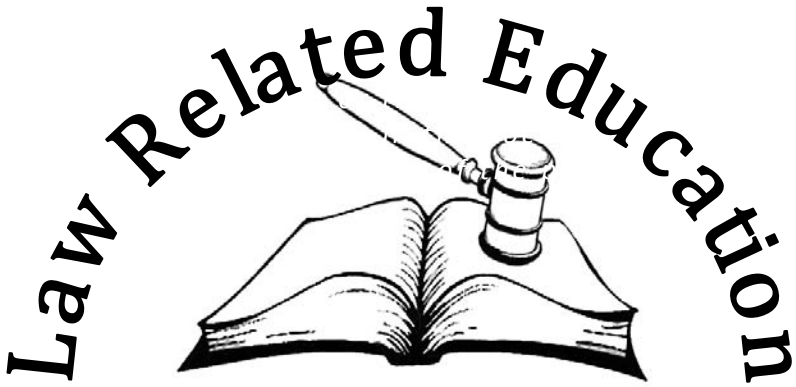


2009 Idaho High School Mock Trial Competition

Mock Trial Handbook

Case Materials

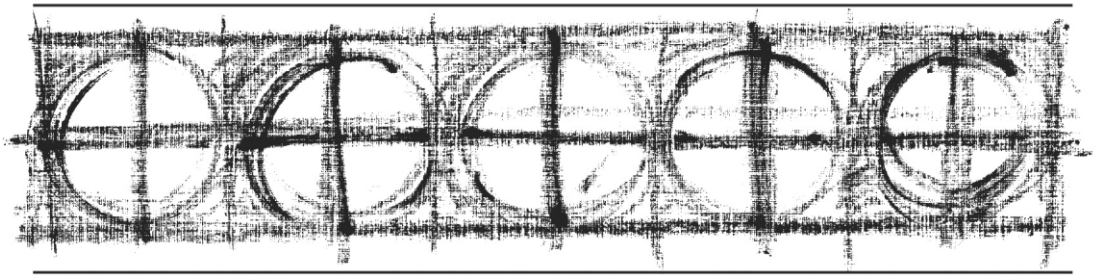
Rules of Competition & Procedures

Timekeeping Procedures

Mock Trial Forms

Idaho Mock Trial Rules of Evidence

IDAHO LAW FOUNDATION



Helping the profession serve the public

October 2008

Dear 2009 Mock Trial Participants,

Welcome to the *2009 Idaho High School Mock Trial* season! We are excited that you have decided to participate in this wonderful program.

The *2009 Mock Trial Handbook* is designed to provide all the support materials you will need to participate in the competition. In the next few months you should plan to become thoroughly familiar with all the contents of this manual. As you learn the case and develop your strategies for trial, you should also learn the *Rules of Competition & Procedures*, and the *Idaho Mock Trial Rules of Evidence*. Your team will also be responsible for providing a Timekeeper, so it's especially important that you take the time to understand the information outlined in the section called *Timekeeping Procedures*.

The 2009 case materials were developed by the Mock Trial Committee of the Idaho Law Foundation, including: Chris Christensen, Ritchie Eppink, Mike Fica, and Colleen Zahn. Special thanks to them and also to Mark Harms and Idaho Fish and Game as well as the U.S. Fish & Wildlife Service. Of course, none of this would have gotten finished without the help of my assistant, Ashley McDermott, who helped keep this whole process organized and on track. That girl has skills!

As you participate in this year's mock trial season, remember the nearly 200 volunteers who make this competition possible each year. Your Teacher Sponsor and Attorney Coach will likely spend countless hours helping to prepare you for competition. You will also meet judges and coordinators who gladly give of their free time to help make this a great experience for you. Remember to take the time to thank all these volunteers for their time.

We are happy to have you as part of the 2009 Idaho mock trial family. Please feel free to contact me at (208) 334-4500 or cshoufler@isb.idaho.gov with any questions or concerns at any time throughout the season. Best of luck to you and your team as you prepare for the 2009 mock trial season.

Sincerely,

Carey Ann Shoufler
Law Related Education Director
Idaho Law Foundation

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INTRODUCTION

What is Mock Trial?

The Idaho High School Mock Trial Program, sponsored by the Idaho Law Foundation's Law Related Education Program, teaches students in grades 9-12 about the law and the legal system by participating in a simulated trial. The program provides an opportunity for students to learn about the law and the legal system from practicing attorneys; for teachers to work closely with attorneys to reinforce legal concepts in their classrooms; and for attorneys to share their expertise about the law and their legal skills.

How does Mock Trial work?

Mock trial teams consist of 6 to 9 students, a teacher-sponsor, and an attorney-coach. Each participating high school can sponsor up to 2 teams. A team will use its members to play different roles in the Plaintiff/Prosecution and Defense rounds, but the same students must participate in both Plaintiff/Prosecution and Defense.

Each team will compete in one of four regional competitions held throughout the state. In regional competitions, each team competes in three rounds. Teams will present both Plaintiff/Prosecution and Defense cases. Twelve winning teams from the regional competitions will move on to compete in the state competition in Boise. At the state competition, all teams participate in two rounds. Four teams move on to compete in the semi-final rounds and two teams compete in the championship round which takes place at the Idaho Supreme Court.

What are the important dates to remember?

Mark these dates on your calendar:

- **Monday, October 20, 2008:** 2009 Mock Trial Materials Released
- **Sunday, November 30, 2008:** Early Registration Deadline
- **Saturday, January 31, 2009:** Regular Registration Deadline
- **Saturday, February 14, 2009:** Regional Competition in Caldwell*
- **Friday, February 20, 2009:** Regional Competition in Pocatello*
- **Saturday, February 21, 2009:** Regional Competition in Boise*
- **Friday, February 27, 2009:** Regional Competition in Lewiston*
- **Saturday, February 28, 2009:** Regional Competition in Twin Falls*
- **Thursday and Friday, March 12 and 13, 2009:** State Competition in Boise

* Regional Competition dates and locations are subject to change based on registration numbers and court availability.

What support does the Idaho Law Foundation offer?

The Idaho Law Foundation will not exclude teams from participation based on an inability to pay. To help support participation in Mock Trial, the Idaho Law Foundation's Law Related Education Program offers the following support:

- Assisting teams in recruiting an attorney-coach;
- Providing training and orientation sessions for teams;
- Offering meals and snacks at both regional and state competitions;
- Helping teams offset transportation and lodging costs for regional competitions through a matching grant program;
- Supporting teams who qualify for the state competition by covering all of the cost of lodging and much of the cost of transportation; and
- A stipend of for the team who wins the state competition to help pay for travel to the national competition.

What's new this year?

There will be several changes for this year's competition. The details of these changes are outlined in the *Rules of Competiton & Procedures*.

Team advancement at State Competition will be determined through Power Matching. In a Power Matching System, teams in the first round are randomly matched to compete with each other. After the first round, teams go up against other teams with similar records (i.e., in the second round, a 1-0 team will be matched with another 1-0 team and an 0-1 team will be matched with another 0-1 team).

Each courtroom will be provided with a set of exhibits that each team must use. This will ensure consistency of exhibits available to both teams and defer the cost of having to create exhibits used for the competition.

The roles of the timekeepers have been expanded. Timekeepers will be responsible for introducing the judges and calling the court to order.

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,	)	Case No. 08-007
	)	
Plaintiff,	)	**INFORMATION**
	)	
vs.	)	**16 U.S.C. § 1540 (b)(1)**
	)	**and 50 C.F.R § 17.40**
KILLIAN ELDREDGE,	)	
	)	
Defendant	)	

The United States Attorney alleges:

COUNT ONE
16 U.S.C. § 1540 (b)(1)
and 50 C.F.R. § 17.40

On or about October 19, 2007, in the District of Idaho, the defendant, KILLIAN ELDREDGE, did knowingly or unlawfully take, possess, and/or transport an endangered species, that is, one (1) grizzly bear (Ursus arctos), in violation of the Endangered Species Act of 1973, Title 16 United States Code, Section 1540 (b)(1), and 50 Code of Federal Regulations, Section 17.40.

DATED this 26th day of September, 2008.

THOMAS E. MOSS
United States Attorney
by:

SCOTT BRAGONIER
Assistant United States Attorney

Stipulated Facts

1. Cody Eldredge is twenty-one years old and lives in St. Anthony with his/her parents and twenty-four year old sibling Killian. Cody has always looked up to Killian and wanted to emulate him/her. Killian felt likewise and spent much of his/her free time with Cody when they were younger. While they were younger, Killian and Cody spent time hunting together. While younger, they often took one or two hunting trips each year. Neither was an expert hunter, but they knew enough to be safe and enjoy themselves.

2. In October of 2007, Cody and Killian's cousin, Marley Reynolds, came to visit for a week. Marley is also twenty-one and from Tacoma. Marley, Cody, and Killian often spent a month or more together during the summers at their grandparents' house in Montana. Marley has recently been having marital troubles with his/her spouse. Although his/her contact with Cody and Killian has been infrequent since his/her marriage a little over a year ago, Marley recently contacted Cody about coming for a visit.

3. One morning during Marley's visit, Marley and Cody went up to the Sawtell Mountain area. The two had stopped at the hardware store that morning and obtained an elk tag. Cody took no weapon, but Marley took a compound bow.

4. After hiking for most of the day and as dusk was quickly approaching, Marley saw what s/he believed to be a bear. S/He told Cody about his/her suspicion. After hiking for a while they came into a clearing, where Marley saw a bear. Marley got out his/her bow and took a shot. The bear turned around and looked in Marley's direction before taking off running in the opposite direction.

5. Cody and Marley ran over to where they believed the bear had been. They saw blood on the ground and a blood trail leading off into the trees. The last bits of sunlight were fading and darkness was setting in. Cody told Marley they needed to track the bear and determine if it was still alive. The two briefly tried to track the bear, but the sun quickly disappeared, leaving the two in darkness. Cody told Marley they would have to call it a night and come back the next day.

6. After returning home that evening, Cody and Marley told Killian about their encounter with the bear. Killian questioned the two and told them that's/he believed they may have shot a grizzly bear. Killian explained that grizzlies are a protected species and it is a federal crime to kill one. Killian told Cody and Marley that it was critical that they try to locate the wounded bear and determine if it was a grizzly.

7. Later that same evening, Killian called Dallas Keating, an experienced hunting guide and outfitter. Killian asked Dallas to help them track the bear. The next morning, Cody, Killian, Marley, and Dallas returned to Sawtell Peak.

8. After arriving and hiking to the spot where Marley had shot the bear, Dallas found the bear's blood trail. At that point, the four agreed to split into two groups. Marley and Killian took a trail 50 yards uphill from the blood trail. Dallas and Cody followed the blood trail.

9. After traveling approximately a quarter of a mile following the blood trail, Dallas and Cody heard gun fire. Dallas and Cody run to where they believe the shots came from and find Killian and Marley standing near two dead bears.

10. The four left the mountain without harvesting either bear. None of the four ever called authorities to report the taking of either bear.

11. Wildlife biologists monitoring the area notice that a tracking collar belonging to a female grizzly bear indicated the bear was no longer moving as it should. Two biologists traveled to the scene and located the carcasses of the two grizzly bears. Biologists found the female was a mother and located the carcass of her cub nearby. The biologists contact federal authorities with the Department of Fish and Wildlife, who immediately commenced an investigation. Information in the backcountry log book located at the Sawtell Mountain trailhead led authorities to contact Cody Eldredge.

Prosecution Witness Statement of Marley Reynolds
Killian Eldredge's Cousin

1. My name is Marley Reynolds. I'm 21 years old and Killian and Cody Eldredge are my cousins. We all used to live in Idaho, but my parents moved to Arizona and I am now a senior at Seattle University. I got married not quite two years ago, and I live in Tacoma with my spouse. I am studying sociology and following a pre-law curriculum. I've wanted to be a lawyer for a long time, and I started researching law schools when I was a sophomore.

2. Cody and Killian and I used to be very close. Although we didn't grow up in the same town, we always spent a lot of time together during summers and around the holidays. We always did a lot of hiking and camping with our parents. We did a lot of hunting and fishing, too, especially as we got older. Ever since my parents moved to Prescott and I went to school, I've seen Cody and Killian less and less. For the last few years, we've only seen each other once a year. We try to alternate: Cody and Killian will visit me in Tacoma and then the next year I'll visit them at Killian's house in St. Anthony.

3. Last year, when I was a junior, I drove out to see them right at the start of elk season. I had to skip a whole week of classes to make the trip, but I really needed the time away. My spouse and I had been having a disagreement that had begun to get deep under both of our skins. We couldn't decide when to try to have our first child: I wanted to wait until I finished my first year of law school, but my spouse thought we should have the baby right then so that it would be about a year old when I started. It got to the point where we were taking our discussions way too personally and I just needed to get out of the apartment for a while. I called up Cody and s/he told me elk season was starting in a week and half. We agreed that I would come out and we'd do some hunting, "just like the good old days."

4. I had never shot an elk with a bow before, but I consider myself a decent archer and wanted to give it a try. When I got in to St. Anthony, Killian showed me his/her bows and let me pick one out to borrow during the week. We talked a bunch, caught up and everything, and then Killian said s/he had to turn in because s/he had to work the next day. I asked him/her where I should try with the bow, and Killian suggested a few places. Cody and I ultimately decided that we would try the area around Sawtell Peak. Killian said something about how s/he had seen a bear up there recently, too.

5. That next morning, Cody and I took off in Cody's friend's new 4x4. We stopped at a hardware store and I picked up a license and an elk tag (Cody didn't get one, though), and we headed north towards Sawtell Peak. Bow hunting for elk involves a lot of walking. A lot! We had struck out pretty early, and hiked nearly all day. I don't remember even once seeing any elk. It was fun hunting with Cody again, but a little frustrating and exhausting, especially since I've been a soft body living in Tacoma for so long now. We had just started talking about heading back to the truck—right around twilight—when I thought I saw a bear down the slope a little ways. I told Cody what I saw and s/he said we should hike off towards the animal to identify it. We eased down the slope and came into a clearing, where we found it. By this time the light had grown pretty dim. I couldn't see much more than the bear's shape. I couldn't tell what color it was. I

figured I would give a shot, since I'd just been carrying the bow all day. I definitely hit it, but then the bear took off in the opposite direction, away from the clearing. Cody and I tracked it for as long as we could, but within ten to fifteen minutes it was too dark to keep on.

6. Cody and I noted our last location and then went back to the truck. We had thought about getting bear tags earlier, so we stopped and got a couple on the way back. As we got closer to Killian's house, my mobile phone started beeping. We had been out of the phone's range all day, but my spouse had been calling and had left six voice messages for me during the day.

7. When we got back, Killian was already home. First thing, we mentioned that we'd have to go back the next day to track the bear we hit. After I described where we saw the bear, Killian said that s/he had heard there might be a grizzly in that area—that s/he had caught a glimpse of one about a month ago when s/he was last out there. Then Killian walked out of the room and when s/he came back s/he was on the phone. Then s/he told us that his/her friend Dallas would help us track the bear the next morning.

8. Right about that time, my spouse called me again. I knew that we'd end up fighting about having a baby, so I walked outside into the backyard. I sat out behind a shed and talked for probably an hour. We did, as usual, get into a heated discussion but I just said that I needed some time to recharge and think and that we could start counseling through the university when I got back. The call managed to get me all worked up, and I couldn't sleep very much that night. I talked a little about my day at the beginning of the call, but I don't remember specifically what I said.

9. Early the next morning, Killian woke us up and we headed back out to the mountain. At the trailhead, we met up with Dallas Keating, who was a friend of Killian's and was some sort of local hunting guide. We went back to where Cody and I had last seen the bear the night before. We picked up a blood trail and then Dallas told us that wounded bears will often double back on you when you're tracking them. S/He said that we should split up to protect ourselves. I went uphill with Killian. Dallas and Cody followed the blood trail.

10. A little while later, I spotted the bear about 25–30 yards away. I stood still and the bear bluff-charged Killian and me once. It was obviously a bluff, and I wasn't in fear of danger, but Killian shot at the bear. I felt like I didn't know Killian anymore. I was scared out of my mind about what was going on and what Killian was doing and what was going to happen to us. I had him/her. As I was standing there, petrified, the bear ran off and then some time later I spotted it again standing next to a dead, older bear. Then Killian shot again. A couple minutes passed between the two shots. The bear had only charged us once.

11. After the second shot, all four of us descended on the two bear carcasses. Dallas and Killian talked for a little while about what happened. I still couldn't believe what Killian had done and I just stood there, staring at the dead bears. I don't remember anything that Dallas or Killian said to each other, specifically. Did I hear Killian say anything to Dallas about shooting the cub bear to "keep everybody honest." No, I don't remember that.

12. When this case began, I retained an attorney who helped me negotiate a plea agreement. I just really have wanted to go to law school for so long; I couldn't let this ruin my chances of getting into a good school. I had to plead in state court to failing to comply with mandatory report requirements. That's just an infraction, but the US Attorney agreed not to prosecute me in federal court if I pleaded to it and testified truthfully about everything I knew and saw.

Prosecution Witness Statement of Dallas Keating
Local Hunting Guide

1. My name is Dallas Keating. I am 59 years old and live near Island Park, Idaho, in a log cabin I built myself. I've lived there for nearly 40 years. I make my living as a hunting, fishing, and backcountry guide.

2. I have been guiding for nearly as long as I've been in Idaho. I suspect that I know the wilderness in this area nearly as well as even the old-timers, and most of them are passing away. In my three decades out here, I've tracked or hunted probably all types of game that are found in this part of the country.

3. It is important, I feel, to pass on my expertise and to be a good citizen. I interact with lots of kids and young adults—from these parts and elsewhere—and I try to act somewhat as a mentor to those who are interested in what I do. Over the years, there have been so many that I could hardly remember all of them. Recently, I do remember meeting Killian Eldredge and talking to him/her about guiding. A very good friend of mine works with Killian at Fed Ex. About a year and a half ago, my friend brought Killian along on a hunting trip with me. During that trip, Killian asked a lot of questions about guiding. I tried to encourage him/her and suggested, half jokingly, that s/he give me a call one day when s/he'd quit Fed Ex and was ready to help me out. I didn't see or talk to Killian again after that until s/he called me out of the blue about the bear his/her buddy had shot. Perhaps Killian got my number when I called his/her mobile phone at one point during that original hunting trip. I had forgotten about Killian, frankly, and by no means were we close.

4. Right at the beginning of elk season last year, I got a call in the evening from Killian. When I answered, Killian reminded me who s/he was and then said s/he needed my help "to take care of a problem." I asked what was going on and Killian said that his/her friend was in town and might have shot a bear on Sawtell Peak. I asked if they had confirmed the kill, and Killian said no. So, I assumed that Killian wanted my help tracking the bear. I didn't think much of it, and because I always try to be a helpful backcountry citizen, I told Killian I'd meet him/her at dawn the next day at the Sawtell/Rock Creek trailhead. Looking back just a day later, I realized that the tone of Killian's voice and the words s/he used should have alerted me that Killian wanted my help to cover up a crime.

5. I don't think that anyone in this area knows about my past. I got into some trouble when I was 17. I pleaded guilty to a federal felony of witness intimidation. I was in an outlaw motorcycle club then and it all had to do with another member who got framed for murder. I had to spend three years in prison, but when I got out I moved to Idaho to live in the wilderness. All of that is way behind me now. I have done all I can to lead a dutiful, honest, and upstanding life since then. I am still on probation with the Idaho Outfitters and Guides Licensing Board. There was an issue with my initial guiding application years ago, where I didn't understand how to report my felony. But I always follow the law and the rules. Had I realized that Killian wanted my help covering up an unlawful kill, I would never have offered to help. In fact, I would have called Fish and Game and other law enforcement right away.

6. I met Killian and his/her siblings, or something, at the Sawtell trailhead early the next morning after Killian called me. They were there when I arrived, and one of Killian's friends, I can't remember who, told me they had already logged in on the Forest Service

register. We went up the trail a bit until Killian's other friends—Cody and Marley—could lead us to where they'd last seen the animal. There was an obvious blood trail. I knew that bears will sometimes double back on you, so I split us into two groups: Killian and Marley to monitor further uphill, and Cody and I to follow the blood.

7. Killian and Marley stayed within earshot, but through the trees, I lost sight of the two. I'm guessing they stayed about fifty yards away. Because I couldn't see them, I would shout out—and Killian would acknowledge me—every five minutes or so.

8. Then, just shortly after Killian had shouted back to me, I heard a second shout "hey!" followed by a gunshot. I can't remember exactly how soon after "hey!" that I heard the shot. There may have been a second shot, but I don't really remember. I only distinctly recall hearing the one shot, soon after the "hey!"

9. I waited with Cody for a few seconds, and then we marched uphill and found Marley and Killian standing next to two dead grizzlies. I was furious. I asked Killian what happened, because I needed to know what happened. I listened patiently, but Killian didn't have any good answers. I was far from convinced that Killian needed to shoot the cub. Then Killian had the gall to tell me to "put a bullet in it to keep us all honest." That was it—I had had it with Killian and the whole mess. I told them all that they legally had to report the kills. "This is your mess. You had better report this. I am not involved in this, and you guys need to learn to clean up your own messes": that's near exactly what I told them. Then, barely able to control my frustration with Killian, I took off and went home.

10. That was the last I dealt with this until federal investigators contacted me and asked me for this statement. Soon after they called me, I got a call from the Idaho O&G Board. Because of my probation, now my guiding license was at serious risk. I told them I would do any and everything I needed to. After a whole lot of mess and stress, we worked out that I would fully cooperate with federal and state investigators and prosecutors, and I would testify completely and truthfully. Then the O&G Board would review and make a further probationary decision. But I would give this statement voluntarily, even if I didn't have to.

Prosecution Witness Statement of River Waters
Expert Witness

1. My name is River Waters and I am fifty-two years old. I have a PhD from Berkeley in Animal Behavior where I focused on the rare occasions where a bear, wolf, or shark has attacked humans and what conditions bring about those attacks.

2. I currently for Yellowstone National Park conducting research on park animals, with a special focus on grizzly bears. I live in Grant Village in Yellowstone Park.

3. I often testify for the prosecution in poaching and ESA violation cases. I am a co-founder of Defenders of Wildlife and am a huge wildlife supporter. I believe that our success and survival as a race depends upon protecting the mix of animals and species that were naturally found hundreds of years ago in the areas where humans now live.

4. I have a special fondness for all animals, but especially enjoy watching and learning about grizzly bears. Grizzlies were historically prevalent in the lower 48 states with estimates near 50,000. There are currently only 1,000 grizzlies (or 2% of the original population) living in the lower 48 states. That's why, in 1975, the U.S. Fish and Wildlife Services listed grizzlies as a threatened species.

5. The mother bear that was killed in this case was a six-year-old sow that weighed approximately 350 lbs and stood 5 ½ feet tall. As part of Idaho Fish and Game in Yellowstone Park I was involved in tagging and studying the sow several years ago. The sow was listed and known as F721. F721 was equipped with a radio tracking collar that monitored her every movement and a bright orange ear tag that identified her by her number. F721 was the only reproducing female in the area at the time of her death and her and her cub's tragic endings were a blow to biologist who track grizzlies and work every day to ensure their survival.

6. Although Fish and Game was aware of the cub (it was listed as C215), it had not been tagged. The cub was only 1 ½ years old. Young bears, three years and younger, tend to be very curious and docile. The young cub in this case was surely confused by his mother's death, but young cubs are not going to attack a human, especially two full-sized humans traveling together.

7. In general, grizzly bears will not attack humans unless threatened. On the rare chance that a grizzly acts aggressive, the best defense is to make yourself as big as possible; put your arms up and spread your legs. Occasionally, grizzly bears will do what is called a bluff charge. A bluff charge is where a grizzly will run at a threat (possibly a human), but the bear will abruptly stop often 50 or more yards before reaching the object. These bluff charges are an attempt to encourage the threat to leave the area. Cubs are often unsteady on their feet (due to their rapidly growing bodies, like many teenagers) and are very unlikely to charge or bluff charge.

8. In my opinion, the cub in this case would not have charged two hunters traveling together. In fact, I believe the cub would not have bluff charged. On the outside chance that it did, the hunters would only needed to have made themselves look big and the cub would have stopped well before presenting a threat.

9. I believe the cub was no threat at all and that it was murdered. I also believe that, although shooting the sow may have been an honest mistake, the cub was killed in cold blood to cover up an innocent accident that could have been remedied by simply reporting the mother's death. There was absolutely no reason to shoot the cub in this case.

Defense Witness Statement of Killian Eldredge
Accused

1. My name is Killian Eldredge. I am twenty-four years old, and live in St. Anthony, Idaho. I work for Fed Ex as a supervisor of the local sorting facility. Before that I spent two years at an office supply store, but I hope to someday have a business as a hunting and fishing guide. I have always loved the outdoors more than anything and really want to make my profession there.

2. I got my idea about being a hunting and fishing guide from Dallas Keating. S/He is a local guide that I have hunted and fished with a lot over the past several years. Dallas and I became friends and s/he talked a lot about guiding. S/He really does know a lot about the woods and animals around here. I really thought I wanted to be like him/her until all of these problems came down, now I have no desire to be the kind of person Dallas is.

3. Last October, my cousin Marley came to visit Cody and me. S/He said s/he was trying to get away and clear his/her mind, but growing up, Marley had a way of latching on to me and Cody and our parents would make us take him/her with us. This has continued now that Marley is an adult; s/he has a way of leaching on to us to take him/her out to hunt and fish. Last fall was just another one of those times. Before Marley came, I told him/her that I would only have a day or two off work to take him/her out hunting, but Cody offered to go when I couldn't. Far be it from Marley to figure out where to go on his/her own.

4. We all talked the evening Marley got to our house. I couldn't go out the next day with them so Cody and Marley decided to go scout for bear around Sawtell Mountain. I had told them I had seen some signs of bear around the area recently. Cody and I were hoping to hunt bear that season and Marley, as usual, wanted to go too. I suggested they scout the area and we could all hunt the following day, which was my day off. Marley also mentioned s/he might borrow a bow from me and take it with him/her and look for an elk too.

5. When Marley and Cody got back from Sawtell the next day it was well after dark. Marley looked pale and upset. Cody told me that at right about dusk Marley spotted a bear and all of a sudden Marley raised his/her bow and shot it. Cody said s/he figure Marley was frustrated from not hitting an elk earlier in the day and forgot that they didn't have a bear tag yet. They said they tracked the bear for a while, following its blood trail, but it got too dark and they decided to head back and get me.

6. Cody described the bear to me as being sort of reddish in color and said that it had real large haunches. Based upon his description I was very concerned that Marley may have shot a grizzly, and I told him/her so. Marley went outside to take a phone call, so I decided to call Dallas to see if s/he would help us track the bear the next day. Dallas is something of a bear tracking expert, and I knew we had to find that bear the next morning and report it if it had indeed been a grizzly.

7. I walked into the living room and told Cody that Dallas would be coming with us the next day. I walked outside to tell Marley and overheard Marley talking on the phone. Marley was very upset, which made me stop. Then I heard Marley say to whoever was on the phone that s/he thought s/he was going to get in a lot of

trouble for killing the bear. Marley then shocked me by saying that s/he would do whatever to avoid getting in trouble to protect his/her future and said that maybe s/he could say Cody killed it if anyone asked. That really made me angry, so I headed back in the house. I was so mad I didn't even say anything to Cody, but I figured we had to find that bear and clear this up so that no one would get in trouble.

8. Dallas met us at the Sawtell trail head at sunlight the next morning. I was in such a hurry to get tracking I forgot to log us in on the trail. It did not take us long at all to get to the location where Cody said Marley had shot the bear. Wounded bears can be very dangerous. They will at times try to ambush a hunter tracking them. So Dallas suggested we should split up. Dallas said s/he would track the bear with Cody, Marley and I hiked up above the trail a ways.

9. I yelled to Dallas a couple of times to make sure I knew their location, and had just yelled at him/her when Marley and I hiked into a small clearing. At the edge of the clearing we could see some movement in the dark shade. Just then I saw a small grizzly come out of the shade into the clearing about twenty feet away. The bear lunged toward us and I could see it was covered in blood. The bear stopped and turned then turned back to us. I could see Marley start to move back and thought that was the worst thing in the world because that was likely to cause the bear to charge us. I yelled at Marley and sure enough, the bear began to charge right at Marley, so I raised my gun and fired. The bear spun and took several steps into the trees. I knew we had to fall the wounded bear to avoid a potentially deadly ambush, so I shot at it again right as the bear went into the trees.

10. I rushed over to the trees and saw the bear lying on the ground. It was then I noticed just a few feet away the larger mother bear lying dead by a tree. I could see the mother bear had an arrow still in its side and there was a bunch of blood where the bear had bled out. I figured the smaller bear was its cub and the cub must have got the blood all over it from nuzzling the mother when it died.

11. About that time Dallas and Cody ran up and I told them what had happened. Marley just stood there and didn't say anything. When I finished telling them what had happened, Dallas looked at Marley and said, "Man are you going to be in a lot of trouble." I didn't think so, after all Marley's was an honest mistake, but Marley was apparently already upset anyway, because s/he walked off a bit and sat down in a daze.

12. As soon as I finished telling them, Dallas asked me if I really needed to shoot the cub. I told him/her that to start out with, it didn't look like a cub to me. It had to be at least a yearling, and being a grizzly, it was at least as big as a full sized black bear. I told him/her I figured it was the wounded bear and when it started to charge us I figured it was just like Dallas had said, wounded bears will attack. Dallas said it was probably just a bluff charge to get us away from the other dead bear, but I can tell you that it did not look like a bluff charge to me. I told him/her to look at Marley, who looked scared witless. Cody and Dallas had begun arguing for awhile. I heard Cody ask Dallas, "Don't we have to report this?" Then before Dallas answered, Cody said, "I think Marley's kill was just an honest mistake." Dallas was fuming mad and s/he just said, "This is your mess, I'm not involved with this" and s/he stormed off.

13. I never said anything about keeping us all honest or trying to get Dallas to shoot the bear too. Dallas was the one who said that we would be better off not reporting this and just walking away given there were two dead grizzly bears. S/He said the tree-huggers would have our neck over this. I told him/her I thought we had to report it, that Marley's kill was just an honest mistake, and I had to shoot the other bear in self defense, but that we had to be honest. Dallas said, "Whatever, as long as it is you and those idiots' butts and not mine." Then s/he stormed off. When we got to the bottom of the hill his/her truck was gone.

14. I swear I was going to report it right away, but it was too late to go to the Fish and Game office. I didn't even think about calling Fish and Game's hotline. I had to work the next four days and couldn't get into their office until after that, but I knew I had five days to report it so I figured I was OK. But the Fish and Game officers showed up to talk to my brother before I got home from work the fourth day. They came in all accusing me and such, so I told them I wanted to talk to a lawyer. Next thing I know, I am getting charged and Dallas and Marley are lying about what happened and pinning this all on me.

Defense Witness Statement of Cody Eldredge
Killian Eldredge's Sibling

1. My name is Cody Eldredge. I am twenty-one years old, and live with my parents in St. Anthony, Idaho. I have previously been enrolled at Idaho State University, but took last fall semester off to work and earn more money. I have always had a very close relationship with Killian, my sister/brother, spending virtually all our free time together as we grew up. We were always interested in all kinds of outdoor activities and still spend many days hunting, fishing, and camping. This past fall, Killian and I have spent a lot more time together outdoors and have began talking about going into the professional hunting and fishing guide business. Killian's friend, Dallas, got us hooked on that idea and we are thinking of pursuing it.

2. Growing up, Killian and I would also spend summers with our cousin Marley Reynolds at our grandparents house in Montana. Marley lives in Tacoma now, but still has come to visit us in Idaho on a fairly regular basis. This was the case last October, when Marley came to spend a week with us and go hunting. Marley had been having a hard time with his/her spouse and said s/he needed to come out and just clear his/her mind.

3. The first night Marley arrived we stayed up late and talked with Killian, basically getting caught up on things. We talked about our plan for the week. Killian said that s/he had seen some signs of bear in the area of Sawtell mountain recently and thought it might be fun to do a little bear hunting. Unfortunately, because of Killian's work schedule s/he only had a limited amount of time to go hunting with us. S/He couldn't go the next day, but suggested that we go up to the Sawtell area and scout for bear a bit, and s/he would join us the following day for a bear hunt.

4. Marley had also wanted to hunt elk with his/her bow. Bow hunting didn't interest me that much, but I wanted Marley to enjoy himself/herself, so I suggested that while we were scouting for bear, s/he bring his/her bow along in case we saw a big elk.

5. We set out early the next day, stopping first for coffee and to get Marley a license and elk tag at the store in town. We decided to wait to spend the money on bear tags until we scouted the area and knew whether we had a chance of getting one. The two of us then headed to Sawtell. We logged in at the parking lot trail head and hiked around the mountain most of the day. We saw plenty of signs of bear, and several elk, which Marley had shot at and missed. I could tell Marley hadn't been in the hills for a while because s/he was really starting to drag as it got later in the day. I had just suggested that we head back to the truck, when Marley whispered "bear."

6. It was right at twilight, and I had a bad angle, but there looked to be a bear on the other side of some high brush. I could see Marley had a better angle. Before I knew it s/he raised his/her bow and shot. This surprised me because we had agreed we were not going to actually hunt bear until the next day, and we did not even have our bear tags. I guess Marley was just frustrated with not getting anything that day.

7. As soon as Marley shot his/her bow the bear reared up and I was fairly certain Marley had hit it. It was also at that point that I began to wonder if, given the bear's size and color, whether it might have been a grizzly bear. I could not tell for certain though in the dimming light. We walked to the area where the bear had been shot and headed off in the direction the bear ran. I immediately picked up a blood trail that we continued to follow for a short time. However, it was starting to get pretty dark, so we decided to head back to the truck and bring Killian up the next morning to help us track it.

8. On our way back home we decided we had better stop and get bear tags, so we went to a shop in Island Park. While I was getting the tag, I was reading a flier describing the differences between black and grizzly bear. On the ride home I told Marley that I thought s/he might have shot a grizzly bear and s/he started to freak out a little bit. It didn't help that his/her spouse called him/her a bunch of times as we drove home and they fought each time.

9. When we got back to my house in St. Anthony, Killian was already home from work. We told his/her what had happened and when I described the bear s/he seemed very concerned and began asking us a lot of questions. S/He told us s/he was thinking that it was probably a grizzly that Marley had shot, and told us that if it was the case, that would not be good because grizzlies were protected and we could get into a lot of trouble. S/He said s/he was going to call his/her buddy Dallas and see what s/he thought. About that time Marley got another call from his/her spouse and went out in the yard to talk. Killian went into the kitchen and called Dallas, s/he said Dallas could help us figure out what to do. Killian came out a couple minutes later and said Dallas was going to go up with us in the morning. S/He went outside to tell Marley, and came back a minute later. Killian seemed a bit ticked off; I guess s/he was sick of Marley and his/her spouse fighting too.

10. When we got to the trail head the next morning Dallas was already there. I assumed s/he had logged us in, so I grabbed my rifle and we headed up the trail. I led the way to the spot we had tracked the bear to the night before. When we got to that location Dallas suggested we should split up into two groups. S/he said wounded bears would often attack and it was a good idea to be in two groups and avoid the bear ambushing us. So Dallas and I followed the blood trail, and Killian and Marley went up the hill about fifty yards and followed a path parallel to ours.

11. We had hiked about a quarter mile. We couldn't see Killian and Marley, but could hear them when we yelled at each other every so often. All of a sudden I heard Killian yell "Hey!" I then heard two quick shots from a rifle, one right after the other. We ran up to where we heard the shots and found Killian and Marley standing next to the two dead bears. They were clearly grizzlies, and the smaller one, which was still a pretty darn big bear, appeared to be the bigger one's cub. Killian said that the smaller bear had charged them so s/he shot at it. S/He said when s/he shot the bear spun as if hit and began to run so s/he shot again and downed it. Marley didn't say anything when Killian told us what happened, but it was clear s/he was scared. S/He was kind of shaking. S/He certainly did not contradict what Killian told us.

12. Dallas asked Killian if s/he really needed to shoot the cub, and Killian started to get upset. I did not want to be part of the argument so I walked over to the bears and checked them out. Sure enough the larger female bear had an arrow in it and a bunch of blood all over it where it had bled out. The smaller bear had dried blood all over its face like it had been nuzzling the larger one.

13. I asked Killian what we should do and s/he said not to worry, it would be taken care of. I assumed Dallas went to report the bears to Fish and Game because his/her truck was gone from the parking lot when we got back down there. Marley was still pretty upset and didn't even talk to us on the ride home. Between the bear and Marley's personal life s/he was so upset s/he decided to cut the trip short and left the next morning.

14. Several days later, Fish and Game officers show up at the house and wanted to talk about the bears. They had come to me because mine was the last name in the log for the Sawtell Mountain trail before the bears had died. Once I told them what had happened, they told me I was not in trouble, but that I needed to write this statement, so I did.

Defense Witness Statement of Pike Buchanan
Expert Witness

1. My name is Pike Buchanan and I am fifty-six years old. I grew up in eastern Idaho where my family lived on game my father hunted.

2. I received my bachelor's degree in Wildlife Biology at the University of Montana where I specialized in grizzly bear and wolf reintroduction and laws protecting those animals. I have worked as a hunting guide in Idaho, Montana, Wyoming, and Alaska for over twenty years.

3. I am on the Idaho Outfitters and Guides Licensing Board. Through my work on the Board, I am familiar with Dallas Keating, the local guide testifying on behalf of the state. I know about Dallas's felony charges from years ago, and believe Dallas is still trying to "make her/his past right."

4. I also know about Dallas's plea to a misdemeanor in early 2007 for attempting to transfer a hunting license to a client. I was involved in reviewing Dallas's guiding license and the board's decision to place Dallas on probation for a year. I have rescued myself from any board action involving Dallas's guiding license and the events giving rise to this incident because I determined a better course of action would be to testify for the defense in this case. I believe Dallas has no business testifying for the prosecution in this case and that s/he should just keep his/her mouth shut.

5. I have seen over 2000 grizzlies in the wild and have spent many hours tracking and studying grizzly bears. I have also had many personal and close encounters with grizzly bears in my years of hunting and guiding. I am not a big fan of grizzly bears, and much like the wolves, I believe that the reintroduction and protection of these carnivorous hunters possess a huge threat to human life.

6. I have seen grizzly bears take game that I or someone I was with has shot, attack hounds and dogs, and even witnessed two grizzly bear attacks on humans. One of those attacks was in Alaska when someone I was guiding shot a sow. The sow's cub charged me and my client and my client was severely injured before the cub was killed. I have a ten inch scar across my waist from that encounter with a grizzly bear cub.

7. I believe from my experience that grizzly bears are very aggressive and very protective. A sow is very protective of her cubs, and cubs can be very protective of their mothers. There are over 10 reported grizzly bear attacks in North America every year, with several of the attacks ending in fatalities. Those attacks typically involve a sow and her cub.

8. It is unwise to attempt to track grizzly bears at night, especially if they are wounded. A grizzly bear that has been wounded is smart enough to figure out that it is being tracked by a human. Therefore, the wounded grizzly bear may circle around the human attempting to track it and track the human instead, often leading to a dangerous ambush situation. Because grizzly bears see better than humans at night and because of their keen sense of smell and intelligence, it is foolish to attempt to track a wounded grizzly bear after sun down.

9. Grizzly bears will often charge when confused or threatened. They can reach speeds of up to 35 miles per hour and have outrun horses in short distances. Grizzly bears have incredibly sharp teeth and claws and cubs are no exception.

10. A yearling grizzly bear cub, like the one in this case, can be the size of a full grown black bear. The cub in this case weighed 200 lbs. and stood almost 5 feet tall. The cub was covered with matted blood and it looked like it had been snuggling with its dying mother. The cub was likely very confused and scared. Cubs are very dangerous when they are in a confused state and their mother bear is not present to protect them and calm them down. The cub likely charged and if it hadn't been shot it could have killed or at least seriously injured the hunters.

11. I believe that the hunters in this case were completely justified in killing the grizzly bear cub in self-defense. I believe that grizzlies pose a major threat to stock, other wildlife, and humans. From my personal experience, if the hunters hadn't shot the cub in this case, it could have killed them.

EXHIBIT 1: Marley Reynold's Hunting License and Bear Tag

1234123512

H07

IDAHO 2007 NON-RESIDENT
NON-RESIDENT ADULT HUNTING

LICENSE # 101-07-012678 $ 141.50

Reynolds, Marley
888 Cypress Lane
Tacoma, WA 55555
DL # 6895486 06/06/0999
M 5 10 250 BLU BRO
DOB 06/06/9999
LIVED IN IDAHO SINCE: N/A
ISSUED 10/19/07 20:37 MT @009995 CAJ
Valid Dates: 10/19/2007-12/31/2007

I THE UNDERSIGNED, HEREBY CERTIFY AND DECLARE THAT THE ABOVE INFORMATION IS TRUE TO ACQUIRE AN IDAHO LICENSE.I ACKNOWLEDGE THIS LICENSE/TAG WAS ISSUED AS REQUESTED.

Marley Reynolds

SIGNATURE OF LICENSEE

TO RECEIVE CURRENT IDAHO FISH AND GAME NEWS SIGN UP AT:
http://fishandgame.idaho.gov/

EXHIBIT 2: Forrest Service Log, Sawtell Peak

Forest Service

Site Location ROCK CREEK/ SAWTELLE PEAK
Date installed OCTOBER 1, 2007

	Entering Date & time	Name please register one person per group	City and State	# in party	Length of stay	Equipment Type and number	Destination	Leaving Date & time	Comments
1	10/2 8AM	Vincent Vega	Butte, MT	2	4days	Hunting Equip	Rock Creek	10/6 - 11AM	Great Honeymoon!
2	10/4 - 6AM	Elizabeth Bennett	Boise, ID	6	1day	—	Sawtelle	10/4 - 10pm	GREAT AREA!
3	10/5 - 1AM	Mickey O'Neal	Anchorage, AK	16	2 weeks	BACKPACKING EQUIP.	HEAVY'S LAKE	10/19 - 10am	Wicked Awesome!
4	10-5 7am	Rory Gilmore	Tucson, AZ	4	2days			10-7 9p	
5	10/10 12pm	Connor McManus	SLC, UT	8	3days	Camping	Sawtelle	10/13 - 12pm	Rained too much :(
6	10/19 8:00 AM	Cody Eldredge	St. A, ID	2	1day	Bow	Sawtelle Peak	10/19 6PM	scouting for bears
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EXHIBIT 3: Letter to Dallas Keating from Board of Outfitters and Guides

Idaho State Board of Outfitters and Guide
1365 N Orchard Street, Room 172
Boise, Idaho 83706

December 6, 2007

Mr. Dallas Keating, License No. LBOG-075
21 E Main Street
St. Anthony, Idaho 83445

Dear Mr. Keating,

Federal investigators have recently contacted the Board and requested information concerning your license status. During this contact, investigators advised the Board that you were being investigated for federal crimes relating to the unlawful taking of an endangered species.

I write to remind you that your guiding and outfitting license is currently on probationary status under the terms of the Stipulation and Consent Order entered on July 11, 2007. Your signature on the Stipulation indicates your agreement to abide by certain conditions of probation as set forth in the Order, including:

a. Respondent shall not be convicted of any violations of local, state or federal laws or ordinances during the term of this probation. . . .

d. Respondent shall fully cooperate with the Board and its agents, and any state and/or federal law enforcement and submit any documents or other information within a reasonable time after a request is made for such documents or information.

Should you be convicted of any violation of local, state or federal law or ordinance as a result of this investigation, or should you fail to fully cooperate with the federal investigators, the Board will take further action against your license for failure to abide by the terms of your probation. Further action could include action up to, and including, revocation of your guiding and outfitting license.

Please contact me if you have any questions concerning the Board's position on this matter or concerning the terms and conditions of your probation.

Very Truly Yours,

Hale Rogers

Hale Rogers
Legal Counsel

EXHIBIT 4: Dallas Keating's Stipulation and Consent Order

BEFORE THE IDAHO STATE LICENSING BOARD OF

OUTFITTERS AND GUIDES

In the Matter of the License of: DALLAS KEATING, License No. LBOG-075 Respondent.	Case No. OUT-2007-12 **STIPULATION AND CONSENT ORDER**

.

WHEREAS, information has been received by the Idaho State Board of Outfitters and Guides ("the Board") that constitutes sufficient grounds for the initiation of an administrative action against Dallas Keating ("Respondent"); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A. Stipulated Facts and Law

A.1. The Board regulates the operations of licensed outfitters and guides in the State of Idaho in accordance with title 36, chapter 21, Idaho Code.

A.2. The Board has issued License No. LBOG-075 to Respondent. Respondent's license is subject to the provisions of title 36, chapter 21, and applicable portions of title 6, chapter 12, Idaho Code and the Board's rules at IDAPA 25.01.01, *et seq*.

A.3. On or about October 17, 2006, the Idaho Department of Fish and Game received evidence that Respondent attempted to transfer a hunting license issued in Respondent's name to one of Respondent's clients.

A.4. On or about November 16, 2006, the Fremont County Prosecuting Attorney filed a criminal complaint against Respondent, alleging a violation of Idaho Code § 36-405(c)(2)(B), a misdemeanor.

A.5. On or about March 5, 2007, Respondent pled guilty to the misdemeanor charge.

A.6. The allegations contained in Paragraphs A.3, A.4, and A.5 if proven, would violate the laws and rules governing the operations of licensed outfitters and guides, specifically Idaho Code § 36-2113(6) (every license shall be subject to suspension, revocation, probation or other restriction by the board for conviction of any violation of any state or federal fish and game or outfitting and guiding laws). Violations of this law constitute grounds for disciplinary action against Respondent's license to operate as a licensed guide and outfitter in the State of Idaho.

B. Waiver of Procedural Rights

I, Dallas Keating, by affixing my signature hereto, acknowledge that:

B.1. I have read, understand and admit the allegations pending before the Board, as stated in Section A, Paragraphs A.3, A.4, and A.5. I further understand that these allegations constitute cause for disciplinary action upon my license to operate as a licensed outfitter and guide in the State of Idaho.

B.2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to testify myself; the right to reconsideration of the Board's orders; the right to judicial review of the Board's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the operations of licensed guides and outfitters in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this Stipulation as a resolution of the pending allegations.

B.3. I understand that in signing this Stipulation I am enabling the Board to impose disciplinary action upon my license without further process.

C. Stipulated Discipline

C.1. License No. LBOG-075, issued to Respondent Dallas Keating, is hereby placed on probationary status for a period of one (1) year. Respondent's license will be restored to its full status provided Respondent complies with all other terms of this Stipulation and Consent Order.

C.2. Respondent shall pay investigative costs and attorney fees in the amount of Three Hundred Fifty and No/100 Dollars ($350.00) within thirty (30) days of the entry of the Board's Order.

C.3. Respondent is hereby placed on probation for a period of one (1) year from the date of entry of the Board's Order. The conditions of probation are as follows:

a. Respondent shall not be convicted of any violations of local, state, or federal laws or ordinances during the term of this probation.

b. No amendments shall be allowed to Respondent's license during the term of this probation.

c. Within one year of the date of the entry of the Board's Order, Respondent shall successfully complete a hunting regulations course administered by the Idaho Department of Fish and Game.

d. Respondent shall fully cooperate with the Board and its agents, and any state and/or federal law enforcement and submit any documents or other information within a reasonable time after a request is made for such documents or information.

e. Respondent shall make all files, records, correspondence, or other documents available immediately upon the demand of any member of the Board's staff or its agents, and state and/or federal law enforcement.

C.4. At the conclusion of the one year probationary period, and provided Respondent has complied with all other terms of this Stipulation, Respondent may request from the Board termination of the conditions of probation. Any request for termination of probation must be accompanied by written proof of compliance with the terms of this Stipulation. The Board reserves the right to continue supervised probation based on Respondent's compliance with this Stipulation.

C.5. All costs associated with compliance with the terms of this Stipulation are the sole responsibility of Respondent.

C.6. The violation of any of the terms of this Stipulation by Respondent may warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D. Presentation of Stipulation to Board

D.1. The Board's prosecutor shall present this Stipulation to the Board with a recommendation for approval.

D.2. The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects the Stipulation, an administrative Complaint may be filed with the Board. Respondent waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the administrative Complaint based on the fact that the Board has considered and rejected this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

D.3. If the Board rejects this Stipulation then, except for Respondent's waiver set forth in Paragraph D.2., this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing.

D.4. Except for Paragraph D.2., which becomes effective when Respondent signs this Stipulation, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

E. Violation of Stipulation and Consent Order

E.1. If Respondent violates this Stipulation and Consent Order, the violation shall be considered grounds for additional discipline and the Board may impose additional discipline pursuant to the following procedure:

a. The Executive Director of the Board shall schedule a hearing before an administrative hearing officer to assess whether Respondent has violated this Stipulation and Consent Order. The Executive Director shall also serve notice of the hearing and charges to Respondent and to Respondent's attorney, if any. Within fourteen (14) days after the notice of hearing and charges is served, Respondent may submit a response to the allegations. If Respondent does not submit a timely response to the Board, the alleged violations will be deemed admitted.

b. At the hearing, the Board and Respondent may submit evidence and present oral argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated the Stipulation and Consent Order. At the hearing the facts and substantive matters related to the violations described in Section A shall not be at issue.

c. At the hearing, the Board may impose additional discipline, which may include the suspension or revocation of Respondent's license, the imposition of fines, the recovery of costs and attorney fees incurred by the Board and/or other conditions or limitations upon Respondent's operations.

E.2. This Stipulation and consent Order is the resolution of a contested case and is a public record.

E.3. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above Stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

DATED this 11th day of July 2007.

Dallas Keating
Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 11th day of July 2007.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By _____
Hale Rogers
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 36-2107, the foregoing is adopted as the decision of the Board of Guides and Outfitters in this matter and shall be effective on the 11th day of July, 2007. **IT IS SO ORDERED.**

IDAHO STATE BOARD OF GUIDES AND OUTFITTERS

By _____

John Smith, Chair

EXHIBIT 5: Pike Buchanan's Letter to the Editor

Idaho Statesman, 11/19/2000 (Sunday), Page 06A

Grizzly Reintroduction Will Endanger Hunters

As the Statesman reported this week ("U.S. agency submits plan to bring grizzlies back to Idaho," 11/16/2000), our federal government has got a new plan for the "reintroduction" of grizzly bears to Idaho. If this plan goes forward, it will be perhaps the first federal land management action in history likely to result in injury or death of members of the public. Grizzly bears are massive, flesh-eating carnivores, and whenever there's an encounter between a human and a grizzly bear, the human does not fare well.

In the past two decades, grizzlies have killed 30 people in North America. In the same span in Yellowstone National Park alone, grizzlies have attacked 23 park visitors. The notion that it is a good idea to bring grizzlies back to Idaho, on purpose, is not only ludicrous but also evidence of the U.S. Fish and Wildlife Service's reckless disregard for the safety of the thousands of hunters and outdoors people who enjoy our state's backcountry each year.

Now is the time for Idahoans to oppose this dangerous proposal and for all Idaho hunters to ready themselves to defend their lives against "ursus horribilis."

—Pike Buchanan, Box Canyon, Idaho

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,	)	Case No. 08-007
	)	
Plaintiff,	)	**INFORMATION**
	)	
vs.	)	**16 U.S.C. § 1540 (b)(1)**
	)	**and 50 C.F.R § 17.40**
KILLIAN ELDREDGE,	)	
	)	
Defendant	)	

INSTRUCTION NO. 1

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

INSTRUCTION NO. 2

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government proves guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

INSTRUCTION NO. 3

The defendant is charged with violating Sections 1538 (a)(1) and 1540 (b)(1) of Title 16, United States Code. This Act of Congress is commonly referred to as the Endangered Species Act.

For you to find a defendant guilty of the offense charged in Count One of the Criminal Information, you must be convinced that the Government has proved each of the following beyond a reasonable doubt:

First: That the defendant did knowingly take within the United States a grizzly bear;

Second: That the animal taken is in fact a grizzly bear;

Third: That the defendant took the animal in question unlawfully, that is, without permission from the United States Fish and Wildlife Service; and

Fourth: That the defendant did not act in self-defense or in defense of others.

You are further instructed as to Count One that the grizzly bear is listed by the United States as a threatened species under the Endangered Species Act.

An act such as a "take" charged in Count One of the Criminal Information is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the defendant's words, acts or omission, along with all other evidence, in deciding whether the defendant acted knowingly. You may, but are not required to infer that the defendant acted knowingly if you find that the defendant knew that the animal he took looked like a bear.

You are further instructed that the term "knowingly" does not require the Government to prove that the defendant knew that the animal in question was protected under federal law. Furthermore, you are instructed that the use of the term "knowingly" does not mean that the Government is required to prove that the defendant knew that the act he "knowingly" committed constituted a violation of the law. In other words, the Government is not required to show that the defendant knew his conduct was illegal or unlawful.

The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, capture, or collect. The term "harm," as used in the definition of "take," means an act that actually kills or injures wildlife.

The Endangered Species Act, in relevant part, allows a person to take an endangered species within the United States only when that person has a valid permit to do so issued by the Department of the Interior, United States Fish and Wildlife Service. This permit is commonly referred to as an Endangered Species Act permit. However, there is no provision in the law that authorizes the issuance of permits to take the grizzly bear at issue in this case.

INSTRUCTION NO. 4

The defendant has offered evidence of having acted in self-defense. Use of force is justified when a person reasonably believes that it is necessary for the defense of oneself or another against the immediate use of force. However, a person must use no more force than appears reasonably necessary under the circumstances.

Force likely to cause death or great bodily harm is justified in self-defense only if a person reasonably believes that such force is necessary to prevent death or great bodily harm.

The Government must prove beyond a reasonable doubt that the defendant did not act in reasonable self-defense.

INSTRUCTION NO. 5

Section 17.40 of Title 50, Code of Federal Regulations, provides, in pertinent part, that:

B) Grizzly bears may be taken in self-defense or in defense of others, but such taking shall be reported, within 5 days of occurrence, to the Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (3/03/236-7540 or FTS 776-7540), if occurring in Montana or Wyoming, or to the Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1490, 500 Northeast Multnomah Street, Portland, Oregon 97232 (503-231-6125 or FTS 429-6125), if occurring in Idaho or Washington, and to appropriate State and Indian Reservation Tribal authorities. Grizzly bears or their parts taken in self-defense or in defense of others shall not be possessed, delivered, carried, transported, shipped, exported, received, or sold, except by Federal, State, or Tribal authoritie

Rules of Competition
&
Procedures

RULES OF COMPETITION & PROCEDURES

Rule 1: Administration

Rule 1.1: Purpose of the Competition

Though designed as a competition, the primary purpose of the Idaho High School Mock Trial Competition is to educate students about the law and the legal system. Students, teachers, and coaches are urged to place greater emphasis on the experience of learning rather than winning.

It is important to remember that our judicial system, just as this competition, is run by people and, therefore, subject to individual interpretations. Unexpected obstacles in the course of a trial are the rule, rather than the exception. Being prepared to deal with the unexpected obstacles that will inevitably arise is an important part of being prepared for the competition.

Rule 1.2: Rules

The Idaho Mock Trial Competition is governed by the rules set forth below. These rules are designed to ensure excellence in presentation and fairness in judging all competition trials.

Questions or interpretations of these rules are within the discretion of the **Dispute Resolution Panel**, whose decision is final.

The trial proceedings are governed by the *Idaho Mock Trial Rules of Evidence*. Other more complex rules may not be raised in the trial.

Rule 1.3: Code of Conduct and Rules of Ethics

The rules of competition, as well as proper rules of courthouse and courtroom decorum and security, must be followed. The Law Related Education Program and its representatives possess discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violation, and/or breach of decorum occurring before, during, and/or after the competition, which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge, or the mock trial program.

Just as real attorneys are held to codes of ethical conduct, mock trial participants are also expected to demonstrate ethical behavior. This includes but is not limited to:

a) making false statements to the judge or not correcting false information that has been presented; offering evidence the participant knows to be false;

b) counseling or assisting a witness to testify untruthfully;

c) knowingly disobeying an obligation under the rules of the competition;

d) asserting personal knowledge of facts in issue except when testifying as a witness;

e) stating a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused;

f) seeking to influence a judge by means prohibited by the competition rules;

g) engaging in conduct that disrupts the competition;

h) making a statement that the participant knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge; or

i) in trial, knowingly alluding to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence.

All participants (including Teachers Sponsors and Attorney Coaches) will sign a code of conduct agreement prior to their participation in the competition.

Rule 1.4: Master Scorekeeper/Procedures Official

An attorney, judge, or Idaho Law Foundation staff person will be designated at each regional and the state mock trial competition to be the Master Scorekeeper/Procedures Official. This person will:

~ act as a member of the Dispute Resolution Panel;
~ be available to consult with Presiding Judges on questions of rules upon request;
~ be responsible, in coordination with the Regional Coordinator, for all score keeping computations; and
~ be responsible for monitoring and enforcing all mock trial procedures in accordance with the *Mock Trial Handbook*.

Rule 15: Emergencies

Within reasonable consideration of weather, road conditions, etc., the starting time of any trial will not be delayed for longer than ten minutes. Incomplete teams will have to begin without their other members, or with alternates. At least one attorney and any witness are needed to begin the trial. After ten minutes, teams without a sufficient number of participants to start the trial will forfeit the match.

Rule 2: The Problem

Rule 2.1: Witnesses Bound by Statements

The Witness Statements included in the case materials comprise the sole source of information for testimony. Witnesses may testify to any matter directly stated or reasonably implied in their statements.

Each witness is bound by his/her individual witness statement. These witness statements, or affidavits, should be viewed as signed statements made to the police or attorneys by the witnesses as identified. Witnesses can be impeached if they contradict the material contained in their witness statements.

Witness affidavits are subject to all of the human errors of judgment people may make in similar situations, including distortion and varying perceptions.

A witness is not bound by facts contained in other witness affidavits or the pleadings.

It is virtually impossible to provide witnesses with detailed answers to every conceivable question that lawyers may ask. The witness statements are not intended as a complete life history and, for the most part, information not in the statements will be irrelevant and should be subject to objection. If an attorney's question solicits unknown information, the witness may supply an answer of his/her choice, **so long as it does not contradict other information contained in the statement and does not materially affect the witness' testimony**.

If a witness invents an answer that is likely to affect the outcome of the trial, the opposition may object. The judge will decide whether to allow or exclude the testimony in accordance with the *Idaho Mock Trial Rules of Evidence.* **Judges will be instructed that testimony not reflecting information in the casebook, which bolsters a witness, and is generally immune from impeachment, should be ruled inadmissible**.

Rule 2.2: Fair/Unfair Extrapolations

Fair extrapolations, which are consistent with facts contained in the witness statements and do not materially affect the witness' testimony are permitted. It is important for the witnesses to exercise caution in such extrapolations in order to avoid (a) initiation of a dispute over a rules violation which could be brought to the attention of the judges and (b) impeachment of the witness' credibility by the use of his or her prior written statement which was, presumably, all the witness could recall, under oath, at a time much closer to the events in controversy. Just as in our judicial system, lawyers must deal with the facts that exist.

Attorneys for the opposing team may refer to *Rule 2.2* in a special objection, such as “unfair extrapolation” or “This information is beyond the scope of the problem.”

Possible rulings by a judge include:

a) no extrapolation has occurred;

b) an unfair extrapolation has occurred;

c) the extrapolation was fair; or

d) ruling is taken under advisement.

Rule 2.3: Contradiction of Prior Statement

If an attorney believes that a witness has contradicted a prior statement (or affidavit), that testimony may be impeached during cross-examination of the witness through correct use of the statement.

The witness statements or affidavits may be introduced into evidence during the trial as a prior inconsistent or prior consistent statement pursuant to the applicable rules of evidence.

Rule 2.4: Gender of Witnesses

Unless otherwise stated, all witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender.

Rule 3: Teams

Rule 3.1: Team Eligibility

Any public or private school in Idaho may sponsor up to two teams. Students in grades 9-12 may participate.

Each team in the competition must have its own sponsoring teacher. However, this does not preclude one teacher from training both teams so long as both teachers are present during competitions.

Each school must submit a complete official registration form and pay the entry fee for each team before being considered a competition participant.

Rule 3.2: Team Composition

A team will consist of a maximum of nine and a minimum of six students, a Teacher Sponsor and an Attorney Coach. **For schools that have more than one team, each team must have separate core members.**

There must be two or three attorneys, 3 witnesses, and a Timekeeper. Teams may also optionally have two alternates. Each team will indicate which members of the team will be actively participating in each round by listing student names on their *Daily Sheet*. Only students who are attorneys, witnesses, or Timekeepers will be considered active participants in each round. Alternates will be considered inactive participants and will be treated as spectators for the purposes of mock trial rules and procedures.

Alternates may substitute for other students during a competition in an emergency. The Competition Coordinator or LRE Director must be informed prior to the beginning of the round if an alternate takes the place of an active participant.

Teams competing at semi-finals and finals must compete with the same team members in the same roles as from the regional competition.

Rule 3.3: Team Presentation and Participation

Teams must prepare both a Plaintiff/Prosecution and Defense case and should be ready to present both sides. During each of the competitions, teams will have an opportunity to present both Plaintiff/Prosecution and Defense at least one time. Competition staff will determine which team represents which side in the championship round.

Team members are to evenly divide their speaking duties. Each of the attorneys will have at least two speaking parts.

The attorney who examines a particular witness on direct examination is the only person who may make the objections to the opposing attorney's questions of that witness' cross-examination, and the attorney who cross-examines a witness will be the only one permitted to make objections during the direct examination of that witness.

A team may use its members to play different roles in the Plaintiff/Prosecution and the Defense rounds. For example, an attorney for the Plaintiff/Prosecution may become a witness for the Defense; a Timekeeper may become an attorney; or an alternate may become a witness or attorney. It is **not** permissible to have two entirely different teams - one for Plaintiff/Prosecution and one for Defense.

Rule 3.4: Team Duties

~ Each team must ensure that the LRE Director has received a completed and accurate registration form and appropriate payment for each team registered.

~ Each team must submit a participant list to the LRE Director two weeks before the regional and state competitions.

~ Each team must submit a completed *Daily Sheet* when checking in at both the regional and state competitions for each team registered. For regional competitions each team must also bring six copies of their *Daily Sheet*. At the beginning of each of the three rounds, a team must provide one copy of its *Daily Sheet* to the Judging Panel and one copy to the opposing team. For the state competition each team must also bring four copies of their *Daily Sheet*. At the beginning of each of the two quarter-final rounds, a team must provide one copy of its *Daily Sheet* to the Judging Panel and one copy to the opposing team.

~ Each team must fill out competition-provided nametags for all team members—including alternates and teacher and Attorney Coaches.

~ Each team is required to provide one student who will serve as the official Timekeeper for that team. See *Timekeeping Procedures* for more information concerning Timekeeper duties.

~ Each team is responsible for educating their spectators (including parents and friends) about the rules of the competition, including rules regarding spectator contact during the round.

Rule 4: The Trial

Rule 4.1: Pairings

Competition staff will make every attempt to ensure that the same teams do not meet one another for more than one round, or that teams from the same school do not meet each other during a competition. However, various factors such as uneven numbers of teams or a small number of teams participating may necessitate that some teams meet more than once or meet a team from their school. **Pairing decisions are at the sole discretion of the competition staff and may not be disputed**.

Rule 4.2: Uneven Numbers of Teams at a Competition

In the event there are an uneven number of teams competing in a competition, competition staff have the following alternatives: 1) Recruit a practice team to fill in. The practice team will not have the opportunity to advance to the next level of competition. 2) Give a bye to one randomly-selected team during each round of competition. If a team is given a bye, they will be assigned a score equivalent to an average of all the scores of the teams who competed during the round in which the team is given a bye.

Rule 4.3: Courtroom Setting

The Plaintiff/Prosecution shall be seated at the table closest to the jury box. The Defense team will sit at the table on the opposite side of the room. Where possible, all participating (active) members of the team will sit in front of the bar (the wall) that divides the spectators from the active participants. If there is not adequate space/seating in front of the bar, the first row of the spectator section will be reserved for witnesses. No inactive participants (alternates) may sit with the witnesses during the competition. No team shall rearrange the courtroom without prior permission from the competition staff.

Rule 4.4: Trial Sequence

The following trial sequence will be followed:

1. Plaintiff/Prosecution's Timekeeper calls the court to order.
2. Judges enter and the Presiding Judge asks everyone to be seated.
3. Presiding Judge announces the case, swears in all witnesses, and makes any introductory remarks.
4. Plaintiff/Prosecution's Opening Statement
5. Defense's Opening Statement
6. Plaintiff/Prosecution's Direct Examination
7. Defense's Cross Examination
8. Plaintiff/Prosecution's Redirect Examination (optional)
9. Defense's Recross Examination (optional)
10. Defense's Direct Examination
11. Plaintiff/Prosecution's Cross Examination
12. Defense's Redirect Examination (optional)
13. Plaintiff/Prosecution's Recross Examination (optional)
14. Plaintiff/Prosecution's Closing Argument
15. Defense's Closing Argument
16. Plaintiff/Prosecution's Rebuttal (optional)

Rule 4.5: Witness Participation

All witnesses (three for each side) must take the stand. Neither team may call witnesses from the other side.

Rule 4.6: Time Limits

Each team will be allowed a total of 50 (fifty) minutes for their case. Time in each category may be divided among team attorneys and witnesses as they choose, but overall time limits **must** be observed. Timing will halt during objections and judges' responses to objections. The following time categories are recommended but not mandatory:

1. Opening Statement (5 minutes per side)
2. Direct Examination (5 per witness **or** 15 minutes total)
3. Redirect Examination (optional) (2 minutes per witness or 6 minutes total)
4. Cross Examination (4 minutes per witness **or** 12 minutes total)
5. Recross Examination (optional) (2 minutes per witness or 6 minutes total)
6. Closing Arguments (5 minutes per side)
7. Plaintiff/Prosecution's Rebuttal (optional) (1 minute)

Overtime penalties will be assessed ONLY for each full minute a team exceeds its fifty minute allotment. The Presiding Judge may, in an emergency, grant time extensions in the interest of fairness, however, this will be a rare occurrence and shall not be expected or requested.

Rule 4.7: Supplemental Material/Costuming

No witness costumes or props are allowed. This includes changing clothes between rounds to appear more professional or casual than in a previous round.

Rule 4.8: Trial Communication

For educational purposes and student feedback, at least one Teacher Sponsor, Attorney Coach, or other adult (designated by the school to be responsible for the students) must remain in the seating area in the courtroom throughout the trial. **There must be no spectator contact with student team members, including student Timekeepers during the trial, including during interim recesses when the judges are out of the courtroom**. Teacher Sponsors, Attorney Coaches and other spectators may not talk to, signal, and/or otherwise communicate with or coach the participating students. Communication may occur after closing arguments when the judges have left the courtroom to deliberate.

Rule 4.9: Viewing a Trial

Teachers, coaches, and members of competing teams not yet eliminated from the competition may not observe trials in which they are not participating.

Rule 4.10: Videotaping/Photography

Unless participation is agreed to by both teams in a courtroom, tape recording, videotaping, and still photography are prohibited during a trial except by competition staff and/or the media. Any team has the option to refuse participation in videotaping, tape recording, and/or still photography by opposing teams.

Media representatives authorized by the Idaho Law Foundation will wear identification badges.

The final round of the state competition may be videotaped by competition staff or its media representatives for educational purposes. Teams may take photos of their students in the courtroom before and/or after the trial has occurred.

Rule 4.11: Jury Trial

The case will be tried to a panel of three judges: a Presiding Judge and two judges who represent the Jury. Arguments should be made to all the judges. Teams may address the Presiding Judge as "Your Honor," and the other two judges as "Ladies and Gentlemen of the Jury."

Rule 4.12: Standing During Trial

Unless excused by the judge, attorneys will stand while giving opening statements and closing arguments, while conducting direct and cross examinations and while making or responding to objections.

Rule 4.13: Objections during Opening Statement/Closing Argument

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

If a team believes an objection would have been proper during the opposing team's opening or closing statement, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, "If I had been permitted to object, I would have objected to the opposing team's statement that _____." The Presiding Judge will not rule on this objection.

Judges shall weigh the objection individually. No rebuttal by opposing team will be heard.

Rule 4.14: Argumentative Questions

An attorney shall not ask argumentative questions. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.

Rule 4.15: Lack of Proper Predicate/Foundation

Attorneys shall lay proper foundation prior to moving for the admission of evidence. After a motion has been made, the exhibits may still be objected to on other grounds.

Rule 4.16: Procedure for Introduction of Exhibits

Attorneys may introduce physical exhibits, provided the objects correspond to the description given in the evidence section of the case materials. Exhibits must be introduced into evidence if attorneys wish the court to consider the items themselves as evidence, not just the testimony about the exhibits. At the end of the witness examination, attorneys may ask to move the item into evidence in this manner:

1. Present the item(s) to an attorney for the opposing side prior to trial. If that attorney objects to use of the item, the judge will rule whether it fits the official description.
2. Request permission from the judge when you wish to introduce the item during trial. For example, say: "Your Honor, I ask that this item be marked for identification as Exhibit #XX."
3. Show the item to the witness on the stand. Ask the witness if s/he recognizes the item. If the witness does, ask the witness to explain it or answer questions about it. Make sure you show the item to the witness, don't just point.
4. Request permission from the judge when you wish to admit the item during trial. For example, say: "Your Honor, I ask that Exhibit #XX be admitted into evidence."
5. At this point opposing counsel may make any objections they have.
6. The judge will then rule on whether the item may be admitted into evidence
7. When finished using the item, you may return it to the attorney table or request permission to leave it at the witness stand.

Rule 4.17: Use of Notes

Witnesses are **not** permitted to use notes in testifying during the trial. However, attorneys may utilize witness statements to refresh recollection of witnesses in accordance with the applicable rules of evidence. Additionally, attorneys **may** use notes in the presentation of their material.

Rule 4.18: Exhibits

Exhibits not specifically provided for in the case materials are not allowed. The Idaho Law Foundation will provide a set of exhibits for each courtroom during the competition that will be used by both sides during the trial. No other copies of the exhibits will be allowed in the courtroom during the mock trial competition.

Rule 4.19: Redirect/Recross Examination

Redirect and recross examination will be allowed.

Rule 4.20: Scope of Closing Arguments

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

Rule 4.21: The Debrief

Presiding Judges will announce the ruling on the legal merits of the trial. This decision is to inform students about what would happen in a real court of law **BUT** does not determine advancement in the competition.

The judges will also share positive comments and constructive criticism about the teams' presentations.

Presiding Judges shall limit the debriefing sessions to a total of 10 minutes to be shared among all members of the Judging Panel.

Rule 5: Judging and Team Advancement

Rule 5.1: Finality of Decisions

All decisions of the Judging Panel are FINAL.

Rule 5.2: Composition of Judging Panels

A three-person panel will judge and score each round: a Presiding Judge and two other judges. In most cases, two of the judges will be Idaho judges and/or attorneys while the third will be a community representative. The Presiding Judge will sit at the judge's bench and the other two panel judges will sit in the jury box.

All members of the Judging Panels will receive the *Mock Trial Handbook* prior to the trial and are expected to read the case and rules.

In case of a shortage of judges, competition staff will make every effort to find a replacement. If this is not possible, panels of two judges may be used. If two judges are used, the competition scorekeeper shall average the scores of the two judges present to compute a third *Score Sheet*. If the third *Score Sheet* is tied, the decision of the Presiding Judge will determine the winner of the third ballot.

Rule 5.3: Ballots/Score Sheets

The term *ballot* will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term *Score Sheet* is used in reference to the form on which speaker and team points are recorded.

*Score Sheet*s are to be completed individually by the scoring judges. Scoring judges are not bound by the rulings of any other scoring judge. While the Judging Panel may deliberate collectively on any special awards (i.e., Outstanding Attorney or Witness) the Judging Panel will not deliberate collectively on individual scores.

The team that earns the highest points on an individual judge's *Score Sheet* is the winner of that ballot. The team that receives the majority of the three ballots wins the round.

Rule 5.4: Completion of Score Sheets

Each scoring judge shall record a number of points (1-10) for each individual presentation of the trial. At the end of the trial, each judge shall total the sum of each team's individual points and place this sum in the Column Totals box. **NO TIE IS ALLOWED IN THE COLUMN TOTALS BOXES**.

Rule 5.5: Scoring Deductions

There will be a deduction of up to ten points from a team's total score if students, the Teacher Sponsor, or the Attorney Coach is found in violation of a rule by a Presiding Judge or competition staff.

Rule 5.6: Team Advancement

At each regional competition, all teams participate in three rounds, except in the event of an uneven number of teams (see Rule 4.2). At the state competition, all teams participate in two quarter-final rounds. Four teams will advance to the semi-final round, and two teams will advance to the championship round.

The number of other teams that advance to the state competition from each regional will be based on a proportional representation of the number of teams that compete in each region compared to the numbers of teams competing overall. A total of twelve teams will advance to the state competition.

Team advancement will be based on the following criteria in the order listed:

1. **Win/Loss Record**: In each round the team that wins the round is the team that receives the most ballots. In order to win a round, a team must receive two or three ballots from the scoring judges.
2. **Total Number of Ballots:** In each round, a team can win a ballot by earning a higher score from a scoring judge. In each round, a team can earn from zero to three ballots.
3. **Total Number of Points Accumulated:** In each round, the maximum possible points each team can earn is 360 points, calculated by adding together the points given to the team by each of the three scoring judges.

Rule 5.7: Power Matching

The state competition will employ a power-matching system to determine team advancement. In a power-matching system, a random method of selection will determine opponents in the first round. After the first round of competition, teams go up against other teams with similar records (i.e., in the second round, a 1-0 team will be matched with another 1-0 team and an 0-1 team will be matched with another 0-1 team). The two teams emerging with the strongest record will advance to the final round.

Rule 5.8: No Tied Scores

If, after using the criteria outlined in Rule 5.6, there is still a tied score between teams at the end of three rounds for a regional competition or after the two quarter-final rounds of the state competition, the advancing team(s) will be determined using the following criteria in the order listed:

~ Did the tied teams meet each other in competition? If so, the team that won the ballot in that round will be declared the winner.

~ If tied teams did not meet each other during the competition, did they meet a common opponent? For example, let's call the tied teams Team A and Team B. If both teams met Teams C and Team A received more ballots than Team C, while Team B received fewer ballots than Team C, then Team A will be declared the winner over Team B.

~ If tied teams did not meet a common opponent or if they both won or both lost to the common opponent, the winning team is the one that receives the highest combined score in the *Score Sheet* category, **Overall Team Courtroom Decorum**. This combined score will be calculated by adding the **Overall Team Courtroom Decorum** scores from all three judges in all three rounds at a regional competition or all three judges in both rounds at the quarter-final of the state competition.

~ If the score is still tied after calculating the **Overall Team Courtroom Decorum** scores, then the winning team is the one that receives the highest combined score in the *Score Sheet* category, **Opening Statements**. This combined score will be calculated by adding the **Opening Statements** scores from all three judges in all three rounds at a regional competition or all three judges at both rounds at the quarter-final of the state competition.

~ If the score is still tied after calculating the **Overall Opening Statements** scores, then the winning team is the one that receives the highest combined score in the *Score Sheet* category, **Closing Arguments**. This combined score will be calculated by adding the **Closing Arguments** scores from all three judges in all three rounds at a regional competition or all three judges at both rounds at the quarter-final of the state competition.

Rule 5.9: Outstanding Witness and Attorney

Judging Panels may recognize outstanding individual presentations by selecting one outstanding witness and/or one outstanding attorney per round. The decision must be representative of the majority of the panel members and recorded on the forms provided. The judges should not announce these decisions, as students will be recognized at the end of the competition during the awards ceremony.

Rule 6: Dispute Resolution

Rule 6.1: Dispute Resolution Panel

The dispute resolution panel will be made up of the Competition Coordinator, the Master Scorekeeper and a Presiding Judge or other Competition Staff. The dispute resolution panel shall be the appeals board for any disputes.

Rule 6.2: Reporting a Rules Violation Inside the Bar

If, during the trial, any team has reason to believe that a violation of the *Rules of Competition & Procedures* has occurred, the alleged violation shall be presented immediately to the Presiding Judge through one of the team attorneys by objection. This will be presented in accordance with the *Idaho Mock Trial Rules of Evidence* procedure for objections. The Presiding Judge may rule on the matter or take the matter under advisement, and the trial shall continue. The decision of the Presiding Judge is final. While judges will not announce it, they may at their discretion deduct up to ten points from their *Score Sheets* for a rules violation.

Any alleged violation which is known, or through the exercise of reasonable diligence should have been discovered during the trial and which is not brought to the attention of the Presiding Judge, is promptly waived.

Rule 6.3: Reporting a Rules Violation Outside the Bar

Disputes which occur outside the bar during a trial round may be brought by Teacher Sponsors or Attorney Coaches exclusively. Such disputes must be made immediately following a round to a Competition Coordinator or the dispute will not be considered.

The Competition Coordinator will ask the complaining party to complete a *Dispute Resolution Form*. The form must be completed and returned back to the Competition Coordinator.

After the completed form is received, the Competition Coordinator will:

(a) decide whether or not the dispute needs to be referred to the Dispute Resolution Panel;

(b) notify all pertinent parties;

(c) allow time for a response, if appropriate;

(d) evaluate the dispute; and

(e) rule on the complaint.

At their discretion, the Competition Coordinator and/or Dispute Resolution Panel may notify the Judging Panel of the affected courtroom of the ruling on the charge or may assess an appropriate point deduction for the violation.

ALL DISPUTE RESOLUTION DECISIONS OF THE COMPETITION COORDINATOR AND/OR THE DISPUTE RESOLUTION PANEL ARE FINAL AND NOT SUBJECT TO FURTHER DISPUTE.

Timekeeping Procedures

TIMEKEEPING PROCEDURES

Timekeeper Responsibilities

Each team is responsible for training at least one team member to serve as the team's official Timekeeper. The Timekeeper from the Plaintiff/Prosecution side and a Timekeeper from the Defense side will work together as a neutral timekeeping team to ensure that accurate and fair timekeeping has been kept for both teams.

Teams and their official Timekeeper(s) are responsible for being proficient in the *Timekeeping Procedures*. The team's Timekeeper must be familiar with the trial sequence chart and have practiced completing the *Timekeeping Sheet* before the competition begins. The person serving as the Timekeeper needs to be noted on the team's *Daily Sheet*.

The Timekeeper for the Prosecution will also call the court to order at the beginning of the trial, and after any breaks. The Prosecution Timekeeper will stand near the back door in the inside of the courtroom when the judges are not present but should not be in the hallway that leads to the judges' chambers/deliberation area. The judges will let the Prosecution Timekeeper know when they are ready to enter/re-enter the courtroom.

The Prosecution Timekeeper will say:

- When the judges enter the courtroom for the first time:" All rise. United States District Court for the District of Idaho is now is session. The Honorable (Judge's Name) presiding."
- All subsequent times when the judges enter the courtroom, the Prosecution Timekeeper will simply say: "All rise."
- When the judges leave the courtroom the timekeeper will say: "All rise." And after the judges have exited, will say, "Court is now in recess."

Timekeeping Tools

Teams are responsible for ensuring the following tools are with them at the competition.

Stopwatches

Each team must bring two stopwatches with them to the competition. Regardless of what side your team is presenting, both Timekeepers must keep time for both sides. One stopwatch will be for keeping time for the Plaintiff/ Prosecution and one for keeping time for the Defense.

NOTE: The Idaho Law Foundation's Law Related Education Program can provide stopwatches for teams to borrow during the mock trial season. Contact Carey Shoufler at (208) 334-4500 or cshoufler@isb.idaho.gov for more information.

Time Remaining Cards

Each Timekeeper needs to use the *Time Remaining Cards* as indicated on the *Time Card Use Table* shown on page 54. Prior to the competition, the team is required to cut out the *Time Remaining Cards* included on pages 56 to 61. It's recommended that you print the cards on cardstock as it makes it easier to hold them up.

All teams must use the *Time Remaining Cards* provided in this book and no other. Time intervals may not be altered in any way.

Timekeeping Sheet

Both Timekeepers are to sign their own *Timekeeping Sheet* and return both *Timekeeping Sheet*s to the Presiding Judge at the end of the round.

Timekeeping Procedures

Before the Trial

1. Include the name of the official Timekeeper on the team's *Daily Sheet*.
2. Gather timekeeping materials. Materials include:
   - ✓ 2 stopwatches
   - ✓ 1 *Timekeeping Sheet* per round
   - ✓ 1 *Time Card Use Table*
   - ✓ 1 set of *Time Cards*
   - ✓ 2 pencils
3. Enter the courtroom and sit at the end of the jury box closest to the audience (or other appropriate place if no jury box is available).
4. Enter the round number and team names in the space provided on the top portion of the *Timekeeping Sheet*.
5. Arrange your stopwatches, time cards, and *Time Card Use Table*.
6. The Plaintiff/Prosecution Timekeeper will call the court to as both Timekeepers rise when the Presiding Judge and Jury enter the courtroom. Both Timekeepers will be seated when the judge grants permission for all to be seated.

During the Trial

1. Use one stopwatch for each side; Plaintiff/Prosecution on your left and Defense on your right.
2. **DO NOT** reset the stopwatch to zero at any time.
3. Start timing only when the opening/closing argument or questioning actually begins. Do not start when an attorney calls the next witness or when a witness is sworn in.
4. Stop timing during objections, responses to objections, and questioning by the Presiding Judge.
5. Display time cards to the attorneys and witnesses at the intervals set out in *Time Card Use Table*. Display the STOP card to the Presiding Judge, the scoring judges, and the teams.
6. At the end of each segment of the trial, each Timekeeper should record the cumulative time used on the *Timekeeping Sheet*. For example, if the opening statement ends after 5 minutes and 45 seconds, write 5:00:45 in the Opening Statement box of the *Timekeeping Sheet*.
7. At the end of each segment of the trial, check to make sure both Timekeepers' stopwatches for that segment are within 15 seconds of each other. If the

stopwatches show a discrepancy of 15 seconds or more, follow the procedures outlined in the *Timekeeping Discrepancies* section below.

8. At the end of the trial, let the judge know whether or not there has been a timing violation by either side. Remember that overtime penalties will be assessed ONLY for each full minute a team exceeds its fifty minute allotment.

After the Trial

1. Add up the time used for each side and sign the *Timekeeping Sheet*.
2. Give the *Timekeeping Sheet* to the Presiding Judge.
3. Politely remind the judges that both Timekeepers will be timing the debrief and that a maximum of 10 minutes is allotted to that portion of the round.
4. Reset your stopwatch to zero to start time for the debriefing.

After the Recess

1. Start timing the debrief after the verdict has been announced.
2. Begin signaling the judges when 7 minutes have passed that they have 3 minutes left to complete their debrief. Signal the judges following the *Time Card Use Table* from the 3 minute mark.

Timekeeping Discrepancies

At the end of each segment of the trial (i.e., at the end of both openings, at the end of each direct examination, at the end of each cross examination, and at the end of both closing arguments), if there is a timing discrepancy of 15 seconds or more between the Plaintiff/Prosecution and Defense teams' Timekeepers, the following rules will apply.

~ Any timing discrepancies between Timekeepers of less than 15 seconds **WILL NOT** be considered a timing discrepancy.

~ If a timing discrepancy of 15 seconds or more has occurred, Timekeepers are to notify the Presiding Judge that a timing discrepancy has occurred.

~ Timekeepers may raise timing discrepancies **ONLY** at the end of each phase of the trial presentation as outlined above.

~ The Presiding Judge will rule on any timing discrepancy before the trial continues. Timekeepers will synchronize stop watches to match the Presiding Judge's ruling. For example if Plaintiff/Prosecution stop watch indicates 2 minutes left for Plaintiff/Prosecution's case and the Defense stop watch indicates time is expired, the Presiding Judge might decide to split the difference in the timing variation and give Plaintiff/Prosecution 1 minute to conclude. Defense would adjust timing to allow for the 1 minute timing decision.

~ No time disputes will be entertained after the trial concludes.

~ The decisions of the Presiding Judge regarding the resolution of timing disputes are final.

Time Card Use Table

The Plaintiff/Prosecution and the Defense sides are each allotted 50 minutes to try their side of the case. The time card table listed below provides timing stipulations for each side.

When the stopwatch says:	Hold up the time card that says:
5:00	**45:00**
10:00	**40:00**
15:00	**35:00**
20:00	**30:00**
25:00	**25:00**
30:00	**20:00**
35:00	**15:00**
40:00	**10:00**
45:00	**5:00**
46:00	**4:00**
47:00	**3:00**
48:00	**2:00**
49:00	**1:00**
49:20	**:40**
49:40	**:20**
50:00	**STOP**

Timekeeping Sheet

Round #:_____ Prosecution:_____ Defense:_____

	Prosecution Time	Defense Time
Opening Statements		
Prosecution Witnesses Direct and Cross Examination (list cumulative ending times only)		
First Witness		
Second Witness		
Third Witness		
Defense Witnesses Direct and Cross Examination (list cumulative ending times only)		
First Witness		
Second Witness		
Third Witness		
Closing Arguments		
Total Time Used		
Whole Minutes over 50 Minutes		

Timekeeper's Name (Please Print):_____

Timekeeper's Signature:_____

Time Card Template

Time intervals **MAY NOT** be modified.

45:00

40:00

35:00

30:00

25:00

20:00

15:00

10:00

5:00

4:00

3:00

2:00

1:00

0:40

0:20

0:10

STOP

Mock Trial Forms

Mock Trial Forms

On the following pages, you will find samples of the form described below. The forms are included in the order they are described.

Participation Form

Your team must fill out the *Participation Form* and return it to Carey Shoufler at cshoufler@isb.idaho.gov on or before **Friday, February 6, 2009**. This form is used to create the certificates given to all mock trial participants, so it's important that each team member writes his/her name legibly. If the form is not filled out legibly, then mock trial competition staff is left with no option but to guess at the spelling of illegibly printed names and the team member or members with illegibly spelled names will be stuck with certificate(s) without the name(s) spelled correctly.

Please note that you must fill out a *Participation Form* for each team registered for the competition. That means that if your school has two teams participating in the competition you will fill out two separate forms and return both of them to the LRE Director.

Code of Ethical Conduct Form

Each team must fill out a *Code of Conduct Form* and bring it with them on the day of their regional competition. The form must be signed by the Teacher Sponsor, the Attorney Coach, and all members of a team including alternates.

While you only need to bring the signed form with you to your regional competition, for teams advancing from their regional to the state competition, the form will be kept on file with competition staff. You are expected to follow the same conduct guidelines whether participating in a regional or the state competition.

Please note that you must fill out a *Code of Ethical Conduct Form* for each team registered for the competition. That means that if your school has two teams participating in the competition you will fill out two separate forms and bring both signed forms with you to your regional competition.

Daily Sheet

Each team must fill out a *Daily Sheet* and bring the specified number of copies with them to both regional and state competitions. As indicated in **Rule 3.2** of the *Rules of Competition & Procedures*, teams advancing to state must compete with the same team members playing the same roles as in their regional competition.

Please note that you must fill out a *Daily Sheet* for each team registered for the competition. That means that if your school has two teams participating in the competition you will fill out two separate forms and bring both with you to your regional, and if applicable, state competitions.

Score Sheet

The *Score Sheet* included in this section replicates the form used by the three scoring judges for each round. Each piece of a trial is rated from 1 to 10, with 1 being the lowest and 10 the highest. The maximum possible score a team can earn is 120.

Note on the sample *Score Sheet* that the Green team would have more points in this round without a deduction for a rules violation or a timing infraction. This should help remind you that it's important to know the rules and keep track of your time in every round. A deduction of points can really make a difference in your overall competition standings. Without the deduction, the judge, Jane Smith, would have given the Green team the win, a ballot, and a higher number of points than the Red team.

Scoring Rubric

In addition the *Score Sheet*, each judge receives a copy of the *Scoring Rubric*. This rubric serves as a guideline for judges as they score each piece of a trial. While competition staff strives to be as fair and impartial as possible, you must remember that each judge may see things differently. One judge's Excellent may be another judge's Outstanding. One judge's Excellent may also be another judge's Good.

It's impossible to remove 100% of the subjectivity from this process. This is precisely the reason the scoring system counts the criteria of wins and ballots above points.

Dispute Resolution Form

Pursuant to **Rule 6.3** of the *Rules of Competition & Procedures*, if one team believes a team they face in a round has violated a competition rule, the team's Teacher Sponsor or Attorney Coach must fill out a *Dispute Resolution Form* in order for the dispute to be considered. Please take time to carefully read and follow **Rule 6.3**. All pieces of this rule must be followed or competition staff **will not** consider the dispute.

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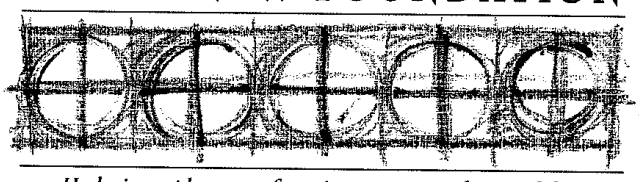

Helping the profession serve the public

2009 Idaho High School Mock Trial
Participant Form

Please fill out the form below and e-mail or fax to Carey Shoufler (cshoufler@isb.idaho.gov) on or before **Friday, February 6, 2009**.

Please note: if your school has more than one team, you need to fill out a separate form for each team.

Name of School: _____

PLEASE TYPE OR PRINT LEGIBLY.

Participant	Name to Appear on Certificate
Student #1	
Student #2	
Student #3	
Student #4	
Student #5	
Student #6	
Student #7	
Student #8	
Student #9	
Teacher Sponsor	
Attorney Coach	

2009 Idaho Mock Trial
Code of Ethical Conduct Form

As a member of the_____(school name) mock trial team, I pledge the following:

For students:

- I will respect my fellow team members, opponents, judges, evaluators, attorney coaches, teacher coaches and mock trial personnel;
- I will avoid willfully violating any of the rules (in spirit or in practice) that govern the Mock Trial Competition.

For teachers and attorney coaches:

- I will focus on the educational value of Mock Trial Competition;
- I have instructed our students about proper courtroom procedure and decorum;
- I have taught our team the rules of the competition and have strongly encouraged them to abide by the Rules of Competition and Procedure;
- I will zealously encourage fair play;
- I will serve as a positive role model for our students by displaying the highest level of professionalism and ethical behavior during the competition.

Please sign below:

_____ Teacher Sponsor

_____ Attorney Coach

Student team members:

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

DAILY SHEET: 2009 IDAHO HIGH SCHOOL MOCK TRIAL COMPETITION

Please fill out this form for each team from your school. If your school has two teams entered in the competition, you will need to fill out two *Daily Sheets*. Once you have completed the *Daily Sheet*, please make the following copies:

~ **For the Regional Competition:** 7 copies (1 for competition staff and 2 for each of your three trials)

~ **For the State Competition:** 5 copies (1 for competition staff and 2 for each of your two trials)

NOTE: If participating in the State Competition, the *Daily Sheet* you submit **must** be identical to the *Daily Sheet* you submitted for your Regional Competition. Your team is required to have the same team members playing the same roles for both Regional and State Competitions.

Team Color: _____
(To be filled in by competition staff on the day of the competition)

PLEASE TYPE OR PRINT LEGIBLY.

Teacher Sponsor: _____

Attorney Coach: _____

PROSECUTION		DEFENSE	
Attorney #1:	_____	Attorney #1:	_____
Attorney #2:	_____	Attorney #2:	_____
Attorney #3:	_____	Attorney #3:	_____
Marley Reynolds:	_____	Killian Eldredge:	_____
Dallas Keating:	_____	Cody Eldredge:	_____
River Waters:	_____	Pike Buchanan:	_____
Timekeeper:	_____	Timekeeper:	_____
Alternate #1:	_____	Alternate #1:	_____
Alternate #2:	_____	Alternate #2:	_____

NOTE: Attorney #3 and the two Alternates are optional team roles. In order to compete, a team must fill the six mandatory roles, but does not have to fill the three optional roles.

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IDAHO HIGH SCHOOL MOCK TRIAL COMPETITION
SCORE SHEET

P = Petitioner/Plaintiff: Yellow (Team Color)

D= Defense/Respondent: Blue (Team Color)

COURT ROOM: 502

ROUND: (CIRCLE ONE) 1 2 3

Using a scale of 1 to 10, rate the Plaintiff and Defense in the Categories below.
Do NOT use fractional points nor award zero points.

Not Effective	Fair	Good	Excellent	Outstanding
1-2	3-4	5-6	7-8	9-10

SCORE SHEET		PLAINTIFF		DEFENSE
OPENING STATEMENTS		8		9
Prosecution/ Plaintiff First Witness:	Direct Examination	9		
			Cross-Examination	8
	Witness Presentation	9		
Prosecution/ Plaintiff Second Witness:	Direct Examination	9		
			Cross-Examination	10
	Witness Presentation	10		
Prosecution/ Plaintiff Third Witness:	Direct Examination	9		
			Cross-Examination	9
	Witness Presentation	10		
Defense/Defendant First Witness			Direct Examination	8
	Cross Examination	8		
			Witness Presentation	9
Defense/Defendant Second Witness			Direct Examination	8
	Cross Examination	7		
			Witness Presentation	10
Defense/Defendant Third Witness			Direct Examination	8
	Cross Examination	8		
			Witness Presentation	10
CLOSING ARGUMENTS		9		7
OVERALL TEAM COURTROOM DECORUM		7		8
SUB-TOTAL: add scores in each column		103		104
DEDUCTION FOR RULES/TIMING VIOLATIONS		0		2
TOTAL SCORE: Sub-total less deductions		103		102

NO TIED SCORES ARE ALLOWED.
Please deliver scoresheet to competition staff before debriefing!

DO NOT SEPARATE COPIES!!!
WHITE - Coordinator Copy
YELLOW - Defense Copy
PINK - Prosecution/Plaintiff Copy

3/12/09
Date

Jane Smith
Judge's Name (Printed)

SCORING RUBRIC FOR MOCK TRIAL

Teams will be rated on a scale of 1-10. The evaluator is scoring STUDENT PERFORMANCE in each category. The evaluator is NOT scoring the legal merits of the case.

On a scale of 1-10 (with 10 being the highest), rate the performance of the two teams in the categories on the score sheet. Each category is to be evaluated separately. DO NOT GIVE FRACTIONAL POINTS.

POINT	PERFORMANCE	CRITERIA: Evaluating Student Performance
1-2	Not Effective	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, ineffective in communication.
3-4	Fair	Minimally informed and prepared. Performance is passable, but lacks depth in terms of knowledge of task and materials. Communication lacks clarity and conviction.
5-6	Good	Good, solid, but less than spectacular performance. Can perform outside the script but with less confidence than when using script. Logic and organization are adequate. Grasps major aspects of the case, but does not convey mastery of the case. Communications are clear and understandable, but could be stronger in fluency and persuasiveness.
7-8	Excellent	Fluent, persuasive, clear, and understandable. Organizes materials and thoughts well, and exhibits mastery of the case and materials.
9-10	Outstanding	Superior in qualities listed for 7-8 point performance. Thinks well on feet, is logical, keeps poise under duress. Can sort out essential from nonessential facts and use time effectively to accomplish major objectives. Demonstrates the unique ability to utilize all resources to emphasize vital points of the trial.

DISPUTE RESOLUTION FORM: OUTSIDE THE BAR (RULE 6.3)

Top part to be filled out by person filing the dispute and returned to the Competition Coordinator.

Date: _____ Location: _____

Name: _____ School: _____

Opposing Team Color: _____

Briefly explain the reason why you are filing the dispute.

_____

_____

_____

_____

Information below to be filled out by Competition Coordinator.

Name: _____ Date: _____

Check all that apply.

- ☐ Spoke with person filing the dispute.
- ☐ Spoke with opposing team.
- ☐ Settled dispute.
- ☐ Referred dispute to Dispute Resolution Panel.

Dispute Resolution Panel Members

_____ _____

_____

Briefly explain the resolution to the dispute.

_____

_____

_____

_____

Signature of Competition Coordinator: _____

Idaho Mock Trial
Rules of Evidence

IDAHO MOCK TRIAL RULES OF EVIDENCE

Article I: General Provisions

Rule 101: Scope

These rules govern proceedings in the Idaho 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.

Rule 105: Limited Admissibility

When evidence which is admissible as to one party or for one purpose, but is not admissible as to the other party or for another purpose is admitted, the judge, upon request, shall restrict the evidence to its proper scope and instruct the Jury accordingly.

Rule 106: Remainder of or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Article II: Judicial Notice

Rule 201: Judicial Notice of Adjudicative Facts

1. **Scope of rule:** This rule governs only judicial notice of adjudicative facts.
2. **Kinds of facts:** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
3. **When discretionary:** A court may take judicial notice, whether requested or not.
4. **When mandatory:** A court shall take judicial notice if requested by a party and supplied with the necessary information.
5. **Opportunity to be heard:** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
6. **Time of taking notice:** Judicial notice may be taken at any stage of the proceeding.
7. **Instructing Jury:** In a civil action or proceeding, the court shall instruct the Jury to accept as conclusive any fact judicially noticed. In a criminal case,

the court shall instruct the Jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Article III: Presumptions in Civil Actions and Proceedings (not applicable in criminal cases)

Rule 301: Presumptions in General in Civil Actions and Proceedings

In all civil actions and proceedings . . . a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non persuasion, which remains throughout the trial upon the party on whom it was originally cast.

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 by . . . these rules. Evidence which is not relevant is not admissible.

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

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

Rule 404: Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

Evidence of a person's character or character trait, is not admissible to prove action regarding a particular occasion, except:

1. **Character of accused:** Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
2. **Character of victim:** Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;
3. **Character of witness:** Evidence of the character of a witness as provided in Rules 607, 608 and 609.
4. **Other crimes, wrongs, or acts:** Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes,

such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405: Methods of Proving Character

1. **Reputation or opinion:** In all cases where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross examination, questions may be asked regarding relevant, specific conduct.
2. **Specific instances of conduct:** In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Rule 406: Habit; Routine Practice

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

Rule 407: Subsequent Remedial Measures

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

Rule 408: Compromise and Offers to Compromise (civil case rule)

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409: Payment of Medical and Similar Expenses (civil case rule)

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

Rule 410: Inadmissibility of Pleas, Plea Discussions, and Related Statements

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

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

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

Rule 411: Liability Insurance (civil case only)

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

Article V: Privileges

Rule 501: General Rule

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

1. communications between husband and wife;
2. communications between attorney and client;
3. communications among grand jurors;
4. secrets of state; and
5. communications between psychiatrist and patient.

Article VI: Witnesses

Rule 601: General Rule of Competency

Every person is competent to be a witness.

Rule 602: Lack of Personal Knowledge

A witness may 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.

Rule 603: Oath or Affirmation

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation, administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

Rule 604: Interpreters

An interpreter is subject to the provisions of these rules relating to the qualification as an expert and the administration of an oath or affirmation to make a true translation.

Rule 607: Who May Impeach

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

Rule 608: Evidence of Character and Conduct of Witness

1. **Opinion and reputation evidence of character:** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.
2. **Specific instances of conduct:** Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross examined has testified.

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

Rule 609: Impeachment by Evidence of Conviction of Crime (This rule applies only to witnesses with prior convictions.)

1. **General Rule:** For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted if elicited from the witness or established by public

record during cross examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

2. **Time Limit:** Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

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

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

5. **Pendency of appeal:** The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Rule 610: Religious Beliefs or Opinions

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

Rule 611: Mode and Order of Interrogation and Presentation

1. **Control by Court:** The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to (1) make the questioning and presentation effective for ascertaining the truth, (2) to avoid needless use of time, and (3) protect witnesses from harassment or undue embarrassment.

2. **Scope of cross examination:** The scope of cross examination shall not be limited to the scope of the direct examination, but may inquire into any

relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.

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

4. **Redirect/Recross Examination:** 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 examination, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

Rule 612: Writing Used to Refresh Memory

If a witness uses a writing to refresh memory for the purpose of testifying, either

1. while testifying, or

2. before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness.

Rule 613: Prior Statements of Witnesses

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

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.

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.

Rule 704: Opinion on Ultimate Issue

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

Rule 705: Disclosure of Facts or Data Underlying Expert Opinion

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

Article VIII: Hearsay

Rule 801: Definitions

The following definitions apply under this article:

1. **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.
2. **Declarant:** A declarant is a person who makes a statement.
3. **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.
4. **Statements which are not hearsay:** A statement is not hearsay if:
    a. Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or
    b. Admission by a party opponent. The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the

existence of the relationship, or (E) a statement by a co conspirator of a party during the course in furtherance of the conspiracy.

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 statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
2. Excited utterance statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
3. Then existing mental, emotional, or physical conditions statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
4. Statements for purposes of medical diagnosis or treatment made for the purpose of medical diagnosis or treatment.
5. Recorded Recollection memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.
6. Records of regularly conducted activity These records include any memo, record, report, or other compilation of data in any form, which meets the following requirements:
   a. It must be kept in the ordinary course of business or as part of the ordinary conduct of an organization or enterprise;
   b. It must be part of the ordinary business of that organization, business, or enterprise to compile the data or information;
   c. The information must be made for the purpose of recording the occurrence of an event, act, condition, opinion, or diagnosis that takes place in the ordinary course of the business or enterprise;
   d. The entry in the record or the compiling of the data must be made at or near the time when the event took place;
   e. The recording of the event must be made by someone who has personal knowledge of it. In order for a document or other form of data to be admissible under this rule, a foundation must be laid as to all of the

foregoing requirements by the custodian of the records or other witness found by the Court to be qualified.

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

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

9. Judgment of previous conviction Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

Rule 804: Hearsay Exceptions; Declarant Unavailable

1. **Definition of unavailability:** Unavailability of a witness includes situations in which the declarant (1) is exempted by a ruling of the court of the ground of privilege from testifying concerning the subject matter of the declarant's statement; or (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or (3) testifies to a lack of memory of the subject matter of the declarant's statement; or (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivisions (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means. A declarant is not unavailable as a witness if exemption, refusal, claim or lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

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

    a. Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

b. Statement under belief of impending death. In a prosecution of a homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the impending death.

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

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

e. Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party is a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant. For the purposes of the mock trial competition, required notice will be deemed to have been given. The failure to give notice as required by these rules will not be recognized as an appropriate objection.

Rule 805: Hearsay within Hearsay

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

Rule 806: Attacking and Supporting Credibility of Declarant

When a hearsay statement has been admitted, the credibility of the declarant may be attacked and supported by any evidence that would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross examination.

ARTICLE X: Contents of Writing, Recordings, and Photographs

Rule 1002. Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required. . . . Copies of any case materials are considered as originals.

ARTICLE XI: Miscellaneous Rules

Rule 1103: Title

These rules may be known and cited as the *Idaho Mock Trial Rules of Evidence*.