

New York State 2009 Statewide High School Mock Trial Tournament Materials

Chris Cross
Plaintiff

vs.

Randy E. Porter
Defendant

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*



Law, Youth and Citizenship



One Elk Street
Albany, New York 12207



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

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
Jamesville 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

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
at Queens College
Port Washington Senior High School



New York State Bar Association

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

November 12, 2008

Dear Mock Trial Students, Teacher-coaches and Attorney-advisors:

Thank you for participating in the 2009 New York State High School Mock Trial Tournament. This program, now in its 26th year, is sponsored by the New York State Bar Association's Committee on Law, Youth and Citizenship and The New York Bar Foundation. Many thanks to 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. Thanks also go to the teacher-coaches and attorney-advisors who dedicate countless hours to students across the state. Most importantly, 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 East Islip High School, the winner of the 2008 Mock Trial Tournament.

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. The case this year, *Chris Cross v. Randy E. Porter*, is a libel case, involving a news story, written by a high school student journalist, which allegedly defamed the school principal.

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 also for the professional example that they set throughout this tournament.

No significant changes to the tournament rules have been made for this year. Over the past few years however, we have received a number of comments stemming from the application of Rules 701 and 702. Rules 701 and 702 are fictitious rules of evidence that do not exist in the actual rules of evidence. They were devised to facilitate a mock trial and without these rules, the participants would have no boundaries in the examination of witnesses. We would like to caution teams against inventing facts and over-using objections based on invention of facts. These types of objections are disruptive to the trial and should be used sparingly in only the most egregious situations. You should remember that an objection based on Rule 701 and 702 is not a substantive application of the law or the rules of evidence and will not likely help your overall presentation.

The tournament finals will be held in Albany on May 17-19, 2009. 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.

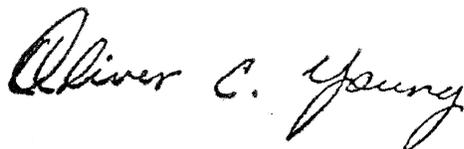
This year's Mock Trial Tournament materials will be posted on the Law, Youth and Citizenship website, www.lycny.org. Throughout the competition, you should check the website for important announcements about the competition.

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,



Janet Phillips Kornfeld, Esq., New York City
Chair, Committee on Law, Youth and Citizenship



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

Subcommittee Members:

Craig R. Bucki, Esq., Buffalo
Karen Callahan, Esq., Croton-on-Hudson
Linda J. Cohen, Esq., Albany
John Cronan, Esq., New York City

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, 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.

2008-2009 Mock Trial Case Materials

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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 (6th ed.), Aspen Law and Business
Murray, Peter, Basic Trial Advocacy, Little, Brown and Company
Lubet, Steven, Modern Trial Advocacy, National Institute for Trial Advocacy
Vile, John R., Pleasing the Court: A Mock Trial Handbook (3rd ed.), Houghton Mifflin Company

Preparation

1. Teachers and attorneys should teach the students what a trial is, basic terminology (e.g., plaintiff, prosecutor, defendant), where people sit in the courtroom, the mechanics of a trial (e.g., everyone rises when the judge enters and leaves the courtroom; the student-attorney rises when making objections, etc.), and the importance of ethics and civility in trial practice.
2. Teachers and attorneys should discuss with their students the elements of the charge or cause of action, defenses, and the theme of their case. We encourage you to help the students, but not to do it for them.
3. Teachers should assign students their respective roles (witness or attorney).
4. Teams must prepare both sides of the case.
5. Student-witnesses cannot refer to notes so they should become very familiar with their affidavits and know all the facts of their roles. Witnesses should “get into” their roles. Witnesses should practice their roles, with repeated direct and cross-examinations, and anticipate questions that may be asked by the other side. The goal is to be a credible, highly prepared witness who cannot be stumped or shaken.
6. Student-attorneys should be equally familiar with their roles (direct examination, cross examination, opening and closing statements). Student attorneys should practice direct and cross-examinations with their witnesses, as well as practice opening and closing arguments. Closings should consist of a flexible outline. This will allow the attorney to adjust the presentation to match the facts and events of the trial itself, which will vary somewhat with each trial. Practices may include a judge who will interrupt the attorneys and witnesses occasionally. During the earlier practices, students may fall “out of role”; however, we suggest that as your practices continue, this be done less and that you critique presentations at the end. Each student should strive for a presentation that is as professional and realistic as possible.
7. Each team should conduct a dress rehearsal before the first round of the competition. We encourage you to invite other teachers, friends and family to your dress rehearsal.

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 names 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 audiotaped 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 audiotaping 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 audiotape must be furnished to the opposing team (at no cost) within 48 hours after the trial.
 5. The video or audiotape 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.

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. Teams must not identify themselves by their school name to the judge prior to the announcement of the judge's decision.
- f. 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.
- g. Members of a team may play different roles in different rounds, or other students may participate in another round.
- h. 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.
- i. 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.

- j. 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.
- k. When a team has a student or students with special needs who may require an accommodation, the teacher-coach **MUST** bring this to the attention of the County Coordinator at least two weeks prior to the time when the accommodation will be needed.
- l. The Judge must take judicial notice any stipulations.
- m. Teams may bring perceived errors in the problem, or suggestions for improvements in the tournament rules and procedures to the attention of the LYC staff at any time. These, however, are not grounds for protests. Any protest arising from an enactment must be filed with the County Coordinator in accordance with the protest rule in the Tournament Rules.

2. SCORING

- a. Scoring is on a scale of 1-5 for each performance (5 is excellent). Judges are required to enter each score on the performance rating sheet (Appendix 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 obtain 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 #4: Lower Hudson
Region #2: Central	Region #5: New York City
Region #3: Northeast	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.
- b. Regional tournaments are held in counties within the region on a rotating basis. Every effort is made to determine and announce the location and organizer of the regional tournaments before the new mock trial season begins.
- c. All mock trial rules and regulations and criteria for judging apply, at all levels of the Mock Trial Tournament.
- d. The winning team from each region will be determined by an enactment between the two teams with the best records (most number of wins and greatest number of points) during the regional tournament. The winning team from each region will qualify for the State Finals in Albany.
- e. The regional tournaments MUST be completed 10 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 two 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. Each team will be provided with a stipend of \$200 to help defray the cost of travel to and from the State Finals. These costs will be reimbursed after the tournament.
 - d. 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.
 - e. 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.
 - f. 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.
 - g. 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.
 - h. A judge or a panel of judges will determine the winner. The judge or judges’ 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 matter that retains the probative value, while reducing the danger of unfair prejudice. In this example, the defense might stipulate to the location of the wounds and the cause of death. Therefore, the relevant aspects of the photographs would come in, without the 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.”

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 at the end of the plaintiff’s or prosecution’s case are not permitted.

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.

PART IV
NEW YORK STATE HIGH SCHOOL MOCK TRIAL

TRIAL SCRIPT

The facts of this case are hypothetical. Any resemblance between the persons, 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 non-gender 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.

SUPREME COURT OF NEW YORK
COUNTY OF CANAL

CHRIS CROSS,	-----x	
	x	
Plaintiff,		Index No. 2008-1500
	x	
-vs.-		
	x	
RANDY E. PORTER,		
	x	
Defendant.		
	-----x	

CASE SUMMARY ¹

1. Chris Cross, Ed.D., is the principal of Livingston-Schuyler High School in Canal City, New York. Having begun his/her career as a mathematics teacher in 1973 at Livingston-Schuyler High, Dr. Cross eventually earned a doctorate in education administration, and worked his/her way up the ranks to the title of Principal in 1990. During Dr. Cross's tenure as principal, Dr. Cross grew to become a favorite of students, teachers, and parents alike, as an effective administrator, a fair disciplinarian, and a strong booster of Livingston-Schuyler High.
2. Capitalizing on this popularity, Dr. Cross successfully ran for a seat on the Canal City Common Council in 2001, by defeating a 20-year incumbent. This new position only required a part-time commitment, thereby enabling Dr. Cross to continue serving as Principal at Livingston-Schuyler High. Dr. Cross pursued elective office not only to serve the constituents of his/her council district, but also to accumulate extra time credits that would eventually enhance his/her New York State retirement pension.
3. As the reward for a job well done on the Common Council, Dr. Cross won re-election with over 70% of the vote in 2005. Soon thereafter, Dr. Cross's most ardent supporters began to encourage him/her to seek higher office. When the local New York State Assemblyman announced in September 2007 that he would not seek re-election at the conclusion of his term the following year, therefore, Dr. Cross immediately announced his/her candidacy for the Assembly. Dr. Cross felt confident in the wisdom of this decision: early public opinion polls had Dr. Cross substantially ahead of other potential challengers in the race. As such, in October 2007, Dr. Cross informed the Canal City School District that he/she would retire at the end of the 2007-08 academic year, in order to focus full-time on the rigors of an Assembly campaign.
4. In the meantime, however, Dr. Cross needed to complete his/her final year as Principal at Livingston-Schuyler High School. Like every year, 2007-08 presented its own administrative challenges for Dr. Cross. The most notable of these was the hotly contested race for the title of Valedictorian between two members of the senior class, Sydney Parker and Dana Hopkins. Pursuant to long-established policy at Livingston-Schuyler High, the Valedictorian would be the student in the senior class who had earned the highest cumulative grade average in all academic subjects after three years and two quarters. Therefore, the race for Valedictorian would be decided in January 2008, at the end of the second quarter of the 2007-08 academic year.

¹ 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.

5. Livingston-Schuyler High School has purchased an expensive computer program called “Grade-Track,” into which every teacher must input the grades for each student at the end of a given marking period. In order to do this, a teacher must use his/her unique user name and password to log into Grade-Track. Grade-Track makes an electronic record of every time a teacher logs in or logs out, as well as a record of the grades the teacher inputs for which students during each session in the program.

6. In most cases at Livingston-Schuyler High, a teacher who logs into Grade-Track may assign and access only the grades that he/she is responsible to assign for the students in his/her classes, and no others. Dr. Cross, however, as the principal, was the only employee at Livingston-Schuyler High who had a “master password,” which empowered him/her to view and/or assign any grade to any student in any class at the school.

7. All teachers at Livingston-Schuyler High must input the grades earned by all students on all assignments in a given marking period no later than three days after the quarter (also known as a “marking period”) has ended. Once the three-day deadline passes, Terry Gates, the Director of Technology at Livingston-Schuyler High and a whiz on the computer, logs into Grade-Track using a special password of his/her own, and then enters several commands that facilitate calculation of a grade average for each student (i) in each class, (ii) across all classes for the given making period, (iii) across all classes during the academic year thus far, and (iv) across all classes during the student’s enrollment at Livingston-Schuyler High School. Upon inputting further commands, Mr./Ms. Gates prints a report card containing all of these averages for each student. This process supervised by Terry Gates takes about one day, such that students receive their report cards five days after a given marking period ends.

8. Monday, January 28, 2008, was the third day after the completion of the second marking period in the 2007-08 academic year at Livingston-Schuyler High. At 12:00 noon that day, after eating lunch in the school cafeteria, Terry Gates walked to the computer lab at the opposite end of the school, in order to commence calculation of students’ averages for their report cards. Upon arriving at the computer lab, Terry Gates was met by Dr. Cross.

9. “Terry,” Dr. Cross advised, “there is a last-minute change that needs to be made before you can start doing the calculations. Could you come back in about an hour?” Terry Gates obliged, as Dr. Cross was his/her boss, and returned to the faculty lounge to kill time, and to chat with other teachers.

10. After Terry Gates left, Dr. Cross found himself/herself alone in the computer lab. At this point, Dr. Cross logged into Grade-Track using his/her master password. Upon entering the system, Dr. Cross accessed the grades for the second marking period for Sydney Parker, and added an extra grade of 100% to the grades already entered for Sydney’s Advanced Biology course. Dr. Cross also printed a record of this change in hard copy. Dr. Cross then promptly logged out of Grade-Track, left the computer lab, and walked to the faculty lounge, where he/she expected to find (and did find) Terry Gates. Upon seeing him/her, Dr. Cross told Terry Gates, in front of several teachers, “Thanks, Terry. Now it’s time for you to do your stuff.”

11. According to Dr. Cross, he/she added the extra grade of 100% to Sydney Parker’s list of grades in Advanced Biology upon the direction of Jackson Frost, Sydney’s teacher in that class.

Dr. Cross states that Mr. Frost e-mailed Dr. Cross that Sydney had submitted to him a last-minute extra-credit report, entitled "The Plight of the Endangered Polar Bear," on the final day of the second marking period. (As Mr. Frost had articulated to Sydney's class at the beginning of the academic year, any student could earn up to one extra grade of 100% per marking period for turning in a satisfactory extra-credit report on any topic relating to biology.)

12. January 25, 2008, was Mr. Frost's last day as a teacher at Livingston-Schuyler High School, because he had accepted a new dream position as a staff scientist at McMurdo Station, Antarctica. He sent a hasty e-mail to Dr. Cross just before he left for Antarctica, in which he reported that Sydney had earned 100% on his/her last minute extra credit project. Unfortunately, one week after Mr. Frost arrived at McMurdo Station, he became afflicted with a severe case of hypothermia after getting lost in the Antarctic wilderness, and he sadly passed away. As such, Mr. Frost is unable to confirm or deny the veracity of Dr. Cross's account.

13. Because of the addition of an extra grade of 100% to Sydney's second marking-period grades in Advanced Biology, his/her average in that course increased from 97% to 98%. On the afternoon of January 28, 2008, when Terry Gates completed his/her computation of grade averages for students at Livingston-Schuyler High, he/she determined that Sydney Parker had achieved a cumulative average over three academic years and two academic quarters of 98.53%, whereas Dana Hopkins had achieved a cumulative average of 98.52%. As such, Sydney would win the race for Valedictorian of the Class of 2008 at Livingston-Schuyler High School. Had Dr. Cross not incorporated the extra grade of 100% into Sydney's second marking-period grades in Advanced Biology, Dana Hopkins would have won the title of Valedictorian instead.

14. At a schoolwide assembly at Livingston-Schuyler High on Wednesday, January 30, 2008, Dr. Cross announced that Sydney Parker would be the valedictorian for the Class of 2008, and Dana Hopkins would be the salutatorian. Emphasizing how close the race was, Dr. Cross also announced that just one one-hundredth of a percentage point separated their cumulative grade-point averages.

15. During the 2007-08 academic year, Randy E. Porter, a senior at Livingston-Schuyler High School, was the editor-in-chief of the *Schuyler Sentinel*, the school newspaper. Among his/her duties as editor-in-chief, Randy Porter was responsible for making requests to Dr. Cross for funding for the *Sentinel's* operation for the following year. It was common knowledge that the school district had been experiencing ongoing financial difficulties.

16. After school on February 1, 2008, Randy Porter met with Dr. Cross in Dr. Cross's office to discuss the *Sentinel's* funding requests for 2008-2009. After they had met for approximately thirty minutes, Dr. Cross received a call from the school's receptionist, advising that Dr. Cross needed to meet briefly with the superintendant. At this point, Dr. Cross excused himself/herself, and told Randy that she/she would return in a few minutes to continue the meeting.

17. Dr. Cross left Randy Porter alone in his/her office for approximately ten minutes. As Randy waited patiently in his/her chair for Dr. Cross to return, Randy's eyes caught a glimpse of a sheet of paper, resting on Dr. Cross's desk, with Sydney Parker's name in large type at the top. Intrigued, Randy picked up the paper to study it, and realized that it was a listing of Sydney Parker's grades in Advanced Biology, including the extra grade change that Dr. Cross had made. Ever the reporter looking for a good story, Randy sneaked out of Dr. Cross's office with the paper, made a photocopy at a nearby copy machine in the Principal's Office, and returned the paper to its place on

Dr. Cross's desk – all before Dr. Cross returned from his/her meeting in the reception area. Once Dr. Cross returned, his/her meeting with Randy Porter proceeded.

18. Later that evening, Randy studied the photocopy further, and concluded that Dr. Cross had added an extra grade of 100% to Sydney Parker's grades in Advanced Biology for the second quarter. Having attended the assembly on January 30, Randy knew that the race for valedictorian had been as close as possible, and suspected that Dr. Cross's change had delivered the outcome to Sydney Parker. Randy also recalled reading in prior years in the *Canal City Chronicle*, a daily newspaper of general circulation in Canal City, that Sydney Parker's father, George Parker, had donated generously to Dr. Cross's prior campaigns for City Council. Randy turned on his computer and visited the New York State Board of Elections website, where he confirmed that George Parker had donated thousands of dollars to Dr. Cross's campaign committee during Dr. Cross's races for City Council, as well as to support Dr. Cross's impending race for Assembly. Now Randy was confident he had a juicy storyline, and could envision the headline: "Principal Changes Sydney Parker's Grade; Parker Wins Valedictorian Race Over Dana Hopkins." Surely, Randy thought, this kind of a story would help him/her gain admission to his/her dream college, Columbia University, with its renowned program in journalism.

19. That weekend, Randy wrote a special editorial for the *Schuyler Sentinel* about the grade change that had benefited Sydney Parker. Randy closed the editorial as follows:

Though Principal Cross might deny it, the evidence is clear: Principal Cross changed Sydney Parker's grades at the last minute to help Sydney become valedictorian of Livingston-Schuyler High School. Dr. Cross's motive: to give payback to one of Dr. Cross's most reliable financial contributors to Dr. Cross's Assembly campaign.

20. After school on Monday, February 4, 2008, Randy showed his completed editorial to the *Sentinel's* faculty advisors, Jamie King and Sandy Curtis, to obtain their approval. Jamie King favored allowing Randy to print his/her editorial in the *Sentinel*: on two occasions in the faculty lounge, Jamie had heard Dr. Cross comment that George Parker was a "good friend," and that Dr. Cross wanted Sydney to become valedictorian. Sandy Curtis, however, was opposed: given the editorial's accusations against Dr. Cross, Sandy thought more research and a personal interview with Dr. Cross, were necessary before the editorial could be published. Because one of the two faculty advisors could veto any article from appearing in the *Sentinel*, Sandy Curtis exercised this right. As such, Jamie and Sandy advised Randy that the *Sentinel* could not publish Randy's proposed editorial.

21. Feeling stonewalled, and anxious to reveal what he/she regarded as the truth about Dr. Cross, Randy decided to take matters into his/her own hands. That evening, Randy typed up his/her editorial, drove to a 24-hour copy store, and made 1,000 copies of his/her editorial. On Tuesday, February 5, 2008, Randy disseminated these copies to students and teachers throughout Livingston-Schuyler High School, and e-mailed another copy to the editorial board of the *Canal City Chronicle*.

22. The backlash against Dr. Cross as the result of Randy's editorial was swift. On Wednesday, February 6, 2008, the *Chronicle* printed a front-page story about Randy's allegations, which became the hot topic of discussion on talk radio and television news in Canal City. Later that day, Dana Hopkins's father, a high-profile attorney, held a news conference in which he vowed to sue the Canal City School District and Dr. Cross to win the title of valedictorian for his child.

23. In interviews with several news outlets, Dr. Cross attempted to explain why he/she needed to change Sydney Parker's grades to reflect the extra credit that Sydney had earned from Jackson Frost. George Parker's documented contributions to Dr. Cross's campaigns, however, rendered this explanation not very credible to many citizens of Canal City. A poll was commissioned by the Cross Campaign and later summarized in the *Chronicle* which showed Dr. Cross's previously substantial lead in the race for the Assembly had evaporated, to the point where less than 25% of the registered voters in the district would even consider voting for Dr. Cross. Faced with a loss of support from the electorate, as well as from other major campaign donors, Dr. Cross announced on February 20, 2008 that he/she would not run for the Assembly seat.

24. Believing that Randy's article about Dr. Cross's motivations for changing Sydney Parker's grades torpedoed Dr. Cross's chance to win the Assembly seat, Dr. Cross has commenced a civil lawsuit against Randy E. Porter, seeking damages for libel. Dr. Cross would love nothing more than to recover a significant sum from Randy Porter, who received a \$1 million gift for his/her 18th birthday from the estate of his/her late grandfather, an oil industry tycoon.

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. Trial of this case has been bifurcated. The only issue to be tried is whether Defendant Randy E. Porter is liable to Plaintiff Chris Cross for the cause of action of libel. Should Randy Porter be found liable, a trial as to the damages sustained by Chris Cross as a result of such libel will ensue at a later date.
4. No other stipulations shall be made between the plaintiff and the defendant, except as to the admissibility of evidentiary exhibits provided herein.

Witnesses for the Plaintiff:

Dr. Chris Cross, former principal of Livingston-Schuyler High School

Sandy Curtis, faculty advisor for the *Schuyler Sentinel*

Sydney Parker, graduate of the Livingston-Schuyler High School Class of 2008

Witnesses for the Defendant:

Randy E. Porter, former editor-in-chief of the *Schuyler Sentinel*

Terry Gates, Director of Technology at Livingston-Schuyler High School

Jamie King, faculty advisor for the *Schuyler Sentinel*

CHRIS CROSS,

Plaintiff,

VERIFIED COMPLAINT

v.

Index No. 2008-1500

RANDY E. PORTER,

Defendant.

Plaintiff Chris Cross, by and through his/her attorneys, Steele & Cheatham LLP, alleges as follows:

1. Plaintiff Chris Cross (“Plaintiff”) and Defendant Randy E. Porter (“Porter”) reside in Canal City, in the County of Canal, State of New York.
2. Venue is proper in this action, pursuant to Article 5 of the New York Civil Practice Law and Rules (“CPLR”).
3. From July 1, 1990, through June 30, 2008, Plaintiff served as Principal of Livingston-Schuyler High School in Canal City.
4. In November 2001, Plaintiff was elected to a four-year term on the Canal City Common Council. Plaintiff was re-elected to another four-year term on the Common Council in November 2005.
5. In October 2007, Plaintiff announced his/her intention to seek election to the New York State Assembly in November 2008. Polling done by Plaintiff’s campaign as late as January 2008 demonstrated that he/she held a significant lead over any other potential candidate for this Assembly seat.

6. At Livingston-Schuyler High School, the second marking period ended for the 2007-2008 academic year on Friday, January 25, 2008.

7. January 25, 2008, was also the last day of employment at Livingston-Schuyler High School for Jackson Frost, an Advanced Biology teacher. The following day, he was scheduled to leave the United States for a research assignment in Antarctica.

8. One of Mr. Frost's students in Advanced Biology was Sydney Parker, a senior at Livingston-Schuyler High School.

9. On January 25, 2008, Sydney Parker submitted to Mr. Frost an extra-credit report entitled, "The Plight of the Endangered Polar Bear." Upon information and belief, Mr. Frost read the report the same day, and found it to be satisfactory.

10. At approximately 10:00 p.m. on January 25, 2008, Mr. Frost e-mailed Plaintiff, to advise Plaintiff that Sydney Parker had earned an extra grade of 100% in Advanced Biology for second marking period. On Monday, January 28, 2008, Plaintiff made the change to Parker's grades for the second marking period.

11. Pursuant to Sydney Parker's cumulative grade average for his/her first three academic years, plus the first two marking periods for his/her fourth academic year, Sydney Parker was named Valedictorian of the Class of 2008 at Livingston-Schuyler High School.

12. During the 2007-2008 academic year, Defendant Randy E. Porter was a senior at Livingston-Schuyler High School, and was editor-in-chief of the school newspaper, the *Schuyler Sentinel*.

13. Plaintiff had previously disciplined Defendant for several infractions at Livingston-Schuyler High School. Defendant had also publicly attacked Plaintiff for failing to provide more funding for the operations of the *Schuyler Sentinel*.

14. On February 1, 2008, Defendant met with Plaintiff in Plaintiff's office at Livingston-Schuyler High School concerning funding for the *Schuyler Sentinel*. During an

interruption in that meeting, while Plaintiff was outside his/her office, Defendant stole from Plaintiff's desk a printout reflecting the addition of an extra grade of 100% to Sydney Parker's grades in Advanced Biology in the second marking period.

15. Before returning the printout to Plaintiff's desk, Defendant made a photocopy for his/her personal reference. Defendant did so without Plaintiff's knowledge or consent.

16. On February 5, 2008, Defendant disseminated to students, faculty, and administrators at Livingston-Schuyler High School leaflets that made the following "Statement," in pertinent part:

Though Principal Cross might deny it, the evidence is clear: Principal Cross changed Sydney Parker's grades at the last minute to help Sydney become valedictorian of Livingston-Schuyler High School. Dr. Cross's motive: to give payback to one of Dr. Cross's most reliable financial contributors to Dr. Cross's Assembly campaign.

17. This Statement in Defendant's leaflet disseminated on February 5, 2008, was not true.

18. The next day, the *Canal City Chronicle*, a newspaper of general circulation in Canal City, ran a front page article reporting on the controversy caused by the Defendant's leaflet.

19. As a result of such publication, and the dissemination of the leaflets at Livingston-Schuyler High School on February 5, 2008, Plaintiff's reputation suffered considerably. In particular, new polling done on or about February 15, 2008, demonstrated that only 25% of registered voters would even consider voting for Plaintiff for New York State Assembly.

20. Given this sudden loss of popularity brought about by Defendant's false written Statement about Plaintiff, Plaintiff was forced to resign the race for New York State Assembly, and thereby forego the opportunity to receive the salary and benefits afforded to every Assembly member.

21. Defendant's publication of his/her false Statement about Plaintiff proximately caused Plaintiff to suffer a loss of reputation that has effectively ended his/her career in government.

AS AND FOR A FIRST CAUSE OF ACTION

22. Plaintiff repeats and realleges paragraph 1 through 21 of this Verified Complaint.

23. The Statement, published by Defendant, was categorically false.

24. In publishing the Statement, Defendant acted recklessly, by failing in advance to take steps to investigate and/or confirm its truth.

25. In publishing the Statement, Defendant acted with malice, in retribution for Plaintiff's previous efforts to discipline Defendant for misconduct, and for the perceived lack of funding Defendant received for the *Schuyler Sentinel*.

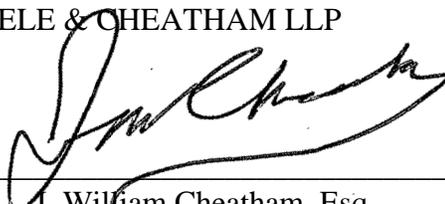
26. In publishing the Statement, Defendant defamed Plaintiff, who suffered resulting damages, including, but not limited to, loss of reputation in the community, and loss of the opportunity to serve as a member of the New York State Assembly.

WHEREFORE, Plaintiff demands relief and judgment in an amount sufficient fairly and justly to compensate Plaintiff for all damages incurred on account of Defendant's defamation as described herein; and such other, further, and different relief as may be just, equitable, and proper, including, but not limited to, an award of fees, costs, and disbursements incurred by Plaintiff to prosecute this action.

Dated: Canal City, New York
November 15, 2008

STEELE & CHEATHAM LLP

By _____


I. William Cheatham, Esq.
3400 Canal City Center
Canal City, New York 11111
Tel. (555) 555-5495

STATE OF NEW YORK
SUPREME COURT : COUNTY OF CANAL

CHRIS CROSS,

Plaintiff,

VERIFICATION

v.

Index No. 2008-1500

RANDY E. PORTER,

Defendant.

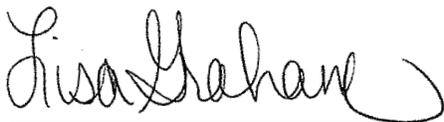
STATE OF NEW YORK)
)ss.:
COUNTY OF CANAL)

CHRIS CROSS, being duly sworn, deposes and says that he/she is a Plaintiff in this action; that he/she has read the foregoing Verified Complaint and knows the contents thereof; that the Verified Complaint is true to his/her knowledge, except as to matters alleged upon information and belief, and as to those matters, he/she believes it to be true.



Chris Cross

Sworn to before me on this
15th day of November, 2008.



Notary Public

STATE OF NEW YORK
SUPREME COURT : COUNTY OF CANAL

CHRIS CROSS,

Plaintiff,

VERIFIED ANSWER

v.

Index No. 2008-1500

RANDY E. PORTER,

Defendant.

Defendant Randy E. Porter, by his counsel, Blaine & Huber LLP, answers the Verified Complaint (“Complaint”) of Plaintiff Chris Cross as follows:

1. Defendant admits the allegations in paragraphs 1, 4, 6, 7, 8, 12, 16, and 18.
2. Defendant denies the allegations in paragraphs 13, 17, 21, 22, 23, 24, 25, and 26.
3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 3, 5, 9, 10, 11, 19, and 20.
4. The allegations in paragraph 2 draw a legal conclusion to which no response is required.
5. With regard to the allegations in paragraph 14 and 15 of the Complaint, Defendant admits that he did temporarily take a printout of Sydney Parker’s grades from Plaintiff’s desk at Livingston-Schuyler High School and photocopied the printout, but denies the allegations in paragraph 14 and 15 in all other respects.

AFFIRMATIVE DEFENSES

6. The Complaint fails to state a cause of action upon which relief may be granted.

7. Plaintiff's claim is barred, in whole or in part, by the doctrines of waiver, estoppel, and consent.

8. Plaintiff has failed to mitigate his/her alleged damages.

9. Any and all alleged losses or damages sustained by Plaintiff were caused by the acts, omissions, or transactions of Plaintiff or third parties.

10. The "Statement" referenced in paragraph 23 of Plaintiff's Complaint was, in fact, true.

11. Defendant did not act recklessly in publishing the Statement.

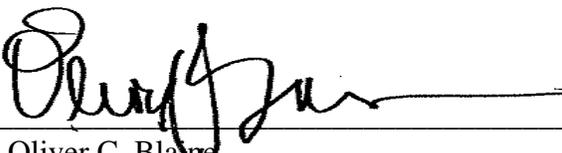
12. Defendant did not act with malice in publishing the Statement.

13. Plaintiff's alleged damages are unquantifiable and speculative.

WHEREFORE, Defendant respectfully requests that this Court award judgment dismissing the Complaint; deny the relief requested therein; award Defendant his/her costs, interest, disbursements, and attorneys' fees in this action; and grant such other and further relief as this Court deems just and proper under the circumstances.

Dated: Canal City, New York
November 30, 2008

BLAINE & HUBER LLP

By 

Oliver C. Blaine

Attorneys for Defendant

10 Main Street

Canal City, New York 11111

Telephone No.: (555) 555-8400

STATE OF NEW YORK
SUPREME COURT : COUNTY OF CANAL

CHRIS CROSS,

Plaintiff,

v.

RANDY E. PORTER,

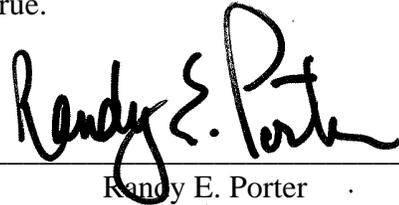
Defendant.

VERIFICATION

Index No. 2008-1500

STATE OF NEW YORK)
)ss.:
COUNTY OF CANAL)

RANDY E. PORTER being duly sworn, deposes and says that he/she is a Defendant in this action; that he/she has read the foregoing Verified Answer and knows the contents thereof; that the Verified Answer is true to his/her knowledge, except as to matters alleged upon information and belief, and as to those matters, he/she believes it to be true.



Randy E. Porter

Sworn to before me on this
30th day of November, 2008.



Notary Public

Affidavit of Dr. Chris Cross
Plaintiff and Former Principal of Livingston-Schuyler High School

1. My name is Chris Cross. I reside with my spouse at 250 Harriman Way in Canal City, New York.
2. Having graduated from Livingston-Schuyler High School in Canal City in 1969, I earned my bachelor's of science degree, *magna cum laude*, from the State University of New York at Albany in 1973. That fall, I was fortunate to begin my career in education as a calculus teacher at my *alma mater*, where I worked in various capacities for 35 years, until my retirement in 2008.
3. During most of the 1980's, while still teaching calculus at Livingston-Schuyler High, I attended classes part-time at Cornell University, where I finally earned my Ed.D., with a focus on educational administration, in 1988. I had been hoping to transition from teaching into an administrative career, and an opportunity opened at Livingston-Schuyler High in 1990, when the incumbent principal retired. After a rigorous application process requiring several interviews, the Canal City School Board selected me Principal of Livingston-Schuyler High, effective September 1, 1990. In the words of the Board's resolution appointing me to that position, I had fulfilled my duties as a teacher with the "highest degree of character."
4. Although I thoroughly enjoyed most aspects of my job as Principal, my favorite was the opportunity to interact with students and teachers. Although I needed to be an effective administrator and a fair disciplinarian in my job, I tried my best to greet everyone at Livingston-Schuyler High with a smile and a "hello," and to treat students, parents and teachers alike with respect. It was one of these parents, George Parker, who proposed to me in 2001 that I consider running for public office, with his financial support. After conferring with my family, I decided to give politics a try. With the help of George and so many other devoted donors and volunteers, I was able to win election to the Canal City Common Council in 2001 over an entrenched incumbent.
5. I won re-election to the Canal City Common Council in 2005 with over 70% of the vote. After this victory, several of my supporters asked that I consider seeking higher office. When our local Assemblyman announced in 2007 that he would retire the following year, therefore, I engaged a consulting firm to do polling on my name recognition and popularity. When poll results came back that I would win an Assembly race against several likely opponents, I threw my hat into the ring, and set out to campaign vigorously for the 2008 Assembly election. To focus on the campaign full-time, I decided in December 2007 to retire from my position as Principal at Livingston-Schuyler High as of July 1, 2008.
6. Based upon my intended platform to slash New York's out-of-control spending and to cut taxes, I was confident that I would win election to the Assembly on November 4, 2008. Yet the opportunity to achieve this goal was dashed by the lies and distortions of a self-serving yellow journalist, Randy Porter.
7. Friday, January 25, 2008, marked the last day of the second marking period at Livingston-Schuyler High. That evening, I received an e-mail from Jackson Frost, who had been a biology teacher for several years. The 25th, however, was his last day at Livingston-Schuyler High, because he had accepted a prestigious position as a researcher at McMurdo Station, Antarctica, to study the effects of global warming on the ozone layer. All of us at Livingston-Schuyler High were disappointed to see him go, but also happy that he had received this wonderful opportunity.

8. In his e-mail, Mr. Frost wrote that Sydney Parker, one of his students and a senior at Livingston-Schuyler High, had submitted a satisfactory extra-credit report on polar bears, such that it would entitle Sydney to an additional grade of 100% to be factored into his/her second-quarter average in that class.

9. There was no way Mr. Frost could input Sydney's extra 100% grade himself, because he was leaving for Tierra del Fuego on his way to Antarctica on Saturday morning, January 26 and besides, he no longer had a user name and password. By return e-mail, I indicated that I would take care of the situation, and personally input this extra grade into Grade-Track.

10. On Monday, January 28, 2008, I took care of the situation. I knew that Terry Gates would visit the Livingston-Schuyler High computer lab at around noon, to log into Grade-Track to prepare the students' second-quarter report cards. At noon, therefore, I walked from the Principal's Office to the computer lab, where I met Terry and advised him that I needed to use the Grade-Track system before he could print the report cards. Terry agreed to leave until I was finished, at which point I logged into Grade-Track with my user name and password, and inputted the extra grade of 100% into Sydney Parker's list of grades in Advanced Biology.

11. Soon after Terry prepared the report cards, I learned that Sydney Parker had edged out Dana Hopkins, another senior, for the title of Valedictorian by just one hundredth of one percent. Sydney is a very hard worker who, unlike Dana, took the most challenging curriculum available at Livingston-Schuyler High, rather than freshman courses during his/her senior year. As such, I was thrilled that Sydney had been rewarded for his/her diligence and perseverance.

12. Despite my own diligence in ensuring accuracy in Sydney's grades, my life began to unravel on February 1, 2008. That day, I met with Randy Porter about the following year's budget for the school newspaper, the *Schuyler Sentinel*. Randy was being his usual demanding self -- making requests for computers and software that the newspaper really didn't need, and refusing to take "no" for an answer. After about thirty minutes of stalemate, I received a call from the school's receptionist, who told me that the superintendent had made a visit to take a look at a leak in the roof. I had no choice but to meet with him, so I asked Randy to wait in my office until I was finished.

13. During his years at Livingston-Schuyler High, Randy could be a troublemaker and a prankster. One time Randy threw a teacher's eraser out a third-story window in the middle of class. Another time, on April Fools' Day, Randy removed the bulbs from every overhead projector after school, simply because he thought it would be "funny." Although he received punishment for these and other incidents, never did I imagine Randy would be as dishonest and unethical as he/she was in stealing papers from my desk while I was meeting with the superintendent on February 1. In particular, as I have learned in the course of this litigation, Randy took a record that I had printed from Grade-Track to confirm that I had indeed added a grade of 100% for Sydney Parker in Advanced Biology on January 28. This was no innocent prank -- this was a breach of my trust.

14. Upon arriving for work at Livingston-Schuyler High on the morning of February 5, I was met by my receptionist, who told me that Randy Porter was distributing an editorial about me throughout the school. The receptionist immediately showed me a copy, and as I read it, I became sick. How could a student write such things about me that were not at all true? Randy had never talked with me about Sydney Parker's grades, or the need to change them on January 28. How,

therefore, could Randy accuse me of making a grade change to pay back a political supporter who only coincidentally happens to be Sydney Parker's father?

15. On February 5, and in the week that followed, I tried my best to do damage control by speaking publicly about the true reason why I had changed Sydney Parker's grades in Advanced Biology, namely because Jackson Frost had asked me to do so for a perfectly legitimate reason. It was truly sad that Mr. Frost was not able to back me up, as I knew he would have. Yet the court of public opinion in Canal City was unfortunately captivated by Randy Porter's untrue allegations. My polling in mid-February indicated that, because of Randy Porter's allegations, there was no way I could win an Assembly race among an electorate that had turned against me so suddenly. Therefore, I had no choice but to give up the race, and my dream of achieving higher elective office.

16. For anyone to contend that I have ever shown favoritism to Sydney Parker is absolutely ludicrous. It is true that Sydney's father George, a successful real estate developer and model philanthropist in our community, gave me my start in politics, and has contributed generously to my past campaigns. It is also true that, as a member of the Canal City Common Council, I have supported re-zonings that have permitted Mr. Parker to build new projects to revitalize Canal City's downtown, and that have added millions of dollars to the City's tax base. Yet none of these factors played any role in my need to change Sydney Parker's grade on January 28. I am guilty only of making sure that Sydney received the extra credit he/she had earned.

17. I know that Terry Gates questions why I needed to change Sydney Parker's grade at the last minute in Advanced Biology. This is just sour grapes, because I would not sign off on a pay raise for Terry a few years ago. Terry is fortunate to have tenure, ensuring that I can't do much about his/her frequent two-hour lunches. Regardless, Mr. Frost asked me in the midst of last-minute preparations for his trip to Antarctica to handle one last grade change for Sydney Parker, and I did so.

18. As for Jamie King, one of Randy Porter's biggest defenders, I have to doubt the judgment of anyone who thinks that writing for the *New York Rag* is a badge of journalistic honor. Enough said.

19. Dana Hopkins's father, himself an attorney, filed suit against the Canal City School District and me.

20. Given Randy's recent inheritance, I am afraid that Randy's yellow journalism will only continue unless he is stopped. I am suing Randy Porter for libel, because I deserve compensation for the harm that Randy Porter's spurious allegations did to my career and to my reputation in the community. At the very least, I want to make sure that Randy Porter never hurts another person ever again.

Dated: December 1, 2008


Chris Cross, Ed.D.

Sandy Curtis
English Teacher/Faculty Advisor

1. My name is Sandy Curtis and I live at 660 Oneida Street in Canal City, NY.
2. I am an English teacher at Livingston-Schuyler High School. I have been a teacher there for eleven years.
3. I received my undergraduate degree in journalism from Empire College, where I was editor of the college newspaper, and my master's in English from SUNY Bison. I interned at NPR in the summer between my sophomore and junior years of college. I interned at the New York State Archives during the next summer. After that, I had to be gainfully employed so I could help to pay for my education.
4. I have been one of the faculty advisors for the *Schuyler Sentinel* for six years now and I have enjoyed it, until now. It gives me a chance to pass along some of what I learned when I studied journalism in college, and it gave me a real thrill last year when one of my students got a spot on the Ivy League Reporter.
5. Jamie King has been the other faculty advisor for something like twenty years. Jamie is an institution at the school. He/she is an English teacher and a good one, but if you ask me, he/she watches those lurid news programs. You know, the ones where people purvey rumors and lies in loud and scandalized voices. After all, he/she still likes to brag about his/her experience as a reporter for the *New York Rag*. I don't trust anyone who ever worked for the *New York Rag*. That's yellow journalism!
6. So when Randy Porter asked to see me on February 4th, I was initially glad to see him/her, but when I heard what he/she wanted to do! Well, I was shocked. Didn't he/she remember anything I taught him/her? A good journalist doesn't publish rumors, he/she publishes news. A journalist is supposed to inform, not titillate. The *Sentinel* is a school newspaper, not a cheap tabloid.
7. You know, we had an incident with Randy in the past. It was three years ago, when Randy was a freshman. Jamie King may not be familiar with this. I think he/she was on sabbatical that year, writing a book. That was the year the gym teacher, Ned Riley, was out for two months mid-year. His father was dying down in Florida and he took a leave of absence. That's not a very glamorous story though and pretty soon the rumors were flying about. Randy came to me with a story about Mr. Riley being fired for punching a member of the football team which, had it been true, would have been shocking indeed. Nothing came of it though because I made Randy interview each member of the team in my presence and not one of them had anything but praise for Mr. Riley. Randy was pretty mad at me for that. I remember him/her standing there. He/she would have been thirteen or fourteen. "You ruined my story!" he/she said. "No one is going to talk in front of a teacher!" I saw to it that when Mr. Riley senior died, our school paper published his obituary. Dr. Cross insisted on that, and he/she assigned the writing of it to Randy.
8. Randy had several run-ins with Dr. Cross. There was the prom incident last year. We were all alarmed by the growth of prom trouble, not just at our school but also across the nation. You hear the stories all the time; kids killed through drunk driving; unwanted pregnancies; date rapes; fights. No one wants those sorts of things in their communities. There was a faculty meeting

and we voted to have a breathalyzer at the entrance to the prom. Any student or date who didn't pass would be barred from attending. Some of the teachers wanted to cancel prom altogether, but Dr. Cross pushed for a more moderate solution. Of course, Randy jumped to the conclusion that Dr. Cross had made a unilateral decision about this only to bolster his/her political credits. I told Randy it wasn't true, that I was there, but Randy wouldn't believe me. I had to veto that story too, but that time, Jamie King agreed with me.

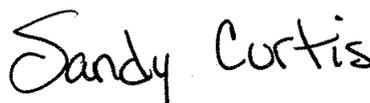
9. Some people are saying that Randy wanted to embarrass Principal Cross because Dr. Cross wouldn't fund the *Sentinel* at the level Randy deemed necessary. I have been accused of "being in the Principal's pocket" because I understood the limitations on the school budget and reluctantly went along with the Principal on the funding level. Some think I vetoed the article because I am a Dr. Cross supporter, but that wasn't why I vetoed the article. I vetoed the article because publishing it would have been a journalistic mistake. A real journalist would have more than one source for a story. Yes, Randy had a document showing a grade change, but the change was not explained. I told Randy that Principal Cross must have had a really good reason for changing that grade and Randy should go ask him/her about it, you know, get an interview. But Randy refused. Also, I told Randy he/she needed another source, but Randy wouldn't wait.

10. So when we had our regular editorial meeting, I wasn't surprised to discover that Jamie King supported Randy's desire to publish his/her article. In fact, I hadn't even settled down with my cup of coffee before Jamie began to plead Randy's case. Jamie felt that Randy had sufficient evidence to run the story. I didn't then and I still don't. Jamie was horrified that I vetoed the story.

11. I was really, really surprised when a student brought me a copy of Randy's editorial. Randy had gone over our heads and self-published. At the time, I wasn't aware that he/she had sent a copy to the *Canal City Chronicle*.

12. This June, I had to walk in graduation. For the first time, I didn't enjoy it. I've gone over and over this and I don't see that I could have done anything differently. Things haven't been the same between Jamie and me since this incident and I don't know if I can continue as faculty advisor with him/her.

Dated: December 2, 2008



Sandy Curtis

Sydney Parker
Valedictorian of Livingston-Schuyler High School Class of 2008

1. My name is Sydney Parker. I am 19 years old, and currently a freshman at Foley College, in Blanche Hills, New York, where I have received a full academic scholarship.
2. Last May, I graduated from Livingston-Schuyler High School, in Canal City, New York. My four years at Livingston-Schuyler were remarkable, but the highlight clearly was winning the award of Valedictorian. I worked tremendously hard throughout high school, and it was so rewarding to see all that hard work pay off at graduation.
3. Since first quarter at Livingston-Schuyler, I found myself in a tight race for the highest average with another student, Dana Hopkins. At the end of each marking period, it seemed that we would take turns holding the highest grade average, usually by a few hundredths of a decimal point. Going into my senior year of high school, I knew that Dana and I would be neck and neck for the highest average. But I also knew how much I wanted to become Valedictorian, so I was committed to doing everything it takes to come out number one in my class.
4. For purposes of naming the Valedictorian, Livingston-Schuyler calculates the grade average based on three years and two quarters. The final two quarters of senior year are not counted toward determining the student ranked number one. Therefore, the final quarter that counted in the race to Valedictorian was the quarter that ended in January 2008. Needless to say, I worked tirelessly that final quarter to put myself in the best position I could be to win Valedictorian.
5. To help bolster my grade average, I enrolled in many advanced and honors courses during my senior year. For me, by far the most challenging was Advanced Biology, taught by Jackson Frost. Biology is not my forte, and I had to work long and hard to keep my grades up in that class. Mr. Frost was a tough teacher, but a fair one, who wanted to see his students excel.
6. At the first Advanced Biology class in September 2007, Mr. Frost passed out a handout of classroom policies, which included information on grading. The handout explained that Mr. Frost would offer extra credit, in the form of one extra grade per quarter, for any student who turns in a satisfactory extra credit report on a biology-related topic. Of course, I took advantage of this opportunity to increase my grade in the class.
7. Because of various other academic and extracurricular commitments, I did not submit my extra credit report to Mr. Frost until rather late. It was still submitted on time, however; I e-mailed it to Mr. Frost on the last day of the marking period. My report was entitled, "The Plight of the Endangered Polar Bear." I was proud of this paper, and I believed Mr. Frost would be satisfied and I was sure that he would credit me with an extra 100% grade.
8. If Dr. Cross had not changed my grade, I would have lost the race to become Valedictorian. The addition of the extra credit grade increased my average in Advanced Biology from 97% to 98%. As a result, my final cumulative average over 3 ½ years at Dewitt Clinton was 98.53%, narrowly ahead of Dana Hopkins' average of 98.52%. I later ran the numbers, and realized that, had that extra credit grade in Advanced Biology not been added, I would have lost

the race for highest average to Dana Hopkins by just as close a margin. This probably was the tightest race in school history, but all I cared about was that I was named Valedictorian, and Dana was Salutatorian. Dr. Cross's announcement at a school wide assembly on January 30, 2008 that I won Valedictorian was probably the proudest moment of my life.

9. I cannot believe that Randy Porter had the audacity to suggest that anything improper had occurred when Dr. Cross changed my Advanced Biology grade. I have known Dr. Cross for many years, ever since he first started to become involved in local politics. My father, George Parker, is a major booster for Dr. Cross's political party, and has donated to each of Dr. Cross's campaigns. My family has money, so my father has been able to donate quite generously, and convince many of his friends also to contribute, which can really make a difference in a local race. I could not tell you exactly how much money my father has contributed for Dr. Cross's various races, but I am sure that it is well into the thousands of dollars.

10. As a result of my father's contributions to Dr. Cross's campaigns, I have come to know Dr. Cross as a standup and honest person, and certainly not someone who would have done anything dishonest. With that said, I suppose the circumstances of when my Advanced Biology grade was changed may have looked suspicious and could be viewed as having an appearance of impropriety.

Dated: December 5, 2008



Sydney Parker

Affidavit of Randy E. Porter
Defendant

1. My name is Randy E. Porter. I reside at 534 South Percy Street in Canal City, New York. I am a freshman at Canal City Community College. Last academic year, I was a senior at Livingston-Schuyler High School in Canal City. I could have gone to a more challenging college, but I decided to attend CCCC because this stupid lawsuit has me confused and unable to focus on heavy-duty academics right now. In fact, I was accepted into Columbia University School of Journalism, but I am deferring my admission until this distraction is behind me. I certainly can afford to go to any college or university now because of the million dollar inheritance I received from my late grandfather Picken C. Boone, an oil tycoon. Right now, I am working as a stringer at *Canal City Chronicle*, the daily newspaper in Canal City.

2. This whole thing started back on February 1, 2008 when I was in the office of Dr. Chris Cross, Livingston-Schuyler's principal at the time. Our meeting started around 3:00 p.m. The regular school day ends at 2:45 p.m. The purpose of the meeting was to discuss the funding request for the school newspaper, the *Schuyler Sentinel* for the 2008-09 academic year. During the 2007-2008 academic year, I served as the editor-in-chief of the *Schuyler Sentinel*.

3. About thirty minutes into my presentation, Dr. Cross received a call and had to leave his/her office. He/she said he/she would return in approximately ten minutes. He/she told me to wait in his/her office. Now, being a reporter, I am naturally curious. My eyes tend to wander and they wandered onto the desk of Dr. Cross. I noticed a sheet of paper on the desk that had Sydney Parker's name in large type at the top of the sheet. Examining the sheet of paper more closely, it listed Sydney Parker's grades in Advanced Biology, including what appeared to be a grade for extra credit work. Like all good journalists with a nose for a good story, I took the sheet of paper and made a copy of the document using the photocopier just outside Dr. Cross's office. By that time of the day, Dr. Cross's office staff had left. After making the copy, I returned the document to the exact same place on Dr. Cross's desk.

4. As editor-in-chief of the *Schuyler Sentinel*, I review all articles (or pieces as we say in the newspaper business) submitted by the staff journalists and the editorial page column writers. We also accept guest editorials. In addition to looking for grammatical errors, I also do fact-checking. Truth and accuracy in reporting are of utmost importance to a news medium. I strive to be truthful and accurate in my own pieces and I expect, no I demand, that of my staff journalists and guest editorial writers. After I review all of the submissions for our weekly publication, the articles are sent to our faculty advisors for final approval.

5. Later in the evening of February 1st, I carefully examined the photocopy of the Dr. Cross document. It was fairly easy to determine from the document that Dr. Cross had changed Sydney Parker's grades in Advance Biology for the second quarter. Having attended the student assembly held on January 30th, I knew that the contest for valedictorian had been a very close one according to what Dr. Cross had said during the assembly. I'm now thinking to myself: "Did Dr. Cross change Sydney Parker's grade so that he/she could be the valedictorian?!" I recall reading in the *Canal City Chronicle* that George Parker, Sydney Parker's father, had donated big money to Dr. Cross's prior election campaigns. I even went to the New York State Board of Elections website and confirmed that George Parker had donated over five thousand dollars (\$5,000.00) to Dr. Cross's campaign committee during Dr. Cross's races for the City Council and over ten thousand dollars

(\$10,000.00) to Dr. Cross's campaign for the Assembly. I immediately knew that I had a juicy storyline with this information. I could see the headline: "***Principal Changes Sydney Parker's Grade: Parker Wins Valedictorian Race Over Dana Hopkins***". I am certain this kind of reporting helped me gain admission to Columbia University.

6. That weekend, I wrote an editorial that I wanted to publish in the *Schuyler Sentinel*. The end of the editorial reads as follows:

Though Principal Cross might deny it, the evidence is clear: Principal Cross changed Sydney Parker's grades at the last minute to help Sydney become valedictorian of Livingston-Schuyler High School. Dr. Cross's motive: to give payback to one of Dr. Cross's most reliable financial contributors to Dr. Cross's Assembly campaign.

7. On Monday, February 4, 2008, I met with the *Schuyler Sentinel*'s faculty advisors, Jamie King and Sandy Curtis and sought permission to publish my editorial in the school newspaper. Jamie King was in favor of publishing it; Sandy Curtis was not. Both faculty advisors have to agree before an article can be published in the *Schuyler Sentinel*. So, they both informed me that my editorial would not be published. Mr./Ms. Curtis gave some lame excuse that I needed to investigate the matter further, including talking to Dr. Cross. REALLY! I believe I had all the information I needed to present a thorough and accurate reporting of this matter.

8. Feeling that I was being stonewalled and fearing a cover-up, I decided I would self-publish my editorial. So, on the evening of February 4th, I went to one of those 24-hour photocopying stores and ran off 1,000 copies of the editorial. On Tuesday, February 5, 2008, I disseminated copies to students and teachers throughout Livingston-Schuyler High School. I also e-mailed a copy to the editorial board of the *Canal City Chronicle*.

9. I was thrilled with the rapid and complete coverage this matter received. Dr. Cross certainly got what he/she deserved as a result of trying to game the system for his/her own selfish benefit. I was even more thrilled when Dr. Cross withdrew from the Assembly race. We need people of higher moral character in public office.

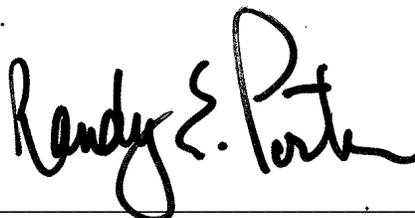
10. The next thing I know I'm getting sued for libel by Dr. Cross. What a sue-happy society we have become! It is no secret that Dr. Cross and I have had our differences in the past. He/she always brings up these little incidents like the time I threw a teacher's eraser out of a third-floor window or the time I removed the bulbs from some overhead projectors. Really high crimes and misdemeanors, right?! Bring on the electric chair!

11. I have always gotten along very well with *Schuyler Sentinel* faculty advisor Jamie King. I consider him/her to be a mentor. He/she received a Masters from the Columbia University School of Journalism and encouraged me to apply. He/she has always been very supportive of my reporting and opinion writing and always stressed that I should pursue stories without fear. Now the other faculty advisor, Sandy Curtis, is a real sourpuss. It seemed that every story I pursued that he/she considered controversial would get shot down before getting started. There was the story about football coach Ned Riley who I believed had been fired because he punched a player. It turned out that he was just on a leave of absence to visit his ailing father in Florida. But, anyway, Mr./Ms. Curtis had me to interview each football player in front of him/her about the punching incident. They all were afraid to say anything bad about the coach. This was no way for a journalist to conduct an investigation. This was all wrong. He/she ruined a good story. Anyway, Coach

Riley's father passed away shortly after the story was killed, and I agreed to write his father's obituary for the *Schuyler Sentinel*. Another story Ms./Mr. Curtis ruined was my story about Principal Cross's decision to have a breathalyzer at the entrance to the prom. Any student who did not pass the breathalyzer test would be barred from entering. I did not think this was Principal Cross's decision alone to make. Principal Cross was just pandering to the voting public. Mr./Ms. Curtis even got Jamie King to agree to the veto. Another great story down the drain! All I have ever tried to be is a good journalist and to expose the truth. But the school officials, except for Jamie King, do not want controversial stories covered. They all have this Pollyanna view of things. Talk about frustrating!

12. Principal Cross was an absolute miser when it came to providing funds for the *Schuyler Sentinel*. The budget for the newspaper hardly grew at all when he/she was principal; yet, Principal Cross always found ample funding for his/her pet school projects. And what a self-centered individual. I truly believe Principal Cross ran for these elective offices not out of a sense of duty and service to the public, but out of selfishness so he/she could double and triple dip in the state pension system. Also, over the years, I received several detentions, none of which were deserved, from Dr. Cross for very minor infractions that could have been easily overlooked. While I do not consider myself to be a crusader, others might. I believe I may have received excessively harsh punishment over the years because of this misperception. Although I was not always treated fairly by Dr. Cross, I believe my reporting and editorializing on this grade scandal was fair and balanced. We are all better off when the truth is revealed.

December 1, 2008

A handwritten signature in black ink that reads "Randy E. Porter". The signature is written in a cursive, flowing style with a large initial "P".

Randy E. Porter

Affidavit of Terry Gates
Director of Technology

1. My name is Terry Gates. I reside at 259 Hill Street, Canal City, New York. Since July 1999, I have served as the Director of Technology for the Dewitt Clinton High School. I was brought in to take care of the Y2K problem that everyone feared. Of course, it turned out to be much-to-do-about-nothing, but my staff and I were prepared anyway.

2. Prior to my employment at Livingston-Schuyler, I was the head computer security analyst for a medium-size regional bank in the Midwest. I have achieved a number of certifications in the computer field. I have a Network+ Certification, which is an entry-level certification that tests a candidate's ability to understand the function and features of networking components, as well as the candidate's ability to carry out essential network installation, maintenance and troubleshooting duties. I am a Security Certified Network Professional (SCNP). The SCNP is an advanced security certification designed to test knowledge of high-level security topics. I am also a MCSA (Microsoft Certified Systems Administrator) and a MCSE (Microsoft Certified Systems Engineer). The MCSA certification is designed for professionals who implement, manage and troubleshoot network and system environments based on the Microsoft Windows®2000 and the Windows .NET Server platforms. The MSCE credential is the premier certification for professionals who analyze the business requirements and design and implement the infrastructure for business solutions based on the Microsoft Windows®2000 and Microsoft server software.

3. I received a Bachelor of Science Degree in electrical engineering and a Masters in Computer Science from the University of Wisconsin-Madison. I am a frequent lecturer at national and regional computer conferences and expos on the topics of network and Internetworking security.

4. I am responsible for all of the computer infrastructure at Livingston-Schuyler. Several years ago when teachers and students started to complain about inaccuracies in the calculation of many students' cumulative GPAs, we trashed-canned the old semi-automated system and brought in Grade-Track. Although very expensive, Grade-Track is an extraordinary computer system and well-worth the money. This is how Grade-Track works:

- The teacher inputs the grades for each student at the end of a given marking period. (A marking period is approximately ten (10) weeks.) The teacher uses his/her unique username and password to log into Grade-Track. Grade-Track makes an electronic record every time a teacher logs in or log out, as well as a record of which grades the teacher inputs for which students during each real-time session.

- A teacher is only able to access the records of students in his or her own class. Dr. Chris Cross, the principal, has a "master password" that allows him/her to access and modify the record of any student at the school.

- Teachers must input the student grades into Grade-Track no later than 1:00 PM on the third day after the marking period. After the three-day deadline, I log into Grade-Track using my "special" password. I then enter several commands that facilitate calculation of a grade point average (GPA) for each student (i) in each class, (ii) across all classes for the given marking period, (iii) across all classes during the academic year to date, and (iv) across all classes during the student's enrollment at Livingston Schuyler High School.

- After entering several additional commands, I am able to generate a report card containing all of these averages for each student. This final process takes about one day which enables students to receive their report cards within five days after the given marking period ends.

5. On Monday, January 28, 2008, the teachers were required to have entered all of their students' grades since this date was the third day following the second marking period. At around 12:00 PM on that day, after I finished eating lunch, I headed to the computer lab to commence calculation of the students' GPAs for their report cards. Upon entering the computer lab, I was greeted by Dr. Cross. He/she informed me that, "There is a last-minute change that needs to be made before you can start doing the calculations. Could you come back in about an hour?" I said "sure" since he/she is the boss and I went to the faculty lounge to kill time as well as chat with some teachers.

6. At around 1:00 PM on January 28th, Dr. Cross approached me in the faculty lounge. In the presence of several teachers, Dr. Cross said to me, "Thanks, Terry. Now it's time for you to do your stuff."

7. I have since learned that Dr. Cross had changed the Advanced Biology grade of Sydney Parker, giving Sydney an extra grade of 100%. As I understand it, Mr. Frost, Sydney Parker's Advanced Biology teacher, had supposedly forgotten to input a grade into the system for Sydney for extra-credit work Sydney had performed. So, it is alleged that before he left for Antarctica, Mr. Frost asked Dr. Cross to correct the oversight. I have no direct knowledge of the events surrounding the grade change, just what I have been hearing.

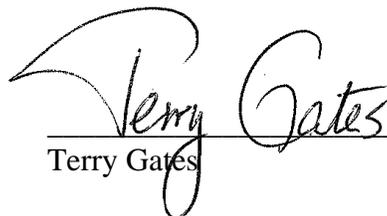
8. Mr. Frost was always conscientious in submitting his grades, almost to a fault. He was usually among the first teachers to input their grades. And he was thorough and made very few errors over the years, if any. Also, Mr. Frost has above-average computer skills. He was very knowledgeable of the Grade-Track computer system and when it was first implemented, he would often ask me very technical questions about Grade-Track. Unlike many teachers, Mr. Frost picked up Grade-Track right away and never needed assistance in inputting his grades. Because Mr. Frost was so meticulous when it came to grades, I don't recall him ever having to correct any errors or oversights.

9. In my opinion, Mr. Frost had ample time to make any corrections to Sydney Parker's biology grade. Mr. Frost told me that his flight was departing Saturday morning for Antarctica. He was in school on Friday, January 25th and in less than five minutes could have easily made any corrections. In fact, he did not turn in his computer access and security code until the very end of the day on Friday.

10. Now, it is completely untrue that I harbor any animosity towards Dr. Cross. Sure I believe I was unfairly denied a pay raise two years ago. My talents and skills should have been rewarded. Besides, I really could use the extra money since my two children will be going off to college within the next couple of years. But, I really don't hold that against him/her. While Dr. Cross could have signed off on my pay raise, I realize that the District was undergoing a minor budget crisis at the time. I still work very hard.

11. Finally, I am testifying because I believe a great injustice has been done to Dana Hopkins. I am aware of Dana because he/she has been the top student in her graduating class at Livingston-Schuyler during his/her four years of high school. I talk to teachers all the time and without exception they all agree that he/she is an outstanding student, and also possesses a pleasing personality. Similarly, Randy Porter has been a stellar student throughout his/her high school years. Having read his/her news stories and editorials over the years and from what I have heard and have observed I sincerely believe Randy is a dedicated and passionate newsperson. I do not believe he/she would engage in sloppy journalism. Just like me, Randy came to the conclusion that a wrong had been committed and sought to bring it to light. It is with pride that I associate myself with Randy.

December 8, 2008



Terry Gates

Affidavit of Jamie King
English Teacher/Faculty Advisor

1. My name is Jamie King. I reside at 41 Washington Street in Canal City, NY. I received a Bachelor's Degree from Canal City University in 1973, a Masters in English from Canal City in 1974, and a Masters degree from Columbia University School of Journalism in 1988.

2. Immediately after receiving my Masters degree from Canal City University, I began a career in newspaper reporting. For the next decade, I served in a variety of roles in various local newspapers across New York State, writing feature stories, as well as covering local politics and sports and the courthouse beat. After Watergate, I was determined to use my reporting to uncover corruption at every level of public life. In 1979, I broke a huge story about how one local government was ripping off the taxpayers by not holding public hearings about which ice cream vendor to use in its public amusement park. I'm proud to say that because of that story, a law was passed that called for a public notice and 30-day public comment period for every contract for ice cream in the state.

3. In 1984 I got what I consider my "big break:" covering the presidential election for the *New York Rag*, a New York City tabloid. In addition to traveling on President Reagan's campaign plane, and interviewing the candidates and their staffs, I was able to learn a lot from my fellow reporters.

4. Following the 1984 election, I decided that I wanted to teach journalism for a living. I felt that I had learned so much about the decisions that go into putting together a paper and making smart choices as a reporter. While continuing to work at the *Rag*, I applied to Columbia's world-renowned journalism school, and in 1986, I was lucky enough to be accepted. I received my degree with highest honors two years later, and the following year, in 1989, I accepted a position to teach English at my alma mater, Livingston-Schuyler High School. I also became the faculty advisor to the *Schuyler Sentinel*, the school newspaper. I have held both positions ever since, except for one year, 2004-2005, when I took a sabbatical. During that year, I wrote a book, *Following Woodward and Bernstein: How One Journalist Took On the Establishment!* The book didn't sell very well, and it's out of print now, but used copies are still available online.

5. In the almost twenty years that I have served as a faculty advisor to the *Sentinel*, I have rarely been as impressed with a student reporter as I have been with Randy Porter. Randy has worked on the paper continuously since his/her freshman year, but because that was the year I took my sabbatical, I didn't get to know Randy well until the following year. He/she has contributed several outstanding pieces, including an expose of excessive trans fats in the cafeteria food, a brilliantly reported piece that resulted in a complete overhaul of the school lunch menu. I was delighted to learn that Randy had been selected as the editor of the *Sentinel* for the 2007-2008 year, and I'm proud to say that Randy will eventually be following in my footsteps by attending Columbia to study journalism.

6. On the afternoon of Monday, February 4, 2008, Sandy Curtis and I held our regular editorial meeting with Randy. The three of us meet every week to go over the layout of the *Sentinel* that week, the stories for publication, and the stories being worked on for the following week. Theoretically, Sandy and I have the authority to veto any story and to prevent its publication,

but in the time that I have been at Livingston-Schuyler, I only remember one other instance where that authority has been invoked. No matter what the story, or whose interests are potentially at stake, we publish. Not only do I feel a commitment to protect the First Amendment freedoms at stake, I believe it's a critical lesson for the students we teach about careful reporting, the need to check sources, and the consequences that might ensue if proper procedures are not followed. If the students miscalculate or don't report a story properly, they need to take responsibility. I take student journalism very seriously – but Dr. Cross doesn't seem to agree with me! We have had many arguments over the years when the *Sentinel* budget was cut.

7. At the end of our February 4, 2008 meeting, Randy showed Sandy and me a special editorial he/she had prepared for publication that week. It was a strongly worded editorial accusing our principal, Chris Cross, of deliberately changing a student's grade to reward that student's father for contributions to Dr. Cross's political campaigns. In fact, if not in word, it accused Dr. Cross of accepting a bribe in exchange for changing Sydney Parker's grade, which directly led to Sydney Parker being named the 2008 valedictorian of Livingston-Schuyler High.

8. I was startled to learn of this turn of events, but in retrospect, it made sense. Of course, everyone in the school, including the faculty, knew that Sydney and Dana Hopkins were locked in a neck-and-neck race to become the valedictorian. I remembered more than one occasion in the faculty lounge where Dr. Cross had mentioned that he/she wanted Sydney Parker to be the valedictorian, and that George Parker was a "good friend." I remember in particular one faculty meeting where Dr. Cross was involved in a heated conversation in which he/she exclaimed: "Sydney is by far a better student than Dana; we all know that Dana takes easy 'gut' courses whenever he/she can get away with it! Sydney deserves it!" At the time, I thought nothing of it; after all, we on the faculty are only human and we have our favorite students, although we should never let our feelings interfere with the grades we give. I was also surprised to learn that Sydney's father George was a major contributor to Dr. Cross's political campaigns, but I did know that George Parker was a wealthy "mover and shaker" in Canal City. Randy did an outstanding reporting job in uncovering the connection and in producing evidence of what certainly looked to be major misconduct by Dr. Cross.

9. After Randy showed us his/her editorial, Sandy and I had a lengthy argument about whether to publish it. I believed that Randy had enough evidence and had done enough independently verifiable reporting to warrant publication, even though Randy told us that he never called Dr. Cross for comment. After all, Dr. Cross is in the news all the time, and had to expect that his/her actions as the principal of Livingston-Schuyler would be fair game for reporters. Particularly because this piece was an editorial, and not a straight news story, I felt that Randy was entitled to put forth his/her version of why Sydney Parker's grade in biology was changed by our principal at the last moment. I told Sandy that I thought we would be sending the wrong message to our students by vetoing publication of such a thoroughly researched and well-written piece. But Sandy and I both have veto power, and Sandy wouldn't be dissuaded from exercising it, so Randy's editorial didn't run in the *Sentinel*.

10. The next day I arrived at school and saw that copies of Randy's editorial were being distributed on flyers in the hallways. I picked up a copy and saw that Randy had copied his/her editorial, word-for-word the same document that Randy had shown to Sandy and me. When I arrived at my office and opened my copy of the *Canal City Chronicle*, I saw a front-page story based on Randy's reporting. I was proud of Randy for taking the initiative and bringing what he/she had learned to the attention of the school and the community. It took a lot of guts, if you ask me, and now Dr. Cross is suing Randy for doing what any good journalist would do – reporting the facts.

December 10, 2008

A handwritten signature in black ink, appearing to read "Jamie King". The signature is written in a cursive style with a large initial "J".

Jamie King

PART V

NEW YORK STATE HIGH SCHOOL MOCK TRIAL

OFFICIAL EXHIBITS

Exhibit 1 ~ *Canal City Chronicle* Article

Exhibit 2 ~ Porter's Special Editorial Flyer

Exhibit 3 ~ Parker's Grade-Track Print Out

Exhibit 4 ~ Frost /Cross E-mail Print Out

Exhibit 5 ~ Crimson Poll Data and Graph

Exhibit 6 ~ Graphic of Polling Data from *Canal City Chronicle*

CANAL CITY CHRONICLE

All the news that's ... whatever!

Vol. 75, No. 38

February 7, 2008

Principal Changes Grade; Costs Student Valedictorian Race

Edward R. Merrill, Reporter

Controversy is brewing at Livingston-Schuyler High School. Randy E. Porter, a high school senior, alleges that Principal Chris Cross changed the grade of a student that allowed that student to be named the 2008 valedictorian. The student who would have become the valedictorian but for the action of the Principal has not filed a complaint, but is expected to do so shortly, according to sources speaking on condition of anonymity.

Porter is editor-in-chief of the high school newspaper, the *Schuyler Sentinel*. Prevented from publishing a story about the grade scandal in the *Schuyler Sentinel* by faculty advisors, Porter produced and distributed a self-published editorial about the grade change. The editorial was widely distributed around the school by Porter. The *Canal City Chronicle* was provided an unsolicited copy of the editorial by the author and facts contained in that editorial have been independently confirmed by this newspaper.

The Porter editorial insists that Principal Cross, also a member of the Canal City Common Council, changed the Advance Biology grade of the child of one of his/her political and chief financial supporters, a George Parker. Porter

alleges that while in Principal Cross' office s/he saw a document on the Principal's desk that evinced the grade change for Sydney, Parker's child. While the Principal was out of his/her office for several minutes, Porter stated that s/he photocopied the document.

The editorial goes on to state that Principal Cross' claim that s/he changed the grade at the request of a teacher is not credible. The teacher, Jackson Frost, now deceased, allegedly asked Principal Cross to add a grade of 100% to Sydney's final grade in the biology course. The change caused student Dana Hopkins to lose the valedictorian contest.

According to sources, Porter and Principal Cross have been at odds for several years regarding the funding for the school newspaper. There are reports that Porter has engaged in petty antics around the school that have irritated Principal Cross. The suggestion is that this animosity between Porter and Cross may have fueled the decision to expose the grading controversy.

Principal Cross, who is in a hotly contested race for a New York State Assembly seat, was unavailable for comment. Repeated calls by a reporter to Porter were not returned.

COVER UP

Principal Changes Sydney Parker's Grade; Parker Wins Valedictorian Race Over Dana Hopkins

Randy E. Porter
February 2, 2008

This is a very difficult story about which I am compelled to write. However, a travesty which occurred at OUR high school, Livingston-Schuyler H.S., has to be exposed.

On February 1, 2008 I had a meeting with Principal Chris Cross in his/her office to discuss next year's funding for the *Schuyler Sentinel*. Shortly after the meeting commenced, the principal had to leave the office for a few minutes to attend to something else. While awaiting his/her return, I observed in plain view on the top of the principal's desk a document which had Sydney Parker's name at the top. I am a reporter; so, I picked up the document to examine it further. The document listed Parker's grades in Advanced Biology. It appeared that Parker's grade in the course had just been changed by Principal Cross.

Sensing a good story, I made a photocopy of the document using the office copier. I knew that the contest for valedictorian between Dana Hopkins and Sydney Parker had been close as Principal Cross mentioned in the student assembly on January 30th announcing Parker as the winner. Did Principal Cross change Parker's grade so that s/he could be the valedictorian?

Parker's farther, George Parker, has donated significant sums of money to Dr. Cross's prior election campaigns. Dr. Cross, in addition to serving as principal of our high school, is also a member of the Canal City Common Council. Now, s/he is running for a seat in the New York State Assembly. The New York State Board of Elections website shows that George Parker contributed five thousand dollars (\$5,000.00) to Dr. Cross's city councilperson campaign and over ten thousand dollars (\$10,000.00) to his current campaign for the Assembly. These kinds of shenanigans have got to stop!

Though Principal Cross might deny it, the evidence is clear: Principal Cross changed Sydney Parker's grades at the last minute to help Sydney become valedictorian of Livingston-Schuyler High School. Dr. Cross's motive: to give payback to one of Dr. Cross's most reliable financial contributors to Dr. Cross's Assembly campaign.

ID # 695223

Sydney Parker

Homeroom: LS House 234

Expected Graduation Date: 0608

DOB: 072790

CLASS SPECIFIC COMMAND

Class ID #499 Adv. Bio.

Q1

HW1	HM2	QZ1	HW3	HW4	QZ2	HW5	HW6	QZ3	LAB	UT 1	EC	Q.AVE
102	102	98	102	99	100	102	102	100	95	98	100	99.5

UNIT TEST/LAB GRADES WEIGHTED 2Xs

Q2

HW7	HM8	QZ4	HW9	HW10	QZ5	HW11	HW12	QZ6	LAB	UT2	EC	Q.AVE	YTD
100	97	99	98	102	100	90	94	93	94	96	100*	96.64	98.07

UNIT TEST/LAB GRADES WEIGHTED 2Xs

LOG IN HISTORY:

090507JF

110907JF

012508JF

012808CC *MASTER PASSWORD

RUN DATE 012808

McMurdomainail.com

Jackson F. <jack.frost@mcmurdomainail.com>

FYI

2 messages

Jackson F. <jack.frost@mcmurdomainail.com>

Fri, Jan 25, 2008 at 9:56

PM

To: Chris Cross <crossc@lscsd.k12.edu>

Chris:

thought you should know- Sydney Parker turned in an extra credit report today-in my adv. bio class, grade = 100%.

JF

Chris Cross <crossc@lscsd.k12.edu>

Fri, Jan 25, 2008 at 10:20

PM

To: " Jackson F." <jack.frost@mcmurdomainail.com>

Jack-

Gotcha-thanks.

Good luck, safe travels, and keep us posted on your experiences in Antarctica.

Chris

[Quoted text hidden]

[Http://mail.mccurdo.com/mail/?ui=2&ak=6744edf430&view=pt&search=inbox&th=32f0w...](http://mail.mccurdo.com/mail/?ui=2&ak=6744edf430&view=pt&search=inbox&th=32f0w...)

The Crimson Poll
239 Onondaga Street
Canal City, NY
December 15, 2007

This poll was prepared for Dr. Chris Cross in preparation for a campaign for State Assembly. Poll commissioned by the Chris Cross Campaign Committee.

Questions asked included the following:

1. Have you heard anything about Dr. Chris Cross, who serves on the Canal City Common Council?
2. Did you know the Dr. Cross is also the principal of Livingston-Schuyler High School?
3. Did you know that he/she held the line on spending while at Livingston-Schuyler?
4. How important is that to you?
5. Did you know that test scores have consistently risen while Dr. Cross has been principal?
6. How do you feel about Dr. Cross?
7. Do you think that your taxes are too high?
8. Did you know that as your Assemblyperson, Dr. Cross plans to slash New York's out-of-control spending and to cut taxes?

After asking those questions, the pollster asked the background questions about age, number of persons in the household, ages of children, voter registration, party affiliation, etc.

The poll results are as follows:

74% of voters polled were familiar with Dr. Cross as Council member. Of those who were familiar with his/her Council position, 27% had no opinion of his job, 14% had an unfavorable opinion and 59% had a favorable opinion.

57% knew that Dr. Cross is the Principal of Livingston-Schuyler High School, of those who knew both, 78% were favorably impressed with his/her holding down costs and 88 % thought that Livingston-Schuyler High School is a good school, at least in part, because of his/her leadership.

79% of the registered same party voters polled stated that they would vote for Dr. Cross should he/she run for Assembly person while 43% of other party voters would vote for Dr. Cross.

The Crimson Poll
239 Onondaga Street
Canal City, NY
February 14, 2008

This poll was prepared for Dr. Chris Cross in preparation for a campaign for State Assembly person. Poll commissioned by the Chris Cross Campaign Committee.

Questions asked included the following:

1. Have you heard anything about Dr. Chris Cross, who serves on the Canal City Common Council?
2. How important is that to you?
3. How do you feel about Dr. Cross?
4. Did you know the Dr. Cross is running for Assembly person?
5. Did you know that he/she held the line on spending while at Livingston-Schuyler?
6. Did you know that test scores have consistently risen while Dr. Cross has been principal?
7. Do you think that your taxes are too high?
8. Did you know that as your Assembly person, Dr. Cross plans to slash New York's out-of-control spending and to cut taxes?
9. Have you read anything in the *Canal City Chronicle* about Dr. Cross and the process of determining the valedictorian of Livingston-Schuyler High School?

After asking those questions, the pollster asked the background questions about age, number of persons in the household, ages of children, voter registration, party affiliation, etc.

The poll results are as follows:

79% of voters polled had read the editorial in the *Canal City Chronicle*, but 92% had discussed the editorial with their friends. Of those who were familiar with the article, 15% had no opinion of its veracity, 17% did not believe the editorial, 10% wanted to hear more facts, and 58% believed the article.

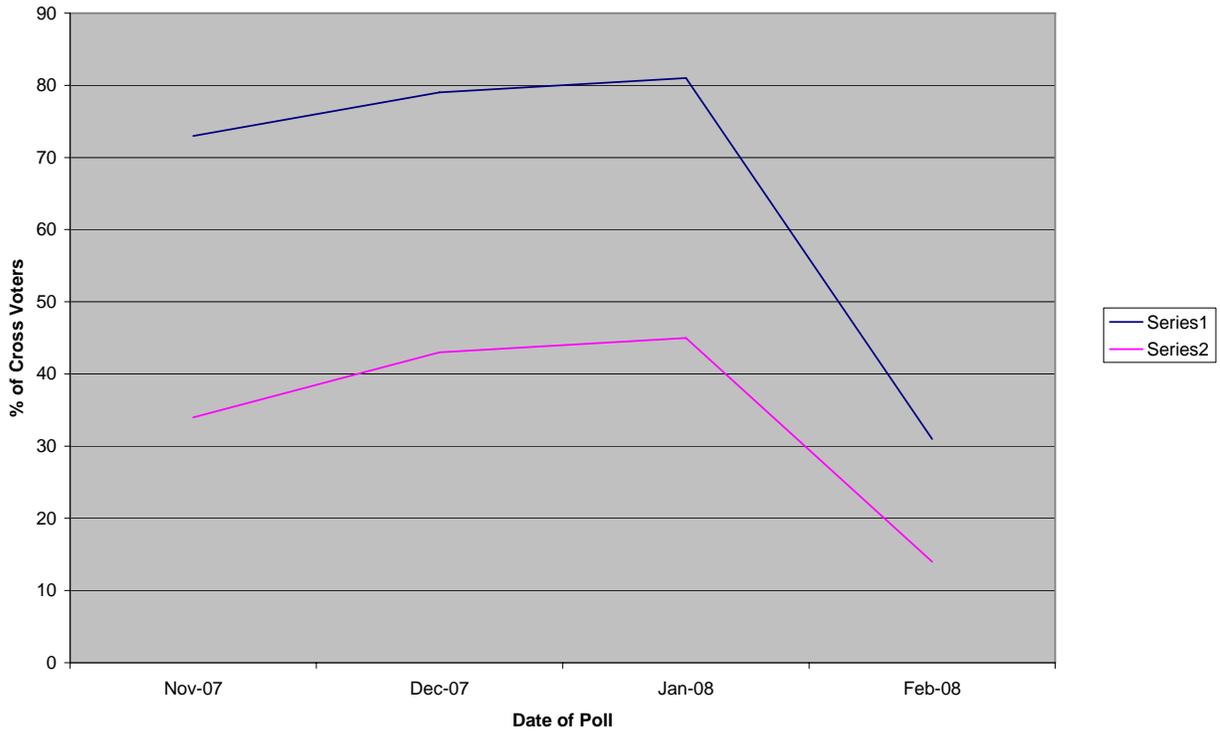
31% of the registered same party voters polled stated that they would vote for Dr. Cross despite the *Canal City Chronicle* article should he/she run for Assembly person while 14% of other party voters would vote for Dr. Cross.

Canal City Chronicle-February 24, 2008

Graphic of Poll Data courtesy of Cross Campaign

For full article see page A3: "Cross Craters"

Crimson Poll-Dr. Chris Cross' Numbers
 Committed by the Chris Cross Campaign Committee



Legend: Series 1: Same Party Affiliation

Series 2: Different Party Affiliation

Month	%of Same Party Voters	% of Different Party Voters
Nov-07	73	34
Dec-07	79	43
Jan-08	81	45
Feb-08	31	14

New York State Board of Elections
www.elections.state.ny.us

QUERY:02/01/2008

COMMITTEE: FRIENDS OF CHRIS CROSS

DONOR: PARKER

DATES: 01/01/2000 TO 01/31/2008

DONOR	DATE	COMMITTEE	AMOUNT
Parker, George	05/10/00	Friends of Chris Cross	\$ 500.00
Parker, George	11/01/01	Friends of Chris Cross	\$1,500.00
Parker, George	10/12/02	Friends of Chris Cross	\$ 750.00
Parker, George	05/13/03	Friends of Chris Cross	\$1,000.00
Parker, George	03/07/04	Friends of Chris Cross	\$1,500.00
Parker, George	11/01/05	Friends of Chris Cross	\$2,500.00
Parker, George	07/13/06	Friends of Chris Cross	\$2,000.00
Parker, George	08/11/07	Friends of Chris Cross	\$2,000.00
Parker, George	01/15/08	Friends of Chris Cross	\$5,000.00

PART IV

NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT

RELATED LAW

NEW YORK STATE CASE LAW

New York Times Co. v. Sullivan

376 U.S. 254 (1964)

When the plaintiff is a public official, a candidate for public office, or a public figure, suing for defamation, the plaintiff's claim must be established by proving whatever is required under state tort law (i.e., the defendant's publication to a third person of defamatory material of and concerning the plaintiff) AND, as a constitutional requirement, that the defendant published (a) a falsehood, (b) knowing it to be false or acting in reckless disregard whether it was true or false (i.e., "actual malice.") While the *New York Times* (b) requirement must be proved with "convincing clarity," the *New York Times* rule does not require proof of actual harm to reputation.

James v. Gannett Co., Inc.

47 AD2d 437 (1975)

The plaintiff, a belly-dancer, sued the defendant which had published a story suggesting that the plaintiff might be a prostitute. The court reasoned that inevitable misstatements which occasionally occur in the exercise of uninhibited speech and press are tolerated because of our national commitment to free expression. However, the purpose of the *New York Times* rule is to promote the search for truth – not to encourage embellishment of the facts, and particularly not to encourage spicing-up a story with clearly libelous fabrications.

Huggins v. Moore and The Daily News

94 NY2d 296 (1999)

Even where the plaintiff is not a public official or a public figure, but the allegedly defamatory statement involves a matter of public concern, the plaintiff still must prove constitutional malice to recover presumed or punitive damages. Such plaintiff must prove that the media defendant "acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties." (Cite omitted.) To make the determination of whether content is arguably within the sphere of legitimate public concern, allegedly defamatory statements "can only be viewed in the context of the writing as a whole, and not as disembodied words, phrases or sentences." (Cite omitted.)

Mahoney v. Adirondack Publishing Co.

71 NY2d 31 (1987)

Plaintiff, a high school football coach, sued for defamation based on an article in defendant's newspaper that the coach had used profanity in addressing his players during and after a game the team lost. The Court of Appeals held that the plaintiff failed to show by clear and convincing proof that the reporter's defamatory statements were published with actual malice. The plaintiff conceded at trial that he was a public figure. (NOTE: In a footnote, the court provided the following: The term "actual malice" has been criticized as an inappropriate label for this state-of-mind requirement because it employs a term (malice) -- commonly understood to mean hostility or ill will toward another person -- to describe something quite different: the state of mind of the defendant with respect to the truth or falsity of the statements made. [Cite omitted.]

Prozeralik v. Capital Cities Communications, Inc. 82 NY2d 466 (1993)

Plaintiff, a Niagara Fall restaurateur, won a 15 million dollar defamation lawsuit against the defendant. The Court of Appeals reversed in part because the lower court gave faulty jury instructions on the issues of retraction and the jury's treatment of a conversation between an employee of the defendant and an FBI agent. In sending the case back to the trial court, the Court of Appeals held that in order to prevail it must be established that the "defendant ... made the false publication with a 'high degree of awareness of ... probable falsity' ... or must have 'entertained serious doubts as to the truth of his publication.'" (Cite omitted.) Case is distinguishable from ***Mahoney v. Adirondack Publishing Co.***



New York State Bar Association

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

Stacey Whiteley, Program Manager *Law, Youth & Citizenship Program*
518-486-5760 (FAX) 518-486-1571 swhiteley@nysba.org

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.***



New York State Bar Association

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

Stacey Whiteley, Program Manager *Law, Youth & Citizenship Program*
518-486-5760 (FAX) 518-486-1571 swhiteley@nysba.org

TO: County Coordinators, Coaches, Attorney Advisors and Judges
DATE: January 30, 2009
RE: Mock Trial Case 2009 Correction Memo 2

All the evidence provided in the case book should be considered authentic. Specific questions have arisen regarding **Exhibit 4** as there were typos in the final line. The corrected version should read:
<http://mail.mcmurdo.com/mail/?ui=2&ak=6744edf430&view=pt&search=inbox&th=32f0w...>

The Grade-Track report, **Exhibit 3**, page 71 is the same document that was found on Cross's desk.

Sydney Parker's date of birth listed on **Exhibit 3**, page 71, should read 072789.

Chris Cross Affidavit, page 45, paragraph 4, line 5, should state: "George Parker, who proposed to me in 2000 that I consider".

Jamie King Affidavit

Page 63. Should read as follows:

10. The next day I arrived at school and saw that copies of Randy's editorial were being distributed on flyers in the hallways. I picked up a copy and saw that Randy had copied his/her editorial, word-for-word the same document that Randy had shown to Sandy and me.

11. Even more surprising, was what I found the following day. I went to my office and opened my copy of the Canal City Chronicle, and I saw a front-page story based on Randy's reporting. I was proud of Randy for taking the initiative and bringing what he/she had learned to the attention of the school and the community. It took a lot of guts, if you ask me, and now Dr. Cross is suing Randy for doing what any good journalist would do-reporting the facts.

Exhibit 1, page 67 the date should read: February 6, 2008

If the case is bifurcated, how can damages be proven?

It is necessary to demonstrate that there was some damage, but evidence attempting to quantify those damages would be irrelevant.

The information regarding the prom incident involving Porter, the "turning in" of Jack Frost's password, and the Dana Hopkins lawsuit is to remain as is. No additional information will be provided.



New York State Bar Association

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

Stacey Whiteley, Program Manager *Law, Youth & Citizenship Program*
518-486-5760 (FAX) 518-486-1571 swhiteley@nysba.org

TO: County Coordinators, Coaches, Attorney Advisors and Judges
DATE: February 17, 2009
RE: Mock Trial Case 2009 Correction Memo 3

This error has been pointed out by several teachers. This information will also be posted on line.

Page 67, Exhibit 1-Canal City Chronicle article. In paragraph 4, this article references Porter's "editorial" regarding Cross' claim about why he changed the grade.

In Porter's "editorial", page 69, Exhibit 2, there is no reported claim made by Cross regarding his reasoning for changing the grade.

In order to resolve this discrepancy please remove paragraph four from the Canal City Chronicle piece, except for the final sentence, "The change caused student Dana Hopkins to lose the valedictorian contest." Please place this sentence at the end of paragraph three.

I appreciate your time. Thanks so much.

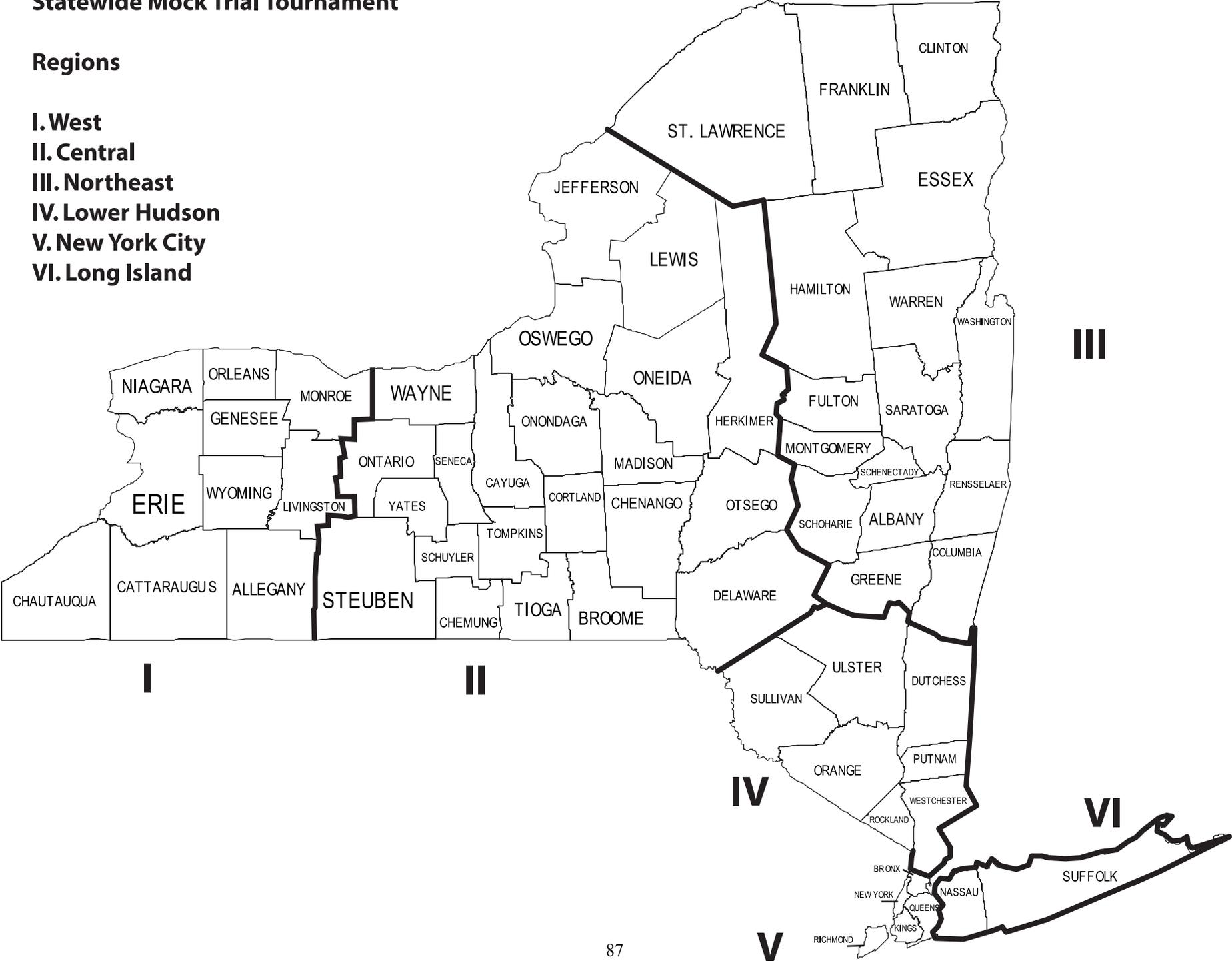
APPENDICES

- 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	Not prepared/disorganized/illogical/uninformed Major points not covered Difficult to hear/speech is too soft or too fast to be easily understood Speaks in monotone Persistently invents (or elicits invented) facts Denies facts witness should know Ineffective in communications
2 Fair	Minimal performance and preparation Performance lacks depth in terms of knowledge of task and materials Hesitates or stumbles Sounds flat/memorized rather than natural and spontaneous Voice not projected Communication lack clarity and conviction Occasionally invents facts or denies facts that should be known
3 Good	Good performance but unable to apply facts creatively Can perform outside the script but with less confidence than when using the script Doesn't demonstrate a mastery of the case but grasps major aspects of it Covers essential points/well prepared Few, if any mistakes Speaks clearly and at good pace but could be more persuasive Responsive to questions and/or objections Acceptable but uninspired performance
4 Very Good	Presentation is fluent, persuasive, clear and understandable Student is confident Extremely well prepared—organizes materials and thoughts well and exhibits a mastery the case and materials Handles questions and objections well Extremely responsive to questions and/or objections Quickly recovers from minor mistakes Presentation was both believable and skillful
5 Excellent	Able to apply case law and statutes appropriately Able to apply facts creatively Able to present analogies that make case easy for judge to understand Outstandingly well prepared and professional Supremely self-confident, keeps poise under duress Thinks well on feet Presentation was resourceful, original and innovative Can sort out the essential from non-essential and uses time effectively Outstandingly responsive to questions and/or objections Handles questions from judges and attorneys (in the case of a witness) extremely well Knows how to emphasize vital points of the trial and does so

<p>Professionalism of Team</p> <p>Between 1 to 10 points per team</p>	<p>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</p>
---	--

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 Performance		
Plaintiff/ Prosecution Second Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		
Plaintiff/ Prosecution Third Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		

		Plaintiff/ Prosecution	Defense
Defense- First Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		
Defense- Second Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		
Defense-Third Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		
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 below):

Plaintiff/Prosecution

Defense



**Please send in this form if you would like up to the minute
information about the
2009 Mock Trial Summer Institute**

NAME:

SCHOOL:

COUNTY SCHOOL IS IN:

PHONE NUMBER:

EMAIL:

You can fill this out and return it to Stacey Whiteley by fax: 518.486.1571 OR email this information to swhiteley@nysba.org OR go to lycny.org and fill out the online interest form.

Thanks!

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

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



Law, Youth and Citizenship

