

New York State  
**2012 Statewide High  
School Mock Trial  
Tournament Materials**

*People of the State of New York*

*vs.*

*P.J. Long*

Law, Youth and Citizenship  
New York State Bar Association®

*Materials prepared by the Law, Youth & Citizenship Program of the  
New York State Bar Association. Supported by  
The New York Bar Foundation*



**New York Statewide  
High School  
Mock Trial Tournament  
Regional Champions**

**2011**

Buffalo Academy of the Sacred Heart  
Seton Catholic Central  
**LEAH Schenectady Homeschool Team**  
Blind Brook High School  
Bronx High School of Science  
William Floyd High School

**2010**

Brighton High School  
Vestal High School  
LEAH Schenectady Homeschool Team  
Scarsdale High School  
**James Madison High School**  
William Floyd High School

**2009**

Pittsford Mendon High School  
Lehman Alternative Community School  
Madrid-Waddington Central School  
Rye Neck High School  
**Tottenville High School**  
W. Tresper Clarke High School

**2008**

Clarence High School  
Bishop Ludden Jr./Sr. High School  
Notre Dame-Bishop Gibbons High School  
Nyack High School  
Tottenville High School  
**East Islip High School**

**2007**

Clarence High School  
Vestal High School  
Potsdam High School  
Blind Brook High School  
**Bronx School for Law, Government and Justice**  
Bay Shore High School

**2006**

Buffalo Academy of the Sacred Heart  
Lehman Alternative Community School  
LEAH Schenectady Homeschool Team  
Blind Brook High School  
**Marymount High School of New York**  
William Floyd High School

**2005**

Buffalo Academy of the Sacred Heart  
Vestal High School  
Notre Dame-Bishop Gibbons High School  
Blind Brook High School  
James Madison High School  
**William Floyd High School**

**2004**

McQuaid Jesuit High School  
Union-Endicott High School  
Notre Dame-Bishop Gibbons High School  
Ramapo High School  
Tottenville High School  
**William Floyd High School**

**2003**

Albany Academy for Girls  
Hunter College High School  
Minisink Valley High School  
Vestal High School  
Williamsville North High School  
**W. Tresper Clarke High School**

**2002**

Pittsford-Mendon High School  
Vestal High School  
Coxsackie-Athens High School  
Ramapo High School  
**The Rabbi Joseph H. Lookstein Upper  
School of Rainaz**  
William Floyd High School

**2001**

St. Francis High School  
Chittenango High School  
Albany Academy for Girls  
Kingston High School  
The Kew-Forest School  
**William Floyd High School**

**2000**

**St. Francis High School**  
Norwich High School  
Notre Dame-Bishop Gibbons High School  
Sleepy Hollow High School  
The Kew-Forest School  
Roslyn High School

**1999**

Orchard Park High School  
Dewitt High School  
The Academy of the Holy Names  
Mt. Vernon High School  
Louis D. Brandeis High School  
**William Floyd High School**

**1998**

Allendale Columbia School  
Seton Catholic Central High School  
Scotia-Glenville High School  
John S. Burke Catholic High School  
The Rabbi Joseph H. Lookstein Upper  
School of Rainaz  
**Stella K. Abraham High School for Girls**

November 12, 2011

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

Thank you for participating in the 2011-12 New York State High School Mock Trial Tournament. This program, now in its 31<sup>st</sup> year, is sponsored by the New York State Bar Association's Committee on Law, Youth and Citizenship (LYC) and The New York Bar Foundation. The LYC would like to thank the numerous local bar associations across the state that sponsor mock trial tournaments in their counties and to the County Coordinators who spend many hours managing the local tournaments. The LYC also recognizes and thanks the many teacher-coaches and attorney-advisors who dedicate countless hours to students across the state. Most importantly, we want to extend a special thank you to all the students who devote their time and energy to preparing for the tournament. Their incredible performances, year after year, never cease to amaze us. Congratulations to Schenectady LEAH Homeschool Team, the 2010-11 New York State High School Mock Trial Tournament champions.

Please review carefully all of the enclosed mock trial tournament information, paying special attention to the rules of the competition and the simplified rules of evidence with which you must become familiar. This year's case, *People of the State of New York v. P.J. Long*, is a criminal case in which the defendant is charged with Assault in the Second Degree for allegedly striking the victim in the head with a lug wrench, aka tire iron, in the parking lot of a popular dance club.

The mock trial program is a competition that has two purposes. The first is to teach high school students basic trial practice 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. The level of skill shown by New York State students is extraordinary, and it is due to the dedication and hard work of both the students and their teacher-coaches and attorney-advisors.

The second and most important purpose of this competition is to teach professionalism. Students learn ethics, civility and how to be zealous but courteous advocates for their clients. Good sportsmanship and respect for all participants are central to this competition. We thank all of our coaches, advisors and judges not only for the skills that they teach, but for the example of professionalism they model for students throughout this tournament.

Please note that the witness category of the scoring sheet has been changed this year: it now reads "**Witness Preparation and Credibility**" instead of "**Witness Performance.**" This change was implemented to emphasize the important role witnesses have, which extends beyond acting, and requires extensive preparation and knowledge of the facts. Witnesses are crucial to the case, and must have a sufficient understanding of the facts to be properly prepared to answer questions from the opposing side which cannot easily be anticipated or predicted. While "playing the part" is important, and the Mock Trial participant should exercise his or her creative liberties and "get into the character" of the witness, it is also important that the witnesses come across as credible and believable, as in any courtroom. We hope that this change will acknowledge the challenges witnesses face and their importance to Mock Trial, and that it will also clarify that the

witnesses' presentation and demeanor should convey believability, rather than mere showmanship.

In order to address another issue that has been of concern to many of the teams, there has also been a rule change, Part I, Rule 14, part b, now states: The judges have been instructed to adhere as closely as possible to the above time limits and that an abuse of the time limits should be reflected in scoring. *Specifically, although leeway may be given based upon time consumed by an opposing attorney's objections and resulting argument, an attorney should be penalized for repeatedly posing frivolous objections.*

There has been an addition to the General Policies section that has been made in order to ensure that tournament rounds are consistent throughout the levels of play from local to states. This addition is in Part II, General Policies and reads: **e. For all tournament rounds, one judge will be utilized for trial re-enactments.**

Please be sure to take note of these changes and make sure the teams and judges are clearly aware of them as well.

The tournament finals will be held in Albany on May 21 and 22, 2012. The team that is successful in achieving the regional championship in each of the six mock trial regions will be invited to participate in the finals. The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days that the team participates in the tournament finals in Albany. Regional teams consist of the nine students, teacher coach, and attorney advisor whose expenses will be paid by the New York Bar Foundation. If a school can cover the additional room and board costs, the entire team is invited to attend as well.

This year's Mock Trial Tournament materials will be posted on the Law, Youth and Citizenship website, [www.lycny.org](http://www.lycny.org). There will also be updates posted on the Mock Trial blog, [www.nysbar.com/blogs/mocktrial](http://www.nysbar.com/blogs/mocktrial). Be sure to "like" the Facebook page too, under NYS Mock Trial and Mock Trial Summer Institute. We also have a Twitter feed, @NYSMockTrial. Throughout the competition, you should check the website and the other sites for important announcements about the competition.

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

Sincerely,



Richard Bader, Esq. Albany  
Chair, Committee on Law, Youth and Citizenship

*Oliver C. Young*

Oliver C. Young, Esq., Buffalo  
Chair, Mock Trial Subcommittee

Subcommittee Members:

Craig R. Bucki, Esq., Buffalo  
Karen Callahan, Esq. New York City  
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Susan Katz Richman, Esq., Long Island  
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## 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 participants in the Mock Trial Tournament, including students, teachers, and attorneys:

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. Whether orally or in writing, lawyers should avoid vulgar language, disparaging personal remarks or acrimony toward other counsel, parties or witnesses.
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.*

# 2011-2012 Mock Trial Case Materials

## Table of Contents

<b>Part I:</b>	<b>Tournament Rules.....</b>	<b>page 9</b>
<b>Part II:</b>	<b>Tournament Policies and Procedures.....</b>	<b>page 13</b>
<b>Part III:</b>	<b>Simplified Rules of Evidence and Procedure.....</b>	<b>page 19</b>
<b>Part IV:</b>	<b>Trial Script.....</b>	<b>page 37</b>
<b>Part V:</b>	<b>Mock Trial Case Official Exhibits.....</b>	<b>page 61</b>
<b>Part VI:</b>	<b>Related Law.....</b>	<b>page 77</b>

### **APPENDICES:**

- A. Statewide Mock Trial Regions (Map)**
- B. Mock Trial Tournament Performance Rating Guidelines**
- C. Mock Trial Tournament Performance Rating Sheet**
- D. Mock Trial Summer Institute Page**

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## 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 (6<sup>th</sup> 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 (3<sup>rd</sup> 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.



# PART I

## NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT RULES

### General Information

#### 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. 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.

#### 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. A witness may talk to his/her student attorney during a recess or during direct examination but not during 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:
  1. 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.*
  2. The judge consents before the beginning of the trial.
  3. 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.
  4. A copy of the video or audio tape must be furnished to the opposing team (at no cost) within 48 hours after the trial.
  5. 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.

## 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.

## 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 enactment. No costumes or props may be used.
- f. 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) and (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. TIME LIMITS

- a. The following time limits apply:

Opening statements	5 minutes for each team
Direct examination	7 minutes for each witness
Cross examination	5 minutes for each witness
Closing arguments	5 minutes for each team

- b. The judges have been instructed to adhere as closely as possible to the above time limits and that an abuse of the time limits should be reflected in scoring. *Although leeway may be given based upon time consumed by an opposing attorney's meritorious objections and resulting argument, an attorney should be penalized for repeatedly posing frivolous objections.*

## 15. TEAM ATTENDANCE AT STATE FINALS ROUND

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

## **PART II**

# **NEW YORK STATE HIGH SCHOOL 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. Volunteer 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.
- l. 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.
- m. The judge must take judicial notice of the Statement of Stipulated Facts and any other stipulations.
- n. 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 C) after each performance, while the enactment is fresh in their minds. Judges should be familiar with and use the performance rating guidelines (Appendix B) 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 and signals

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 six regions:

Region #1: West

Region #2: Central

Region #3: Northeast

Region #4: Lower Hudson

Region #5: New York City

Region #6: Long Island

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

### 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 points. All 2-0 teams automatically advance; teams with a 1-1 record advance based on total number of points; if any spots remain open, teams with a record of 0-2 advance, based on their total number of points.
- 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 Stacey Whiteley, the New York State Coordinator, 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. Volunteer 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.
- a. 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.
- b. All mock trial rules and regulations and criteria for judging apply, at all levels of the Mock Trial Tournament.
- c. 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.
- d. 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 only to pay for up to nine students, one teacher coach and one attorney-advisor for each team. Students are up to four to a room. Regional teams consist of the nine students paid for by The New York Bar Foundation. However, as

we have done in the past, if schools can cover additional costs for transportation and room and board, all members of a team are welcome to attend the State Finals.

- b. Additional students and adults attending the State Finals will not be reimbursed for their expenses. The cost of those students' and adults' rooms will not be covered by the New York Bar Foundation grant or the LYC Program. The State Coordinator will not be 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, every attempt will be made to pass along any special hotel rates to these other participants. Additional students and adults attending the State Finals may participate in organized meal functions but will be responsible for paying for their participation.
- c. Teacher-coaches proceeding to the State Finals must communicate all special dietary requirements and the total number of persons attending to the State Coordinator within 72 hours before the tournament.
- d. 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.
- e. 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.
- f. The final enactment will be a single elimination tournament. Plaintiff/prosecution and defendant will be determined by a coin toss by the tournament director. All teams invited to the State Finals must attend the final trial enactment.
- g. A judge will determine the winner. The judge's decision is final.

## **7. MCLE CREDIT FOR JUDGES AND ATTORNEY-ADVISORS**

The LYC Program applies for MCLE credit for attorneys participating in the New York State high school mock trial program. All paperwork is submitted to the MCLE board after the State Finals are held in May. Coordinators and the LYC Program must follow the following procedures:

- a. County Coordinators receive and disseminate the appropriate forms to attorneys and judges that participate in their counties.
- b. The County Coordinators will collect all forms from attorneys who participated in the Mock Trial Tournament during the current year, complete the cover form and return it to the State Coordinator within 6 days of the completion of their final round of the tournament.

- c. The State Coordinator compiles all of the forms and submits them to the MCLE board within 7 days of the completion of the State Finals.
- d. Once the tournament has been accredited, certificates will be generated by MCLE staff at the NYSBA and mailed to attorneys.
- e. According to MCLE rules, each attorney-judge or attorney-coach may earn CLE credits by participating in a specific activity. That is, an attorney-judge earns credits for trial time only; an attorney coach earns credit for time spent working with students only, which does not include the advisor's personal preparation time. A maximum of three (3) CLE credits may be earned for judging or coaching mock trial competitions during any one reporting cycle, i.e., in a two-year period. Finally, an attorney who has been admitted to the New York State Bar in the last two years **MAY NOT** apply for this type of CLE credit.

## **PART III**

# **NEW YORK STATE HIGH SCHOOL MOCK TRIAL 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.

### **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.

### **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 manner 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 unduly 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.*

## **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 an 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: Questions that have already been asked of and answered by a witness should not be asked again and may be objected to by opposing counsel.

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."*

**HEARSAY**

Understanding and applying the Hearsay Rule (Rule 401), and its exceptions (Rules 402, 403 and 404), 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)?*

## 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 is perceiving that event.*

## **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 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 eye sight.*

## **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 has 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.*

NOTE: 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:

- a. Have exhibit marked for identification. *“Your Honor, please mark this as Plaintiff’s Exhibit 1 (or Defense Exhibit A) for identification.”*
- b. 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?”*
- c. Ask witness questions about the exhibit, establishing its relevancy, and other pertinent questions.
- d. Offer the exhibit into evidence. *“Your Honor, we offer Plaintiff’s Exhibit 1 (or Defense Exhibit A) into evidence at this time.”*
- e. Show the exhibit to opposing counsel, who may make an objection to the offering.
- f. The Judge will ask opposing counsel whether there is any objection, rule on any objection, admit or not admit the exhibit.
- g. 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: *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 and any time spent on *voir dire* will be deducted from the time allowed for cross examination of that witness.

#### **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.”*

**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 need 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).



**PART IV**  
**NEW YORK STATE HIGH SCHOOL MOCK TRIAL**

**TRIAL SCRIPT**

*The facts of this case are hypothetical. Any resemblance between the person, facts and circumstances described in these mock trial materials and real persons, facts and circumstances is coincidental.*

*All witnesses may be portrayed by either sex. All witness names are meant to be gender non-specific. It is stipulated that any enactment of this case is conducted after the named dates in the stipulated facts and witness affidavits.*

*Written and edited by the Mock Trial Subcommittee of the New York State Bar Association's Law, Youth and Citizenship Committee.*





## CASE SUMMARY

### **People v. P.J. LONG**

Queen's County Indictment No. 2011-01234

P.J. Long, now 22 years old, is a resident of Pew Gardens in Queens County, New York. Last year, at the age of 21, s/he was charged with criminal assault. The victim is Dana Malone, also 21 years old at the time. On March 18, 2011, s/he was assaulted outside a hip-hop establishment frequented by teenagers and young adults called The Joint. The music is mostly rap and very loud. Dana did not see who attacked him/her. S/he remembers hearing, just before being struck from behind, a voice sounding similar to the defendant reciting the lyrics of a song by gangsta rapper DJ ColdBlooded. The lyrics Dana heard were:

*If the sucka gets in my way,  
he is gonna have to pay,  
that all for now I gotta say,  
end of this rotten day.*

*With the tire iron from my trunk  
I will deploy in multiple phases  
and the sucka I am sure  
will soon be pushing up daisies.*

from the song entitled "The Sucka Gotta Die" from the album Total Chaos by DJ ColdBlooded.

DJ ColdBlooded is a Grammy-award winning artist who is very popular with the hip-hop crowd. Ryan Tecrest, a friend of Dana's since middle school, had observed P.J. sitting in his/her car about 90 minutes before the attack, and P.J. was listening over and over to DJ ColdBlooded's song "The Sucka Gotta Die." Ryan likes to hang out at The Joint with Dana and their friends. They also spend a lot of time at Gamez & More on Broadway playing video games. About two years ago, Ryan was arrested for Unauthorized Use of a Vehicle in the Third Degree. The owner of the automobile left the car running when he went into Javabuck's to purchase a cup of coffee. Ryan took the car for a joy ride around town, picking up friends along the way. S/he pleaded guilty and received a conditional discharge.

About 30 minutes before the attack upon Dana, s/he was inside The Joint and had accidentally bumped into the defendant, causing P.J. to spill his/her drink. Although Dana did not intend to bump P.J., Dana did not apologize and told P.J. to "watch it!" Dana then shouted across the room, telling Ryan that they needed to leave The Joint in about 30 minutes. Ryan told Dana that s/he would meet him/her at the car. At approximately 9:00 p.m., while outside The Joint and going to his/her car, Dana was struck from behind by someone wielding a blunt-force metal object. Dana was rendered temporarily unconscious and did not see his/her attacker. Ryan was just exiting The Joint to get a ride with Dana and saw his/her friend on the ground. Ryan also saw someone with what appeared to be a lug wrench, a/k/a tire iron, in his/her hand running away. Ryan could not see the alleged attacker's face, but observed that the person was of similar stature to P.J. and may have been wearing a black leather jacket similar to the one P.J. was wearing that night. The jacket is one of those unisex leather coats with a large white eagle in the

back that is popular with the young adult crowd. As Dana was regaining consciousness, Ryan asked him/her what had happened. Dana said, "I think that dirtbag P.J. Long clocked me." Because s/he had to care for Dana, Ryan could not chase after the assailant. Instead, Ryan helped Dana to his/her feet and drove him/her to the hospital for observation and treatment. Fifteen stitches were required to close the gash in the back of Dana's head.

While in the hospital, Dana was visited by police officer Bobby Callahan. Dana and Ryan told Officer Callahan what had happened to Dana and who they believed the perpetrator to be. Officer Callahan had had many run-ins with P.J. Long over the years, having arrested P.J. on numerous occasions for minor criminal infractions. The officer did not like P.J. because P.J. had filed a complaint against the officer in May 2009 for Tasing him/her during an arrest for one of those minor infractions. Internal Affairs determined that the officer had not committed a crime in using the Taser, but did put a letter of reprimand in his/her personnel file admonishing the officer for using the Taser in that instance. Officer Callahan believes the admonishment letter has prevented him/her from being promoted to detective.

Perceived as a "hothead" around the station house, Officer Callahan has had a rocky relationship with the department command. The officer has had many citizen complaints lodged against him/her over the 15 years on the police force. S/he has appeared before Internal Affairs on at least ten occasions. Although s/he is an honest cop, s/he likes to make arrests and will "push the envelope" to do so. S/he likes to use his/her own techniques in catching criminals and prefers to work alone, having turned down offers to be assigned a partner. Some suspect s/he does not want a partner so that s/he can use his/her "special techniques" in making arrests without scrutiny from other officers.

On the evening of March 18, Sal Maurder, P.J.'s best friend and roommate, noticed at about 10:00 p.m. that P.J. was no longer in The Joint. S/he asked several of their friends where P.J. had gone. No one knew. At approximately 10:30 p.m., Sal, whose nickname is Murda, went to their apartment to look for P.J. S/he found P.J. in the apartment sitting in a chair and repeatedly listening to his/her favorite song "The Sucka Gotta Die." Murda recalls that P.J. may have replayed the song three or four times before they left the apartment at 11:00 p.m. to go to the gaming parlor on Broadway.

Officer Callahan took statements from Dana and Ryan and proceeded to his/her precinct to prepare a felony complaint charging P.J. for Assault in the Second Degree, a class D felony. On the morning of the next day (March 19, 2011), Officer Callahan went to the Criminal Court in Pew Gardens to file the felony complaint and to obtain an arrest warrant. With the arrest warrant in hand, Officer Callahan went to P.J.'s apartment in the late afternoon of March 19 to execute the warrant. No one was home. The officer then went to The Joint early that evening to look for P.J. S/he asked the owner of The Joint, Max Miller, whether s/he had seen P.J. that day. Max has had trouble with the State Liquor Authority (SLA) over the years. Teenagers come to The Joint for the music and to socialize with their friends. They are not permitted to purchase alcoholic drinks, although it is widely known that drinking-age clientele will sometimes provide liquor to the teenagers. Max has been fined by the SLA for allowing teenagers to consume liquor on his/her premises. The Joint does check IDs before serving liquor, but Max could use more bouncers to make sure underage drinking is not occurring there. Max is trying to

run a legitimate business; however, the young crowd attracted to The Joint causes many problems. Max could legally exclude the under-21 patrons from The Joint, but s/he would lose significant income from the over-priced soft drinks and energy drinks that these young people purchase. The loss of this income could result in The Joint closing its doors.

Max wanted to know why the officer was looking for P.J. Officer Callahan told Max that P.J. had assaulted Dana in The Joint's parking lot the night before and that s/he had a warrant for his/her arrest. Always concerned about his liquor license, Max said that s/he was not aware of anyone being attacked in the parking lot, but that s/he did remember P.J. being in The Joint last night and that P.J. and Dana had an altercation. However, Max said that s/he did not believe that P.J. would attack someone like that. The SLA had investigated a stabbing in The Joint that had taken place in September of 2010. The SLA warned Max that future criminal conduct or underage drinking could result in a revocation of The Joint's liquor license. Without its liquor license, The Joint would have to shut down. Max told the officer that P.J. had not been in The Joint on March 19, 2011, at all. Officer Callahan told Max that if s/he is covering for P.J., there would be consequences. The officer was aware of Max's troubles with the SLA.

Upon leaving The Joint, Officer Callahan saw Murda in the parking lot and walking toward the establishment. Officer Callahan knew that Murda is P.J.'s best friend. S/he knew that Murda lives with P.J. in an apartment in a rundown building on Dodge Street near Broadway. As the officer was exiting The Joint, Murda saw Officer Callahan, turned around quickly and proceeded to run away. Officer Callahan gave chase and tackled Murda to the ground.

Murda, age 22, dropped out of high school in the eleventh grade. S/he works odd jobs to support himself/herself. Murda received his/her GED while serving time in the Queens County Correctional Facility. S/he had been charged in 2009 with Assault in the Second Degree, having used a lug wrench a/k/a tire iron to viciously beat a helpless victim. S/he pleaded guilty to the lesser crime of Assault in the Third Degree and received a one year sentence. Despite the nickname, Murda has never really killed anyone, although most people who know him/her believe s/he is fully capable. S/he has a quick temper.

Officer Callahan asked Murda why s/he was running. Murda said you know why. The officer said why don't you tell me. Murda told the officer s/he thought there was an arrest warrant out on him/her for repeatedly jumping the turnstiles at the subway station. Callahan sarcastically said, "That's a likely story." According to Officer Callahan, no arrest warrants are ever issued for turnstile jumping. Officer Callahan said to Murda, "I know why you were running. Now, tell me where P.J. is or I might have to use my Taser." Murda said s/he did not know where P.J. was. As the officer was reaching for the Taser, Murda said s/he saw P.J. in the gaming parlor on Broadway about an hour ago. The officer also asked Murda to tell him/her about the attack on Dana. Murda denied having any knowledge of the attack. S/he further stated that s/he did not care about Dana and his/her friends and that Dana deserved what s/he got.

Officer Callahan proceeded to the gaming parlor and arrested P.J. without incident. P.J. was indicted on the charge of Assault in the Second Degree and is out on bail.

**Stipulations**

1. All witness statements are sworn and notarized.
2. All items of evidence are eligible for use at trial, following proper procedure for identification and submission.
3. No other stipulations shall be made between the plaintiff/prosecution and the defense, except as to the admissibility of evidentiary exhibits provided herein.
4. The Yaz jacket advertisement exhibit in Part V of the materials was placed in the Pew Gardens' Daily Express newspaper on Black Friday, November 26, 2010.
5. The picture of the lug wrench in Part V of the materials is a photograph of the lug wrench that was discovered by Officer Callahan near The Joint. It is not stipulated that this is the weapon used in the alleged assault.
6. The forensic report exhibit in Part V of the materials is original and was prepared by Crime Scene Investigator IV, Horatio Caine.
7. The Joint parking lot exhibit in Part V of the materials was prepared by Officer Callahan lot on March 28, 2011 as part of the investigation of the alleged assault that took place in The Joint's parking lot on March 18, 2011.

**Witnesses:**

For the Prosecution:

**Dana Malone**, the victim

**Ryan Tecrest**, victim's friend

**Bobby Callahan**, the arresting police officer

For the Defense:

**P.J. Long**, the defendant

**Max Miller**, owner of The Joint

**Sal Maurder** (a/k/a **Murda**), defendant's friend

*Please note, the foregoing summary of the case is provided solely for the convenience of the participants in the Mock Trial Tournament. This overview itself does not constitute evidence and may not be introduced at trial or used for impeachment purposes.*

STATE OF NEW YORK  
SUPREME COURT : QUEENS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

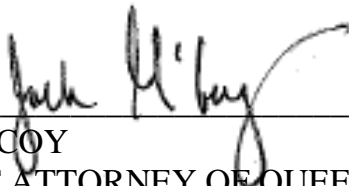
Indictment No. 2011-01234

P. J. LONG,

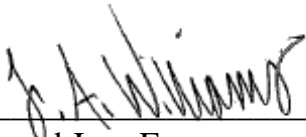
Defendant

THE GRAND JURY OF THE COUNTY OF QUEENS, by this  
indictment, accuses P. J. LONG of the following crime:

ASSAULT IN THE SECOND DEGREE, in that s/he, the said P. J.  
LONG, on or about the 18<sup>th</sup> day of March 2011, in this County and State, with  
intent to cause physical injury to another person, caused such injury to Dana  
Malone by hitting him/her over the head with a dangerous instrument, to wit: a lug  
wrench.

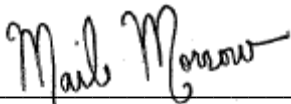


JACK McCOY  
DISTRICT ATTORNEY OF QUEENS COUNTY



Grand Jury Foreperson

FILED: Queens County Clerk's Office  
April 11, 2011



Court Clerk, Arraignment Part



Affidavit of Dana Malone  
Complainant

1. My name is Dana Malone, I am 21 years old. I live with my parents at 259 Hill Drive in Pew Gardens, New York. I work part time as a cashier at a local gas station convenience store. I am the victim of a vicious and cowardly attack by P.J. Long on March 18, 2011.
2. I was leaving my favorite hangout, The Joint, on March 18th at approximately 9:00 p.m. So, I am in the parking lot and walking to my car when I hear someone who sounds like P.J. singing the lyrics to a disgusting song by an even more disgusting rapper called DJ ColdBlooded. The song is "The Sucka Gotta Die" from the album Total Chaos. The lyrics I heard P.J. singing are:

*If the sucka gets in my way,  
he is gonna have to pay,  
that all for now I gotta say,  
end of this rotten day.*

*With the tire iron from my trunk  
I will deploy in multiple phases  
and the sucka I am sure  
will soon be pushing up daisies.*

I don't care for rapper DJ ColdBlooded and would never buy any of his music. His music is played on the radio all of the time and many of my friends have this album.

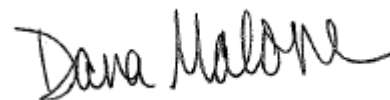
3. I hear from behind me P.J. singing the song as I am walking to my car and I don't think anything of it. Then all of a sudden P.J. strikes me in the back of my head with a very hard object. I apparently lose consciousness for a few seconds and the next thing I remember is being helped to sit up by my best friend, Ryan Tecrest. Ryan saw someone running away who was about the same height and weight of P.J. and wearing a black leather jacket with a big white eagle on the back similar to the one P.J. was wearing on the night of March 18. Now, I know a lot of people have a similar jacket, but the only person I remember wearing a leather jacket in The Joint on March 18 was P.J.
4. Ryan had thought about giving chase to P.J., but did not want to leave me. S/he helped me to sit up and asked me what had happened. I said to Ryan, "I think that dirtbag P.J. Long clocked me." S/he then helped me to stand and to walk to my car. Using my car, Ryan drove me to the emergency room of Queens County Medical Center. It took 15 stitches to close the gash in the back of my head.
5. Before I was released from the hospital, police officer Bobby Callahan came to my room. Someone on the hospital staff must have called the police based on what Ryan and I had told

the staff. I told Officer Callahan what had happened. I told him/her about the minor incident earlier in the evening at The Joint when I accidentally bumped into P.J., causing him/her to spill his/her drink. I said that I may have told P.J. to “watch it,” but I did not mean anything negative about it, just suggesting that everyone be careful. You should have seen the look P.J. gave me. If looks could kill, I would have been dead at that instant. I told Officer Callahan that I offered to buy P.J. another drink, but s/he declined my kind gesture. Some people just prefer to make trouble. I told the officer that at about 8:30 p.m. I yelled to Ryan from across the room that I would be leaving The Joint in about thirty minutes and to meet at my car that was parked near the front entrance of The Joint. Ryan said sure. I did in fact leave at about 9:00 p.m. and that is when P.J. attacked me.

6. Ryan told Officer Callahan that the person s/he saw running away looked like P.J. from the rear and the person was carrying what looked like a tire iron. Ryan also told the officer that s/he had seen P.J. around 7:30 p.m. on March 18 sitting in his/her car parked in The Joint’s parking lot listening over and over again to the song “The Sucka Gotta Die.” The officer said s/he was not surprised that P.J. would attack someone in this cowardly manner and that s/he has had many run-ins with P.J. over the years. The officer thanked us for providing the information and said that s/he would see to it that P.J. is put away for a long time for this shameful act.
7. I am sure P.J. is the person that attacked me. Any suggestion that it was someone else like Shannon Taylor, for instance, is off base. I have had my differences with Shannon. He claims that I have been spreading a rumor that he was stealing money from his employer, Pizza Galore. I believe he was recently fired. I did not start the rumor and have not repeated it. Besides, I did not see Shannon in The Joint on March 18, and would have remembered that if I did.
8. Anyway, Shannon is not a coward like that P.J. and would not hit someone from behind. P.J. and people like him/her, who listen to all of that gangsta rap crap, sometimes act out some of the things they hear. I like rap music like many young people, but I can do without that gangsta rap stuff. That kind of music is a bad influence. See what P.J. did to me!

To the best of my knowledge, the above is true.

Dated: Pew Gardens, New York  
December 12, 2011



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Dana Malone



Affidavit of Ryan Tecrest  
Friend of Complainant

1. My name is Ryan Tecrest and I am 22 years old.
2. Since graduating high school in May 2007, I've been living with my parents and attending Queens Community Technical's two-year hair stylist program. I don't go every quarter, but I'll finish eventually.
3. When I graduate, I don't know how long I'll stick around Queens. New York is good for hair, but I bet I'll be good enough to go to L.A. I'm really into the celebrity and music scene and just recently started listening to more rap music at this place I hang out at. The music is so loud you can hardly understand half of it, but I'm starting to pick it up. I hope if I really get to know the music, I can start making connections and styling hair for music video shoots and stuff.
4. When I'm not studying to be a stylist, I like to play video games at Gamez & More. Gamez & More is a super sweet, modern arcade on Broadway in Pew Gardens. Gamez & More has a pretty intense set up, and a lot of serious gamers play nonstop. But it's not some low-key, loner group of video game players, these people know how to party. You'll always see a lot of action on a night at Gamez & More. I also spend a lot of time hanging out with my friends at The Joint. I'm at one of those two places--or sometimes both--practically every night. Sometimes I'm even surprised I have any time for school, life's just one long blur of partying.
5. The Joint is owned and run by this guy/girl named Max Miller. S/He pretends to get so mad at me and my friends because s/he says we are "bad influences" on the teenagers that hang out there, but I know s/he's cool. The Joint's always packed, the music is always loud, and there's not a lot of crowd control trying to keep us from having a good time. Things get so crazy. There was even an attack at The Joint sometime in the fall of last year. And now my friend Dana Malone got attacked there, too.
6. Dana Malone and I have been best friends and partners in crime since middle school. Actually, Dana and I even kept each other out of detention in middle school because one of us could goof off and the teachers would never know who to blame. We certainly weren't going to help them out. It's really messed up what happened to Dana.
7. On this one day in the middle of March, I was hanging out at Gamez & More when I decided to go over to the Joint to wait for Dana and our crew to get there. Dana had told me earlier that s/he wasn't planning on staying out late that night and I wanted to be sure I didn't miss him/her. That's the night that someone attacked Dana. I know it was P.J. Long who did it. That punk heard Dana tell me what time we should meet at the car, Dana yelled it across the room, she even said where the car was parked, so P.J. Long knew Dana would be waiting for me there. By the time I walked out to meet Dana, Dana was already on the ground and I saw that coward P.J. making a break for it with something in hand, I think it was a tire iron. I couldn't see P.J.'s face, but the person who

was running wore a dark leather jacket with a large white eagle on the back that looked just like P.J.'s and the person was the same height and size.

8. When Dana finally came to, I asked what happened, but all Dana said was, "I think that dirtbag P.J. Long clocked me." If that cheapskate Max had lights in the parking lot, this attack on Dana wouldn't have happened. All Max has is this little floodlight on the right side of the front entrance to the bar. It's hardly enough to light up the front of the building, let alone the surrounding area. Someone should file a complaint with the State Liquor Authority about this.
9. Even if I hadn't seen someone who looked like P.J. sprinting away, I just know P.J.'s the kind of person to attack someone. I got to the Joint at about 7:30 p.m. and when I was cutting through the parking lot from its back entrance, I noticed P.J. blasting this song called "The Sucka Gotta Die" over and over in his car. That song's just aggressive. Also, no one saw P.J. in The Joint after Dana was attacked. Explain that.
10. I don't know if I'm more annoyed that P.J. beat up Dana, or that I had to talk to the 5-0 because of it. After I drove Dana to the hospital, we had to tell Officer Callahan what happened. We let him know P.J. was the attacker and exactly where P.J.'s car was parked on that evening. I've got to admit, if I ever have to deal with a cop again, I hope it's Officer Callahan. That guy/lady was so laid back and easy to talk to, I almost forgot s/he carried handcuffs.
11. I've got a criminal record but nothing like P.J. Long has or his/her roommate Murda. I was arrested two years ago for what the cops said was "Unauthorized Use of a Vehicle in the Third Degree," whatever that means. This dude left his car running when he was in Javabuck's buying some \$10 cup of coffee or something, so I took it for a little trip. I drove around town and picked up a few of my friends, nothing major. I ended up pleading guilty and got off with a conditional discharge. It was totally worth it. And it's not like the Javabuck's guy couldn't spare a little extra gas.

To the best of my knowledge, the above is true.

Dated: Pew Gardens, New York  
December 29, 2011

  
\_\_\_\_\_  
Ryan Tecrest

Affidavit of Bobby Callahan  
Police Officer

1. My name is Bobby Callahan. I am a police officer for Pew Gardens in Queens County in the State of New York.
2. I have proudly served on the force for 15 years.
3. My integrity is without fault. I am an honest officer, despite having had to appear in front of Internal Affairs on at least ten occasions. Anyway, my honesty has never been an issue.
4. I have a reputation in the station as being a bit of a “hothead” due to the run-ins I have had with the department command. I like to use my own techniques in catching criminals and protecting the public. I have received directives from the command to use the traditional techniques, but I find my way to be more effective in combating crime. I am a police officer and this is my job – those pencil pushers have no idea what it is like on the streets.
5. I work alone. I prefer to work alone because a partner can only slow you down and being slow in my line of work can mean the difference between laying your head on a pillow in your own bed or taking a permanent dirt nap over at your local cemetery.
6. People like to question me: “Are you really such a good cop? Why haven’t you been promoted to detective?” I’ll tell you, it is because of one letter of admonishment from Internal Affairs. Sure, I “push the envelope” in making arrests, but I am effective.
7. As far as the letter of admonishment; in May 2009 I had an encounter with one P.J. Long, one of many times that have led to his/her arrest for minor criminal infractions – stupid stuff! I really hate that P.J. Long – s/he is one bad egg. Anyway, May 2009, I stopped P.J., and made an inquiry regarding a minor infraction to determine if s/he was a participant. S/he was acting like a miscreant, you know a real wise @\$%, so I told him/her to stop it and answer my questions or I am going to use my little friend on you. I pulled my Taser out. S/he screamed, “Don’t Tase me!” S/he took a step toward me and I Tased him/her. Down s/he went. P.J. was one big jiggling, mouth foaming, and crying mess. P.J. then filed a complaint against me for using my Taser. I was cleared – no wrongdoing. But they issued me a letter of admonishment which became part of my personnel file. Everybody loves sausage, but nobody wants to know how it’s made. And that’s why I ain’t a detective, because of that dirtbag P.J. Long.
8. On March 18, 2011, I received a call regarding a possible assault of one Dana Malone outside a hip-hop establishment commonly known as The Joint. It is owned by a Max Miller, who has had trouble with the State Liquor Authority for serving alcohol to minors. I understood from the call that Mr./Ms. Malone had been transported to the hospital, so I immediately made my way to the hospital.

9. I located the victim, Dana Malone, and a friend, a possible witness, Ryan Tecrest. The E.R. doc had just finished closing a gash on Mr./Ms. Malone's head with 15 stitches. I introduced myself to Mr./Ms. Malone and Mr./Ms. Tecrest and I asked them for their statements. I took notes so that I could refer back to them later when and if I needed to draft a complaint.
10. During my interview, Mr./Ms. Malone told me, "I think that dirtbag P.J. Long clocked me." I learned that P.J. was inside The Joint when Malone arrived. Malone was there to meet Tecrest, who had arrived earlier that evening. Upon entering, Malone bumped into the defendant, causing the defendant to spill his/her drink. No words were exchanged other than Malone telling the defendant to "watch it." Ms./Mr. Malone could only recall being struck from behind before losing consciousness. S/he did not see the attacker.
11. I then interviewed Mr./Ms. Tecrest. I am familiar with Mr./Ms. Tecrest; I recall that s/he was arrested a couple years ago for Unauthorized Use of a Motor Vehicle in the Third Degree and I am certain s/he pled to the charge but s/he received a conditional discharge. I was not the arresting officer. Tecrest told me that s/he noticed the defendant sitting in her/his car around 7:30 p.m. listening to, with the volume turned way up, as those kids do so that everything around them is vibrating, DJ ColdBlooded's song "The Sucka Gotta Die" over and over again. Tecrest then indicated that Malone, the complainant, arrived at The Joint where s/he bumped into the defendant, causing the defendant to spill his/her drink. Tecrest said that s/he heard the complainant say to the defendant, "Watch it!" At approximately 8:30 p.m., the complainant yelled across the room to Tecrest that they had to leave in a half-hour and that they would meet at his/her (the complainant's) car. At about 9:00 p.m., Tecrest exited The Joint when s/he observed the complainant lying on the ground unconscious. Tecrest further indicated that s/he observed an individual running away with what appeared to be a lug wrench a/k/a tire iron and running towards the area of The Joint's parking lot where s/he had seen P.J.' car parked that evening. S/he also observed that this individual had a similar build as the defendant and that this individual was wearing a black leather jacket with a large white eagle on the back. Tecrest noted that s/he had observed the defendant wearing a similar leather jacket that night. Mr./Ms. Tecrest then assisted the complainant back to his/her feet and then proceeded to drive the complainant to the hospital. S/he further added that when the complainant returned to consciousness s/he said, "I think that dirtbag P.J. Long clocked me."
12. After the interviews, I went to the crime scene to look for evidence. Using my flashlight, I completely searched the area where the attack occurred and the area where the attacker reportedly ran. About 50 yards from the where the attack took place, I found a lug wrench under some bushes. I proceeded to my precinct where I turned in the lug wrench for testing. I then prepared a felony complaint charging the defendant with Assault in the Second Degree, a class D felony. The following morning I then filed the felony complaint at the Pew Gardens Criminal Court, where I obtained an arrest warrant for the arrest of the defendant.

13. Late in the afternoon of March 19, 2011, I went to the apartment of the defendant. When I found that no one was at home, I then proceeded to The Joint. At The Joint, I ran into the owner Max Miller and I then inquired as to the whereabouts of the defendant. Miller asked why I was looking for the defendant and I told her/him that the defendant allegedly assaulted the complainant in the parking lot the previous night. Miller indicated that s/he had no knowledge of such an incident, but s/he did recall that the complainant and the defendant did have an altercation last night. Miller then added that ever since the stabbing at his/her place in September 2010 and the subsequent investigation by the SLA, s/he has been running a tight ship.
14. I then exited the premises known as The Joint, when I saw the defendant's best friend and roommate Sal Maurder A/K/A "Murda," walking toward the establishment. As soon as Murda noticed me, s/he proceeded to run away. I gave chase and tackled him/her to the ground. I then asked Murda why s/he was running. Murda then indicated that there was an arrest warrant out on him/her for repeatedly jumping the turnstiles at the subway station. I knew that this was not correct as I knew that no arrest warrants are ever issued for turnstile jumping. I then made a further inquiry, by asking Murda where I might find the defendant. I then placed my hand on my Taser, with no intention of using it, and then Murda cooperatively told me that s/he had last seen the defendant an hour ago at the arcade on Broadway. I then asked him/her if s/he knew anything about the assault last night involving the complainant and the defendant. Murda indicated that s/he had no such knowledge. I then thanked the citizen for his/her cooperation. I then proceeded to the arcade, where I was able to arrest the defendant without incident.
15. The police department's forensic unit tested the lug wrench for evidence. Although traces of blood and hair were found on the lug wrench, there was an insufficient amount of blood to determine the blood-group and there were hair fibers. No fingerprints were found on the lug wrench, probably because the defendant was wearing gloves. We wear gloves in March around here. Nevertheless, I am pretty sure that this is the lug wrench P.J. Long used to attack the complainant. I obtained a search warrant on March 21, 2011 to search Mr./Ms. Long's automobile and discovered that the lug wrench was missing. What more do you need?
16. This talk about Shannon Taylor possibly being the attacker in this case is all wrong. Shannon Taylor is not a suspect. I've learned that there are several individuals who have had differences with Dana Malone. The fact that Shannon Taylor has a leather coat with a white eagle in the back is of no consequence. There are a lot of people around here who have that jacket. It is a popular coat. I arrested the attacker of Dana Malone and it is P.J. Long.

To the best of my knowledge, the above is true.

Dated: Pew Gardens, NY  
December 3, 2011

*OFFICER BOBBY CALLAHAN*  
\_\_\_\_\_  
Officer Bobby Callahan



Affidavit of P.J. Long  
Defendant

1. My name is P.J. Long. I reside at 534 Dodge Street in Pew Gardens, New York. I was employed at a machine shop until about two months ago. I just started receiving unemployment compensation. I still can't believe that I have been accused of, and even indicted for, something I did not do.
2. I was arrested on March 19, 2011, having been charged with attacking Dana Malone from behind with a tire iron on the evening of March 18. I was told that s/he was assaulted in the parking lot at The Joint. Now, all kinds of dangerous people, including ex-felons, hang out at The Joint. Any one of them could have wracked him/her, because nobody likes Dana. Dana thinks s/he is better than anybody else and struts around like s/he owns the place. It just makes you sick to see how Dana carries himself/herself, so full of himself/herself. While I did not attack Dana, s/he nevertheless deserved what s/he got.
3. This whole thing appears to have started on March 18, 2011 at The Joint. I was sitting at a table with my friends, talking about current events. As I was about to take a first sip from the five-dollar drink I had just purchased, Dana clumsily bumps into me causing me to spill more than two-thirds of my drink. Instead of apologizing, Dana shouts to me, "Watch it!" Can you believe it?! Dana bumps into me, causing me to spill my drink, and it's my fault! Needless to say, I was not happy with this occurrence. At that instance, I could have "gotten into Dana's face." But I did not want to cause any trouble; so, I just let it go. I like going to The Joint and if I started a fight, Max, the owner, would ban me from the place. Max has had enough trouble with those liquor authority people.
4. I've heard that Dana has been telling people that s/he apologized for causing me to spill my drink and that s/he even offered to pay for another one. S/he also has been saying that I refused his/her offer. Trust me, none of this took place.
5. I don't remember when I left The Joint on the evening of March 18, 2011. It could have been before 9:00 p.m. or it could have been after that time. The fact that I don't have someone who could vouch for where I was at the time Dana was attacked does not mean that I was the person who attacked him/her. I remember leaving The Joint at some time on March 18 and driving around the town to clear my head. I eventually went back to my apartment and just listened to music. My best friend and roommate, Sal Maurder, returned to the apartment at about 10:30 p.m. We stayed in the apartment until about 11:00 p.m. and then left for the arcade on Broadway. I stayed at Gamez & More until closing time at 1:00 a.m. I had thought about going back to The Joint, but decided it was best to go home since I was really tired.
6. My lawyer says the prosecution is focusing in on me because I like rap music, specifically the rap music of DJ ColdBlooded. He is really a very cool guy, a Grammy-award winning artist. He has this one song that I like the most, called "The Sucka Gotta Die." The lyrics are catchy and sometimes I will sit in my car and listen to the song a few times. I don't see anything wrong with that. So, let me get this straight: I listen to

my favorite song and this makes me go out and hit someone in the head with a tire iron. Have you ever heard of anything so absurd?

7. This persecution, that's right "persecution," is Officer Callahan's doing. S/he and I have never gotten along. S/he is a "Dirty Harry" kind of cop, thinking s/he has the right to push people around. Officer Callahan once tried to arrest me for no reason. I believe it was in 2009. During the arrest, s/he claimed I was trying to resist and used the Taser on me. I was just trying to tell the officer that I had not shoplifted anything and that the store owner had made a mistake. This so-called "resistance" was too much for the officer and that is when I was Tased. The charges were eventually dropped. I filed a complaint with the police department. Someone from Internal Affairs visited me and took a statement. It is my understanding that the department was not happy with Officer Callahan using the Taser on me and s/he may have been disciplined. Serves him/her right.
8. Sal Maurder has been a great friend. It seems everybody in the neighborhood has a nickname and Sal's street name is "Murda." I don't believe Murda has ever really killed anyone, but you really wouldn't want to get on his/her wrong side. S/he would do anything for me and I would do anything for him/her. Murda has been in trouble with the law and has served time. S/he did a year in the Queens County Correctional Facility for roughing up a person who got on Murda's wrong side. Murda, using a tire iron, beat the crap out of this person who I believe probably deserved what s/he got. So, I guess now anybody I know who gets a tire iron to his/her head, the police will come looking for me or Murda. I don't mean to make this sound like a "pity party," but give me a break! Murda and I don't claim to be saints. We have had our scrapes with the law, but we don't take cheap shots at our enemies.
9. If you ask Murda, s/he will tell you that I was back in the apartment listening to music at about the time Dana claims s/he was attacked. Anyway, I remember Shannon Taylor telling me in January or February of this year that, "If I ever catch Dana alone at night, I'm gonna put a dent in his/her skull." Apparently, Shannon had heard that Dana was spreading rumors that Shannon was stealing money from Shannon's employer, Pizza Galore. Shannon worked the cash register as well as delivered pizzas and wings. I believe I saw Shannon in The Joint on March 18, but I can't be certain. Come to think of it, I have not seen Shannon since April or May of 2011. You have to wonder where he is.
10. So what if I have a black leather jacket with a large white eagle on the back. I know a lot of people that have a leather jacket like mine. As a matter of fact, I believe Shannon has this same exact jacket. So much for the prosecution's case!
11. The prosecution is making a big deal about the tire iron missing in my car. The car is almost 20 years old and is a piece of crap. I have never been able to lock the trunk, so anyone could have taken it. When I bought the car three years ago, I don't believe there was a tire iron in the trunk. I did not check at the time because it was not something I

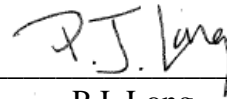


was concerned about. I was just glad it was running and did not cost too much. If I ever need to fix a flat, I'll just borrow a tire iron. No big deal. Most people have one.

12. I am sure I will be acquitted of this crappy charge. All the prosecution has, according to my lawyers, is circumstantial evidence. And the prosecution is trying to use everything it has, including lyrics to a rap song. Can you believe it?! While Officer Callahan has spent all of this time focusing on me, the real perpetrator of this crime is still out there.

To the best of my knowledge, the above is true.

Dated: Pew Gardens, New York  
December 21, 2011



---

P.J. Long



Affidavit of Sal Maurder  
Friend of Defendant

1. My name is Sal Maurder. P. J. Long and me live at 534 Dodge Street, in Queens, New York. That's Pew Gardens.
2. P.J. and I came up together. We lived in the Lemuel Haynes Houses. There was a bunch of us who all went to the High School for Strong Citizens. It was supposed to be for strong people, see. Strength through sports, that was the school slogan. Yeah. But to me it was strength through not getting beat up in the hallway, strength through not getting pushed around by teachers, strength through having friends who'll have your back. That school was just bad. No one learned nothing. No one listened to the teachers. People, they just got up out of their seats and walked around the classroom chillin' with their friends. The teachers didn't say nothing neither. They were too scared they'd get beat up. They weren't teaching me nothing. I was just wasting my time, so I quit.
3. What did I do after I quit school? What do you think I did? I moved on, supported myself. I been working all my life, know what I mean? Bagging groceries, shoveling snow, washing cars, that kind of thing. I got my GED when I was doin' time in the county jail. Then when I got out, I worked at McPizza, part time and sometimes at the bodega up there on Broadway.
4. I did some time, yeah, but I'm no criminal. I never killed no one. They call me Murda on the street, my handle. But that's just a play on my last name. So what, I did a year in jail. They charged me with assault second. I pled to assault third, a misdemeanor. It was a crock. That person asked for it. S/he scratched my ride. Not by accident, neither.
5. Okay, so I hopped the turnstile in the subway a few times, or, you know, maybe in the morning when the trains was crowded and people pushed through the swing door, I maybe went in that way without paying. But you know, that's not really a crime. It's not like it hurts someone. You know what's a crime? That they charge so much in the first place. Where they expect me to get that kind of money? But the cops, they don't like it, so when I saw Officer Callahan, I ran. S/he caught me though. The cop asked me why was I running. I told the officer I thought s/he was trying to arrest me for turnstile jumping. The officer then asked me where was P.J. I didn't think it was any of his/her business where P.J. was. So, I lied and said I did not know where P.J. was. Officer Callahan was reaching for his/her Taser, and I said, "Yo! Don't Tase me!" S/he was going to Tase me! There is something wrong with this cop. You know, s/he Tased P.J. a while back for nothing and got into a lot of trouble. P.J. told me the Taser hurts like hell; so, I told the cop that I saw P.J. over at the arcade on Broadway about an hour ago. Then the cop wants me to tell him/her about the attack on Dana. I told the officer I don't know nothin'. I also said I don't care for Dana Malone and his/her friends and that s/he probably deserved what s/he got.

6. You know, me and my friends like video games and we're good at them, too. We meet up at the arcade on Broadway. That's where P.J. and me went after I caught up with him/her again on the night of March 18, 2011. I had seen him/her earlier in the evening at The Joint. But around 10:00 p.m. I noticed P.J. had left without telling me. I don't know what time s/he left The Joint on that night. I asked some of our friends where P.J. was. They did not know. So, at around 10:30 p.m., I went to the apartment to look for P.J. S/he was sitting in a chair and listening over and over again to his/her favorite song "The Sucka Gotta Die." S/he must have replayed the song three or four times before we left the apartment at 11:00 p.m. to go over to the arcade. For some reason, P.J. didn't want to go back to The Joint.
7. That guy/girl, Dana, I've seen him/her before. S/he and his/her friends, wannabes all of them. Acting like they come from a tough neighborhood, y'know. Dancing all hip-hop style in the clubs, that kind of thing. And it's all fake. You hear them talk? People from Haynes Houses, they don't talk like that. That Dana didn't go to no school where kids had to go through metal detectors to get in and where there was a cop on the restroom door so no one would get beat up in there. S/he went to some special school where you got to go on a bus or ride the subway to get to it and they've got lots of computers and they learn Chinese or some such. S/he went to a school where they expect you to go to college after. Not a tough school like we went to.
8. You can't believe anything Ryan Tecrest, Dana's best buddy, says or trust him/her. I remember seeing him/her in county lockup a couple of years ago. I believe s/he was in for stealing a car. I heard s/he was all scared and always sucking up to the correctional officers like they were going to protect him/her. I wouldn't be surprised if s/he didn't become an informant. So s/he sees someone running away after Dana's attack. So what if they were wearing a leather jacket looking like the one P.J. has? A lot of people have this jacket including me, P.J., and Shannon Taylor. I heard that Shannon has a beef with Dana. I haven't seen Shannon around for some time now.
9. I don't know what happened to Dana that night. I guess s/he was hit over the head and I bet s/he asked for it too. Dana Malone doesn't belong in our neighborhood. People like that should keep to themselves up in their own neighborhood, not come down here pretending to be one of us.

To the best of my knowledge the above is true.

Dated: Queens, New York  
January 5, 2012

*Sal Maurder*

---

SAL MAURDER


Affidavit of Max Miller  
Owner and Operator of "The Joint"

1. My name is Max Miller. I currently am the owner and operator of The Joint, a popular Pew Gardens hip-hop establishment frequented by teenagers and young adults.
2. I was born and raised in San Diego, California and spent most of my young adult life as a surfer and part owner of an establishment called the Surf and Turf, a bar in San Diego, until it closed in 1999. At the mature age of 30, I moved to Queens, New York and tended bar in a lower Manhattan nightclub owned by an ex-Marine buddy of my father's. However, after the terrorist attacks of 9/11, the bar closed and a friend of mine told me about The Joint, which at the time was in receivership. I made an offer, which was accepted, and ever since then, The Joint has been the reason for my existence.
3. Despite the relative success I have had operating The Joint, the New York State Liquor Authority (SLA) has been a thorn in my side because of the underage drinking clientele that is attracted to The Joint. Teenagers throng to The Joint for the cool hip-hop music and to socialize with their friends. They are not permitted to purchase alcoholic drinks, but it is known that the drinking-age clientele will provide liquor to the teenagers, something I cannot control.
4. I strictly prohibit the sale of alcohol to the underage clientele that come into The Joint. All of my bartenders check IDs before serving liquor. I could exclude the under-21 patrons, but I would lose significant income from the food and soft drinks they legally purchase while in The Joint. The loss of income would force me to shut down.
5. The SLA has unfairly targeted me by fining me for allowing teenagers to consume liquor on the premises. I am a small-time neighborhood establishment, and do not have enough bouncers on the payroll to monitor everything that happens on the premises. I try to run a legitimate business, but cannot stop the young crowd from frequenting The Joint.
6. In the early evening of March 19, 2011, Officer Bobby Callahan entered The Joint. S/he wanted to talk to me and asked me if I had recently seen P.J. Long, a regular patron of The Joint. When I asked Officer Callahan why s/he was looking for P.J., s/he told me that P.J. had assaulted Dana Malone, another frequent patron, in The Joint's parking lot the night before. S/he also told me that s/he had a warrant for P.J.'s arrest.
7. This was the first I had heard about anyone being attacked in The Joint's parking lot on March 18, 2011. I remember seeing P.J. in The Joint the night before, but I do not believe that P.J. would do something like that. Such an incident would cause me even more trouble with the SLA. The SLA had investigated an alleged stabbing in The Joint in September 2010. At that time, the SLA warned me that any future criminal conduct or underage drinking in The Joint could result in a revocation of my liquor license. With no liquor license, I would have not any choice but to shut down The Joint.

8. Not having seen P.J., I told Officer Callahan that P.J. had not been in The Joint at all on March 19, 2011. However, Officer Callahan seemed to assume that I was covering for P.J. Knowing of my history with the SLA, s/he responded that if I were covering for P.J., “there would be consequences.”
9. Then the officer goes off chasing after P.J.’s friend, Murda, who was on his/her way into The Joint. I learned later that this is all because Ryan Tecrest thought the person running away after the attack was P.J. Ryan based this conclusion on nothing more than that the person was wearing a leather jacket with a white eagle on the back. A lot of my patrons have that jacket. Hell, if I were a few years younger, I would even have one. I’ve seen Shannon Taylor wear that jacket and I was told Shannon was in The Joint on March 18, 2011. Anyway, I wouldn’t trust anything that slimy Ryan has to say. S/he was arrested for stealing a guy’s car and joy-riding his/her friends around town all day. It wouldn’t bother me one bit if Ryan and Dana never came to The Joint again.
10. I saw the incident in The Joint that Dana believes caused the attack. Dana clumsily bumped into P.J., causing P.J. to spill his/her drink. Instead of apologizing right away, Dana tells P.J. to “watch it.” The look in P.J.’s eyes could kill. But cooler heads prevailed and nothing happened. Anyway, everybody knows I don’t tolerate fighting in The Joint. I believe I heard Dana offer to buy P.J. another drink, but because of Dana’s attitude and because P.J. was so mad, s/he refused the offer.
11. Well, I have had my troubles with the SLA, but I would not try to cover up any crime that might have taken place at The Joint. I really don’t believe anyone was attacked in my parking lot on March 18, 2011. Why didn’t they call the police right away? I wouldn’t put it past Dana and Ryan to have made up all of this stuff.

To the best of knowledge the above is true.

Dated: Pew Gardens, New York  
December 2, 2011

  
\_\_\_\_\_  
Max Miller

## PART V

### NEW YORK STATE HIGH SCHOOL MOCK TRIAL

#### OFFICIAL EXHIBITS

Exhibit ...Forensic Examination  
1 page

Exhibit ...Certificate of Conviction-Ryan Tecrest  
1 page

Exhibit ...Certificate of Conviction-Sal Maurder  
1 page

Exhibit ...Parking lot map  
1 page

Exhibit ...Lug wrench photograph  
1 page

Exhibit ...Jacket advertisement  
1 page

Exhibit...Song lyrics





## Forensic Examination

People v. P.J. Long

An L-shaped standard lug wrench (a/k/a tire iron) was examined to determine whether it had been used as a weapon in a crime. Preliminary analysis showed the presence of hair fibers and blood on the elbow area of the tire iron.

Using a stereo-microscope, it was determined that the hair fibers were from a human donor. Having obtained hair samples from the victim, it was determined that the source of the hair fibers found on the tire iron appear to be from the victim's.

An examination was conducted to determine whether the blood sample found was human blood. Under appropriate testing, the blood sample was found to contain human antigens. However, the sample was too small to perform the ABO blood type test.

Consequently, this examiner cannot conclude, to a reasonable degree of scientific certainty, that the lug wrench tested was used in the assault upon the victim.

Horatio Caine  
Officer's Signature

Crime Scene Investigator IV  
Officer's Rank

Horatio Caine  
Print or Type Name in Full

2345-678  
Badge/ID No.

Headquarters                      Crime Scene Laboratory  
Precinct/Zone                      Station/Beat/Sector

Calleigh Duquesne, Detective  
Reviewing Officer

March 21, 2011/09:45 hour  
Date/Time Reviewed



CERTIFICATE OF CONVICTION-IMPRISONMENT Section 380.60 C.P.L.

AT A TERM OF THE CITY COURT  
held in and for the County of Queens,  
at the Queens City Hall, in the City of  
Pew Gardens, on the 28<sup>th</sup> day of October 2009.

Present-Honorable Judy S. Highland, CCJ  
Docket No. 2009ER76543M

THE PEOPLE OF THE STATE OF NEW YORK

ADA: B. FINLEY

DC: A. GORDON

CR: C. HALL

AGAINST

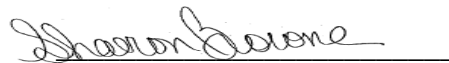
RYAN TECREST, Defendant  
DOB: 09-26-1989  
DATE OF ARREST: 06-06-2009

The defendant above having pleaded guilty in this Court, on the 21<sup>st</sup> day of AUGUST 2009, of the crime of UNAUTHORIZED USE OF A MOTOR VEHICLE IN THE THIRD DEGREE - § 165.05 PL personally appears this day for judgment, the Court informs the defendant, the defendant's counsel and the District Attorney of their rights to make statements and rebuttal to the Court's remarks under Section 380.50 of the C.P.L.

Judgment is thereupon pronounced that the said defendant be **CONDITIONALLY DISCHARGED**. \$175.00/\$25.00 MANDATORY SURCHARGE/CVAF FEE IMPOSED.

**I HEREBY CERTIFY** the foregoing to be a true copy of the entry of Judgment upon the minutes in the above-entitled action.

**WITNESS** my hand and the seal of said court this 9<sup>th</sup>  
day of January 2012



SHARON BROWN  
Chief Clerk,  
Pew Gardens City Court



CERTIFICATE OF CONVICTION-IMPRISONMENT Section 380.60 C.P.L.

AT A TERM OF THE COUNTY COURT  
held in and for the County of Queens, at the  
Queens City Hall, in the City of Pew Gardens,  
on the 11<sup>th</sup> day of December 2009.

Present-Honorable Michael L. Mathis  
INDICTMENT NO: 2009-01571

THE PEOPLE OF THE STATE OF NEW YORK

ADA: T. ADAMS

DC: S. BARNES

CR: R. CARTER

AGAINST

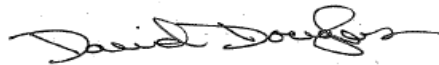
SAL MAURDER  
DOB: 11-15-1988  
DATE OF ARREST: 06-30-2009

The defendant above having pleaded guilty in this court, on the 9<sup>st</sup> day of OCTOBER 2009, of the crime of ASSAULT IN THE THIRD DEGREE - \$120.00 PL personally appears this day for judgment, the Court informs the defendant, the defendant's counsel and the District Attorney of their rights to make statements and rebuttal to the Court's remarks under Section 380.50 of the C.P.L.

Judgment is thereupon pronounced that the said defendant be imprisoned in the Queens County Jail in Pew Gardens, N.Y., for the term of one (1) year. \$300.00/\$25.00/\$50.00 MANDATORY SURCHARGE/CVAF/DNA FEE IMPOSED.

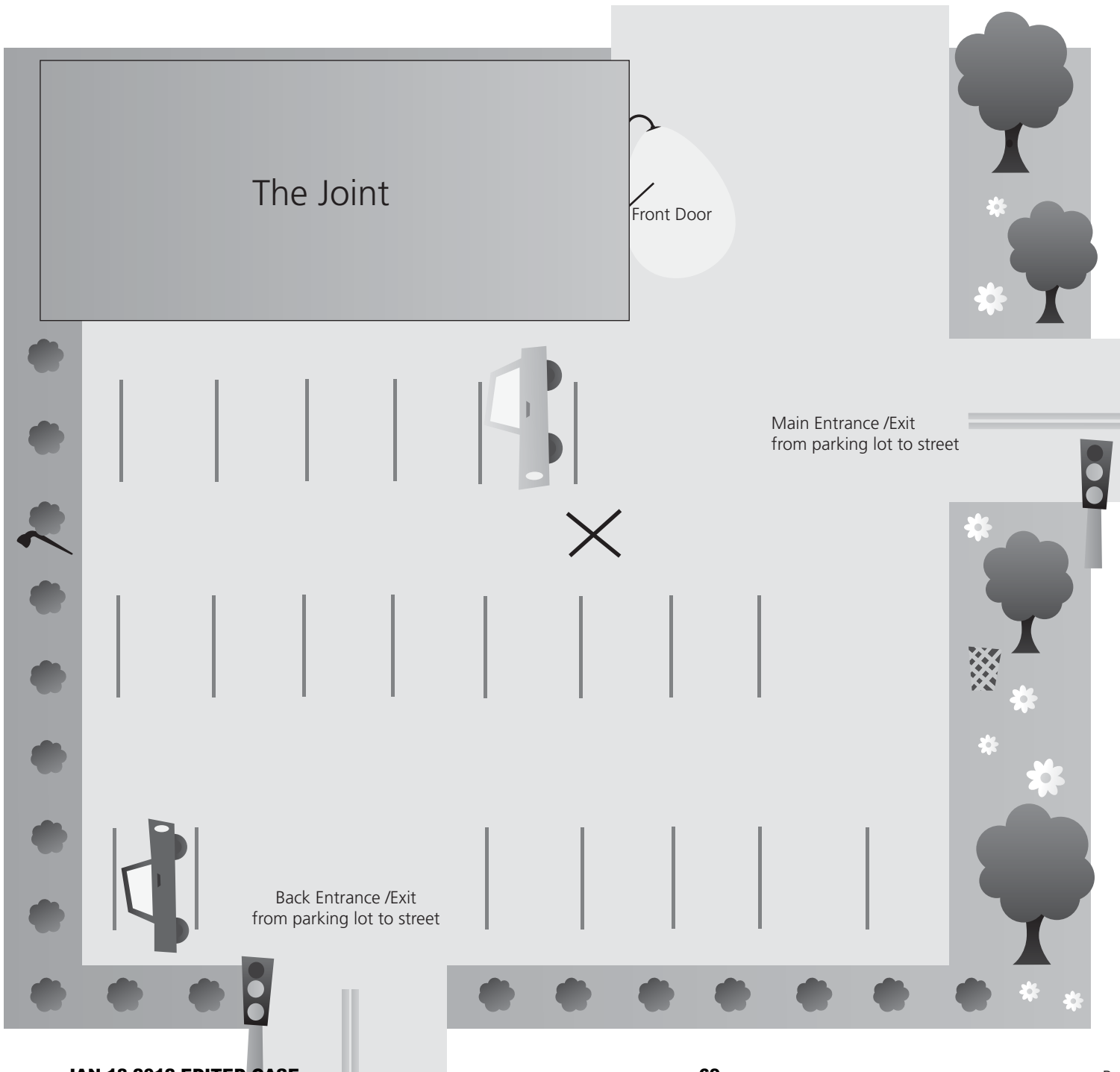
**I HEREBY CERTIFY** the foregoing to be a true copy of the entry of Judgment upon the minutes in the above-entitled action.

**WITNESS** my hand and the seal of said court this 13<sup>th</sup>  
day of January 2012



DAVID J. DOUGLAS  
Queens County Clerk





Dana's Car



PJ's Car



Tire Iron



Trash Can



Light



Dana







Lug Wrench a/k/a Tire Iron



# MUST HAVE!!

## The 2011 Jacket To Own



Exclusively at  
**Mercy's**

Yaz's unisex black leather motorcycle jacket  
Classic styling, rich Italian leather with Yaz's signature  
Eagle in white leather on back

**Regular Price 425.00 Sale Price 379.00**



*If the sucka gets in my way,  
he is gonna have to pay,  
that all for now I gotta say,  
end of this rotten day.*

*With the tire iron from my trunk  
I will deploy in multiple phases  
and the sucka I am sure  
will soon be pushing up daisies.*

from the song entitled "The Sucka Gotta Die" from the album Total Chaos by DJ ColdBlooded.



PART VI

NEW YORK STATE HIGH SCHOOL MOCK TRIAL

RELATED LAW

RELATED CASES





## RELATED LAW

### **Penal Law §120.05 Assault in the Second Degree.**

A person is guilty of assault in the second degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person; or
2. With intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or dangerous instrument.

### **Penal Law §10.00 Definitions.**

Except where different meanings are expressly specified in subsequent provisions of (the Penal Law), the following terms have the following meanings:

...

12. “Deadly weapon means any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, gravity knife, pilum ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles.

13. “Dangerous instrument” means any instrument, article or substance, including a “vehicle” as that terms is defined in this section, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury.

...



## 2012 Statewide High School Mock Trial Tournament Materials

### Related Cases

#### *People v. Yazum*

13 NY2d 302 (1963)

[**Editor’s note:** *In the mock trial case, the prosecution is suggesting that the defendant, having listened repeatedly to a violence-laced rap song both before and after the alleged attack, is evidence of the defendant’s consciousness of guilt.*] In *Yazum*, the court held that “... any circumstantial evidence, to be sufficient in itself to sustain a conviction, must be inconsistent with all reasonable hypotheses of innocence (*citations omitted*). But the admissibility of each piece of circumstantial evidence is subject to no such rule. Generally speaking, all that is necessary is that the evidence have relevance, that it tend to convince that the fact sought to be established is so. That it is equivocal or that it is consistent with suppositions other than guilt does not render it inadmissible.”

#### *People v. Leyra*

1 NY2d 199 (1956)

The defendant was convicted of killing his parents, based largely on what the appellate court felt was a confession coerced from the defendant by a psychiatrist and on purely circumstantial evidence. Regarding the circumstantial evidence, the court, referencing well-settled principles applicable to such evidence, held that “... its sufficiency depends upon ‘whether the proof points logically to defendant’s guilt and excludes to a moral certainty every other reasonable hypothesis (*citation omitted*). Moreover, ‘the facts from which the inferences are to be drawn must be established by direct proof; the inferences may not be based upon conjecture, supposition, suggestion, speculation or upon other inferences (*citation omitted*).” The appellate court, in reversing the conviction, went on to say that “... (i)n many cases in which convictions have been upheld, the evidence indicating a consciousness of guilt has bolstered other circumstances which in and of themselves strongly pointed to the defendant’s guilt (*citation omitted*).” Finally, the court noted “... that the inference of the consciousness of guilt, though one of the simplest in human experience, may easily be pushed too far (*citation omitted*).”

#### *People v. Price*

135 AD2d 750 (1987)

The appellate court affirmed the defendant’s 1<sup>st</sup> degree robbery, 2<sup>nd</sup> degree robbery and 3<sup>rd</sup> degree grand larceny convictions. However, the court ruled that when the prosecution has offered evidence tending to establish a defendant’s consciousness of guilt, the defendant may explain his behavior and is entitled to any explanation consistent with his innocence.

***People v. Cosby***  
200 AD2d 682 (1994)

The defendant allegedly killed his landlord with a wrench. During the 3-week period prior to the discovery of the body hidden by the defendant, he repeatedly lied to the deceased's family about her whereabouts and about things missing from the deceased's room. The court held that evidence of the defendant's post-altercation behavior, while of limited probative value, constituted circumstantial evidence of his consciousness of guilt.

***People v. Drake***  
19 AD3d 209 (2005)

The defendant was found guilty of assault in the 1<sup>st</sup> degree and criminal possession of a weapon in the 3<sup>rd</sup> degree. The court, concluding that the verdict was not against the weight of the evidence, held that "(i)ssues of identification and credibility were properly considered (by the trier of fact) and there is no basis for disturbing its determinations. The eyewitness testimony identifying defendant was corroborated by other proof, including evidence of defendant's actions and statement evincing a consciousness of guilt."

***People v. Saunders***  
292 AD2d 780 (2002)

The defendant was convicted of assault in the second degree. He contends that the trial court should have allowed the jury to consider the lesser-included offense of assault in the third degree. The people presented credible evidence that the defendant struck blows to the victim's head using a tire iron, which caused open wounds that required stitches. The court held that the tire iron was "... readily capable of causing ... serious physical injury" and thus under the circumstances in which it was used constituted a dangerous instrument (*citation omitted*). Therefore, no reasonable view of the evidence would support the view that the defendant committed the lesser offense, but not the greater offense.

***People v. Beaton***  
152 AD2d 992 (1989)

The court held that "(e)vidence that two victims of defendant's assaults with a metal wrench sustained cuts to the head requiring stitches and were in pain for a few days after the incident ... constituted legally sufficient evidence of 'physical injury' ..." under the Penal Law (*citation omitted*).

***Matter of Kurt EE***  
199 AD2d 945 (1993)

The victim sustained a cut to his finger while trying to wrest a knife from the defendant. Said victim did not require medical attention, but was in pain for approximately one week. The court held that the evidence was “... insufficient to establish a physical injury within the meaning of (the) Penal Law ... which defines physical injury as ‘impairment of physical condition or substantial pain’ (*citation omitted*).”



## **APPENDICES**

- A. STATEWIDE MOCK TRIAL REGIONS (MAP)
- B. MOCK TRIAL TOURNAMENT  
PERFORMANCE RATING GUIDELINES
- C. MOCK TRIAL TOURNAMENT  
PERFORMANCE RATING SHEET
- D. MOCK TRIAL SUMMER INSTITUTE INFORMATION

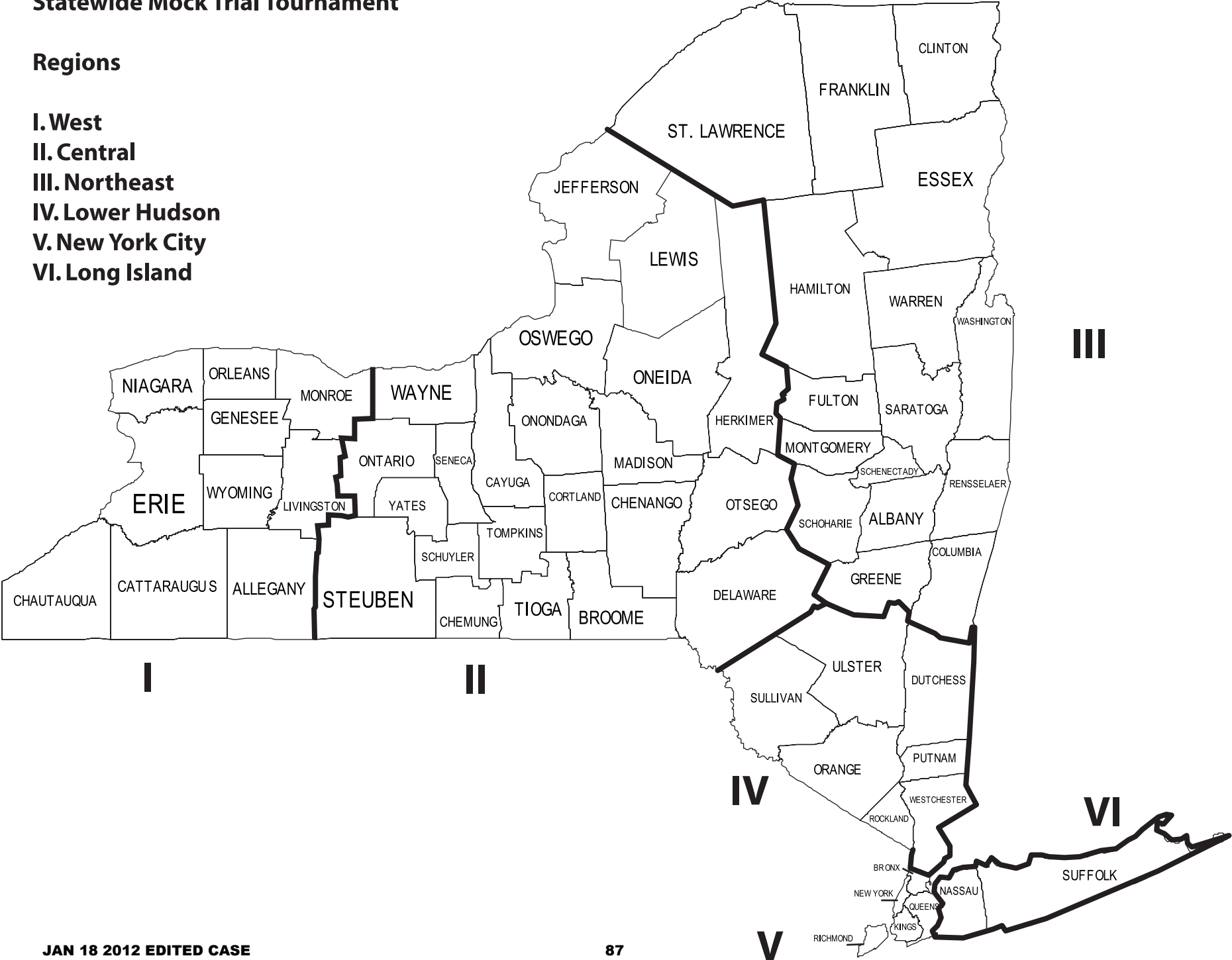




# Statewide Mock Trial Tournament

## Regions

- I. West
- II. Central
- III. Northeast
- IV. Lower Hudson
- V. New York City
- VI. Long Island





## MOCK TRIAL TOURNAMENT PERFORMANCE RATING GUIDELINES

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



## NEW YORK STATE MOCK TRIAL TOURNAMENT PERFORMANCE RATING 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).

**1=Ineffective      2=Fair      3=Good      4=Very Good      5=Excellent**

### Time Limits

Opening Statements	Direct Examination	Cross Examination	Closing Arguments
5 minutes for each side	7 minutes for each side	5 minutes for each side	5 minutes for each side

		Plaintiff/ Prosecution	Defense
Opening Statements			
Plaintiff/ Prosecution First Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
Plaintiff/ Prosecution Second Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
Plaintiff/ Prosecution Third Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		

		Plaintiff/ Prosecution	Defense
Defense- First Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
Defense- Second Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
Defense-Third Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
Closing Statements			
Professionalism (1-10 points PER team) • 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 and signals			
		Total	

Judge's Name: \_\_\_\_\_ *Please Print*

In the event of a tie, please award one point to the team you feel won this round  
(circle your choice):      Prosecution                      Defense

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**Sign up for the email list for information about the 2012 Mock Trial Summer Institute which will take place July 15-20, 2012 at Silver Bay YMCA in Lake George, NY.**

**Send an email to Stacey Whiteley at [swhiteley@nysba.org](mailto:swhiteley@nysba.org) to be included on future email notifications!**





**1997**

**Canisius High School**

Susquehanna Valley High School  
Waterford-Halfmoon High School  
Mt. Vernon High School  
St. Ann's School  
Hebrew Academy of the Five Towns  
and Rockaway

**1996**

Canisius High School  
Fayetteville-Manlius High School  
Waterford-Halfmoon High School  
Port Jervis High School  
Townsend Harris High School  
Port Washington Senior High School

**1995**

Clarence High School  
New Berlin Central School  
Scotia-Glenville High School  
Spring Valley Senior High School  
Sheepshead Bay High School  
Hebrew Academy of the Five Towns  
and Rockaway

**1994**

Buffalo Seminary High School Seton  
Catholic Central School Waterford-  
Halfmoon High School Kingston High  
School  
York Preparatory School  
Hebrew Academy of the Five Towns  
and Rockaway

**1993**

Pittsford Mendon High School Seton  
Catholic Central School Waterford-  
Halfmoon High School Kingston High  
School  
Martin Van Buren High School  
Syosset High School

**1992**

Pittsford Mendon High School Fayetteville-  
Manlius High School Ballston Spa High  
School  
Byram Hills High School  
Edward R. Murrow High School  
Half Hollow Hills High School—West

**1991**

Brighton High School  
Fayetteville-Manlius High School  
Academy of the Holy Names  
Kingston High School  
Andrew Jackson High School  
Port Washington Senior High School

**1990**

Canisius High School  
Seton Catholic Central High School  
Ballston Spa High School  
Kingston High School  
Edward R. Murrow High School  
Roslyn High School

**1989**

Canisius High School  
Binghamton High School  
Waterford-Halfmoon High School  
Kingston High School  
Riverdale Country School  
Roslyn High School

**1988**

St. Francis High School  
Chittenango Central School  
Christian Brothers Academy  
Spring Valley High School  
Packer Collegiate Institute  
Half Hollow Hills High School—East

**1987**

Greece-Athena High School  
Binghamton High School  
Shenendehowa High School  
Ossining High School  
Packer Collegiate Institute  
Roslyn High School

**1986**

Clarence Central High School  
Binghamton High School  
Albany High School  
Mount Vernon High School  
Jamaica High School  
George W. Hewlett High School

**1985**

Pittsford Mendon High School  
Union-Endicott High School South  
Colonie High School Harrison  
High School  
Martin Van Buren High School  
Brentwood High School

**1984**

R. L. Thomas  
Fayetteville-Manlius High School  
Colonie High School  
Harrison High School  
The Ramaz School  
Bay Shore High School

**1983**

Pittsford Mendon High School  
Union-Endicott High School  
Keveny Memorial Academy  
Ossining High School  
The Ramaz School  
Half Hollow Hills High School—West

**1982**

Fairport High School  
Maine-Endwell High School  
Cohoes High School  
North Rockland High School  
Jamaica High School  
Hewlett High School

A special thanks to the following sections of the New York State Bar Association for their generous support of the 2012 Mock Trial Tournament:

**The Family Law Section**

**The Antitrust Law Section**

**The Corporate Counsel Section**

**The Criminal Justice Section**

