



New York State Bar Association

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TO: County Coordinators, Coaches, Attorney Advisors and Judges
DATE: January 13, 2009
RE: Mock Trial Case 2009 Correction Memo

TYPOS/OMISSIONS

Page 51, paragraph 8, line three. "...at Dewitt Clinton" should read "...at Livingston Schuyler".

Page 57, paragraph 1, line two. "...for the Dewitt Clinton High" should read "...for the Livingston Schuyler High".

Page 65, Exhibit 7 ~ Board of Elections Donation List, page 81 should be included.

Page 73, Exhibit 4 ~ Email communication. The "Http:" should read, "http:".

QUESTIONS

1. Why isn't a statute included in the case material?
No statute is included as defamation is a common law cause of action. Common law is law created and refined by judges: a decision in a currently pending legal case depends on decisions in previous cases and affects the law to be applied in future cases. When there is no authoritative statement of the law, judges have the authority and duty to make law by creating precedent. The body of precedent is called "common law" and it binds future decisions. In future cases, when parties disagree on what the law is, an idealized common law court looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision (this principle is known as *stare decisis*).

2. Why isn't a definition of libel included?
A set definition of libel is not included in order for the students to arrive at a definition set out by the decisions made through the included case law. They can then apply these decisions to this case as needed. Generally, four items must be realized for a libel/defamation case to be proven:
 - a. whether a public figure was involved.
 - b. whether the statements published were false.
 - c. the defendant published these statements with malice and/or with recklessness.
 - d. damages were incurred by the plaintiff.
3. The complaint and answer do not carry notary public seals and appropriate verification. Please add the following to **STIPULATIONS**, page 36:
All Verified Complaints and Answers are sworn and notarized.
4. We have a lot of students interested in Mock Trial. Can we form and enter two teams?
Per the NYS High School Mock Trial Tournament Rules, Part I, 1.(c) Each school participating in the Mock Trial Tournament may enter only **ONE** team.
5. We have a student who left the school and still wishes to participate with our Mock Trial team. Can they still be a part of our team?
Per the NYS High School Mock Trial Tournament Rules, Part I, 1. (a) The Mock Trial Tournament is open to all 9th-12th graders in public and nonpublic schools what are currently registered as students at that school.
6. Can we hold practice matches or scrimmages against other teams?
Per the NYS High School Mock Trial Tournament Rules, Part I, 1. (d) ... (teams) are **NOT** permitted to attend the trial enactments of any possible future of 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.

This rule has been established to prevent teams from scouting other teams, but should not be read as prohibiting practice between teams.
7. The 1975 case of James V. Gannet which is cited at 47 AD2d 437 on page 83 of the Mock Trial case book was overruled by the New York State Court of Appeals the following year. What should be done regarding this overruling?
The rule of law in the James' case from the Appellate Division was not overturned and still is a valid statement of law. It is acknowledged that the cause of action was eventually dismissed by the Court of Appeals. Please make the following change to the case caption:
James v. Gannett Co., Inc. 47 AD2d 437 (1975), reversed on other grounds, 40 NY2d 415 (1976)

Rule Clarification

Please keep in mind the Scoring rules, specifically: Part II, Number 2 (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 obtain its total score through the County Coordinator.*

The County Coordinator is responsible for ensuring this rule is followed. The ***total score*** of a team can be released ***by the County Coordinator.***