

**Multnomah County Courthouse  
December 9, 2011**

**Thomas Jackson, as guardian *ad litem* on  
behalf of Chris Hinchey, a minor, Plaintiff**

**v.**

**The Great American Tobacco Company,  
Defendant**

**a civil case questioning whether the defendant, a cigarette manufacturer, was  
negligent or fraudulent with respect to the plaintiff, a minor, who is dying of  
lung cancer**

**coordinated by**

***James S. Coon, Swanson Thomas & Coon, Portland, Oregon***

**in cooperation with**

***CLASSROOM LAW PROJECT***

**PLEASE NOTE: The Case Materials have been  
amended as of October 14, 2011, to correct paragraph  
numbering in the Complaint and Answer.**

**CLASSROOM LAW PROJECT**  
**2011 Oregon High School**  
**Mini Mock Trial**

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## I. 2011 Mini Mock Trial

### I.

This packet contains the official materials, which student teams will need to prepare for the Fall 2011 Mini Mock Trial.

Mini Mock Trial is not a competition! It is a chance for students to practice their skills and to try out mock trial. Judges do not compile scores, and no teams are ranked in any way. Judges offer their subjective comments to help participants understand mock trial and improve their skills.

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

Since teams are unaware of which side of the case they will present until shortly before the trial begins, they must prepare for both the prosecution and defense.

## II. Program Objectives

### II.

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

1. Increase proficiency in basic skills such as reading and speaking, critical thinking skills such as analyzing and reasoning, and interpersonal skills such as listening and cooperating.
2. Provide the opportunity for interaction with positive adult role models in the legal community.
3. Provide a hands-on experience outside the classroom from which students can learn about law, society, and themselves.

For the **school**, the mini mock trial will:

1. Promote cooperation and healthy academic competition among students of various abilities and interests.
2. Demonstrate the achievements of high school students to the community.
3. Provide a challenging and rewarding experience for participating teachers.

## III. Code of Ethical Conduct

### III.

At the first meeting of the Mock Trial Team, this code should be read and discussed by students

and their teacher. **The Code of Ethical Conduct governs as participants, observers, guests and parents at all mock trial events.**

All participants in the Mini Mock Trial must adhere to the same high standards of scholarship that are expected of students in their academic performance. Plagiarism of any kind is unacceptable. Students' written and oral work must be their own.

**Coaches, non-performing team members, observers, guests, and parents shall not talk to, signal, communicate with or coach any member of the currently performing side of their team during trial. This rule remains in force during any recess time, which is called by the judge.** Currently performing team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Non-team members, teachers and coaches must remain outside the bar in the spectator section of the courtroom, unless the presiding Judge allows seating in the jury box.

**Students** promise to compete with the highest standards of deportment, showing respect for their fellow students, opponents, judges, evaluators, attorney coaches, teacher coaches, and mock trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly and with the utmost civility. Students will avoid all tactics they know are wrong or in violation of the rules, including the use of unfair extrapolations. Students will not willfully violate the rules of the competition **in spirit or in practice.**

**Teacher coaches** agree to focus attention on the educational value of the mock trial. They shall discourage willful violations of the rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition's rules and this Code of Ethical Conduct.

**Attorney coaches** agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition's rules and this Code of Ethical Conduct. Attorney coaches are reminded that they are in a position of authority and thus serve as positive role models for the students. All participants are bound by all sections of this Code of Ethical Conduct and agree to abide by the provisions. Teacher and attorney coaches should ensure that students understand and agree to comply with this Code. Violations of this Code may result in disqualification from competition.

1 (THE PLEADINGS IN THE CASE – PLAINTIFF’S COMPLAINT AND DEFENDANT’S  
2 ANSWER – MAY BE USED IN OPENING STATEMENT OR IN CLOSING ARGUMENT TO  
3 TELL THE JURY WHAT THE PARTIES HAVE ALLEGED. THEY MAY NOT BE USED TO  
4 CROSS-EXAMINE WITNESSES.)  
5

6 IN THE CIRCUIT COURT OF THE STATE OF NEW COLUMBIA  
7 FOR THE COUNTY OF CHINOOK

8  
9  
10 THOMAS JACKSON, as guardian *ad litem*  
11 on behalf of CHRIS HINCHEY, a minor,

12  
13 Plaintiff,

14  
15 vs.

16  
17 THE GREAT AMERICAN TOBACCO  
18 COMPANY,

19  
20 Defendant.  
21  
22

No. 1003-00028

**COMPLAINT (Consumer  
Fraud/Negligence)**

**NOT SUBJECT TO MANDATORY  
ARBITRATION**

**JURY TRIAL DEMANDED**

23 Plaintiff, Thomas Jackson, in a representative capacity as the guardian *ad litem* of  
24 Chris Hinchey, a minor, hereby brings this Complaint against The Great American Tobacco  
25 Company as follows.

26 1. Plaintiff Thomas Jackson is the court-appointed guardian *ad litem* for  
27 Chris Hinchey and brings this lawsuit in a representative capacity on behalf of Chris  
28 Hinchey. Both Thomas Jackson and Chris Hinchey are residents of Chinook County, New  
29 Columbia.

30 2. The Great American Tobacco Company is a Virginia corporation which is  
31 authorized to and doing business in the State of New Columbia.

32 3. Defendant has caused acts to occur in Chinook County, New Columbia  
33 such that venue and jurisdiction are proper in this Court.



1 suppression or omission of a material fact with intent that others rely upon such deception,  
2 suppression or omission in connection with the sale of tobacco products in an effort to cause  
3 tobacco products to be provided to and used by minors.

4           9. As set forth above, The Great American Tobacco Company has caused its  
5 products to be sold to minors, including Chris Hinchey, in part, by (i) concealing that their  
6 marketing is designed to encourage minors to smoke; (ii) concealing that their product is  
7 addictive and harmful and suppressing information on these subjects while at the same time  
8 portraying tobacco in a fashion that is designed to minimize the risks associated with tobacco  
9 use; (iii) designed their marketing campaigns with the intent that minors rely on them; and (iv)  
10 engaging in conduct for the purpose of causing minors to smoke while denying that they have  
11 launched a course of conduct specifically designed to encourage minors to smoke.

12           10. Chris Hinchey began smoking as a direct, foreseeable and intended result of  
13 The Great American Tobacco Company's practices.

14           11. The Great American Tobacco Company acted with intent that others  
15 including but not limited to Chris Hinchey, rely on the concealment, suppression and omissions  
16 of information and misleading advertising of The Great American Tobacco Company as set forth  
17 above.

18           12. Chris Hinchey relied upon the concealment, suppression and omissions of  
19 information and misleading advertising of The Great American Tobacco Company to his/her  
20 foreseeable detriment.

21           13. Chris Hinchey's cancer and his/her impending death are the direct,  
22 proximate and foreseeable and results of The Great American Tobacco Company's deceptive  
23 and illegal acts.



1                   19. As a result of his smoking of Great American cigarettes, Chris Hinchey has  
2 suffered damage in that s/he now has cancer which will cause his/her untimely death.

3  
4                   WHEREFORE, plaintiff Thomas Jackson, on behalf of Chris Hinchey, prays for  
5 judgment as follows:

6                   A.     That this Court find in favor of the plaintiff and against the defendant The  
7                   Great American Tobacco Company;

8                   B.     That plaintiff be awarded damages to compensate him/her for all his/her  
9                   injuries considering the nature, extent and duration of the injury s/he has  
10                  suffered as well as the pain, suffering and anxiety s/he has already  
11                  experienced and will experience in the future.

12                  C.     That plaintiff be awarded all costs of his/her necessary medical care and  
13                  expense already incurred and into the future.

14  
15                  DATED this 8<sup>th</sup> day of March, 2009.

1                                   **IN THE CIRCUIT COURT OF THE STATE OF NEW COLUMBIA**  
2                                   **FOR THE COUNTY OF CHINOOK**

3  
4  
5       THOMAS JACKSON, as guardian *ad litem*  
6       on behalf of CHRIS HINCHEY, a minor,

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8                                   Plaintiff,

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10                               vs.

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12       THE GREAT AMERICAN TOBACCO  
13       COMPANY,

14  
15                                   Defendant.  
16  
17

No.    1003-00028

**ANSWER**

18                               Defendant, The Great American Tobacco Company, for its answer to plaintiff's  
19 Complaint, admits, denies and alleges as follows.

- 20                               1. Defendant admits ¶¶ 1, 2, 3, 6 and 19 of plaintiff's Complaint.  
21                               2. Defendant denies ¶¶ 8, 9, 10, 11, 12, 13, 14, 16, 17, and 18.  
22                               3. Defendant is without sufficient information to either admit or deny the  
23 truth of ¶¶ 4 and 5 of plaintiff's Complaint and therefore denies the same. Responding to  
24 paragraphs 7 and 15, defendant incorporates its answers to the paragraphs incorporated  
25 therein.  
26                               4. Defendant denies any allegation in plaintiff's Complaint not expressly  
27 admitted herein.  
28                               5. Defendant asserts that Chris Hinchey is contributorily or comparatively  
29 negligent as s/he knew of the dangers associated with smoking and that it is illegal for  
30 minors to smoke or possess tobacco and yet s/he knowingly chose to smoke and use tobacco.  
31

1                   6. Defendant asserts that Charles and Pam Hinchey are non-parties at fault  
2 and comparatively negligent for allowing, encouraging or overlooking Chris Hinchey's  
3 smoking.

4                   7. Defendant asserts that it has not marketed its product to minors nor has it  
5 engaged in any deceptive practices.

6                   8. Defendant asserts plaintiff's Complaint fails to state a valid claim and  
7 should be dismissed.

8                   WHEREFORE, defendant having fully answered plaintiff's Complaint hereby  
9 requests judgment as follows.

10                  A. Plaintiff's Complaint be dismissed and plaintiff take nothing thereby;

11  
12                  B. Defendant be awarded its costs incurred in this litigation.

13                  DATED this 1<sup>st</sup> day of April, 2009.



1 11. This Stipulated Statement of Facts is deemed a part of the official record and need not be  
2 entered into evidence but may be referred to by the parties in examination and argument.  
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**WITNESSES AND EXHIBITS**

**The following witnesses shall be called by the parties:**

<b>For the Plaintiff</b>	<b>For the Defendant</b>
Chris Hinchey	Lee Wessel
Pam Hinchey	Charles Hinchey
Pat Lipman, M.D., Ph.D.	Terry Cohen

**The following exhibits may be used by teams in competition. They are pre-marked and are to be referred to by number as follows:**

<b>Exhibit Number</b>	<b>Exhibit Description</b>
<b>1</b>	Marketing advertisement by The Great American Tobacco Company
<b>2</b>	Examples of Surgeon General's Warning



because the assistant principal sent a warning letter to my parents. I remember when my parents got the letter. My dad was pretty upset and yelled a lot. He tried to make me quit by telling me that smoking wasn't cool and things like that, but I wasn't going to let him tell me what to do. I felt that I was old enough that I shouldn't be bossed around anymore. My mom was cool about it, though. After all, she smokes, so what could she say?

6. When I first started smoking, it was pretty tough to get cigarettes with all the stupid government regulations. Now that I'm older, it's easier. In fact, I can buy cigarettes in a lot of stores without even getting carded.

7. I went to my first NASCAR race when I was in the 5<sup>th</sup> grade. Great American Tobacco Company was giving out discount passes, just like some of the other NASCAR sponsors. I think some of my friends picked up the Great American passes at a convenience store, and they were passing them out to a bunch of us at school. At the race, Great American Tobacco Company was handing out a bunch of free things imprinted with their logo along with a picture of the car and driver they sponsor. I got a T-shirt, sports bottle and key chain. Ever since, I've been one of the biggest NASCAR fans in the world. My favorite car is the #88 "Mountain Car" driven by Casey Johnson. I picked that car because it's sponsored by Great American.

8. They warned us in grade school about the dangers of smoking, and I've seen the government warnings on the Mountain Car posters in my room, on all the advertisements, and even on the back of the Mountain Car. But, I just figured it was a lot of hype about nothing, like most the other warnings manufacturers are forced to put on products. I thought there was no way that NASCAR would promote a product that's unhealthy or could even kill you. Plus I know a lot of people who smoke, and nothing's ever happened to them.

9. I'll never forget Thursday, November 13, 2008. I call it Black Thursday, because that's the day they discovered that I have lung cancer. I had been coughing for several weeks, and couldn't stop. At first, I thought I had a flu bug or something, and I didn't think much about it. The cough never went away, though, and I was having more and more trouble breathing. Finally, my mom took me to the doctor on November 11. The doctor took an x-ray, and showed me a comparison between my lungs and a non-smoker's lung. I couldn't believe the difference. He then pointed out a spot on my right lung. He said it was about 1.5 cm. in diameter, and that I needed to have a biopsy done. Boy, was that painful. On November 13, after the biopsy was done, my mom got a phone call from the doctor. I could tell something was wrong, and asked what was the matter. She said the doctor told her the biopsy revealed a malignant tumor on my right lung. I couldn't believe this was happening to me.

10. Ever since Black Thursday, it seems like my whole life has been spent in doctor's offices. The doctors are always running tests on me. Last April, the doctors told me that the tumor spread to my liver. They said that, as a result, I probably have only 1 to 4 years to live. That really scared me.

11. The worst part of this whole deal is the chemotherapy. I know that it's supposed to ease some of the pain and stop the tumors from growing, but the side effects are almost unbearable. The chemotherapy gives me nausea and makes me vomit, I get pains in my stomach, and I'm always tired. I also can't eat my favorite foods anymore. Sometimes I feel like I just can't take it anymore, and wish it would all come to an end.

12. Needless to say, I wish that this had never happened to me. I knew shortly after I started smoking that I was hooked. I never really tried to quit before, and now it's too late because the damage already is done. I blame Great American Tobacco Company for targeting their ads at young people like me, all the while knowing that once young people start smoking they're hooked and Great American will have a customer for life. I hope that what's happened to me doesn't have to happen to anyone else. If I can keep one young person from starting smoking during my short time left, then my life will have some meaning.

---

Chris Hinchey

SUBSCRIBED AND SWORN to before me, a Notary Public, this 13<sup>th</sup> day of January, 2010, by Chris Hinchey.

---

Notary Public

My Commission Expires:

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disappear. My husband wanted to confront and punish Chris. I did not want to do that. If we confronted him/her and s/he denied it, then we would be pitted against each other.

20. One day, when Chris was about 15 s/he came home and put down his/her backpack and a pack of Great American cigarettes fell out. I knew I had to say something. Chris told me that the cigarettes were not his/hers and s/he was only holding them for a friend so his parents would not yell at him. I did not want to call him/her a liar so I just accepted his story. I told him/her that I was glad they were not his/hers because smoking is very bad for you. Chris laughed and then looked at me with a smirk. S/he said “Mom, if that is true, why do you smoke?” I never answered.

21. I admit my husband and I argued over whether Chris was smoking and whether we should be harder on him/her. I simply thought that whatever Chris was doing was typical for a teenager—s/he was just breaking away from us and testing his/her independence. If Chris’ friends were smoking, then I did not see how we could stop him/her if that is what s/he wanted to do. After all, it could be much worse—s/he could be drinking and driving or using illegal drugs.

22. I will never forget learning Chris had cancer. S/he had been coughing for a while and would not go to the doctor. S/he said that s/he just had the flu. Finally I forced him/her to go. During the exam the doctor took an x-ray. The next thing I knew he was showing Chris and me the damage to Chris’ lungs from smoking. I was in shock. The doctor said he had taken a biopsy and would call us with the results. The doctor told us both we should stop smoking immediately. Unfortunately, we found out that Chris’ tumor was malignant. I still cannot believe s/he is dying.

23. Since learning of Chris’ illness, I have thought about this a great deal. I now see how Great American Tobacco Company trapped and basically killed my child. All those advertisements, movie stars smoking, billboards of sexy celebrities and sports endorsements. Chris was lured into smoking. Plus, no one else ever told us those warnings were really true. If cigarettes are so lethal, why does the government only require warnings. They should be illegal or the companies should be required to change them so they are safe for smokers. I feel in today’s society with tobacco companies’ slick marketing that no child is safe.

24. I am now trying again to stop smoking. As of now, I have not been successful.

---

PAM HINCHEY

Subscribed and sworn to before me this 12 day of January 2010, by Pam Hinchey.

---

NOTARY PUBLIC

My Commission Expires:

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promotions. For example, one tobacco company paid Sylvester Stallone \$500,000 to use or feature its product in his next five films (all of which were R rated). R.J. Reynolds Tobacco paid for the promotion of Camel in such films as “Who Framed Roger Rabbit” and “Honey, I Shrunk the Kids.” Great American Tobacco Company, the defendant in this case, paid for the promotion of its cigarettes in “Crocodile Dundee” and the James Bond movie “License to Kill.”

11. Tobacco companies also publicize their products through sports sponsorships and advertisements showing that smoking is cool or sexy. Research has shown “sex appeal” and sports have a high impact on teen-agers. Other studies have shown a similar strong impact on adults.

12. The tobacco companies’ illegal campaign to obtain children as the next generation of smokers is working. The Center for Disease Control and Prevention announced in 1996 a 35% higher tobacco use in high school students in 1995 than 1993. Among 8<sup>th</sup> graders almost 20% smoked in 1994. Smokeless tobacco use is also growing such that 11% of male children 12-17 years of age were using smokeless tobacco in 1992. Every day 3000 children in the U.S. become regular smokers.

13. I have not actually spoken to Chris Hinchey regarding his/her smoking. I view Chris as an average American teenager. I believe that Chris Hinchey is the victim of the tobacco companies’ war against our children. Great American Tobacco Company marketed its cigarettes to children like Chris, and once s/he started smoking, the nicotine made it hard for him/her to stop. I acknowledge thousands of people stop smoking every year, but Great American certainly did not want Chris or any of its other “customers” to quit, and it knew many of them, like Chris, would not be able to.

14. The adverse health consequences of smoking are undeniable. Over 400,000 Americans die each year from tobacco related illnesses. This is over 1 in every 5 deaths in the U.S. Smoking causes more deaths than AIDS, homicide, suicide, automobile accidents, alcohol and drug use combined. Smoking is responsible for 90% of all lung cancer deaths, and 87% of chronic obstructive pulmonary disease deaths. Smoking is linked to increased risk of lung cancer, oral cancer, esophageal cancer, kidney and bladder cancer, pancreatic cancer, cervical cancer, and premature infant death.

15. I smoked for 10 years. I began smoking while studying for my Ph.D. I quit smoking approximately 14 years ago.

---

PAT LIPMAN, M.D., Ph.D.

Subscribed and sworn to before me this 28 day of January 2010, by Dr. Pat Lipman.

---

NOTARY PUBLIC

My Commission Expires:

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before they can purchase tobacco products. I personally have seen these signs displayed in many retail stores.

6. Great American takes great pride in the fact that we comply with all government regulations in the production of our products. We've never been cited for, or even accused of, failing to comply with a government regulation. Although we have raised the nicotine level in our cigarettes, the nicotine level always has been at or below the government-prescribed limits. Nicotine is the chemical in cigarettes that makes people become addicted to smoking, but that's not why we raised the nicotine levels. We raised the level of nicotine in our products, primarily because our market research demonstrates that our customers prefer a quality cigarette with higher levels of nicotine than other brands.

7. Advertising is important to Great American. The tobacco industry is very competitive, and name recognition is critical because most smokers are loyal to the brand of cigarette they first started smoking. For this reason, Great American, like other tobacco companies, spends most of its advertising budget targeting non-smokers who the studies show are likely to begin smoking. The largest segment of this group consists of young adults.

8. One of Great American's most successful advertising campaigns is the sponsorship of NASCAR, which I spearheaded. About 15 years ago, I noticed that several successful non-tobacco companies with products targeted towards young adults did very well sponsoring NASCAR. This was consistent with our own market research which showed that young adults and those approaching adulthood were primarily interested in dating, cars, music and sports. NASCAR combines two of these key interests – cars and sports. Based on this research, I convinced management that Great American should become a general sponsor of NASCAR. After a few years, I thought Great American could be even more successful by sponsoring its own car and driver. I came up with the concept of the #88 "Mountain Car" which is now driven by Casey Johnson. From the very beginning, the Mountain Car has been a big hit with the younger generation. I think it was the success of this campaign that led Great American's board of directors to ask me to take over as president of the company when the former president unexpectedly passed away.

9. As part of the NASCAR campaign, Great American, like most of the other NASCAR sponsors, gives away promotional tickets at stores that sell its products. We have found that this creates good will with our present customers and, more importantly, with our potential future customers. In addition, Great American's account representatives attend NASCAR events and distribute free promotional merchandise with Great American's logo to the fans. This merchandise includes posters, sports bottles, toy Mountain Car replicas, key chains and T-shirts. It is Great American's policy not to offer this merchandise to minors.

10. I am familiar with the lawsuit filed against Great American on behalf of Chris Hinchey. I understand that one of the contentions is that the use of tobacco by certain

celebrities is one of the factors that led Chris to start smoking. I don't see how Great American can be held responsible for these celebrities causing Chris to smoke. Great American is not involved in the production of movies, and we have absolutely no control over these celebrities or the movie industry. That would be like holding Smith & Wesson liable if someone, based on what he or she sees in a movie, shoots another person with a gun manufactured by Smith & Wesson. Besides, we don't even know whether these celebrities were smoking Great American cigarettes.

11. I understand that the Centers for Disease Control contends that certain tobacco advertising campaigns, primarily those that rely on promotional giveaways, are to blame for an increased number of minors beginning to smoke. I disagree with the CDC's conclusions. Everyone knows that you can twist statistics to say whatever you want. Instead, I believe that peer pressure and smoking parents are the two primary factors that lead most minors to smoke. I don't believe that marketing and advertising play much of a role in causing minors to smoke.

---

Lee Wessel

SUBSCRIBED AND SWORN to before me, a Notary Public, this 13<sup>th</sup> day of January, 2010, by Lee Wessel.

---

Notary Public

My Commission Expires:

---



20. Having been a teenager myself, I know what Chris' friends say and what s/he sees on TV, movies and billboards probably matters more than what parents say. Still I wanted to be more direct with Chris and exercise parental authority. I asked myself and my wife if that was not our job. Nevertheless I had to agree with her that there were worse things to worry about, like protecting our children from illegal drugs.

21. Even though I truly believe my child started smoking because of all the slick advertisements, the movie stars that smoke and sports events like NASCAR, sponsored by tobacco companies, I wonder if they are to blame. If my wife and his/her friends smoked, would Chris have tried it anyway? Should I have done something different as his/her father? I guess I really don't know what caused this tragedy.

22. I understand that tobacco is a legal product that is heavily regulated. I realize that it was illegal for Chris even to have cigarettes. I also believe the danger of smoking is very well known and the government requires companies like Great American Tobacco Company to put warnings on cigarettes just to sell them. I guess there is a lot tobacco companies do to prevent children from smoking. I just wish they would not do so much advertising to make smoking look cool to kids. They just cannot make good decisions when they are teenagers.

---

CHARLES HINCHEY

Subscribed and sworn to before me this 15 day of February 2010, by Charles  
.. Hinchey.

---

NOTARY PUBLIC

My Commission Expires:

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8. In my experience, tobacco companies are now quite diligent in promoting smoking as an adult choice. In fact, in 2007, Great American Tobacco Company, in a letter to the various state attorneys general, proposed a blue print to address youth smoking that could include: (a) banning tobacco ads near schools and playgrounds; (b) prohibiting tobacco brand names (but not logos) on items like T-shirts and caps; (c) banning cigarette vending machines in video arcades; and (d) limiting tobacco sponsorship to events with primarily adult audiences. Unfortunately, due to the highly politicized nature of the issue, no one took Great American up on its proposal.

9. It is illegal to sell cigarettes to anyone under the age of 18. In fact, tobacco companies, like Great American, supply distributors with signs indicating that sales to minors are illegal and that anyone under 25 must present identification.

10. I understand that tobacco companies have been greatly criticized for manipulating the nicotine levels in cigarettes. While it is true that studies show the amount of nicotine in cigarettes is sufficient to be addictive, Great American Tobacco Company, as well as the majority of other companies, have never exceeded the allowable amount under current governmental regulations for nicotine.

11. I believe that under the current public policy decisions of our government regarding the legality of smoking, tobacco companies generally are good citizens and honest businesses. I do not believe they can be held responsible for any adverse health effects suffered by any person choosing to use their legal product.

12. I have never smoked.

---

TERRY COHEN

Subscribed and sworn to before me this 28 day of January 2010, by Terry Cohen.

NOTARY PUBLIC

My Commission Expires:

(The following legal excerpts describe the elements of the causes of action for fraud and negligence and those elements may be described for the jury in opening statement or closing argument. In a real trial, the judge would instruct the jury as to these legal principles after closing argument.)

### APPLICABLE LAW

***State ex rel. Babbitt v. Goodyear Tire***, 128 Ncol 483, 484, 486; 626 P.2d 115, 116, 118 (App. 1981) (In an action by the state against Goodyear Tire & Rubber Co. alleging violations of the Consumer Fraud Act...)

\*\*\*

The next argument raised by Goodyear is that (1) NC § 44-1522 requires an intent to deceive and (2) the State has failed to show such an intent. In light of the purpose of the Consumer Fraud Act, which is to protect the public from deceptive acts, we hold that the only showing of intent required by NC § 44-1522 is an intent to do the act involved. It is not necessary to show a specific intent to deceive. In the context of advertising, once it has been shown that the act complained of is encompassed by NC § 44-1522, a *prima facie* showing of the intent to do the act is made by the placing of the advertisement.

\*\*\*

Within the language of NC § 44-1522 is an additional intent which must be shown when the complained of acts involve “concealment, suppression or omission of a material fact.” As to these, NC § 44-1522 requires a showing that “others [relied] upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise.”

***Correa, v. Pecos Valley Development Corp.***, 126 NCol 601, 604-605, 17 P.2d 767, 770-771 (App. 1980) ...

The elements of a private cause of action for **fraud** in marketing are a (1) false promise or a misrepresentation, including concealment of information, (2) made in connection with the sale or advertisement of merchandise; (3) reasonable reliance on the misrepresentation; and (4) injury caused by that reasonable reliance.

***Dunlap v. Jimmy GMC of Tucson, Inc.***, 136 Ncol 338, 344, 656 P.2d 83, 89 (App. 1983) (The court of appeals held that consumer fraud could be proven by a preponderance of the evidence...)

The purpose of legislation such as New Columbia’s Consumer Fraud Act is to provide a remedy for injured consumers who need such protection to counteract the disproportionate bargaining power which is typically present in consumer transactions. The legislative intent behind the Consumer Fraud Act is to provide consumers with a claim for relief that is easier to establish than is common law fraud. To require the higher degree of proof would frustrate the legislative intent.

***Ontiveros v. Borak***, 136 NCol 500, 667 P.2d 200 (1983) (The supreme court held that tavern owners and other licensed sellers of alcohol in the state were under a duty of care and could be held liable for the sale of liquor to intoxicated persons where they knew or should have known that their conduct constituted an unreasonable risk of harm to others...)

Ordinarily, a plaintiff may maintain an action in negligence if he proves:

1. A duty, or obligation, recognized by the law, requiring the [defendant] to conform to a certain standard of conduct, for the protection of others against unreasonable risks.
2. Failure on [defendant's] part to conform to the standard required....
3. A reasonably close causal connection between the conduct and the resulting injury....
4. Actual loss or damage....

\*\*\*

New Columbia law holds that cause-in-fact exists if the defendant's act helped cause the final result and if that result would not have happened without the defendant's act. Defendant's act need not have the "main" or "major" cause of the final result; there is liability if the result would not have occurred but for the defendant's conduct, even if that conduct contributed "only a little" to plaintiff's injuries. New Columbia also recognizes that more than one person may be liable for causing an injury and that a particular defendant may not avoid liability for his causative act by claiming that the conduct of some other person was also a contributing cause.

Therefore as far as causation-in-fact is concerned, the general rule is that a defendant may be held liable if his conduct was a "substantial factor" that contributed to the result and if that result would not have occurred "but for" defendant's conduct.

\*\*\*

Duty is a concept, which arises out of the recognition that relations between individuals may impose upon one a legal obligation for the benefit of the other.

In other words, "duty" is a question of whether the defendant is under any obligation for the benefit of the particular plaintiff; and in negligence case, [if it exists] the duty is always the same, to conform to the legal standard of reasonable conduct in the light of the apparent risk.

\*\*\*

The relation between individuals, which imposes a legal obligation, is usually a direct relationship between the plaintiff and the defendant. . . . However a duty to the plaintiff may also arise out of a relation between the defendant and a third party whose negligence causes injury to the plaintiff. We believe that changing social conditions require recognition of a duty which extends to innocent third parties and which is based on the relation of the licensed supplier of liquor and his patron.

**Markowitz v. Parks Board**, 146 NCol 352, 706 P.2d 364 (1985) (Regarding negligence, the court stated ...)

[A] negligence action may be maintained only if there is a duty or obligation, recognized by law, which requires the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm.

\*\*\*

The question of duty is decided by the Court. The question is whether the relationship of the parties was such that the defendant was under an obligation to use some care to avoid or prevent injury to the plaintiff. If the answer is "No", the defendant is not liable even though he may have acted negligently in light of the foreseeable risks.

\*\*\*

If there is a duty, then the law requires that the defendant conform to a standard of care. In negligence cases that is usually “reasonable care under the circumstances,” though it may differ, depending on the relationship. Thus, doctors may be required to have and exercise the care and skill had and used by other doctors, landowners may be required to take reasonable precautions to make the premises safe for invitees or to warn licensees of known dangers, etc. All of these standards carry with them an implicit requirement that the defendant act reasonably in light of the known and foreseeable risks. It is here, in determining whether the defendant acted reasonably or negligently, that the law concerns itself with specifics of defendant’s conduct.

## **§ 44-1521**

## **Trade and Commerce Title 44**

### **§44-1521. Definitions**

In this article, unless the context otherwise requires:

1. “Advertisement” includes the attempt by publication, dissemination, solicitation, or circulation, oral or written, to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.
2. “Attorney general” means the attorney general of the state or his authorized delegate.
3. “Authorized delegate” means any attorney, investigator or administrative personnel employed by the attorney general and so designated, and, when requested by the county attorney and authorized by the attorney general may include similar personnel employed by the several county attorneys of this state.
4. “Examine” means the inspection, study, or copying of any account, book, document, merchandise, paper or record.
5. “Merchandise” means any objects, wares, goods, commodities, intangibles, real estate, or services.
6. “Person” means any natural person or his legal representative, partnership, domestic or foreign corporation, any company, trust, business entity, or association, any agent, employee, salesman, partner, officer, director, member, stockholder, associate, or trustee.
7. “Sale” means any sale, offer for sale, or attempt to sell any merchandise for any consideration, including sales, leases and rentals of any real estate subject to any form of deed restriction imposed as part of a previous sale.

Added by Laws 1967, Ch. 43, § 1, eff. March 13, 1967. Amended by Laws 1972, ch. 49 § 1, eff. April 10, 1972; Laws 1975, Ch. 149, § 19.

### **§ 44-1522. Unlawful practices; intended interpretation of provisions**

- A. The act, use, or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice.
- B. The violation of chapter 19, article 1 of this title is declared to be an unlawful practice and subject to enforcement under this article.
- C. The violation of § 3-303, subsection A, is declared to be an unlawful practice and subject to enforcement under this article.
- D. It is the intent of the legislature that, in construing the provisions of subsection A of this section, that the courts may use as a guide

interpretations given by the federal trade commission and the federal courts to §§ 45, 52 and 55 (a)(1) title 15, U.S.C.A. of the federal trade commission act.

Added by Laws 1967, Ch. 43, § 1, eff. March 13, 1967. Amended by Laws 1992, ch. 115, § 2; Laws 1992, Ch. 1947, § 1.

## **Examples of Surgeon General's Warnings**

The United States Surgeon General requires that certain warnings be placed on cigarette packages and advertisements. There are eleven approved warnings. Here are representative samples of the warnings:

**SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight.**

**SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.**

**SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to your Health.**

**SURGEON GENERAL'S WARNING: Smoking Can Lead to Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy.**

## V. The Form and Substance of a Trial

### A. The Elements of a Civil Case

In civil law, when a person commits a wrong, it is called a tort. It is a civil wrong committed by one against another. The injured party, or plaintiff, may sue the wrongdoer, or defendant, in court for a remedy, which is usually money damages. In this case the plaintiff alleges that a tort has been committed and is suing under the legal theories of negligence and violation of the unlawful trade practices act.

The tort of negligence contains four elements and the plaintiff has the burden of proving each of them. They are:

- **Duty:** the defendant owed a duty of care to the plaintiff;
- **Breach of Duty:** that duty was violated, or breached, by the defendant's conduct;
- **Causation:** the defendant's conduct caused the plaintiff's harm; and
- **Damages:** the plaintiff suffered actual damages.

A defendant can defend himself or herself by showing either (1) that at least one of the four elements above has not been proven, or (2) introducing the concept of **comparative negligence**. Comparative negligence means dividing the loss according to the degree to which each party is at fault. If the defendant can prove that more than 50% of the fault lies with the plaintiff, then the plaintiff gets no damages and the defense wins.

In this case the plaintiff is suing under two legal theories. The second theory is violation of **unlawful trade practices act**. The elements the plaintiff has to prove by a preponderance of the evidence include:

- that the defendant engaged in **deceptive practices** or **concealment** of a material fact
- with the **intent** that purchasers **rely** on that deception or concealment
- in connection with the **sale** or **advertisement of merchandise**.

### B. Proof by a Preponderance of Evidence

The standard of proof in a civil case is the preponderance of the evidence. This standard requires that more than 50% of the weight of the evidence be in favor of the winning party. The jury does not count witnesses or documents but weighs the persuasive force of the evidence.

### C. Role Descriptions

#### 1. Attorneys

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

Demeanor of counsel is most important. On direct examination it is easy to be sympathetic and supportive of your witnesses. On cross-examination it is not less important to be sympathetic and winning. An effective cross-examination is one in which the cross-examiner, the witness, the judge and jury all agree on the outcome. It is bad manners and unethical to be sarcastic, snide, hostile or contemptuous. The element of surprise may, in fact, be a valuable attorney's tool, but it is best achieved by being

friendly and winning over everybody in the courtroom, including the other side.

The plaintiff's attorneys present the case for the plaintiff, Chris Hinchey. By questioning witnesses, they will try to convince the jury that the defendant, The Great American Tobacco Company, is liable by a preponderance of the evidence.

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

Trial attorneys will:

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

#### **a. Opening Statement**

The opening statement outlines the case it is intended to present. The plaintiff's attorney delivers the first opening statement. A good opening statement should explain what the attorney plans to prove, how it will be proven, and mention the burden of proof – the amount of evidence needed to prove a fact (in a civil case, a preponderance of the evidence) – as well as the applicable law; and present the events (facts) of the case in an orderly sequence that is easy to understand.

Begin your statement with a formal address to the judge:

“Your Honor, my name is (full name), representing the plaintiff/defense in this case” or

“Your Honor, my name is (full name), counsel for the plaintiff/defense in this action.”

Proper phrasing in an opening statement includes:

“The evidence will indicate that ...”

“The facts will show that...”

“Witnesses (full name) will be called to tell...”

“The defendant will testify that...”

*Tips:* You should appear confident, make eye contact with the judges, and use the future tense in describing what your side will present. Do not read your notes word for word – use your notes sparingly and only for reference, or work without notes if you can.

#### **b. Direct Examination**

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

Direct examination should:

- call for answers based on information provided in the case materials

- reveal all of the facts favorable to our position
- ask questions which allow the witness to tell the story. Do not ask leading questions which call for only “yes” or “no” answers – leading questions are appropriate only during cross-examination
- make the witness seem believable
- keep the witness from rambling about unimportant matters

Call for the witness with a formal request:

“Your Honor, Plaintiff calls Chris Hinchey”

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

You may wish to ask some introductory questions of the witness to make him/her feel comfortable.

Appropriate introductory questions might include:

- the witness’ name
- length of residence or present employment, if this information helps to establish the witness as an expert

Proper phrasing of questions on direct include:

“Could you please tell the court what occurred on (date)?”

“How long did you remain in that spot?”

“How long did you see \_\_\_\_\_?”

“Did anyone do anything while you waited?”

Conclude your direct examination with:

“Thank you Mr./s. \_\_\_\_\_. That will be all your Honor.”

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

### **c. Cross Examination**

See explanations, examples, and tips for Rule 611.

### **d. Redirect and Re-Cross Examination**

See explanation and note to Rule 44.

### **e. Closing Arguments**

See explanation to Rule 45.

## **2. Witnesses**

See explanation to Rule 3.

## **3. Court Clerk, Bailiff**

It is recommended that you provide two separate people for these roles; if you use only one, then that person **must** be prepared to perform as clerk and bailiff in every trial.

The **plaintiff** will be expected to provide the **clerk** for any given trial. **Defense** will provide the **bailiff**.

#### **a. Duties of the Clerk**

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

1. Roster and rules of competition: The clerk is responsible for bringing a roster of students and their roles to each trial round. You should have enough copies to be able to give a roster to each judge in every round as well as a few extras. Use the roster form in the mock trial packet. In addition, the clerk is responsible for bringing to the trial a copy of the "Rules of Competition." In the event that questions arise and the judge needs further clarification, the clerk is to provide this copy to the judge.
2. Swear in the witnesses: Every witness should be sworn in as follows:  
"Do you promise that the testimony you are about to give will faithfully and truthfully conform the facts and rules of the Mini Mock Trial?"  
Witness responds, "I do."  
Clerk then says, "Please be seated and state your name for the court and spell your last name."  
..
3. Mark exhibits for attorneys.

**An experienced clerk is critical to the success of a trial.**

#### **b. Duties of the Bailiff**

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

1. Call to Order: As the judges enter the courtroom, say, "All rise. The Circuit Court of the State of New Columbia, County of Chinook, the Honorable Judge \_\_\_\_\_ presiding, is now in session. Please be seated and come to order."  
If the judge calls a recess during the trial, say "all rise" as the judges leave the courtroom and again as they enter.
2. Timekeeping. The bailiff is responsible for bringing a stopwatch to the trial. Be sure to practice with it and know how to use it before the competition. Follow the time limits set for each segment of the mock trial and keep track of the time used and time left on the time sheet provided in the mock trial materials.

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

After each witness has finished his/her testimony announce the time remaining, e.g., if after direct examination of two witnesses, the plaintiff has used 15 minutes, announce "5 minutes remaining" (20 minutes total allowed for **direct/redirect, less the 15** minutes already used). When the time has run out for any segment of the trial, announce "Time!" and hold up the "0" card. After each witness has completed his/her testimony, mark on the time sheet the time to the nearest one-half minute. When three minutes are left, bailiff will hold up "3" minute card, then again at "1" minute and finally at "0" minutes. Be sure time cards are visible to all the judges as well as to the attorneys when you hold them up.

Time cards (3, 1, 0 minute) will be provided in each courtroom. Leave them in the courtroom for the next trial round.

## **VI. Rules of the Mini Mock Trial**

### **A. The Problem**

#### **Rule 1. Rules**

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

Questions or interpretations of these rules are within the discretion of the Classroom Law Project whose decision is final.

#### **Rule 2. The Problem**

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

#### **Rule 3. Witness Bound by Statements**

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 4, unfair extrapolation.

If in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness/testimony.

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

*Explanation:* Witnesses will supply the facts in the case. Witnesses may testify only to facts stated in or reasonably implied from the witness statements or fact situation. ON direct examination, when your side's attorney is asking you questions you should be prepared to tell your story. Learn the case thoroughly, especially your own witness statement. Know the questions your attorney will ask you and prepare clear and convincing answers that contain the information that your attorney is trying to get you to say. However, don't recite your witness

statement verbatim. You should know its content beforehand so you can put it into your own words. Be sure that your testimony is never inconsistent with, nor a material departure from, the facts set forth in your affidavit.

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

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

#### **Rule 4. Unfair Extrapolation**

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

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

Attorneys for the opposing team may refer to *Rule 4* in a special objection, such as "unfair extrapolation" or "outside the scope of the mock trial materials." Possible rulings a judge may give include:

- a) no extrapolation has occurred;
- b) an unfair extrapolation has occurred;
- c) the extrapolation was fair; or
- d) ruling taken under advisement.

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

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

#### **Rule 5. Gender of Witnesses**

All witnesses are gender neutral. Any student may portray the role of any witness of either gender.

### **B. The Trial**

#### **Rule 7. Team Eligibility**

Teams participating in the 2010 Mini Mock Trial must register their team(s) by the registration deadline. A school may register one, two or three teams.

### **Rule 8. Team Composition**

A mock trial team must consist of a **minimum of eight** students and may include up to a **maximum of 18** students all from the same school. More students may be involved as jurors in the fall Mini Mock, but juries will not be used in the spring competition. Students could also be used in support roles as researchers, understudies, photographers, court artists, court reporters, and news reporters. However, none of these roles will be used in the competition. We encourage you to use the maximum number of students allowable, especially at schools with large student enrollments.

*Note:* At the National High School Mock Trial Championships, teams may consist of a maximum of eight members with six participating in any given round. Since teams larger than eight members are ineligible, Oregon's winning team in the spring may have to pare down its team members to participate at the national level.

A mock trial team includes attorneys and witnesses for both the plaintiff and defense (students may play a role on the plaintiff side as well as on the defense side if necessary) a clerk and a bailiff. One possible team configuration could be:

- 3 trial attorneys for the plaintiff
- 3 trial attorneys for defense
- 3 witnesses for the plaintiff
- 3 witnesses for the defense
- 1 clerk
- 1 bailiff

### **Rule 9. Team Presentation**

Teams must present both the plaintiff and defense sides of the case. All team members must be present and ready to participate in all rounds. The sponsors guarantee that both the plaintiff and defense sides of every team will have at least one opportunity to argue its side of the case.

### **Rule 10. Team Duties**

Team members are to divide their duties as evenly as possible. Opening Statements must be given by both sides at the beginning of the trial. The attorney who will examine a particular witness on direct is the only person who may make the objections to the opposing attorney's questions of that witness on cross-examination; and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness. Each team must call all three witnesses. Witnesses must be called by their own team and examined by both sides. Witnesses may not be recalled by either side.

### **Rule 11. Swearing of Witnesses**

The following oath should be used before questioning begins:

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

The swearing of witnesses will done by the **clerk** which is **provided by the prosecution.**  
(See Section V.C.3., notes for Court Clerk, Bailiff, Team Manager.)

### **Rule 12. Trial Sequence and Time Limits**

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

- |                                   |  |
|-----------------------------------|--|
| 1. Introductory matters           | 5 minutes total (conducted by judge)**   |
| 2. Opening Statement              | 5 minutes per side                       |
| 3. Direct and Redirect (optional) | 20 minutes per side                      |
| 4. Cross and re-cross (optional)  | 10 minutes per side                      |
| 5. Closing argument               | 5 minutes per side*                      |
| 6. Judges' debrief                | 15 minutes total (conducted by judges)** |

\*Prosecution **may** reserve some time for rebuttal **in advance of beginning his/her closing argument**

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

The prosecution gives the opening statement first, followed by the defense. The prosecution gives the closing argument first; and the prosecution may reserve a portion of its closing time for a rebuttal. Defense closing follows prosecution's first closing, then prosecution rebuts. The prosecution's rebuttal is limited to the scope of the defense's closing argument. None of the foregoing may be waived, nor may the order be changed. The attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

### **Rule 13. Timekeeping**

Time limits are mandatory and will be enforced. The official timekeeper is the **bailiff** which is provided by the **defense.**

1. Timing will halt during objections, extensive questioning from a judge, and administering the oath.
2. Timing will **not** halt during the admission of evidence unless there is an objection by opposing counsel.
3. Three and one-minute card warnings must be given before the end of each trial segment. **Students will be automatically stopped by the bailiff at the end of the allotted time for each segment.**
4. The bailiff will also time the debrief by judges after the trial. The judging panel will be allowed 15 minutes for debriefing. After this time has elapsed, the bailiff will hold up the "0" card. Presiding judges should limit critique sessions to the 15 minutes allotted.

### **Rule 14. Time Extensions and Scoring**

The Presiding Judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the scoring judges may determine individually whether to discount points in a category because of overruns in time.

### **Rule 18. Supplemental Material – Illustrative Aids**

Teams may refer only to materials included in the trial packet No illustrative aides of any kind may be used, unless provided in the case packet. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials.

**Rule 19. Trial Communication**

Instructors, coaches, non-performing team members, alternates and observers shall not talk to, signal, communicate with, or coach their teams during trial. **This rule remains in force during any recess time which may occur.** Performing team members may communicate among themselves during the trial; however, no disruptive communication is allowed. **There must be NO spectator or non-performing team member contact with the currently performing student team members once the trial has begun.**

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar, except that the presiding judge may allow spectators to sit in the jury box.

**Rule 20. Viewing a Trial**

(No limitations in fall Mini Mock.)

**Rule 21. Videotaping/Photography**

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

**C. JUDGING**

**Rule 22. Decisions**

All decisions of the judging panel are FINAL.

**Rule 23. Composition of Panel**

The judging panel will consist of three individuals: one presiding judge, one attorney judge, and one educator/community member judge (all three completing score sheets). All judges receive this mock trial manual, a memorandum outlining the case, orientation materials, and a briefing in a judges' orientation.

**Rule 28. Merit Decisions**

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

**VII. Rules of Procedure**

**A. Before the Trial**

**Rule 34. Team Roster**

Copies of the Team Roster Form must be completed and duplicated by each team prior to arrival at the competition site. Teams must be identified by the code assigned at registration. No information identifying team origin should appear on the form. Before beginning a trial, the teams must exchange copies of the Team Roster Form. Witness lists should identify the gender of each witness so that references to such parties will be made to the judging panel and presiding judge before each round.

**Rule 36. The Record**

No stipulations or pleadings will be read into the record.

**B. Beginning the Trial**

**Rule 37. Jury Trial**

The case will be tried to a jury; arguments on objections and procedure are to be made to the judge; opening statement and closing argument are to the jury.

**Rule 38. Standing During Trial**

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

**Rule 39. Objection During Opening Statement/Closing Argument**

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

*Note:* It will be the judge's responsibility to handle any legally inappropriate statements made in the closing, while scorers will also keep in mind the closing argument judging criteria.

**C. Presenting Evidence**

**Rule 40. Argumentative Questions**

An attorney shall not ask argumentative questions.

*Example:* When cross-examining an expert witness the attorney asks, "you aren't as smart as you think you are, are you?"

**Rule 42. Procedure for Introduction of Exhibits**

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

(*Note:* Steps 1 - 6 identify the exhibit.)

1. All evidence will be pre-marked as exhibits.
2. Show a copy of the exhibit to opposing counsel.
3. Ask for permission to approach the bench (unless permission to move freely about the courtroom has been granted by the Court). "Your Honor, may I approach the bench to show you what has been marked as Exhibit No. ?"
4. Hand the clerk the exhibit.
5. Ask for permission to approach the witness (unless permission has been granted to move freely). Give the exhibit to the witness. "I now hand you what has been marked as Exhibit No. ? for identification."
6. Ask the witness to identify the exhibit, "would you identify it, please?"
7. Witness answers with identification only, **does not describe or show exhibit to jury.**

(*Note:* Steps 8 - 11 offer the item into evidence.)

8. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. ? into evidence at this time. Its authenticity has been stipulated."
9. Judge, "Is there an objection?" If not, the Court will receive the exhibit; if so, opposing counsel states her/his objection and counsel offering the exhibit responds as requested by the Court.
10. The Court admits or excludes the exhibit.
11. Attorney may then ask the witness about the exhibit.

**Rule 43. Use of Notes**

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table orally or through the use of notes.

#### **Rule 44. Redirect/Re-Cross**

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

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

If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, during re-direct the attorney whose witness has been damaged may wish to "save" the witness. These questions should be limited to the damage the attorney thinks has been done and should enhance the witness truth-telling image in the eye of the court. Work closely with your attorney coach on re-direct and re-cross strategies. Remember that time will be running during both re-direct and re-cross and may take away from the time needed to question other witnesses.

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

### **D. Closing Arguments**

#### **Rule 45. Scope of Closing Arguments**

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

*Explanation:* a good closing argument summarizes the case in the light most favorable to your position. The prosecution delivers the first closing argument. The defense responds, and the prosecution concludes with rebuttal, if it has reserved time. A good closing should:

- be spontaneous, synthesize what actually happened in court rather than relying on prepared remarks;
- be emotionally charged and strongly appealing (unlike the calm opening statement);
- emphasize the facts that support the claims of your side, by reviewing the witnesses' testimony and physical evidence;
- outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses;
- isolate the issues and describe briefly how your presentation addressed these issues;
- attempt to reconcile inconsistencies that might hurt your side;

- be well-organized, clear and persuasive (start and end with your strongest point);
- the prosecution should emphasize that the evidence shows it has proven guilt beyond a reasonable doubt;
- the defense should raise questions which suggest the continued existence of doubt;
- use a case theme developed in opening, and, if possible, use the other side's theme against them; and
- refer to your co-counsel's opening statement and show how it was accurate.

Proper phrasing includes:

"The evidence has clearly shown that ..."

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

"The prosecution has failed to prove that"

"The defense would have you believe that"

Prosecution should conclude the closing argument with an appeal to find the defendant guilty. And the defense may say the prosecution did not meet its burden of proof.

## **E. CRITIQUE**

### **Rule 46. The Critique**

The judging panel is allowed 15 minutes for debriefing. The timekeeper will monitor the critique following the trial. Presiding judges are to limit critique sessions to the 15 minutes total time allotted.

*Note:* Judges' 15 minutes is not included in 40 minutes allotted to each side of the case.

## **VIII. FEDERAL RULES OF EVIDENCE (Mock Trial Version)**

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

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

Evidence (Mock Trial Version) and to be able to use them to protect their interests and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence, and its numbering system. **Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure.** Text in italics represents simplified or modified language. Not all judges will interpret the Rules of Evidence (or procedure) the same way and mock trial attorneys should be prepared to point out specific rules (quoting if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate. The mock trial Rules of Competition and these Federal Rules of Evidence (Mock Trial Version) govern the Oregon High School Mock Trial Competition.

## **Article I. General Provisions**

### **Rule 101. Scope**

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

### **Rule 102. Purpose and Construction**

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

## **Article IV. Relevancy and Its Limits**

### **Rule 401. Definition of "Relevant Evidence"**

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

### **Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible**

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

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

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

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

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

## **Article VI. Witnesses**

**Rule 601. General Rule of Competency**

Every person is competent to be a witness.

**Rule 602. Lack of Personal Knowledge**

A witness may not testify to a matter unless *the witness has personal knowledge of the matter.*

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

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

**Rule 607. Who May Impeach**

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

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

Witness statements in the Mock Trial materials are considered to be affidavits. In order to impeach the witness by comparing information in the affidavit to the witness' testimony, a cross-examining attorney might use this procedure:

Step 1: Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit

*Example:* "Now, Ms. Burns, on direct examination you testified that you were out of town on the night in question, didn't you?"  
Witness responds, "yes."

Step 2: Ask the witness to read from his or her affidavit the part that contradicts the statement made on direct examination.

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

Step 3: Dramatize the conflict in the statements. Remember, the point of this line of questioning is to demonstrate the contradiction in the statements, not to determine whether Ms. Burns was in town or not.

*Example:* "So, Ms. Burns, you testified that you were out of town in the night in question didn't you?"  
"Yes."  
"Yet in your affidavit you said you were in town, didn't you?"

"Yes."

**Rule 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:

- truth,
- (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 testimony that are otherwise material and admissible.

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

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

*Examples* of proper questions include:

"Isn't it a fact that ...?"

"Wouldn't you agree that ...?"

"Don't you think that ...?"

Cross examination should conclude with:

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

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

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

*Explanation:* A "leading" question is one that suggests the answer desired by the questioner. (The fact that a question may be answered "yes" or "no" does not make it leading if the question doesn't suggest the answer.)

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

On direct examination, the same information would be brought out with questions such as "Mr. Smith, did you see Ms. Jones that night? Did you do anything together?"

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

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

## **Article VII. Opinions and Expert Testimony**

### **Rule 701. Opinion Testimony by Lay Witness**

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

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

*Example* - inadmissible lay opinion testimony: "The doctor put my cast on wrong. That's why I have a limp now."

*Example* - Admissible lay opinion testimony: "He seemed to be driving pretty fast for a residential street."

### **Rule 702. Testimony by Experts**

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

### **Rule 703. Bases of Opinion Testimony by Experts**

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

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

#### **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.

#### **Article VIII. Hearsay**

##### **Rule 801. Definitions**

The following definitions apply under this article:

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

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

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

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

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

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

(2) **Admission by a party-opponent** -- The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course in furtherance of the conspiracy.

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

## **Rule 802. Hearsay Rule**

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

## **Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial**

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

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

*Example:* "As the car drove by Janet said, 'Wow, that car is really speeding.' "

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

*Example:* A witness testifies, "Sam ran out of the store and said, 'Carl has shot Robert!' "

(3) Then existing mental, emotional, or physical condition -- 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 a declarant's will.

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

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

### **Rule 805. Hearsay within Hearsay**

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

*Example:* Witness for prosecution testifies “Jack told me he heard Chris Archer bragging that he had pushed Milan Jackson off the tower.” Archer’s statement is not hearsay because it’s an admission by a party opponent, but Jack’s statement is hearsay, not admissible under any exception, so a hearsay objection to this testimony be sustained.

## **IX. NOTES TO JUDGES**

### **A. General Notes**

To ensure that the mock trial experience is the best it can be for students, please familiarize yourself with the case materials and rules of competition. Particular attention should be paid to the simplified rules of evidence.

Each courtroom will be assigned a panel of three judges:

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

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

Please note that a mock trial differs from a real trial situation in at least the following ways:

1. Students are prohibited from making objections or using trial procedures not listed in the mock trial materials. Students should request a bench conference (to be held in open court from counsel table) if they think the opposing attorneys are using trial procedures outside the rules.
2. Students are limited to the information in the witness statements and fact situation. If a witness invents information, the opposing attorney may object on the grounds that the information is beyond the scope of the mock trial materials. The presiding judge may request a bench conference (to be held in open court from counsel table) and ask the students to find where the information is included in the case materials.
3. Bailiffs are the official timekeepers. The defense team is responsible for providing the bailiff (prosecution provides the clerk). Bailiffs will time all phases of the trial including the 15-minute judges' critique.

4. Students have been instructed to address their presentations to the judge and jury. The students will address the presiding judge as the judge in the case and the other judges as jurors since they are in the jury box.
5. Each trial round has been scheduled to take two hours. To keep the competition on schedule, we ask you to keep within the time limits set out in Rule 12.

## **B. Introductory Matters**

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

1. Ask each side if it is ready for trial. Ask each side to provide each judge with a copy of its Team Roster. Ask each member of a team to rise and identify himself/herself by name and role. Students are to identify their team by their assigned letter designation and not by school name.
2. If video or audio recorders are present, inquire of both teams whether they have approved the taping of the round.
4. Remind spectators of the importance of their showing respect for the competing teams. Judges may remove spectators who do not adhere to appropriate courtroom decorum.
5. Remind teams that witnesses are permitted to testify only to the information in the fact situation, their witness statements, and what can be reasonably inferred from the information.
6. Remind teams that they must complete their presentations within the specified time limits. The bailiff will signal you as the time for each segment of presentation runs out (3 and 1 minute warning and then 0 minute cards will be held up). At the end of each segment you will be stopped when your time has run out whether you are finished or not.
7. All witnesses must be called. Suggestions for often used objections are listed in the Appendix.
8. Only the following item may be offered as evidence at the trial: Memo from Dean Thomas.
9. At the end of the trial you may (but need not) render a decision only on the merits of the case. Judges may not inform the students of score sheet results.
10. Finally, before you begin, indicate that you have been assured that the Code of Ethical Conduct has been read and will be followed by all participants in the mock trial competition including the teams before you. Should there be a recess at any time during the trial, the communication rule (see third paragraph of Code of Ethical Conduct) shall be in effect. If there are no other questions, begin the trial.

## **C. Evaluation Guidelines**

All three judges will be given evaluation sheets to use to assist in making decisions in the trial. Judges are advised to use these evaluation sheets to keep track of

each student's presentation in order to offer comments on each student's presentation during the debrief.

The following evaluation guidelines may help you provide comments to the students during the debriefing and determine the overall team presentation points:

### EVALUATION GUIDELINES

<b>1-2</b>	<b>Not Effective</b>	Unsure, illogical, uninformed, unprepared, ineffective, communication skills.
<b>3-4</b>	<b>Fair</b>	Minimally informed and prepared; passable performance but lack of depth in terms of knowledge of task and materials. Communication lacked clarity and conviction.
<b>5-6</b>	<b>Good</b>	Good, solid but not spectacular; can perform outside script but with less confidence; logic and organization adequate but not outstanding. Grasp of major aspects of case, but no mastery. Communications clear and understandable but could be more fluent and persuasive.
<b>7-8</b>	<b>Excellent</b>	Fluent, persuasive, clear, understandable; organized material and thoughts well and exhibited mastery of case and materials.
<b>9-10</b>	<b>Outstanding</b>	Superior in qualities listed in 7-8 above. Demonstrated ability to think on feet, poised under duress; sorted out essential from nonessential and used time effectively to accomplish major objectives. Demonstrated unique ability to utilize all resources to emphasize vital points of trial. Team members were courteous, observed general courtroom decorum and spoke clearly and distinctly. All team members were involved in the presentation of the case and participated actively in fulfilling their respective roles, including the clerk and bailiff. The clerk and bailiff performed their roles so that there were no disruptions or delays in the presentation of the trial. Team members demonstrated cooperation and teamwork.

#### D. Tips for Debriefing

Try not only to praise students but also to provide comments to help them improve. Each judge is asked to provide a **few** comments. Teams are not provided a written critique so your statements are likely the only impartial feedback they'll get.

Because it is impossible for each of the three judges to offer comments to every team member within the 15-minute debrief time allotted, it is recommended that you divide the team members among the judges so that everyone gets at least one comment but you are able to keep within the debrief time:

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

Suggested critique might include comments such as:

"The content of your opening statement was excellent, but practice telling the story without reading to the jury." *or*

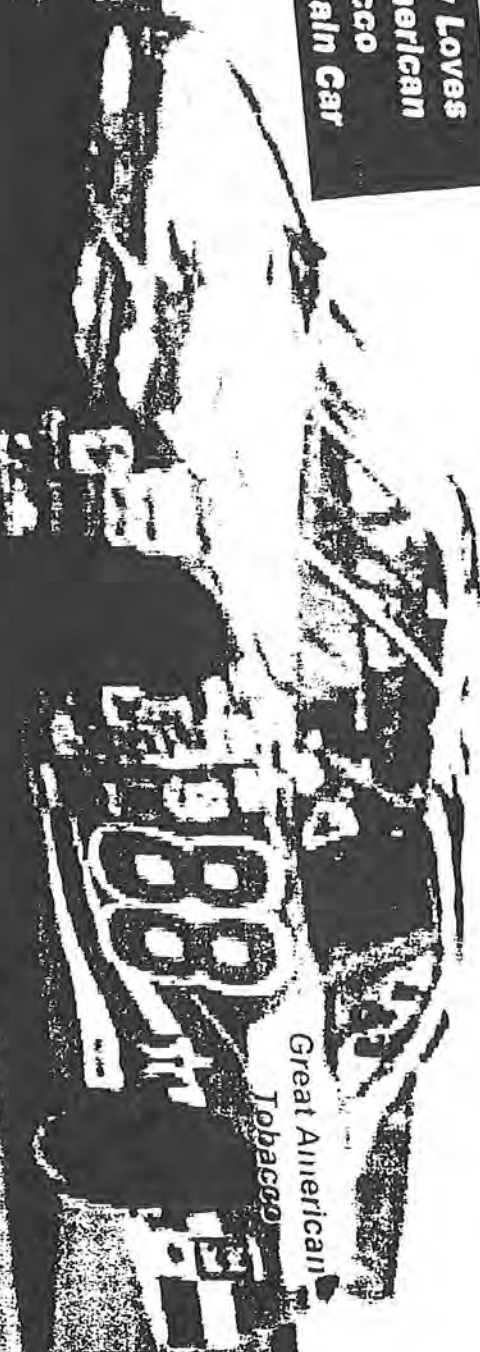
"You asked good specific questions on direct, but try not to sound too rehearsed with your witness."

The bailiff will time the critique. The time allotted for critique is limited to 15 minutes total. When the bailiff holds up the "0" minutes card, the debrief is over.

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

# Exhibit 1

Everybody Loves  
Great American  
Tobacco  
88 Mountain Car



**SURGEON GENERAL'S WARNING:** Smoking by  
Pregnant Women May Result in Fetal Injury, Premature  
Birth, and Low Birth Weight.

16 mg. "tar," mg nicotine av. Per cigarette by FTC method.

Sponsored by  
Great American  
Cigarettes