. In particular, the public trial right operates as an essential cog in the constitutional design of fair trial safeguards….Our decision to employ the same closure standard for both the section 10 and section 22 rights mirrors the United States Supreme Court's decision in Waller v. Georgia,...Faced with a defendant's challenge to a closure order under the Sixth Amendment public trial right, the Waller Court imported its standard from closure cases brought under the First Amendment's protection of public access to trials.

**In re Detention of DFF, 172 Wn. 2d 37 (2011)[Justice Sanders]:**

We are asked to decide whether Superior Court Mental Proceedings Rules (MPR) 1.3, which provides involuntary commitment proceedings “shall not be open to the public, unless the person who is the subject of the proceedings or his attorney files with the court a written request that the proceedings be public,” violates the right to open administration of justice under article I, section 10 of the Washington Constitution.

We first address whether D.F.F. has rights under article I, section 10, which afford her standing to challenge the constitutionality of MPR 1.3. Article I, section 10 pronounces, “Justice in all cases shall be administered openly ….” The State does not dispute that D.F.F. has rights under article I, section 10 as a member of the public. But the State argues that open justice under article I, section 10 merely protects her right to attend her own commitment proceedings, and thus there was no violation since she did attend her own commitment proceedings. The State reasons D.F.F. has no standing to claim a violation based upon the general public's inability to attend.

The State misconstrues and minimizes D.F.F.'s rights under article I, section 10...The open administration of justice assures the structural fairness of the proceedings, affirms their legitimacy, and promotes confidence in the judiciary. D.F.F. is a member of the public and the target of a civil action to involuntarily confine her. Article I, section 10 provides for her right as a member of the public to attend the proceedings, but also her individual right to have the
proceedings open to the observation and scrutiny of the general public. This court observed in John Doe v. Puget Sound Blood Center, 117 Wn.2d 772, 780-81, 819 P.2d 370 (1991), that open justice under article I, section 10 “is not an abstract theory of constitutional law, but rather is the bedrock foundation upon which rest all the people's rights and obligations. In the course of administering justice the courts protect those rights and enforce those obligations. … The public monitors the fairness of the proceedings and the appropriateness of the result—and article I, section 10 grants D.F.F. the right to demand that protection….D.F.F. also has a right to open proceedings to permit family, friends, and other interested individuals to be present at the proceedings. …Not only can those individuals monitor the case and publicly disseminate information about it, but also they may possess specialized or personal knowledge that they can provide to assist D.F.F. If D.F.F.'s rights under article I, section 10 are limited to assuring her presence at her own proceedings, she is robbed of any of the actual benefits of the open administration of justice.

The constitutionality of a court rule is a question of law. . . . We now consider whether MPR 1.3 is unconstitutional in light of article I, section 10. We hold that it is unconstitutional. This court has clearly and consistently held that the open administration of justice is a vital constitutional safeguard and, although not without exception, such an exception is appropriate only under the most unusual circumstances and must satisfy the five requirements as set forth in . . . State v. Bone-Club.

In re Woods, 154 Wn. 2d 400 (2005) [Chief Justice Alexander]:

[A jury in Spokane County found Woods guilty of aggravated first degree murder. In rejecting the defendant’s personal restraint petition, the Washington Supreme Court considered his claim that spectator actions had deprived him of a fair trial]:

Woods claims that he was denied a fair trial and the right of confrontation when the trial court denied his pretrial motion to have the victims' family members remove black and orange remembrance ribbons while in the courtroom. Woods argues that the presence of these ribbons constituted extrinsic evidence of victim impact that could not be challenged at trial.

A defendant has a fundamental right to a fair trial. . . .When a courtroom arrangement is challenged as inherently prejudicial, the question to be answered is whether an unacceptable risk is presented of impermissible factors coming into play. . . .In other words, all a court may do in such a situation is to look at the courtroom scene presented to the jury and determine whether what they saw was so inherently prejudicial as to pose an unacceptable threat to the defendant's right to a fair trial.

In support of his claim, Woods relies on Norris v. Risley, 918 F. 2d 828 (9th Cir.1990). In Norris, the Ninth Circuit Court of Appeals concluded that because women spectators were wearing buttons inscribed with "Women Against Rape" the defendant was deprived of a fair trial. It reached this conclusion because the buttons announced the spectators' conclusion about the defendant's guilt and amounted to "unacceptable risk of... impermissible factors" coming into play. Id. at 834. The present circumstance, in our judgment, is distinguishable from Norris. Here,
the black and orange ribbons did not contain any inscription. They were simply ribbons that the wearers indicated they wore in memory of the victims. In examining a color copy of the ribbon, it is our view that they do not express any conclusion about Woods' guilt or innocence.

In most cases involving violent crime, there is at least one grieving family present at the trial and the presence of such persons should not come as any surprise to the jury members. ...."We must assume that a jury has the fortitude to withstand this type of public scrutiny, and cannot presume irreparable harm to the defendant's right to a fair jury trial by the presence of spectators who may have some type of associational identity with the victim of the crime."


… Jurors are especially susceptible to external factors, such as compassion, sympathy, and empathy, which can greatly influence their verdicts. Indeed, these peripheral factors can influence the decision of the jury "as much as, if not more than, the factual merits of a case." Judges and attorneys, then, have a crucial responsibility to guarantee fair trials by protecting the jury from immaterial influences.

Nevertheless, outside factors can still influence a jury. Trial spectators within the courtroom, especially those who sit in plain view of jurors and in close proximity to the jury's box, can intentionally or unintentionally affect the jury. Justice Holmes once observed that "[a]ny judge who has sat with juries knows that, in spite of forms, they are extremely likely to be impregnated by the environing atmosphere." In recent years, trial spectators have threatened to "impregnate" the minds of jurors by wearing expressive clothing to court. Specifically, it is a growing trend for spectators to publicly express their emotion by wearing buttons depicting the victim, armbands, and color-coded ribbons to trial.

Over the past twenty years, appellate courts across the country have reexamined criminal convictions because spectators wore symbolic displays of emotion during the trial. These cases involve a wide variety of expressive apparel, ranging from ribbons to colored armbands to corsages to matching uniforms to t-shirts. Each court handled the situation differently. Some held that expressive clothing infringes on a defendant's right to a fair trial because it erodes the defendant's right to be presumed innocent and creates an unacceptable risk that the courtroom showing of support will unduly influence the jury. Other courts held that any prejudice presented by a spectator's display can be cured by appropriate instructions from the judge to the jury.

There are five chief reasons to forbid expressive clothing and accessories in all courtrooms. [Case Author’s Note: Three arguably apply to civil cases]. Expressive items (i) psychologically affect jurors; (ii) are inherently prejudicial; and (iii) infringe upon a defendant's right to due process.

Sociological studies of jurors and juries confirm that they make decisions based on emotional factors. For example, one applied research psychologist argues that "jurors reach their verdict decisions with their right brains, then endorse these decisions with their left brains (i.e., jurors utilize emotions to decide the case, then shuffle through the evidence to authenticate their
emotional reactions on an intellectual basis). Since jurors rely on emotions in their decision-making process, it follows that they are especially receptive to emotional factors. The juxtaposition of courtroom displays of emotion with emotionally-influenced jurors creates a severe risk that verdicts will be rendered on sentiments rather than facts.

In *Holbrook*, the Court stated that the standard for determining whether something is inherently prejudicial does not depend on "whether jurors articulated a consciousness of some prejudicial effect," but whether there is a risk that external factors could influence the verdict. Under this standard, symbolic items are inherently prejudicial. As the Supreme Court stated, even the threat of impermissible factors coming into play should preclude such items…. "[O]ur system of law has always endeavored to prevent even the probability of unfairness.

The Supreme Court considers it a denial of due process if the factfinder has even a mere temptation to render a verdict based on something other than the evidence presented. Applied to the issue of symbolic displays of emotion, there is a strong argument that expressive items could, at the very least, tempt a fact finder to reach a conclusion without considering the burden of proof or the evidence at hand. Symbolic accessories may inflame the compassion of the jury and coax them into making a decision based on something other than the merits of the case.

*State v Russell*, 141 Wn. App. 733 (Division 2, 2007)[Judge Bridgewater]:

Roy Wayne Russell, Jr., appeals his conviction for second degree murder of 14-year-old C.M.H. We hold that the trial court did not violate Russell's constitutional right to public trial when it prohibited the media from photographing juvenile witnesses without consent because there was no closure of the courtroom in any sense under *State v. Bone-Club*….We affirm.

Before trial, the State raised its concerns about media coverage of the case. The trial court decided that the broadcast media could operate a pool camera in the courtroom but that it would not allow photographs of the jury, under the bench-bar rules. In addition, the trial court decided that the print media could not photograph juvenile witnesses. The court specified that the media could report on and even record the voices of juvenile witness testimony, but that it could not photograph such witnesses and put their images in the press. The trial court also prohibited the pooled television camera from being pointed at the juvenile witnesses during their testimony.

Following its preliminary ruling, the trial court invited arguments from the print media and the parties… Following an extended discussion with the editor [of a local newspaper] and counsel about the competing interests at stake, the trial court affirmed its previous decision that it would not allow the press to photograph juvenile witnesses. But the trial court also stated that it was “not closing the door to the subject.” …[Later, the court] “slightly adjust[ed]” its original decision. Ultimately it decided that it would permit the press to photograph juvenile witnesses only if the witnesses and/or his or her parents agreed to the press taking photographs. Thereafter, the trial court and the press coordinated their efforts to identify which witnesses agreed to being photographed and which did not.
Russell equates the trial court's prohibition on photographing the juvenile witnesses without consent to a complete closure of the courtroom. He then implies that the trial court failed to consider the Bone-Club factors and enter specific findings to justify the closure. . . .But here, the trial court never completely closed the courtroom. It never prevented any person from entering the courtroom or removed any person from the courtroom. It merely ordered that the press not photograph juvenile witnesses without consent from the juvenile witness and/or the witness's parents. The trial court's prohibition on photographing minor witnesses without consent cannot even be considered akin to a partial closure.

…The trial court explicitly explained its reasons for prohibiting the press from photographing juvenile witnesses, stating that the cameras “could dampen [the juvenile witnesses’] ability to report on the facts. It could dampen their ability to speak.” …The trial court later stated that allowing the press to photograph the juvenile witnesses “had the potential to have an adverse impact on the children's ability to testify. And I always want my jurors to have a complete picture.” Because there was no closure in any sense, and certainly not a full closure at any time, we decline to discuss whether the trial court complied with the Bone-Club standards. We do however discuss the standards set forth in General Rule 16.

Under GR 16, broadcasting, televising, recording, and taking photographs in the courtroom are permissible, subject to the trial court's permission and conditions, and provided the media personnel do not distract the participants or impair the dignity of the proceedings…. Under GR 16(c), a trial court may limit courtroom photography if it makes particularized findings to support its decision. In making these findings, the trial court must presume open access, it shall hear from any party before imposing limitations, and it shall explain its reasons supporting limitations on photography and how they relate to the specific circumstances of the case….Here, the record clearly shows that the trial court complied with the GR 16 requirements. …[T]he trial court supported the limitation on photographing the juvenile witnesses on the specific circumstances of the case. Namely, the record shows that the trial court was cognizant of the sensitive and possibly embarrassing subject matter to which the juvenile witnesses would testify. Its primary concern was that the juvenile witnesses would be able to provide accurate testimony of the facts and circumstances of the case.