2019

ALASKA HIGH SCHOOL

MOCK TRIAL COMPETITION

Anchorage, March 28-30, 2019

Rupert v. Jones

Case No. 5AN-18-99501 CI

OFFICIAL CASE MATERIALS & COMPETITION RULES

TEAM MEMBER'S PACKET

Including all evidence, applicable law, competition rules, and team registration forms

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Young Lawyers Section

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2019 Alaska High School Mock Trial Problem

Rupert v. Jones **– Author's Note**

This is the 30th anniversary of the Alaska High School Mock Trial Competition. So, we decided to create a problem that has its origins thirty years ago. This is not an easy task. The solution we came up with is a property dispute involving a 30-year-old deed. In that Alaska was in the midst of its oil bust/recession in 1989, we first thought of something involving abandoned property. But it was hard to come up with a problem that was both fun and interesting. Better to look at something more in line with Alaska's frontier ethos. A land deed drafted on a napkin on a cold night at a remote bar. Confusion over the tract of land actually sold. And a recent gold strike that makes the property worth fighting about. Throw in a few classic Alaska sourdoughs, and you have the makings of an entertaining problem. (Because we are using a real plat map and referencing a real road, we decided to use real place names throughout the problem.)

Land disputes can be a complicated subject matter, legally speaking. The expert affidavits were written by an attorney with engineering and surveying experience, so the disputes raised are consistent with what might be experienced in an actual courtroom. At the same time, we have as much as we could simplified the facts of the dispute into a couple of primary claims and counterclaims. The legal stance of the case reflects what would likely be encountered in actual legal proceedings – a complaint to quiet title and recover possession, followed by an answer and counterclaim asserting adverse possession. The dispute over the deed takes primacy. If Pat Jones establishes that s/he legally owns the land around south lake (where the gold was discovered), then there is no need for an adverse possession claim. But if Pat Jones does not own the land in question by virtue of the deed, then ownership could potentially be obtained through adverse possession, provided the legal requirements are met. Don't worry, all of this is explained in the jury instructions. Keep in mind that each party bears the burden of proving its own claims. However, the binary nature of this case necessitates that one party prevail at the expense of the other party. In other words, *someone* has to own the land.

We have had fun drafting the problem and hope that you have fun working with it. Every year at the competition we are so incredibly impressed with how the students perform, maneuvering amongst complicated fact patterns and legal rules. It is highly rewarding to know that in some small way this problem is contributing to student appreciation of the legal system. And it always seems like there are new approaches to the problem that students derive that did not occur to us as the problem drafters. We cannot wait to see what all of you come up with this year.

Sincerely,

Ryan Fortson/Lars Johnson/Kristin Knudsen/Leroy Latta/Carl Olson

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

SAM RUPERT, Plaintiff, vs. PAT JONES, Defendant.	Case No. 5AN-18-99501 CI

COMPLAINT FOR DECLARATION TO QUIET TITLE AND RECOVER POSSESSION OF REAL PROPERTY

Plaintiff SAM RUPERT complains of Defendant PAT JONES and all persons unknown claiming any right, title, estate, lien, or interest in the real property described adverse to Plaintiff's title, and for a cause of action alleges:

1. Plaintiff, SAM RUPERT, resides on the property that is the subject of this dispute, within the Third Judicial District of the State of Alaska. Defendant, PAT JONES, resides in the Third Judicial District of the State of Alaska.

2. Plaintiff owns in fee simple and possesses the real property known as the Rupert Homestead situated off the Petersville Road (formerly known as the Cache Creek Road) near Trapper Creek in the Fifth Judicial District, in the State of Alaska, originally conveyed by Homestead Patent to Plaintiff's father, Edward Rupert, and more fully described as follows:

> The northwest one-quarter of Section 25, Township 26 North, Range 7 West of the Seward Meridian, Alaska, in the Talkeetna Recording District, consisting of 160 acres, excluding therefrom the Cache Creek Road right-of-way.

3. The original homestead patent (attached exhibit 1) was properly recorded in the State Recording Office in 1965 by Edward and Kathy Rupert. The Rupert family satisfied all

requirements of the Homestead Act for improvement of the property, and built their house thereon, and resided therein.

4. Upon the death of Kathy Rupert in 2000, her interest in the Homestead was transferred by will to her surviving husband, Edward Rupert.

5. Upon the death of Edward Rupert in 2003, all real property he possessed, including the land concerned in this complaint, was transferred by will to Defendant, and to Defendant alone, the sole child and heir of Edward and Kathy Rupert. Following admission to probate, the court issued a decree ordering distribution of the property to the Plaintiff.

6. Since 2006, Defendant has resided continuously in the house built by Edward and Kathy Rupert upon the land patented to them in the original Homestead.

7. Defendant PAT JONES claims an interest and estate in a portion of such property, to wit: the Southeast quadrant of the original Rupert Homestead, adverse to Plaintiff.

8. Defendant's claim is without any right, and Defendant has no right, estate, title, lien, or interest in or to the property claimed and such claim constitutes a cloud on Plaintiff's title to the property.

WHEREFORE, Plaintiff requests judgment as follows:

1. Defendant be required to set forth the nature of the claim to the described real property;

2. All adverse claims to such real property be determined by decree of this court;

3. A decree adjudging that Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession of, such real property, and that Defendant, and all persons claiming under the Defendant, have no estate, right, title, lien, or interest in or to the real property of the Plaintiff or any part of it;

4. The court permanently enjoin Defendant, and all persons claiming under Defendant, from asserting any adverse claim to Plaintiff's title to the property;

5. The court order that Defendant leave, and immediately cede possession of, the subject property to Plaintiff;

6. Plaintiff be awarded costs of this action, reasonable attorney fees, and such other and further relief as the court deems just and proper.

Dated this 18th day of September, 2018, at Anchorage, Alaska.

_____
Attorney for Plaintiff

VERIFICATION

I, SAM RUPERT, swear that I am the plaintiff in the above-named complaint and have read the complaint and I am cognizant of the facts alleged, and that the facts and matters stated and set forth are true and correct.

Sam Rupert
Sam Rupert

STATE OF ALASKA)
) *SS*
THIRD JUDICIAL DISTRICT)

SUBSCRIBED AND SWORN TO by Sam Rupert before me on the 17th day of September, 2018 at Palmer, Alaska.

_____
Notary Public for Alaska
Commission expires: __09/15/20___

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

SAM RUPERT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
PAT JONES,	)	Case No. 5AN 18-99501 CI
	)	
Defendant.	)	ANSWER TO COMPLAINT AND
_____	)	COUNTERCLAIM FOR POSSESSION

ANSWER TO COMPLAINT

Defendant, PAT JONES, responds to Plaintiff's complaint as follows:

1. Defendant admits that both Plaintiff and Defendant reside in the Third Judicial District. Defendant denies any statements in Paragraph 1 regarding legal ownership of the property in question.

2. As to Paragraph 2 of the complaint, Defendant admits that Plaintiff lives on property which is part of the land known as the Rupert Homestead and that the Rupert Homestead was originally conveyed by Homestead Act patent to Edward and Kathy Rupert, and that the original patent described the land as stated in Paragraph 2; the remainder of the allegations of Paragraph 2 the Defendant denies.

3. Defendant admits the allegations of Paragraph 3 of the Plaintiff's complaint.

4. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 4 of the complaint and, on that basis, denies it.

5. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 5 of the Plaintiff's complaint and on that basis denies it.

6. Defendant admits the allegations of Paragraph 6 of Plaintiff's complaint.

7. Answering the allegations of Paragraph 7 of the Plaintiff's complaint, Defendant asserts that Defendant's mother, Judy Jones, entered into a written agreement for the purchase of forty acres of real property from Plaintiff's father, Ed Rupert, in 1989, concerning the property located at the southeast corner of the Homestead, and that such transaction was memorialized by a deed written by Ed Rupert and conveyed to the Defendant's mother, Judy Jones.

8. Answering the allegations of Paragraph 8 of the complaint, Defendant denies the same and asserts that, as the sole heir and devisee of his/her mother, Judy Jones, Defendant is the true owner and possessor of the property in question.

COUNTERCLAIM FOR DETERMINATION OF TITLE BY ADVERSE POSSESSION AND ESTABLISHMENT OF THE BOUNDARY LINE (AS 09.45.020)

9. The Defendant resides in the town of Palmer, in the Third Judicial District, in the State of Alaska.

10. The Defendant asserts a claim to property adverse to Plaintiff and all others located in the Third Judicial District of the State of Alaska, and more particularly described as:

> 40 acres, consisting of the SE one-quarter of the NW one-quarter of Section 25, Township 26 North, Range 7 West, Seward Meridian, Alaska, in the Talkeetna Recording District.

11. On February 11, 1989, Edward Rupert owned absolutely and in fee simple the real property described in Paragraph 10 above, together with other real property to which he was given a patent by Homestead Act.

12. Edward Rupert by good and sufficient deed dated February 11, 1989, conveyed the real property described in Paragraph 2 to Judy Jones, by his own hand, in return for the payment of $20,000. The deed was never recorded.

13. Thereafter, the property was used continuously by Judy Jones, for such uses as the property was suited, and more particularly to frequently camp on the southernmost of the two lakes in the eastern portion of the property known as the Rupert Homestead.

14. On October 10, 2008, Judy Jones died, believing in good faith, and believed by Defendant, to be the rightful owner of the subject property. On October 20, 2008, the last will and testament of Judy Jones was duly admitted to probate by the Superior Court of the State of Alaska at Palmer. Plaintiff, as sole devisee under the will, became the rightful owner of the property.

15. Beginning in the summer of 2010, the Defendant began using the property, inhabiting it in summer, and cleared trees and levelled land.

16. In 2011, the Defendant poured a foundation for a permanent dwelling and established necessary outbuilding sites.

17. In summer of 2012, the Defendant had established a permanent dwelling on the land, and that such dwelling was open, and obvious, and continuously present.

18. The Defendant has used the property to which Defendant claims title, in a manner that was notorious, exclusive except as to friends and family members, continuous within the suitable uses of the land and against all claims of others.

19. The Defendant or Defendant's parent and ancestor, has been in continuous possession of the subject property for a period of more than 7 years under a claim of title, exclusive of any other right, and adversely to the pretended title of the Plaintiff, for 7 years before the commencement of this action.

20. The Plaintiff, nor his ancestor, did not, in those 7 years, assert any act of possession or use or objection to the Defendant's ancestor's, or Defendant's use and occupancy of the subject

property. The Defendant claims sole ownership of the property, and the Plaintiff's action and recorded deed constitute a cloud on Defendant's title to the property.

21. The Plaintiff's action places the boundary line of the Defendant's property in dispute. The Defendant therefore seeks a decree of this court determining the boundary line of the real property as between the Plaintiff and the Defendant.

WHEREFORE, Defendant requests as follows:

1. That Plaintiff take nothing by his/her complaint and Plaintiff's complaint be dismissed with prejudice;

2. That the court enter an order directing the marking of the true boundary line between the forty acres of land owned by the Defendant and that land owned by the Plaintiff.

3. The court enter judgment that Defendant is the fee simple owner of all right, title, and interest in and to the property and the court decree the State of Alaska Department of Natural Resources Office of the Recorder accept and file a deed reflecting the Defendant's rightful ownership of the SE quarter of the NW quarter of Section 25, Township 26 North, Range 7 West, Seward Meridian, Alaska.

4. That the court award Defendant reasonable attorney's fees and costs of litigation; and

5. That the court grants such other and further relief as may be allowed by law.

Dated October 4, 2018.

_____

Attorney for Defendant

VERIFICATION

I, PAT JONES, swear that I am the plaintiff in the above-named Answer and Counterclaim and have read the complaint and I am cognizant of the facts alleged, and that the facts and matters stated and set forth are true and correct.

Pat Jones

PAT JONES

STATE OF ALASKA)
) *SS*
THIRD JUDICIAL DISTRICT)

SUBSCRIBED AND SWORN TO by PAT JONES before me on the 4th day of October, 2018 at ANCHORAGE, ALASKA.

_____
Notary Public for Alaska
Commission expires: __03/24/21___

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

SAM RUPERT, Plaintiff, vs. PAT JONES, Defendant.	Case No. 5AN-18-99501 CI

ANSWER TO DEFENDANT'S COUNTERCLAIM FOR ADVERSE POSSESSION AND TO DETERMINE BOUNDARY LINE

Plaintiff, SAM RUPERT, answers the Counterclaim asserted in paragraphs 9 through 21 of Defendant's Answer as follows:

1. As to Paragraph 9, the Plaintiff admits the allegations contained therein.

2. As to Paragraph 10, the Plaintiff admits the allegation that Defendant asserts a claim to Plaintiff's property described as:

> 40 acres, consisting of the SE one-quarter of the NW one-quarter of Section 25, Township 26 North, Range 7 West, Seward Meridian, Alaska, in the Talkeetna Recording District.

Plaintiff denies Defendant's right of possession or ownership thereto.

3. As to Paragraph 11, the Plaintiff admits the allegation that Edward Rupert owned the property described therein and that he was given a patent to the land by the Homestead Act; Plaintiff alleges that Edward Rupert's wife, Kathy Rupert, was also a patentee, and therefore denies that Edward Rupert was the sole and absolute owner of the property.

4. As to Paragraph 12, the Plaintiff denies that the "deed" was good and sufficient and further that the deed was to the property claimed by Defendant, and admits that no such deed was recorded.

5. As to Paragraph 13, the Plaintiff denies that the subject property was continuously or frequently used by Judy Jones, or any member of her family.

6. As to Paragraph 14, the Plaintiff admits that Judy Jones died, although Plaintiff did not learn of her death until 2009. Plaintiff denies Judy Jones was the rightful owner of the subject property at the time of her death and therefore denies that Defendant is the rightful owner of the property now. As to other allegations contained in Paragraph 14, Plaintiff lacks sufficient information to form a belief and therefore denies the same.

7. As to Paragraph 15, the Plaintiff has no knowledge on which to base an opinion as to the truth or falsity of the Plaintiff's claim regarding her actions, and therefore denies the same.

8 As to Paragraph 16, the Plaintiff has no knowledge on which to base an opinion as to the truth or falsity of the Plaintiff's claim regarding her actions, and therefore denies the same.

9. As to Paragraph 17, the Plaintiff admits Defendant built a small cabin, but denies that the cabin's existence was open and obvious, and that it was continuously used.

10. Plaintiff denies the allegations of Paragraph 18.

11. Plaintiff denies the allegations of Paragraph 19.

12. Plaintiff denies the allegations of Paragraph 20, and further asserts that no permission or objection can be made where there is no knowledge of the Defendant's activity.

13. Plaintiff denies the allegations of Paragraph 20, and asserts that Defendant's actions, by claiming right to the SE quadrant of the property, the Defendant has clouded Plaintiff's title.

14. Paragraph 21 calls for neither admission nor denial.

WHEREFORE, the Plaintiff requests judgment against the Defendant, and that

1. Judgment be that Plaintiff is the fee simple owner of all right, title, and interest in and to the subject real property;

2. Judgment be that Defendant has no right, title, estate, or interest in or lien on the subject real property;

3. Plaintiff be granted all relief requested in Plaintiff's Complaint;

4. Attorney fees and costs; and

5. Such other and further relief as the court may deem just and proper.

Dated this 17th day of October, 2018 at Anchorage, Alaska.

_____
Attorney for Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

SAM RUPERT, Plaintiff, vs. PAT JONES, Defendant.	Case No. 5AN-18-99501 CI

STIPULATIONS

It is stipulated for purposes of this [Mock] Trial that the following facts and law may be relied upon by the parties in the presentation of their case:

I.

All exhibits included in these case materials are authentic and are accurate in all respects; no objections to the authenticity of the exhibits will be entertained. All affidavits are considered part of the case materials and may be used during trial as would any sworn statement. The affidavits are to be considered authentic, signed, and notarized.

II.

The witnesses for the Plaintiff are:

1. Sam Rupert
2. Dale Baxter
3. Lane Thomas
4. Kelly Larson

III.

The witnesses for the Defendant are:

1. Pat Jones
2. Hanley Hansen
3. Mel Carmichael
4. Julia/o Sanchez

IV.

Jurisdiction for the case is appropriate. Proper venue is in Palmer, Alaska, but the case was filed in and both parties have agreed to hear the case in Anchorage, Alaska.

V.

Sam Rupert is the sole legal heir of Kathy Rupert and Edward Rupert. Any legal interest validly held by Kathy Rupert and Edward Rupert at the time of their respective deaths was legally conveyed to Sam Rupert, who may assert any claims thereto.

VI.

Pat Jones is the sole legal heir of Judy Jones. Any legal interest validly held by Judy Jones at the time of her death was legally conveyed to Pat Jones, who may assert any claims thereto.

ATTORNEYS FOR
SAM RUPERT

By:_____/s/_____

ATTORNEYS FOR
PAT JONES

By:_____/s/_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

SAM RUPERT, Plaintiff, vs. PAT JONES, Defendant.	Case No. 5AN-18-99501 CI

JURY INSTRUCTIONS

FOUNDATIONAL INSTRUCTIONS

Introduction

Members of the jury, you have now heard and seen all of the evidence in the case and you have heard argument about the meaning of the evidence. We have reached the stage of the trial where I instruct you about the law to be applied.

It is important that each of you listen carefully to the instructions. Your duty as jurors does not end with your fair and impartial consideration of the evidence. Your duty also includes paying careful attention to the instructions so that the law will properly and justly be applied in this case. You will have a copy of my instructions with you when you go into the jury room to deliberate and to reach your verdict. But it is still absolutely necessary for you to pay careful attention to the instructions now. Sometimes the spoken word is clearer than the written word, and you should not miss the chance to hear the instructions. I will give them to you as clearly as I can in order to assist you as much as possible.

The order in which the instructions are given has no relation to their importance. The length of instructions also has no relation to their importance. Some concepts require more explanation than others, but this does not make longer instructions more important than shorter ones. All of the instructions are important and all should be carefully considered. You should understand each instruction and see how it relates to the others given.

Presumption of Innocence, Burden of Proof, Proof Beyond a Reasonable Doubt

The distinguishing features of a criminal trial are what are known in the language of the law as the presumption of innocence and the burden of proof beyond a reasonable doubt. The law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a clean slate – with no evidence favoring conviction. The presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

This last-mentioned requirement, that you be satisfied beyond a reasonable doubt of the defendant's guilt, is what is called the burden of proof. It is not required that the prosecution prove guilt beyond all possible doubt, for it is rarely possible to prove anything to an absolute certainty. Rather, the test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense. Proof beyond a reasonable doubt must be proof of such a convincing character that, after consideration, you would be willing to rely and act upon it without hesitation in your important affairs. A defendant is never to be convicted on mere suspicion or conjecture.

The burden of proving the defendant guilty beyond a reasonable doubt always rests upon the prosecution. This burden never shifts throughout the trial, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant has the absolute right not to testify, and you must not draw any inference against the defendant for not testifying. Thus a reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove every essential element of the crime charged beyond a reasonable doubt, a defendant has the right to rely upon the failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution.

Evaluation of Evidence

The weight to be given the evidence is for you to determine. You must examine the evidence carefully and decide how to evaluate it in light of the law that I have given you in these instructions. In your deliberations, you must not be governed by mere sentiment, unsupported conjecture, sympathy, passion, prejudice, public opinion, or public feeling. You should consider the evidence in light of your own common sense and observations and experiences in everyday life. But you may not consider other sources of information not presented to you in this court.

Your consideration of this case should be based solely on the evidence presented and the instructions I have given. The parties to this action are entitled to have a calm, careful, conscientious appraisal of the issues presented to you. Sympathy, bias or prejudice should not have the slightest influence upon you in reaching your verdict.

Direct and Circumstantial Evidence

Evidence is either direct or circumstantial. Direct evidence, if you accept it as true, proves a fact. Circumstantial evidence, if you accept it as true, proves a fact from which you may infer that another fact is also true.

Let me give you an example. Let us pretend that as a juror you are asked to decide the following question: Did snow fall during a particular night? Direct evidence would be a witness testifying that the witness awoke during that night, went to the window, and saw the snow falling. From this evidence you could conclude that snow fell during the night.

Circumstantial evidence would be a witness testifying that the ground was bare when the witness went to sleep at 10:00 p.m., but the next morning when the witness awoke and looked out the window, the witness saw that the ground was covered with snow. From this evidence you could also conclude that snow fell during the night.

Facts may be proved by either direct or circumstantial evidence. The law accepts each as a reasonable method of proof.

Witness Credibility

You have heard a number of witnesses testify in this case. You must decide how much weight to give the testimony of each witness.

In deciding whether to believe a witness and how much weight to give a witness's testimony, you may consider anything that reasonably helps you to evaluate the testimony. Among the things that you should consider are the following:

(1) the witness's appearance, attitude, and behavior on the stand and the way the witness testified;

(2) the witness's age, intelligence, and experience;

(3) the witness's opportunity and ability to see or hear the things the witness testified about;

(4) the accuracy of the witness's memory;

(5) any motive of the witness not to tell the truth;

(6) any interest that the witness has in the outcome of the case;

(7) any bias of the witness;

(8) any opinion or reputation evidence about the witness's truthfulness;

(9) any prior criminal convictions of the witness that relate to honesty or veracity;

(10) the consistency of the witness's testimony and whether it was supported or contradicted by other evidence.

You should bear in mind that inconsistencies and contradictions in a witness' testimony, or between a witness's testimony and that of others, do not necessarily mean that you should disbelieve the witness. It is not uncommon for people to forget or to remember things incorrectly and this may explain some inconsistencies and contradictions. It is also not uncommon for two honest people to witness the same event and see or hear things differently. It may be helpful when you evaluate inconsistencies and contradictions to consider whether they relate to important or unimportant facts.

If you believe that part of a witness's testimony is false, you may also choose to distrust other parts of that witness's testimony, but you are not required to do so. You may believe all, part, or none of the testimony of any witness. You need not believe a witness even if the witness's testimony is uncontradicted. However, you should act reasonably in deciding whether you believe a witness and how much weight to give to the witness's testimony.

You are not required to accept testimony as true simply because a number of witnesses agree with each other. You may decide that even the unanimous testimony of witnesses is erroneous. However, you should act reasonably in deciding whether to reject uncontradicted testimony.

When witnesses are in conflict, you need not accept the testimony of a majority of witnesses. You may find the testimony of one witness or of a few witnesses more persuasive than the testimony of a larger number.

Expert Witnesses

A witness who has scientific, technical or other specialized knowledge or experience may be qualified as an expert and may express an opinion in addition to giving testimony as to facts.

In determining whether to believe an expert witness and the weight to be given to his or her opinion, you may consider the expert's qualifications and knowledge, the reasons given for the opinion, how the expert got the information he or she testified about, and the factors given you for evaluating the testimony of any other witness.

As with other witnesses, you must decide whether or not to believe an expert witness and how much weight to give his or her testimony. You may believe all, part or none of the testimony of an expert witness.

Opinion Testimony of Non-Experts

A non-expert witness may testify to his or her opinion if it is rationally based on the witness' perceptions and helpful to a clear understanding of the testimony or the determination of a fact in issue.

In determining the weight to be given to an opinion expressed by a non-expert witness, you should consider the witness's credibility, the extent of the witness's opportunity to perceive the matters upon which the opinion is based and the reasons, if any, given for it. You are not required to accept such an opinion but should give it the weight, if any, to which you find it entitled.

You are not to decide any issue by the simple process of counting the number of witnesses who have testified on the opposing sides. The final test is not number of witnesses, but whether, considering all the evidence, the state has proved every element of each charge beyond a reasonable doubt.

Objections

There are rules of law that control what evidence you can consider. When a lawyer asks a question or offers an exhibit into evidence, and the lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, or the exhibit be received. Whenever I sustain an objection to a question addressed to a witness, you must disregard the question entirely, and must not draw any inference from the wording of it, nor speculate as to what the witness would have said if permitted to answer the question. If I sustain an objection to a question after an answer has been given, then you must disregard the question and the answer.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. In that case, you must not consider the evidence which I told you to disregard. You may wonder why some evidence must be excluded or disregarded when it appears to be of some interest to you. The rules that govern what evidence can be received are designed to do two things. First, they try to help you focus on important and reliable evidence by keeping out interesting but not very important or reliable information. Second, the rules help you decide the case objectively without being swayed by information that might cause you to respond emotionally.

You should not be influenced by the fact that objections are made or that requests are made that I take certain actions; nor should you be influenced by the number of objections or requests that are made. Objections or requests are not evidence. Please remember that my rulings that exclude evidence or that bar questions are designed to help you decide the case fairly. When I allow testimony or other evidence to be introduced over the objection of a lawyer, I do not mean to suggest any opinion as to the weight or effect of such evidence.

SUBSTANTIVE INSTRUCTIONS

Quiet Title

Plaintiff has raised a claim to quiet title over the subject property – the southeast quadrant of land contained within the Rupert Homestead. In the present case there is a purported sale of the subject property in a contract dated February 11, 1989. You must first determine by a preponderance of the evidence whether the purported contract is a valid contract. If you determine that it is a valid contract, you must then determine whether the contract pertains to the southeast quadrant or the northeast quadrant of the Rupert Homestead.

To find that there was a contract, you must decide that it is more likely true than not true:

(1) that both the plaintiff and the defendant gave something of value or promised to give something of value in exchange for what the other gave or promised; and

(2) that both the plaintiff and the defendant agreed to the essential terms and conditions of what each gave or what each promised to give the other. Agreement as to these essential terms

may be implied from conduct or words. The law does not require that the conduct or words be in any special form.

If you decide that both things are more likely true than not true, then there was a contract, and you must decide to which quadrant the contract refers. Otherwise, you must decide that the plaintiff and the defendant did not form a contract.

If you determine that a valid contract existed and that it conveyed the southeast quadrant of the Rupert Homestead from Edward Rupert to Judy Jones, then you do not need to address the claim for adverse possession raised by Pat Jones. However, if you find either (1) that no valid contract existed between Edward Rupert and Judy Jones, or (2) that a valid contract existed between Edward Rupert and Judy Jones but that it conveyed the northeast quadrant, then you must proceed with the adverse possession claim.

Adverse Possession

Defendant Pat Jones has raised a claim of adverse possession of the subject property. If you find in favor of Pat Jones on the adverse possession claim, this will result in Pat Jones having full legal possession of the subject property. In order to make a finding of adverse possession, you must find that Pat Jones had exclusive and uninterrupted adverse notorious possession of the subject property under color and claim of title for seven years or more. Let me explain each of these elements in more detail.

In order for possession to be "exclusive," the person asserting adverse possession (the "claimant") must use the land for the statutory period as an average owner of similar property would use it. It is not required that the claimant be the only user of the property, only that any use of the land the claimant allows of others be consistent with the conduct of a hospitable landowner.

In order for possession to be "uninterrupted," the claimant must have used the land in question continuously for at least the last seven years in a manner consistent with the typical, suitable uses of the land. For example, it is not necessary that land suitable only for seasonal use be used in the winter to establish continuity.

In order for possession to be "adverse," the claimant must be using the land in a manner hostile to the intent of the record owner of the land. In order to meet the hostility requirement,

adverse possession claimants must prove both that they acted as owners and that they did not act with the true owner's permission.

In order for possession to be "notorious," actions taken by the claimant with regard to the subject property must be done openly and in a manner such that a reasonable person would interpret the claimant as asserting ownership of the property. This requirement is fulfilled when the record owner knew or should have known of the adverse possession – what a duly alert owner would have known, the owner is charged with knowing.

In order for possession to be "under color of title," the claimant must have a good faith belief of legal ownership of the subject property. This must be accomplished through the existence of a written instrument which purports, but which may not be effective, to pass title to the claimant and which describes the land in question with sufficient accuracy to justify a good faith belief in its ownership.

You must find the existence of each of these elements for the statutory period of at least seven years prior to the filing of this action in order to find in favor of defendant's claim of adverse possession.

AFFIDAVIT OF SAM RUPERT

1. My name is Sam Rupert. I am sixty-two years old. I am the true owner of the property in dispute here – the south lake in the southeast corner of our land off the Petersville Road. The land has been in our family since 1964. I inherited it from my father – Edward Rupert – when he passed away about fifteen years ago at the ripe old age of eighty-four. My mother, Kathy, died a couple years before Dad did. I miss them both every day, and I consider it an affront to our family name to have someone like Pat Jones trying to take our land away from us.

2. Dad worked in the mining industry – first as a mineworker, but then he eventually worked his way up into management. He and the firms he worked at mined for all sorts of minerals – copper, gold, coal. Mostly in Interior Alaska. He had a home in Wasilla, but it always seemed like he was off working somewhere. Dad loved being out in the middle of the wilderness, by himself if he could. He worked in some gold mines around Trapper Creek off the Petersville Road (also known as the Cache Creek Road) and fell in love with the place. As soon as he figured out that there was land up there available for homesteading, he jumped on it. I'm still not sure how he convinced Mom to join him out there! But she had an adventurous spirit in her too and could do without the comforts of civilization.

3. Dad homesteaded the land in 1964 and obtained a homestead patent from the U.S. government for it. He wanted easy access, so he homesteaded land that abutted the Cache Creek Road on the north edge of the property. Actually, the Road went through the northern portion of the property, so Dad had to accept an easement over his land for the Road. The homestead parcel as originally constituted was a square, with each side being a little over 880 yards in length. (For comparison, an acre is 90.75 yards in length of a football field at 53 1/3 yards wide.) There are three lakes on the property – a larger seven-acre lake dead center in the western half of the property and two small unnamed lakes on the eastern half of the property, each about four acres in surface area. These two lakes are on a north-south axis approximately 100 yards from the eastern boundary of the property. The lakes are evenly spaced about 150 yards each from the east-west center line of the property, so about 300 yards apart. There is a stream that runs from the northern boundary of the property, through the north lake, to the south lake, and then through the southern boundary of the property. The north lake is 200 feet higher in elevation than the south lake. The north lake is in flatter terrain than the south lake, which has a few hills around it. They are both nice lakes for someone looking for a wilderness retreat, though because of the surrounding scenery most people I talk to who have seen them both prefer the south lake. Plus, the north lake is fairly close to the Petersville Road, though the road is blocked from view by some trees and a small but steep hill. When Mom and Dad first bought and developed the property, I would go up and explore all over, including spending time camping at all three lakes. But that was decades ago. I spend most of my time now on the western half of the property, but on occasion I go over to the eastern side and am familiar with both the lakes there.

4. Dad built a nice log house out on a big lake on the western side of the property. Fully functioning, with a kitchen and plumbing. Three bedrooms and a good sized living room, all with amazing views. He was not particularly good at construction himself, so he had a dirt road put in off the Petersville Road to the place on the western lake where he wanted to build. The Petersville Road partially bisects the northern half of the homestead, so this was easy to do. Because of the terrain – there is a steep ravine along much of the northern edge of the western half of the

homestead – this private access road actually starts in the northeast quadrant, but it immediately curves to the west and pretty quickly gets to the north side of the big west lake, where Dad built the house. Dad also figured that he would eventually want to build smaller cabins on the two western lakes – maybe to sell off the land or to have a place for me or any grandchildren to stay. So, he had the dirt road extended over to those two lakes. Not sure why he didn't just have a second road come off the Petersville Road, though there is a hill on the north side of the north lake that you couldn't really build a road over, so that may have something to do with it. The road from his house curves around the north side of the western lake and then takes a few twists and turns before getting to a Y-intersection. Because of how winding the road is, travelers can be kind of disoriented by the time they are at the intersection and confused about which way to turn to get to the different lakes. But after doing it a couple of times, you learn that you have to go left to get to the north lake and right to get to the south lake. This is also fairly intuitive when you think about it spatially.

5. Dad never did build on the two western lakes. Never got around to it. Plus, he sold the land around the northern lake to Judy Jones. I still live in our house on the western half of the property. I have been there ever since my Dad died. Well, after I fixed up the property, at least. Before that I lived in Anchorage. I live by myself. My only daughter, Clara, 38, left the state long ago and lives in California with her husband and two kids. My ex-husband/wife and I separated eighteen years ago, after Clara left the house to go to college out of state. Clara was the reason we didn't get divorced earlier. When Dad died, I jumped at the opportunity to move into the family home. I needed a change in my life, and there was no longer really anything to keep me in Anchorage. I had always loved visiting there when I could, and spent a fair bit of time visiting Dad as he got older. The last few months of his life he lived in a hospice. It was tough to see him unable to care for himself. He had been such a strong personality in life. Everyone liked him.

6. I work as an electrical engineer on the Slope. I have a two-week on/two-week off schedule. This makes it easy for me to spend solid chunks of time at the house, then drive to Anchorage to catch the flight up North. The house is a full-fledged house, not some wilderness cabin. It had fallen into a bit of disrepair when I inherited the property because Dad was unable to properly maintain it. But, I mean, I am good with my hands and had no problem fixing it up. It did take me a couple of years, though. I moved in during the summer of 2006 and have loved living on the property ever since. No regrets. I never miss being in a bigger city like Anchorage and love the isolation of being out in nature. And if I ever want to see people, the Broken Snowshoe Bar is still around.

7. I am admittedly a bit of a hermit and stay mostly to myself. I pretty much stick to the western half of the property, where my house is located. There is not really much reason for me to go to the twin lakes or anywhere else on the eastern half of the property. I have a larger lake where my house is located. And an even better fishing stream than the one between the lakes. Not to mention plenty of places to hike around the western side of the property. I suppose I might have crossed into the eastern side of the property during the fall when I went ptarmigan hunting, but I never paid it much attention. I would sometimes go over to the lakes in the winter because it was easy and fun to get around on a snowmachine and the terrain over there is challenging to ride on. I never saw anyone over there in the winter – or the summer either on the few occasions I would head in that direction. I guess I just like living in a place where I can be by myself so much of the time without another soul around for miles.

8. I do remember Dad telling me that he had sold the northeast quadrant of his property about thirty years ago to a lady by the name of Judy Jones. He did not tell me much about when he sold it, only that it was in the late 1980s or early 1990s. He did say that it was in the winter at the Broken Snowshoe Bar. Probably some drinking going on, but Dad could handle a few drinks without it really having much of an effect. Dad did not have a copy of the deed of sale. He said it was done on the back of a napkin and that Judy had the only copy. A place like the Broken Snowshoe certainly was not going to have a photocopy machine, and there wasn't one back then anywhere near Trapper Creek. The Broken Snowshoe is still a bit sketchy, and to be honest I avoid it as much as I can. But, there aren't that many places to meet people and hang out up there, so I admit I sometimes break down and have a beer or two.

9. Dad was a man of his word, so it did not really matter to him that he did not have a copy of the deed of sale for the property. He knew what he had sold and didn't need any more record of it than that. And he was careful to make sure I knew that the northeast quadrant was no longer Rupert land. I tried to make a point of staying out of that area, particularly in the summer. I mean, of course I would have to cross it on the Petersville Road to get to my access road, but I never left the main road to check things out. In the winter everyone rides around each other's property and no one really cares. It is all frozen over anyway so can't really do any harm. But in the summer is when I figured Judy or her family might be camping out or whatever on the property, so I did the respectful thing and stayed away. Like I said, I had plenty to do on the eighty acres on the western side of the property.

10. Another reason not to go to the northern twin lakes is that it is just not that pretty. I wouldn't call it a true lake so much as a flat expanse of flooded land. Kind of swampy, really. I mean, there are mosquitos everywhere in tundra Alaska in the summer, but it is especially bad around the north lake. And just flat and boring. Dad told me that is why he sold the north lake instead of the south lake. He was surprised he could get anyone to buy the north lake. The south lake is much nicer. More hills and scenery. Not as much swamp or marsh, so the mosquitos aren't as bad. Plus, the water in the lake flows a bit more, which prevents the stagnant pools that mosquitos like to breed in. Dad always figured he would keep the southeast quadrant around the south lake in the family and maybe sell it off at a later date for a good sum of money. But he never got around to it. I guess I never got around to it either.

11. Dad did have a good friend, Lane Thomas, that he would let use the property for weekend camping. Lane was an ophthalmologist in Anchorage. Dad was a fairly private person. I guess that is where I got it from. He didn't have too many good friends, but Lane was one of them. They sort of bonded over a love of nature. I don't know all the details, but I think Dad pretty much let Lane come up to hike and camp on our land whenever s/he wanted. From what I understand, Lane mostly stayed around the south lake, which makes sense. When Dad died, Lane came up to me at Dad's funeral and asked if s/he could still come on the land. Lane was a bit sheepish about asking, but I didn't mind. If Dad trusted Lane to be on the land without doing anything inappropriate, I could too. I am not aware of Dad having that kind of arrangement with anyone else.

12. There would be the occasional random hiker that would come through the property. It is a patchwork of ownership around there, and I figured that people might sometimes wander in from places they had a legitimate reason to be on. As long as they kept moving, I didn't mind and would let them be. But I do remember having a problem about five years ago with David Hansen, Hanley

Hansen's son. David was big into duck hunting, and there was a nice flock of ducks staying on the far side of my lake. In late September, just as the ducks are getting ready to start migrating south, I hear these rifle shots coming from across the way. Now, I don't mind people hiking through, but hunting on my property is another thing! I don't want to get shot, particularly if I am out there myself hunting. So, I hiked over there and started yelling until I could find David. I told David he had to leave and not to hunt on my property. He played dumb and said he thought it was public land. So, ok, he left. But then two days later I hear "BANG BANG" from the far side of the lake again. I trek over and who is it but David hunting at the same place as before. I was real mad at David and yelled at him to leave. Told him I'd call the Troopers if I ever saw him on my property again. I even confronted Hanley at the Broken Snowshoe about it a couple weeks later. Hanley seemed pretty perturbed about it and thought I should be more open about sharing my land with others. There would still be plenty of ducks for me to shoot, Hanley said. I just told Hanley that s/he and her/his kid better stay off my property. I never have seen David on my land again, but to this day I still don't trust either David or Hanley.

13. Another person I don't trust is Pat Jones. Well, I guess maybe more Judy Jones. Pat probably just took over the land around the lake that Judy told her/him to go to. Dad knew the property much better than Judy and never would have sold her the property around the south lake. Dad never told me how much money Judy paid for the property, but I do remember him telling me that he thought he did the best he could in selling the land around the north lake, particularly since there is a road across the property. I also specifically remember him telling me when he was dying that he was leaving me the southeast quadrant of the property and that I should sell it to make enough money to retire a bit early. Dad was very honest and never would have told me this if he thought that there was any chance Judy Jones owned that land. And any suggestion that Dad might have made a mistake and sold the wrong parcel is ridiculous. Dad loved that land almost more than he loved me! He never would have been careless with it.

14. I think what happened is that Judy knew she had gotten the worse of the two lakes and just decided to take over the south lake anyway. She took advantage of how remote my Dad's land is and how rarely anyone else came around there. Maybe she figured that if all she was doing was just camping it was no big deal. It is a big property, and if you do not actively patrol it, it would be easy to miss someone else making an occasional visit. Judy never did anything to change the land, so unless Dad caught her in the act of staying at the south lake, there was no way he could know what was going on. Where I really blame Judy is in telling Pat that s/he would inherit the southeast quadrant of the Rupert land. Judy must have known this was a lie!

15. It wasn't until over a year after Judy's death that I heard through someone down at the Broken Snowshoe that she had died and that Pat Jones had inherited the Jones parcel. This was toward the end of 2009 that I found out. It never occurred to me that I would need to check out the south lake to make sure Pat wasn't building a cabin. I just assumed that the south lake was being left alone, and that whatever Pat was doing s/he was doing at the north lake. And that was none of my business. It was easy to stay away from the eastern side of the property during the summer, since there was so much to do on the western half. Maybe I might go over there if I was hiking around, but I usually stayed in the woods. The north lake is in flatter, more open terrain, so it was easy to see there was nothing going on there. I mean no construction or anything. The south lake was more surrounded by trees and hills. You wouldn't be able really to see any kind of improvements to the land unless you were looking for them. I suppose I might have been able to

see something if I went along the dirt road to where it dead-ended at the lake, but I liked to be traipsing through the trees with my dog when I was off hiking, not on the road. The only time I would go on the roads on the property was in the winter when I was on my snowmachine and everything was covered with snow.

16. I know everyone thinks I am just bringing this lawsuit for the money from the gold deposit at the south lake. Don't get me wrong, I definitely think I deserve whatever comes out of that deposit more than Pat Jones does. But it just breaks my heart that Dad spent all his life searching for gold and never knew that there was this huge deposit on his own land. That gold deserves to be Rupert gold, and I'm not going to give it up without a fight.

AFFIDAVIT OF DALE BAXTER

1. My name is Dale Baxter, and I have lived in Alaska my whole life. I was born in 1943, so I'm pushing 76 years old. Oh boy. I grew up in Anchorage because my parents were in the military. But that's not the Alaska I know and love. I moved away as soon as I finished high school. I would come back to visit my parents, but I wanted to be out in the wild with the real Alaskans. I moved up north to Trapper Creek and worked for the Department of Transportation in my youth. It was good work, just out on the roads all day digging or directing traffic or doing whatever.

2. We couldn't work the roads year-round though. Winter in Alaska – it's what separates the real Alaskans from the folks who just pretend to be Alaskans. Spend some winters up north and see what if feels like. I spent a couple of winters up in Barrow for work. Now that is cold. Made me appreciate winters in Trapper Creek, where I still live.

3. Since I couldn't work with the Department of Transportation during the winter, I got a gig tending bar at a great old place – the Broken Snowshoe Bar. Still there. Owned by a good friend of mine, Richard Dean, until he died just a couple of years ago. He was a true Alaskan – grew up in Fairbanks then spent summers working in Denali National Park and the rest of the year mining at his homestead near Cantwell. Cold out during the winters, but he didn't mind. I got to visit his place a few times – just beautiful. Had a nice cabin built right along a stream. Richard was a great Alaskan. Eventually he got a chance to buy the Broken Snowshoe Bar right outside Trapper Creek, and that's when I might him. I was actually in there one winter night lamenting my lack of a job. Richard said, "Well, why don't you stop complaining about it and start working? I could use a bartender most nights." So I said, sure, finished my drink, and started tending bar immediately.

4. I worked there for years. During the summer all sorts of people would come through, but I was usually working for the Department then. Instead, I worked there during the winters, when Richard didn't really want to be around. Eventually he just let me basically run the place. You could certainly meet some interesting people there. Mostly just the locals. Not many of us, so everyone knew everyone else. But, there were the occasional free spirits that wanted to explore the glorious Alaska wilderness.

5. I remember Ed Rupert and Judy Jones. Ed had a place outside Trapper Creek. He homesteaded it with his wife Kathy sometime in the 60s, I think. Before my time there, anyway. I hear he built this beautiful log house there all by himself, though I've never visited it myself. Ed loved that place. He would tell me about it, about the lakes on it, about how secluded it felt, about the hiking and fishing and hunting he could do out there. He once had a caribou tag and was getting ready to leave for his hunt when a few caribou wandered right past his cabin. He managed to bag one from his front porch. He had built a really nice cabin by a big lake somewhere on the property. I believe there were two other lakes on the property, but Sam Rupert, Ed and Kathy's daughter/son, would know better. Maybe the thing about the caribou was a tall tale, but I loved it. I let Ed tell me all sorts of tall tales during the winter – he was full of stories.

6. I didn't see Judy as much. She lived in Palmer – not sure what she did for work, but I heard she was a secretary for a law firm or something like that. I'm not sure exactly. She would come through the area sometimes, stop in at the bar occasionally, seemed to get along well with people.

She and Ed knew each other – I think their families would hang out or something, but I'm not entirely sure of that. I enjoyed talking with Judy – she would tell some good stories, laugh at mine. I'm not entirely sure what brought Judy through Trapper Creek, but I know after she bought the land from Ed she began coming through much more often. I used to see her fairly regularly some summers.

7. I remember one night in the winter of 1989 – I think it was around the middle of February – when Ed and Judy were in there together. I remember it was 1989 because it was the year of the World Series with the earthquake. That was crazy. My parents instilled a love of baseball in me when I was young, so I always kept tabs on how things were going. Nowadays I can watch games, but back then I had to make do with box scores. Kids these days don't have any understanding of what it was like to be a fan back then. I don't get these newfangled "stats" these days. Give me home runs, RBI, and batting average – that's all I need!

8. It was a cold stretch in a cold winter – the kind of winter where you couldn't do much outside with any skin exposed. The bathroom in the Broken Snowshoe was busted that winter because some pipes froze, so we had to stash a couple of porta potties outside. I'm not sure what chemicals they put in those to keep them from freezing but thank goodness for it. But I can still recall the awful smell.

9. Anyway, it was cold, safe to say. Ed and Judy were in there one night just relaxing. Ed had come into town to get some supplies for his cabin, and he decided to stay the night and head back the next day. You don't want to get into trouble on those roads at night, so it made sense. Ed and Judy definitely had a few that night. The Broken Snowshoe did not get that much traffic in the winter (like I said, only the real Alaskans stick around for the winter), so I remember them pretty well. They weren't drunk, so to speak, but they definitely were feeling a little tipsy. Without Richard around, I may have knocked back a few beers myself, but I always kept an even keel when I was working. If I had to rank how drunk they were on a scale of 1-10, I would say they were comfortably in the 6 range.

10. I couldn't catch all of it because I had other duties to attend to, but I could tell that Ed and Judy were pretty excited about something. I stopped by to ask them what they were so jolly about at one point, and Ed said, "Oh, I'm selling Judy the farm!" He explained that he and Judy were discussing a sale of part of the property Ed had. I guess it was about 150 or so acres total and Ed was selling about 40 to Judy. It surprised me a little bit, but hey, they got along well and I could see Ed wanting to give Judy a piece of the pie.

11. At one point though, while Judy was using the facilities, I brought by a couple more beers and Ed said to me, "I'm glad to sell some of that land. I've never liked the North Lake much anyway – that part of the land is pretty much worthless to me. It doesn't even have any good fishing." So, it made sense to sell it – Ed always loved to fish, so he would not want to give up the good fishing. He had mentioned on other occasions that he would spend days out there on his lake on the western half of his property just fishing, catching trout then breading and frying them. He just loved it.

12. Now, I don't think Ed mentioned this to Judy, but he had told me about it – I guess Ed had a bit of a gambling debt. I knew Ed liked to gamble a fair bit, but I didn't realize how bad it had gotten. The Broken Horseshoe sometime had poker games going on in a private back room. You know, with pipeline and mining money, you had some people with extra cash to spend. Things could get pretty wild and pretty expensive pretty fast. Ed never struck it rich, but he still liked to play with the big boys. He had been in a few nights prior, just sipping some beers and wiling the night away. We got to talking as the night wore on – it was a slow night. Ed said he wanted to tell me something and whispered (I think he didn't want anyone to know) "I need money, Dale. I'm in deep with some gambling. I lost a big hand to Jake Roberts last weekend. I had a full house. How was I supposed to know he had a straight flush! I lost $15,000 on that one hand! Jake gave me two weeks to come up with the money. Said I'd really regret it if I didn't." I'm sure that was why Jake wanted to sell to Judy. He certainly seemed to want to wrap up the deal quick. I don't blame him. Jake Roberts was a real tough character.

13. When Judy came back from the porta potty, things really got going. Ed and Judy drew something up on a napkin – that's how we used to do things in Alaska – and they both signed off on it and everything. I didn't get much of a look at the napkin – just glanced at it as I was cleaning some glasses off their table. Judy yelled out at me at one point, "I'm buying myself a lake, Dale! Can you believe it?!?" Ed yelled, "Darn right you are!" They were both really enjoying themselves, though I guess alcohol helps. They each had a shot of tequila to celebrate and consummate their agreement.

14. Ed asked me to come over to be a witness to their signatures (I didn't sign anything, just watched them sign it). I looked at the property description, and it seemed clear to me that Ed was selling Judy the north lake. Not sure how anyone could say anything different. I don't remember exactly the wording, but I think it said something about selling the quarter of the property along the Petersville Road. Everyone knew that the Petersville Road went along and actually through the northern part of Ed's homestead.

15. At that point, Ed turned to Judy and said, "So this is the lake you want, right?" Judy responded, "Yes. Absolutely. I'm looking forward to that lake and catching some fish from it!" Didn't seem to be any hesitancy in either of their voices. They shook on it and both of them signed the napkin right in front of me. I believe Judy took the napkin with her, but I don't remember for sure. I don't recall exactly what it said on the napkin about any of the sales terms, but I do remember Judy agreeing to pay Ed $20,000 – enough to cover his gambling debt and a bit extra.

16. Yeah, I remember Hanley Hansen being there that night too. I may be old, but my memory is great. I've always had a good memory. I even remember my first Christmas. Hanley was just drinking and hanging out by him/herself. Hanley was sitting fairly near to Ed and Judy, but Hanley seemed more interested in her/his drinks than in what Ed and Judy were discussing. I probably served Hanley just as many drinks as I did Ed and Judy. At one point, Hanley said to me, "Can you shut those two up? I'm trying to drink here." Hanley was always a bit of a gruff one. That's fine. Different people live differently, but I never much went in for Hanley frankly. I knew Hanley from around Trapper Creek and just never got a good vibe from him/her. I would see Hanley in the Broken Snowshoe pretty often in the winter, maybe too often for someone who had young kids at home. Hanley could also be pretty rude at times.

17. I've heard about the dispute over the land and the gold and what not. Everyone has. I haven't worked at the Broken Snowshoe for about a decade, but I still live in the area and go the bar from time to time. I don't really put in for worrying about that sort of stuff since it doesn't involve me, but I know that Ed said he was selling the land around the north lake.

AFFIDAVIT OF LANE THOMAS

1. My name is Lane Thomas and I am 75 years old. I was born and raised in Alaska, still live in Anchorage. I have a little trouble remembering some things, mostly recent stuff like where I left my car keys or who I talked with yesterday, but I remember my old days like they were yesterday.

2. I was an ophthalmologist up until 2012, when I retired. After graduating from West High, I headed east to Providence, RI and went to medical school at Brown University. After graduation, I missed the mountains and moved back to Anchorage to set up my own practice. I never practiced with any of those big groups – too much politics and insurance. I had a small office in a house on the Park Strip with a small staff and a good group of patients. I'd sometimes take alternative payments from patients who couldn't afford my normal rates. Salmon, furs, maybe a little gold, you name it. And don't get me going on those electronic medical records. Just seems like a way for people to sell you stuff you don't need. Those paper records worked for me all those years.

3. Ed Rupert and I go way back. Ed never had the best eyes, so he would come down from Trapper Creek every year to get his eyes checked. I think he probably started seeing me in the late 1970s. He drove a beat up Ford pick-up truck, and you could hear it come rumbling down the road. We became good friends, and would hang out whenever Ed was in town. We'd meet up for dinner or drinks when he was in Anchorage. Ed's favorite was Club Paris. He always ordered the Teriyaki Tips. I liked hearing his stories of all the adventures he'd have up in Trapper Creek, and he liked my dry sense of humor. Some of his best stories usually involved the Broken Snowshoe. He really got to know some characters in that bar and may have been a bit of a character himself. He liked poker, and that always made for good stories.

4. I'd head up to Ed's spot off Petersville Road several times a summer. It was such a beautiful spot. I don't remember anymore exactly when Ed snagged that land. I know he had had it for years before I got to know him. Ed knew I liked to camp, so after a while he told me that I could come up and camp on his property whenever I wanted to. I didn't even need to check in with him. I usually did stop by his house to see if he was there. Lots of times he'd be off mining. Sometimes Kathy would be there, but if Ed was gone she'd often go down into Anchorage to spend time with her sister. Not only did Kathy like to be in a place with at least some stores, but she got lonely by herself and I don't think she always felt completely safe.

5. I'd say I probably went up on Ed's land about three or four times a year during the summer and fall starting in the mid 1980s. Sometimes I'd go out hunting in the fall with Ed. Lots of birds and even the occasional caribou to hunt. The property was really beautiful. It could get pretty muddy in the spring and fall, but that's the nature of Alaska. The property is nicely wooded with some great streams. And of course the lakes. Ed built a nice big house around one lake on the western half of the property. This was the largest lake on the property and the most scenic. No question why he chose that one to build his house. Then there were two others – the north lake and the south lake. The north and south lakes were along the same stream. I've spent time at both of them. Both are great, but it doesn't make sense to me that someone could mix them up.

6. First, it is a different route to get to each lake. Sure, the road gets pretty muddy, downright impassable, at times. Sure, there are no signs. Sure, I even took a wrong turn once or twice before

I familiarized myself with the property. But the road has a clear fork in it. Given your direction of travel, taking a left will lead you to the north lake; taking a right will lead you to the south lake. Once you go along the road a few times, it is easy to remember which way to go. And besides, no one does anything up there without a compass.

7. Second, the lakes have several distinct features. To someone who isn't that observant they might seem similar, but there are several differences. The north lake is in fairly flat terrain and quite swampy. Not nearly as nice as the south lake. I mean, you've still got the tundra surrounding you in the north lake, which is always pretty, but I like the hills that surround the south lake. I think most people would. The north lake also doesn't have as much fish in it. I'm not sure why that is, maybe because of how swampy it is, but the fishing in the north lake just isn't as good. The south lake, on the other hand, is chock-full of trout. Another major difference is that the north lake has some distinct aspects of its shape. It's roughly round, just like the south lake, but it has a few little coves and angles to it, again probably because of the flat expanse of the surrounding land. The south lake is much more uniform in shape and more scenic.

8. Before I started going out to the property, I remember Ed saying "Lane, feel free to set up wherever you want, but please respect our friendship and don't build anything". This was fine with me, I much preferred a simple campfire and tent, really made you feel like you were in the woods, and I can understand why Ed wouldn't want people building stuff on his property. I would head up with just my tent, sleeping bag and camp out under the midnight sun. Fishing was my favorite activity during the summer, just sitting by the side of one of the lakes with a few cold beers and a line in the water. Never caught much (as I said, I preferred the south lake for fishing) but it was peaceful unless the mosquitos were out – biggest bugs in the state.

9. I noticed Judy Jones camping around the south lake on occasion. I'm not sure what years exactly, but I believe there was an occasion in the early 90s that I saw her there. I went up and introduced myself. She told me her name but didn't mention anything about owning the land there. And I don't recall Ed ever saying anything to me about selling a piece of his property. I guess it just was not a big deal to Ed. There was plenty of land there, and everyone had a chance to find their own spot of pristine wilderness.

10. I would see Judy periodically after that, always around the south lake. Not every year, but maybe every other year. I don't think she ever noticed me, I tend to blend in to the surroundings, helps you sneak up on the fish better. And it was easy just for me to go to another part of the lake. I can't really recall if Judy was always on the same spot at the south lake or if she would maybe head up to the north lake. The road to the south lake dead ends at this nice flat area that was perfect for camping. Sometimes Judy would be there with her car and sometimes she'd be there without her car, presumably having left it further up the road for some reason. I guess I can understand that. I liked to hike and would usually leave my car at Ed's house and hike my in. I never told Ed about seeing Judy around the south lake. I figured he'd given her the same deal as me, so I didn't think much of it. She also seemed pretty unobtrusive herself. I would see her tent and a campfire occasionally, but nothing that was out of place. I would on rare occasions see people other than Judy hiking through the property, but I can't recall seeing anyone else camping there. But again, I mostly kept to myself.

11. Kathy died about 17 years ago and Ed about 15. I remember talking to Sam Rupert, their son/daughter, at Ed's funeral. I felt kind of guilty asking, but I told Sam about the arrangement Ed and I had and asked if s/he'd mind if I could keep going up there from time to time. By that point I was only heading up there once or maybe twice a year. Sam was very kind to me and said I could keep using the property. I stopped going altogether to Ed's place – I still consider it Ed's place, even though Sam owns it now – about six years ago. I was starting to slow down a bit, the bugs were getting bigger, and the ground and my back weren't agreeing with each other – just the nature of getting old I guess.

12. Also, and frankly more significantly, Pat Jones had started to build a cabin by the south lake. Now, there is plenty of room up there that everyone should be able to have their own space and not bother anyone, but Pat, and whoever was helping him/her, had no idea what they were doing. It seemed like they were unprepared and all over the place. They cleared more land than was necessary, then they tore up the road getting material out there, then they left things half-done for months or even years at a time, then they didn't fully clean up even when their cabin was done.

13. I wouldn't say you could see Pat's cabin from anywhere on the lake, but it was pretty clear what Pat was doing. Sort of ruined the spot if you ask me. I meant to mention this to Sam, but I kind of figured it wasn't my business. I didn't really know Sam. And though s/he had been quite nice to me at her/his dad's funeral, I didn't feel comfortable approaching him/her out of the blue. I also didn't know if Sam had much of a connection to the land and thought that maybe Sam had simply sold the land around the south lake. I didn't know until I heard about the gold discovery that Pat was Judy's kid. I guess it all makes sense now, and I wish I had said something to Ed or to Sam. But I just assumed that they knew what was going on on their property.

AFFIDAVIT OF KELLY LARSON

1. My name is Kelly Larson, and I am eighty-one years old. I came up here to visit some cousins in Palmer, back in the 'fifties, and once I got a job, I just never went back home to Minnesota. I began working on an Alaska Road Commission survey crew, back just at the end of territorial days, in 1957, when I was just 16. Back then, no one had a degree to be a surveyor. You worked your way up, from cartographic aid to chainman to surveyor on a crew. It was an apprentice system.

2. Well, I enlisted into the Army in 1959, wanting to give back to my country. And because I'd been on the Road Commission, I was put to work in the Army Map Service, in the 29th Engineer Topographic Battalion, which was responsible for Korea and Okinawa, and was moved to Tokyo, Japan. I was so lucky not to be stationed permanently in Korea, but I did some surveying there. Not much fun that. You know, the reason for the Army Map Service was primarily to make the topo maps, so that artillery fire and bombing could be more accurate. A lot of the work involved aerial photography overlays. The AMS does a bunch of other surveying too, and they are the reason all those aerial mapping techniques were developed.

3. Anyway, I managed to get out of the Army in time to avoid Vietnam, but not lucky enough to be stationed in Hawaii when the topo part of the battalion got moved there. When I got out, though, I had my patch and I was a U.S. Army Surveyor. Being an Army Surveyor was good training. The US Army's Universal Transverse Mercator, and the geodetic controls the army established all over the world after 1949 are still used in the U.S., Canada, the NATO countries, South America, and even space. I could have stayed in, traveled all over the world, but I wanted to get back to Alaska. I'd had enough of the Army.

4. I got back to Alaska in 1965 and I just wanted to live the back country life. I opened an office in Talkeetna, where most of my work involved mineral surveys. If people want a federal mining claim, they need a mineral survey. After Statehood, the State had set about licensing surveyors, and I was one of the original licensees. I have Professional Land Surveyor License No. 102. It was just after the Good Friday Earthquake, so I was kept real busy, because I was working contracts to the Road Commission again, and the Railroad, and even some contracts to the Bureau of Land Management. But I never wanted to go back to work for the government. I got no respect for them lazy BLM-mers. They just about abandoned surveying on the ground, they just are doing everything from their helicopters. They take their time getting around to doing their job and you don't find many of them up here in the winter – they're all finding something to do somewhere warm. My stint in the Army was enough gov'mint work for me.

5. I've worked in just about every part of Alaska. I've testified in a few cases before, but most of the cases I was hired to work on have settled. One case I was involved in was the right-of-way for the Iditarod Trail up near Skwentna. City people don't know it, but the Iditarod Trail is an actual surveyed right-of-way, for transportation, just it's not paved. So there was a dispute over the actual right-of-way, and I got to say, it was a good day when it was finally properly surveyed and monumented. I am being paid $150/hour for my time. Anything more than that is highway robbery if you ask me.

6. I am particularly familiar with the property that's involved in this case, because I worked on the crew that established the Petersville Road right-of-way, working for the Road Commission. Back then, of course, it was the Cache Creek Road. And, because of the Earthquake, the survey of the Rupert homestead was not filed before the conveyance. So, not long after I got back to Alaska, I was the surveyor who had to mark and verity the boundaries of Ed Rupert's homestead patent, so the filing could be properly completed. That means I walked the four corners of the property with the owner, as was customary, and he showed me the property corners he'd set, and I determined that they comported with the Bureau of Land Management's cadastral survey established in this area. That's why his plat was dated in 1966, but his patent is actually almost two years earlier. It's because of the Earthquake and they couldn't get the BLM survey crew out there.

7. I didn't know Ed Rupert very well. We weren't in the same kind of business really. I mean, we were both doing mining stuff, but so was just about everyone else in that part of Alaska. But I met him once or twice after the survey, and I did meet his wife Kathy who seemed like a nice lady. They didn't come into Talkeetna much from all I could tell. And, I wouldn't have known who Sam Rupert was, until he called me to be a witness here.

8. Now, as to this deed of sale between Ed and Judy, I can tell you plainly that it does present a problem, but it is not what you might think. Doesn't matter that it is on a napkin. Heck, that happened all the time in Wild West Alaska in those days. The deed is also not vague as to the property it conveys. You just have to know how to read property boundaries. You see, there's a strict hierarchy of authority in land descriptions that is well established in boundary law. And you can look it up in Clark on Boundaries, edited by John Grimes, if you don't believe me. That's *the* treatise on boundary law.

9. First, and with greatest authority, is the metes and bounds. That's where you start from a recognized monument, and you describe by bearing and distance the perimeter of the property. So you might say "Beginning at the iron post, 2-1/2 inches in diameter, 28" long and set in 22" in the ground, capped in brass and marked C-5, G 103, 1960, located in a large open swamp, and bearing west 160 chains" and so forth. And if you were to look at the field notes for the original BLM survey for the section that the Rupert Homestead was in, that's what you'd find. And, if you'd go back at look at the field notes that I filed for when I verified the property corners for them, that's what you'd find too.

10. Second is the proportional aliquot part survey, which is what most people are familiar with. That's where you have the fractional parts of the township and sections used to describe the property, and that's what you have with the land patent that Ed Rupert got. Throughout the western part of the U.S., we use this system, so land grants from the U.S. Government are by fractions of a section of a township, ranged from a meridian, which is a kind of imaginary line, a mathematical coordinate, that governs all the mapping in a particular area. So, in Alaska, you have the Copper River Meridian, Fairbanks Meridian, Kateel River Meridian, Seward Meridian, and Umiat Meridian. The meridians run north-south, and across them, going east west, is the base line. That's how you get the name of Base Line Road up in Fairbanks. And, all the public land tracts are divided into townships described as being north or south of the base line, and east or west of the meridian. It is by fractional part and cardinal direction. And each township is divided into 36 sections of one

square mile, so each section holds 640 acres of land. And that makes it easy to divide, by halves and quarters, and then by quarters, again, and again, all the way down to a 5-acre parcel.

11. You can establish the aliquot part boundaries by working in from a known monument *or* by use of mathematics and satellites. That's what spherical trigonometry is all about, fixing these grid descriptions onto the curves of the earth. That's why you had to be good with the math to be a surveyor, back before everything was on computers. Lots of long pencil and paper calculations to be done. But, monuments take precedent over bearings and distances. And here, the BLM started from a fixed, established monument for the Rupert Homestead.

12. Then you get volume. Now volume, like "10 acres of meadow" is the *least* authoritative in boundary law, because volume has no perimeter. It's just a number, and it has no location. Without a location, it is meaningless – at least in terms of its boundary. So, in a proper deed, the volume of the land conveyed comes LAST. You can see that in Ed's patent – the 160 acres he is acquiring is the last descriptor given of the property.

13. Any encumbrances like easements then follow. The Cache Creek Road goes over the northern part of the property, so there had to be an easement added to the patent to maintain the Road. Otherwise, Ed could make the case that he owned the land the Cache Creek Road was on and just close it down the road and anyone else who had property further down wouldn't be able to get to their land. But of course the government wasn't going to let Ed do that, so there had to be an easement in the homestead patent.

14. All in all, the property description in the Rupert homestead patent is fairly simple and straightforward. It employs all the standard conventions and matches what you would see in any other homestead patent drafted at that time. I mean, there were a lot of people homesteading back then, and us government surveyors knew what we were doing. It was just a matter of following the rules for property division I just described.

15. And those rules still apply to any other property description, including one in a deed of sale such as what Ed gave to Judy. When you are looking at what a deed is conveying and interpreting the land description, you are supposed to go from the *first* to the *last*. That means, you start with the first descriptor as having the most authority, and then so on. Same rules as any other property description. And, what happened here is that Ed wrote the volume, which has no particular authority as to the *location* of the 40 acres. So, basically you can ignore that, at least for the purpose of determining *where* the land being sold is.

16. But the next thing Ed did is he says he is selling a fraction of his land. Now ordinarily under the standard rules of property descriptions – aliquot parts and all that – this means that you divide the original property into four equal squares. This means you take the Rupert homestead and divide it into four equal quadrants. Okay, easy enough. But Ed doesn't give the cardinal direction of the quadrant being sold. I admit that it would have been easier if he had just said he was selling the northeast quadrant of his property and we wouldn't have all of this mess. But you can still figure it out with what is in the deed.

17. I mean, it seems pretty clear to me. Ed describes the property he is selling Judy as "*just off* the Petersville Road." Anyone with common sense would know that this mean that the 40 acres

being sold *abuts* the Petersville Road. And between the northeast and southeast quadrants, only the northeast quadrant abuts the Petersville Road. If Ed intended to sell the southeast quadrant of his property with the south lake, surely he would have given a much different property description. To be honest, I can't see anything in the deed of sale that would even suggest it might be the southeast quadrant of the Rupert homestead that is being sold.

18. A 40-acre quarter-quarter parcel is 20 chains to a side, or 1,320 feet. That's a far ways to be "just off" a road, where there's no road to the location. To put it in a way city folk can understand, a city block in Anchorage is generally 264 feet, so that's 5 blocks away – and that's not level concrete out there on the Rupert Homestead. And you wouldn't say that something 5 blocks away is "just off" the street.

19. Another reason to believe that Ed Rupert was selling Judy Jones the northeast quadrant is the easement that is listed. The easement for access described in the land description is for him to use to get to his property, because *he* needs the easement to travel to his home. And that is right too, because exclusions and reservations are at the end of the description. The dirt access road to get to his own house starts in the northeast quadrant of the property. Just like with the Cache Creek Road easement in the Rupert homestead warrant, if Ed did not include this language in the deed of sale, Judy could cut him off from his own house. No way he would do that. And no way this would be at all relevant for the southeast quadrant.

20. So, in my opinion, using the standard techniques of interpretation of land descriptions in deeds, and being familiar with the land concerned and very familiar with the history of surveying in Alaska, I say that the closest approximation to what is conveyed is the NE quarter of the NW quarter of Section 26 North, Range 7 West of the Seward Meridian. Or in other words the northeast quadrant of the Rupert homestead.

AFFIDAVIT OF PAT JONES

1. My name is Pat Jones. I am forty-three years old and live in Palmer, Alaska, where I work as an insurance agent. I am divorced with two children, both of whom are now in college. I have lived in Alaska for about twelve years now. I moved here from Texas because of my mother's failing health and because I needed a change in my life following my divorce. Ever since moving back here, I have gotten more and more into outdoor activities. Many of these activities take place on land I own near Trapper Creek. I inherited this land from my mother, Judy Jones, when she passed away about ten years ago.

2. I own forty acres just off the Petersville Road. It is a beautiful piece of property, with a four-acre lake, a stream, and rolling hills. Lots of trees and abundant wildlife. The dirt access road to get there is fairly bumpy, but it is passable with an SUV. You can't get directly to my property from the Petersville Road, but rather have to drive first through the neighboring Rupert property from the west and then turn off about a mile in. In the winter access is much easier because you can use a snowmachine to get there directly off the Petersville Road. The boundaries of the property are an even-sided square, with each side being a little over 880 yards long. The lake – which I call Jones Lake, because why not – is in the middle of the property north-south, but more on the eastern side about 100 yards from the eastern border of the property. That stream I mentioned runs from the north heading south, first into the lake and then again heading back out of it.

3. My mother bought the property from Ed Rupert thirty years ago. My Mom was a real pioneer woman. She came to Alaska in the 1970s to work in Palmer as a nurse. Got married and had me. My dad died when I was only eight in a small plane crash. This was real tough on my mom. Most people probably would have used this as an excuse to move back to "civilization." But not my Mom. She loved Alaska, saw the potential of the place, and never wanted to leave. She especially enjoyed going out into Nature and escaping the rest of the world. I think this was when she was happiest. Mom camped whenever she could. I admit I wasn't as into the wilderness back then. Didn't appreciate it the way I do now. This kept Mom from going out as much as she wanted while I was growing up.

4. I remember when Mom bought the land from Ed Rupert. It was February of 1989. I was 13. Mom was stressed with work and needed to get out of town for the weekend. So, she arranged for me to stay with a friend and left for Trapper Creek, borrowing a rickety old snowmachine to get there. Mom said she was surprised it didn't break down, leaving her to freeze to death. She had been out hiking and camping around Trapper Creek on multiple occasions. She also every once in a while would assist with a medical clinic in Talkeetna or Trapper Creek. I would often spend weeks at a time during the summers visiting both sets of grandparents in the States. Mom would use this time to go out to hike and camp along the Petersville Road, basically wherever struck her fancy. Back then, people were not as particular about having others on their land. As long as you didn't do anything to damage the land or engage in any illegal hunting, no one really cared. It was kind of accepted that strangers might traverse across your land at will.

5. I wasn't there, of course, when Mom bought the lake property, but she told me when she got back on Sunday about hanging out at a bar on Saturday night, and there was this guy Ed Rupert that she was chatting with. Not flirting or anything. He was a little older than her and married. I

think she had met him once or twice before this. But I guess this was the first time they ever had a real substantive conversation. Mom said she told Ed how much she loved the outdoors. When Ed told her he owned the land around two small lakes connected by a stream, she knew exactly what he was talking about and had hiked and camped around there on multiple occasions. And then, much to my Mom's surprise, Ed offered to sell her one of the lakes for only $20,000. Mom still had some money left over from Dad's life insurance and figured this would be a nice way to honor him. Mom had me to take care of, meaning she couldn't get back to Trapper Creek any time soon. So, she and Ed wrote up the agreement right there in the bar on a paper napkin. When Mom picked me up on Sunday afternoon, she was super excited and a little nervous. She cut a check as soon as she got home, put it in the mail, and the property was ours. We didn't have a lot of money, so even though this was a great deal even back then for 40 acres and a lake, it was still a major purchase. Mom told me that when she bought land out in the wilderness she finally felt like a true Alaskan.

6. Mom couldn't wait for the summer thaw to get up there and check out her new purchase more intently. She remembered the lakes and the stream between them, but it is of course different when you are just passing through. You don't pay nearly as much attention to your surroundings. But when you own it you really pay attention to everything. It was early June before we could get up there. I didn't want to go, but I knew how much it meant to Mom to take me up there, so I tagged along. The land was still drying out from the long winter snow. The road was muddy, with some large pools of water. We actually stopped at the place where the road split – just past the Rupert house and lake – and decided to walk from there. Mom was not quite sure which way to go. She had hiked the area on foot, but had never tried to drive all the way to the lake. Mom remembered Ed selling her the southeast quadrant of his larger property, around the south lake. When we got to the split in the road, Mom thought she remembered Ed saying to take the road to the left. But that didn't make any sense, as a road to the left would go to the north part of the property. So, we took the road to the right instead and were soon at the most beautiful tundra lake we had ever seen. We had brought camping gear and spent the next couple of days hiking around the new property and doing a little fishing. I look back on it fondly now, but I'm sure at the time I complained a lot.

7. Because of her responsibilities taking care of me, Mom was not able to go to the lake as much as she would have liked in those early years. We would only go one or two or maybe three times together a summer. Mom would sometimes go by herself when I was down visiting the grandparents, but she also used this opportunity to explore other paths in and around the area. I guess maybe the lake property was not quite as exotic when she owned it. But I do know she wished she could spend more time out there. It didn't help that it was so remote and that summer is so short. Sometimes we'd be able to drive all the way to the lake. Other times the roads would be too muddy and we'd have to walk a ways. We would always pitch a tent and stay a few nights. Mom didn't have the money or the ability to build a cabin on the lake, and honestly I don't think the thought ever crossed her mind. She did clear some trees and bushes from a spot next to the lake so that she would have a nice place to pitch her tent. Mom kept this one spot well maintained, but did not do any improvements other than clearing the camping spot. She loved being out there by herself. Once we got across the Rupert property on the road, I don't think we ever saw a single soul out there. And as for me, as I got to be older and Mom felt more comfortable leaving me at home by myself, I often would skip the trips to the lake. I regret now not taking the opportunity to spend the time with my Mom, but I was just being a typical teenager.

8. I went to college down in Oregon and then moved to Texas with my spouse for her/his job. I would come back to Alaska from time to time to visit Mom, but she also came down to visit me a fair bit, especially after the kids were born. I never made it up to the lake during this time. Mom would talk about going up on occasion during the summer. She even tried winter camping once with some borrowed equipment. That didn't go too well. I got divorced in 2006, when my son Thomas was eleven and my daughter Grace eight. It was a pretty acrimonious divorce. I cheated on my spouse and admit that I wasn't the most attentive parent, though I never did anything to hurt my kids. My ex got primary custody, though I had liberal visitation. I stuck around for about a year, but Texas was just not the right place for me. It was also about this time that Mom got sick with a brain tumor. This was the spur to get me to move back to Palmer to be close to Mom.

9. Mom underwent chemotherapy, but unfortunately Mom's tumor was too aggressive and she died about a year and a half later, in October of 2008. I was an only child, so I inherited everything Mom had. Including this piece of property up off the Petersville Road that I had not really thought about for almost a decade. It's kind of funny, but that napkin where Ed Rupert sold the land to Mom was in the safe deposit box along with my Mom's will. It didn't look very official, but I guess it was all my Mom had, and I know she certainly felt like she owned the property. I asked the probate judge if this meant that I now owned the property, and she said that whatever interest my Mom legally had in the property was now mine.

10. I knew how much the place meant to Mom, so for the first year I couldn't bring myself to go up there. By the summer of 2010, I felt I was ready to visit the lake again. It was a sunny and warm early June day when I made it back to the lake. The road seemed better maintained than I was expecting, and I was able to drive my SUV all the way to the lake. Once I got there, the setting was more beautiful than I remembered. So quiet, so pristine. I had not been a big fan of nature when I was a teen, but age and perspective made me a convert. I decided that very day that this would be the perfect place to take my kids when they were up visiting Alaska. They were coming for their summer visit in a couple of weeks, and I couldn't wait to show it off to them. Mom had wanted to show it to them when the children visited after I first moved back to Alaska, but she was too sick to take them.

11. To my great delight, my children really enjoyed staying at the lake. There were no structures there at the time, so we camped, just like I had done with Mom. But then, this crazy idea popped in my head that if I built a cabin on the property, I would be able to spend even more time there, like maybe a week or longer. It would be a true vacation retreat for me and my kids, one that would make them appreciate everything Alaska had to offer! And both Thomas and Grace enthusiastically endorsed this idea. I didn't have enough money to have a contractor build the cabin, so we would have to do it ourselves. Thomas was fifteen by this point, and Grace twelve, so it was reasonable to expect them to help. I was a bit nervous about pulling it off, but I asked around and determined that I could do it. Maybe not a fancy cabin by any means, but one that would keep out the elements and give us a place to sleep. By the time we made this decision and looked into the feasibility of building a cabin on our own, it was too late in the summer to do much construction. We cleared trees and underbrush from the spot on the lake where we intended to put the cabin and levelled out the land, but that was all we could accomplish in 2010. We resolved to start building first thing next summer, as soon as my kids arrived from Texas.

12. We did indeed start on construction of the cabin in the summer of 2011. It went slower than I anticipated. I was sick some that summer, so we only visited the lake twice, though the second time for an extended visit. Because of a combination of bad weather and, well, wanting to do other things, we were only able to pour the concrete foundation for the cabin that summer. My friend Mel Carmichael helped us out with this. Sometimes Mel even brought her/his family out to help, though his/her kids are too young to really do much. I'd let them use the property for camping on their own, regardless of whether I was there. Nice to be able to share my land with others. And I don't think I would have been able to build the cabin without Mel's assistance. Mel had a bit of experience working on construction projects, though mostly as a consulting environmental engineer. But s/he was good to have around. Thomas and I had set the frame for the concrete on our first visit in late June, but we didn't pour it until over a month later when we anticipated a long stretch of sunshine. Getting the concrete in wasn't easy, but we wanted a slab to base everything off of. Mel was an invaluable help bringing up dozens of bags of concrete in her/his pick-up truck. We got the water we needed from the lake. Once it dried, we decided to take a break and use the concrete pad as a flat spot for a good five straight days of camping. It was the longest we had been there at one time. Mel stayed for the first couple of days, but most of the time it was just me and the kids. During that visit, I started on the framing on top of the slab, but we just weren't able to get very far on it. Mel was a bit too busy to help much, and my lack of experience slowed us down. So, I decided just to take down what I had started and try again next summer. No point in erecting the frame just to leave it there all winter. We – mostly Thomas if I am being honest – also dug the pit for the outhouse. I wanted to construct the outhouse itself, but ran out of time. I covered it with a tarp at the end of the summer so that no animals would fall into it before we could return. A bright red tarp. Probably scared away the animals too.

13. It was not until the summer of 2012 that we framed the cabin and put up the walls. It was also then that we constructed the outhouse. I was more or less using a kit from a local company and enlisting Mel's assistance and construction knowledge. I mean, I'm an insurance adjuster, I don't do much work with my hands. Nor have I ever really had any construction skills. But, I definitely had a lot of fun, and so did Thomas and Grace. We were able to finish the exterior walls of the cabin in the summer of 2012. Pretty much just the shell of a cabin at that point, but it had a good roof that protected us from the rain. I'd guess we made four visits to the site that summer – three or four days at a time – building a bit more each time. We would finish out the inside of the cabin over the next two summers. Thomas would even come up during his time off from college to help out and see his sister. No running water, but the cabin had a kitchen area, living and eating area, and two small bedrooms. I installed a wood stove that would keep the place warm and also be useful for cooking. By the end of 2014, I had a completely finished cabin on a lake in remote Alaska. I felt so happy and so connected to Mom.

14. Now that I had a comfortable place to stay, I went up much more in the summer, paying less attention to the weather. I maybe went up twice a month or more. I even went a couple of times during the fall and winter if I didn't think it was going to get too cold. The wood stove kept the place warm enough, but it used up a fair bit of wood. I would usually go up alone. Sometimes Mel would come up with me. I also let Mel come up by herself/himself. I figured s/he had played such a vital role in building the cabin that it was only fair to let him/her use it. All the times I went up there, I was never confronted by Sam Rupert or anyone else about being on the wrong lake. To be honest, the thought never crossed my mind.

15. Last summer, Thomas and his girlfriend Norah were visiting me in Alaska. This was the first time I had met Norah, and of course I wanted to give her an Alaska wilderness experience. We decided to try goldpanning up at my property. I had never done it before. Of course, I wasn't expecting to find anything. I just figured it would be a fun way to spend some time outside. I took off on Friday, July 13, 2018. I had bought three goldpans at an outdoor supply store, and we had watched some YouTube videos the night before on how to separate the gold in the pans. We made it up to the cabin by early afternoon. Norah wanted to go panning as soon as we got there. We took the pans and hiked to the south end of the lake where the stream leaving the lake had a little bit of speed to it but not too much. The stream on the north side of the lake was a bit too fast to capture the slow moving silt.

16. It turned out that this Friday the 13th was my lucky day! All three of us got quite a few flakes of gold in our pans in only a little bit of panning. We collected it in small jars and went back to the cabin all excited. We decided to go back the next day, figuring it was just a fluke that once. But to our surprise, we found even more gold this time! And got even more on Sunday. I didn't think gold panning was supposed to be this easy! We headed back to my house in Palmer Sunday evening. I had a digital cooking scale that we used to weigh the gold. Between the three of us, we collected close to an ounce. I know that may not seem like much, but for first time casual goldpanners it was a huge success. And worth a few hundred dollars.

17. The next day I contacted a geologist friend of mine, Emilie Parker. I explained what had happened. Emilie was quite intrigued. She said she would come up the next weekend to check it out and bring some equipment to try to determine if there was the possibility of a gold vein on the property. Thomas and Norah had left by then, so it was just me and Emilie. I don't understand everything Emilie did, but she determined from soil samples and geology that there was a strong possibility of an exposed gold vein just under the surface of the south end of the lake next to the stream. It would take some test core samples to determine this further. It would take Emilie a couple of weeks to obtain the equipment required to take the core samples. Long story short, there is a gold deposit worth an estimated $20 million on my property! Thanks, Mom!

18. Of course, it was then that I heard from Sam Rupert, claiming that I was on the property illegally and filing a lawsuit to assert title over the land. I never heard from Sam when I was constructing the cabin. I find it appalling, but I suppose not surprising, that Sam would sue to correct the mistake that her/his dad made. But the land was legally sold to Mom – I know it! If it takes a court fight to prove this, so be it.

AFFIDAVIT OF HANLEY HANSEN

1. My name is Hanley Hansen, and I am 72 years old. I was born in 1946 in Virginia. I moved up to Alaska after high school to work. I would spend my summers fishing and my winters teaching. Not a bad way to make a living as a young man/woman. Good money and some free time in the winter to get to know Alaska. During the winters I lived in Trapper Creek. They had a small school there. I started out just an assistant but became a teacher after a few years.

2. I have since moved out of Alaska. I live in Seattle now. I wanted to be closer to family, and my kids all moved down to Seattle for college and stayed. I have 3 kids, so being close to them and grandchildren was worth it. I get back up to Alaska in the summers most years for at least a few weeks, but I spend most winters down in Seattle, where I teach part time.

3. Winter is winter, especially in Interior Alaska. Not a place for the faint hearted. Even with my day job, a person could go crazy without company, so I would spend some time at the Broken Snowshoe Bar. My husband/wife and I would take turns going there, since we had small kids at home. Not every night mind you, but it was good to get out by yourself every other weekend or so. The Broken Snowshoe Bar was about the only place to go in Trapper Creek. I never got too involved in my beer, but I would have a few to take the edge off the cold. I never liked the cold, but I could handle it as well as anyone else. I could also handle my alcohol pretty well.

4. I knew Ed Rupert and Judy Jones. They were good folks. Judy lived in Palmer, where she worked as a nurse. She would swing through Trapper Creek periodically though, sometimes even in the winter for the medical clinic that got set up in town every couple of months or so. But she was there more often in the summer. Some of her summer trips were just to get out in the wilderness I think – she talked about just loving the outdoors around there.

5. Judy was great. I saw her once or twice at the clinic, but we would also talk sometimes at the Broken Snowshoe. In the winter it was where everyone went. There were a couple of bars and restaurants that only stayed open in the summer, but the Broken Snowshoe stayed open all year. Richard, the guy who owned it, used to say "You gotta give people a place to go or they will just go somewhere else for the winter." Richard really wanted the Broken Snowshoe to be a gathering place for the community. Weird thing to say about a bar I guess, but it was true.

6. I knew Ed too. Ed had a place off Petersville Road that he lived at, so I used to see Ed at the Broken Snowshoe a fair bit. Like I said, not much else around. He would buy me a drink occasionally and we would talk about his place with the lakes. Ed liked talking about that place – three big lakes, 160 acres, hunting, fishing, hiking, skiing, everything anyone could want. Sometimes it felt like Ed would talk the place up more than it deserved, but I suppose if you call a place your own you probably think it is pretty special. I never went to Ed's property specifically, though I've been along the Petersville Road plenty of times and know the dirt road turnoff to get to his house.

7. Dale Baxter was the bartender at the Broken Horseshoe most winters. I guess you can say that I got to know Dale from all the time that I spent at the bar. We didn't get along great, but that's okay. Dale just rubbed me the wrong way. Dale could be pretty talkative and boastful. Always making up stories and spreading gossip. You kind of had to learn never to put too much trust in

anything Dale said. I tend to be more shy and quiet. I don't want anyone else to know my business, and I don't need to know theirs either. Anyway, me and Dale, we each kept to ourselves for the most part and didn't bother each other. I was always a bit bummed when I would come in and find Dale working, but what can you do? I wasn't going to make a thing out of it. And there was nowhere else really I could go.

8. I remember the winter of 1989. It was cold, like chill your bones and you don't warm up until spring cold. I felt like I could not get warm that winter. My wife/husband and I couldn't afford much of a place and just had a little cabin that was not well insulated and heated by a wood stove. Needless to say, it was a rough winter. And needless to say, I spent a fair bit of that rough winter at the Broken Horseshoe. The bar had better heat – plus alcohol too. It was so cold that winter that their pipes froze and burst and we had to trek out to a porta potty in subzero temperatures any time we needed to pee. Not what you want for a bar, but no real other alternatives. I'd say my husband/wife and I spent a fair number of nights fighting over who could spend the evening out at the Broken Horseshoe.

9. I was in the Broken Snowshoe one night that winter – I think it was in February – when Ed and Judy struck up a really animated conversation. I think you can confuse excitement with being drunk, and Ed and Judy were definitely boisterous, but I didn't think they were particularly intoxicated. At first I couldn't really tell what they were so excited about – the bar was noisy and I was trying to mind my own business – but I was sitting at the table next to them and gathered that Ed was selling some of his land to Judy. Not sure why Ed was selling any of the land if he loved it so much, but it was 160 acres, so I guess Ed could spare a bit. I was getting ready to go home, but with Ed and Judy so excited I decided to stay and listen to what was going on between them. We didn't have television reception out there, and this was as good a form of entertainment as anything else.

10. It sounded like Ed was going to sell Judy land around one of the lakes. I mean, this was 1989, so it was 30 years ago. Nobody can remember everything so old with 100% accuracy. My kids say that my memory is the worst, but they're just teasing me. I can remember anything as well as anyone else. But I remember Judy was walking to the bathroom early in her conversation with Ed. On her way she stopped by my table and said, "I just love that lake. It's so much better than the northern lake. I can't believe Ed is going to sell it to me."

11. When Judy returned, I made a point of paying more attention to the conversation between Judy and Ed. I remember Ed saying, "You sure you don't want the north lake?" Judy insisted she wanted the south lake because, she said, "It has better lake access and you know that's what I'm interested in." Judy mentioned that she had camped at both lakes and would only be interested in buying the south lake. They went back and forth for a bit before Ed finally said, "Well, if you really want the south lake maybe I can be persuaded to part with it. I never did much with that land anyway." But Ed still kept haggling. You could tell that Ed really didn't want to give up the south lake and was sort of trying to talk himself into it. Judy said she could pay Ed $20,000 for the lake, but that was it. Ed said he would be willing to sell the south lake for no less than $30,000, but Judy stuck to her guns, saying she couldn't come up with more money and she would only buy the south lake. Ed offered to sell Judy the north lake for $15,000, but she wasn't interested.

12. So, Ed and Judy kept going back and forth about the property and the lakes for a while. I guess Ed's house wasn't by either of the lakes they were discussing. It sounded from other conversations we had had like he built his house in an area with some rivers and such, on a hill or something, but I think with another lake nearby. Ed was really proud of it. They continued to disagree about which lake Judy was buying until finally Ed said, "You're the one paying me money – just decide which lake you want and let's draw this thing up!" He wasn't angry really, just excited and eager to make the sale. Sounded like Ed just needed some cash quick and was willing to do whatever Judy wanted at this point. Good for Judy for holding out for what she wanted.

13. I had to excuse myself for a bit at that point, and when I came back they were signing some kind of property deed on a napkin. I stopped by their table and said, "Maybe you should do this on something other than a napkin?" I know it's fun to make sales on napkins and what not, but it didn't seem very formal to me. Judy seemed to hesitate a bit, like she was considering my point, but Ed just said, "No, let's get this thing done!" and signed the napkin. He really seemed to want to wrap up the sale. Judy only had $50 on her and had left her checkbook at home. Judy told Ed she would write the check as soon as she got home the next day and mail it to him. Ed grumbled a bit about this but figured he had no choice but to accept it. And just like that the deal was done. Ed wrote it all out on that napkin.

14. They were both really excited when they signed the napkin. I'm sure Ed and Judy were both happy to be done finally done with their negotiations. Like I said, they hadn't had too much to drink at this point, but they got shots to celebrate. Ed even bought me one. Whiskey I think. As they were finally getting ready to leave, Judy gave me a big hug, waived that napkin in my face, and said, "Ed finally gave in and sold me the lake!" She was clearly really excited about the whole thing and having just signed the deed. Given what she had said earlier about the lakes, I know she meant that Ed had sold her the south lake.

15. Thinking back on it, I didn't actually see much of Dale around that night. I'm pretty sure s/he was working that night, but I don't remember for sure. Dale was never that great as a bartender anyway – s/he usually spent most of the time talking to people instead of serving beer. I guess it was usually pretty slow in the winter anyway, so it probably didn't matter. Someone else could have been tending the bar, but it was usually Dale, so it was probably Dale that evening too.

16. I heard something about the gold Judy's son/daughter discovered on the property. I was pretty excited for them when I heard about it. Pat spent a lot of time building the cabin s/he used there and really did a lot to keep that property going. I don't know how Ed's kids couldn't know about the work Pat did if it was their land but whatever. I never went on the property and am not familiar with how it is laid out.

17. Now, there has been some animosity between my family and the Ruperts for a bit now. I admit that. One of my sons got into a bit of an altercation with Sam Rupert. I don't think it was that big a deal, just live and let live. My son, David, was just out hunting some ducks or something, not going to hurt anyone or anything. There are plenty of ducks in this world and even on Sam's land – Sam has plenty of land after all. But Sam got pretty whipped up about it. Sam made a couple of angry phone calls about it to me. I told Sam to calm down and brush it off. I don't think Sam ever really got over it though – always seems a bit peeved when we run into each other.

18. I don’t really have a vested interest in the outcome of all of this. That stuff with Sam Rupert was after Ed sold the land to Judy. And there is no doubt in my mind he sold her the south lake.

AFFIDAVIT OF MEL CARMICHAEL

1. My name is Mel Charmichael. I am forty-five years old. I live in Palmer, AK, just past the Fairgrounds towards the river. My spouse and I have two young kids. I work in Anchorage, actually on JBER, as a civilian environmental engineer for the Air Force. Even though the drive is a pain in the winter, I love my spot. I can take walks along the river or though the fields, and it is much quieter than living in Anchorage.

2. I met Pat at a public hearing regarding a proposed road in our neighborhood. We were both concerned that the road would increase traffic and disturb some critical fish habitat. After the hearing, we struck up a conversation and hit it off. We have a lot in common – we're both really into hiking and just being out in nature. We both have two kids, though mine are younger than his/hers. We haven't known each for that long, but we've become really close during that time. We spend a lot of holidays together, especially when Pat's kids are up to visit – s/he really loves those kids, really does a great job parenting them even though they live in Texas most of the time. I have gotten to know Pat's kids and it's true what some people say – you can tell a lot about a person by how their children behave.

3. We now meet up pretty frequently to have coffee or lunch. We usually meet up at Turkey Red on the weekends. Pat likes the Mediterranean menu, says its miles away from the stuff in Texas. I think Pat got a raw deal in Texas, and am glad Pat's been able to have such a good life up in Alaska. You know, "If you cut Alaska in half, Texas would be the third-largest state".

4. Pat has this great patch of land near Trapper Creek. Beautiful land – I think Pat's mother bought it years ago, but I'm not sure about all of that. Pat had told me his/her mother bought the plot Pat owned from a larger plot owned by Ed Rupert. I guess there are three lakes on the larger plot – one larger lake to the west and two lakes on the eastern half. Informally, Pat and I call these two eastern lakes the north and the south lake, and to be honest, that is about all that differentiates them. Pat mentioned another lake on the west side where the original property owner had built a large house. You could sort of see it behind some trees as you were driving on the access road to get to Pat's property. The Rupert homestead is a huge property, and I don't think Pat has ever seen all of it. Pat mostly stayed on his/her property and didn't venture too much outside it except for the occasional short hike in the summer or snowmachine ride in the winter. I tried to stay on Pat's property around the south lake too, though I'd sometimes take a day hike up to the north lake for a change of scenery.

5. I would camp up at Pat's place on the south lake during the summers. Sometimes I'd go up with my family and we'd pitch a big tent. We'd fish on the south lake, and my kids and I would walk around the lake perimeter. Some days we'd have to walk faster than others due to the bugs. Pat was cool and didn't mind if we went up when Pat was there or not. We probably got up there a few times a summer. Some summers more than others, but we were there pretty often. I got to know the area about as well as I could given how large the property is.

6. The north and south lakes really are very similar, at least to my eyes. Both are about four acres in area, so they are similar size. They have the same kind of shape even – very round. I guess there were a few more hills around the south lake, but really most tundra lakes are pretty much the

same. Both lakes are about 150 yards from the centerline of the property. Even a stream runs pretty much through both. Remember "A River Runs Through It"? Well, a stream runs through it. Really the only thing is that the north lake is 200 feet higher in elevation than the south lake, but you'd expect that otherwise how would the stream go anywhere? Pat has mentioned that the south lake has better fishing, but I've never fished the north lake, so I don't know. I do know I've fished the south lake and have had good luck doing that. Caught some real nice lake trout.

7. Each lake is accessible by a dirt road. I say road generously, as it is basically a muddy path at best. If the conditions are great, you can drive out to the lakes, but most times I remember having to walk a lot of the way because we would get stuck. The road starts south from the Petersville Road along the northern edge of the property, takes a quick turn to the west then south to the big lake and the Rupert house. From there it runs east-west through the property toward the two east lakes. After about a half-mile past the Rupert house it splits in a Y fork to traverse to each lake. If you haven't been there, good luck figuring out where you are. There are no markings. You just have to know where you want to get to and how to get there. The first time I went out there without Pat, I took a wrong turn and almost ended up at the north lake before I realized my mistake. It doesn't help that the road can become overgrown and isn't really maintained – sometimes you have to clear some underbrush before you can drive your car on it.

8. Having Pat's cabin out there has certainly made it easier to figure out which lake you're at now. Pat was new to that kind of work, so of course I offered to help out. I've done a fair bit of construction work in my lifetime, so it made sense. I helped Pat plan out where the cabin would be, helped him plan a schedule for clearing the land, and helped with construction. Pat is not rolling in money (at least s/he wasn't until this whole gold discovery), so s/he needed help to avoid having to pay contractors to do the work.

9. Helping with the cabin was a ton of fun. Just being out there with Pat and his/her kids was great. The kids helped a lot, which was fun. It took several summers to get everything done. Pat spent a summer clearing land for where the cabin would go. That would have been in the summer of 2010. Pat and her kids did most of this work themselves. I helped Pat pick the spot and chainsawed down a few trees for her/him. The spot we chose for the eventual cabin was great! Being so close to the lake, the view was awesome. It got great light – it's not like it was surrounded by trees, lots of light from every direction. But I let Pat and them take care of shoveling dirt around to flatten out the land. When it was done there was a nice flat spot for camping. The land around the lake had always been sort of bumpy, so it was great having a clear and level place to plop a tent. Of course, by the time they finished this it was toward the end of summer and starting to get a little chilly, so I was only able to camp out there once – by myself.

10. The next summer – 2011 – not much happened because Pat was sick. That was a tough time for him/her – Pat probably doesn't want me to talk about that, so I would rather not, but s/he had a leg injury and an infection and was really struggling for a while. But with a lot of help from me we were able to get the cement foundation laid, and that is not nothing. I instructed Pat and his/her son Thomas how to construct a wood frame into which we could pour a concrete foundation. I even went to the store with them to get the wood and the chop saw they would need. They built the frame sort of early in the summer, but then Pat got that leg injury and the weather got too rainy to pour concrete. It wasn't until mid-August that there was a favorable forecast for

laying concrete. We needed a lot of concrete for the project, and there was no way we could get a cement mixer out there. So, I offered to carry the bags of concrete in my pick-up truck out to the lake. I think we must have used 40 bags. I do remember that it took two trips to get them all out there. Fortunately, the road was dry enough to drive all the way to the south lake. I don't think we could have done it if we had had to stop short and use a wheelbarrow. It took a couple of days to pour all the concrete, using water from the lake to mix it. But it dried fine, and when we were all done there was a nice concrete slab perfect for a cabin – or camping in the meantime.

11. I had to leave, but Pat and her kids stayed behind for a few more days. I did get out there in early September over Labor Day weekend. Even with just the clearing of the land, it was obvious someone was doing work. Laying the foundation made it undeniable. Pat had also dug the hole for the outhouse and covered it with a bright red tarp, which was certainly a sharp visual contrast from the surrounding vegetation. And with all the hills around the south lake, anyone walking up in that area should have been able to see down toward the lake and the construction that was going on.

12. In the summer of 2012, Pat and I were able to spend much more time at the property, erecting the frame and the walls of the cabin. Pat had bought a kit from a local company that specializes in remote cabins. S/He couldn't afford to have them assemble it, though, so I supervised most of putting everything together. I had to, since Pat certainly did not know what s/he was doing, and the instructions that came with the cabin kit were not much help. I also installed the windows. Pat had chosen a cabin kit with lots of windows to take advantage of the nice views. We probably installed more windows than we should have for a place that gets so cold in the winter. But I suppose the cabin was mostly for summer use, and we did install a nice wood stove to keep the cabin warm. It took a couple of years to finish off the inside of the cabin. I would help here and there, particularly with some of the more complicated tasks. It was nice to have an excuse to go up to the south lake so often.

13. Given the shape of the south lake, it's pretty easy to see a lot of the shore from various points, and with a little attention you could see the cabin area. Now, I'm not saying it looked bad. I thought it fit very well in the landscape, especially once Pat finished it. I've heard some complaints about what Pat did, but I think that's ridiculous. Ed Rupert build a much larger house for his family, and nobody complains about that. Pat may have been new to the work, so s/he progressed more slowly than others might, but Pat made a great little cabin. I'm just saying that it's silly to pretend it was hard to be aware of Pat's presence out there. Anyone paying even just a little bit of attention could see Pat had been out there. Plus, it's her land, she can do what she wants.

14. I don't know about land use law or anything, but I know Pat and Pat's family certainly believed they owned the area around the south lake. I'm sorry there isn't a bunch of gold around the north lake too, but that's how life is sometimes.

AFFIDAVIT OF JULIA/O SANCHEZ

1. My name is Julia/o Sanchez. I am thirty-eight and a Professional Land Surveyor licensed in Alaska. I am also a Registered Land Surveyor licensed in California and in Arkansas. I have a Bachelor of Science in Geomatics Engineering with a Certificate in Photogrammetry from California State University at Fresno in California, which is accredited by the Engineering Accreditation Commission of ABET. I graduated with Tau Beta Pi honors, and, like a lot of fresh surveyors do, I went to work for the Bureau of Land Management, or BLM. I was stationed in Arkansas doing retracements in the Ozarks Highlands. That's where I met some Alaskan BLM surveyors, who were coming down to help with retracements, but mostly, I think, just to get a little sunshine and warmth in the winter. Anyway, they persuaded me to take a transfer up to Anchorage, and this is where I have been the last 10 years.

2. Up here, the BLM had me working on a big survey crew doing airborne cadastral surveys. A cadastral survey is a fancy word for using survey techniques to establish property boundaries. At the BLM, we would do much of our surveying from the air, particularly in remote locations where there were unlikely to be common ground markers. This is first order surveying, using helicopters with initial guidance systems that work from a predetermined point of control established by our chief surveyor. You find the control point then fly exactly 2 miles in one direction and set that point and then 2 miles in another direction and triangulate your position. It's all very much tied into the computers and satellites. Honestly, it got boring after a while, because I was just sitting in a helicopter staring at a computer, or in camp swatting bugs, or at a desk in the office staring at a computer. Moreover, I didn't realize it, but that part of the BLM's work was really winding down.

3. But, I'd met my spouse, who had a good job here in Alaska and really didn't want to follow me if I was transferred out of Alaska as they shut down more of the office. So, when I got offered a job with the Alaska Department of Transportation to do right-of-way surveying, I jumped at it. Right-of-way work is basically your construction surveying. You survey the center line, and cuts and grades, and so on. It's exciting, because you are building things, there's lots of heavy equipment, and the overtime is real good in the summer. But, after two years with DOT, the state also started cutting back on personnel as oil prices tanked, and there was no room to transfer over the Cadastral Survey section in the Department of Natural Resources, so I had no choice but to go private if I was going to stay in Alaska.

4. Fortunately, I was taken on at Klokken Surveying and Engineering here in Anchorage. It is a large surveying firm, with offices up and down the west coast and in Denver. We do a lot of general engineering work, some subdivision design, some government contracting, and a fair amount of off-shore and shoreline work, in support of larger engineering projects like oil development. Much of my work was focused on the platting and processing end of stuff; although subdivision work has slowed down from what it used to be here in Alaska. In fact, I'd really like to transfer out to Denver. I kind of regret leaving BLM – I'd like to have transferred into the National Geodetic Survey, you know, doing more satellite work, which is what I'd like to get back into. In addition, I teach an adjunct class out at UAA, once a year, in the Geomatics program, but that's not really a money maker. It's just to stay involved in the geomatics community, have a chance to stay current on my skills, and so on.

5. I have been called to testify before in cases involving Anchorage area boundary disputes. I've testified twice on behalf of private parties in eminent domain cases, and I testified about the Lynn Ary Park slump zone, and I also testified in a case on behalf of the Municipality of Anchorage regarding the boundary of parkland. So, I haven't been on just one side or the other. I will be honest though, that most of my work experience has been working for the government or for government contractors.

6. I should also disclose that I am casual friends with Pat Jones, more of an acquaintance, really. We are in a curling league together. Not the same team or anything, but we would sometimes chat before and after matches, maybe over a beer or two. I have never gotten together with Pat outside of the curling club. Anchorage can be a small town sometimes, despite being the biggest city in Alaska. My prior contact with Pat has not influenced my opinion of this case in any way, and I stand nothing to gain from the outcome of the case. I am being paid $350/hour for my services, which is consistent with what I have charged as an expert in other cases.

7. I have read Kelly Larson's affidavit, and s/he has summarized how aliquot parts and metes and bounds surveys work in general quite well. And I would agree that Clark on Boundaries is a recognized authority on boundary law in the surveying community, although to be exact the title is Clark on Surveying and Boundaries and the current editor is Walter Roubilliard. But it is the standard reference. Of course, if you are looking at more current methods, you'll find different authorities in photogrammetry, which is aerial surveying, done mostly by drones these days, and LiDar, which is basically lasers. And, for the current big contracts that Klokken is executing, that's what we're using.

8. Not that it matters in this case. This was a casual sale that was never recorded and supported by a subdivision plat. I can tell you right now, that even if the grantee had taken this deed to the Recorder's Office, it would be refused because there's no plat reference. These days, in Alaska, you have to have the plat – and in this case, a new plat map showing the subdivision. And that would mean hiring a surveyor, a licensed surveyor, to survey and map the division of the parcel. And the reason that is so necessary is illustrated by the mess we are in today with this property.

9. But again, obviously, this was a casual sale with no real attention to proper surveying techniques. I mean, the fact that it was written on a napkin should be indication enough. The deed clearly was not written by someone with professional expertise, nor was it intended to follow the standard property description protocols described by Ms./Mr. Larson. For example, it describes selling a "quarter" section. Well, in strict surveying terms, a quarter section is 160 acres – one fourth of a township. If this were a proper property description, the deed would say it was selling one-quarter of one-quarter of a township. That would be 40 acres. But it doesn't. The deed was simply a lay description of property written up at a bar for the purposes of a quick sale.

10. So, yeah, the property description is informal and imprecise. There was no closing or title search. And, again, the deed was not recorded. Trying to apply standard surveying and recording techniques to determine the boundaries or ownership of the property is meaningless because standard conventions were not followed and there is no subdivision survey upon which to apply such analysis. Mr./Ms. Larson's detailed sequential reading of the property description is quaint but not relevant to determining the intent of the parties as to the property being transferred.

11. What you are left with in determining the boundaries of the property sold by Edward Rupert to Judy Jones are the confines of the sale document – the deed – itself. So, you have to use the internal clues of the deed. This is a common practice when some issue with the surveying, such as people not having an established starting point or orientation to the survey. Where the survey does not make sense, it is accepted practice to rely on the narrative description of the property. For example, if you can't tell by the survey what a property is on a residential street, but it is described as "the house between house A's fence and house B's fence", then you have a pretty good idea it is the property abutted on either side by house A and house B.

12. Here the most significant indicator of the property being described and sold is the provision of "an easement for access over my dirt road from the Petersville Road." A couple of things about the phrasing here. First, the granting of an express easement would be completely unnecessary if the land conveyed abutted the road, that is, was right next to the road. In fact, if you look at the map, the Petersville Road bisects, that is it crosses, the parcel along the northern edge. If Judy Jones was buying the northeast quadrant – I use "quadrant" instead of "quarter" because again the whole Rupert homestead was itself only a "quarter" in recording terminology – then she would already have access by virtue of the Petersville Road. Indeed, if she was buying the northeast quadrant, then Ed Rupert likely would have known well enough to list the Petersville Road easement itself in the sale document, since the Petersville Road passes *through* the northeast quadrant of the Rupert Homestead. The fact that the Petersville Road easement is not mentioned signals to me that Mr. Rupert knew he was not selling the northeast quadrant.

13. I think the better interpretation of the easement phrase is that it is describing the dirt road used for access to the south lake in the southeast quadrant of the Rupert homestead. This land is some distance from the Petersville Road and has no other means of access. Moreover, the deed grants Judy Jones access over "my dirt road" – meaning Ed's dirt road. Meaning the already existing road that went to the south lake. Now, it is correct that this dirt road also went to the north lake, but you have to remember that this dirt road was extended from the road to Ed and Kathy's house prior to the sale of the land. It would have been easier for Mr. Rupert to have access to both lakes from his own lake than to have to go out to the Petersville Road to gain access to the north lake. It also was much easier to construct the road to the north lake off the road to the south lake once you already committed to building the road to the latter. But the point is that if the northeast quadrant was the one sold, then it would not be necessary for Ed to maintain the road or the easement to the north lake, since the new purchaser could simply build an access road directly from the Petersville Road.

14. I know that Kelly Larson puts weight on the part of the deed describing the property as "just off the Petersville Road." However, that phrase is clearly describing the Rupert homestead itself – which no one questions is "just off the Petersville Road" – and has no bearing on the location of the 40 acres being sold. Only the requirement of the easement and simple logic does. The deed describes the property being sold as having a four-acre lake. This limits it to the southeast and northeast quadrants. Since the need for an easement excludes the northeast quadrant, it must be the southeast quadrant that was sold.

15. The final key piece of evidence in the deed of sale is the insertion of the phrase "next to the hill" into the description of the lake. The terrain surrounding the south lake was hilly, whereas the terrain surrounding the north lake was flat and marshy. The fact that this is an insertion – in Ed

Rupert's handwriting – into what he had already written suggest that it was a clarification desired by Judy Jones. She must have been trying to make it clear that she wanted the south lake and the land surrounding it. If the sale was of the north lake, this insertion would have been misleading to both Judy and Ed. And I do think Ed must have meant to say "hills" instead of "hill". There is a single large hill between the north lake and the Petersville Road, but surely Ed would have chosen a clearer way of describing the north lake than mentioning the one hill there when there were multiple hills surrounding the south lake. To me this must have been an insertion requested by Judy to clarify that the south and not the north lake was being sold. Judy may not have even known about the hill north of the north lake unless she spent a fair bit of time exploring that area.

16. Assuming that Judy Jones and consequently Pat Jones is the legal owner of the southeast quadrant of the Rupert homestead, it still remains to be determined a proper legal property description for the land sold by Ed Rupert. If I was asked to survey this parcel, I would start from the southeast corner, which is closest to a monument set by electronic traverse, which is actually located in section 36, just to the south. I would describe it as SE quarter of the NW quarter of Section 25 Township 26 North, Range 7 West of the Seward Meridian. And that is my considered opinion.

Homestead Patent

Anchorage 011235

4 – 1040
(October 1948

The United States of America,

To all in whom these presents shall come, Greeting:

WHEREAS, a Certificate of the District Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that, pursuant to the Act of Congress of October 17, 1940 (54 Stat. 1191), entitled, "An Act To authorize the lease or sale of certain public lands in Alaska, and for other purposes," full payment has been made by Edward Rupert, for the northwest quarter of Section twenty-five in Township twenty-six north of Range seven west of the Seward Meridian, Alaska, containing 160 acres, according to the original plat of the survey of said land on file in the Bureau of Land Management.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the said Act of Congress, in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT unto the said Edward Rupert and to his lawful wife, Kathleen Rupert, and to his heirs and assigns forever, excluding therefrom the Cache Creek Road right-of-way, and subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and there is reserved from the lands hereby granted, a right of way for ditches and canals constructed by authority of the UNITED STATES OF AMERICA. And there is also reserved to the UNITED STATES a right of way for the construction of roads, telegraph, and telephone lines, in accordance with the Act of March 12, 1914 (38 Stat. 308). Reserving also to the UNITED STATES all the oil and gas deposits, together with the right to prospect for and mine, and remove the same under such regulations as the Secretary of the Interior may prescribe.

EXCEPTING AND RESERVING, however, to the UNITED STATES, pursuant to the provisions of the Act of August 1, 1946 (60 Stat. 755), all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the UNITED STATES, through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same.

IN TESTIMONY WHEREOF, the undersigned officer of the Bureau of Land Management in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the UNITED STATES, cased these letters to be made Patent, and the seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the EIGHTEENTH day of OCTOBER in the year of our Lord one thousand nine hundred and SIXTY-FOUR .

For the Director, Bureau of Land Management

By: Jos. F. Horner
Chief, Patents Section

Patent No. 1134985

U.S. GOVERNMENT PRINTING OFFICE 12-21670-1

Survey completed May 26, 19 66

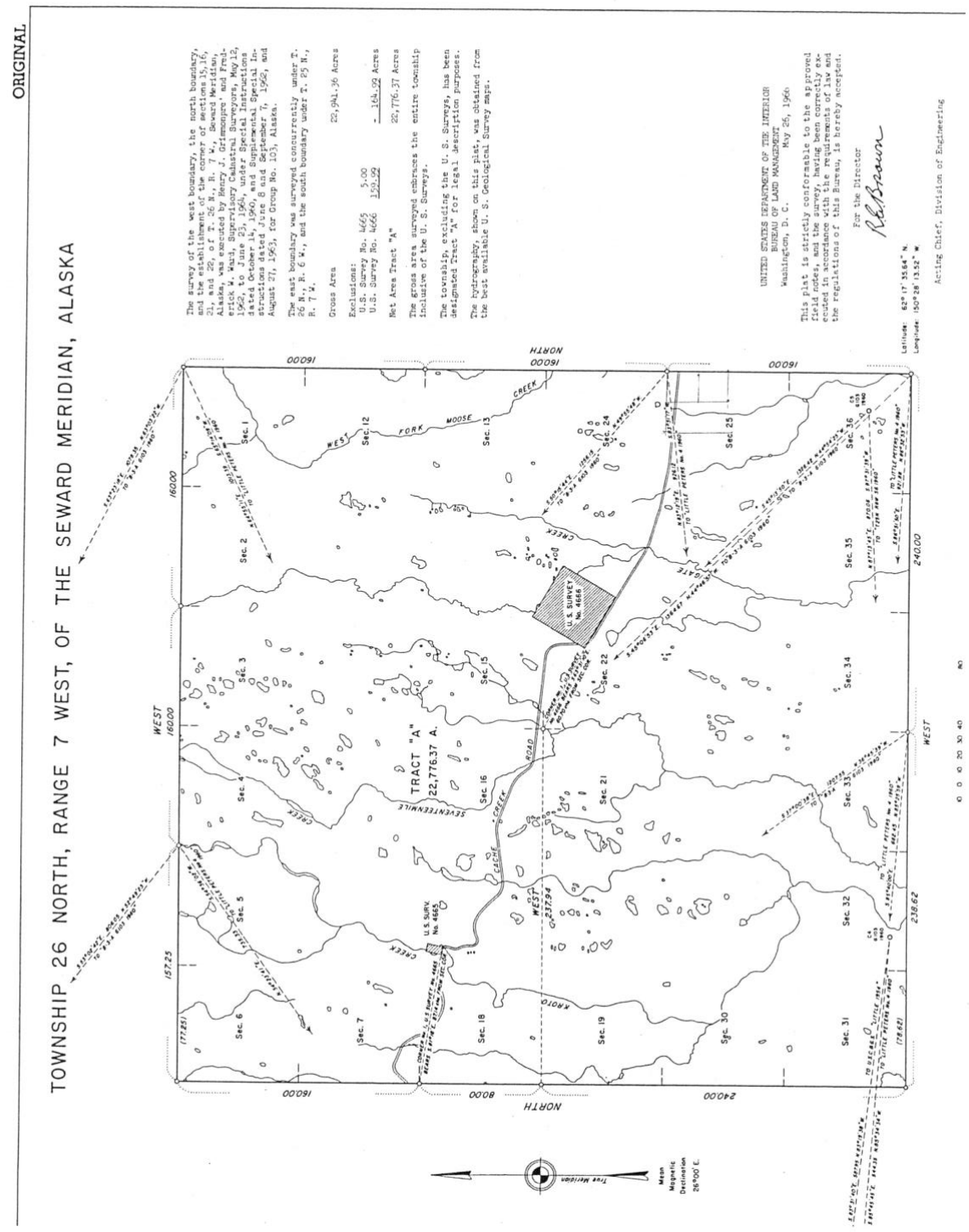
February 11, 1987

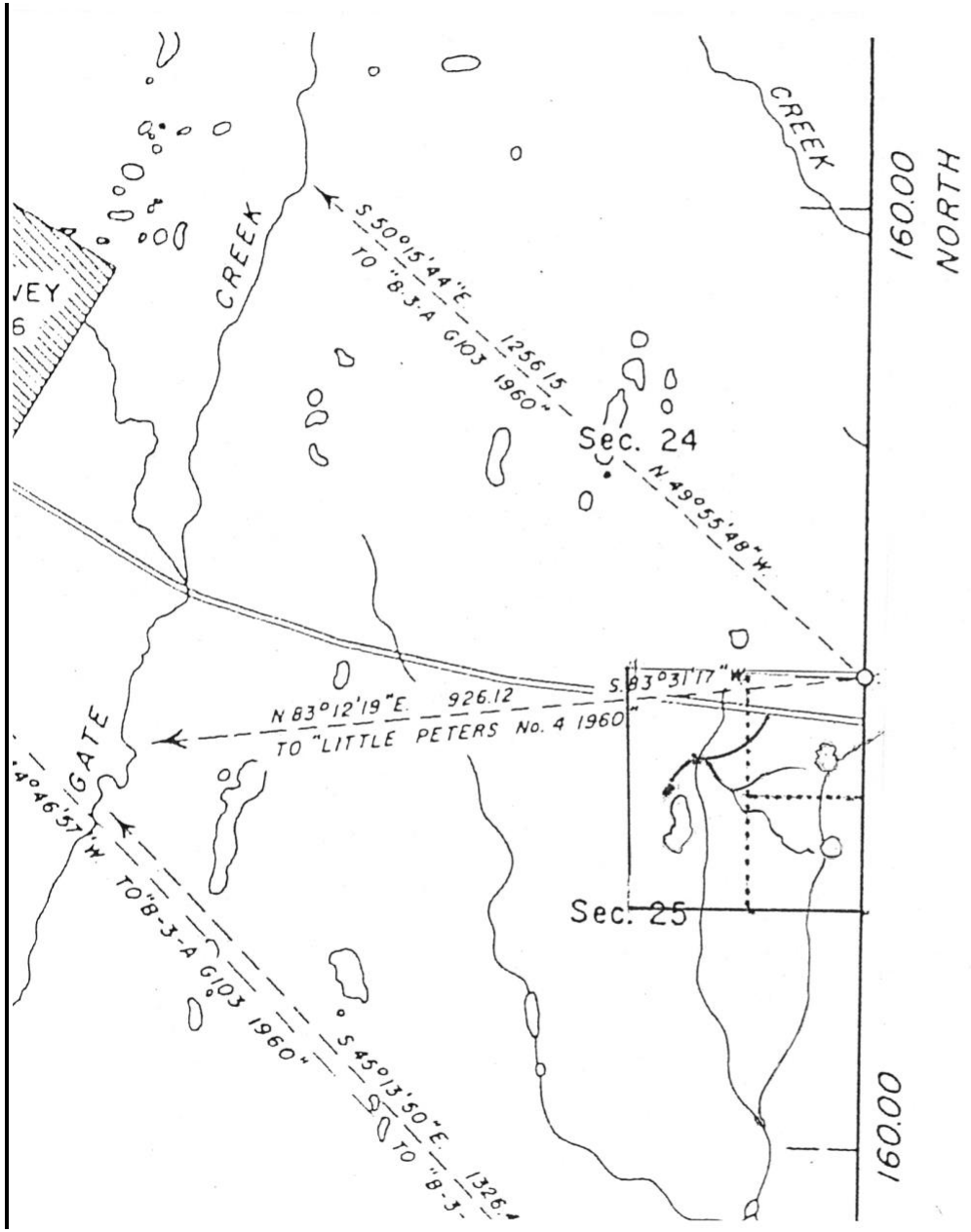
I, Edward Rupert, for the sum of $50 cash now and the remainder of $20,000 to be paid by check within a week, do hereby convey 40 acres, one quarter of my homestead located just off the Petersville Road, to Judy Jones, along with an easement for access over my dirt road from The Petersville Road. Said 40 acres contains a small, unnamed lake, about 4 acres in size. next to the hill

Ed Rupert

Judy Jones

Township Survey Plat





Enlarged to show details of Rupert Homestead. The Rupert house is located on the west lake. The meandering lines near and between the lakes are streams. The curved line from the Cache Creek Road is the dirt road that goes first toward the Rupert house and then to the two eastern lakes.

UNITED STATES DEPAR
BUREAU OF LA
Washington, D. C.

This plat is strictly

RULES GOVERNING THE ALASKA HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP COMPETITION

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I. COMPETITION RULES AND RULES OF PROCEDURE

A. GOVERNING RULES

Rule 1. Competition Coordinators

The Alaska High School Mock Trial Championship is sponsored by the Anchorage Bar Association, Young Lawyers Section. A committee comprised of interested members of that organization and other persons, as appropriate, shall organize and oversee all aspects of the competition, and shall be referenced as the competition coordinators. All written correspondence with the competition coordinators should be addressed to:

ANCHORAGE BAR ASSOCIATION
YOUNG LAWYERS SECTION
c/o PROF. RYAN FORTSON
JUSTICE CENTER
UNIVERSITY OF ALASKA ANCHORAGE
3211 PROVIDENCE DRIVE, LIB 213
ANCHORAGE, AK 99508-4614
Attn: MOCK TRIAL

Competition organizers may also communicate via electronic means with teams and offer alternate addresses to which to send or fax registration and other forms. Email communication can be sent through hrfortson@alaska.edu or through another email address provided by competition organizers.

Rule 2. Interpretation of the Rules

All trials will be governed by the current Alaska High School Mock Trial Championship's Rules of Competition and Rules of Procedure and by the Federal Rules of Evidence (Mock Trial Version). Interpretation of the rules is within the discretion of the competition coordinators, whose decisions are final. Any clarification of rules will be issued in writing to all participating teams. Teams who believe that clarification is needed should request clarification in writing.

Rule 3. Code of Conduct

The Competition rules, as well as proper rules of courthouse and courtroom decorum and security must be followed. The Competition Coordinators will have discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations, or breaches of decorum 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.

Rule 4. Emergencies

During a trial, the presiding judge or the competition coordinators shall have discretion to declare an emergency and adjourn the trial for the period of time necessary to address the emergency. If an emergency arises which would cause a team to be unable to continue a trial, or require it to participate with less than six members, the competition coordinators

Rule 4.5. Food and Beverages in the Courthouse

Food and beverages – including water – are NOT ALLOWED in the courtroom at any time. After receiving a warning, teams that fail to follow this rule are subject to forfeiture of rounds and/or disqualification. Water will be available during the trial for the participating lawyers and witnesses.

B. THE PROBLEM

Rule 5. Case Materials

The problem will be an original fact pattern which may contain any or all of the following: statement of facts, indictment, stipulations, witness statements/affidavits, jury charges, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

Teams who believe that errors exist in the case materials should bring such errors to the attention of the competition coordinators in writing. Any clarification of case materials will be issued in writing to all participating teams. In preparing and participating in the Competition, students are limited to the supplied case materials, the Governing Rules and the Modified Rules of Evidence.

Rule 6. Witness Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 7, outside the scope of the problem.

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

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

Rule 7. Unfair Extrapolation

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

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

Consistent with the obligation to attack unfair extrapolations through impeachment and closing arguments, attorneys for the opposing team may refer to Rule 7 in a special objection, such as "unfair extrapolation" or "This information is beyond the scope of the statement of facts."

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.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings. The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

Rule 8. Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any team member may portray the role of any witness of either gender. Please try to be mindful of the genders of the witnesses portrayed by the opposing team.

Rule 9. Voir Dire

Voir dire examination of a witness, including experts, is not permitted.

C. THE TRIAL

Rule 10. Team Eligibility

Any Alaska high school may assemble one or more teams and become eligible to compete in the Alaska High School Mock Trial Championship Competition. Two or more Alaska high schools may jointly form a team if each school participating in the formation of a joint team would otherwise be unable to participate in the Alaska High School Mock Trial Championship Competition. Educational and civic organizations which are 1) independent of any Alaska high school, 2) not formed primarily for the purpose of competing in the Alaska High School Mock Trial Championship Competition, and 3) comprised of high school students residing in Alaska, may assemble one or more teams and become eligible to compete in the Competition. Alaska high schools wishing to form a team but not qualifying under this Rule may timely request that an exception to this Rule be granted by the competition coordinators. A decision by the competition coordinators as to eligibility under this Rule or an exception to this Rule shall be final. Any team wishing to participate in the Alaska High School Mock Trial Championship Competition must properly register with the competition coordinators in advance of the competition. The competition coordinators will attempt to accommodate all registrants. Any school or other organization wishing to enter multiple teams must designate a "first" team. In the unlikely event that registration must be limited as a result of too many teams attempting to participate, priority will be given to the "first" team over other teams from the same school or organization. In all other aspects, registration will be permitted on a first come, first served basis. The team that wins the Alaska High School Mock Trial Championship Competition will be deemed the current Alaska State Mock Trial Championship Team and is eligible to participate and compete in the National High School Mock Trial Championship. Any team representing Alaska in the National High School Mock Trial Championship must be comprised of students

who participated on the current Alaska State Mock Trial Championship team. The Alaska State Mock Trial Championship Team is responsible for its own expenses in attending the National High School Mock Trial Championship Competition.

Rule 11. Team Competition

Teams consist of no less than **six** members and no more than **nine** members, including alternates. Team members are assigned to roles representing the Prosecution/Plaintiff and Defense/Defendant sides in each round of the competition. Student timekeepers may be provided by the teams; however, these persons are not considered "official timekeepers" in the tournament.

Rule 12. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members. Different sides will be assigned to teams for different rounds. Only in the case of an emergency occurring during a round of competition may a team participate with less than six members. In such a case, a team may continue in the competition by making substitutions to achieve a two attorney/three witness composition. If an emergency causes a team to use less than three attorneys, the team may be penalized by a reduction of points for that round or may be caused to forfeit the round, depending on the nature of the emergency. Final determinations of emergency, forfeiture, or scoring record will be made by the competition coordinators.

Rule 13. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct and one cross; in addition, one will present the opening statement and another will present a closing argument. The principal attorney duties for each team will be as follows:

1. Opening Statement
3. Direct Examination of Witness #1
4. Direct Examination of Witness #2
5. Direct Examination of Witness #3
6. Cross Examination of Opposing Witness #1
7. Cross Examination of Opposing Witness #2
8. Cross Examination of Opposing Witness #3
9. Closing Argument

Opening Statements must be given by both sides at the beginning of the trial.

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

Each team must call three witnesses and only three witnesses. Witnesses must be called only by their own team and examined by both sides. Although re-direct and re-cross are permissible, witnesses may not be recalled to the stand after their testimony is complete. Thus,

once a witness is excused and steps down, neither team may recall the witness for further questioning even if no re-direct or re-cross was previously conducted.

Rule 14. Swearing of Witnesses

The following oath, or a similar oath permitted by the presiding judge, may be used before questioning begins:

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

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate that all witnesses are assumed to be sworn, or the above oath will be conducted by a) the presiding judge, b) a bailiff or clerk provided by the competition coordinators, or c) the examining attorney. The presiding judge shall indicate which method will be used during any given round of the Mock Trial Competition. Witnesses may stand or sit during the oath.

Rule 15. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
3. Direct and (optional) Redirect Exam (25 minutes total per side)
4. Cross and (optional) Recross Exam (15 minutes total per side)
5. Closing Argument (5 minutes per side)

The Prosecution/Plaintiff is the first to present the opening statement and give the closing argument. The Prosecution/Plaintiff may reserve a portion of the time allotted for closing argument to present a rebuttal. Rebuttal is limited to the scope of the opposing side's argument.

Rule 16. Timekeeping

Time limits are mandatory and will be enforced. Each team is permitted to have its own timekeeper and timekeeping aids; however, an official timekeeper will be assigned to each trial. Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements. Time does not stop for the introduction of exhibits.

Rule 17. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the scoring judges may determine individually whether or not to discount points in a category because of over-runs in time.

Rule 18. Prohibited Motions

Except as provided in these Rules, no motions may be made. (A motion for directed verdict, acquittal, or dismissal of the case at the end of the Prosecution's case, for example, may not be used.) A motion for a recess may be used in the event of an emergency (i.e., health emergency). To the greatest extent possible, team members are to remain in place. Should a

recess by called by the court, teams are not to communicate with any observers, timekeepers, coaches, or instructors during the recess.

Rule 19. Sequestration

Teams may not invoke the rule of sequestration.

Rule 20. Bench Conferences

Bench conferences may be granted at the discretion of the presiding judge, but should normally be conducted in such a manner that all participants, scoring judges, instructors, alternates, and other courtroom observers can hear the arguments and discussions in their entirety. This Rule is designed to further the educational interests of the Alaska High School Mock Trial Competition. Bench conference time shall not be counted against the time allotted to either team.

Rule 21. Supplemental Materials/Illustrative Aids

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

Rule 22. Trial Communication

Instructors, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This Rule remains in force during any recess time that may occur during the course of the trial. Team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' own timekeepers shall not be considered a violation of this Rule. Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in a round may sit inside the bar during that round.

Rule 23. Viewing a Trial

Each team is responsible for the conduct of its members and persons associated with the team throughout the duration of the mock trial competition. Team members, alternates, attorney-coaches, teacher-sponsors, and any other persons directly associated with a mock trial team may view their team competition, but otherwise, except when specifically authorized by the competition coordinators, are not allowed to view other teams in competition, so long as their team remains in the competition.

Nothing may be brought into the courtroom which would tend to reveal the identity of the participating teams. Spectators should be cautioned that they may not wear school insignias. School owned equipment should have all identifying marks covered.

Rule 24. Videotaping/Photography/Audiotaping

Any team may videotape or audiotape a competition round in which it participates for its own educational purposes only. With the consent of an opposing team, any team may videotape or audiotape a competition round for any other purpose. Bright camera lights, flash bulbs and equipment tending to distract the competitors may be barred in the discretion of the presiding judge. Disruptive conduct in the course of taping, filming, or taking photographs is prohibited,

and may result in a penalty against the team responsible for the conduct of the offending photographer.

If school owned equipment is employed for video or audiotaping, identifying information must not be visible on such equipment that might be seen by a judge.

Media coverage will be allowed in accordance with the policies of the competition coordinators.

D. JUDGING

Rule 25. Decisions

All decisions of the judges are FINAL.

Rule 26. Composition of the Judging Panel

The judging panel will consist of individuals determined to be eligible by the competition coordinators. Generally, the competition judges are members of the Alaska judiciary or attorneys practicing in Alaska. Qualified educators and other persons may also be invited by the competition coordinators to participate as Mock Trial judges. The composition of the judging panel and the role of the presiding judge will be at the discretion of the competition coordinators. For preliminary rounds, one presiding judge and at least one additional scoring judge will be appointed by the competition coordinators to judge the round. The final (championship) round may have a larger judging panel than preliminary rounds, at the discretion of the competition coordinators.

All presiding and scoring judges receive the mock trial manual, a memorandum outlining the case, orientation materials, and a briefing as to the case, the role of judges, and the standards to be applied.

Rule 27. Score Sheets/Ballots

The presiding judge and each additional scoring judge shall complete a "score sheet" or "ballot" for each trial conducted in each round of the competition. Judges' ballots will be substantially like the sample provided by the competition coordinators to each team. When evaluating the teams that each judge observes in the competition, the judges will reference the teams only by their assigned identification codes.

Score sheets are to be completed individually by the judges and without consultation with the other judges. Scoring judges are not bound by the rulings of the presiding judge. While the judging panel may confer within guidelines established by the competition coordinators, the judging panel should not deliberate on individual scores.

Rule 28. Completion of Score Sheets

Score sheets are completed by the judges as follows:

1. Trial Points:
   Each judge will award and record a number of points for each aspect of the trial. Points will be awarded from a scale of 1 to 10, with 10 being the highest. Judges are required to complete the ballots in their entirety, though they are not required to compute final scores.

2. Final Point Total:
A team is determined to be the winner of a round when that team wins a majority of the points cast by the judges scoring a given trial. If the opposing teams for a given round each receive the same number of points for that trial, the competition coordinators shall consider the judges' determinations of tiebreaker points, as provided in the tiebreaker box at the bottom of each scoresheet.

A forfeiting team will receive a loss for purposes of ranking and zero points toward the competition total. If a trial cannot continue due to forfeiture, the non-forfeiting team shall be considered to have won by default. A non-forfeiting team will not be penalized in ranking by any inability to receive points from scoring judges.

Rule 29. Team Advancement

Teams will be ranked based on the total number of points received for all rounds. The two teams emerging with the strongest record from the preliminary rounds will advance to the final round. Ballots from the championship round will determine the current Alaska State Mock Trial Championship Team only.

Rule 30. Selection of Opponents for Each Round

As best as possible, a random lottery will be conducted prior to the competition for the purpose of assigning team identification designations. The assignment of opponents for all rounds will be governed by a fixed schedule which will be made available for review by team coaches prior to the time of conducting the lottery. As a result, all opponent selections for all preliminary rounds will become manifest through the random process of assigning team identification designations. Efforts will be made to prevent multiple schools from the same school from competing against each other in the preliminary rounds.

The schedule governing the assignment of opponents will designate which team is to present the Prosecution/Plaintiff's case and which is to present the Defense/Defendant's in each round. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. Every effort will be made to ensure that each team will present each side twice, but all teams will be scheduled to present each side of the case at least once.

Rule 31. Merit Decisions

Judges will make a ruling on the legal merits of the trial, after deliberating. During the debriefing process, judges may inform students of the verdict on the merits of the case. Judges may not inform the students of score sheet results.

Rule 32. Effect of Bye

A "bye" becomes necessary when an odd number of teams are present for the tournament. If an odd number of teams are competing, an additional round will be scheduled, during which those teams receiving a bye will compete against each other. Any team receiving a bye must not observe other teams competing during the round in which the bye was drawn.

E. DISPUTE SETTLEMENT

Rule 33. Reporting a Rules Violation/Inside the Bar

Disputes which (a) involve students competing in a competition round and (b) occur during the course of a trial must be filed immediately upon conclusion of the trial. Disputes must be brought to the attention of the presiding judge at the conclusion of the trial. If any team believes that a substantial rules violation has occurred, one of its student attorneys must indicate that the team intends to file a dispute. The presiding judge will instruct the student attorney to prepare a notice of dispute, in which the student will record in writing the nature of the dispute. The student may communicate with counsel and/or student witnesses before lodging the notice of dispute or in preparing the form. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure permitted under this Rule.

Rule 34. Dispute Resolution Procedure

Upon receipt of a Rule 33 notice of dispute, the presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce his/her decision to the Court, retire to complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a representative. After the designated representatives have had time (not to exceed three minutes) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's designated representative three minutes for a presentation. The judge may question the designated representatives. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider his/her ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 35. Effect of Violation on Score

If any judge, whether presiding or scoring, observes independently that a substantial rules violation has occurred, or if the presiding judge makes such a determination in accordance with Rule 34, the judge will inform each of the other judges for that trial. The presiding judge shall inform all other judges who score a trial in which a notice of dispute is submitted of the nature and existence of the dispute, and in the event that some or all of the scoring judges are not present for resolution of the dispute, the presiding judge shall provide a summary of each team's argument and any decision rendered as to the dispute. Each scoring judge will consider the dispute before reaching his or her final decisions. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring judges.

Rule 36. Reporting of Rules Violation/Outside the Bar

Disputes which arise from matters not governed by Rule 33 may be brought exclusively by a team's official faculty advisor or attorney-coach. Such disputes must be made promptly to the competition coordinators, who may ask the complaining party to state the complaint in writing. The competition coordinators will select and appoint a dispute resolution panel which

will (a) notify all pertinent parties; (b) allow time for a response, if deemed by the dispute resolution panel to be appropriate; (c) investigate, if deemed by the dispute resolution panel to be appropriate; (d) conduct an informal hearing, if deemed by the dispute resolution panel to be appropriate; and (e) rule on the charge. The dispute resolution panel may notify the judging panel of the affected courtroom of the ruling on the charge.

RULES OF PROCEDURE

A. BEFORE THE TRIAL

Rule 37. Team Roster

Copies of the team roster must be completed and duplicated by each team prior to arrival for trial. Teams must be identified ONLY by the code assigned at registration. No information identifying a team's city or school of origin should appear on the form or any materials brought into the courtroom or on any clothing worn by the team members or audience. Before beginning a trial, the teams must exchange copies of the Team Roster Form. Copies of the Team Roster Form should also be made available to the judging panel before each round.

Rule 38. Stipulations

When the Court asks the Plaintiff if it is ready to proceed with opening statements, the attorney assigned the opening statement should offer the stipulations into evidence.

Rule 39. The Record

The stipulations, indictment, and charge to the jury, if any, will not be read into the record.

B. BEGINNING THE TRIAL

Rule 40. Jury Trial

The case will be tried to a jury unless the presiding judge determines otherwise; arguments are to be made to the judge and jury. Teams may address the scoring judges and any other persons permitted by the presiding judge to sit in the jury box as the jury.

Rule 41. Standing During Trial

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

Rule 41. Objection During Opening Statement/Closing Argument

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

If a team believes an objection would have been necessary during the opposing team's closing argument, a student-attorney, following the closing arguments, may seek to be recognized by the presiding judge and may say "If I had been permitted to object during closing

arguments, I would have objected to the opposing team's statement that _____." The presiding judge need not rule on this "objection." Presiding and scoring judges will weigh the "objection" individually. No rebuttal by the opposing team will be heard.

C. PRESENTING EVIDENCE

Rule 43. Argumentative Questions

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

Rule 44. Lack of Proper Predicate/Foundation

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

Rule 45. Procedure for Introduction of Exhibits

The following steps are *examples* by which evidence may be effectively introduced:

1. All evidence will be pre-marked as exhibits.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No. ___?"
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness.
5. "I now hand you what has been marked as Exhibit No. ____ for identification."
6. Ask the witness to identify the exhibit. "Would you identify it please?"
7. Witness answers with identification only.
8. Offer the exhibit into evidence.
9. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
10. Opposing Counsel: "No, your Honor," or "Yes, your Honor." If the response is "yes", the objection will be stated on the record. Court: "Is there any response to the objection?"
11. Court: "Exhibit No. ____ is/is not admitted."

Rule 46. Use of Notes

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

Rule 47. Redirect/Recross

Redirect and recross examinations are permitted, provided that they conform to the restrictions in Rule 611(d) in the Federal Rules of Evidence (Mock Trial Version).

D. CLOSING ARGUMENTS

Rule 48. Scope of Closing Arguments

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

E. CRITIQUE

Rule 49. The Critique

The judging panel is allowed time for debriefing. Judges will not reveal the scores attributed by them to individual performances, nor will they reveal which team was the ballot winner. The judges may announce the winner of the case on the merits and may discuss or comment upon the presentations in furtherance of the educational interests of the Alaska High School Mock Trial Competition.

II. MODIFIED RULES OF EVIDENCE

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the mock trial team to know the Federal Rules of Evidence (Mock Trial Version) and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses. For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence and its numbering system. When rule numbers or letters are skipped, those rules were deemed not applicable to mock trial procedure. Text in italics represents simplified or modified language.

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

Article I. General Provisions

Rule 101. Scope

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

Rule 102. Purpose and Construction

The 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 106. Remainder of Writings

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 Fact

A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the subject jurisdiction or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. A court may take judicial notice whether requested or not.

ARTICLE III. Presumptions in Civil Actions and Proceedings – Not Applicable

ARTICLE IV. Relevancy and its Limits

Rule 401. Definition of "Relevant Evidence"

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

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

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

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

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

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

(a) Character Evidence – Evidence of a person's character or a *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 the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;
   (3) Character of witness – Evidence of the character of a witness as provided in Rules 607, 608, and 609.

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

Rule 405. Methods of Proving Character

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

(b) Specific instances of conduct – In cases in which 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 eyewitnesses, 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 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 410. Inadmissibility of Pleas, Pleas Discussions, and Related Statements

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

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

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

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

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

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

(a) General Rule – For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused had 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.

(b) 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.

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

(d) *Not applicable*.

(e) *Not applicable*.

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

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

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

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

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

Rule 612. Writing Used to Refresh Memory

If a written statement is used to refresh the memory of a witness either while or before testifying, the Court shall determine that the adverse party is entitled to have the writing

produced for inspection. The adverse party may cross examine the witness on the material and introduce into evidence those portions which relate to the testimony of the witness.

Rule 613. Prior Statement of Witnesses

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

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

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, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

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

(a) *Opinion or inference testimony* otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.

(b) In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or date, unless the Court requires otherwise. The expert may in any event 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:

(a) Statement – A "statement" is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant – A "declarant" is a person who makes a statement.

(c) Hearsay – "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

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

Rule 802. Hearsay Rule

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

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

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

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

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

(5) Recorded Recollection – A memorandum or record concerning a matter about

which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.

(6) Business Records – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

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

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

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

Rule 804. Hearsay Exceptions–Declarant Unavailable.

(a) **Definition of Unavailability.** Unavailability as a witness includes situations in which the declarant

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) establishes a lack of memory of the subject matter of his 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 his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), (4), or (5), of this rule, his attendance or testimony) by reasonable means including process.

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

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

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

(2) *Statement Under Belief of Impending Death.* 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 his impending death.

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

(4) *Statement of Personal or Family History.* (A) A statement concerning the declarant's own birth, adoption, marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; 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.

(5) *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 with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

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.

Article X. Contents of Writing, Recordings and Photographs – Not applicable.

EVALUATION GUIDELINES

The competition judges are given instructions on how to evaluate the performance of participating teams and individuals. The following guidelines, as well as additional instructions that are not included here, are included in the material provided to the competition judges. Participating teams may assume that the winning team will excel in the following ways:

ATTORNEYS: **DEMONSTRATED SPONTANEITY:**

- in response to witnesses and/or the court;
- in the overall presentation of the case; and
- in making and responding to objections, capitalizing on opportunities which arise during trial.

DEMONSTRATED COMMAND OF THE FACTS AND ISSUES in the case and attorney's understanding of the relevant points of law.

When examining witnesses, attorney **PHRASED QUESTIONS PROPERLY** and demonstrated a clear understanding of trial procedure and the simplified rules of evidence used for the mock trial competition.

The attorney's questions:

- were clearly stated, concise, and to the point;
- resulted in straightforward answers from the witness;
- brought out information important to the case; and
- brought out contradictions in testimony.

Opening statements and closing arguments were **ORGANIZED AND WELL-REASONED** presentations, with the closing argument emphasizing the strengths of the attorney's own side and addressing the flaws exposed by the opposing attorneys during trial.

WITNESSES: Testimony was **CONVINCING** and characterizations were **BELIEVABLE** and **CONSISTENT** with the affidavits**. PREPARATION** and **SPONTANEITY** were evident in the manner witnesses handled questions posed to them by the attorneys.

TEAMS: Courtroom **DECORUM AND COURTESY** by all team members and coaches were observed. Affiliated observers were not disruptive. All participants were **ACTIVE** in the presentation of the case.

2019 ALASKA HIGH SCHOOL
MOCK TRIAL CHAMPIONSHIP COMPETITION
(Anchorage, March 28-30, 2019)

TEAM REGISTRATION FORM
(Please CLEARLY print name and contact information)

School (Organization) Name: _____

Team Mailing Address: _____

_____

Teacher or other School Advisor: _____ T-Shirt Size: _____

Advisor Contact Phone: _____ Message Phone: _____

Advisor FAX Number: _____ **E-Mail: _____**

Attorney Coach: _____ T-Shirt Size: _____

Coach Contact Phone: _____ Message Phone: _____

Coach FAX Number: _____ **E-Mail: _____**

Student Team Members (Please print names in block lettering)

	(T-Shirt Size)		(T-Shirt Size)
_____	( )	_____	( )
_____	( )	_____	( )
_____	( )	_____	( )
_____	( )	_____	( )
_____	( )	THIS IS TEAM NUMBER _____	

Each team must have a minimum of six students members. No team may have more than nine members, including alternates. The assistance of attorney coaches is recommended, but not mandatory. Schools wishing to register more than one team may designate the same teacher or other school sponsor as the official school advisor. Any school wising to register multiple teams MUST indicate which team is the "First Team," "Second Team," etc. **All teams must be registered *no later than March 22, 2019.***

TO REGISTER A TEAM, PLEASE RETURN THIS FORM WITH THE REGISTRATION FEE OF $150 PER TEAM TO:

ANCHORAGE BAR ASSOCIATION
YOUNG LAWYERS SECTION
c/o PROF. RYAN FORTSON
JUSTICE CENTER
UNIVERSITY OF ALASKA ANCHORAGE
3211 PROVIDENCE DRIVE, LIB 213
ANCHORAGE, AK 99508-4614
Attn: MOCK TRIAL