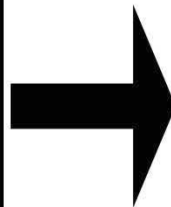


2018 NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT MATERIALS

PEOPLE V. CARSON CONNERS



Materials prepared by the Law, Youth & Citizenship Program of the New York State Bar Association®

Supported by The New York Bar Foundation



TABLE OF CONTENTS

➤ Letter From The Chair.....	1
➤ Standards Of Civility	3
PART I -TOURNAMENT RULES	5
1. Team Composition.....	7
2. Objections.....	7
3. Dress.....	8
4. About Stipulations	8
5. Outside Materials	8
6. Exhibits	8
7. Signals and Communication.....	8
8. Videotaping /Audiotaping	8
9. Mock Trial Coordinators	9
10. Role and Responsibility of Attorneys	10
11. Witnesses.....	10
12. Protests.....	11
13. Judging.....	11
14. Order of the Trial	12
15. Time Limits.....	13
16. Team Attendance at State Finals Round	13
PART II - POLICIES AND PROCEDURES	15
1. General Policies	17
2. Scoring.....	18
3. Levels of Competition.....	19
4. County Tournaments	19
5. Regional Tournaments	21
6. Statewide Finals.....	21
7. MCLE Credit for Participating Attorneys and Judges (revised 11/2017).....	23
• Request for CLE Credit Verification Form (revised 11/2017)	25
PART III - SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE	27
1. SCOPE	29
• Rule 101: Scope	29
• Rule 102: Objections	29

2. RELEVANCY	29
• Rule 201: Relevancy	29
• Rule 202: Character.....	30
• Rule 203: Other Crimes, Wrongs, or Acts.....	31
3. WITNESS EXAMINATION	32
a. Direct Examination	32
• Rule 301: Form of Question.....	32
• Rule 302: Scope of Witness Examination.....	33
• Rule 303: Refreshing Recollection	33
b. Cross-Examination (Questioning the Other Side’s Witnesses)	33
• Rule 304: Form of Question.....	33
• Rule 305: Scope of Witness Examination.....	33
• Rule 306: Impeachment	33
• Rule 307: Impeachment by Evidence of a Criminal Conviction.....	34
c. Re-Direct Examination	35
• Rule 308: Limit on Questions.....	35
d. Re-Cross Examination	35
• Rule 309: Limit on Questions.....	35
e. Argumentative Questions	36
• Rule 310.....	36
f. Compound Questions	36
• Rule 311	36
g. Asked and Answered Questions	36
• Rule 312.....	36
h. Speculation	37
• Rule 313.....	37
4. HEARSAY	37
• Rule 401: Hearsay.....	37
• Reasons for Excluding Hearsay	37
5. EXCEPTIONS	38
• Rule 402: Admission of a Party Opponent	38
• Rule 403: State of Mind.....	38
• Rule 404: Business Records	39

• Rule 405: Present Sense Impression.....	39
• Rule 406: Statements in Learned Treatises	40
• Rule 407: Statements by an Unavailable Declarant	40
6. OPINION AND EXPERT TESTIMONY	41
• Rule 501: Opinion Testimony by Non-Experts	41
• Rule 502: Opinion Testimony by Experts	42
7. PHYSICAL EVIDENCE	42
• Rule 601: Introduction of Physical Evidence.....	42
• Procedure for Introducing Evidence.....	42
• Rule 602: Redaction of Document	43
• Rule 603: <i>Voir Dire</i> of a Witness	43
8. INVENTION OF FACTS.....	44
• Rule 701: Direct Examination	44
• Rule 702: Cross-Examination.....	44
9. PROCEDURAL RULES	44
• Rule 801: Procedure for Objections	44
• Rule 802: Motions to Dismiss	45
• Rule 803: Closing Arguments	45
• Rule 804: Objections During Opening Statements and Closing Arguments.....	45
• Rule 901: Prosecution’s Burden of Proof (Criminal Cases) Beyond a Reasonable Doubt.....	45
• Rule 902: Plaintiff’s Burdens of Proof (Civil Cases).	45
○ 902.1: Preponderance of the Evidence.....	45
○ 902.2: Clear and Convincing Evidence.....	46
• Rule 903: Direct and Circumstantial Evidence	46
○ 903.1: Direct Evidence	46
○ 903.2: Circumstantial Evidence	46
PART IV - TRIAL SCRIPT	47
• Case Summary	49
• List of Stipulations	53
• Affidavit of Lauren Smith.....	55
• Affidavit of Dr. Sidney Crosby	59
• Affidavit of Bobbie Jones	63
• Affidavit of Carson Connors	67

• Affidavit of Dr. Avery Johnson.....	71
• Affidavit of Billie Jo Stapleton.....	75
PART V - EVIDENCE	79
• Exhibit – Statistical Analysis 11th Grade ELA Assessment Examination (Bigtown HS).....	81
• Exhibit – Bigtown Board of Education Policy on Discipline.....	83
• Exhibit – Excerpt from Section 3214 (New York State Education Law).....	85
• Exhibit – City Court Information (Arrest of Carson Connors)	89
• Exhibit – Supporting Deposition (Police Department, City of Bigtown)	91
PART VI - RELATED CASELAW/CASES AND STATUTES	93
• Cases.....	95
• Statutes	97
APPENDICES	99
• Performance Rating Guidelines.....	101
• Performance Rating Score Sheet – Page 1 (Front)	103
• Performance Rating Score Sheet – Page 2 (Back).....	104
• Order of the Trial	105
• Preparing for the Mock Trial Tournament	107
• Time Keeper’s “One Minute” Sign – Page 1 (Front)	109
• Time Keeper’s “One Minute” Sign TIME LIMITS – Page 2 (Back).....	110
• Map of New York State Mock Trial Tournament Regions and Counties	111
• Past New York State Mock Trial Tournament Champions.....	112



New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>

LETTER FROM THE CHAIR

November 14, 2017

Dear Mock Trial Students, Teacher-Coaches and Attorney-Advisors:

Thank you for participating in the 2018 New York State High School Mock Trial Tournament. The tournament is now entering its 36th year. Thanks to the continued financial and logistical support from the New York Bar Foundation and the New York State Bar Association, New York State continues to have one of the largest and longest running high school mock trial programs in the nation. Equally important to the success of the program is the continued support of the numerous local bar associations across the state that sponsor mock trial tournaments in their counties and the County Coordinators who spend many hours managing the local tournaments. We are grateful to the teacher-coaches and attorney advisors who give their time, dedication and commitment to the program. And finally, our special thanks to the students who devote their time and energy in preparing for the tournament. Every year, we are amazed at the level of skill and talent the students bring to the courtrooms. Congratulations to the 2016-2017 New York State Tournament Champion, *W. Tresper Clarke High School*, who turned in a winning performance last May at the State Finals in Albany.

Please take the time to carefully review all of the enclosed mock trial tournament information. The **Simplified Rules of Evidence** and the **General Tournament Rules** should be studied carefully. Please pay special attention to the information regarding the timing, redaction of evidence and constructive sequestration of witnesses.

In this criminal case, Carson Conners, a high school student, was observed by his/her English teacher, Lauren Smith, repeatedly pushing another unidentified student in the hallway. The teacher approached Carson and tried to lead Carson away by the arm; a verbal exchange ensued. A School Resource Officer saw the incident on closed-circuit TV and rushed to the scene. Carson was arrested, taken to the local police precinct and charged with Disorderly Conduct. Due to the arrest, Carson was not able to attend school until after the due process hearing, which caused him/her to miss taking the districtwide assessment tests. Because removal from school is typically the result of an arrest and a criminal prosecution, Carson believes that the teacher, Lauren Smith, precipitated the encounter to get him/her out of the classroom in advance of the assessment test. Carson and his/her defense team allege that the criminal charge was trumped up so that Carson would not be available to take the assessment test. The defense believes that the school has adopted a “school-to-prison pipeline” policy and practice, which results in “zero-tolerance” for even minor school infractions and in the prosecution of students in the juvenile and the adult criminal justice systems, rather than within the school disciplinary process. The school-to-prison pipeline policy primarily targets at-risk students charged with public order offenses, such as disorderly conduct, harassment, violation of school conduct codes or school-yard fighting, by preferring prosecution over in-school disciplinary measures. The Bigtown Civil Liberties Society alleges that the school cut funding to aid at-risk students, like Carson, and used the money to reimburse the city for the services of the two police officers.

The mock trial program is, first and foremost, an educational program designed to teach high school students basic trial skills. Students learn how to conduct direct and cross examinations, how to present opening and closing statements, how to think on their feet, and learn the dynamics of a courtroom. Students will also learn how to analyze legal issues and apply the law to the facts of the case. Second, but equally important, is that participation in mock trial will teach the students professionalism. Students learn ethics, civility, and how to be ardent but courteous advocates for their clients. Good sportsmanship and respect for all participants are central to the competition. We thank the teachers, coaches, advisors, and

judges, not only for the skills that they teach, but for the example of professionalism and good sportsmanship they model for the students throughout the tournament.

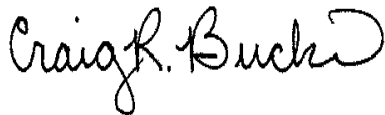
We remind the teams that all participants (students, teachers, attorneys, parents and all spectators) must conduct themselves with the utmost respect and civility toward the judge, before, during and after each round. If there is a circumstance in which any participant does not abide by this standard, a referral will be made to the LYC Mock Trial Subcommittee to consider appropriate sanctioning.

The tournament finals will be held in Albany, Sunday, May 13 through Tuesday, May 15, 2018. As in years past, the regional winners in each of the eight regions will be invited to participate in the semi-finals, and two of the teams will advance to the final round the last day. The New York Bar Foundation is generously supporting the tournament again this year and will fund the teams' room and board for the state tournament. More details will be available closer to the date of the tournament.

This year's Mock Trial Tournament materials will be posted on the Law, Youth and Citizenship website, www.lycny.org (click on the *NYS Mock Trial* tab). Updates will also be provided on Facebook at www.facebook.com/nysmocktrial and on Twitter @NYSMockTrial.

We trust you will enjoy working on this year's case. Best wishes to all of you for a successful and challenging mock trial tournament.

Sincerely,



Craig R. Bucki, Esq.
Chair, Committee on Law, Youth and Citizenship

Subcommittee Members:

Craig R. Bucki, Esq., *Buffalo (Chair)*
Melissa Ryan Clark, Esq., *New York City*
Christopher E. Czerwonka, Esq., *New Windsor*
Christine E. Daly, Esq., *Chappaqua*
Eugenia Brennan Heslin, Esq., *Poughkeepsie*

Seth F. Gilbertson, Esq., *Syracuse*
Stuart E. Kahan, Esq., *White Plains*
Susan Katz Richman, Esq., *Hempstead*
Lynn Boepple Su, Esq., *Old Tappan*
Oliver C. Young, Esq., *Buffalo*

STANDARDS OF CIVILITY

“ . . . [O]urs is an honorable profession, in which courtesy and civility should be observed as a matter of course.”

Hon. Judith S. Kaye, Former Chief Judge of the State of New York

The following standards apply to all Mock Trial Tournament participants, including students, teachers, attorneys, and parents/guardians. A Mock Trial Tournament participant’s failure to abide by any of these standards may result in the disqualification of his or her team from the Tournament, pursuant to the sole discretion of the New York State Bar Association Law, Youth and Citizenship Committee’s Mock Trial Subcommittee.

1. Lawyers should be courteous and civil in all professional dealings with other persons.
2. Lawyers should act in a civil manner regardless of the ill feelings that their clients may have toward others.
3. Lawyers can disagree without being disagreeable. Effective representation does not require antagonistic or acrimonious behavior. All participants in the Mock Trial Tournament shall avoid vulgar language or other acrimonious or disparaging remarks, whether oral or written, about other Mock Trial Tournament participants.
4. Lawyers should require that persons under their supervision conduct themselves with courtesy and civility.
5. A lawyer should adhere to all expressed promises and agreements with other counsel, whether oral or in writing, and to agreements implied by the circumstances or by local customs.
6. A lawyer is both an officer of the court and an advocate. As such, the lawyer should always strive to uphold the honor and dignity of the profession, avoid disorder and disruption in the courtroom, and maintain a respectful attitude toward the court.
7. Lawyers should speak and write civilly and respectfully in all communications with the court and court personnel.
8. Lawyers should use their best efforts to dissuade clients and witnesses from causing disorder or disruption in the courtroom.
9. Lawyers should not engage in conduct intended primarily to harass or humiliate witnesses.
10. Lawyers should be punctual and prepared for all court appearances; if delayed, the lawyer should notify the court and counsel whenever possible.
11. Court personnel are an integral part of the justice system and should be treated with courtesy and respect at all times.

The foregoing Standards of Civility are based upon the Standards of Civility for the New York State Unified Court System.

This page left intentionally blank.

**NEW YORK STATE
HIGH SCHOOL MOCK
TRIAL TOURNAMENT
RULES**

PART I

This page left intentionally blank.

MOCK TRIAL TOURNAMENT RULES

1. TEAM COMPOSITION

- a. The Mock Trial Tournament is open to all 9th–12th graders in public and nonpublic schools who are currently registered as students at that school.
- b. If a school chooses to limit student participation for any reason, this should be accomplished through an equitable “try-out” system, not through disallowing participation by one or more entire grade levels.
- c. Each school participating in the Mock Trial Tournament may enter only **ONE** team.
- d. Members of a school team entered in the Mock Trial Tournament—including teacher-coaches, back-up witnesses, attorneys, and others directly associated with the team’s preparation—are **NOT** permitted to attend the trial enactments of any possible future opponent in the contest. This rule should not be construed to preclude teams from engaging in practice matches, even if those teams may meet later during the competition.

Violations of this rule can lead to being disqualified from the tournament.

- e. Immediately prior to each trial enactment, the attorneys and witnesses for each team must be physically identified to the opposing team and the judge by stating their first and last names. Please do not state the name of your school in front of the judge since the judge will not otherwise be told the name of the schools participating in the enactment he or she is judging.

2. OBJECTIONS

- a. Attorneys should stand when making an objection, if they are physically able to do so.
- b. When making an objection, attorneys should say “objection” and then, very briefly, state the basis for the objection (for example, “leading question”). Do not explain the basis unless the judge asks for an explanation.
- c. Witnesses should stop talking immediately when an opposing party makes an objection. Please do not try to “talk over” the attorney making an objection.

3. DRESS

We emphasize to the judges that a student's appearance is not a relevant factor in judging his or her performance. However, we strongly encourage students to dress neatly and appropriately. A "business suit" is not required.

4. ABOUT STIPULATIONS

Any stipulations are binding on all participants and the judge, and may **NOT** be disputed at the trial.

5. OUTSIDE MATERIALS

Students may read other materials such as legislative histories, judicial opinions, textbooks, treatises, etc., in preparation for the Mock Trial Tournament. However, students may cite only the materials and cases provided in these Mock Trial Tournament materials.

6. EXHIBITS

Students may introduce into evidence or use only the exhibits and documents provided in the Mock Trial Tournament materials. Students may not create their own charts, graphs or any other visual aids for use in the courtroom in presenting their case. **Evidence is not to be enlarged, projected, marked or altered for use during the trial.**

7. SIGNALS AND COMMUNICATION

The team coaches, advisors, and spectators may not signal the team members (neither student attorneys nor witnesses) or communicate with them in any way during the trial, including but not limited to wireless devices and text messaging. The use of cellular telephones, laptop computers, or any other wireless devices by any student attorney or witness, other than a timekeeper for the purpose of keeping time during the trial, is strictly prohibited. A student witness may talk to a student attorney on his/her team during a recess or during direct examination, but may not communicate verbally or non-verbally with a student attorney on his/her team during the student witness' cross-examination.

8. VIDEOTAPING/AUDIOTAPING

- a. During any tournament round, except State semi-finals and State finals, a trial may be videotaped or audio taped but only if each of the following conditions is satisfied:

- i. The courthouse in which the tournament round is taking place must permit video or audio taping, and the team wishing to videotape or audiotape has received permission from the courthouse in advance of the trial. *We note that many State and Federal courthouses prohibit video or audio taping devices in the courthouse.*
 - ii. The judge consents before the beginning of the trial.
 - iii. The opposing team consents in writing prior to the time the trial begins. Written consents should be delivered to the County Coordinator. Fax or e-mail is acceptable.
 - iv. A copy of the video or audio tape must be furnished to the opposing team (at no cost) within 48 hours after the trial.
 - v. The video or audio tape may not be shared by either team with any other team in the competition.
- b. Video or audio taping of the State semi-finals and final rounds is **NOT** permitted by either team.

9. MOCK TRIAL COORDINATORS

The success of the New York State Mock Trial Program depends on the many volunteer county and regional coordinators. **The appropriate supervisor will be contacted if any representative from a high school, parent, coach, or team member addresses a mock trial volunteer or staff person at any level of the competition in an unprofessional or discourteous manner. County Coordinators may also refer any such matters to the Law, Youth and Citizenship Committee of the New York State Bar Association for appropriate action by the LYC Committee.**

Absent prior approval by the Mock Trial Subcommittee of the New York State Bar Association's *Law, Youth and Citizenship Committee*, a county or regional Mock Trial Tournament coordinator or assistant coordinator may not be an employee of a school that competes, or of a school district that includes a high school that competes, in that county or regional Mock Trial Tournament. Nothing in this rule shall prohibit an employee of a Board Of Cooperative Educational Services (BOCES) or the New York City Justice Resource Center from serving as a county or regional Mock Trial Tournament coordinator or assistant coordinator.

10. ROLE AND RESPONSIBILITY OF ATTORNEYS

- a. The attorney who makes the opening statement may not make the closing statement.
- b. Requests for bench conferences (i.e., conferences involving the Judge, attorney(s) for the plaintiff or the people and attorney(s) for the defendant) may be granted after the opening of court in a mock trial, but not before.
- c. Attorneys may use notes in presenting their cases, for opening statements, direct examination of witnesses, etc. Witnesses are **NOT** permitted to use notes while testifying during the trial.
- d. Each of the three attorneys on a team must conduct the direct examination of one witness and the cross examination of another witness.
- e. The attorney examining a particular witness must make the objections to that witness's cross-examination, and the attorney who will cross-examine a witness must make the objections to the witness's direct examination.

11. WITNESSES

- a. Each witness is bound by the facts of his/her affidavit or witness statement and any exhibit authored or produced by the witness that is relevant to his/her testimony. Witnesses may not invent any other testimony. However, in the event a witness is asked a question on cross examination, the answer to which is not contained in the witness's statement or was not testified to on direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial.
- b. If there is an inconsistency between the witness statement or affidavit and the statement of facts or stipulated facts, the witness can only rely on, and is bound by, the information contained in his/her affidavit or witness statement.
- c. A witness is not bound by facts in other witnesses' affidavits or statements.
- d. If a witness contradicts a fact in his or her own witness statement, the opposition may impeach the testimony of that witness.
- e. A witness's physical appearance in the case is as he or she appears in the trial re-enactment. No costumes or props may be used.

- f. Witnesses, other than the plaintiff and the defendant, may be constructively sequestered from the courtroom at the request of opposing counsel. A constructively sequestered witness may not be asked on the stand about the testimony another witness may have given during the trial enactment. A team is **NOT** required to make a sequestration motion. However, if a team wishes to make such motion, it should be made during the time the team is introducing itself to the judge. Please note that while a witness may be constructively sequestered, said witness **WILL REMAIN** in the courtroom at all times. (Note: Since this is an educational exercise, no participant will actually be excluded from the courtroom during an enactment.)
- g. Witnesses shall not sit at the attorneys' table.

12. PROTESTS

- a. Other than as set forth in 12(b) below, protests of judicial rulings are **NOT** allowed. **All judicial rulings are final and cannot be appealed.**
- b. Protests are highly disfavored and will only be allowed to address two issues:
- (1) Cheating (a dishonest act by a team that has not been the subject of a prior judicial ruling)
 - (2) A conflict of interest or gross misconduct by a judge (e.g., where a judge is related to a team member). All protests must be made in writing and either faxed or emailed to the appropriate County Coordinator and to the teacher-coach of the opposing team. The County Coordinator will investigate the grounds for the protest and has the discretion to make a ruling on the protest or refer the matter directly to the LYC Committee. The County Coordinator's decision can be appealed to the LYC Committee.
- c. Hostile or discourteous protests will not be considered.

13. JUDGING

THE DECISIONS OF THE JUDGE ARE FINAL.

14. ORDER OF THE TRIAL

The trial shall proceed in the following manner:

- Opening statement by plaintiff's attorney/prosecuting attorney
- Opening statement by defense attorney
- Direct examination of first plaintiff/prosecution witness
- Cross-examination of first plaintiff/prosecution witness
- Re-direct examination of first plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second plaintiff/prosecution witness
- Cross-examination of second plaintiff/prosecution witness
- Re-direct examination of second plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third plaintiff/prosecution witness
- Cross-examination of third plaintiff/prosecution witness
- Re-direct examination of third plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Plaintiff/prosecution rests
- Direct examination of first defense witness
- Cross-examination of first defense witness
- Re-direct examination of first defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second defense witness
- Cross-examination of second defense witness
- Re-direct examination of second defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third defense witness
- Cross-examination of third defense witness
- Re-direct examination of third defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Defense rests
- Closing arguments by defense attorney
- Closing arguments by plaintiff's attorney/prosecuting attorney

15. TIME LIMITS

- a. The following time limits apply:
- Opening Statement5 minutes for each team
 - Direct Examination.....10 minutes for each witness
 - Cross Examination.....10 minutes for each witness
 - Closing Argument10 minutes for each team
- b. At all county and regional trials, the time will be kept by two timekeepers. Each team shall provide one of the timekeepers. Timekeeper shall be a student of the participating school. A school may use a student witness who is not a witness during a particular phase of the trial. (For example, a defense witness can keep time when the plaintiff/prosecution attorneys are presenting their case.)

The timekeepers will use one watch and shall agree as to when a segment of the trial (e.g., the direct examination of a witness) begins. When one minute remains in a segment, the timekeepers shall flash the “1 Minute Remaining” card (found in the *Appendices*), alerting the judge and the attorneys. The timekeepers will not stop the clock during objections, *voir dire* of witnesses or bench conferences.

Since the number of questions allowed on redirect and re-cross is limited to three, time limits are not necessary. Any dispute as to the timekeeping shall be resolved by the trial judge. The judge, in his/her sole discretion, may extend the time, having taken into account the time expended by objections, *voir dire* of witnesses and/or bench conferences, thereby allowing an attorney to complete a line of questioning.

16. TEAM ATTENDANCE AT STATE FINALS ROUND

Eight teams will advance to the State Finals. All eight teams are required to participate in all events associated with the Mock Trial Tournament, including attending the final round of the competition.

This page left intentionally blank.

**NEW YORK STATE
HIGH SCHOOL MOCK
TRIAL TOURNAMENT
POLICIES AND
PROCEDURES**

PART II

This page left intentionally blank.

MOCK TRIAL TOURNAMENT POLICIES AND PROCEDURES

New York’s Annual Mock Trial Tournament is governed by the policies set forth below. The LYC Committee and the Law, Youth and Citizenship Program of the New York State Bar Association reserve the right to make decisions to preserve the equity, integrity, and educational aspects of the program.

By participating in the Mock Trial Tournament, participants agree to abide by the decisions rendered by the LYC Committee and the Mock Trial program staff and accept such decisions as final.

1. GENERAL POLICIES

- a. All mock trial rules, regulations, and criteria for judging apply at all levels of the Mock Trial Tournament.
- b. The Simplified Rules of Evidence and Procedure contained in Part III govern the trial proceedings.
- c. County Coordinators administer county tournaments. County Coordinators have sole responsibility for organizing, planning, and conducting tournaments at the county level and should be the first point of contact for questions at the county level.
- d. For any single tournament round, all teams are to consist of three attorneys and three witnesses.
- e. For all tournament rounds, one judge will be utilized for trial re-enactments.
- f. Teams must not identify themselves by their school name to the judge prior to the announcement of the judge’s decision.
- g. If a team member who is scheduled to participate in a trial enactment becomes ill, injured, or has a serious conflict and as a result cannot compete, then the team may substitute an alternate team member. If an alternate team member is not available, the local coordinator may declare a forfeit or reschedule the enactment at his or her sole discretion.
- h. Members of a team may play different roles in different rounds, or other students may participate in another round.

- i. Winners in any single round will be asked to switch sides in the case for the next round. Where it is impossible for both teams to switch sides, a coin flip will be used to determine assignments in the next round.
- j. Teacher-coaches of teams who will be competing against one another are required to exchange information regarding the names and gender of their witnesses at least three days prior to each round.
- k. No attorney may be compensated in any way for his or her service as an attorney-advisor to a mock trial team or as a judge in the Mock Trial Tournament. When a team has a student or students with special needs who may require an accommodation, the teacher-coach **MUST** bring this to the attention of the County Coordinator at least two weeks prior to the time when the accommodation will be needed.
- l. The judge must take judicial notice of the Statement of Stipulated Facts and any other stipulations.
- m. Teams may bring perceived errors in the problem or suggestions for improvements in the tournament rules and procedures to the attention of the LYC staff at any time. These, however, are not grounds for protests. Any protest arising from an enactment must be filed with the County Coordinator in accordance with the protest rule in the Tournament Rules.

2. SCORING

- a. Scoring is on a scale of 1-5 for each performance (5 is excellent). Judges are required to enter each score on the Performance Rating Sheet (Appendix) after each performance, while the enactment is fresh in their minds. Judges should be familiar with and use the performance rating guidelines (Appendix) when scoring a trial.
- b. Judges are required to also assign between 1 and 10 points to **EACH** team for demonstrating professionalism during a trial. A score for professionalism may not be left blank. Professionalism criteria are:
 - Team’s overall confidence, preparedness and demeanor
 - Compliance with the rules of civility
 - Zealous but courteous advocacy

- Honest and ethical conduct
 - Knowledge and adherence to the rules of the competition
 - Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; and strategies intended to waste the opposing team’s time for its examinations. A score of 1 to 3 points should be awarded for a below average performance, 4 to 6 points for an average performance, and 7 to 10 points for an outstanding or above average performance.
- c. The appropriate County Coordinator will collect the Performance Rating Sheet for record-keeping purposes. Copies of score sheets are **NOT** available to individual teams; however, a team can get its total score through the County Coordinator.

3. LEVELS OF COMPETITION

- a. For purposes of this program, New York State has been divided into eight regions:

Region 1West	Region 5New York City (NYC-A)
Region 2Central	Region 6New York City (NYC-B)
Region 3Northeast	Region 7Nassau County
Region 4Lower Hudson	Region 8Suffolk County

- b. See Map and Chart of Counties in Regions (Appendix).

4. COUNTY TOURNAMENTS

- a. All rules of the New York State Mock Trial Tournament must be adhered to at tournaments at the county level.
- b. In these tournaments, there are two phases. In the first phase, each team will participate in at least two rounds before the elimination process begins, once as plaintiff/prosecution and once as defendant. After the second round, a certain number of the original teams will proceed to the second phase in a single elimination tournament. Prior to the competition, and with the knowledge of the competitors, the County Coordinator may determine a certain number of teams that will proceed to the Phase II single elimination tournament. While this number may be more or less than half the original number of teams, any team that has won both rounds based on points, but whose combined score does not place it within the established number of teams, **MUST** be allowed to compete in the Phase II single elimination tournament.

- c. The teams that advance to Phase II do so based on a combination of wins and point differential, defined as the points earned by a team in its Phase I matches minus the points earned by its opponents in those same Phase I matches. All 2-0 teams automatically advance; teams with a 1-1 record advance based upon point differential, then upon total number of points in the event of a tie; if any spots remain open, teams with a record of 0-2 advance, based upon point differential, then upon total number of points in the event of a tie.
- d. If the number of teams going into the single elimination phase is odd, the team with the most wins and highest combined score will receive a bye. If any region starts the year with an odd number of teams, one team from that region may receive a bye, coin toss, etc.
- e. Phase II of the contest is a single round elimination tournament; winners advance to the next round.
- f. At times, a forfeit may become a factor in determining aggregate point totals and which teams should advance to the single elimination tournament. Each county should review its procedures for dealing with forfeits, in light of the recommended procedures below. Please note that due to the variety of formats in use in different counties, it is strongly urged that each county develop a system which takes its own structure into account and which participants understand prior to the start of the local tournament. That procedure should be forwarded to the New York State Mock Trial Program Manager, before the first round of competition is held.
- g. If a county has an established method for dealing with forfeits, or establishes one, then that rule continues to govern. If no local rule is established, then the following State rule will apply: *In determining which teams will advance to the single elimination tournament, forfeits will first be considered to cancel each other out, as between two teams vying for the right to advance. If such canceling is not possible (as only one of two teams vying for a particular spot has a forfeit victory), then a point value must be assigned for the forfeit. The point value to be assigned should be derived from averaging the team's point total in the three matches (where possible) chronologically closest to the date of the forfeit; or if only two matches were scheduled, then double the score of the one that was held.*

5. REGIONAL TOURNAMENTS

- a. Teams who have been successful in winning county level tournaments will proceed to regional level tournaments. Coordinators administer regional tournaments. Coordinators have sole responsibility for organizing, planning and conducting tournaments at the regional level. Participants must adhere to all rules of the tournament at regional level tournaments.
- b. Regional tournaments are held in counties within the region on a rotating basis. Every effort is made to determine and announce the location and organizer of the regional tournaments before the new mock trial season begins.
- c. All mock trial rules and regulations and criteria for judging apply, at all levels of the Mock Trial Tournament.
- d. The winning team from each region will be determined by an enactment between the two teams with the best records (most number of wins and greatest number of points) during the regional tournament. The winning team from each region will qualify for the State Finals in Albany.
- e. The regional tournaments **MUST** be completed 16 days prior to the State Finals. Due to administrative requirements and contractual obligations, the State Coordinator must have in its possession the schools' and students' names by this deadline. Failure to adhere to this deadline may jeopardize hotel blocks set aside for a region's teacher-coaches, attorney-advisors and students coming to Albany for the State Finals.

6. STATEWIDE FINALS

- a. Once regional winners have been determined, The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days it participates in the State Finals in Albany. Funding is available to pay for up to nine students, one teacher coach and one attorney-advisor for each team. Students of the same gender will share a room, with a maximum of four per room. Transportation costs are **not** covered. However, if a school can cover the additional costs for room and board for additional team members above the nine students, one teacher coach and one attorney-advisor sponsored through the Bar Foundation, all members of a team are welcome to attend the State Finals. However, requests to bring additional team members must be approved by the Mock Trial Program Manager in advance.

- b. Costs for additional students (more than 9) and adult coaches and/or advisors (more than 2) will **not** be covered by the New York Bar Foundation grant or the LYC Program. The Mock Trial Program Manager is **not** responsible for making room arrangements and reservations for anyone other than the nine students, one teacher-coach and one attorney-advisor for each team. However, the Mock Trial Program Manager may choose to make those arrangements for the additional team members. This applies to team members only, not guests. If the Program Manager chooses **not** to make the arrangements, every attempt will be made to pass along any special hotel rates to these other participants. Additional team members attending the State Finals may participate in organized meal functions but will be responsible for paying for their participation. **The teacher coach must advise their school administration of the school's responsibility to cover those additional charges and obtain their approval in advance.** The Mock Trial Program Manager will provide an invoice to the Coach to submit to the school's administrator. A purchase order must then be submitted to the Mock Trial Program Manager in Albany immediately after the school's team has been designated as the Regional Winner who will be participating in the State Finals in Albany. In most cases, the school will be billed after the State Finals. However, it is possible that a school may be required to provide payment in advance for their additional team members.
- c. Each team will participate in two enactments the first day, against two different teams. Each team will be required to change sides—plaintiff/prosecution to defendant, defendant to plaintiff/prosecution—for the second enactment. Numerical scores will be assigned to each team's performance by the judges.
- d. The two teams with the most wins and highest numerical score will compete on the following day, except that any team that has won both its enactments will automatically advance, regardless of its point total. In the rare event of three teams each winning both of their enactments, the two teams with the highest point totals, in addition to having won both of their enactments, will advance.
- e. The final enactment will be a single elimination tournament. Plaintiff/prosecution and defendant will be determined by a coin toss by the Mock Trial Program Manager. All teams invited to the State Finals must attend the final trial enactment.
- f. A judge will determine the winner. **THE JUDGE'S DECISION IS FINAL.**

7. MCLE CREDIT FOR PARTICIPATING ATTORNEYS AND JUDGES

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program in the State of New York, as an accredited provider of CLE programs, we are required to carefully monitor requests for earning CLE credit through participation in our high school mock trial program. Credit may be earned for preparing students for and judging law competitions, mock trials and moot court arguments, including those at the high school level. Ethics and professionalism credit hours are not available for participation in this type of activity. No additional credit may be earned for preparation time.

One (1) CLE credit hour may be earned for each 50 minutes of participation in a high school or college law competition. **A maximum of three (3) CLE credits** in skills may be earned for judging or coaching mock trial competitions **during any one reporting cycle**, i.e., within a two-year period¹. **Newly admitted attorneys (less than 24 months) are NOT eligible for this type of CLE credit.**

The LYC Program will process all requests for CLE credit through the New York State Bar Association's Continuing Legal Education Department, an accredited provider of CLE approved by the New York State Continuing Legal Education Board. The procedure is as follows:

- a) The Mock Trial Program Manager will provide the County Coordinators with a copy of the Request for CLE Credit Verification Form² to disseminate to attorneys/judges participating in the mock trial tournament in their county.
- b) **Request for CLE Credit Verification Forms** must be signed by the attorney/judge and returned to the County Coordinator. The County Coordinator must return the signed copy to the Mock Trial Program Manager in Albany by mail, email or fax by June 1 for processing.
- c) MCLE certificates will be generated and sent by **email** to the attorney/judge requesting the credit. **MCLE credit cannot be provided without the signed Request for CLE Credit Verification Form.** The attorney/judge **MUST** provide a valid email address on the form. A copy of the Request for CLE Credit Verification Form follows and is also available online at www.nysba.org/nysmocktrial.

¹ 1) The biennial reporting cycle shall be the two-year period between the dates of submission of the attorney's biennial registration statement; 2) An attorney shall comply with the requirements of this Subpart commencing from the time of the filing of the attorney's biennial attorney registration statement in the second calendar year following admission to the Bar.

² County Coordinators will begin disseminating this revised form to participating attorneys and judges during the 2017-2018 New York State Mock Trial tournament season.

This page left intentionally blank.

New York State Bar Association

HIGH SCHOOL MOCK TRIAL PROGRAM REQUEST FOR CLE CREDIT VERIFICATION FORM

IMPORTANT! *You must complete this form to receive CLE credit. Return the completed form to your County Coordinator or send directly to the Mock Trial Program Manager at the NYS Bar Association for processing (**form must be signed to be valid**). Your CLE certificate will be emailed directly to you once it has been issued by the NYSBA, **so be sure to include a valid email address below.***

- ◆ **Name** (please print): _____ **NYSBA ID #** (if known) _____
- ◆ **Address:** _____
Name of Firm (if applicable) Street City State Zip Code
- ◆ **Email address** (required): _____
- ◆ **County of Service:** _____
(do not submit another form for service in additional counties if you have already requested the maximum of 3.0 credits)
- ◆ **Date of Service:** _____ (if more than one date of service, list only the last date.)
- ◆ **Hours of Service:** _____ (no more than 3.0 hours should be listed – See the MCLE Rules below)

I certify that the information provided on this form is accurate.

➤ **Signature:** _____ **Date:** _____

NEW YORK STATE MCLE RULES PERTAINING TO CLE CREDIT FOR MOCK TRIAL PARTICIPATION

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program in the State of New York, as an accredited provider of CLE programs, we are required to carefully monitor requests for earning CLE credit through participation in our high school mock trial program. Credit may be earned for preparing students for and judging law competitions, mock trials and moot court arguments, including those at the high school level. Ethics and professionalism credit hours are not available for participation in this type of activity. No additional credit may be earned for preparation time.

One (1) CLE credit hour may be earned for each 50 minutes of participation in a high school or college law competition. A **maximum of three (3) CLE credits in skills** may be earned for judging or coaching mock trial competitions **during any one reporting cycle, i.e., within a two-year period. Newly admitted attorneys (less than 24 months) are NOT eligible for this type of CLE credit.**

** 1) The biennial reporting cycle shall be the two-year period between the dates of submission of the attorney's biennial registration statement; 2) An attorney shall comply with the requirements of this Subpart commencing from the time of the filing of the attorney's biennial attorney registration statement in the second calendar year following admission to the Bar.*

This page left intentionally blank.

**NEW YORK STATE
HIGH SCHOOL MOCK
TRIAL SIMPLIFIED
RULES OF EVIDENCE
AND PROCEDURE**

PART III

This page left intentionally blank.

SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

In trials in the United States, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. 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 attorneys to know the rules of evidence and to be able to use them to protect their client and to limit the actions of opposing counsel and their witnesses.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this Mock Trial Tournament, the New York State rules of evidence have been modified and simplified. Not all judges will interpret the rules of evidence or procedure the same way, and you must be prepared to point out the specific rule (quoting it, if necessary) and to argue persuasively for the interpretation and application of the rule that you think is proper. No matter which way the judge rules, you should accept the ruling with grace and courtesy.

1. SCOPE

Rule 101: SCOPE. These rules govern all proceedings in the mock trial competition. The only rules of evidence in the competition are those included in these rules.

Rule 102: OBJECTIONS. The court shall not consider an objection that is not contained in these rules. If counsel makes an objection not contained in these rules, counsel responding to the objection must point out to the judge, citing Rule 102 that the objection is beyond the scope of the listed objections. However, if counsel responding to the objection does not point out to the judge the application of this rule, the court may exercise its discretion and consider such objection.

2. RELEVANCY

Rule 201: RELEVANCY. Only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the probative value of the relevant evidence is substantially outweighed by the danger that the evidence will cause unfair prejudice, confuse the issues, or result in undue delay or a waste of time,

the court may exclude it. This may include testimony, physical evidence, and demonstrations that do not relate to time, event or person directly involved in the litigation.

Example:

Photographs present a classic problem of possible unfair prejudice. For instance, in a murder trial, the prosecution seeks to introduce graphic photographs of the bloodied victim. These photographs would be relevant because, among other reasons, they establish the victim's death and location of the wounds. At the same time, the photographs present a high danger of unfair prejudice, as they could cause the jurors to feel incredible anger and a desire to punish someone for the vile crime. In other words, the photographs could have an inflammatory effect on the jurors, causing them to substitute passion and anger for reasoned analysis. The defense therefore should object on the ground that any probative value of the photographs is substantially outweighed by the danger of unfair prejudice to the defendant. Problems of unfair prejudice often can be resolved by offering the evidence in a matter that retains the probative value, while reducing the danger of unfair prejudice. In this example, the defense might stipulate to the location of the wounds and the cause of death. Therefore, the relevant aspects of the photographs would come in, without the undue prejudicial effect.

Rule 202: CHARACTER. Evidence about the character of a party or witness may not be introduced unless the person's character is an issue in the case or unless the evidence is being offered to show the truthfulness or untruthfulness of the party or witness. Evidence of character to prove the person's propensity to act in a particular way is generally not admissible in a civil case.

In a criminal case, the general rule is that the prosecution cannot initiate evidence of the bad character of the defendant to show that he or she is more likely to have committed the crime. However, the defendant may introduce evidence of her good character to show that she is innocent, and the prosecution may offer evidence to rebut the defense's evidence of the defendant's character. With respect to the character of the victim, the general rule is that the prosecution cannot initiate evidence of the character of the victim. However, the defendant may introduce evidence of the victim's good or (more likely) bad character, and the prosecution may offer evidence to rebut the defense's evidence of the victim's character.

“Examples:

A limousine driver is driving Ms. Daisy while he is intoxicated and gets into a car accident injuring Ms. Daisy. If Ms. Daisy sues the limousine company for negligently employing an alcoholic driver, then the driver’s tendency to drink is at issue. Evidence of the driver’s alcoholism is admissible because it is not offered to demonstrate that he was drunk on a particular occasion. The evidence is offered to demonstrate that the limousine company negligently trusted him to drive a limousine when it knew or should have known that the driver had a serious drinking problem.

Sally is fired and sues her employer for sexual harassment. The employer cannot introduce evidence that Sally experienced similar problems when she worked for other employers.

Evidence about Sally’s character is not admissible to prove that she acted in conformity with her prior conduct, unless her character is at issue or it relates to truthfulness.

If an attorney is accused of stealing a client’s money, he may introduce evidence to demonstrate that he is trustworthy. In this scenario, proof of his trustworthiness makes it less probable that he stole the money.

Richard is on trial for punching his coworker, Larry, during an argument. The prosecution wants to offer that Richard has, in the past, lost his temper and has neared physical altercations. This evidence constitutes character evidence within the meaning of the rule, because it is being offered to show that Richard has a propensity for losing his temper and that he may have acted in conformity with this character trait at the time he struck Larry.

Therefore, it would only be admissible if Richard, as the defendant, has decided to place his character at issue.

Rule 203: OTHER CRIMES, WRONGS, OR ACTS. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person. Such evidence, however, may be admissible for purposes other than to prove character, such as to show motive, intent, preparation, knowledge, or identity.

Examples:

Harry is on trial for stealing from a heavy metal safe at an office. The prosecution seeks to offer evidence that, on an earlier date Harry opened the safe and stole some money from the safe. The evidence is not being offered to show character (in other words, it is not being offered to show that Harry is a thief), but rather it is being offered to show that Harry knew how to crack the safe. This evidence therefore places Harry among a very small number of people who know how to crack safes and, in particular, this safe. The evidence therefore goes to identity and makes Harry somewhat more likely to be guilty.

William is on trial for murder after he killed someone during a fight. The prosecution seeks to offer evidence that a week earlier William and the victim had another physical altercation. In other words, the victim was not some new guy William has never met before; rather, William and the victim had a history of bad blood. The evidence of the past fight would be admissible because it is not being offered to show that William has bad character as someone who gets into fights, but rather to show that William may have had motive to harm his victim.

In the same trial, the evidence shows that the victim died after William struck him in the larynx. William's defense is that the death was completely accidental and that the fatal injury suffered by his victim was unintended and a fluke. The prosecution seeks to offer evidence that William has a black belt in martial arts, and therefore has knowledge of how to administer deadly strikes as well as the effect of such strikes. This evidence would be admissible to show the death was not an accident; rather, William was aware that the strike could cause death.

3. WITNESS EXAMINATION

a. Direct Examination (attorneys call and question witnesses)

Rule 301: FORM OF QUESTION. Witnesses should be asked direct questions and may not be asked leading questions on direct examination. Direct questions are phrased to evoke a set of facts from the witnesses. A leading question is one that suggests to the witness the answer desired by the examiner and often suggests a “yes” or “no” answer.

Example of a Direct Question: “*What is your current occupation?*”

Example of a Leading Question: “*Isn't it true that in your current position you are responsible for making important investment decisions?*”

Narration: While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or “narrate” a whole story. Narrative questions are objectionable.

Example of a Narrative Question: “*Please describe how you were able to achieve your financial success.*” Or “*Tell me everything that was said in the board room on that day.*”

Narrative Answers: At times, a direct question may be appropriate, but the witness's answer may go beyond the facts for which the question was asked. Such answers are subject to objection on the grounds of narration.

Objections:

“Objection. Counsel is leading the witness.” “Objection. Question asks for a narration.” “Objection. Witness is narrating.”

Rule 302: SCOPE OF WITNESS EXAMINATION. Direct examination may cover all the facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.

Objection:

“Objection. The question requires information beyond the scope of the witness’s knowledge.”

Rule 303: REFRESHING RECOLLECTION. If a witness is unable to recall a statement made in an affidavit, the attorney on direct may show that portion of the affidavit that will help the witness to remember.

b. Cross-Examination (questioning the other side’s witnesses)

Rule 304: FORM OF QUESTION. An attorney may ask leading questions when cross-examining the opponent’s witnesses. Questions tending to evoke a narrative answer should be avoided.

Rule 305: SCOPE OF WITNESS EXAMINATION. Attorneys may only ask questions that relate to matters brought out by the other side on direct examination, or to matters relating to the credibility of the witness. This includes facts and statements made by the witness for the opposing party. Note that many judges allow a broad interpretation of this rule.

Objection:

“Objection. Counsel is asking the witness about matters that did not come up in direct examination.”

Rule 306: IMPEACHMENT. An attorney may impeach the credibility of a witness (show that a witness should not be believed) in the following ways:

1. A witness may testify as to another witness’s reputation for truthfulness, provided that an adequate foundation is established for the testifying witness’s ability to testify about the other witness’s reputation.

Example:

Ben testifies at trial. Jeannette then takes the stand and is familiar with Ben's reputation in the community as not being truthful. Jeannette therefore would be able to testify to Ben's reputation for truthfulness.

2. Counsel may ask questions demonstrating that the witness has made statements on other occasions that are inconsistent with the witness's present testimony. A foundation must be laid for the introduction of prior contradictory statements by asking the witness whether he or she made such statements.

Example:

If a witness previously stated that the car was black but at trial testified that the car was red, the witness could be questioned about this prior inconsistent statement for impeachment purposes.

3. An attorney may ask questions demonstrating the witness's bias in favor of the party on whose behalf the witness is testifying, or hostility toward the party against whom the witness is testifying or the witness's interest in the case.

Examples:

"Isn't it true that you are being paid to testify at this trial?" If the witness is paid to testify, he may have an incentive not to tell the truth while testifying.

Steve is on trial for bank robbery, and calls his father as a defense witness to testify that they were watching football at the time of the crime. On cross-examination, the prosecutor could attempt to demonstrate the father's bias that could cause him to fabricate an alibi for his son. Proper questions to impeach the father's credibility might include, "You love your son very much, don't you?" and "You don't want to see your son go to jail, do you?"

Rule 307: IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION.

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted, but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the value of this evidence as reliable proof outweighs its prejudicial effect to a party. Crimes of moral turpitude are crimes that involve dishonesty or false statements. These crimes involve the intent to deceive or defraud, such as forgery, perjury, counterfeiting and fraud.

Example:

“Have you ever been convicted of criminal possession of marijuana?”

Objections:

“Objection. The prejudicial effect of this evidence outweighs its usefulness.”

“Objection. The prior conviction being testified to is not a felony or a crime involving moral turpitude.”

c. Re-Direct Examination

Rule 308: LIMIT ON QUESTIONS. After cross-examination, up to three, but no more than three questions, may be asked by the attorney conducting the direct examination, but such questions are limited to matters raised by the attorney on cross-examination. The presiding judge has considerable discretion in deciding how to limit the scope of re-direct.

NOTE: If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to “save” the witness’s truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Please note that at times it may be more appropriate not to engage in re-direct examination.

Objection:

“Objection. Counsel is asking the witness about matters that did not come up in cross-examination.”

d. Re-Cross Examination

Rule 309: LIMIT ON QUESTIONS. Three additional questions, but no more than three, may be asked by the cross-examining attorney, but such questions are limited to matters on re-direct examination and should avoid repetition. The presiding judge has considerable discretion in deciding how to limit the scope of re-cross. Like re-direct examination, at times it may be more appropriate not to engage in re-cross-examination.

Objection:

“Objection. Counsel is asking the witness about matters that did not come up on re-direct examination.”

e. Argumentative Questions

Rule 310: Questions that are argumentative should be avoided and may be objected to by counsel. An argumentative question is one in which the cross-examiner challenges the witness about his or her inference from the facts, rather than seeking additional facts.

Example:

“Why were you driving so carelessly?”

Objection:

“Objection. “Your Honor, counsel is being argumentative.”

f. Compound Questions

Rule 311: Questions that are compound in nature should be avoided and may be objected to by counsel. A compound question requires the witness to give one answer to a question, which contains two separate inquiries. Each inquiry in an otherwise compound question could be asked and answered separately.

Examples:

“Tony, didn’t you get sued by the buyer of your company and get prosecuted by the IRS?”

“Did you see and feel the residue on the counter?”

Objection:

“Objection. “Your Honor, counsel is asking a compound question.”

g. Asked And Answered Questions

Rule 312: A student-attorney may not ask a student-witness a question that the student-attorney has already asked that witness. Such a question is subject to objection, as having been asked and answered.

Objection:

“Objection. “Your Honor, the witness was asked and answered this question.”

h. Speculation

Rule 313: Questions that ask a witness to speculate about matters not within his personal knowledge are not permitted, and are subject to an objection by opposing counsel.

Example:

"Do you think your friend Robert knew about the robbery in advance?"

Objection:

"Objection. Your Honor, the question asks the witness to speculate."

4. HEARSAY

Understanding and applying the Hearsay Rule (Rule 401), and its exceptions (Rules 402, 403, 404, and 405), is one of the more challenging aspects of the Mock Trial Tournament. We strongly suggest that teacher-coaches and students work closely with their attorney-advisors to better understand and more effectively apply these evidentiary rules.

Rule 401: HEARSAY. A statement made out of court (i.e., not made during the course of the trial in which it is offered) is hearsay if the statement is offered for the truth of the fact asserted in the statement. A judge may admit hearsay evidence if it was a prior out-of-court statement made by a party to the case and is being offered against that party. The party who made the prior out-of-court statement can hardly complain about not having had an opportunity to cross-examine himself regarding this statement. He said it, so he has to live with it. He can explain it on the witness stand. Essentially, the witness on the stand is repeating what she heard someone else say outside of the courtroom. The hearsay rule applies to both written as well as spoken statements. If a statement is hearsay and no exceptions to the rule are applicable, then upon an appropriate objection by opposing counsel, the statement will be inadmissible.

REASONS FOR EXCLUDING HEARSAY: The reason for excluding hearsay evidence from a trial is that the opposing party was denied the opportunity to cross-examine the declarant about the statement. The declarant is the person who made the out-of-court statement. The opposing party had no chance to test the declarant's perception (how well did she observe the event she purported to describe), her memory (did she really remember the details she related to the court), her sincerity (was she deliberately falsifying), and her ability to relate (did she really mean to say what now appears to be the thrust of her statement).

The opportunity to cross-examine the witness on the stand who has repeated the statement is not enough because the judge or the jury is being asked to believe what the declarant said.

Example:

Peter is on trial for allegedly robbing a Seven-Eleven store on May 1. A witness who is testifying on Peter's behalf testifies in the trial, "I heard Joe say that he (Joe) went to the Seven-Eleven on May 1." Peter, the party offering the witness's testimony as evidence, is offering it to prove that Joe was in the Seven-Eleven on May 1, presumably to create a question as to whether it could have been Joe at the scene of the crime, rather than Peter. In this example, Joe is the declarant. The reason why the opposing party, in this case the prosecution, should object to this testimony is that the prosecution has no opportunity to cross-examine Joe to test his veracity (was he telling the truth or just trying to help his friend Peter out of a mess) or his memory (was Joe sure it was May 1 or could it have been May 2)?

5. EXCEPTIONS

Hearsay may be admissible if it fits into certain exceptions. The exceptions listed below are the only allowable exceptions for purposes of the Mock Trial Tournament.

Rule 402: ADMISSION OF A PARTY OPPONENT: A judge may admit hearsay evidence if it was a prior out-of-court statement made by a party to the case that amounts to an admission that is against that party's interest at trial. Essentially, the party's own out-of-court statement is being offered into evidence because it contains an admission of responsibility or an acknowledgment of fault. The party who made the prior out-of-court statement can hardly complain about not having had the opportunity to cross-examine himself. He said it, so he has to live with it. He can explain it on the witness stand.

Example:

Pam is involved in a car accident. Wendy was at the scene of the crash. At Pam's trial, Wendy testifies that she heard Pam say, "I can't believe I missed that stop sign!" At the trial, Wendy's testimony of Pam's out-of-court statement, although hearsay, is likely to be admitted into evidence as an admission against a party's interest. In this example, Pam is on trial so she can testify about what happened in the accident and refute having made this statement or explain the circumstances of her statement.

Rule 403: STATE OF MIND: A judge may admit an out-of-court 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). Such out-of-court statements of pain or intent do

not present the usual concerns with the reliability of hearsay testimony. For instance, when a witness testifies as to a declarant’s statement of intent, there are no memory problems with the declarant’s statement of intent and there are no perception problems because a declarant cannot misperceive intent. When applying this exception, it is important to keep in mind that the reliability concerns of hearsay relate to the out-of-court declarant, not to the witness who is offering the statement in court.

Example:

Mike is on trial for a murder that occurred at the West End Restaurant. Mike’s defense relies upon the theory that another person, Jane, committed the murder. The defense then calls a witness who testifies that on the night of the murder he heard Jane say that she intended to go to the West End Restaurant. This hearsay statement is admissible as proof of Jane’s intent to go to the restaurant.

Rule 404: BUSINESS RECORDS. A judge may admit a memorandum, report, record, or data compilation concerning an event or act, provided that the record was made at or near the time of the act by a person with knowledge and that the record is kept in the regular course of business. The rationale for this exception is that this type of evidence is particularly reliable because of the regularity with which business records are kept, their use and importance in the business and the incentive of employees to keep accurate records or risk being reprimanded by the employer.

Example:

Diane is on trial for possession of an illegal weapon. The prosecution introduces a written inventory prepared by a police officer of items, including a switchblade knife, taken from Diane when she was arrested as evidence of Diane’s guilt. The written inventory is admissible. In this example, the statement that is hearsay is the written inventory (hearsay can be oral or written), the declarant is the police officer who wrote the inventory and the inventory is being offered into evidence to prove that Diane had a switchblade knife in her possession. The reason that the written inventory is admissible is that it was a record made at the time of Diane’s arrest by a police officer, whose job required her to prepare records of items taken from suspects at the time of arrest and it was the regular practice of the police department to prepare records of this type at the time of an arrest.

Rule 405: PRESENT SENSE IMPRESSION. A judge may admit an out-of- court statement of a declarant’s statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter. The rationale for this exception is that

a declarant's description of an event as it is occurring is reliable because the declarant does not have the time to think up a lie.

Example:

James is witnessing a robbery and calls 911. While on the phone with the 911 operator, James describes the crime as it is occurring and provides a physical description of the robber. These hearsay statements are admissible because they are James's description or explanation of an event – the robbery – as James perceives that event.

Rule 406: STATEMENTS IN LEARNED TREATISES. A statement contained in a treatise, periodical, or pamphlet is admissible if:

- (A) The statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
- (B) The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

Example:

Dr. G, plaintiff's expert witness, is being cross-examined by defendant's counsel. During the cross-examination Dr. G is shown a volume of a treatise on cardiac surgery, which is the subject of Dr. G's testimony. Dr. G is asked if s/he recognizes the treatise as reliable on the subject of cardiac surgery. Dr. G acknowledges that the treatise is so recognized.

Portions of the treatise may then be read into evidence although the treatise is not to be received as an exhibit.

If Dr. G does not recognize the treatise as authoritative, the treatise may still be read to the jury if another expert witness testifies as to the treatise's reliability or if the court by judicial notice recognizes the treatise as authoritative.

Rule 407: STATEMENTS BY AN UNAVAILABLE DECLARANT. In a civil case, a statement made by a declarant unavailable to give testimony at trial is admissible if a reasonable person in the declarant's position would have made the statement only if the declarant believed it to be true because, when the statement was made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to expose the declarant to civil or criminal liability.

Example:

Mr. X, now deceased, previously gave a statement in which he said he ran a red light at an intersection, and thereby caused an accident that injured plaintiff P. Offered by defendant D to prove that D should not be held liable for the accident, the statement would be admissible as an exception to the exclusion of hearsay.

6. OPINION AND EXPERT TESTIMONY

Rule 501: OPINION TESTIMONY BY NON-EXPERTS. Witnesses who are not testifying as experts may give opinions which are based on what they saw or heard and are helpful in explaining their story. A witness may not testify to any matter of which the witness has no personal knowledge, nor may a witness give an opinion about how the case should be decided. In addition, a non-expert witness may not offer opinions as to any matters that would require specialized knowledge, training, or qualifications.

Example:

(General Opinion)

The attorney asks the non-expert witness, “Why is there so much conflict in the Middle East?” This question asks the witness to give his general opinion on the Middle East conflict.

Note: This question is objectionable because the witness lacks personal perceptions as to the conflict in the Middle East and any conclusions regarding this issue would require specialized knowledge.

Objection:

“Objection. Counsel is asking the witness to give an opinion.”

Example:

(Lack of Personal Knowledge)

The attorney asks the witness, “Why do you think Abe skipped class?” This question requires the witness to speculate about Abe’s reasons for skipping class.

Objection:

“Objection. The witness has no personal knowledge that would enable him/her to answer this question.”

Example:

(Opinion on Outcome of Case)

The attorney asks the witness, “Do you think the defendant intended to commit the crime?” This question requires the witness to provide a conclusion that is directly at issue and relates to the outcome of the case.

Objection:

“Objection. The question asks the witness to give a conclusion that goes to the finding of the Court.”

Rule 502: OPINION TESTIMONY BY EXPERTS. Only persons qualified as experts may give opinions on questions that require special knowledge or qualifications. An expert may be called as a witness to render an opinion based on professional experience. The attorney for the party for whom the expert is testifying must qualify the witness as an expert. This means that before the expert witness can be asked for an expert opinion, the questioning attorney must bring out the expert’s qualifications, education and/or experience.

Example:

The attorney asks the witness, an auto mechanic, “Do you think Luke’s recurrent, severe migraine headaches could have caused him to crash his car into the side of George’s house?”

Objection:

“Objection. Counsel is asking the witness to give an expert opinion for which the witness has not been qualified.”

However, a doctor can provide an expert opinion on how migraine headaches affect eyesight.

7. PHYSICAL EVIDENCE

Rule 601: INTRODUCTION OF PHYSICAL EVIDENCE. Physical evidence may be introduced if it is relevant to the case. Physical evidence will not be admitted into evidence until it has been identified and shown to be authentic or its identification and/or authenticity have been stipulated to. That a document is “authentic” means only that it is what it appears to be, not that the statements in the document are necessarily true.

A prosecutor must authenticate a weapon by demonstrating that the weapon is the same weapon used in the crime. This shows that the evidence offered (the weapon) relates to the issue (the crime). If the weapon belonged to the prosecutor, it would not be relevant to the defendant’s guilt. The evidence must be relevant to the issue to be admissible.

PROCEDURE FOR INTRODUCING EVIDENCE: Physical evidence need only be introduced once. The proper procedure to use when introducing a physical object or document for identification and/or use as evidence is:

Have exhibit marked for identification. *“Your Honor, please mark this as Plaintiff’s Exhibit 1 (or Defense Exhibit A) for identification.”*

- a. Ask witness to identify the exhibit. *“I now hand you what is marked as Plaintiff’s Exhibit 1 (or Defense Exhibit A). Would you identify it, please?”*
- b. Ask witness questions about the exhibit, establishing its relevancy, and other pertinent questions.
- c. Offer the exhibit into evidence. *“Your Honor, we offer Plaintiff’s Exhibit 1 (or Defense Exhibit A) into evidence at this time.”*
- d. Show the exhibit to opposing counsel, who may make an objection to the offering.
- e. The Judge will ask opposing counsel whether there is any objection, rule on any objection, admit or not admit the exhibit.
- f. If an exhibit is a document, hand it to the judge.

NOTE: After an affidavit has been marked for identification, a witness may be asked questions about his or her affidavit without its introduction into evidence. In order to read directly from an affidavit or submit it to the judge, it must first be admitted into evidence.

Rule 602: REDACTION OF DOCUMENT. When a document sought to be introduced into evidence contains both admissible and inadmissible evidence, the judge may, at the request of the party objecting to the inadmissible portion of the document, redact the inadmissible portion of the document and allow the redacted document into evidence.

Objection:

“Objection. Your Honor, opposing counsel is offering into evidence a document that contains improper opinion evidence by the witness. The defense requests that the portion of the document setting forth the witness’s opinion be redacted.”

Rule 603: VOIR DIRE OF A WITNESS. When an item of physical evidence is sought to be introduced under a doctrine that normally excludes that type of evidence (e.g., a document which purports to fall under the business record exception to the Hearsay Rule), or when a witness is offered as an expert, an opponent may interrupt the direct examination to request the judge’s permission to make limited inquiry of the witness, which is called *“voir dire.”*

The opponent may use leading questions to conduct the *voir dire* but it must be remembered that the *voir dire*'s limited purpose is to test the competency of the witness or evidence and the opponent is not entitled to conduct a general cross-examination on the merits of the case.

The *voir dire* must be limited to three questions. The clock will not be stopped for *voir dire*.

8. INVENTION OF FACTS (Special Rules for the Mock Trial Competition)

Rule 701: DIRECT EXAMINATION. On direct examination, the witness is limited to the facts given. Facts cannot be made up. If the witness goes beyond the facts given opposing counsel may object. If a witness testifies in contradiction of a fact given in the witness's statement, opposing counsel should impeach the witness during cross-examination.

Objection:

“Objection. Your Honor, the witness is creating facts which are not in the record.”

Rule 702: CROSS-EXAMINATION. Questions on cross-examination should not seek to elicit information that is not contained in the fact pattern. If on cross-examination a witness is asked a question, the answer to which is not contained in the witness's statement or the direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial. If a witness's response might materially alter the outcome of the trial, the attorney conducting the cross-examination may object.

Objection:

“Objection. The witness's answer is inventing facts that would materially alter the outcome of the case.”

9. PROCEDURAL RULES

Rule 801: PROCEDURE FOR OBJECTIONS. An attorney may object any time the opposing attorneys have violated the “Simplified Rules of Evidence and Procedure.” Each attorney is restricted to raising objections concerning witnesses, whom that attorney is responsible for examining, both on direct and cross-examinations.

NOTE: The attorney wishing to object (only one attorney may object at a time) should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for it. Then the judge will turn to the attorney who asked the question and the attorney usually will have a chance to explain why the objection should not be accepted (“sustained”) by the judge. The judge

will then decide whether a question or answer must be discarded because it has violated a rule of evidence (“objection sustained”), or whether to allow the question or answer to remain on the trial record (“objection overruled”).

Rule 802: MOTIONS TO DISMISS. Motions for directed verdict or dismissal are not permitted at any time during the plaintiff’s or prosecution’s case.

Rule 803: CLOSING ARGUMENTS. Closing arguments must be based on the evidence presented during the trial.

Rule 804: OBJECTIONS DURING OPENING STATEMENTS AND CLOSING ARGUMENTS. Objections during opening statements and closing arguments are **NOT** permitted.

Rule 901: PROSECUTION’S BURDEN OF PROOF (criminal cases).

Beyond a Reasonable Doubt: A defendant is presumed to be innocent. As such, the trier of fact (jury or judge) must find the defendant not guilty, unless, on the evidence presented at trial, the prosecution has proven the defendant guilty beyond a reasonable doubt. Such proof precludes every reasonable theory except that which is consistent with the defendant’s guilt. A reasonable doubt is an honest doubt of the defendant's guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary one. It is a doubt that a reasonable person would be likely to entertain because of the evidence that was presented or because of the lack of convincing evidence. While the defendant may introduce evidence to prove his/her innocence, the burden of proof never shifts to the defendant. Moreover, the prosecution must prove beyond a reasonable doubt every element of the crime including that the defendant is the person who committed the crime charged. (Source: NY Criminal Jury Instructions).

Rule 902: PLAINTIFF’S BURDENS OF PROOF (civil cases).

902.1 Preponderance of the Evidence: The plaintiff must prove his/her claim by a fair preponderance of the credible evidence. The credible evidence is testimony or exhibits that the trier of fact (jury or judge) finds to be worthy to be believed. A preponderance of the evidence means the greater part of such evidence. It does not mean the greater number of witnesses or the greater length of time taken by either side. The phrase refers to the quality of the evidence, *i.e.*, its convincing quality, the weight and the effect that it has on the trier of fact. (Source: NY Pattern Jury Instructions, §1:23).

902.2 Clear and Convincing Evidence: (To be used in cases involving fraud, malice, mistake, incompetency, etc.) The burden is on the plaintiff to prove fraud, for instance, by clear and convincing evidence. This means evidence that satisfies the trier of fact that there is a high degree of probability that the ultimate issue to be decided, *e.g.*, fraud, was committed by the defendant. To decide for the plaintiff, it is not enough to find that the preponderance of the evidence is in the plaintiff's favor. A party who must prove his/her case by a preponderance of the evidence only needs to satisfy the trier of fact that the evidence supporting his/her case more nearly represents what actually happened than the evidence which is opposed to it. But a party who must establish his/her case by clear and convincing evidence must satisfy the trier of fact that the evidence makes it highly probable that what s/he claims is what actually happened. (Source: NY Pattern Jury Instructions, §1:64).

Rule 903: DIRECT AND CIRCUMSTANTIAL EVIDENCE

903.1 Direct evidence: Direct evidence is evidence of a fact based on a witness's personal knowledge or observation of that fact. A person's guilt of a charged crime may be proven by direct evidence if, standing alone, that evidence satisfies the fact-finder (a judge or a jury) beyond a reasonable doubt of the person's guilt of that crime. (Source: NY Criminal Jury Instructions).

903.2 Circumstantial evidence: Circumstantial evidence is direct evidence of a fact from which a person may reasonably infer the existence or non-existence of another fact. A person's guilt of a charged crime may be proven by circumstantial evidence, if that evidence, while not directly establishing guilt, gives rise to an inference of guilt beyond a reasonable doubt. (Source: NY Criminal Jury Instructions).

NOTE: The law draws no distinction between circumstantial evidence and direct evidence in terms of weight or importance. Either type of evidence may be enough to establish guilt beyond a reasonable doubt, depending on the facts of the case as the fact-finder (a judge or a jury) finds them to be. [Source: NY Criminal Jury Instructions].

**NEW YORK STATE
HIGH SCHOOL MOCK
TRIAL SCRIPT**

PART IV

This page left intentionally blank.

PEOPLE v. CARSON CONNERS
Bigtown City Court
Docket No. 2017ER012345M

Carson Connors is a nineteen year-old senior at Bigtown High School in Bigtown, New York. S/he resides in Bigtown, a large city in central upstate New York. In April 2017, Carson, then a junior, was arrested and charged with Disorderly Conduct (Penal Law, §240.20[1]). The charge arose out of an incident occurring on April 27, 2017. Carson was observed by his 11th grade English teacher, Lauren Smith, appearing to repeatedly push an unidentified student in the hallway. Pursuant to the school's no-bullying policy, Ms. Smith approached Carson and directed Carson to go with him/her to the office of the assistant principal, Sidney Crosby. Carson refused, telling Mr./Ms. Smith that s/he did not want to be late for his/her next class. Mr./Ms. Smith grabbed Carson by the arm in an attempt to lead him/her to the assistant principal's office. Carson broke free of Mr./Ms. Smith's grasp while yelling in a very loud voice to "Take your damn hands off me. You can't tell me what to do you freakin' idiot. Go screw yourself."

The two Bigtown police officers, who are assigned to the high school as resource officers (SROs) and who monitor the hallways using closed-circuit television, were observing the altercation and rushed to the scene. Carson continued to be belligerent when the officers arrived, indicating that s/he was not going to the assistant principal's office. Based on what they had observed and what Mr./Ms. Smith told them, the officers, who are authorized to make arrests on school grounds, placed Carson under arrest and took him/her to the nearby police precinct for processing. The charged disorderly conduct was the alleged pushing of the student, the verbal exchange with the teacher, and what appeared to be threatening behavior towards the teacher by refusing to go to the assistant principal's office. Smith was unable to identify the student allegedly being pushed by Connors and the student's back was to the camera. The student has not come forward, and the video footage showing the incident is now unavailable. The tape containing the incident was pulled from the videotaping equipment by an SRO and stored in a locked desk drawer in the basement security office. Over the weekend, the security office was flooded with three feet of water. There is a restroom directly over the security office, and a water pipe burst causing the flood. The tape sat in water for more than fifty hours and was completely destroyed.

Carson is a student with a very poor academic record: lots of Cs and Ds, and a few Fs. The only Bs are in physical education classes. By consistently placing in the lowest quartile, students like Carson, cause

Mr./Ms. Smith's English class to consistently rank poorly on the Districtwide Assessment Test for English. There are also districtwide tests for math, natural sciences and social studies. Students are not required to take any of the tests. However, to induce a student to take the tests, two points are added to his or her final grade in the class if he or she scores in the first quartile, four points if the score is in the second quartile, and seven points if the score is in the third. While the stated purpose of the assessment tests is to assess student proficiency in the subjects, the teachers believe the test results are really used to assess teacher performance.

The test in May 2017 was held on May 2nd. The raw testing data are sent to the test developer located in Cincinnati, Ohio. A makeup test is administered three weeks later to students who have excused absences on the initial testing date. However, the data for the makeup tests are not sent to Cincinnati and consequently are not reflected in the classroom scoring results. The makeup tests are graded locally by the guidance counselors' staff.

In a meeting with the English Department teachers in September 2016, Assistant Principal Crosby told them that the administration was not satisfied with the test results of the 11th grade English classes on the past five assessment tests. Dr. Crosby, a big proponent of the districtwide assessment testing program, stressed at the meeting that the 9th and 10th grade teachers must do more to prepare the students for the 11th grade test. S/he emphasized to the 11th grade teachers that poor performances by the students on the assessment test will have detrimental consequences to the careers of the teachers. After the meeting, Mr./Ms. Smith was told privately by the assistant principal that s/he would be demoted to teaching 9th grade English if the majority of his/her students' scores on the ELA districtwide assessment test did not reach into at least the third quartile during the 2016-2017 academic year.

Because of his/her arrest, Carson was not able to attend school until after his/her due process hearing, pursuant to NYS Education Law, was held. Carson was allowed to return to school on May 8th. Consequently, s/he did not take the May 2nd English assessment test. Several other students in Mr./Ms. Smith English classes who also had relatively poor academic records were under out-of-school suspension on May 2nd and did not take the test. A majority of Mr./Ms. Smith's students who did take the test scored just well enough to make it into the third quartile. Carson took the test on May 23rd and received a score that would have placed him/her in the first quartile.

Bobbie Jones and Lauren Smith have been close friends since their grade school days in the mid-1970s. Smith was instrumental in getting Jones assigned to the school as an SRO, which is regarded as one of the cushy police assignments. They talk frequently during the school day and eat lunch together in the faculty lounge all the time. Aware of the pressure Smith is under to get his/her students to do better on the ELA and keep his/her job, Officer Jones has asked Smith what s/he can do to help Smith.

Carson and his defense team allege that the criminal charge was trumped up so that s/he would not be available to take the assessment test. Citing a study undertaken by Avery Johnson, a fellow of the Bigtown Civil Liberties Society (BCLS), the defense believes that the school has adopted a “school-to-prison pipeline” policy and practice. Said policy and practice, according to Johnson, results in “zero-tolerance” for even minor school infractions and in students being prosecuted in the juvenile and the adult criminal justice systems, instead of being handled in the school disciplinary process. The school-to-prison pipeline policy primarily targets at-risk students charged with public order offenses, such as disorderly conduct, harassment, violation of school conduct codes or school-yard fighting, by preferring prosecution over in-school disciplinary measures. The BCLS alleges that the school cut funding to aid at-risk students, like Carson, and used the money to reimburse the city for the services of the two police officers.

Billie Jo Stapleton, a retired Bigtown High School teacher, once overheard Dr. Crosby talking about having students arrested even for minor infractions. The assistant principal reportedly said that, “Well, that’s one way to reduce class size and at the same time get those class assessment scores up.” According to Mr./Ms. Stapleton, Dr. Crosby was laughing as s/he made the statement, but Mr./Ms. Stapleton did not find the remark funny at all. Since removal from school is typically the result of an arrest and a criminal prosecution, Carson believes that Mr./Ms. Smith precipitated the encounter to get him/her out of the classroom in advance of the May 2nd assessment test. Stapleton, who taught at BHS for thirty-five years, retired after the 2016-2017 academic year after learning that Crosby was planning to recommend that Stapleton be reassigned from teaching AP Calculus to teaching intermediate geometry. They had been at odds against each other soon after Crosby’s arrival at the school approximately ten years ago. Crosby, a micro-manager, did not like Stapleton’s teaching approach and frequently demeaned said approach at faculty meetings. Stapleton ignored Crosby’s recommendation, since an overwhelming majority of his/her students were doing exceedingly well on the districtwide math assessment test.

The case will be tried in Bigtown City Court. The defense has requested all of the adjournments in order to prepare for trial. Consequently, common law and statutory speedy trial objections are waived. If found guilty as charged, Carson could be sentenced to a term of imprisonment not exceeding fifteen days (Penal Law, §70.15[4]) and a fine not exceeding two hundred fifty dollars (Penal Law, §80.05[4]).

Witnesses:

Prosecution

- Lauren Smith, English Teacher, Bigtown High School
- Dr. Sidney Crosby, Assistant Principal, Bigtown High School
- Bobbie Jones, Bigtown Police Department Officer assigned to Bigtown High School as a School Resource Officer

Defense

- Carson Conners, Defendant
- Dr. Avery Johnson, Fellow, Bigtown Civil Liberties Society
- Billie Jo Stapleton, Retired Math Teacher, Bigtown High School

LIST OF STIPULATIONS

1. All witness statements are deemed sworn or affirmed, and duly notarized.
2. All items of evidence are originals and eligible for use during the match, following proper procedure for identification and submission.
3. Any enactment of this case is conducted after the named dates in the Case Summary and the witness affidavits. (Please note that the Case Summary is provided solely for the convenience of the participants in the Mock Trial Tournament. Said summary itself does not constitute evidence and may not be introduced at the trial or used for impeachment purposes).
4. The parties agree that the Bigtown School District fully complied with the relevant provisions of §3214 of the New York Education Law. Therefore, the parties may not raise the issue of §3214 compliance at trial.
5. If the person playing the role of Carson Connors is female, the student allegedly being pushed by Connors will be referred to as female.
6. No other stipulations shall be made between the plaintiff/prosecution and the defense, except as to the admissibility of evidentiary exhibits provided herein.

This page left intentionally blank.

AFFIDAVIT OF LAUREN SMITH

1. My name is Lauren Smith. I am 35 years old. I live alone in an apartment complex located at 234 Lily Pond Circle in Bigtown, New York. I graduated from SUNY Binghamton with a B.A. in English Literature and obtained my M.A. in Education from the Teachers College at Columbia University. I am licensed to teach English Language Arts in grades 7 through 12 in New York State.
2. In August 2005, I was hired to teach 11th grade English at Bigtown High School. This was a dream come true—I grew up in Georgica, a neighboring town, and it’s great to be back at home. I love literature and reading, so introducing young people to the classics seemed like the perfect job for me, and living in a community where there are places to hike and ride my bike was an added bonus.
3. I enjoy teaching, but sometimes get discouraged because it’s hard to engage kids. Some come from dysfunctional families, others have learning differences, and, of course, many are experiencing the typical teenage angst that distracts them from their studies. However, on the whole, I’ve had a successful teaching career. I believe I have a talent for designing lesson plans and leading the class discussion. I really enjoy mentoring my students.
4. I was introduced to the harsh reality of standardized testing soon after I started my job at Bigtown High. Standardized tests are stressful for students because whether and where they go to college often depends on their performance on high-stakes assessments. Standardized testing causes a lot of anxiety for teachers because their effectiveness in the classroom is measured, in large part, by the test results.
5. My classes’ standardized test scores are usually in the mid-range, but the overall scores plummeted in 2014. They were well below average in 2014 and 2015. I attributed this to students’ personal problems and their inability to concentrate in class. Social media, in my opinion, is a big part of the problem; kids can’t focus on schoolwork anymore.
6. At the end of 2015-2016 school year, the majority of my students were scoring in the first and second quartiles on the districtwide assessment test, near the bottom. I told Dr. Sidney Crosby,

the assistant principal, that this was likely due to a handful of students who, because of unique personal challenges, performed poorly. Dr. Crosby agreed. S/he told me that the teaching is hard and that my overall performance was satisfactory.

7. In September 2016, shortly after school started, Dr. Crosby had a meeting with the all the teachers in the English Department. S/he told us that the administration was dissatisfied with the test results of the 11th grade English classes on the past five assessment tests. At the meeting, Dr. Crosby, a big proponent of the districtwide testing program, stressed that the 9th and 10th grade teachers must do more to prepare the students for the 11th grade districtwide assessment test. S/he also emphasized to the 11th grade teachers that poor performances by their students on this assessment would negatively impact the teachers' careers.
8. After the meeting, Dr. Crosby pulled me aside and told me that I had one more chance to get the majority of my students' scores on the districtwide assessment test into at least the third quartile, otherwise I would be assigned to teach 9th grade English in the 2017-2018 academic year. That would be horrible for me and in my opinion, almost as bad as getting fired. It would entail redoing all of the lesson plans I have developed over the years. My summer would be completely ruined. Besides, I love the challenge of teaching the upperclassmen.
9. Needless to say, I was under a lot of pressure during the 2016-2017 academic year, but I rose to the challenge. I used more visuals and interactive exercises in the classroom and this engaged my students. They performed well on the quizzes and tests I designed. Therefore, I was sure that most of my students would score well into the third quartile on the districtwide assessment test in May.
10. Although I made considerable progress with my students during the 2016-2017 academic year, there was one incident in April 2017 that was very upsetting. On April 27, 2017, I saw Carson Conners, a troubled student, repeatedly push another student in the hallway. I couldn't identify the other student because his/her back was to me, and s/he ran away after Carson pushed him/her.
11. Carson was in my 11th grade English class during the 2016-2017 academic year. I hate to say it, but the kid is bad news. S/he is a bully, isn't invested in school, and gets really poor grades.

I didn't have any personal problems with Carson, but I had my eye on him/her. S/he is arrogant and didn't get along well with his/her classmates.

12. After I saw Carson push the student, I told him/her to go with me to Dr. Crosby's office. The school's no-bullying policy requires that all incidents be reported to the assistant principal. Carson, however, refused, telling me that s/he did not want to be late for his/her next class. I lightly touched Carson's arm in an attempt to lead him/her to the assistant principal's office. Carson then moved away from me and screamed "Take your damn hands off me. You can't tell me what to do you freakin' idiot. Go screw yourself."
13. Bobbie Jones and Zeke Baldwin, Bigtown police officers who serve as the high school's resource officers (SROs), apparently saw the altercation on closed-circuit TV. I grew up with Bobbie and we've been close friends since we were in grade school. When Bigtown High needed an SRO, I recommended Bobbie for the job. I told the hiring committee that Bobbie is great with kids, and the school district hired him/her in September 2013. I'm glad s/he is on the job.
14. After witnessing the assault on closed-circuit TV, Bobbie and Zeke rushed to the scene. Carson continued to be belligerent when the officers arrived, yelling that s/he was not going to the assistant principal's office. I told the officers what happened, and they arrested Carson for disorderly conduct. To be candid, I feel that Carson got a break and should have been charged with assault. Bobbie told me that there is a big gang problem at the school and that if I see something, say something. It is believed that Carson is one of the ringleaders.
15. Bobbie and I talk during the school day and frequently eat lunch together in the faculty lounge; it's nice to have an old friend at work. I often confide in Bobbie and told him/her that my position as an 11th grade English teacher was in jeopardy because of the low test scores. I made a few joking comments to Bobbie about how students with "educational challenges" have affected classroom scores on standardized tests, but I never asked Bobbie to get Carson Connors or any other student removed from my class on trumped up charges. Although Bobbie asked me if there was anything s/he could do to help me, Bobbie was only offering emotional support. We're honorable people and would never conspire to get low-performing students suspended or expelled.

16. It's Carson's own fault that s/he wasn't in school on the day of the districtwide English assessment test and didn't take the test at that time. Several other students in my English classes who had relatively poor academic records were also under out-of-school suspension on May 2nd and did not take the test. Again, it was not my fault that they were unavailable to take the test. My students who did take the test did fairly well on it, with a majority just making it into the third quartile. So, I am still teaching 11th grade English for the 2017-2018 academic year. Any speculation that Carson's absence helped in this successful outcome on the assessment test is insulting to me as a teacher and to the students who have worked so hard to learn the material. In accordance with district policy, Carson took the test on May 23rd, but his/her score was not used to calculate my assessment test results. That's not my doing, but rather, it is policy and procedure established by the district. I don't remember the exact score s/he received, but I believe it was probably in the low range of the first quartile. For a determination whether or not Carson's score and the scores of my other students who did not take the test because of suspensions would have resulted in the majority of my students not getting into at least the third quartile, you would have to check with the test developer, located in Cincinnati, Ohio, who does the scoring. Who knows?! If Carson and the other students had taken the test on the original date, they may well have scored much higher. Any discussion regarding the affect Carson had or didn't have on the overall assessment results is pure speculation.
17. It's outrageous that Carson is challenging his/her arrest under "school-to-prison pipeline" theory. I remember reading something about this theory in the news, but didn't pay much attention to the story. Right now, I'm focused on helping my students read text critically and develop a love for literature. I'm also hoping to find a partner with whom I can start a family. I don't have the time or energy to concoct schemes to get students thrown out of school. The simple truth is that Carson is a troublemaker and, in my opinion, should have been dealt with more harshly because s/he is menace to the other kids at school.

I affirm the veracity of the foregoing statement.

Dated: Bigtown, New York
August 22, 2017

Lauren Smith
Lauren Smith

AFFIDAVIT OF DR. SIDNEY CROSBY

1. My name is Sidney Crosby. I am 54 years old and I reside in Waterview, a lovely gated community just outside of Bigtown.

2. After receiving my Bachelor's Degree in English literature with a minor in secondary education from the University of New Mexico in 1986, I found it difficult to find a job in the education field. I worked part-time for a private security company while I worked on obtaining my Master's Degree in 1988. I moved back to New York, and qualified for a permanent teaching certification in 1989. I taught high school English for a few years, mostly as a substitute, but I found that I did not enjoy working in a classroom. While continuing to work in various school settings, I earned a Ph.D. in Educational Administration from the School of Education at SUNY Albany in 2001. Since then, I have been employed in various management positions in educational settings until I accepted the job of Assistant Principal at Bigtown High School in 2007.

3. Take it from me; the business of education has gone through a lot of changes over the last 15 years or so, and not for the better. Schools are now required to teach things that kids should be learning at home. Schools are responsible for feeding two meals a day to students, making sure they pass certain tests in just a few subjects, plus monitoring their personal behavior on and off campus. Kids are more empowered, parents don't back up the school, and people who are clueless about what really goes on have an opinion about everything. Everyone thinks they can just write rules and make accurate assessments, but no one wants to take responsibility.

4. The principal takes care of big public relations issues such as budget and reporting to the School Board, and has the luxury of dealing mostly with intelligent grown-ups. My job is to supervise the day-to-day management of Bigtown High School. A typical week might involve problems in everything from school bus schedules to testifying against students in Family Court and local criminal courts. You have no idea how many small problems can't be solved without my personal involvement: everything from what vegetarian options should be offered in the cafeteria to what time we lock the doors after a basketball game. Plus, I have to handle all the bigger issues such as teacher supervision, compliance with state mandates for curricula and measuring achievement, and of course, student safety and discipline.

5. It wasn't my idea to have police officers permanently stationed at the high school; you would have to take that up with the school board. Personally, I am glad the school board found funding to post two police officers and install the surveillance cameras. I think it makes everyone feel safer. It certainly has helped with school discipline and order, particularly with the "zero tolerance for bullying" that the school board insisted on implementing.
6. In my opinion, the most important part of my job is to keep the educational standards up. Taxpayers resent paying the bills for a non-performing school, and in my experience, that's when administrative heads start to roll. It took me a long time to find this job and I don't want to lose it!
7. I encourage the teachers to get better classroom scores on the assessment tests in their subjects. In my opinion, districtwide assessment tests are critical to keeping the parents and taxpayers happy, the school well-funded, and the school budgets passed. The assessment tests' scoring is not done locally, and we have no influence on the scoring. The scoring is performed by the test developer located in Cincinnati, Ohio. We send all of the raw testing data to them for processing.
8. I make it very clear that poor scores will play a part in their performance evaluations. The better teachers understand and appreciate my hard-nosed and crystal-clear position on that issue. They don't want to be demoted for poor performance either. We just can't risk the consequences of low assessment test scores, particularly in English Language Arts (ELA).
9. The teachers work well with administration and follow the plan for everyone's benefit. There was one glaring exception: Billie Jo Stapleton. S/he is not, and has never been, a team player. We have butted heads for the last ten years. Stapleton adhered to his/her own ideas and methods, which I often criticize during staff meetings. At times, I have considered him/her to be insubordinate. I never thought s/he is a particularly good math teacher, either, despite the fact that his/her classes always do well on the assessment tests. I was planning on recommending that Stapleton be moved from teaching AP Calculus to Intermediate Geometry for the 2017-2018 school year. After all, s/he had been here for 35 years and is clearly not adapting to the

new ways of doing things. I was delighted to see Stapleton’s retirement paperwork come in at the end of the last school year. Goodbye and good riddance! That’s one retirement party I was happy to attend!

10. Before the commencement of the 2016-2017 school year, the principal and the school board made it very clear to me that they were very disappointed with the ELA assessment test scores for the fourth straight year. In September 2016, I met with the English Department teachers in all four years. I stressed that the 9th and 10th grade teachers had to do more to prepare the students. As for the 11th grade teachers, I told them all that the 2017 results could have detrimental consequences to their careers.
11. At the meeting, some of the high school teachers bemoaned that the school board just doesn’t want to hear that there are some students who are dragging down the averages—these students either don’t want to work or don’t try to work or they are chronic discipline problems. Everyone started talking at once. Several of us pointed out that in the past, more of the under-performing students or hardcore discipline problems would drop out after the school year in which they turned 16, which would, of course, reduce class sizes. But now, almost every entry-level job requires a high school diploma, and we are stuck with these kids. Now, under the school’s zero-tolerance for violence and bullying policy, some are even getting arrested and removed from the building for days or weeks. Someone said, “Hey, if they aren’t there to take the test, their low scores wouldn’t matter!” I admit I said, “Well, that’s one way to reduce class size and at the same time get those class assessment scores up!” Everyone laughed.
12. I can’t believe some people are making such a big deal out of my comment. It was a venting session after a long and uncomfortable meeting, and I was making a joke! Everyone else in the room was talking and laughing. Billie Jo Stapleton has no sense of humor. S/he is all over the school building eavesdropping on teachers’ conversations and ascribing ill-intent on everyone’s part. Stapleton even claimed to have heard Lauren Smith and SRO Bobbie Jones discussing ways to get poorly performing students suspended from school before the assessment tests. This is an outrageous accusation and just more evidence of his/her burn-out, in my opinion.
13. It’s true that Lauren Smith’s performance as a teacher has been problematic. Smith’s classes do not score well on the ELA assessment tests. I have had to counsel him/her privately several

times about it. In fact, after the meeting, I told Smith that s/he would be demoted to teaching 9th grade English if the majority of his/her students' scores on the ELA districtwide assessment test did not reach into at least the third quartile during the 2016-2017 academic year.

14. Had Carson Connors complied with Lauren Smith's instruction to come to my office, instead of mouthing off and causing the school police to become involved, this probably would not have happened, at least not that particular day. When the police viewed the surveillance tape and took Lauren Smith's statement about viewing the assault and creating a disturbance, this became a criminal matter and was out of my hands. Because of his/her arrest, Carson Connors was not able to return to school until after his/her due process hearing, pursuant to the NYS Education Law, was held. The hearing was held on May 1, 2017 and s/he was suspended by the principal for five days pursuant to section 3214[3] of the Education Law. Connors returned to school on May 8th.

15. Now you have this study by someone named Avery Johnson and this far-left liberal group BCLS suggesting that there is a spike in suspensions just prior to the administration of the assessment tests. There could be any number of reasons for this alleged spike and none of the reasons being teacher malfeasance. Towards the end of the school year, when most of these assessment tests are given, many students are sick of school, become restless and sometimes act out. There are consequences for acting out. I believe in personal responsibility, and not in any so-called "school-to-prison pipeline." Carson Connors is guilty of disorderly conduct, and now that I have heard the rumors about what a bad person s/he is, probably guilty of a whole lot more.

I affirm the veracity of the foregoing statement.

Dated: Bigtown, New York
August 24, 2017

Sidney Crosby, Ph.D.
Sidney Crosby, Ph.D.

AFFIDAVIT OF BOBBIE JONES

1. My name is Bobbie Jones and I am 36 years old. I am an Officer with the Bigtown Police Department. Currently, I am assigned to Bigtown High School as a School Resource Officer (SRO).
2. I have an Associate's Degree in criminal justice and have been in law enforcement for 13 years. Before joining the Bigtown Police Department in 2004, I was a Security Guard at Bigtown Savings and Loan. I've been an SRO assigned to Bigtown High School since September 2013.
3. I like being an SRO. I'm not sure I would even have stayed with the force if I was still out dodging bullets in the neighborhoods. I couldn't believe my luck when I found out that my old friend Lauren Smith was on the search committee for the Bigtown High School SRO position back in 2013. I will soon have the magic number of 20 years in the pension system, and sometimes on our lunch breaks, we joke that I'll owe Lauren a big chunk of it. I say that I've bought enough rounds of beer after work to make up for it! In all seriousness though, I'll never be able to repay Lauren for helping me get this gig.
4. It's unfortunate, but it seems like I have a more secure job at Bigtown now than Lauren does. Lauren gets a lot of flak from the administration for test scores and stuff like that. I know it haunts Lauren, and I wish I could do more to help. It's not Lauren's fault that kids like Carson Connors don't learn proper English at home and don't seem to have any interest in learning it at school.
5. As much as I appreciated my job at Bigtown High School, these snot-nosed little punks really get to me sometimes. Most of them are good kids, I suppose, but the bad ones get worse every year. The last year or two this one little gang has been terrorizing the weaker kids. We know who they are, but they're street smart and they know where all the cameras are so it's hard to catch them red-handed. Plus all the victims are afraid of them so nobody ever snitches. These gangbangers just don't belong in school. The only thing they are at "at-risk" of is me banging their heads! Just kidding.

6. In April 2017, we caught one of them in the act. Lauren saw that delinquent, Carson Conners, shaking down some poor kid and stepped in. Of course, Conners started mouthing off at Lauren and resisting. My partner and I saw the whole episode unfold on the video and got to the scene pretty fast.
7. By that time, Conners was having a full-on tantrum, cursing and yelling at Lauren and aggressively pulling away. Lauren had simply directed Conners to go to the assistant principal's office after seeing Conners bullying another kid who we were never able to identify.
8. Conners was saying that nothing happened and that "that idiot" Lauren had simply made up a big scene in the hallway. Conners was apoplectic. To me, it seemed obvious that Conners was lying and was just upset about finally getting caught. I mean, who are you going to believe, this little petty criminal or a respected teacher?
9. Either way, there was no excuse for the way Conners reacted. Conners was practically foaming at the mouth and swinging around. I tell you what, that kid is lucky Lauren wasn't hurt. The whole thing would have gone down much differently if Lauren had been so much as scratched.
10. If the tapes would have been preserved, we wouldn't even be here. I mean, you couldn't make out who the victim was, but you could see that Lauren was obviously responding to something and you could see that Conners' reaction was way over the top.
11. Normally, we keep the tapes on a rotating weekly cycle. That usually gives us time to pull one out before it is overwritten if there is an incident. That's what we did here. I pulled the tape containing the Conners' shakedown and stored it in a locked desk drawer for safekeeping. Over the weekend, my basement office was flooded with three feet of water. There is a restroom directly over my office and a water pipe burst causing the flood. The tape sat in water for more than fifty hours and was completely destroyed. Oh well—I'm not going to lose a lot of sleep over it. Like I said, who are you going to believe?
12. I've heard there is some nonsense out there that Lauren had it out for this kid. Lauren might not be in Conners' fan club, but no one is around here. The way Lauren tells it, thugs like Conners could cost some teacher a job. I'm sure most of the staff at Bigtown High School would rather

not have to deal with kids like that—Sidney Crosby has said as much—but that doesn't change what happened. Hey, if it takes something like this to get rid of those bad eggs, so be it.

13. It seems that every time there is some incident at school they drag out this quack doctor, Avery Johnson, to make unsupported allegations. Dr. Johnson testified against me and the City in a case where I was accused of using excessive force against another one of those street urchins. The case was dismissed on technicality, but the ultimate outcome would have been in my favor anyway because I did not do anything wrong. Anyway, this so-called doctor is still trying to get me fired and will say anything to get me in trouble. Conners is guilty, but that doesn't matter to Dr. Johnson.

I affirm the veracity of the foregoing statement.

Dated: Bigtown, New York
August 28, 2017

Bobbie Jones

Bobbie Jones

This page left intentionally blank.

AFFIDAVIT OF CARSON CONNERS

1. My name is Carson Connors and I am 19 years old. I reside with my parents at 534 South Percy Street, Bigtown, New York. I will be a senior at Bigtown High starting in September 2017. I currently work as a stockperson/cashier at Dollar World, one of those chain dollar stores that are now very popular. I will likely lose my job if I am not able to get this trumped-up criminal charge thrown out.

2. I was having trouble with Mr./Ms. Lauren Smith, my 11th grade English teacher, from the very start of my junior year in September 2016. I'm sure s/he looked at my school record and noticed all of my Cs and Ds as well as a few Fs. I could probably do better if I studied some more, but I like hanging out with my small gang of friends after school and on the weekends. We meet at the Bigtown Mall or at the community center. I did manage to get some Bs in my physical education classes though. No doubt, Mr./Ms. Smith felt that I was going to be a problem for him/her since I was not one of those brown-nosing, smarty-pants geeks that s/he just loves. S/he probably thought s/he would have to work a bit harder with me being in his/her classroom. S/he never appeared to be a teacher willing to put in any extra effort. OK, I will say it: s/he was LAZY. If Mr./Ms. Smith knew how to teach or just cared a little more, my English grades would probably be a little better.

3. So, on April 27, 2017, I am walking down the hall after my 11:30am lunch period to get to my next class before the bell rings at 12:15pm. I noticed a person from the neighborhood who used to come to the community center. I don't know his/her name, but I recognized the face. I go up to him/her and as I am gently patting him/her on the back, Mr./Ms. Smith like a crazy person comes up to me, yelling at me to stop and to go with Mr./Ms. Smith to the assistant principal's office. I wasn't doing anything wrong and did not understand why I needed to go to the assistant principal's office. Besides, I was getting close to being late to my next class. Mr./Ms. Smith then grabs my left arm and tries to lead me to the office. I pulled away and said, "Take your damn hands off me. You can't tell me what to do you freakin' idiot. Go screw yourself." On reflection, I probably should not have said that to the teacher, but s/he caused the situation.

4. The next thing I see is these two school cops running towards us. Mr./Ms. Smith tells the officers that I was assaulting a student and causing a disturbance. Officer Jones, who is always

with Mr./Ms. Smith during their lunch period, tells the teacher that s/he saw the whole thing on camera, which is why they are on the scene. The officers put me in handcuffs without even listening to me and hauled me off to the police station. I was not allowed to call my parents until much later.

5. I called my parents after being at the police station for about an hour. They were both at work. They arrived at the police station about two hours later. Officer Jones, who has a reputation for roughing up students and making false allegations, told them I was being charged with disorderly conduct. I was issued an appearance ticket and was released to my parents. I was told to report to city court on April 28, 2017 for the arraignment. I appeared in court on April 28th with my attorney and my parents. Judge Judy (I don't remember her last name) read the charge and asked me, "How do you plead?" I, of course, said not guilty. Judge Judy set trial, which will be before another judge, for Monday, June 5, 2017 and released me on my own recognizance. Under the policy of the school district, I cannot return to school until I go through something called a due process hearing. The hearing was held on Monday, May 1st and I was suspended from school for one week.
6. Although my lawyers say I have a solid defense, I am still very upset about the situation Mr./Ms. Smith has put me in. My lawyers tell me all the time that the teacher cannot create the circumstances leading to an altercation and have me charged with a crime. Mr./Ms. Smith was just making up stuff just to get me in trouble. That's just not right! I don't see why I should have had to go to the assistant principal's office. Assistant Principal Crosby is a piece of work; what a goof ball. S/he walks around the school like s/he owns the place. S/he has the teachers, especially Mr./Ms. Smith, scared crap-less, thinking they will all lose their jobs because of poor scores on the assessment tests.
7. I was set up. I didn't know it at the time, but I now suspect that they were just trying to get me out of school so that I would not be able to take the English assessment test. It's interesting that Mr./Ms. Smith did not direct the other student to go to the assistant principal's office. S/he just let the student walk away. The student could have cleared up this matter quickly. Mr./Ms. Smith didn't want that. I suspect this whole scheme was concocted by Officer Jones and Mr./Ms. Smith during one of their lunchtime discussions. I see them going to lunch in the teachers' lounge practically every day.

8. My lawyers talk about this “school-to-prison pipeline” thing, which is the result of zero-tolerance policies implemented by some school districts like Bigtown. I had never heard of this “pipeline” craziness until my lawyers started looking into it and talking to me about it. I really work hard at trying to learn the subjects at school. It is not completely my fault that I have difficulty grasping some of the concepts. Anyway, it is not right that they would try to get me suspended from school just prior to a big assessment test. Mr./Ms. Smith’s English assessment test was held on May 2nd. I suppose it was very convenient for him/her that I was not available to take the test. I did take the test later just so I could get some points toward my final classroom grade. My assessment test score was not that good.

9. I don’t know anything about a gang problem at BHS and I am certainly no ringleader. This “problem” is all in the minds of that goofy assistant principal and that rogue cop. They are making up all of this stuff to justify what they did to me. It is not true that I am hiding the identity of the student I was talking to prior to Mr./Ms. Smith’s intervention. This is a big school with almost two thousand students. The suggestion that I was “shaking-down” this student is completely false. Besides, the student was not complaining. Mr./Ms. Smith should just mind his/her own business.

10. Because my defense team has requested a series of adjournments to completely investigate this case and prepare a quality defense, the trial of this matter will not occur until early 2018. I could have pleaded guilty, paid a small fine and avoided any jail time. But, there are important principles involved here. As I learned in We the People, which was one of my favorite classes in middle school, a person is innocent until proven guilty in a court of law. Also, even the worst criminal is entitled to due process of law. Finally, the prosecution must, in order to convict, prove a person is guilty beyond a reasonable doubt. I am simply exercising all of the rights I learned about in middle school.

I affirm the veracity of the foregoing statement.

Dated: Bigtown, New York
August 4, 2017

Carson Connors
Carson Connors

This page left intentionally blank.

AFFIDAVIT OF DR. AVERY JOHNSON

1. My name is Avery Johnson. I am 48 years old and reside at 212 Cinnamon Tree Lane in Bigtown, New York. I am a Fellow at the Bigtown Civil Liberties Society (“BCLS”).
2. I received my B.A. in Education, with a concentration in Social Studies, from the State University of New York at New Paltz in 1991. Between 1991 and 1995, I participated in the Teach For America program, teaching global studies to middle school students in the Mississippi Delta. Most TFA teachers participate in the program for just two years. Because of the extreme poverty and the lack of educational opportunities available to my students, I felt obligated to work a little longer. My students were so loving, and genuinely appreciated even the most modest efforts undertaken by their teachers to help them achieve. My friends always say I have a soft-heart for people less fortunate.
3. After leaving TFA, I went to Harvard University in Cambridge, MA to pursue a Ph.D. in Education Administration. I received my Ph.D. in 1999 and returned to Bigtown, my hometown. In addition to my employment at BCLS, I am also a part-time history professor at Bigtown State College. I enjoy teaching the young students and keeping up on the issues of concern to them.
4. Working at BCLS has given me the opportunity to delve into the many issues affecting society, especially K-12 educational matters. One issue of special concern to me is the “zero-tolerance” policy that some school districts have adopted. These policies have often led to a phenomenon that has come to be known as the “school-to-prison pipeline.” The “zero-tolerance” policy results in children with behavioral problems being prosecuted for even minor school infractions in the juvenile and the adult criminal justice systems instead of being handled in the school disciplinary process. This over-policing of such students, typically at-risk youth, have led to this “school-to-prison pipeline” phenomenon, where the students are removed from school, prosecuted, convicted and sent to prison. Before the District adopted these extreme policies, minor incidents or infractions would have been handled by school officials and parents.
5. It had come to our attention at BCLS that the Bigtown School District had implemented assessment tests for high school students in English, math, natural sciences and social studies. While students are not required to take the tests, they are given, as inducement to take the tests,

two points towards their final grades in the particular classes if they place in the first quartile, four points if they score in the second and seven points if they score in the third quartile. While the stated purpose of the assessment tests is to assess student proficiency in the subjects, the teachers believe the test results are really used to assess teacher performance. I have long been against the draconian testing regimes implemented by school districts and states under the guise of “educational reform” and “enhancing student achievement,” as they create a set of perverse incentives for schools to “push out” the worst performing students so that their classroom performance on assessment tests is not negatively affected.

6. A number of schools have adopted “zero tolerance policies” for offenses like bullying and other forms of disorderly conduct, but a study that we undertook at BCLS revealed that these policies are inconsistently applied. We see that high-achieving students are generally referred to the school disciplinary process, while students who struggle, or are otherwise “at risk,” are referred to the criminal justice system. Because of privacy concerns, the complete study has not yet been released.

7. The study appears to show that there was a spike in suspensions just prior to the assessment tests. The data for the past five years were collected from the three public high schools in Bigtown: Craig Central High School, Jonah Vocational Institute and Bigtown High School. The data were broken down for each high school by the ten months the schools are in session and then by the subject areas. The tests are normally given in early May. The data show that there is in our opinion a significant uptick in suspensions during the month of April. Since the schools, understandably, would not give us the names of the students suspended because of privacy concerns, we could not identify the students or confirm their academic standing. However, anecdotal evidence and commonsense would suggest that the overwhelming majority of the individuals suspended were “at-risk” students. From that study, I conducted an analysis of just the ELA assessment test administered at Bigtown High School since 2013. The results were jaw-dropping. My analysis shows a steady increasing number of students not taking the ELA assessment tests at Bigtown High due in part to suspensions. I admit that there are probably some students who just refused to take the tests. That number is probably small because you get points toward your final grade just for taking the tests.

8. A corollary “benefit” of this “school to prison pipeline” system is that during the pendency of criminal charges, the school may order an interim suspension of the student in question, making that student unavailable to take these assessment tests. In this way, the test results are, in a sense, manipulated.
9. Of course, enforcing a system like this requires resources. When I was contacted by the defense, I learned that the school had hired two School Resource Officers to patrol the school. The money the school used on those police officers could have been better used to invest in resources for struggling and “at-risk” students, but it all goes back to this “not my problem” mentality.
10. One of the officers involved in this case is Bobbie Jones, against whom I have testified previously for a deposition in a case involving excessive force used against a student with a disability. It is my understanding that the case was dismissed in favor of the City on Statute of Limitations grounds because the notice of claim was not timely filed. However, I believe the student’s complaint against Jones was legitimate. Jones is a bad apple, and if it was up to me, Jones would not be a police officer and certainly not an SRO.
11. Without a doubt, Carson Connors was suspended because s/he was an academically-challenged student, and Jones’s involvement only reinforces my belief. In any event, all of these teachers, including Lauren Smith, are under enormous pressure to get the majority of their students’ test scores into the third quartile. Self-preservation is a very basic and understandable instinct. My beef is not so much with the teachers, but instead with the school districts that have implemented these zero-tolerance/school-to-prison pipeline policies. The harm these policies have caused to our society is incalculable.

I affirm the veracity of the foregoing statement.

Dated: Bigtown, New York
August 18, 2017

Dr. Avery Johnson
Dr. Avery Johnson

This page left intentionally blank.

AFFIDAVIT OF BILLIE JO STAPLETON

1. My name is Billie Jo Stapleton. I am 63 years old. I reside at 12 Olivia’s Way in Bigtown, N.Y., where I was born and raised.
2. I recently retired as a math teacher from Bigtown High School, where I taught for 35 years. I received a Bachelor of Science Degree in Engineering from the Massachusetts Institute of Technology in 1976. I also hold a Master of Arts Degree in Education from Stanford University.
3. I graduated from BHS in 1972. I was always good with numbers and did extremely well in math, especially physics, although you never would’ve guessed it back then, based upon how I looked and acted. I had long hair, and wore dark shades, tie-dye and a green ragged army jacket. I was into social justice--on the cusp of protests and marches for every cause. I was angry that I was stuck being a high school student in Little Bigtown, USA, as I used to call it. It wasn’t until years later that I realized how lucky I was that my teachers hadn’t labeled and given up on me, and instead, had actually challenged me to think and learn.
4. Anyway, after I graduated from M.I.T. in 1976, I took a year off and traveled cross-country, following my favorite band, the Grateful Dead. I ended up in the San Francisco Bay area, where I enjoyed the happenings and sense of community, and knew that what I really wanted to do was to teach--to share my knowledge with teenagers, who were our tomorrow.
5. I discovered the Stanford Teacher Education Program (STEP) pretty quickly, and once I read their mission statement, I knew it was for me —“to cultivate teacher leaders who share a set of core values that includes a commitment to social justice, an understanding of the strengths and needs of a diverse student population, and a dedication to equality and excellence for all students.”
6. I graduated from STEP in 1979, with certification as a secondary school math teacher. I taught in the Berkeley public schools for three (3) years. When my Dad got sick in 1982, I came back to Bigtown to help, and ended up staying. It was a long, strange trip, but I was right where I wanted to be.

7. That is, I was, until July 2017, when I retired from Bigtown High, after learning that Assistant Principal Sidney Crosby was planning to recommend that I be moved from teaching AP Calculus to teaching intermediate-level geometry for the 2017-2018 academic year. Not that I actually thought the school principal would agree with Crosby, given my excellent record as a teacher at BHS for 35 years. I have just had it with Crosby and his/her twisted view of teaching. Besides, why would I want to be teaching proofs at this stage of my teaching career?! Enough is enough!
8. I have been at odds with Crosby since s/he first arrived at the school about 10 years ago, as an Assistant Principal. S/he's a real micro-manager, which doesn't surprise me since most of his/her experience in the education field was and remains management positions. Crosby's Ph.D. is in Educational Administration, and it's no secret that s/he never enjoyed working in the classroom.
9. When it comes to teaching, Crosby's incompetent. It's all about the numbers with him/her. S/he has no enthusiasm for working with the young minds that we were entrusted to teach, and certainly doesn't share in the joy of helping students learn and grow. That's why it really galled me that Crosby didn't like my teaching approach, and would frequently demean me at faculty meetings.
10. Given my teaching mantra, I usually ignored Crosby and his/her comments—especially since an overwhelming majority of my students was doing exceedingly well on the districtwide math assessment test. Still, there were some things I just couldn't ignore, particularly his/her blatant discrimination against “at-risk” students—particularly those with poor academic records. Crosby was a huge proponent of BHS's zero tolerance policy. This didn't surprise me at all, in view of his/her stated opinion that the “business of education” has really changed for the worse now that schools have to teach kids things that they should have learned at home, are obligated to feed them two meals a day, and aren't backed up by the parents, while teachers and administrators have to struggle to keep up academic standards, for fear of losing their jobs.
11. It's the attitude of paper-pushers like Crosby that's resulted in the “school-to-prison pipeline” crisis. By insisting that the justice system handle all behavior and discipline issues—even minor school infractions that aren't even criminal or against the law, school authorities are effectively tossing “at-risk” students into the pipeline to prison. And, if they time it right, these misguided

“educators” can have the “at-risk” students, who often have low grades and other issues, removed from a school for a period that includes assessment testing, which, of course, would most likely raise the school’s scores.

12. I even heard Crosby admit as much, shortly after school began last Fall. While walking past one of BHS’s meeting rooms, I overheard him/her discussing the District’s zero tolerance policy. Then Crosby said, “Well, that’s one way to reduce class size and at the same time get those class assessment scores up.” Crosby may have been laughing then, but his/her comment was anything but funny. Anyway, Crosby’s sentiments are having deleterious effect on otherwise good teachers. While sitting in the faculty lounge last March, Lauren Smith and Officer Bobbie Jones were whispering about getting students who habitually score poorly on tests suspended before taking these assessment tests. I could not believe what I was hearing. It is just pathetic what Crosby has done to the academic climate at BHS.

13. The incident involving Carson Connors and Lauren Smith last Spring was the last straw for me. Connors, an “at-risk” student, was arrested and, as a result, missed the English assessment exam that s/he was scheduled to take. S/he then returned and scored in the lowest quartile on the makeup test, which doesn’t count for District assessment purposes. I was told that there were several other students who also had relatively poor academic records were under out-of-school suspension on May 2nd and did not take the English assessment test until later. I could not believe that the school-to-prison pipeline had finally permeated BHS.

14. I no longer wished to be a part of BHS. I had always known about Crosby’s warped view of education. S/he had also been trying to get rid of me for years. This time, s/he had succeeded—not because of a recommendation not to rehire me after 35 years, but because in my mind, this is not what education is all about.

I affirm the veracity of the foregoing statement.

Dated: Bigtown, New York
August 21, 2017

Billie Jo Stapleton
Billie Jo Stapleton

This page left intentionally blank.

**NEW YORK STATE
HIGH SCHOOL
MOCK TRIAL
TOURNAMENT
EVIDENCE**

PART V

This page left intentionally blank.

EXHIBIT _____

**STATISTICAL ANALYSIS
11th GRADE ELA ASSESSMENT EXAMINATION
BIGTOWN HIGH SCHOOL**

This chart shows the total number of students in the last five (5) years who took the 11th grade ELA assessment test, their performance on the assessment test and the breakdown of their scores (by quartile). The number of students that did not take the test on the original testing date (and whose scores are not included in the quartile breakdowns) is also shown. The data are further broken down to Mr./Ms. Smith's students by number, quartile ranking and number of students assigned to Smith's class who did not take the test on the original testing dates.

	Number	Grade	Q ₁	Q ₂	Q ₃	Did not take (suspended, illness, etc.)
May 2013	275	11	67	84	102	22
Smith	92		29	38	22	3
May 2014	245	11	52	77	86	30
Smith	90		26	42	17	5
May 2015	275	11	55	98	88	34
Smith	90		30	32	22	6
May 2016	245	11	52	68	87	38
Smith	92		42	32	10	8
May 2017	261	11	40	55	125	41
Smith	95		17	25	43	10

Prepared by: Dr. Avery Johnson, Bigtown Civil Liberties Society

August 11, 2017

This page left intentionally blank.

EXHIBIT _____**BIGTOWN BOARD OF EDUCATION POLICY ON DISCIPLINE**

The Bigtown Board of Education recognizes the value of a quality, comprehensive education for all of its students. It also affirms the value of programs and policies which enforce developmentally appropriate levels of behavioral expectations, paired with commensurate privileges, while giving students maximum appropriate autonomy to grow in citizenship and accept responsibility for their actions, and the consequences, positive and negative, which flow from them.

To facilitate this growth, when a student fails to meet basic expectations for behavior, it is the policy of this Board that discipline should ordinarily be administered progressively; that is, the first violation of a rule or policy will ordinarily merit a lesser penalty than a second or subsequent violation of a rule or policy. Individual faculty and administrators have the authority to impose more or less severe sanctions than would ordinarily be imposed for a particular offense in view of the particular mitigating and aggravating circumstances of a situation.

The Board recognizes, however, that certain conduct by students is so substantially at odds with the educational mission of a school that such conduct must result in suspension or expulsion from school. The following acts constitute offenses for which a student must, at a minimum, be suspended from school.

- 1) Assault/Fighting
- 2) Bringing Weapon(s) to School
- 3) Threats
- 4) Gross Insubordination
- 5) Drug, Tobacco and Alcohol Offenses
- 6) Arrest, pending a due process hearing

In all cases, the District is committed to following the relevant procedures outlined in Section 3214 of the Education Law, which are incorporated by reference into this policy.

This page left intentionally blank.

EXHIBIT _____**Section 3214. Student placement, suspensions and transfers.**

[Excerpted] *from New York State Consolidated Laws - Education- PART I - COMPULSORY EDUCATION and presented for general information purposes as a public service. Readers are advised to consult McKinney's Consolidated Laws of New York for the official exposition of the text of this law and any subsequent changes or revisions.*

2-a. a. Violent pupil. For the purposes of this section, a violent pupil is an elementary or secondary student under twenty-one years of age who:

- (1) commits an act of violence upon a teacher, administrator or other school employee;
- (2) commits, while on school district property, an act of violence upon another student or any other person lawfully upon said property;
- (3) possesses, while on school district property, a gun, knife, explosive or incendiary bomb, or other dangerous instrument capable of causing physical injury or death;
- (4) displays, while on school district property, what appears to be a gun, knife, explosive or incendiary bomb or other dangerous instrument capable of causing death or physical injury;
- (5) threatens, while on school district property, to use any instrument that appears capable of causing physical injury or death;
- (6) knowingly and intentionally damages or destroys the personal property of a teacher, administrator, other school district employee or any person lawfully upon school district property; or
- (7) knowingly and intentionally damages or destroys school district property.

b. Disruptive pupil. For the purposes of this section, a disruptive pupil is an elementary or secondary student under twenty-one years of age who is substantially disruptive of the educational process or substantially interferes with the teacher`s authority over the classroom.

3. Suspension of a pupil.

a. The board of education, board of trustees or sole trustee, the superintendent of schools, district superintendent of schools or principal of a school may suspend the following pupils from required attendance upon instruction: A pupil who is insubordinate or disorderly or violent or disruptive, or whose conduct otherwise endangers the safety, morals, health or welfare of others.

b. (1) The board of education, board of trustees, or sole trustee, superintendent of schools, district superintendent of schools and the principal of the school where the pupil attends shall have the power to suspend a pupil for a period not to exceed five school days. In the case of such a suspension, the suspending authority shall provide the pupil with notice of the charged misconduct. If the pupil denies the misconduct, the suspending authority shall provide an explanation of the basis for the suspension. The pupil and the person in parental relation to the pupil shall, on request, be given an opportunity for an informal conference with the principal at which the pupil and/or person in parental relation shall be authorized to present the pupil's version of the event and to ask questions of the complaining witnesses. The aforesaid notice and opportunity for an informal conference shall take place prior to suspension of the pupil unless the pupil's presence in the school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process, in which case the pupil's notice and opportunity for an informal conference shall take place as soon after the suspension as is reasonably practicable.

(2) A teacher shall immediately report and refer a violent pupil to the principal or superintendent for a violation of the code of conduct and a minimum suspension period pursuant to section twenty-eight hundred one of this chapter.

c. (1) No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his behalf. Where a pupil has been suspended in accordance with this section by a superintendent of schools, district superintendent of schools, community superintendent or principal of a school, the superintendent shall personally hear and determine the proceeding or may, in his discretion, designate a hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding before him. A record of the hearing shall be maintained, but no stenographic transcript shall be required and a tape recording shall be deemed a satisfactory record. The hearing officer shall make findings of fact and recommendations as to the appropriate measure of discipline to the superintendent. The report of the hearing officer shall be advisory only, and the superintendent may accept all or any part thereof. An appeal will lie from the decision of the superintendent to the board of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools. Where the basis for the suspension is, in whole or in part, the possession on school grounds or school property by the

student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in subdivision one of section 265.01 of the penal law, the hearing officer or superintendent shall not be barred from considering the admissibility of such weapon, instrument or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.

(2) Where a pupil has been suspended in accordance with this section by a board of education, the board may in its discretion hear and determine the proceeding or appoint a hearing officer who shall have the same powers and duties with respect to the board that a hearing officer has with respect to a superintendent where the suspension was ordered by him. The findings and recommendations of the hearing officer conducting the proceeding shall be advisory and subject to final action by the board of education, each member of which shall before voting review the testimony and acquaint himself with the evidence in the case. The board may reject, confirm or modify the conclusions of the hearing officer.

d. Consistent with the federal gun-free schools act of nineteen hundred ninety-four, any public school pupil who is determined under this subdivision to have brought a weapon to school shall be suspended for a period of not less than one calendar year and any nonpublic school pupil participating in a program operated by a public school district using funds from the elementary and secondary education act of nineteen hundred sixty-five who is determined under this subdivision to have brought a weapon to a public school or other premises used by the school district to provide such programs shall be suspended for a period of not less than one calendar year from participation in such program. The procedures of this subdivision shall apply to such a suspension of a nonpublic school pupil. A superintendent of schools, district superintendent of schools or community superintendent shall have the authority to modify this suspension requirement for each student on a case-by-case basis. The determination of a superintendent shall be subject to review by the board of education pursuant to paragraph c of this subdivision and the commissioner pursuant to section three hundred ten of this chapter. Nothing in this subdivision shall be deemed to authorize the suspension of a student with a disability in violation of the individuals with disabilities education act or article eighty-nine of this chapter. A superintendent shall refer the pupil under the age of sixteen who has been determined to have brought a weapon to school in violation of this subdivision to a presentment agency for a juvenile delinquency proceeding consistent with article three of the family court act except a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20

of the criminal procedure law. A superintendent shall refer any pupil sixteen years of age or older or a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law, who has been determined to have brought a weapon to school in violation of this subdivision to the appropriate law enforcement officials.

EXHIBIT _____

CITY COURT INFORMATION

Arrest# 217AR0012796

CR# 217CR0045554

Date of Arrest 4/27/17 at 1205 hours

**THE PEOPLE OF THE STATE OF NEW YORK AGAINST
CARSON CONNERS**

DOB	02/02/98
Age	19
Offense	240.20 (1)
DISORDERLY CONDUCT	
SUB 1	
N/A	
VIOL	
Sector	HE
Prepared by	8143 JONES

IN THE STATE OF NEW YORK, CITY OF BIGTOWN: POLICE OFFICER BOBBIE JONES, BEING A MEMBER OF THE BIGTOWN POLICE DEPARTMENT, DEPOSES AND SAYS THAT ON OR ABOUT THE 27TH DAY OF APRIL 2017, AT OR ABOUT 12:00 NOON, AT BIGTOWN HIGH SCHOOL IN BIGTOWN, NEW YORK, THE DEFENDANT DID VIOLATE NEW YORK STATE PENAL LAW SECTION 240.20 (1).

P.L. §240.20 DISORDERLY CONDUCT. A PERSON IS GUILTY OF DISORDERLY CONDUCT WHEN, WITH INTENT TO CAUSE PUBLIC INCONVEIENCE, ANNOYANCE OR ALARM, OR RECKLESSLY CREATING A RISK THEREOF:

1. HE ENGAGES IN FIGHTING OR IN VIOLENT, TUMULTUTOUS OR THREATENING BEHAVIOR; OR
2. HE MAKES UNREASONABLE NOISE; OR
3. IN A PUBLIC PLACE, HE USES ABUSIVE OR OBSCENE LANGUAGE, OR MAKES AN OBSCENE GESTURE; OR
4. WITHOUT LAWFUL AUTHORITY, HE DISTURBS ANY LAWFUL ASSEMBY OR MEETING OF PERSONS; OR
5. HE OBSTRUCTS VEHICULAR OR PEDESTRIAN TRAFFIC; OR
6. HE CONGREGATES WITH OTHER PERSONS IN A PUBLIC PLACE AND REFUSES TO COMPLY WITH A LAWFUL ORDER OF THE POLICE TO DISPERSE; OR
7. HE CREATES A HAZARDOUS OR PHYSICALLY OFFENSIVE CONDITION BY ANY ACT WHICH SERVES NO LEGITIMATE PURPOSE. DISORDERLY CONDUCT IS A VIOLATION.

TO WIT: Your Deponent, while on duty as a school resource officer, observed, on closed-circuit television, the defendant CARSON CONNERS, DOB 2/02/98, engaging in tumultuous and violent conduct, as well as threatening behavior, causing alarm in a public place by repeatedly pushing an identified student in the school hallway and, when confronted by teacher Lauren Smith, by screaming and yelling in a threatening manner.

The above is based on information and belief, the basis for said information and belief being the observations of your deponent, and the supporting deposition of Lauren Smith, which is annexed hereto and made a part hereof.

*ANY FALSE STATEMENT MADE HEREIN IS PUNISHABLE AS A CLASS A MISDEMEANOR, PURSUANT TO SECTION 210.45 OF THE PENAL LAW.

SUBSCRIBED BEFORE ME THIS
27TH DAY of APRIL 2017

PO Bobbie Jones
PO BOBBIE JONES

SGT Remy Williams
SGT REMY WILLIAMS

This page left intentionally blank.

EXHIBIT _____

**POLICE DEPARTMENT, CITY OF BIGTOWN, N.Y.
SUPPORTING DEPOSITION**

INSTRUCTIONS: Deponent must place signature immediately after his/her narrative statement, which shall include a statement of non-permission when applicable. Police Officer will complete boxed area of form and will witness the deponent's statement by placing signature immediately below the deponent's signature.

Case Report No. 217CR0082495	D.D. No		Defendants Names if Known Carson Connors	Relationship of Deponent to Property
Date & Time of Deposition 04/27/17 1235 hours	Witness	Rank P.O.	Name Printed Jones	Serial No.

NOTICE

ANY FALSE STATEMENT MADE IN THIS DEPOSITION IS PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW.

I am Lauren Smith (D.O.B 5/17/1982). I have read and understand the above notice.

On the 27th day of April 2017 at or about 12:00 ()AM (X)PM, I saw Carson Connors repeatedly shove another student in the hallway of Bigtown High School. When I immediately confronted Carson and directed that s/he accompany me to the assistant principal's office, Carson ran away, screaming and yelling. I want Carson Connors arrested for his/her actions. I have given this statement to Officer Jones, and it is the truth.

Lauren Smith

LAUREN SMITH

PO Bobbie Jones

PO BOBBIE JONES

This page left intentionally blank.

**NEW YORK STATE
HIGH SCHOOL MOCK
TRIAL RELATED
CASES / CASE LAW AND
STATUTES**

PART VI

This page left intentionally blank.

CASES***People v. Pritchard, 27 NY2d 246 (1970)***

A deputy sheriff, moonlighting as a bouncer at a teenage dance club, arrested the 17-year-old defendant for fighting with another boy at the club. He was charged with, and convicted of, disorderly conduct (Penal Law, §240.20[1]). The Court of Appeals reversed the conviction, holding that the record failed to demonstrate conscious disruptive intent and was devoid of proof of recklessness such as to engender risk of disruption or disorder.

People v. Weaver, 16 NY3d 123 (2011)

The defendant sought to reverse his two convictions for disorderly conduct. He was arrested for causing a disturbance outside a hotel and a mini-mart, which were both open at the time of the incident, while engaging in a verbal altercation with his wife. The police officer, who happened upon the dispute, repeatedly told the defendant to quiet down and leave the area. The defendant argued that the evidence was legally insufficient to sustain the disorderly conduct convictions, claiming that his behavior did not have the requisite potential or actual ramifications related to a public disturbance because there was no proof that the altercation with his wife and the police officer attracted attention from, or annoyed, any bystanders. The Court of Appeals agreed with the People that the evidence, viewed in the light most favorable to the prosecution, was legally sufficient to establish the defendant's guilt beyond a reasonable doubt.

People v. Tichenor, 89 NY2d 769 (1997)

The Court of Appeals determined that the disorderly conduct statute is not unconstitutionally void for vagueness.

People v. Hill, 60 Misc.2d 277 (1969)

The county court, sitting as an intermediate appellate court, determined that the defendant, who had congregated in a park, was not guilty of disorderly conduct, since the evidence was insufficient to show that the conduct was public in nature and caused inconvenience, annoyance or alarm to a substantial segment of the public.

People v. M.R., 12 Misc.3d 671 (2006)

The information set forth that the defendant and a group of other young men were jumping up and down, jostling each other and making noise in a park. The court determined that the said information charging disorderly conduct was facially insufficient, since it failed to allege facts, either about the defendant's conduct or about the surrounding circumstances, to support an inference that the defendant possessed the culpable mental state, intending to create a public disturbance. Disorderly conduct statutes apply only where the offending conduct is reinforced by a culpable mental state to create a public disturbance (P.L. §240.20[1]).

Cuff ex rel. B.C. v. Valley Central School District, 677 F.3d 109 (2012)

Elementary school student was suspended for drawing in crayon, while in class, threats against the school. His parents brought an action against the school district challenging the student's suspension as violative of his First Amendment right of free expression. The court determined that the school officials could have reasonably concluded that the student's drawing would substantially disrupt the school environment and that the school's policy of zero-tolerance was not in violation of the First Amendment. See also ***S.G. ex rel. B.C. v. Valley Central School District, 677 F.3d 109 (2012)***

IMPORTANT NOTE:

Only the names and the citations of the relevant cases are provided here.

Please go to www.nysba.org/mtcaselaw to **view** and/or **print** the text of each case.

RELEVANT STATUTES

Penal Law §240.00 (L.1965. Amended L.1999; L.2000; L.2001; L.2017)

The following definitions are applicable to this article:

- (1). **“Public place”** means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, community centers, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

- (2). **“Transportation facility”** means any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle or any other method. It includes aircraft, watercraft, railroad cars, buses, school buses as defined in section one hundred forty-two of the vehicle and traffic law, and air, boat, railroad and bus terminals and stations and all appurtenances thereto.

- (3). **“School grounds”** means in or on or within any building, structure, school bus as defined in section one hundred forty-two of the vehicle and traffic law, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational or high school.

- (4). **“Hazardous substance”** shall mean any physical, chemical, microbiological or radiological substance or matter which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health.

- (5). **“Age”** means sixty years old or more.

- (6). **“Disability”** means a physical or mental impairment that substantially limits a major life activity.

Penal Law §240.20 [1] (L.1965)

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior

. . . .

Disorderly conduct is a violation.

Penal Law §70.15 [4] (L.1965. Amended L.1980; L.1981; L.1984; L.1993)

. . . .

(4). **Violation.** A sentence of imprisonment for a violation shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed fifteen days.

Penal Law §80.05 (L.1965. Amended L.1977; L.1984; L.1999)

. . . .

(4). **Violation.** A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding two hundred fifty dollars.

**NEW YORK STATE
HIGH SCHOOL MOCK
TRIAL APPENDICES**

This page left intentionally blank.

POINTS	MOCK TRIAL TOURNAMENT PERFORMANCE RATING GUIDELINES
1 Ineffective	<ul style="list-style-type: none"> ● Not prepared/disorganized/illogical/uninformed ● Major points not covered ● Difficult to hear/speech is too soft or too fast to be easily understood ● Speaks in monotone ● Persistently invents (or elicits invented) facts ● Denies facts witness should know ● Ineffective in communications
2 Fair	<ul style="list-style-type: none"> ● Minimal performance and preparation ● Performance lacks depth in terms of knowledge of task and materials ● Hesitates or stumbles ● Sounds flat/memorized rather than natural and spontaneous ● Voice not projected ● Communication lack clarity and conviction ● Occasionally invents facts or denies facts that should be known
3 Good	<ul style="list-style-type: none"> ● Good performance but unable to apply facts creatively ● Can perform outside the script but with less confidence than when using the script ● Doesn't demonstrate a mastery of the case but grasps major aspects of it ● Covers essential points/well prepared ● Few, if any mistakes ● Speaks clearly and at good pace but could be more persuasive ● Responsive to questions and/or objections ● Acceptable but uninspired performance
4 Very Good	<ul style="list-style-type: none"> ● Presentation is fluent, persuasive, clear and understandable ● Student is confident ● Extremely well prepared—organizes materials and thoughts well and exhibits a mastery of the case and materials ● Handles questions and objections well ● Extremely responsive to questions and/or objections ● Quickly recovers from minor mistakes ● Presentation was both believable and skillful
5 Excellent	<ul style="list-style-type: none"> ● Able to apply case law and statutes appropriately ● Able to apply facts creatively ● Able to present analogies that make case easy for judge to understand ● Outstandingly well prepared and professional ● Supremely self-confident, keeps poise under duress ● Thinks well on feet ● Presentation was resourceful, original and innovative ● Can sort out the essential from non-essential and uses time effectively ● Outstandingly responsive to questions and/or objections ● Handles questions from judges and attorneys (in the case of a witness) extremely well ● Knows how to emphasize vital points of the trial and does so
Professionalism of Team Between 1 to 10 points per team	<ul style="list-style-type: none"> ● Team's overall confidence, preparedness and demeanor ● Compliance with the rules of civility ● Zealous but courteous advocacy ● Honest and ethical conduct ● Knowledge of the rules of the competition ● Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; and strategies intended to waste the opposing team's time for its examinations.

This page left intentionally blank.

**2018 NEW YORK STATE MOCK TRIAL TOURNAMENT
PERFORMANCE RATING SCORE SHEET**

In deciding which team has made the best presentation in the case you are judging, use the following criteria to evaluate each team’s performance. **FOR EACH OF THE PERFORMANCE CATEGORIES LISTED BELOW, RATE EACH TEAM ON A SCALE OF 1 TO 5 AS FOLLOWS (USE WHOLE NUMBERS ONLY). INSERT SCORES IN THE EMPTY BOXES.**

SCALE	1=Ineffective	2=Fair	3=Good	4=Very Good	5=Excellent	Page 1 of 2
T I M E L I M I T S						
OPENING STATEMENTS		DIRECT EXAMINATION		CROSS EXAMINATION		CLOSING ARGUMENTS
5 minutes for each side		10 minutes for each side		10 minutes for each side		10 minutes for each side
				PLAINTIFF / PROSECUTION		DEFENSE
➤ OPENING STATEMENTS (ENTER SCORE) →						
PLAINTIFF/PROSECUTION 1st Witness	Direct and Re-Direct Examination by Attorney					
	Cross and Re-Cross Examination by Attorney					
	Witness Preparation and Credibility					
PLAINTIFF/PROSECUTION 2nd Witness	Direct and Re-Direct Examination by Attorney					
	Cross and Re-Cross Examination by Attorney					
	Witness Preparation and Credibility					
PLAINTIFF/PROSECUTION 3rd Witness	Direct and Re-Direct Examination by Attorney					
	Cross and Re-Cross Examination by Attorney					
	Witness Preparation and Credibility					

PLEASE BE SURE TO ALSO COMPLETE THE OTHER SIDE OF THIS FORM (PAGE 2)

SCALE	1=Ineffective	2=Fair	3=Good	4=Very Good	5=Excellent	Page 2 of 2
-------	---------------	--------	--------	-------------	-------------	-------------

T I M E L I M I T S

OPENING STATEMENTS	DIRECT EXAMINATION	CROSS EXAMINATION	CLOSING ARGUMENTS
5 minutes for each side	10 minutes for each side	10 minutes for each side	10 minutes for each side

		PLAINTIFF / PROSECUTION	DEFENSE
DEFENSE 1st Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
DEFENSE 2nd Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
DEFENSE 3rd Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		

➤ CLOSING STATEMENTS (ENTER SCORE→)		
--	--	--

<p style="text-align: center;">(1-10 points PER team)</p> ➤ PROFESSIONALISM (ENTER SCORE→) <ul style="list-style-type: none"> • Team’s overall confidence, preparedness and demeanor • Compliance with the rules of civility • Zealous but courteous advocacy • Honest and ethical conduct • Knowledge of the rules of the competition • Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; strategies intended to waste the opposing team’s time for its examinations. 		
---	--	--

➤ TOTAL SCORE (ENTER SCORE)→		
-------------------------------------	--	--

JUDGE’S NAME (Please print) →

In the event of a tie, please award one point to the team you feel won this round. Mark your choice below.

PLAINTIFF/PROSECUTION

DEFENSE

ORDER OF THE TRIAL

The trial shall proceed in the following manner:

- Opening statement by plaintiff’s attorney/prosecuting attorney
- Opening statement by defense attorney
- Direct examination of first plaintiff/prosecution witness
- Cross examination of first plaintiff/prosecution witness
- Re-direct examination of first plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second plaintiff/prosecution witness
- Cross examination of second plaintiff/prosecution witness
- Re-direct examination of second plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third plaintiff/prosecution witness
- Cross examination of third plaintiff/prosecution witness
- Re-direct examination of third plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Plaintiff/prosecution rests
- Direct examination of first defense witness
- Cross examination of first defense witness
- Re-direct examination of first defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second defense witness
- Cross examination of second defense witness
- Re-direct examination of second defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third defense witness
- Cross examination of third defense witness
- Re-direct examination of third defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Defense rests
- Closing arguments by defense attorney
- Closing arguments by plaintiff’s attorney/prosecuting attorney. There can be no deviation from this ordering.

Thank you,

Craig R. Bucki, Chair
 NYSBA’s Mock Trial Subcommittee

This page left intentionally blank.

PREPARING FOR THE MOCK TRIAL TOURNAMENT

Learning the Basics

Teachers and attorneys should instruct students in trial practice skills and courtroom decorum. You may use books, videos and other materials in addition to the tournament materials that have been provided to you to familiarize yourself with trial practice. However, during the competition, you may cite only the materials and cases provided in the Mock Trial Tournament materials contained in this booklet. You may find the following books and materials helpful:

Mauet, Thomas A., Trial Techniques (6th ed.), Aspen Law and Business Murray, Peter, Basic Trial Advocacy, Little, Brown and Company

Lubet, Steven, Modern Trial Advocacy, National Institute for Trial Advocacy

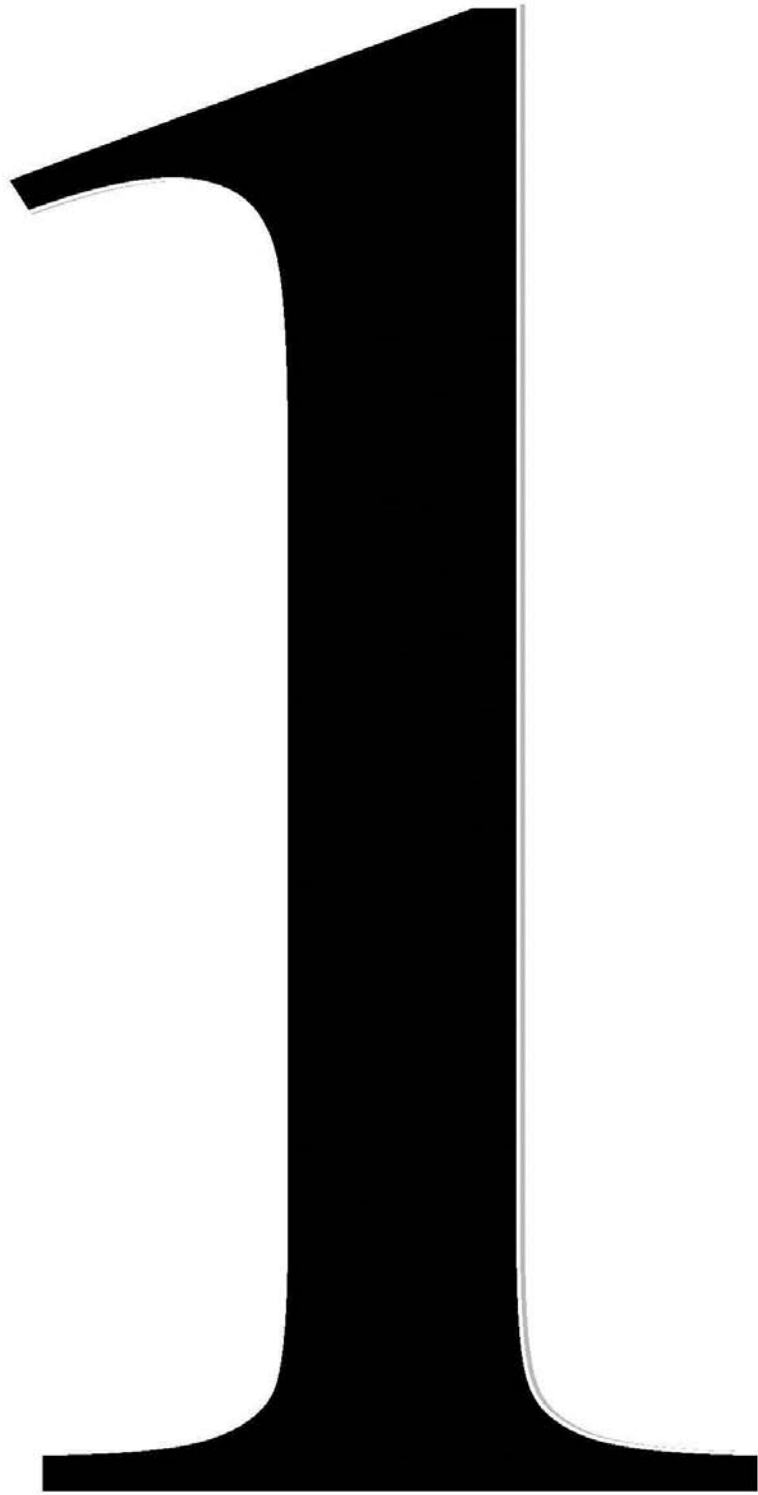
Vile, John R., Pleasing the Court: A Mock Trial Handbook (3rd ed.), Houghton Mifflin Company

Preparation

1. Teachers and attorneys should teach the students what a trial is, basic terminology (e.g., plaintiff, prosecutor, defendant), where people sit in the courtroom, the mechanics of a trial (e.g., everyone rises when the judge enters and leaves the courtroom; the student-attorney rises when making objections, etc.), and the importance of ethics and civility in trial practice.
2. Teachers and attorneys should discuss with their students the elements of the charge or cause of action, defenses, and the theme of their case. We encourage you to help the students, but not to do it for them.
3. Teachers should assign students their respective roles (witness or attorney).
4. Teams must prepare both sides of the case.
5. Student-witnesses cannot refer to notes so they should become very familiar with their affidavits and know all the facts of their roles. Witnesses should “get into” their roles. Witnesses should practice their roles, with repeated direct and cross examinations, and anticipate questions that may be asked by the other side. The goal is to be a credible, highly prepared witness who cannot be stumped or shaken.
6. Student-attorneys should be equally familiar with their roles (direct examination, cross examination, opening and closing statements). Student attorneys should practice direct and cross

examinations with their witnesses, as well as practice opening and closing arguments. Closings should consist of a flexible outline. This will allow the attorney to adjust the presentation to match the facts and events of the trial itself, which will vary somewhat with each trial. Practices may include a judge who will interrupt the attorneys and witnesses occasionally. During the earlier practices, students may fall “out of role”; however, we suggest that as your practices continue, this be done less and that you critique presentations at the end. Each student should strive for a presentation that is as professional and realistic as possible.

7. Each team should conduct a dress rehearsal before the first round of the competition. We encourage you to invite other teachers, friends and family to your dress rehearsal.



TIME LIMITS

OPENING STATEMENTS

5 minutes for each side

DIRECT EXAMINATION

10 minutes for each side

CROSS EXAMINATION

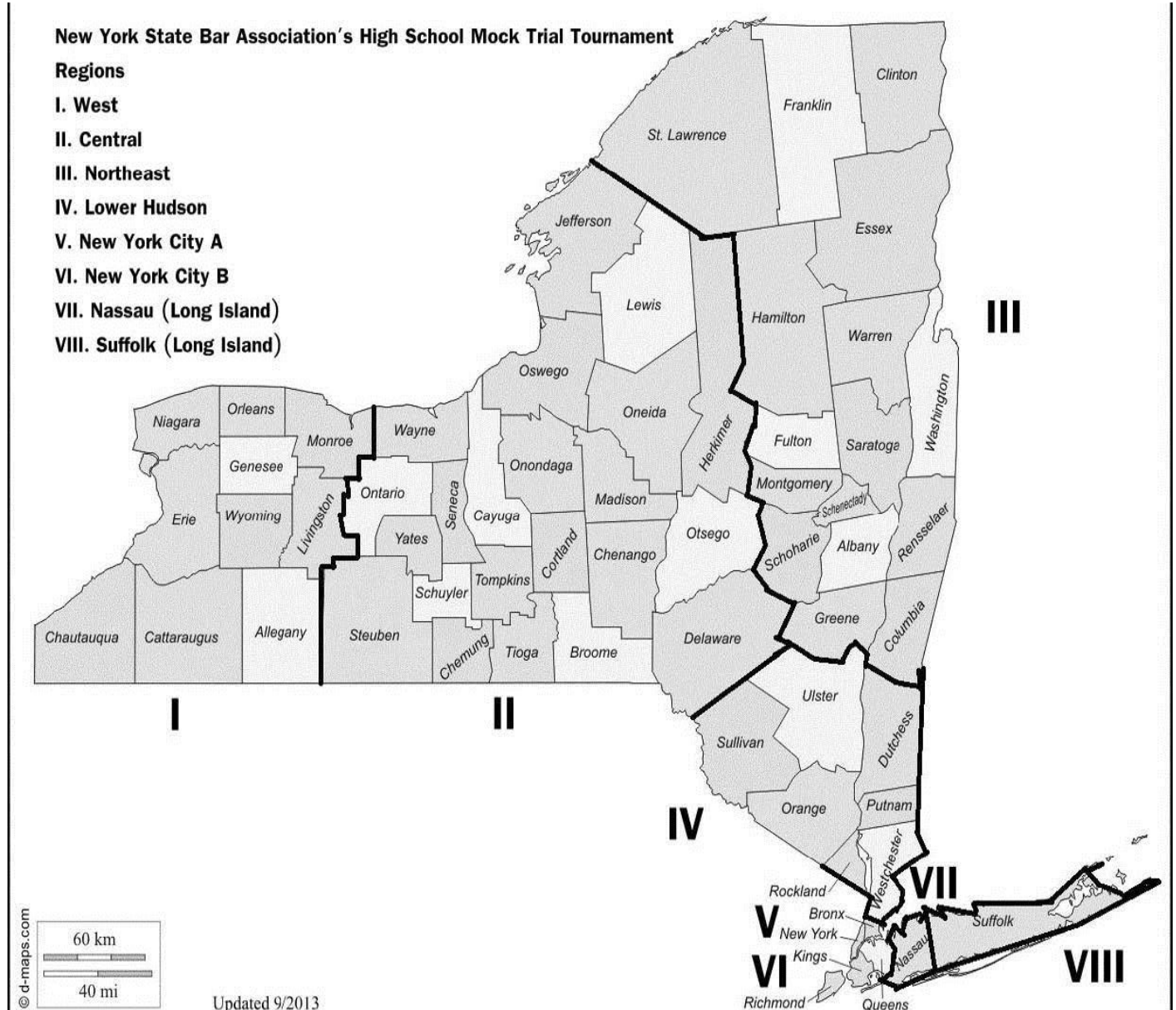
10 minutes for each side

CLOSING ARGUMENTS

10 minutes for each side

Regional Map for New York State Bar Association’s High School Mock Trial Tournament

A list of all the Past Regional Champions is available at www.nysba.org/pastchampions



2017 NEW YORK STATE BAR ASSOCIATION HIGH SCHOOL MOCK TRIAL CHAMPIONS



W. TRESPER CLARK HIGH SCHOOL *Westbury, NY / Nassau County*

Faculty Coach

Paul Henning

Attorney Coach

Allan Hyman, Esq.

Team Members

Bhavya Arora

Gulfam Dhillon

Stephen Gavrielidis

Alby Joseph

Stephanie Papoutsakis

Bryanna Resende

Megan Rodriguez

Avani Singh

Trenton Ullrich

The Honorable Mae A. D'Agostino Presiding

United States District Court Judge, Northern District of New York

May 23, 2017

A list of all the Past Regional Champions is available at www.nysba.org/pastchampions.

