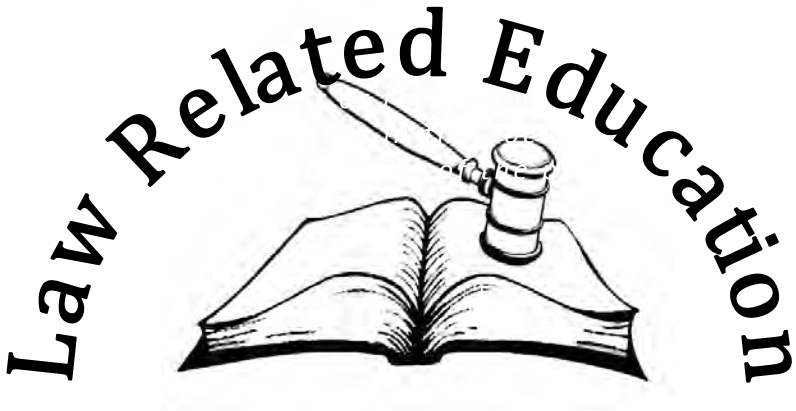


2010 Idaho High School Mock Trial Competition

Mock Trial Handbook

Case Materials

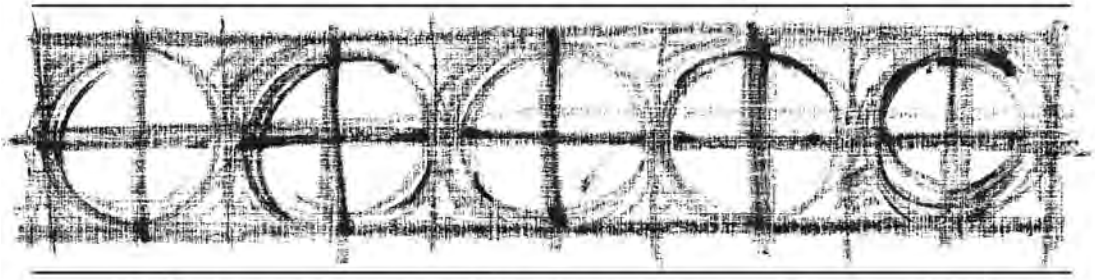
Rules of Competition & Procedures

Timekeeping Procedures

Mock Trial Forms

Idaho Mock Trial Rules of Evidence

IDAHO LAW FOUNDATION



Helping the profession serve the public

October 2009

Dear 2010 Mock Trial Participants,

Welcome to the *2010 Idaho High School Mock Trial* season! We are excited that you have decided to participate in this wonderful program.

The *2010 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 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 important that you understand the information outlined in the section called *Timekeeping Procedures*.

This year we are excited to give mock trial teams the opportunity to try a criminal case based on the Haywood trial. We are proud to be able to introduce a whole new generation of Idahoans to what has been called one of the most important events in Idaho's history and perhaps one of the most famous criminal trials in U.S. history. These 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 for all their hard work and dedication to this project.

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 thank all these volunteers for their time.

We are happy to have you as part of the 2010 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 2010 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.

What are the important dates to remember?

Mark these dates on your calendar:

- **Monday, October 26, 2009:** 2009 Mock Trial Materials Released
- **Wednesday, December 15, 2009:** Early Registration Deadline
- **Friday, January 29, 2010:** Regular Registration Deadline
- **Saturday, February 13, 2010:** Regional Competitions in Pocatello and Boise
- **Saturday, February 20, 2010:** Regional Competition in Coeur d' Alene
- **Saturday, March 6, 2010:** Regional Competition in Caldwell
- **Thursday and Friday, March 25 and 26, 2010:** State Competition in Boise

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;

- 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 are some important points to remember?

This year, there will be no changes to the *Rules of Competiton & Procedures*. However, based on some feedback received in last year's mock trial evaluation as well as the historical nature of this year's case, there are some important points that need to be emphasized.

- **No Costumes:** According to Rule 4.7, witnesses are not allowed to wear costumes or have any costume elements in their dress. Any teams who violate this rule will have points deducted from their scores.
- **Accents and Dialects:** There is no rule indicating whether or not a witness may use an accent or dialect as part of her/his presentation. That being said, mock trial staff does not encourage teams to use voice acting just for the sake of using voice acting. There are some judges who may deduct points if an accent or dialect detracts rather than adds to a presentation.
- **Courtroom Attire:** The Idaho mock trial program does not mandate a specific dress code. However, proper courtroom attire is part of courtroom decorum. Blue jeans are never proper courtroom attire, whether a team member is playing a role as an attorney or a witness or serving as a time keeper.
- **No Extraneous Case Research:** Given that this case is based on an actual event, it may be tempting to start digging into the history. While knowing this piece of Idaho history is important, mock trial staff advises against using history to help with case preparation. First of all, there are places the mock trial committee had to deviate from the historical account to make sure they created a good mock trial case. Secondly, judges will be informed to watch for instances when teams try to bring in historical references that aren't included in the case materials. Remember you have all you need to try your case in the materials you are given. Teams who deviate from this rule, especially with this case, will have points deducted from their scores during the competition.
- **Exhibits:** 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. Teams are not to enlarge or anyway modify the exhibits included with the case materials.

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Case Materials

THE STATE OF IDAHO V. B.B. HAYWOOD

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO	)	Case No. CR
	)	
Plaintiff	)	**INFORMATION**
	)	
vs.	)	**I.C. § 18-1701**
	)	**I.C. § 18-4004**
B.B. HAYWOOD	)	
	)	
Defendant	)	

COUNT ONE

Conspiracy to Commit Murder
(I.C. §§ 18-1701 and 18-4004)

On various dates, including December 1905, in Canyon County, Idaho, and elsewhere, the defendant, B.B. Haywood, and others both known and unknown did knowingly and intentionally combine, conspire, confederate and agree with other persons both known and unknown to the Prosecuting Attorney to commit murder upon Frank Stuenenberg. In furtherance of this conspiracy, the defendant did elicit A.J. Horsley, a.k.a. Harlen Orchard, to murder Frank Stuenenberg, the defendant did further provide direction and compensation to Orchard to assist in the murder, all in violation of Idaho Code Sections 18-1701 and 18-4004.

DATED this 13th day of February, 1906.

Owen M. Van Duyn
Prosecuting Attorney

STIPULATED FACTS

1. The industrial revolution in the United States brought with it great wealth and many job opportunities. However, with the growth and the profit came conflict between social and economic classes. This conflict reared its ugly head in Chicago in 1886 in what became known as the "Haymarket Riot."

2. During the Haymarket Riot, police officers were dispersing a crowd of union members when someone threw a bomb at them. Gun fire erupted from both the police and union members and both police officers and union members were killed. There was debate as to whether a union member or someone opposed to the union threw the bomb to incite the gun fire. Regardless of the source of the bomb, the Haymarket Riot became a catalyst for labor around the United States to organize more unions.

3. At the time, laborers worked long hours, often over ten hours a day, six or seven days a week, for little pay. One such group of laborers was miners, whose profession was known as one of the most dangerous. In an attempt to establish rights and protections, miners were one of the first groups to form labor unions.

4. Miners formed the Western Federation of Miners (WFM), a collection of local unions from the United States and British Columbia, with its main office in Denver, Colorado. By the 1898 WFM convention in Salt Lake City, the WFM was one of only three industrial unions in the U.S. As of 1907, the WFM had over 27,000 members and over 100 offices, making it the largest and one of the most powerful unions in the United States.

5. On January 4, 1897, Frank Steunenberg was sworn in as Idaho's fourth governor.

6. One of the first major labor struggles between the WFM and mine owners in Idaho was fought in the Coeur d' Alene area beginning in 1898. After several strikes and exchanges of gunfire over a period of months, the violence culminated with the destruction of the Bunker Hill Mine on April 29, 1899, by a group of renegade mine workers. The destruction was caused by three separate explosions that hurled debris in the air and killed two people.

7. The newly elected Governor Steunenberg declared the area to be under martial law, against the strong opposition of the WFM. At Steunenberg's request, federal military forces were brought in, the writ of habeas corpus (the writ of habeas corpus is a legal action through which a person can seek release from unlawful detention) was suspended, and miners even loosely associated with the WFM were put in cages. Some of the miners were eventually deported from the area by train.

8. After only that one term, Governor Steunenberg left office on January 10, 1901.

9. Idaho was not the only state dealing with mining violence during this time period. In 1903 and 1904 violent clashes between miners and mine owners occurred in the Cripple Creek area in Colorado, including at the Vindicator Mine and the Independence Depot. In 1903, over 3,500 workers went on strike in the various mines in the Cripple Creek area. During the strike, there was significant violence between miners and mine owners or their agents. Renegade miners burned several buildings and attempted to wreck a train. Colorado Governor Peabody declared the county in a state of insurrection and the military was brought in.

10. To combat the violence, the Mine Owners Association (MOA)—a group of mine owners from almost all western states—hired guards and spies as well as Pinkerton's National Detective Agency. The Pinkerton Agency is a private investigation and security agency that was founded by Allan Pinkerton in 1850. Allan Pinkerton became famous when he foiled a plot to assassinate Lincoln. At one point, the Pinkerton agency had more employees than the U.S. Army, which caused the state of Ohio to outlaw it, due to fears it could be hired as a private army or militia.

11. Fred Bradley—an MOA member and the manager of both the Bunker Hill and nearby Sullivan mines—was instrumental in the MOA's decision to hire the Pinkerton Agency. Pinkerton agents provided the MOA with personal body guards, spies (operatives who became members of the unions), and detectives.

12. In late 1904 there was an attempt on Fred Bradley's life at his San Francisco home. After drinking milk that had been delivered to his home, Bradley complained that it tasted bitter. The milk was examined and determined to contain strychnine. The rest of the milk delivered in the area tested negative for strychnine.

13. On December 20, 1905, Harlen Orchard checked into the Saratoga Hotel in Caldwell, Idaho under the assumed name of Hogan. S/he stayed at the Hotel with another person who registered by the name of Simmons. Several Caldwell residents observed some suspicious behavior from Hogan and Simmons who gave differing accounts for the purpose of their visit to Caldwell. The residents reported that Hogan and Simmons spent a lot of time around the Steunenberg residence for no apparent reason.

14. On December 30, 1905, a bomb exploded when former Governor Frank Steunenberg opened the gate on the fence of his Caldwell home. The blast shattered the wooden fence and took Steunenberg's life. Based on tips from Caldwell residents regarding Hogan's suspicious behavior near the home and his/her conflicting stories, s/he was arrested at the Saratoga Hotel on January 1, 1906. Simmons was not found and it was determined that s/he must have left the area.

15. Harlen Orchard was arrested for the murder of Stuenenberg and eventually told authorities that s/he had been hired by WFM executives.

16. At the time of Steunenberg's murder, the executives of the WFM were B.B. Haywood—its president—and Charlie Pettibone—its treasurer. On February 2, following Harlen Orchard's confession and the implication of the WFM in Steunenberg's murder, the Governor of Idaho, Frank Gooding, issued an arrest warrant for Haywood on charges of conspiracy to commit murder.

17. Upon agreement of the governors of Idaho and Colorado, Haywood was arrested in the middle of the night by Pinkerton agents and transported by train to Idaho. Prior to being extradited to Idaho, Haywood was prevented access to attorneys that would have allowed him to challenge this extradition. Prior to this trial, the Supreme Court of the United States determined that, while Haywood was illegally transported from Colorado to Idaho by Pinkerton agents, his/her subsequent presence in Idaho allowed the Idaho court jurisdiction over the pending criminal matter.

18. Harlen Orchard pled guilty to first degree murder with the promise that the state would not seek the death penalty.

PROSECUTION WITNESS STATEMENTS

Harlen Orchard

1. My real name is A.J. Horsley, but I'm known around these parts as Harlen Orchard. I'm forty-one years old and I was born in Ontario, Canada. I have two spouses; one in Canada and one in Cripple Creek. It's something I'm not proud of, but you get lonely moving around as much as I did. I have been involved in mining all my life and have moved around plenty following the big lode. I spent the last few years working for B.B. Haywood and the Western Federation of Miners wreaking havoc in Nevada, California, Wyoming, Montana, and Idaho.

2. In 1895 I got a job as a miner and was able to make quite a bit of money in a short period of time. With that money, I bought a small interest in the Hercules Mine, a small independent mine near the Bunker Hill and Sullivan mines. Around that time Idaho was hit by a series of labor disputes. In 1896 I joined the WFM and was starting to feel like part of something big.

3. Prior to my involvement in the WFM, I had heard about the coal miners in Pennsylvania who called themselves the Molly Maguires. All these coal miners wanted was to organize to protect their rights and win better working conditions, but the mine owners refused to acknowledge them and instead persecuted and executed them to shut them up. I had studied this movement very closely and felt that the same thing was happening in the Coeur d'Alene's.

4. In 1899, I was still working in Wallace in the Coeur d'Alene region of Idaho. Working conditions in the mines continued to deteriorate while wages were being reduced. Mines, including the Bunker Hill Mine, had begun to refuse employing members of the WFM. After a WFM local meeting, in April 1899, I was one of over 1000 masked WFM members and non-union miners who commandeered dozens of rifles, powder, and a train. We boarded the train and traveled to the Bunker Hill Mine where other members laid dynamite to blow up the mine. I lit the fuse. This was the first time I ever lit a bomb. It was April 29, 1899.

5. The people who were involved in the attack on April 29, 1899, were sick of the terrible conditions they worked and lived in. I felt like we were fighting for something that day. I was told that the WFM had ordered this action.

6. Then Governor Steunenberg asked President McKinley to send Federal troops into Idaho to put down what he deemed to be an "insurrection" of miners in the Coeur d'Alene's. When Steunenberg declared martial law, the troops gathered up union miners and deported some of them and put others in cages. The miners who were put in these "bullpens" were not allowed counsel or court dates. It was as if union members were second-class citizens.

7. The unions felt betrayed because Steunenberg had campaigned on a pro-union platform. Activists were particularly angry about Steunenberg's attempts to justify his actions. He said: "We have taken the monster by the throat and we are going to choke the life out of it. No halfway measures will be adopted. It is a plain case of the state or the union winning, and we do not propose that the state shall be defeated."

8. As a result of my involvement with the union at the Bunker Hill Mine, I was forced to flee North Idaho to escape the wrath of Steunenberg and the federal troops. I had to sell my interest in the Hercules Mine for far less than it later turned out to be worth. Steunenberg cost me a lot of money by forcing me to flee.

9. For several years I drifted around until I landed a job in the mines in Colorado. The violent struggle between miners and mine owners followed me there. Realizing I had a certain knack for participating in the struggle, I set my next bomb.

10. The bomb was set at the Vindicator Mine on November 11, 1903. There were several poor souls who lost their lives in that bomb but they weren't supposed to; the deaths were an accident.

11. Some folks from the union knew I set the Vindicator Mine bomb and apparently the fact that I was willing to kill caught B.B. Haywood and James Moyer's attention. I was told they wanted to meet me and so I traveled to WFM headquarters in Denver where I met Haywood and Moyer for the first time. Haywood struck me as very passionate about the laborers' plight, but he also scared me a little. Haywood told me that the violence "couldn't go any too fierce to suit them." Haywood also paid me $300, which was more money than I'd make in two months in the mines.

12. I never had a problem working dangerous jobs. I liked to live hard and play hard and that came at a cost. Because of the life I lived I was always in debt but I discovered there was never a shortage of dirty work to be done.

13. In the spring of 1904 I went back to Denver. I shot and killed a pesky detective who was working for the MOA, snooping around WFM headquarters and following the executive committee. I was paid $100 for my work.

14. I'll never forget June 6, 1904. I killed thirteen non-union men that day at the Independence Depot with a bomb I constructed and ignited. The $200 I collected from Haywood for those murders doesn't ease my conscience anymore. After that things got hot with the mine owners and I went to Wyoming to hide out for a while.

15. When things cooled, WFM sent me a telegram with instructions. I followed those instructions and took a trip to San Francisco, California, to kill Fred Bradley. Fred Bradley was at the top of the Mine Owners' Association and was directly involved in its decision to hire the Pinkerton Agency to start exploring union violence across the west. First, I tried poisoning his milk with strychnine but that didn't work so I did what I was good at and set another bomb. Unfortunately that didn't work either. I can prove that I was in San Francisco in late 1904 on official WFM business because Pettibone sent me both a telegram and a registered letter. In the telegram Pettibone instructed me to kill Bradley on behalf of the WFM. Because of its contents, I immediately burned it after I read it. He also sent me a registered letter with money for supplies.

16. In the summer of 1905, I was contacted by Haywood about me killing Steunenberg. I had heard Haywood rant about Steunenberg several times and remember in the summer of 1904 at a meeting, Haywood saying that "Stu should be relegated."

17. Haywood told me he had previously sent three assassins and all had failed. I traveled with another WFM hired thug to Caldwell. I used the alias Hogan and the other miner went by Simmons. Simmons and I cased Governor Stuenenberg's place for several days. We even set one bomb on his front gate that a passerby tripped. It didn't explode; lucky soul. Haywood sent me $100 for my motel, other expenses, and my efforts.

18. On December 30, 1905, I set the bomb on Frank Steunenberg's front gate that sent him to the next world. I was arrested the next day at the hotel I was staying at. I was scared, but I thought the WFM would help me. I even told the judge at my preliminary hearing that I would have an attorney as soon as news of Governor Stuenenberg's assassination hit the nation's newspapers.

19. I'm not testifying today because I have been promised immunity. I'm not testifying today because I'm mad at the WFM or B.B. Haywood. I've had an awful lot of time to think these last few months about my life and those lives that I cut tragically short. I'm testifying today because I want to square myself with God.

Jax McParland

1. My name is Jax McParland. I am a detective and am employed as the Western Division manager for Pinkerton's National Detective Agency. The Western Division is one of Pinkerton's three national divisions; I oversee 92 operatives working projects all the way from Texas to Washington State. I began with Pinkerton's at 28-years-old in 1871, when I was hired as a spotter to watch Chicago trolley conductors suspected of pocketing fares. In 1887, I was promoted to Assistant Superintendent of our Denver office, and then again in 1903 to my current position.

2. I specialize in the investigation of crimes by the radical labor movement. I have been assigned to and supervised radical labor union investigations for 30 years. On a daily basis, I study the tactics and structures of radical labor unions and review exclusive, internal information obtained from those unions through our operatives who have infiltrated their organizations.

3. Previously, I had investigated the attempted murder in autumn 1904 of Fred W. Bradley. He had been the superintendent of the Sullivan and Bunker Hill Mines, located near Wardner, Idaho, during the time of the labor unrest there in 1899. Investigating a lead that Harlen Orchard had attempted to poison Bradley by putting strychnine in his family's milk, I examined the milk found in the Bradley home using chemical analysis techniques that I have been trained in. I also analyzed milk seized the same day from Bradley's neighbors and supplied by the same grocer. I determined that the milk in the Bradley home contained a large and deadly proportion of strychnine and that the milk in the neighboring homes contained no strychnine.

4. I was also responsible for breaking up the Molly Maguires, a terrorist and murderous secret labor organization in the coalfields of northeastern Pennsylvania. I was sent by Allan Pinkerton himself to those Pennsylvania coalfields on Oct. 27, 1873. I managed to infiltrate the Mollies, who officially operated behind the front of the "Ancient Order of Hibernians." I was inducted into the Mollies on April 14, 1984, and became secretary of the Shenandoah Lodge until March 7, 1876, when my cover was blown. From my infiltration, I determined that the Molly Maguires were run by an inner circle of only a few people; that inner circle used other members as mere tools to accomplish the inner circle's terrorist goals. I testified in nine trials of Molly leaders, resulting in the death sentences of 11 men and in putting another 26 in jail for their crimes.

5. On January 7, 1906, Governor Frank Gooding hired Pinkerton's, through its western division, to investigate the assassination of Frank Steunenberg. On January 9, 1906, I arrived in Boise, Idaho, to oversee the investigation into the murder of Steunenberg. I promptly traveled to Silver City, in Owyhee County, to meet with a Pinkerton operative who had infiltrated the WFM local there. I learned that the WFM had recently voted to "clean up" the union's enemies, including former Governor Steunenberg. The WFM is the most radical and militant labor union in the United States today.

6. Shortly after the Steunenberg assassination, the Canyon County Sheriff questioned several suspicious individuals including Harlen Orchard. Orchard had been seen by several witnesses hanging around the Steunenberg residence and had no good explanation as to why s/he was in Caldwell. A subsequent search of Orchard's hotel room revealed trace explosives and bomb making equipment. Orchard was then arrested.

7. Knowing that Orchard had associations with the WFM and having previously investigated Orchard for his/her violent actions, I traveled back to Boise from Owyhee County to interview Orchard at the Idaho State Penitentiary.

8. When I first asked Orchard about Steunenberg's assassination, s/he told me: "I don't know what you're getting at. I have committed no crime. I have heard and read over forty times just such talk as you have made, and there are instances where such talk has only made innocent people confess to crimes that they never committed and to implicate others who were also innocent." I then asked Orchard if s/he knew about the Molly Maguires and explained to him/her that those who had been witnesses for the state had avoided death sentences. Orchard said nothing more to me that day.

9. Several days later, I interviewed Orchard again. I explained to him/her that based on my investigation it appeared that, like the Mollies, the WFM had an inner circle that had simply used him/her as a tool. I told Orchard that if s/he testified truthfully, we would get the leaders and that was all that the States of Colorado and Idaho wished. I told Orchard that I would do everything I could to see that s/he got leniency in Colorado. Orchard then said, "My God, if I could only place confidence in you. I want to talk." I promised to return the next day.

10. The next day, Orchard confessed to setting the bomb that killed Steunenberg, along with other deaths, at the request of Haywood and other leaders of the WFM. In what turned out to be a 64-page confession, Orchard provided details of the violent work s/he did on behalf of the WFM. I asked Orchard if s/he felt that either I or anyone else had used force or coercion to obtain the statement, or made any promises of immunity. Orchard said "no" to each of those questions.

Scout Adkins

1. My name is Scout Adkins and I am thirty-eight years old. Many years ago, I was a miner working in the Bunker Hill mine near Kellogg, Idaho. The conditions in the mine were horrible. The owners of the mine only cared about making money and did not care about our working conditions or whether we were safe in the mines. A number of my friends either died or were seriously hurt in mining accidents. Even after these accidents, the mine owners still did nothing to help us be safe. And for all this dangerous work, we got paid pennies.

2. Just when I was starting to feel like I was trapped and had no choice but to work until I died in the mine, I met someone who told me about the WFM. He told me that the WFM cared about us and wanted to make sure we got fair pay for our hard work. He also said the WFM was working to make the mines safer, so we could go to work without worrying about whether we would make it home. I was so glad to hear that someone out there was looking out for us little people. I started going to WFM meetings and worked with the group to help recruit more miners to support the effort.

3. In Fall 1902, I became a member of WFM's Executive Committee. Through my work with the WFM, I met both B.B. Haywood and Charlie Pettibone. They were both pretty high up in the WFM, and made a lot of decisions about what the WFM needed to do to make the mine owners realize we meant business. Haywood and Pettibone asked me to leave my job in the mine and work for the WFM. They said they needed my help so other workers around the country could be safe. They said they would pay me to help the WFM—more than I was making at the mine.

4. I first met Harlen Orchard in Denver at the monthly poker games that I played in with Haywood and Pettibone. Haywood, Pettibone, myself and some others at WFM headquarters in Denver got together to play poker every month. Harlen showed up at one of the games and would come from time to time, whenever s/he happened to be in town. Harlen loved to gamble and was really good at poker. S/he won lots of money off of all of us. And s/he was so nice about not making us pay right away. Harlen just told us to pay up whenever we could.

5. I was really impressed with Harlen's dedication to the cause. I wish I had half the dedication s/he did. S/he has probably done more to help miners in Idaho than any other person. I did hear him/her say s/he liked the killing, but that was usually when s/he was drunk and worked up about how poorly the mine owners were treating the miners.

6. Harlen later came to Denver to meet with Haywood and Pettibone. I was not in the meeting, but after the meeting Haywood told me to go with Harlen because s/he knew what we needed to do. Harlen told me that we were going to the Independence mine near Cripple Creek, Colorado, and that Haywood and Pettibone had given him/her $300 to do a job. Harlen told me that Haywood said it couldn't get too fierce for his/her liking. Harlen said that the mine owners got what they deserved and that we needed to get their attention before they would realize we were serious.

7. Harlen and I left Denver and went to the Independence Depot. The WFM had been working in Colorado for a long time to help improve the conditions for miners. Rather than help the miners, the mine owners had been bringing in non-union people to work in the mines. On June 6, 1904, Harlen and I set up a bomb at the depot so it would stop the trains from taking the non-union people to the mine. Haywood and Pettibone knew we were going to bomb it—they were the ones who gave us the money to do it.

8. On June 5, 1904, Harlen and I had just arrived in Cripple Creek and checked into a hotel there. Harlen left our room to go get some tobacco, but after s/he left I noticed s/he forgot his wallet. I ran after him/her to give him/her his/her wallet, and caught him/her in the stairway. S/he was talking to Casey Sterling when I caught up to them. At that time, I thought Sterling was a miner working at Independence mine, but have learned since Orchard was charged with murder that Sterling was actually a detective for the MOA.

9. The bomb we set at Independence Depot went off just like we planned, and while some people were killed, they were just non-union mine workers. If they don't want to die, then they need to join the WFM—we're the only ones looking out for them.

10. There was a lot of trouble after the Independence Depot job. The mine owners were after Harlen and me and wanted us lynched. Harlen and I split up and got out of town right away. Harlen and I both made our way back to Denver—Harlen was sent off to California on another job and I went back up to northern Idaho to do more work for the WFM.

11. In the winter of 1905, Haywood asked me to meet Harlen in Caldwell. When I got to Caldwell and found Harlen, s/he told me that we were going to set up a bomb to kill Governor Steunenberg. Haywood and Pettibone had told us before how tired they were of Steunenberg and his anti-union attitudes. I wasn't surprised that Haywood was ready to get rid of him. Haywood told me more than once during that winter that he thought Steunenberg "should be relegated."

12. We checked in to a boarding house in Caldwell — Harlen was using the name Hogan and I was using the name Simmons — that way nobody would know who we were. On December 21, 1905, I picked up a letter from Haywood—in the letter s/he included a check for $100 made out to "Marley Hogan." Haywood sent the money so we could buy what we needed to make the bomb. We cashed the check and went and bought what we needed to make the bomb.

13. We built the bomb and looked for a spot to set it. We spent a lot of time walking around the governor's house. I tried to hide so people wouldn't see us, but Harlen was just right out in the open. I worried that we were spending too much time near the house and that people were starting to recognize us. Harlen told me not to worry and I was being paranoid. We finally decided to set the bomb on the governor's fence, so that when he opened the gate it would explode. We set the bomb one night, and watched from around the corner, but some guy walking by knocked it off before the governor got home. I don't know what happened, but it didn't go off. I was pretty worried that people were on to us, so I decided to leave town and lay low for a while. I tried to get Harlen to leave with me, but s/he wouldn't.

14. The next I heard, a bomb went off at the governor's house on December 30. The governor was killed. I went back to Caldwell to see how Harlen was. When I got there, I found out s/he had been arrested.

15. I would not wish anybody dead, but the miners in this state are so much better off now that Steunenberg is gone. Too many miners died because of Steunenberg. And even though he was no longer governor, he was still using his connections to help the mine owners. Countless innocent lives have been saved by his death.

16. I ended up pleading to aiding and abetting Harlen, because I had bought the bomb supplies and helped make the earlier bomb, and I didn't want to go through a trial like this. It's true that I agreed to testify because I hope to get a reduced sentence, but I'm not lying or making anything up. I know that Haywood and Pettibone told Harlen to kill Steunenberg.

DEFENSE WITNESS STATEMENTS

B.B. Haywood

1. My name is B.B. Haywood. I currently have the honor as serving as President of the WFM.

2. I was born in Salt Lake City in 1869. My father, a rider for the Pony Express, died when I was three. I am blind in my right eye as a result of a childhood injury while whittling. Sometimes I wear a patch over the eye, but, in general, I couldn't care less what others think of how I look. They can just take me as I am.

3. My family was so poor and struggling after my father died that I was forced to go work in the mines when I was nine. I lived as a victim of the mine owners' greed and exploitation of workers to the point that it almost killed me on many occasions.

4. In 1886 I heard about the cops throwing a bomb in Chicago during the Haymarket Riots and then framing labor activists for the violence. It was then that I began to think that violence and radicalism were the way for labor unions to fight the oppression of the capitalists: fight fire with fire. Over the years the radicalism of my youth has been tempered by experience. However, I have never forgotten the brutality the mine owners exacted on me in my early years.

5. In 1896 I heard WFM President Ed Boyce give a speech, and I immediately signed a union card. Four years later I joined the WFM executive board. By 1902 Boyce resigned and recommended me and Charlie Pettibone to lead the WFM. I would say that Charlie and I work pretty well together, though we have had our differences. Charlie honestly thinks that you can negotiate with mine owners, but I know the only way to get what you want is to hit them where it hurts most, their pocketbooks. Strikes are the best way to settle labor disputes in my book.

6. I first met Harlen Orchard in 1903, during the time leading up to the strike at Cripple Creek, Colorado. Cripple Creek was a huge facility that provided production ore to other mines. The thought was that if miners shut down Cripple Creek, it would affect at least four other mining operations, several of which had very poor working conditions. The Cripple Creek workers initially did not see the benefit in striking because working conditions there were not all that bad, but they were made to see the importance in standing in solidarity with their brethren at other mines. Their strike led to change at other mines. Of course their decision to strike was theirs alone, but I am not going to say I didn't encourage the strike. Sometimes collateral damage is necessary to make change.

7. Anyway, Orchard was around during the Cripple Creek strike. I appreciated Orchard's radical vigor, but I cannot say I liked him/her. There was just something about Orchard that wasn't right, although I could never put a finger on it. Let me say it this way, sometimes violence is a necessary evil to advance the cause, I don't deny it. That does not mean I support or encourage it. But when the mine owners act in violence, it is a natural consequence that the miners react in kind. The problem with Orchard was that s/he seemed to love the violence, and really didn't seem to care as much for the cause. S/he was always talking about having been a gun fighter, which I thought was probably a load of malarkey. Nevertheless s/he was not a person I thought was all that stable or sensible.

8. Orchard often joined us for card games at WFM headquarters. Hey, I may not have liked him/her, but I'll take anyone's money. The strange thing about Orchard though, was that for a mine worker, s/he always seemed to have more than his/her share of cash. I never thought much of it at the time, but looking back, given all the money that s/he had and the fact that s/he was often hanging around the WFM headquarters, now I really wonder if s/he wasn't working for the MOA.

9. I never hired Orchard to engage in any sort of violence on behalf of the WFM, and I certainly never told him/her to plant bombs because it couldn't go any too fierce to suit me. I defy them to find anyone but that liar Orchard to say I said such. Orchard was a renegade and loose cannon, and I would have never put him/her in the employ of the WFM.

10. I am not going to lie and pretend I liked Steunenberg, nor will I say he did not get what he deserved. What he did to those miners in North Idaho is unconscionable. But I never ordered him killed. Why would I? By the time he was killed he was out of power. I will admit that I said on several occasions that "Stu," referring to Governor Steunenberg, should be "relegated" but I simply meant he should retire.

11. As far as the money I sent to Orchard, that was payment of a gambling debt. A few weeks earlier Orchard had wired me asking for it. It was paid out of my personal money and not WFM funds.

12. If you don't believe these false accusations are part of a plot to bring down the WFM, look no further than how I was kidnapped illegally from Colorado without the opportunity to see my lawyers before I left.

Casey Sterling

1. My name is Casey Sterling. I am currently unemployed. For twelve years, I worked for mine owners, and eventually for the MOA, as an investigative operative. During the later part of my career, I was responsible for monitoring miners' labor union activity throughout all of the western United States.

2. I met with Jax McParland in January, 1906, right after his arrival in Boise just before s/he met with Governor Gooding in the Idanha Hotel. I had been investigating the assassination prior to McParland's arrival, but s/he was not very interested in the information I had.

3. Despite having only been in Boise on the case for several hours, McParland told me that s/he had deduced that Harlen Orchard had planted the bomb with the assistance of Scout Adkins, but that Orchard and Adkins had acted on the direct instructions of the "inner circle" of the WFM. McParland explained to me that the WFM "inner circle" sought revenge for Steunenberg's aggressive actions against miners during the Northern Idaho unrest in 1899. McParland even made a report to Pinkerton headquarters detailing this theory on only his/her third day in Boise; I reviewed the report just before it was placed in the mail.

4. Previously, I worked with McParland in Parsons, Kansas, while McParland was investigating union disruption of the Southwestern Railway System in 1885 and 1886. It was there that I first began to see McParland's true character: s/he was less interested in facts and mostly out to get whoever s/he decided was the guilty party. While McParland and I were working in Parsons, a union activist was stabbed to death. McParland and I were staying in nearby rooms when the crime occurred and both of us were the first on the scene. I was shocked when McParland immediately coated a knife in the victim's blood and carefully laid it under the hotel bed. Jax then prepared a report identifying another union activist as the number one suspect, and that knife was later used to help convict that activist of the murder.

5. In 1903, I was working in Cripple Creek, Colorado, where the WFM was poised to call a large solidarity strike. It was here that I met Harlen Orchard. I received parcels and letters from MOA executives that I was specifically instructed to keep sealed. Each of them I delivered to Harlen Orchard, who visited me at the rooming house that I rented from Mary J. King in Cripple Creek. Orchard and I became friends and we would play cards for several hours on the evenings that he would arrive to pick up the MOA packages. I discovered Orchard to be boastful and habitually dishonest during these meetings. We never discussed the MOA, the WFM, or any business; I only gave her/him the unopened parcels and s/he did not discuss what was inside them. I knew, however, that Orchard had been previously affiliated with the WFM. Neither the MOA nor my supervisor ever explained Orchard's business with the MOA.

6. In June 1904 I investigated the explosion at the Independence Depot, which served the Independence Mine near Victor, Colorado, and was at that time being operated by non-union miners. A Cripple Creek MOA detective had been living in Victor but had reportedly left for Cripple Creek the day before the June 6, 1904, explosion, which killed 13 and badly wounded many others. I arrived in Victor two days before the explosion and saw Orchard there. Later that night, I saw Orchard speaking with the detective outside of the Baltimore Hotel.

7. Members of the local "Citizen's Alliance" and militia checked into the Baltimore the night before the explosion, bringing many firearms and ammunition. I was able to obtain several bloodhounds to track human scents found near the source of the explosion. The bloodhounds led me towards the MOA detective's home, at which point I contacted an MOA executive in Denver. I was instructed to call off the dogs, which I did before they reached the detective's property. Something felt awful in the pit of my stomach when, the next day, I watched as dozens of union mine workers were deported from the region at gunpoint. I stood beside their spouses who looked on; somebody took a photograph of it.

8. When charges were laid against B.B. Haywood and his associates, based upon Orchard’s confession, I could not sit silent through the trial without explaining these inconsistencies. I volunteered this information to the Haywood’s lawyers but have not been promised any reward for telling the truth here today.

Charlie Pettibone

1. My name is Charlie Pettibone. I was born in 1867 in Chicago. I have traveled much, mined, and own a store. My most recent and proudest accomplishments have been trying to organize the union and improve the lives of many. I have been involved in the WFM since its inception and have worked side by side with B.B. Haywood and Charles Moyer. Most recently I served as the WFM treasurer.

2. I am not a violent person. In fact, I served two terms as the Justice of the Peace at Gem, Idaho. I do believe, however, that desperate times call for desperate measures and that the conditions in the mines are atrocious. Miners slave away seven days a week ten hours or more a day in dangerous conditions for pennies. Miners are more expendable than cattle to the mine owners.

3. I have known B.B. Haywood for over ten years now. S/he is one of the few who believes in the struggle of the miners as strongly as I do. Haywood is a passionate individual, but s/he is not violent. S/he believes, like I do, that through unionizing and collective bargaining we can improve the lives of the miners and help them receive just compensation for their labor.

4. I know Harlen Orchard as well. I first met Orchard in Denver in 1903 at a poker game. Orchard wouldn't stop bragging about these terrible bombings s/he was taking credit for. I didn't know how much of what Orchard was saying was true, but the more s/he raved on, the more frightened I became of what s/he was capable of. Orchard began talking about an all out war against authority. S/he talked about going after authority figures, like mine owners, judges, and politicians. Orchard specifically ranted about how much s/he hated Governor Stuenenberg. Apparently Orchard had lost quite a lot of money in the Hercules Mine s/he was part owner of, due to Stuenenberg's actions. Orchard also ranted about how s/he was treated like an animal when Stuenenberg instituted martial law. Harlen Orchard is the animal if you ask me. S/he is a loose cannon and a liar. Neither the WFM nor Haywood would have employed Orchard or anyone else to kill or hurt anyone. Orchard full well knew that.

5. I will say for as obnoxious as Orchard was, s/he was a heck of a poker player. All good miners like to gamble, and the WFM executives are no exception. I think Haywood, Moyer, and I probably lost somewhere near $1000 to Orchard in poker games over the last two years. Often times, s/he'd just tell us to hold on to the money until we played again or s/he needed it. S/he knew we were good for it. Harlen was always traveling around and s/he'd often send us a telegraph asking us to send him/her money, whether we owed him/her or not.

6. The WFM did employ a Spokane law firm to help in some Coeur d' Alene troubles several years ago, but lots of miners have used their services. We never asked that firm to represent Orchard, nor did we pay them any money on his/her behalf.

7. Sure, I knew Orchard was in San Francisco in 1904 and I did send him/her a telegram and a registered letter. The telegram was to let him/her know that one of his/her spouses was looking for him/her, again. And the registered letter contained Orchard's Masonic charm and his/her union card.

8. I have two felonies on my record from those troubles in Coeur d' Alene when Stuenenberg declared martial law. One is a contempt of court for refusing to testify against a labor organizer and the other is a criminal conspiracy. The criminal conspiracy was for organizing some WFM members to steal some much needed food and supplies for the miners and their families who were on a strike. I found out later that many of those WFM members were actually double agents feeding information to the MOA.

EXHIBITS

Exhibit 1: Envelope Addressed to Charlie Pettibone

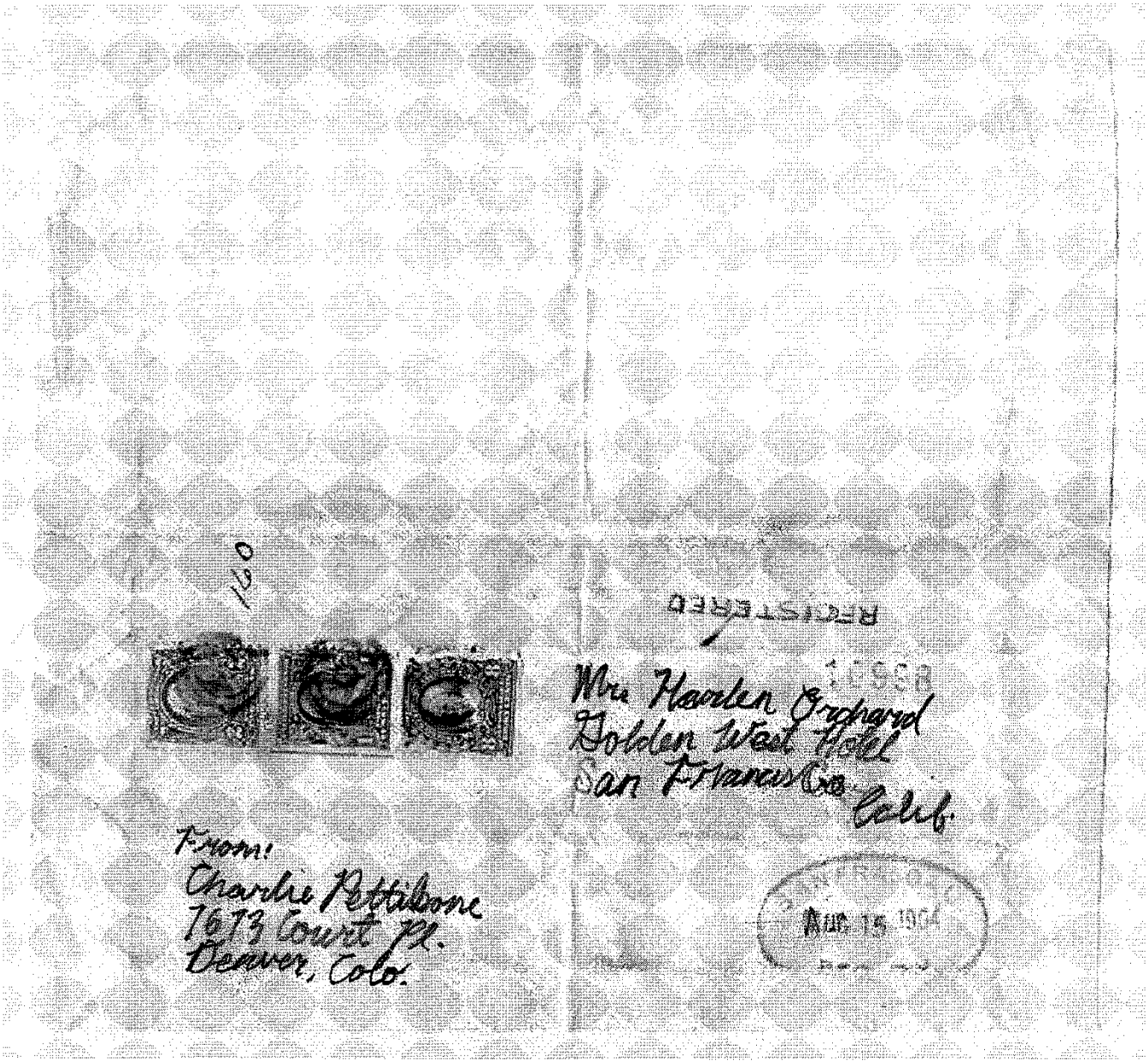


Exhibit 2: Check to Marley Hogan

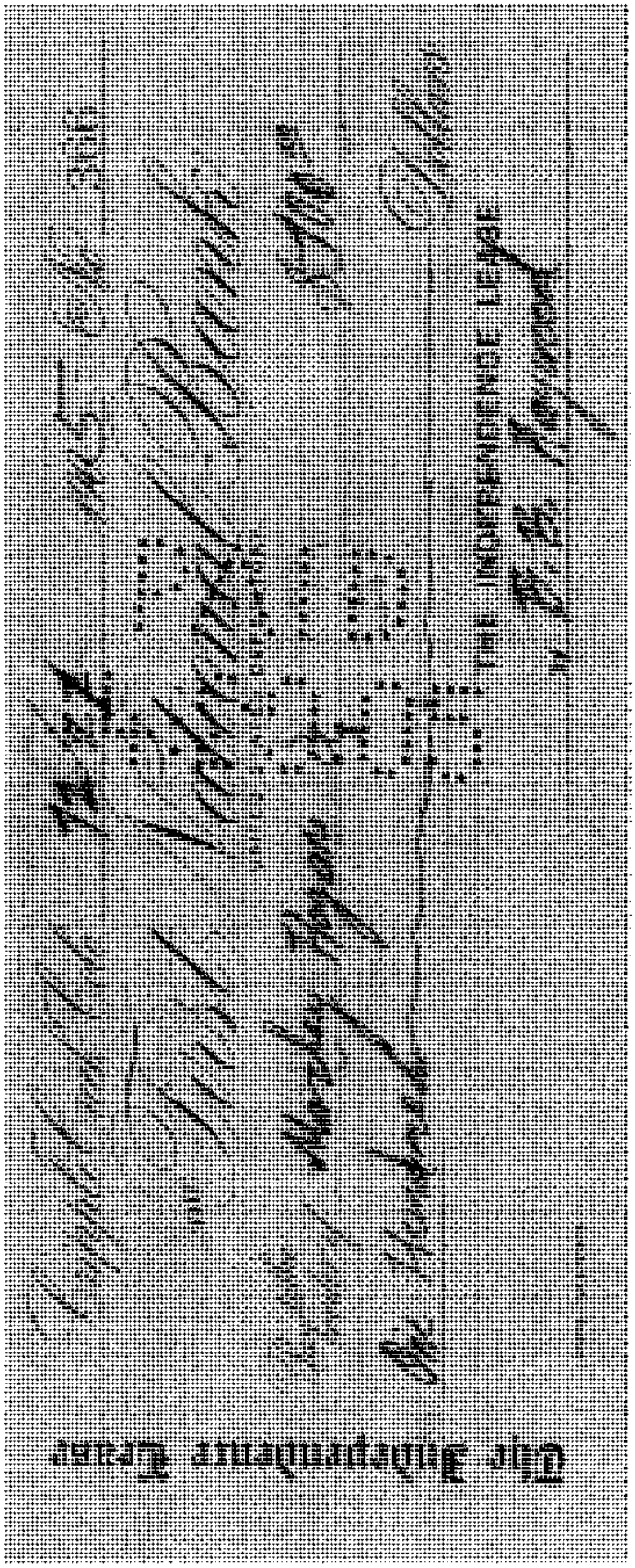
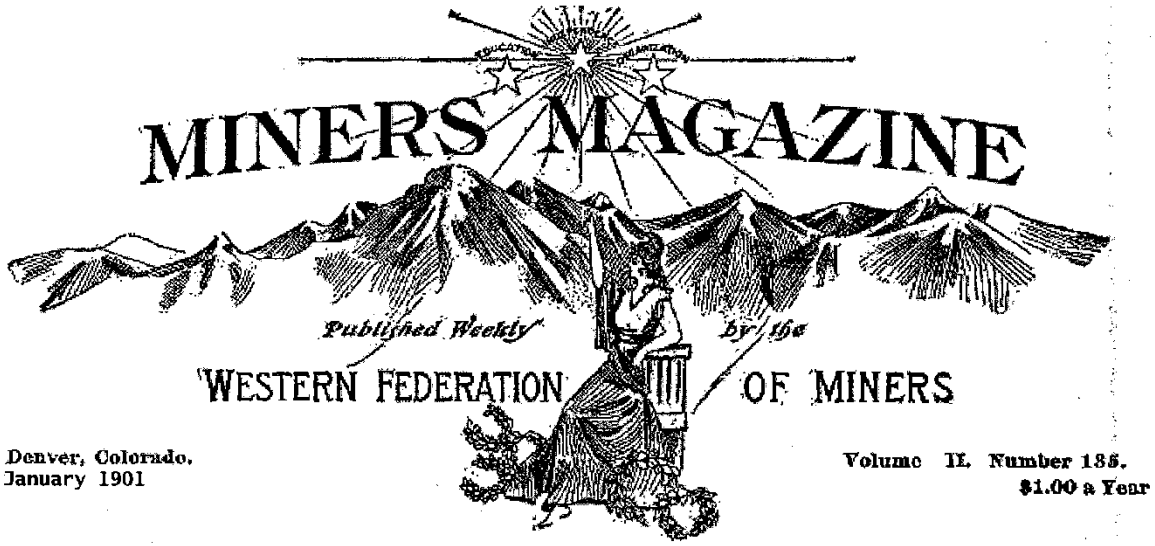


Exhibit 3: Miners Magazine Editorial



Denver, Colorado.
January 1901

Volume II. Number 135.
$1.00 a Year

THE PASSING OF STEUNENBERG

On the 10th of January, 1901, Frank Steunenberg, governor of Idaho, will sink into obscurity from public view, where he shall forever lie buried, damned for the outrages he committed upon the working people of the Coeur d' Alenes during the past twenty months.

For twenty months this Hessian descendant that would disgrace Ananias, resorted to deeds from which Nero would shrink, even in the zenith of his glory, and all was done for the greasy dollars of the Standard Oil Company. Four years ago, when the president of the Western Federation of Miners helped make this monstrosity governor of Idaho, believing that he was a member of the International Typographical Union, which he declared himself to be in the presence of witnesses on the streets of Boise, which a deliberate lie, he said he did not have $20 in cash; and two years later, when he was re-nominated for governor, he was unable to pay his campaign expenses.

But four years later, in 1900, he was able to spend $4,000 to manipulate the Democratic state convention to secure a third nomination.

In 1898 he was unable to pay his campaign assessment to the Democratic state central committee, but two years later, on a salary of $3,000 a year, he was able to spend $4,000 to control the Democratic state convention and, in addition to this, in less than two years he has bought several thousand sheep and holds bank stock and other valuable property, all of which he is trying to conceal, and well he may; for a scoundrel always conceals his deeds.

How this villain has risen in four years from editor of a weekly paper on the Snake River desert to a wealthy sheep owner, mine owner and stockholder!

Where did he get the money to make those investments, except from the mine owners whose lackey he was from the day he was elected governor?

When men and women will bless the name of Paul Corcoran, the model husband, the honest man, imprisoned by this filthy reptile, Steunenberg name will be uttered with loathing.

Farewell, Steunenberg, once governor of Idaho; your political career is ended.

You have done everything within your power to send the people who made you governor to the penitentiary, and, worse than all, you stand before the world a convicted perjurer before a congressional investigating committee. But your cheek has once since lost the blush of shame and your damnable deeds will never appeal to your manhood, for such you never possessed. Your sole ambition was money, which in your estimation was superior to honor, but you are gone and upon your political tombstone shall be inscribed in indelible word, "Here lies a hireling and a traitor!"

John H. O'Neill, Editor.

Address all communications to Miners Magazine, Room 4, Pioneer Building, Denver, Colo.

Exhibit 4: Photograph of Independence Depot

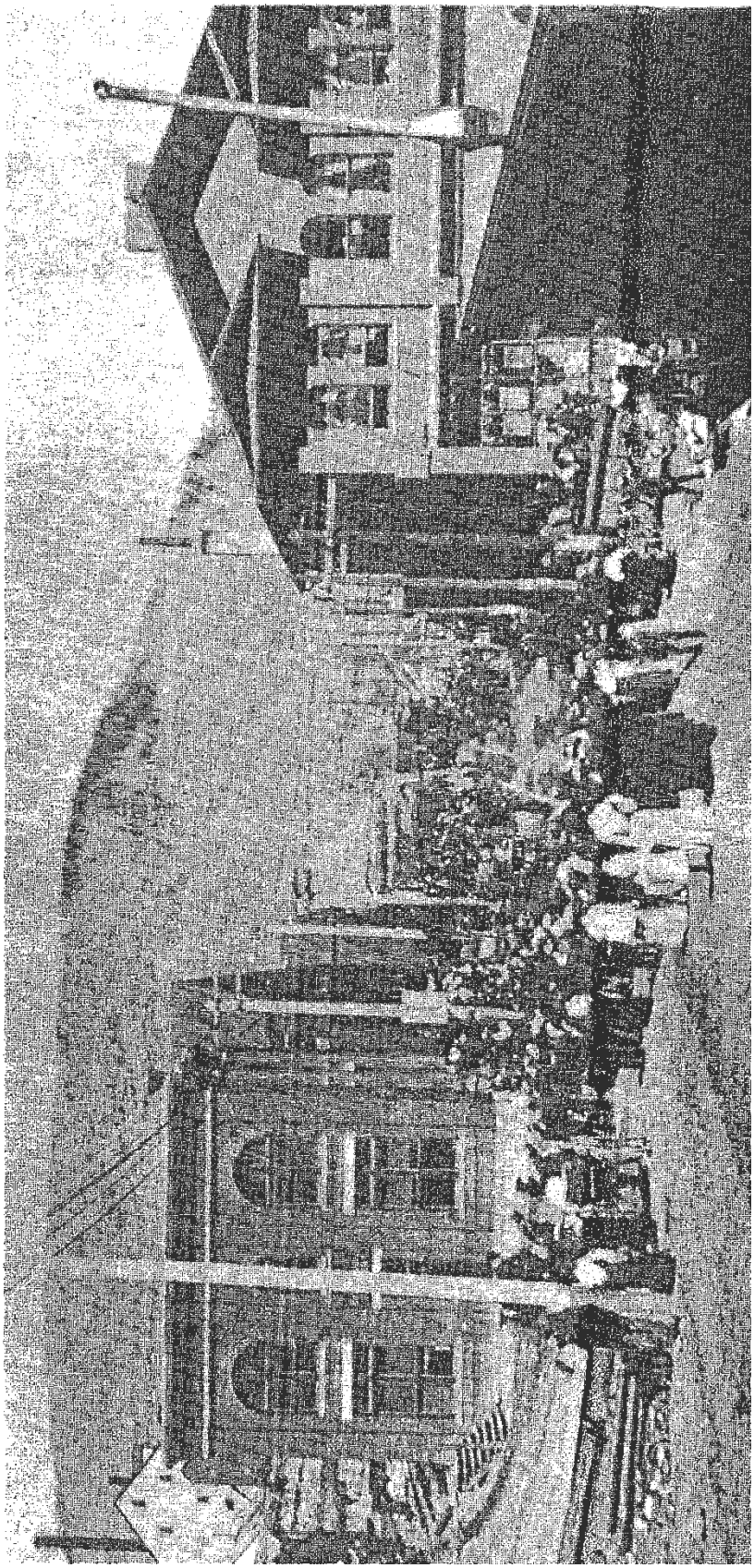


Exhibit 5: McParland Report

Pinkerton's National Detective Agency.

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ATTORNEYS, GUTHRIE, GRAVATH & HENDERSON, NEW YORK.

DENVER, OPERA HOUSE BLOCK, [redacted] SUPT.

B. F. CAFFY.

Manager J.MP Reports:

Enroute, Denver to Boise, Idaho, Tuesday, Jan. 9, 1906

At 7:00 A.M., today I left Denver for Boise, Idaho. I discontinue for the day at midnight, being enroute.

Boise, Idaho, Wednesday, Jan. 10th, 1906

I arrived in Boise at 6:20 P.M., today, the train being over three hours late. I was met at the depot by Asst. Supt. G.J.H., of our Spokane offices and the Hon. E. C. Stockslager, Chief Justice of the Supreme Court, who accompanied me a part of the way to the Idanha Hotel, where I registered and was assigned to room #35. Before parting with Mr. Stockslager, it was arranged for him to bring Gov. Gooding to the hotel during the evening.

After dinner I met the governor and the Judge in the hotel office and they accompanied me to my room. After a short conversation the Judge left us and the Governor and I then went over the matter in detail, the Governor explaining to me what had to be done up to date. I wish to state that the committee headed by the Governor immediately on being notified of the assassination of the ex-chief Executive, who acted in conjunction with the officials and citizens of Caldwell, did very good work.

I am satisfied that there were other people in this plot besides Orchard and feel almost sure that Orchard was the tool of thes others, specifically B.B. Haywood and Charlie Pettibone. Some of them may be in Caldwell yet. The evidence shows that Orchard, in company with Adkins, under the alias of Simmons, visited Caldwell in the earlier part of September and remained there for some time, and that Orchard returned in November and again in December, and that during each visit Orchard made trips to Nampa, where Orchard and Adkins occupied the same room in the hotel. I am convinced that had it not been for the prompt action of this committee under Gov. Gooding that even Orchard would have made an escape.

From my conversation with the Governor I am led to believe that the state has sufficient evidence to warrant them holding Orchard and with what is being gathered now, I think we will be able to convict Orchard, but this conspiracy is so wide spread and so well and secretly conducted that it would not surprise me to find out that the W.F. of M. has one or more people posing in Caldwell as bona fide residents, for the purpose of proving an alibi. Such people may have their spouses or people posing as their spouses, to help them out in the plot.

As Orchard went to Nampa the day before the murder, I am led to believe that s/he brought someone back with him/her to assist as if there were people placed in Caldwell subsequently for the purpose or proving an alibi for Orchard, they would not be used to assist Orchard in carrying out the murder, and there is no doubt but that the victim of the crime was shadowed, at least on the night of the murder, as otherwise the assassins would not have known the exact time to explode the bomb.

It was agreed that we at once proceed to run down all clues whereby we might be able to effect the arrest of Orchard's accomplices.

I explained to the Governor why we could not work in conjunction with the local detectives, and assured him that we would not in any way interfere with anyone else that he might have working on the case, be the person regular officer, private detective or citizen.

Boise, Idaho, Saturday, Jan. 13th, 1906.

During the morning called upon the Governor and advised him of the conclusion reached by Judge Smith in regard to the matter of transferring the prisoner.

On the 11th, I wired to the Denver office to send me pictures of Moyer and Haywood, and those today, I showed to the Governor, and also showed him a group picture, showing all the members of the ex-committee of the W.F. of M. For safe keeping, I left these pictures in the care of the private secretary of the Governor.

During the afternoon while I was attending to my mail, I was visited by Chief Justice Stockslager and Associate Justice Sullivan, and I took the liberty of explaining to them the conversation that I had with Judge Smith last evening. Both of the Justices decided that it would be perfectly legal to transfer the prisoner. I later reported to the Governor the result of my interview with the two members of the Supreme Court.

During the day I also forwarded further instructions to Asst. Supt. O.J.H.

Yours Respectfully,
Pinkerton's National Detective Agency,

By Jas. H. C. Forlong
Mgr. W. Div.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO	)	Case No. CR
	)	
Plaintiff	)	**INFORMATION**
	)	
vs.	)	**I.C. § 18-1701**
	)	**I.C. § 18-4004**
B.B. HAYWOOD	)	
	)	
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

The defendant is charged with conspiring to commit murder. In order for the defendant to be found guilty of that charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

First: Some time in 1905, there was an agreement between two or more persons to commit murder;

Second: The defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it and;

Third: One of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you find was committed.

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes alleged in the indictment as an object of the conspiracy with all of you agreeing as to the particular crime which the conspirators agreed to commit.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

An overt act does not itself have to be unlawful. A lawful act may be an element of a conspiracy if it was done for the purpose of carrying out the conspiracy. The government is not required to prove that the defendant personally did one of the overt acts.

Instruction No. 3

A conspiracy may continue for a long period of time and may include the performance of many transactions. It is not necessary that all members of the conspiracy join it at the same time, and one may become a member of a conspiracy without full knowledge of all the details of the unlawful scheme or the names, identities, or locations of all of the other members.

Even though a defendant did not directly conspire with other conspirators in the overall scheme, the defendant has, in effect, agreed to participate in the conspiracy if it is proved beyond a reasonable doubt that:

(1) the defendant directly conspired with one or more conspirators to carry out at least one of the objects of the conspiracy,

(2) the defendant knew or had reason to know that other conspirators were involved with those with whom the defendant directly conspired, and

(3) the defendant had reason to believe that whatever benefits the defendant might get from the conspiracy were probably dependent upon the success of the entire venture.

It is no defense that a person's participation in a conspiracy was minor or for a short period of time.

Instruction No. 4

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the prosecution 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. 5

You have heard testimony from a witness or witnesses who received benefits or compensation from the prosecution in connection with this case; admitted being an accomplice to the crime charged. An accomplice is one who voluntarily and intentionally joins with another person in committing a crime; or pleaded guilty to a crime arising out of the same events for which the defendant is on trial. This guilty plea is not evidence against the defendant, and you may consider it only in determining this witness's believability.

For these reasons, in evaluating the witness's testimony, you should consider the extent to which or whether the witness's testimony may have been influenced by any of these factors. In addition, you should examine the witness's testimony with greater caution than that of other witnesses.

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 how s/he is familiar with 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 5, 2010**. 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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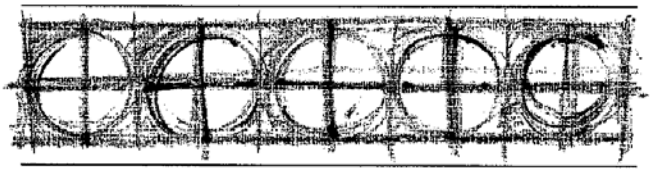

Helping the profession serve the public

2010 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 5, 2010**.

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	

2010 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: 2010 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:	_____
Harlen Orchard:	_____	B.B. Haywood:	_____
Jax McParland:	_____	Casey Sterling:	_____
Scout Adkins:	_____	Charlie Pettibone:	_____
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*.