

November 12, 2009

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

Thank you for participating in the 2010 New York State High School Mock Trial Tournament. This program, now in its 27<sup>th</sup> 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, 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 Tottenville High School, the winner of the 2009 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, *People v. Shawn Miller*, is a criminal case involving two life long friends and now business associates accused of securities fraud.

The mock trial program is a competition that has two purposes. The first is to teach high school students basic trial practice skills. Students learn how to conduct direct and cross examinations, how to present opening and closing statements, how to think on their feet and learn the dynamics of a courtroom. Students will also learn how to analyze legal issues and apply the law to the facts of the case. The level of skill shown by New York State students is extraordinary, and it is due to the dedication and hard work of both the students and their teacher-coaches and attorney-advisors.

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

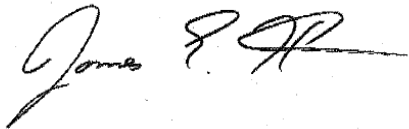
For 2010, there is a new rule under the Objections section regarding speculation. Rule 313 states: *Questions that ask a witness to speculate about matters not within his personal knowledge are not permitted, and are subject to an objection by opposing counsel.* Please review this new rule carefully with your team; it can be found on page 24. As a reminder, 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 23 through 25, 2010. The team that is successful in achieving the regional championship in each of the six mock trial regions will be invited to participate in the finals. The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days that the team participates in the tournament finals in Albany. Regional teams consist of the nine students, teacher coach, and attorney advisor whose expenses will be paid by the New York Bar Foundation. If a school can cover the additional room and board costs, the entire team is invited to attend as well.

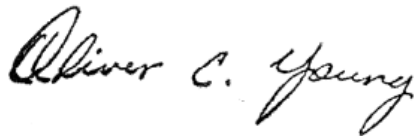
This year's Mock Trial Tournament materials will be posted on the Law, Youth and Citizenship website, [www.lycny.org](http://www.lycny.org). There will also be updates posted on the Mock Trial blog, [www.nysbar.com/blogs/mocktrial](http://www.nysbar.com/blogs/mocktrial). There is also a link to the blog on the lycny page. Throughout the competition, you should check the website and the blog 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,

A handwritten signature in black ink that reads "James Hanlon". The signature is written in a cursive style with a long, sweeping underline.

James Hanlon, Esq., Akron  
Chair, Committee on Law, Youth and Citizenship

A handwritten signature in black ink that reads "Oliver C. Young". The signature is written in a cursive style with a long, sweeping underline.

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

Subcommittee Members:

Craig R. Bucki, Esq., Buffalo  
Karen Callahan, Esq. New York City  
Melissa Ryan Clark, Esq., New York City  
Linda J. Cohen, Esq., Albany  
John Cronan, Esq., New York City  
Janet Phillips Kornfeld, Esq., New York City  
Michael A. Yood, Esq., Buffalo

## **STANDARDS OF CIVILITY**

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

Hon. Judith S. Kaye, 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.*

# **2010-2011 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 (6<sup>th</sup> ed.), Aspen Law and Business

Murray, Peter, Basic Trial Advocacy, Little, Brown and Company

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

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

### Preparation

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

# PART I

## NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT RULES

### General Information

#### 1. TEAM COMPOSITION:

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

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

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

#### 2. OBJECTIONS

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

#### 3. DRESS

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

#### 4. STIPULATIONS

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

#### 5. OUTSIDE MATERIALS

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

#### 6. EXHIBITS

Students may introduce into evidence or use only the exhibits and documents provided in the Mock Trial Tournament materials. Students may not create their own charts, graphs or any other visual aids for use in the courtroom in presenting their case.

#### 7. SIGNALS AND COMMUNICATION

The team coaches, advisors, and spectators may not signal the team members (neither student-attorneys nor witnesses) or communicate with them in any way during the trial, including but not limited to wireless devices and text messaging. A witness may talk to his/her student attorney during a recess or during direct examination but not during cross examination.

#### 8. VIDEOTAPING/AUDIOTAPING

- a. During any tournament round, except State semi-finals and State finals, a trial may be videotaped or audio taped but only if each of the following conditions is satisfied:
  1. The courthouse in which the tournament round is taking place must permit video or audio taping and the team wishing to videotape or audiotape has received permission from the courthouse in advance of the trial. *We note that many state and Federal courthouses prohibit video or audio taping devices in the courthouse.*
  2. The judge consents before the beginning of the trial.
  3. The opposing team consents in writing prior to the time the trial begins. Written consents should be delivered to the County Coordinator. Fax or e-mail is acceptable.
  4. A copy of the video or audio tape must be furnished to the opposing team (at no cost) within 48 hours after the trial.
  5. The video or audio tape may not be shared by either team with any other team in the competition.
- b. Video or audio taping of the State semi-finals and final rounds is **NOT** permitted.

## **9. MOCK TRIAL COORDINATORS**

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

## **10. ROLE AND RESPONSIBILITY OF ATTORNEYS**

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

## **11. WITNESSES**

- a. Each witness is bound by the facts of his/her affidavit or witness statement and any exhibit authored or produced by the witness that is relevant to his/her testimony. Witnesses may not invent any other testimony. However, in the event a witness is asked a question on cross examination, the answer to which is not contained in the witness's statement or was not testified to on direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial.
- b. If there is an inconsistency between the witness statement or affidavit and the statement of facts or stipulated facts, the witness can only rely on and is bound by the information contained in his/her affidavit or witness statement.
- c. A witness is not bound by facts in other witnesses' affidavits or statements.
- d. If a witness contradicts a fact in his or her own witness statement, the opposition may impeach the testimony of that witness.



- e. A witness's physical appearance in the case is as he or she appears in the trial enactment. No costumes or props may be used.
- f. Witnesses shall not sit at the attorneys' table.

## **12. PROTESTS**

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

## **13. JUDGING**

The decisions of the judge are final.

## **14. TIME LIMITS**

- a. The following time limits apply:

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

- b. The judges have been instructed to adhere as closely as possible to the above time limits and that an abuse of the time limits should be reflected in scoring.

## **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 of the Statement of Stipulated Facts and any other stipulations.
- m. Teams may bring perceived errors in the problem, or suggestions for improvements in the tournament rules and procedures to the attention of the LYC staff at any time. These, however, are not grounds for protests. Any protest arising from an enactment must be filed with the County Coordinator in accordance with the protest rule in the Tournament Rules.

## 2. SCORING

- a. Scoring is on a scale of 1-5 for each performance (5 is excellent). Judges are required to enter each score on the performance rating sheet (Appendix C) after each performance, while the enactment is fresh in their minds. Judges should be familiar with and use the performance rating guidelines (Appendix B) when scoring a trial.
- b. Judges are required to also assign between 1 and 10 points to **EACH** team for demonstrating professionalism during a trial. A score for professionalism may not be left blank. Professionalism criteria are:
  - Team's overall confidence, preparedness and demeanor
  - Compliance with the rules of civility
  - Zealous but courteous advocacy
  - Honest and ethical conduct
  - Knowledge and adherence to the rules of the competition
  - Absence of unfair tactics, such as repetitive, baseless objections and signals

A score of 1 to 3 points should be awarded for a below average performance, 4 to 6 points for an average performance and 7 to 10 points for an outstanding or above-average performance.

- c. The appropriate County Coordinator will collect the Performance Rating Sheet for record keeping purposes. Copies of score-sheets are not available to individual teams; however, a team can get its total score through the County Coordinator.

### 3. LEVELS OF COMPETITION

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

Region #1: West

Region #2: Central

Region #3: Northeast

Region #4: Lower Hudson

Region #5: New York City

Region #6: Long Island

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

### 4. COUNTY TOURNAMENTS

- a. All rules of the New York State Mock Trial Tournament must be adhered to at tournaments at the county level.
- b. In these tournaments there are two phases. In the first phase each team will participate in at least two rounds before the elimination process begins, once as plaintiff/prosecution and once as defendant. After the second round, a certain number of the original teams will proceed to the second phase in a single elimination tournament. Prior to the competition and with the knowledge of the competitors, the County Coordinator may determine a certain number of teams that will proceed to the Phase II single elimination tournament. While this number may be more or less than half the original number of teams, any team that has won both rounds based on points, but whose combined score does not place it within the established number of teams, **MUST** be allowed to compete in the phase II single elimination tournament.
- c. The teams that advance to Phase II do so based on a combination of wins and points. All 2-0 teams automatically advance; teams with a 1-1 record advance based on total number of points; if any spots remain open, teams with a record of 0-2 advance, based on their total number of points.
- d. If the number of teams going into the single elimination phase is odd, the team with the most wins and highest combined score will receive a bye. If any region starts the year with an odd number of teams, one team from that region may receive a bye—coin toss, etc.
- e. Phase II of the contest is a single round elimination tournament; winners advance to the next round.
- f. At times, a forfeit may become a factor in determining aggregate point totals and which teams should advance to the single elimination tournament. Each county should review its procedures for dealing with forfeits, in light of the recommended procedures below. Please note that due to the variety of formats in use in different counties, it is strongly urged that each county develop a system which takes its own structure into account and which participants understand prior to the start of the local tournament. That procedure should be forwarded to Stacey Whiteley, the New York State Coordinator, before the first round of competition is held.

- g. If a county has an established method for dealing with forfeits, or establishes one, then that rule continues to govern. If no local rule is established, then the following State rule will apply: *In determining which teams will advance to the single elimination tournament, forfeits will first be considered to cancel each other out, as between two teams vying for the right to advance. If such canceling is not possible (as only one of two teams vying for a particular spot has a forfeit victory) then a point value must be assigned for the forfeit. The point value to be assigned should be derived from averaging the team's point total in the three matches (where possible) chronologically closest to the date of the forfeit; or if only two matches were scheduled, then double the score of the one that was held.*

## **5. REGIONAL TOURNAMENTS**

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

## **6. STATEWIDE FINALS**

- a. Once regional winners have been determined, The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days it participates in the State Finals in Albany. Funding is available only to pay for up to nine students, one teacher coach and one attorney-advisor for each team. Students are 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. Teacher-coaches proceeding to the State Finals must communicate all special dietary requirements and the total number of persons attending to the State Coordinator within 72 hours before the tournament.
- d. Each team will participate in two enactments the first day, against two different teams. Each team will be required to change sides—plaintiff/prosecution to defendant, defendant to plaintiff/prosecution—for the second enactment. Numerical scores will be assigned to each team's performance by the judges.
- e. The two teams with the most wins and highest numerical score will compete on the following day, except that any team that has won both its enactments will automatically advance, regardless of its point total. In the rare event of three teams each winning both of their enactments, the two teams with the highest point totals, in addition to having won both of their enactments, will advance.
- f. The final enactment will be a single elimination tournament. Plaintiff/prosecution and defendant will be determined by a coin toss by the tournament director. All teams invited to the State Finals must attend the final trial enactment.
- g. A judge 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.”*

#### **h. Speculation**

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

Example:

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

Objection:

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

#### **HEARSAY**

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

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



**REASONS FOR EXCLUDING HEARSAY:** The reason for excluding hearsay evidence from a trial is that the opposing party was denied the opportunity to cross-examine the declarant about the statement. The declarant is the person who made the out-of-court statement. The opposing party had no chance to test the declarant's perception (how well did she observe the event she purported to describe), her memory (did she really remember the details she related to the court), her sincerity (was she deliberately falsifying), and her ability to relate (did she really mean to say what now appears to be the thrust of her statement). The opportunity to cross examine the witness on the stand who has repeated the statement is not enough because the judge or the jury is being asked to believe what the declarant said.

Example:

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

## **EXCEPTIONS**

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

Rule 402-a: **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 402-b: STATEMENT OF A CO-CONSPIRATOR: A judge may admit hearsay evidence if it is a prior out-of-court statement offered against a party and is a statement by a co-conspirator of a party made during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered.

Example:

*Jane and Jill are charged with conspiracy to sell illegal drugs. During that alleged conspiracy, Jill approached an undercover police officer and said: "We have two kilos for sale. How much are you willing to pay?" At Jane's trial, the prosecution may try to get the officer's testimony of Jill's out-of-court statement admitted into evidence as an admission against a co-conspirator's interest. The court will admit this statement as an exception to hearsay if the prosecution has demonstrated that Jill was a co-conspirator and this statement was made in the course and in furtherance of the conspiracy. However, even if the court admits the evidence, the statements alone cannot be used to establish the existence of the conspiracy.*

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 person, facts and circumstances described in these mock trial materials and real persons, facts and circumstances is coincidental.*

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

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

SUPREME COURT OF NEW YORK  
COUNTY OF NEW YORK

-----X  
PEOPLE OF THE STATE OF NEW YORK,

X  
Indictment no. 2009-00015-SAG

-VS.-

SHAWN MILLER,

X  
  
X  
  
X  
  
X

Defendant.

-----X

CASE SUMMARY<sup>1</sup>

1. Shawn Miller and Sidney Taylor have been the best of friends since elementary school. Growing up in the same working class neighborhood, they attended the same schools in their hometown of Far Rockaway, New York. They did everything together, including playing baseball, soccer and basketball for the school teams, going to the movies, hanging out at parties and backing each other up.
2. While their parents were doing their best to make their lives as comfortable as economically possible, Shawn and Sidney always wanted more. This desire for financial enrichment was fueled when in their eleventh-grade business course they had to read a book by and about a very successful Wall Street stockbroker who started from nothing and who, along with his child, at one time had been homeless. Shawn and Sidney were fascinated by the story and talked about it all of the time. Sidney would always say, “If this person could do this, there is no reason why we can’t do it too.”
3. In their senior year, Shawn and Sidney took all of the economic, business and marketing courses available. They even joined the mock investing club so that they could learn as much as they could about the financial markets and investing. While Sidney earned good grades and scored a nearly perfect SAT score, Shawn did not fare so well. Sidney was accepted into Wharton School of the University of Pennsylvania, matriculating in September 1995. Shawn attended the Far Rockaway Community College. Although they were many miles apart, the two friends were in constant contact. They would talk at least once per week. Sidney would come home during school breaks and summer recesses, allowing the friends to resume their usual activities.
4. Shawn graduated from FRCC in May 1997 with an associate’s degree in business administration. While s/he could have gone on to New York University to pursue a bachelor’s degree, Shawn had had enough of school and started to look for employment. In August 1997, s/he decided to take a job in the mailroom at Behman Brothers, a large

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<sup>1</sup> 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.

brokerage house and investment bank on Wall Street. After a short time on the job, a Behman manager, Ryan Williams, recognized that Shawn had an outgoing personality and in their frequent discussions the manager believed that Shawn, in spite of his/her rudimentary knowledge of the financial markets, could nevertheless be a good stock “salesperson,” if not a stockbroker. Shawn was made a junior associate in May 1999.

5. In January 2001, Shawn began to study for several National Association of Securities Dealers (NASD) examinations so that s/he could obtain his/her license to trade securities. After several failures, Shawn in October 2004 finally passed Series 6 exam (mutual funds/variable annuities) and Series 7 exam (stockbroker). His/her sponsor for the exams was Ryan Williams.
6. After graduating in May 2001, Sidney went to work for Terrill, Hynch, Fierce, Phenner & Smythe, the premier brokerage house on Wall Street. S/he worked for several years in the commercial finance unit before transitioning to the firm’s hedge fund that traded in mortgage-backed securities. Sidney passed on the first try all of the securities examinations for which s/he had sat: Series 6, Series 7, Series 26 (investment company - mutual funds), Series 31 (Futures - managed funds exam) and Series 63 (uniform securities agent state law exam).
7. Although Sidney was very well compensated, s/he was not content and wanted more. Sidney invited Shawn to lunch one day, August 1, 2005, and discussed the possibility of going into business together. The plan was for Shawn to leave Behman Brothers and start an investment consulting firm. The firm would in fact be a hedge fund, called S&S Derivatives, LLC. Because Sidney had a DO NOT COMPETE clause in his/her employment contract, s/he was prohibited from working with any business involved in the trading of securities in the tri-state area (New York/New Jersey/Connecticut) for one year. Shawn had no such prohibition.
8. To bide time, Sidney would return to school to pursue a master’s in business administration. S/he entered the one-year accelerated executive MBA program at Columbia University in September 2005. S/he would join the new firm after graduation in August 2006. In the meantime, Shawn would bring over some of his/her loyal clients from Behman Brothers and actively solicit new investment clients. The plan was for Sidney to advise Shawn on how to invest the clients’ money until such time as s/he joins the firm.
9. In January 2006, S&S Derivatives, LLC was launched. After graduating in May 2006, Sidney joined the firm as a full partner. Shawn had developed such a knack for bringing in new clients that s/he took on that task for the firm. Because of his/her superior technical knowledge developed at two of the best business schools in the country and at the largest brokerage house on the Street, Sidney would take the lead on making the investments and preparing the monthly client statements. This division of labor worked perfectly and before long the firm was earning sizable returns on their clients’ investments. The firm was making the two friends very wealthy.

10. After several years of making unbelievable investment returns for their clients, the Security and Exchange Commission started an investigation. The SEC had received a complaint in August 2008 from one of the firm's clients, Fran Ashcott. Fran had been reading on one of his/her favorite financial blogs about hedge funds that consistently pay double-digit returns to investors month after month even during stock market downturns. The blog warned the readers to be cautious in dealing with such hedge funds and to demand more information about their accounts. Fran, a retired college professor, and his/her spouse had invested their entire 2.5 million dollar nest-egg with S&S Derivatives. Fran had met Shawn shortly after Shawn had become a junior associate at Behman Brothers. Fran and his/her spouse had an account at Behman Brothers. They were impressed with Shawn and decided to move their money to S&S Derivatives in March 2006.
11. After reading the financial blog, Fran contacted Shawn to inquire into (1) the status of their account beyond the monthly statement and (2) the basis of the firm's investment strategy. Shawn appeared to be somewhat evasive, reassured Fran that their account was sound and directed Fran to contact Sidney if s/he wanted more assurance. Fran called Sidney five or six times over a two week period to discuss the matter. Each time, Sidney's executive assistant, Pat Nolan, told Fran that Sidney was unavailable, but that Sidney would call Fran soon. Pat worked primarily with Sidney, setting up his/her daily calendar, serving as office manager and assisting Sidney in getting out the monthly statements.
12. Having not heard from Sidney as promised, Fran became frustrated. The SEC's investigation had stalled due to bureaucratic malaise. So, on October 15, 2008, Fran contacted the Investor Protection Bureau of the New York Attorney General's Office to file a formal complaint. The matter was assigned to investigator/analyst Sheridan Holmes. Mr./Ms. Holmes had worked in the securities industry as a trader until the stock market crashed in October 1987. S/he knows the ins and outs of the stock market and keeps up to date on all of the new, and sometimes exotic, securities. Mr./Ms. Holmes reviewed the books of S&S Derivatives and determined that the returns were too uniform over too long a period of time. S/he suspected that a phony investment scheme was afoot and recommended to the Attorney General that the principals of S&S Derivatives be arrested and prosecuted.
13. On February 5, 2009, the Attorney General's office indicted Shawn Miller and Sidney Taylor under the Martin-Webb Act (General Business Law, Article 23-A, § 352 et seq.) on charges of securities fraud. It appeared to the state prosecutors that the principals at S&S Derivatives started to manipulate the books to make it appear that its investors were receiving double-digit returns as promised in the firm's prospectus. As new clients were brought into the hedge fund, the new money was credited to the accounts of older clients to make it appear that said older accounts had earned the promised returns. The new money was simply deposited into a special business account at a bank and the money was moved among the different clients' accounts to create the impression of trading. A client who requested a redemption of her account would receive the money she had requested plus a printed confirmation of the "sale" of some or all of the securities in her account.

All clients receive 1099s showing interest, dividends and sales proceeds at the end of the year so that they can prepare their income tax returns. When the S&S clients received their monthly and annual statements, they in effect would simply receive false confirmations of trades. It would be practically impossible for a client to devise that his or her statement was false. Fran Ashcott became concerned because s/he realized that ten to fifteen percent return in the current economy was not realistic.

14. The principals at S&S Derivatives had always intended to resume legitimate trading activity and restore all of their clients' accounts. But with the weakening economy, investments slowed almost to a halt and there was not enough cash to pay out as more and more clients demanded redemption. Furthermore, as a result of the pressures brought on by the inquiries from Fran Ashcott, it became difficult and ultimately impossible for S&S Derivatives to reconcile its clients' accounts. The prosecutors believed that the scheme worked for such a long time because new clients were always brought to the firm. With the downturn in the economy, new clients had become harder to recruit and the firm started to have difficulty maintaining the scheme, according to the prosecutors.
15. Pat Nolan was named as an unindicted co-conspirator and agreed to testify for the prosecution. S/he maintains that s/he was unaware of the alleged securities fraud and did not actively participate in the scheme. Pat insists that his/her job was merely to prepare the monthly and annual statements according to Sidney's instructions and to place the statements in the mail. His/her suspicions were aroused once when s/he overheard Sidney say to Shawn prior to the June 2007 statements going out, "Did you ever think it could be so easy?! If they only knew." Shawn was heard to say, "Too easy I say. He is doing a great job." Pat at the time dismissed the statements as idle chatter. S/he now believes that the comments were about the securities fraud scheme. Shawn claims that s/he and Sidney were talking about the New York Mets. Being huge Mets' fans, Shawn maintains that they were excited about well the Mets were playing in April, May and most of June of 2007 and how easy the team was winning until late June. Shawn and Sidney are season ticket holders of the Mets. Their parents are lifelong Mets' fans and season ticket holders as well. The "he" Shawn claims s/he was talking about when s/he said "He is doing a great job" was pitcher John Maine, who had a 9-4 record through the month of June 2007, which was totally unexpected. Pat Nolan believes the "he" Shawn referenced is Bernie Madlock, Shawn and Sidney's accomplice, who worked at the trading firm Dorgan Manly, LLC.
16. Ryan Williams, the Behman Brothers' manager, was shocked upon learning of the criminal case against Shawn. Mr./Ms. Williams did not believe that Shawn would engage in securities fraud. No longer in the securities industry as a result of the recent collapse of Behman Brothers, s/he nevertheless pledged to do whatever s/he could do to help Shawn. It is believed that Behman Brothers failed, in part, as a result of improper trading activities occurring primarily in the division managed by Mr./Ms. Williams. Although Mr./Ms. Williams has not yet faced criminal or civil charges, it is believed that Mr./Ms. Williams permitted his unit to sell mortgaged-backed securities that were improperly rated as investment grade AAA. Mr./Ms. Williams now lives on his farm in upstate New York and is writing a book about the fall of Behman Brothers.

17. Shawn maintains that s/he knew nothing about the allegedly illegal investment scheme. S/he claims that Sidney was supposed to invest the clients' money in the highly lucrative derivatives market, such as credit default swaps, forward contracts and futures contracts. Shawn insists that Sidney kept the books, supposedly made all of the investment calls and solely produced the monthly reports. The firm's auditor was Meal & Muchie, which assigned Mickey Pennman as the lead auditor on the S&S account. Mr./Ms. Pennman, who also happened to be Shawn's personal accountant, believes Sidney misled Shawn. Mr./Ms. Pennman believes Sidney kept two sets of books. The book that Mr./Ms. Pennman believes s/he examined, on an interim basis, contained the phony numbers. Mr./Ms. Pennman claims that s/he adhered to generally accepted auditing principles as well as PCAOB (Public Company Accounting Oversight Board) standards in his/her financial reporting and does not at this time believe s/he has any legal exposure.
18. Sheridan Holmes, an analyst/investigator for the NYS Attorney General's Office, was assigned to this case. S/he maintains that Shawn Miller's claimed ignorance as to what was going on at S&S Derivatives is nonsense. Alleging that Shawn Miller has earned millions of dollars during the short time S&S Derivatives has been in business, Mr./Ms. Holmes believes Shawn Miller's story that s/he did not know anything about the illegal activities taking place there is incredible. According to Mr./Ms. Holmes, Shawn Miller wants everyone to believe that s/he is not very knowledgeable about derivatives trading, played no part in preparing the monthly statements and did not manipulate their clients' accounts to make it appear that legitimate trades had occurred. Mr./Ms. Holmes claims to have proof that Mr./Ms. Miller regularly reviewed the monthly statements. The Attorney General also has proof in the form of a wiretap implicating the two principals at S&S Derivatives in a cover-up of their illegal activities. In order for derivative trading fraud to be successful, the securities trader would need an accomplice at the clearing house, the derivative market maker, to produce the phony documentation showing that trades had occurred in various accounts. Without the paper trail, an auditor would be alerted to suspicious activities in the accounts. Most of S&S trades were made with Dorgan Manly LLC, a medium-size holding company with a large derivatives unit. The account executive at Dorgan Manly LLC, who executed S&S trades, was Bernie Madlock, the clearing agent. Mr. Madlock worked at Behman Brothers between 1999 and 2002 before moving over to Dorgan Manly LLC. Sheridan Holmes interviewed Mr. Madlock who admitted that he had, for several years, prepared documents showing non-existent trades for S&S Derivatives. Unfortunately, Mr. Madlock was the victim of a very violent mugging and has been in a coma since January 2009.
19. Legal counsel for Shawn, believing that a separate trial was warranted given the circumstances, moved for and was granted a severance. Sidney went to trial first and was convicted as charged of committing securities fraud and conspiracy to commit securities fraud. While out on bail awaiting sentencing, Sidney jumped bail and is residing in a country that has no extradition treaty with the United States.
20. At Shawn's trial, the prosecution has to show beyond a reasonable doubt that Shawn engaged in securities fraud and/or engaged in a conspiracy to commit securities fraud.

## **STIPULATIONS**

1. All witness statements are sworn and notarized.
2. All items of evidence are eligible for use at trial, following proper procedure for identification and submission.
3. No other stipulations shall be made between the prosecution and the defendant, except as to the admissibility of evidentiary exhibits provided herein.

Witnesses:

### Prosecution

- Sheridan Holmes
- Fran Ashcott
- Pat Nolan

### Defense

- Shawn Miller
- Mickey Pennman
- Ryan Williams

Note: If the student playing Shawn Miller is female, Sidney Taylor will be referenced as a female. If the student playing Shawn Miller is male, Sidney Taylor will be referenced as a male.

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF NEW YORK

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**THE PEOPLE OF THE STATE OF NEW YORK**

-against-

Indictment No. 2009-00015-SAG

**SHAWN MILLER and  
SIDNEY TAYLOR,**

Defendants.

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**COUNT ONE**

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuses SHAWN MILLER and SIDNEY TAYLOR of the crime of CONSPIRACY IN THE FIFTH DEGREE, in violation of section 105.05 of the Penal Law of the State of New York, committed as follows:

The defendants, acting together and with others, from on or about December 1, 2006 to on or about October 15, 2008, in New York County and elsewhere in the State of New York, with intent that conduct, prohibited by section 352-c(6) of the General Business Law, said crime being a class E felony, be committed, did knowingly and intentionally agree with each other and others to engage in and cause the performance of such conduct as would constitute the above-mentioned class E felony, to wit: securities fraud.

**PREAMBLE**

Between on or about December 1, 2006 to on or about October 15, 2008, it was the purpose of this conspiracy to engage in the fraudulent trading of securities, including derivative contracts such as forwards, futures, options and swaps, throughout New York State, including New York County, and elsewhere.

The defendants SHAWN MILLER and SIDNEY TAYLOR jointly owned and operated a company called S&S Derivatives, LLC, a hedge fund. In their company's prospectus and other literature, they promised their clients that said clients would receive double-digit returns on their investments. As new clients were brought into the hedge fund during the course of the conspiracy, the money collected from the new clients was credited to the accounts of older clients to make it appear that said older accounts had earned the promised returns. The new money was deposited



into a special business account at a bank and the money was moved among the different clients' account to create the impression of trading. A client who requested a redemption of her account would receive the money she had requested from the special business account in addition to a printed confirmation of the "sale" of some or all of the securities in her account. All clients received IRS1099s showing interest, dividends and sales proceeds at the end of the year so that they can prepare their income tax returns. When the S&S clients received their monthly and annual statements, they were receiving false confirmations of trades

The defendants SHAWN MILLER and SIDNEY TAYLOR, along with unindicted co-conspirators, Pat Nolan and Bernie Madlock, produced and distributed trading confirmation documents that were false.

The defendants SHAWN MILLER and SIDNEY TAYLOR, along with unindicted co-conspirators, Pat Nolan, produced and distributed monthly financial statements and IRS 1099 statements that were false.

## **OVERT ACTS**

In furtherance of the conspiracy and to affect the objects thereof, from on or about December 1, 2006 to on or about October 15, 2008, the following overt acts, among others, were committed:

1: On or about December 1, 2006 to on or about October 15, 2008, the defendants accepted money from clients with the clients' express intention that the money be invested in legitimate financial instruments. The money belonging to the clients was not invested in accordance with the clients' understanding and direction, but was diverted to other accounts and misappropriated.

2: On or about December 1, 2006 to on or about October 15, 2008, the defendants solicited Bernie Madlock, a clearing agent, to issue trading confirmation documents that were false. Bernie Madlock received money from the defendants to produce trading confirmation documents that were false.

3: On or about December 1, 2006 to on or about October 15, 2008, the defendants produced and distributed monthly financial statements and IRS 1099 statements, that were false, to their clients.

4: On or about October 23, 2008, Investigator/Analyst Sheridan Holmes, pursuant to a wiretap order, overheard a coded telephone conversation between the defendants wherein the defendants discussed covering-up their illegal activities.

**COUNT TWO**

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuses SHAWN MILLER and SIDNEY TAYLOR of the crime of SECURITIES FRAUD, in violation of section 352-c(6) of the General Business Law, in that they, the said SHAWN MILLER and SIDNEY TAYLOR, between on or about December 1, 2006 to on or about October 15, 2008, in New York County and elsewhere in the State of New York, intentionally engaged in the fraudulent trading and selling of securities, as defined in section 352 of the General Business Law, and thereby wrongfully obtained property of a value in excess of two hundred fifty dollars.

**ANDREW SNITZER**

Attorney General of the State of New York

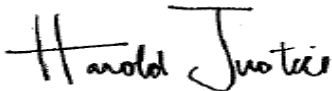


**BY: JACK McCOY**

Assistant Attorney General,  
of Counsel

New York County Grand Jury

A TRUE BILL



Foreperson: Harold Justice

**Affidavit of Sheridan Holmes**  
**Senior Investigator/Analyst**

1. My name is Sheridan Holmes. I am a Senior Investigator/Analyst with the Investor Protection Bureau of the New York Attorney General's Office. My office is located at 120 Broadway in New York City.

2. I am 55 years old and have been employed as an investigator/analyst for the Attorney General's office since 1989. Prior to my current employment, I worked in the securities industry as a trader. I worked on the floor of the New York Stock Exchange for Coldman Machs, a prominent brokerage house and investment bank on Wall Street, for about ten years. I was let go in December 1987 following the stock market crash in October 1987. In 1988, I tried to find another job in the securities business, but the employment market was tight or the pay was not there. I even tried to get a job with the Securities & Exchange Commission that year. I was unceremoniously rejected. I was then hired by the Attorney General's office and have been there ever since. My job is to investigate allegedly illegal investment schemes and, if found, report them to the Attorney General, who decides whether to prosecute offenders under the New York Martin-Webb Act.

3. My office was contacted by a Fran Ashcott, alleging that s/he and his/her spouse had made a sizable investment with S&S Derivatives, LLC. S/he had become concerned about their investment because the firm was refusing to return his/her calls or give him/her more information about their account. S/he told me they had contacted the SEC, but that the SEC was not doing anything. I am not surprise because that organization is full of bungling incompetents. I understand the new SEC commissioner is cleaning house.

4. Derivatives trading is quite complicated, but very lucrative. In 2004, the derivatives market was approximately 220 trillion dollars. By the end of 2007, the outstanding positions had risen to 596 trillion dollars. The derivatives markets are the financial markets for trading derivatives. There are essentially two types of markets: exchange traded market and over-the-counter market. Looking at the books of S&S Derivatives, LLC, it appears that this firm participated for the most part in the over-the-counter derivatives market.

5. Derivatives are financial contracts, like forwards, futures, options and swaps. The price for the financial instruments are derived from something else. This something else is called the underlying and the price of the underlying on which the derivative is based could be that of an asset like a collateralized debt obligation (CDO) - securitized residential mortgage obligations for example, or it could be an index, such as exchange rates or interest rates. In reality, almost anything that can be securitized, rated and priced can serve as an underlying.

6. Derivatives investors typically earn returns by seeking to minimize risk when the value of the underlying investment changes, by hedging. This commonly includes short selling. With short selling, or "going short," the investor makes money if the asset declines in value and she sells the

asset at the contract price. So, when the investor goes to repurchase the asset at the lower value, she pockets the difference in the price. This is what S&S Derivatives was doing in the over-the-counter derivatives market in its first year or so of operation. When the worldwide economy started to tank in the second quarter of 2007, S&S Derivatives could no longer keep the promise to provide double-digit returns to its clients. So, the principals at S&S Derivatives started to manipulate the books to make it appear that its investors were receiving double-digit returns as promised in the firm's prospectus. As new clients were brought into the hedge fund, the new money was credited to the accounts of older clients to make it appear that said older accounts had earned the promised returns. The new money was simply deposited into a special business account at a bank and the money was moved among the different clients' accounts to create the impression of trading. A client who requested a redemption of her account would receive the money she had requested plus a printed confirmation of the "sale" of some or all of the securities in her account. All clients received 1099s showing interest, dividends and sales proceeds at the end of the year so that they could prepare their income tax returns. We believe that when the S&S clients received their monthly and annual statements, they in effect would simply receive false confirmations of trades. It would be practically impossible for a client to devise that his or her statement was false. Fran Ashcott became concerned because s/he realized that ten to fifteen percent return in this economy was not realistic.

7. To facilitate the fraud, S&S Derivatives needed someone on the inside of the derivative market maker who would prepare the phony trading slips. The auditors, having no reason to suspect that the trading confirmation documents were fake, would issue favorable reports after the audits. S&S Derivatives executed most of its trades with Dorgan Manly LLC, a medium size holding company, that had a very large derivatives unit. One of the account executives working in the Dorgan Manly derivatives unit was Bernie Madlock, a clearing agent, who I interviewed in December 2008. He told me that he executed all of the trades for S&S Derivatives and prepared the trade confirmation slips. He said, "I knew Shawn from our days working at Behman Brothers and s/he introduced me to Sidney at a Behman Brothers holiday party in 2005." Mr. Madlock told them that he was now working in the derivatives unit at Dorgan Manly, this unit was a clearing house for derivative trading. Admitting to the illegal trading scheme, Mr. Madlock said that Sidney would deliver to him, on a flashdrive, the trades s/he wanted for each of the accounts and that he, Mr. Madlock, would execute the trades and prepare the trading documents. According to Mr. Madlock, the scheme started in late 2006 and continued until this office began its investigation in October 2008. The flashdrive was the best medium for engaging in this type of illegal activity. Phone calls could be too lengthy and emails would have to be preserved under Sarbanes-Oxley. We would have called Mr. Madlock to testify about his part in this scheme. But in January 2009, before we could even get a written statement, he was the victim of a robbery that went bad and endured a vicious beating. He is now in a coma.

8. We believe that the principals at S&S Derivatives had always intended to resume legitimate trading activity and restore all of their clients' accounts. But with the weakening economy, investments slowed almost to a halt and there was not enough cash to pay out as more and more clients demanded redemption. Moreover, as a result of the pressures brought on by the inquiries

from Fran Ashcott, it became difficult and ultimately impossible for S&S Derivatives to reconcile its clients' accounts. If S&S Derivatives had been able to continue to bring in new clients, the illegal investment scheme could probably have worked for a long time. But with the downturn in the economy, new clients had become harder to recruit. To protect investors like Fran, there needs to be more transparency in the derivatives market. To accomplish this, derivatives should be traded on an exchange or through a clearing house, in my opinion.

9. Shawn Miller and Sidney Taylor, the principals at S&S Derivatives, LLC, were indicted under seal on February 5, 2009 on charges of securities fraud and conspiracy to commit securities fraud. They were arrested on February 6, 2009, provided the usual "perp walk," and booked at Riker's Island. They were arraigned on February 9, 2009 in Supreme Court, New York County. Each pleaded not guilty to all of the charges and they were released after each posted bail in the amount of five hundred thousand dollars.

10. Sidney Taylor went on trial first. Shawn Miller's attorneys were able to convince the court to grant him a severance because they believed Mr./Ms. Miller would be called testify against Mr./Ms. Taylor. I don't believe the prosecutors ever intended to call him/her to testify. S/he would only lie anyway. In any event, Sidney Taylor was convicted as charged on all counts. S/he remained on bail and surrendered his/her passport. Prior to sentencing, s/he jumped bail, managed to get out of the country and may be residing in the Middle East, probably Dubai. S/he is in the FBI's Top Twenty-Five Most Wanted and we are all looking for him/her.

11. Shawn Miller's claimed ignorance as to what was going on at S&S Derivatives is quite pathetic. S/he has earned millions of dollars during the short time this firm has been in business and s/he now claims that s/he did not know anything about the illegal activities taking place there. Unbelievable! Mr./Ms. Miller wants us to believe that s/he is not very knowledgeable about derivatives trading, played no part in preparing the monthly statements, and did not manipulate their clients' accounts to make it appear that legitimate trades had occurred. We have proof that Mr./Ms. Miller regularly reviewed the monthly statements. We also have proof in the form of a wiretap where the two principals at S&S Derivatives discussed how to cover-up their illegal activities. We also have proof in the form of a wiretap that I was able to obtain wherein the two principals at S&S Derivatives discussed how to cover up their illegal activities.

12. I worked on Wall Street as a trader for a long time. I have been a securities fraud investigator for more than ten years. There are many, many honest professionals in the financial industry. But I have seen way too many scoundrels in this industry whose sole purpose is to lie, cheat and steal their way to prosperity. I had a great job on Wall Street and lost it because of the greed and the excesses of people like that. These kinds of people were in charge of S&S Derivatives. We need to do all we can to rid ourselves of this plague. Of course, we should do this only after a fair trial.

VERSION #2

January 7, 2010

A handwritten signature in cursive script that reads "Sheridan Holmes". The signature is written in black ink on a light-colored background.

SHERIDAN HOLMES

Dated: New York, New York  
December 18, 2009

**Affidavit of Fran Ashcott**  
**Investor**

1. My name is Fran Ashcott. My spouse and I currently reside at 534 Clay Alley in New Rochelle, New York. Previously, we resided in a very nice neighborhood in Scarsdale until we were the victims of a scam perpetrated by Shawn Miller and Sidney Taylor which resulted in us losing all of our retirement savings.

2. In June 2004, I retired after working 30 years as an English professor at Bartmoor College. My spouse, a chemical engineer, had retired the previous December from his/her job at a mid-size industrial company. Over the course of our respective careers, my spouse and I had amassed a 2.5 million-dollar retirement nest egg. Our money was managed by Behman Brothers, a company that had provided modest, but stable, returns on our investments over the years.

3. In April 2005, during our yearly meeting with our account managers at Behman Brothers, my spouse and I were introduced to Shawn Miller, who six years earlier had been promoted to the position of junior associate. Shawn was now assigned our retirement account. Both my spouse and I instantly felt comfortable with Shawn, given his/her natural "people friendly" demeanor.

4. Shawn's management of our Behman Brothers' accounts had resulted in consistent returns on our investment. However, we had been hoping for the more profitable double-digit returns that many of our friends thought we should have been receiving.

5. In early December 2005, we met with Shawn to discuss our accounts. At that time, Shawn told us about a new company, S&S Derivatives, LLC, that s/he was planning to start in January 2006. Having known and worked with Shawn for the past eight months or so, we decided in March 2006 to take the risk and invest all of our retirement accounts with S&S Derivatives, LLC.

6. From March 2006 through the second quarter of 2008, our investments with S&S Derivatives, LLC, produced double-digit returns month after month. This occurred even in months experiencing significant stock market downturns. Of course, we were very happy.

7. In early summer 2008, I began to hear about an investment blog that focused primarily on hedge funds. I subsequently began to read this blog on a daily basis. Many of the blog comments warned its readers about investing in hedge funds or investment companies that paid double-digit returns to investors, month after month, despite the economic conditions. The comments also advised readers that they should demand more information from their account managers.

8. In July 2008, acting upon this advice, I contacted Shawn to inquire about the status of our account with S&S Derivatives, LLC. The information I specifically requested was information beyond the monthly statements that we had been receiving and background information on the firm's investment strategy. When I spoke with Shawn about these concerns, s/he was somewhat evasive, but assured me that our account was sound. For additional assurance, Shawn directed that I contact Sidney Taylor, a long-time friend of

Shawn, who in May 2006 had joined S&S Derivative, LLC, as a full time partner. Sidney apparently had been taking the lead on making the investments for S&S Derivatives and preparing the monthly client statements.

9. I attempted to contact Sidney five or six times over a two-week period in mid to late July 2008 to discuss our investment concerns. On each attempt, Pat Nolan, Sidney's executive assistant told me that Sidney was unavailable, but that Sidney would return my call soon.

10. Sidney never did return my calls. Becoming extremely frustrated, I then contacted the New York City Office of the Securities and Exchange Commission in late August 2008 and filed a formal complaint. I believe the SEC made a cursory inquiry into our complaint, but because of bureaucratic ineptness the investigation had stalled.

11. On October 15, 2008, after not hearing anything further from the SEC, I contacted the Investor Protection Bureau of the New York Attorney General's Office to file a formal complaint. The matter was assigned to investigator/analyst Sheridan Holmes, who interviewed me several days later. I showed Mr. Holmes several financial statements (a customer account journal, a monthly statement of account and a trading confirmation statement) that I had recently received from S&S Derivatives. These statements are very confusing and I could never get Shawn to explain this stuff to me. I told Mr./Ms. Holmes how Shawn had been evasive, how Sidney had failed to return my phone calls and why I was concerned about our account with S&S Derivatives.

12. My spouse and I were not trying to make trouble. We just wanted information about our money. So, when we learned in February 2009 that Shawn and Sidney had been indicted on securities fraud charges, we were devastated. Most likely, my spouse and I expected, we would lose our entire retirement savings because we had invested it all with S&S Derivatives. As anticipated, we are now destitute.

13. I know that there are many people who believe that my spouse and I are partly responsible for our current situation. They accuse us of being excessively greedy, reckless with our retirement savings and not deserving of empathy. Perhaps we should not have invested all of our money with S&S Derivatives, but that did not give Shawn and Sidney the right to do what they did to us.

14. It is difficult to believe that such a likeable person as Shawn could have been involved in this despicable scheme. Having never met Sidney or talked to him/her, but knowing that s/he was not respondent to our concerns, we believe that Sidney must have been the driving force behind this criminal endeavor. However, because Shawn and Sidney worked together so closely, it is impossible that s/he was not aware of what Sidney was doing.

Dated: New Rochelle, New York  
November 21, 2009



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FRAN ASHCOTT



**Affidavit of Pat Nolan**

**Office Manager/Sidney Taylor's Assistant**

1. My name is Pat Nolan. I reside at 2 Ponsie Drive, Yonkers, New York.
2. I graduated from Paulson High School in Far Rockaway, New York in 2001. Following my graduation, I attended one year at J. Jay School of Business, studying to be an administrative assistant. I received my business school certificate in May 2002.
3. After completing my studies at J. Jay School of Business, I was hired by Sidney Taylor in August 2002 as his/her administrative assistant at Terrill, Hynch, Fierce, Phenner & Smythe, the large Wall Street investment firm. I learned a lot through working at Terrill, which everyone knows is the largest brokerage house on "the Street." Sidney took a particular interest in my work and my career, often giving me opportunities to study different investment scenarios and discussing with me what s/he thought were the best opportunities for his/her clients. With Sidney's assistance and advice, I learned quickly about Wall Street and investments in general, and Sidney began to give me more responsibility beyond that of an administrative assistant. It wasn't long before I began to assist him/her in filling out monthly investment statements, and in other tasks that a secretarial employee wouldn't ordinarily do.
4. In August 2005, Sidney came to me and told me that s/he was leaving Terrill and was enrolling in the one-year accelerated executive MBA program at Columbia, and that after graduation in May 2006, s/he would be joining with his/her old friend, Shawn Miller, in forming a new firm to be called S&S Derivatives, LLC. Sidney asked me to keep this information a secret, and promised me that if I stuck it out at Terrill for another year, s/he would make sure that I had a great job at S&S. When I asked about the non-compete clause from the employment contract that we all had to sign at Terrill, Sidney told me not to worry about it and that it's really only enforced against key personnel. I was also informed that Mr. /Ms. Miller would be bringing some of his/her clients over from Behman Brothers and that the new venture would make a lot of money.
5. In August 2006, after Sidney had finished at Columbia and had joined S&S, s/he called me and made good on his/her promise. I joined S&S in October 2006 as the Office Manager and as Sidney's Executive Assistant. In addition to all the duties associated with those two titles, I continued to help Mr. /Ms. Taylor fill out the monthly investment statements. I got a big raise and was the first person in my family to earn a six-figure income. Before long, S&S was making big money and I began to receive annual bonuses of \$10,000 or more.
6. The one problem I had with working at S&S was that I didn't think Mr. /Ms. Miller really liked me. His/her assistant told me that Mr./Ms. Miller didn't really want to hire me, because s/he didn't think I had the right training and background for such a responsible position, and that Mr./Ms. Miller wanted to stop my annual bonuses. I'm glad Sidney never gave in to that! With everything I did for S&S, and for Sidney, I earned my salary and bonuses fair and square.

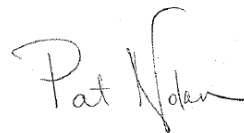
January 7, 2009

7. Other than that, I loved working at S&S because of the family atmosphere. Sidney and Mr. /Ms. Miller were old friends and you could see that they loved working together, making big money and realizing their childhood dreams. It seemed like they could hardly believe their good fortune. Mr./Ms. Miller and Sidney would meet together often to discuss company matters and on at least one day each month they would meet to go over client accounts. One day, in July 2007, as we were working on the monthly statements, I heard Sidney say to Mr./Ms. Miller, "Did you ever think this could be so easy?! If they only knew." Mr. /Ms. Miller replied, "Too easy I say. He is doing a great job." I asked Sidney about this conversation, and s/he told me, "Oh we were just talking about the Mets....I can't believe how well they're doing this year. It will never last." I didn't think anything more about this conversation until very recently, but now I'm certain that they weren't talking about any Mets, but about securities fraud going on at S&S right under my nose. I really believe the "he" Mr. /Ms. Miller claims s/he was talking about when s/he said "He is doing a great job" is Bernie Madlock, Mr. /Ms. Miller's and Sidney's accomplice, who worked at the trading firm Dorgan Manly, LLC. We sent trading requests to Mr. Madlock all of the time, but never by e-mail or regular mail. The requests were always on a flash drive. I even delivered the flash drive to Mr. Madlock on many occasions. I can't believe I didn't see what was going on, but I guess I just always see the good side of people. It never occurred to me that S&S was cheating innocent clients out of their hard-earned money.

8. I remember receiving a lot of calls in the summer of 2008 from one of our clients, Fran Ashcott, asking to speak with my boss. I guess Mr. /Ms. Ashcott called five or six times within a two week period. I was instructed by Sidney that s/he was not available to speak to Mr. /Ms. Ashcott. I kept telling Mr. /Ms. Ashcott that my boss would return the calls soon. I don't know if they ever did speak, but I did tell Sidney about each and every call in accordance with office protocol.

9. I was shocked upon learning that Sidney and Mr. /Ms. Miller were indicted on charges of securities fraud. I was heartbroken when Sidney was convicted, because I believe that if anyone is guilty of fraud and conspiracy, it's Mr. /Ms. Miller. I never did trust him/her and I'm certain that s/he is "knee-deep" in this scheme. It would be impossible for Mr. /Ms. Miller not to know what was going on. I think Shawn Miller should pay for his/her crimes, and my boss shouldn't be the scapegoat for any hanky-panky. I haven't seen or spoken to Sidney Taylor since s/he was convicted, but I hope s/he's doing OK wherever s/he is.

10. I know Mickey Pennman thinks that Sidney and I kept two sets of books for S&S, but I am aware of only one set of books. We are not liars! I know it looks bad, and I feel really bad for all of our clients who were cheated by Mr. /Ms. Miller, and that's why I went to the Attorney General's office and volunteered to testify in this case. All I want is for the truth to come out, and I'm sure that when it does, Shawn Miller will be spending a lot of time in the Big House.



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PAT NOLAN

Dated: Yonkers, New York  
December 22, 2009

**Affidavit of Shawn Miller**  
**Defendant**

1. My name is Shawn Miller and I reside in an apartment at 259-12 Knox Terrace in New York City. It is a fairly upscale neighborhood in Lower Manhattan called SoHo. I bought this apartment in March 2007. It was expensive, but a great find nevertheless.

2. I have talked to my lawyers many times since the indictment, but I still don't understand why I am being prosecuted. I have not personally done anything wrong and certainly nothing illegal.

3. I don't know what went wrong with my best friend, Sidney Taylor. Sidney and I have been friends since grade school. We grew up together in the same neighborhood in Far Rockaway, New York and attended the same schools all the way through high school. We were on the same soccer, basketball and baseball teams. We were not very good in any sport, but we always had lots of fun playing. We hung out together all the time, going to movies, parties or whatever. You know how it is when kids get together. There is usually a misunderstanding or a fight breaking out. Sidney and I always were there to watch each other's back and protect each other. We were like brothers/sisters.

4. Our families did not have a lot of money when Sidney and I were in our formative years. Our parents were doing their level best to provide a comfortable livelihood, but in our working class neighborhood, life was sometimes economically tough. Sidney and I pledged to each other that we would do better. I remember a book Sidney and I had to read in the eleventh grade by and about a successful Wall Street stockbroker. This stockbroker started with nothing and in fact at one time was, along with his son, homeless. Sidney and I were fascinated by this story. We talked about it all of the time. Sidney repeatedly said, "If this person could do this, there is no reason why we can't do it too."

5. I remember in our senior year in high school, Sidney and I took all of the economic, business and marketing courses the school offered. We joined the Investing Club where we pretended to invest in real companies so that we could learn as much as we could about the financial markets and investments. I did OK on the SAT, scoring about 1250 (reading and math only); Sidney did exceptionally well, earning a score of 1580.

6. After graduating from high school in May 1995, I decided to attend Far Rockaway Community College. I pursued an Associate's Degree in Business Administration. Sidney earned a scholarship to attend Wharton School of the University of Pennsylvania. We both entered college in September 1995. I lived at home of course. We stayed in constant contact during our college years, talking at least once per week. When Sidney would come home during school breaks, we would hang out and talk about how successful we would be in the business world.

7. I graduated from FRCC in May 1997. My parents were encouraging me to go on to New York University to pursue a bachelor's degree, but by then I had had enough of school. I decided to look for work. In August 1997, I took a job in the mailroom at Behman Brothers, a large brokerage house and investment bank on Wall Street. I did not mind the low-level job because I got to meet a lot of brilliant people in the financial industry and I was able to learn much about how financial institutions operate literally from the "ground up."

8. You can say that I have always had an out-going personality. I have always been comfortable meeting and engaging people in conversation. I can talk to anybody about anything. A Behman manager, Ryan Williams, recognized my sunny disposition and after not even two years on the job, I was offered a position as a junior associate in May 1999. Prior to the appointment, I would have occasion to talk to Mr./Ms. Williams frequently during the work week as I delivered mail to his/her office or just in passing through the hallways. At Mr./Ms. Williams' suggestion, we also would have lunch together once a month or so. Mr./Ms. Williams came to believe that, in spite of my limited knowledge of the financial markets, I could nevertheless be a good stock salesperson.

9. Knowing that at some point in the future I would want my own securities' firm, I decided I should try to obtain several of the certifications from the National Association of Securities Dealers (NASD) so that I could obtain my license to trade securities in my own name. So, in January 2001, I started studying for the Series 6 exam (mutual funds/variable annuities) and the Series 7 exam (stockbroker). I had a lot of trouble with these two exams. Talk about difficult! After having failed both exams several times, I finally passed both in October 2004. What a relief! My sponsor, Ryan Williams, was probably happier and more relieved that I was.

10. Sidney graduated from Wharton in May 2001 and went to work right away for Terrill, Hynch, Fierce, Phenner & Smythe, the premier brokerage house on Wall Street. S/he started out in the firm's commercial finance unit and worked there for several years. S/he then moved over to the firm's hedge fund that traded in mortgage-back securities. Sidney took several of the securities examinations and passed them all without a hitch on the first try. I believe s/he took the following exams: Series 6, Series 7, Series 26 (investment company - mutual funds), Series 31 (Futures - managed funds exam) and Series 63 (uniform securities agent state law exam).

11. I got a call from Sidney in late July 2005 inviting me to lunch. We met for lunch on August 1, 2005 and discussed the possibility of going into business together. While Sidney was well compensated at Terrill, Hynch, s/he was not satisfied and was looking for more. The plan was for me to leave Behman Brothers and start an investment consulting firm. The firm would in fact be a hedge fund, called S&S Derivatives, LLC. Because Sidney had a DO NOT COMPETE clause in his/her employment contract, s/he was prohibited from working for any other business involved in the trading of securities in the tri-state area (New York/New Jersey/Connecticut) for a period of one year following the termination of his/her employment at Terrill, Hynch. I had no such prohibition.

12. Sidney left Terrill, Hynch in late August 2005. Because s/he could not work in the securities business for one year, s/he decided to go back to school for a Master's in Business Administration. S/he entered the one-year accelerated executive MBA program at Columbia University in September 2005. Sidney would join our newly-formed firm after his/her graduation in May 2006. My job, in the meantime, would be to bring over as many of my loyal Behman Brothers clients as possible and actively solicit new investment clients. Sidney would advise me on how to invest the clients' money until such time as s/he would join the firm.

13. In December 2005, I left Behman Brothers and on January 9, 2006, S&S Derivatives, LLC was launched. I was running the firm alone for about four months until Sidney graduated from the Columbia University in May 2006. During the four-month period, Sidney would tell me how and where to make the investments. I never questioned his/her instructions. S/he had learned all about derivative investments at Terrill, Hynch. Much more than I ever wanted or cared to know.

14. In August 2006, Sidney joined the firm as a full equity shareholder. Because I had developed an ability to bring in new clients, I took on that responsibility for the firm. Sidney had the superior technical knowledge acquired at two of the best business schools in the country and honed at the largest brokerage house on the Street. So, s/he took the lead on developing the investment strategy for the firm and preparing the monthly client statements. This was a perfect division of labor and we were earning sizeable returns for our clients in record time. The firm was doing exceptionally well.

15. For some reason the Securities and Exchange Commission contacted the firm in August 2008 and started asking questions about our investment strategies and business practices. I have since learned that one of our clients, Fran Ashcott, a nervous type, had contacted the SEC after reading on some financial blog about hedge funds that may be ripping off their clients with illegal investment schemes. I met Fran and his/her spouse when I was at Behman Brothers. We struck an accord and they moved their account, approximately 2.5 million dollars, to S&S Derivatives in March 2006, shortly after we opened. We were very cooperative with the SEC and after several visits from the SEC, the investigation must have been dropped because we never heard from the SEC again.

16. I did talk to Fran. Talk about greedy! S/he wasn't even happy with the double-digit returns we were delivering. S/he and his/her sorry spouse thought they were entitled to more. Fran had contacted me to ask about (1) the status of their account beyond the monthly statement and (2) the basis of the firm's investment strategy. I sought to reassure Fran that their account was sound and directed Fran to contact Sidney if s/he wanted more assurance. S/he seemed to feel that I was being evasive. I have since learned that Fran called Sidney five or six times over a two week period to discuss the matter. Each time, Sidney's executive assistant, Pat Nolan, told Fran that Sidney was unavailable, but that Sidney would call Fran soon. Pat worked primarily with Sidney, setting up his/her daily calendar, serving as office manager and assisting Sidney in getting out the monthly statements. I don't know why Sidney never returned Fran's calls.

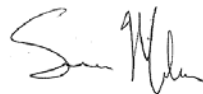
17. (a) The New York State Attorney General started hounding us. I believe Fran contacted the Investor Protection Bureau of the New York Attorney General's Office to file a formal complaint against us. Subsequently, Sheridan Holmes (IPB) contacted S&S. Mr./Ms. Holmes reviewed our books and reported that the returns were too uniform over too long a period of time.
- (b) Mr./Ms. Holmes asked me if I knew someone by the name of Bernie Madlock. I told Mr./Ms. Holmes that Mr. Madlock and I had worked at Behman Brothers at the same time. S/he wanted to know the last time I had any communication with Mr. Madlock. It may have been at a holiday party Behman Brothers threw in December 2005. Mr./Ms. Holmes then asked if Mr. Madlock was a friend of mine and if Mr. Madlock had been conducting illegal trading for S&S Derivatives. I responded that Mr. Madlock was a mere acquaintance and that I was unaware that he was conducting any trading for S&S at all. I further stated that in our setup Sidney was in charge of all of the trading activities and that I was in charge of client development.
- (c) Well, needless to say, this poor excuse of a securities fraud investigator did not believe anything I said. S/he became increasingly agitated and started making all kinds of outlandish accusations. I believe that Mr./Ms. Holmes could not make it in the investment business and is now taking his/her frustration out on legitimate investment advisers like me and Sidney. I could not believe it when Mr./Ms. Holmes reported to the Attorney General that s/he suspected a phony investment scheme was afoot and recommended that Sidney and I be arrested and prosecuted.
18. (a) As far as I know, no one had lost any money prior to the Attorney General investigation and if S&S Derivatives had been allowed to continue, no one would have lost money going forward. We promised our clients that they would receive ten percent or better return each year if they invested with us. Looking at the monthly reports that Sidney was generating, we appeared to be achieving those returns. We were a new firm. We had to promise and deliver great results in order to get business.
- (b) Part of the reason I'm in this mess rests with Pat Nolan. S/he never liked me. I believe s/he always thought I was trying to get him/her fired so that I could hire my old assistant at Behman Brothers. Totally false. Anyway, the investigator told me that Pat overheard Sidney and me talking in July 2007 about something being "too easy." Pat told the investigator that Sidney and I had a big laugh and that Pat now believes that the statements were about the alleged securities fraud scheme. Now, Mr./Ms. Holmes wants you to believe I was talking about this Bernie Madlock. Totally ridiculous.
- (c) I believe Pat is just protecting his/her own rear end. If Sidney was "cooking the books," Pat was knee-deep in it. I believe Sidney paid Pat a six figure salary plus \$10,000 annual bonuses. Why would you pay a glorified secretary that kind of money? Perhaps to buy silence?! S/he should be the one prosecuted, not me.

(d) If I remember correctly, Sidney and I were talking about the New York Mets. With Sidney and me being huge Mets fans and season ticket holders in fact, we were excited about how well the Mets were playing in April, May and most of June of 2007 and how easy the team was winning until late June. Why even Sidney's parents and my parents are lifelong season ticket holders of the Mets. The "he" I was talking about when I said "He is doing a great job" was pitcher John Maine who had a 9-4 record through the month of June 2007, which was totally unexpected. I'm sure I mentioned his name before Pat started eavesdropping on our private conversation.

19. I realize people might find it hard to believe that I did not know what Sidney and Pat were doing; but this is the truth. As I understand it, Sidney was supposed to invest our clients' money in the extremely lucrative derivatives market, like credit default swaps, forward contracts and futures contracts. Don't ask me about what this is all about. I really do not understand all of the ins and outs of derivatives investment. It is true that during the four-month period before Sidney came on board I was making the various investments for our clients. But Sidney was instructing me on exactly what to do. I was just following instructions and certainly no securities fraud was knowingly committed by me during that time period.

20. Now I am on trial for something I don't fully understand and for something I did not do. Although we were indicted together, Sidney went on trial first. My attorneys asked for and were granted a severance because I was expected to testify against Sidney. However, I was never called to testify against him/her. I could not believe it when Sidney was convicted of securities fraud and conspiracy to commit securities fraud. I did not attend Sidney's trial upon advice of counsel. My attorneys told me to stay away unless I was subpoenaed to testify. So, I don't know anything about what might have transpired at Sidney's trial, except that s/he was convicted. After the verdict, Sidney jumped bail and is living somewhere in the Middle East, probably Dubai. This whole thing is just crazy! Why should Sidney have to go to prison because Mr./Ms. Holmes wanted another notch in his/her belt?! From the beginning of the investigation, it was all a rush to judgment.

21. The forecasts in late 2006 were that the economy was entering into a recession the next year and that double-digit returns were probably not sustainable in the long run. But our monthly reports showed otherwise. Sidney was working his/her magic! I don't know what s/he was doing, but it was working.



Shawn Miller

Dated: New York, New York  
December 12, 2009

**Affidavit of Mickey Pennman**  
**Certified Public Accountant**

1. My name is Mickey Pennman and I live at 124-98 Ruth Street in Hudsonale, New York.
2. I am a Certified Public Accountant. I have been licensed in the State of New York for twenty-three years and in the State of New Jersey for eighteen.
3. I received my undergraduate degree in accounting from CUNY Roosevelt and my Master of Science in Taxation from Bricker University in Massachusetts. Both schools have strong accounting programs. Roosevelt is well known nationally and I did well there, receiving my degree, summa cum laude, which led to a scholarship to Bricker.
4. My father graduated from Bricker University and had his own accounting practice for forty-seven years. I worked for my father during school vacations and in the evenings during his audit season. I started just answering phones and making copies and gradually took on more responsibility as my education progressed.
5. I interned at Arthur Andersen during my years at Bricker and was offered a spot on graduation, a spot I jumped at because of Andersen's reputation and because the people I worked with were smart, I really liked the work, and I was learning a lot.
6. I stayed with Andersen for thirteen years, during which I gained a lot of excellent experience in auditing. In addition, I became an adjunct faculty member at my alma mater, CUNY Roosevelt. It took up a lot of time, but it also allowed me to prospect for promising auditors. I used to like telling my students about our training center, Andersen U. At that time, I began working on my Ph.D. in Accounting.
7. The handwriting was on the wall and I was preparing to leave Andersen in 2001. I made manager at Andersen, but I didn't make partner. I brought in clients but maybe not enough and they were all auditing clients. I was growing uneasy about Andersen's "2X" strategy which required that partners bring in two times as much non-auditing revenue as they did auditing revenue. I just wanted to be an auditor and I loved it at Andersen because I worked on really big audits. Unfortunately, Enron was one of them.
8. In the summer of 2001, Enron stories began to pop up in the news. The stock price had tanked. I was interviewing at the time but I was still with Andersen. I got the order to shred documents. Andersen had a shredding policy. I had been trained in it. I followed it. End of story. Only it wasn't. Enron filed for bankruptcy. My boss pled guilty to obstruction of justice. I was accused of obstruction for shredding the documents and I was also threatened with jail time, and who would raise my children with me in jail? Luckily, I was able to avoid criminal charges. The U.S. Supreme Court overturned Andersen's conviction in 2005.



9. Andersen was destroyed, but I still had my licenses and lots of good experience. I got a phone call from Sam Muchie of Meal & Muchie (“M&M”) offering me a job. It was a good firm and I made partner in 2004.

10. M&M merged with Ramirez and Roper in 2006. This was important to us because we needed a larger staff of experience auditors to do audits of public companies under the new requirements of Sarbanes Oxley (SOX).

11. M&M has been conducting audits for S&S Derivatives, LLC for the past three and one-half (3½) years, but that does not mean that M&M would necessarily continue to be the S&S outside auditors. The first part of any annual audit involves a re-consideration of the auditor/client relationship. We look at the client, the business environment, the problems incurred with the client in the past and their ability to pay. Did you know, Sarbanes-Oxley requires that we drop a client who has not paid within a year? SOX also requires that we rotate the partner in charge of the audit every five years. We have to be sure we have enough trained auditors to do the job properly. In our evaluation of S&S, we didn’t find anything to indicate that we should drop this client.

12. We have a really good staff at M&M and we are always undergoing training to hone our skills. That goes for staff members who are out on family leave or who participate in job share. Sure, with job share, we have to train two people, but our job share people usually return to full time within three years, so the extra expense makes sense. Also, we pay our staff well.

13. Of course, we always do interim work. Audit season is rush, rush, rush! We have to make SEC deadlines, tax deadlines, etc. But, since summer is usually slow, we do some of the work then. We bring new staff with us; get them familiar with the client’s business, etc. We perform analytical procedures then and conduct tests of internal controls.

14. I have always believed that internal controls are the key to running a tight ship. People are people. They get sloppy. Forget to put things away. Forget to record things. Sometimes, you get an employee with some sort of personal problem, one that might be solved with a little extra money. You don’t tempt people. You set up a system of checks and balances. Keeps people on their toes, you know. We did evaluate internal controls during our interim work at S&S.

15. We performed analytical procedures during interim work too as well as during the review of internal controls, during the audit and while wrapping up. Analytical procedures include comparisons of data from different periods or between various components of the financial statements in order to reveal possible errors or omissions. In some famous cases, these comparisons would have shown that something was wrong. For example: how could Bernard Madoff, the imprisoned hedge fund manager, have such consistent profits when the market was inconsistent? We did not notice any such anomalies at S&S.

16. You know, auditing has changed now that we’ve got SOX. Consequently, we now do what we call “an integrated audit.” That means we take the information we obtain from the tests of internal controls and use that to develop not only our report on the effectiveness of the internal controls but also to plan the audit. What we are doing is assessing the risk of material error and

determining how much evidence we need to formulate an opinion of the fairness of the financial statements. Oh yes, the financial statements include the income statement, the balance sheet, the statement of retained earnings and the cash flow statement.

17. We gain evidence by performing tests of the account balances. We observe while the client takes inventory. We confirm a statistical sample of accounts receivable. We check a sample of the accounts payable to make sure that the client has recorded properly the money owed to vendors, that kind of thing. You know, you can never be 100% sure that there are no errors or omission unless you redo every transaction and even then you might make a mistake. We use statistical sampling because it would be too costly, and too expensive, to check everything. As I said, there is always a residual risk that you've missed something. We use representative samples to reduce that risk to something acceptable.

18. How do we know what's acceptable? Brainstorming. We hold meetings for the entire staff of an audit and we discuss what could go wrong. S&S's investment strategy was not simple. Sidney invested clients' funds in credit default swaps, forward contracts and futures contracts. These are complex securities and they require a very specialized knowledge of the market and also of the economy. So when we brainstormed, we tried to think of all the ways in which something could go wrong. One of our newest auditors even suggested that, given the incredible rates of return achieved by S&S, we ought to request more confirmations. I didn't ever think this situation would occur, but this auditor was new and eager to do things right, so we increased the scope of our audit and got the confirmations she requested. And it didn't help. We still missed what was going on.

19. Proper internal controls guard against employee misappropriation and financial reporting fraud, but when top management conspires to commit fraud, it's virtually impossible to discover. This is especially true when management has a history of honesty. Bernard Madoff, for example, really did transact business honestly for years before deciding to maintain his track record by fudging results and then by outright stealing.

20. We did all the right things and have no legal exposure. These securities fraud investigators are always pointing the finger at the outside auditors when these scandals are uncovered and often make unfounded accusations against the auditors. But in this case, we complied with every auditing standard including the new PCAOB standards which followed SOX. We confirmed purchases which were apparently never made. When I say we "confirmed," I mean we wrote to the people who sold securities to S&S and asked them to send directly to us written confirmation that certain trades took place and the dates, the identity of securities traded and the amount involved in those trades. I've been over it and over it and there is only one way this could have happened without our knowledge: someone in the vendor's organization was lying. I wonder now if this lying went on from the beginning.

21. I've known Shawn for over ten years and I just don't see him/her as a liar. In fact, I am his/her personal accountant and trust him/her implicitly. Sidney may have kept two sets of books so s/he could keep track of where the money actually was. Of course, if s/he did, s/he may have destroyed the second set by now because they would be really powerful evidence against him/her. It's a shame really because those books just might exonerate Shawn.

To the best of my knowledge the above is true.

A handwritten signature in black ink, appearing to read "Mickey Penman". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Mickey Penman

Dated: Hudsonale, New York  
January 6, 2010

**Affidavit of Ryan Williams**  
**Former Behman Brothers' Manager**

1. I am 52 years old. I graduated from the University of Pennsylvania with a bachelor's degree in finance in 1980 and from the Yale University School of Management in 1984. In September of that year, I began a career in investment banking with Behman Brothers, then one of the largest financial firms on Wall Street. After years of hard work, I eventually became a Manager of Behman Brothers' Mortgage-backed Securities Division in 2003. I served the firm in that capacity until its collapse in October 2008.

2. After Behman Brothers closed its doors, I decided to retire from the securities business to pursue a much less stressful life in a more bucolic setting. I now reside on a beautiful 150-acre farm located at 12500 Main Street in the Town of Pembroke, located in Genesee County, New York. These days, I worry much more about my roses and my vegetable garden than I do about the fluctuations in the capital markets.

3. Nonetheless, I have taken time to make this affidavit to support my friend Shawn Miller, who is presently the target of a malicious and unwarranted criminal prosecution for fraud. Thanks to the broad powers afforded to the State Attorney General pursuant to the Martin-Webb Act in New York, A.G. Andrew Snitzer – in his quest for headlines and media fame – is trying to ruin the life and career of one of the finest people I know.

4. I first met Shawn Miller when s/he was working in the Mail Room at Behman Brothers in the fall of 1997. Unlike some other management-level employees who send their secretaries to retrieve their mail, I picked up my own mail every day. Even though I was making a seven-figure salary and leading a comfortable life, I made it my business to get to know and to interact with everyone in our New York office, from the CEO to the janitor on the overnight shift. It's nice to be important, but it's more important to be nice.

5. The first time I talked with Shawn on my daily trip to the Mail Room, I was impressed at how his/her fixation on the National Business Network broadcast on the TV when I came in, and by how s/he approached me in such an outgoing, cordial, and friendly way. After I introduced myself, I asked Shawn what had brought him/her to work in the Mail Room, and s/he explained that s/he viewed the job as his/her entry-level opportunity to achieve his/her career goal of becoming a stockbroker.

6. On that first meeting, sensing Shawn's determination, I offered to have lunch with Shawn monthly or so to talk about stocks and the markets. Shawn immediately accepted my invitation, and for the next two years, we would meet to talk about the bulls and the bears, the hottest investments, and the American economy. I was amazed at Shawn's knowledge in discussing his/her view of the markets, despite his/her relative lack of formal academic training in business.

7. Perhaps more important, I have known Shawn to be an honest person of the highest integrity. This became apparent to me one day in mid-December 1997. I had ordered some holiday gifts from the TV Shopping Channel, and expected them to arrive at my office any day. Unfortunately, the gift box was given to my boss' secretary by accident. Needless to say, my boss was none too pleased that I had used my office address as a personal mail box, and he told

me so upon delivering the box to me later in the afternoon. I was angry that someone from the Mail Room must have caused me this angst, so I stopped what I was doing, and walked down there in a huff to demand an explanation as to what happened. When I explained the problem to Shawn, he immediately volunteered that he had made the accidental mistake of giving my gift box to my boss' secretary, he apologized, and he promised that kind of mix-up would never happen again. Shawn didn't need to fess up for his/her mistake, but did anyway: that demonstrates what a person of character Shawn really is.

8. In May 1999, after calling in a few favors from my colleagues at Behman Brothers, I got Shawn a job as a junior associate in our sales brokerage unit. I sincerely believed that Shawn, in spite of his/her rudimentary knowledge of the financial markets, could nevertheless be a good stock "salesperson," if not a legitimate stockbroker.

9. Shawn flourished in his/her career as a salesperson at Behman. S/he built up an excellent rapport with our clients, and used his/her outgoing personality to generate new business contacts from among his/her friends and acquaintances. In January 2001, with my encouragement, Shawn began to study for examinations given by the National Association of Securities Dealers (NASD) to become a licensed stockbroker. Although Shawn failed the first few times, these setbacks did not deter Shawn. As a testament to Shawn's outstanding character, s/he persevered, and eventually passed the Series 6 and Series 7 exams in October 2004. I was proud to serve as Shawn's sponsor for the exams.

10. In December 2005, Shawn left Behman Brothers to start his/her own investment firm, S&S Derivatives, LLC. When some managers at Behman realized that Shawn was stealing our clients, they became pretty upset and angry, as anyone could imagine. It didn't really bother me, though – Behman had not forced Shawn to sign any covenant not to compete when Shawn became a junior associate, so Shawn could freely and legally solicit any Behman client s/he chose. Shawn's bold decision to strike out on his/her own exemplifies Shawn's resilience and risk-taking spirit – qualities that every successful businessperson must have.

11. Although we haven't worked together since 2005, Shawn and I have kept in touch on the phone and via email every few weeks. When Shawn called me last month to tell me s/he had been indicted for securities fraud, and filled me in on the details in this case, I was floored. Given his/her character and integrity, Shawn is the last person I would ever suspect to be guilty of such a terrible crime. During our monthly lunch meetings, Shawn and I would often talk about financial ethics and how the foundation of the financial markets is built on trust. Shawn believed that and lived it. So, there's no need for me to read the so-called "evidence" produced by A.G. Snitzer: Shawn is too honest and too good of a person to do what Snitzer says Shawn did.

12. Some people might view my opinion of Shawn's character with skepticism. The New York Rag, that muckraking broadsheet not fit to be called a newspaper, has reported scandalous and libelous stories that I authorized improper trading activities that led to the downfall of Behman Brothers. To rehabilitate my reputation in response, I am writing a book about the firm's sudden collapse. I have received a \$1 million advance from my publisher, Chance Dwelling, so I am working on my initial draft in earnest to set the record straight.

13. Just as I need to defend my own reputation against personal attack and invective, so does Shawn. And for anyone to suggest that Shawn might have learned how to commit securities fraud from me is beyond the pale. That's why I'm happy to vouch for my friend's honesty and good character in Shawn's time of need.

A handwritten signature in black ink, appearing to read "Ryan Williams", written in a cursive style.

---

RYAN WILLIAMS

Dated: Pembroke, New York  
December 19, 2009

## PART V

### NEW YORK STATE HIGH SCHOOL MOCK TRIAL

#### OFFICIAL EXHIBITS

Exhibit 1 ~ New York Rag Article

Exhibit 2 ~ New York Rag Financial Page Byline

Exhibit 3 ~ Wiretap Transcript

Exhibit 4 ~ Customer Account Journal

Exhibit 5 ~ Monthly Statement of Account

Exhibit 6 ~ Confirmation Statement

Exhibit 7 ~ Dow Jones Industrial Average Index

Exhibit 8 ~ NY Mets Standings June 15, 2007

Exhibit 9 ~ NY Mets Standings September 30, 2008

# New York Rag

*Salacious R Us*  
Vol. 25, No. 275  
October 30, 2008

## Behman Brothers Collapses; Mortgage-backed Securities Unit Primary Cause

Walter Monkite, Reporter

**I**n a frightening development on the eve of Halloween, Behman Brothers filed for bankruptcy. In what has been nothing less than a “nightmare on Wall Street” this year, the famed global financial firm was unable to convince government or private lenders to fork over the funds to cover its many debts. It appears that the firm’s mortgage-backed securities division was the major contributing factor to the downfall.

The mortgage-backed securities unit managed by “investment banker to the stars” Ryan Williams, held large positions in subprime mortgages and other basement-rated mortgage securities. Between 2003 and the current residential mortgage meltdown, Behman Brothers was the leader in securitizing mortgages and selling these bundled mortgages around the globe. Williams, who over the years cultivated a great personal relationship with many in the securities rating companies, allegedly was able to obtain AAA ratings on all of the collateralized mortgage obligations (CMOs) the firm packaged. During this period of time the mortgage-backed securities unit earned huge returns for the firm and Williams received a seven-figure salary and six-figure bonuses each year.

In early 2008, as the residential mortgage market bubble was about to burst, Williams failed to reposition the firm out of the subprime mortgage market. As a result of this inertia, Behman had to pay several billions to cover some of the large positions it held in the subprime space. This payment was a charge against earnings and the

firm’s stock price declined precipitously. As the credit market continued to tightened, Behman, suffering significant losses each quarter, was unable to secure funding to cover the remaining positions in its CMO portfolio. Cut out of the credit market and lacking reserves, these circumstances forced Behman to declare bankruptcy.

Ryan Williams was unavailable for comment. Sources revealed that Williams is planning to leave Wall Street and will soon move to upstate New York. Investigations by the SEC are expected and Williams may be called to answer questions about the firm’s demise. Civil and possibly criminal charges may result, especially in connection with Williams’ undue influence in obtaining AAA rating on some questionable CMOs.

It is expected that Behman Brothers will be broken up and sold in parts. Several of its units, such as retail brokerage and asset management, are still rather lucrative operations and should sell at close to market price. The mortgage-backed securities operation managed by Williams is worthless and will likely be sold for pennies to the dollar.

Many of Behman Brothers’ investors, both institutional and individual, who rode the stock down, are not happy with the outcome. Much of their anger is directed at Williams. Calls for a criminal investigation of his/her conduct are rampant in the financial blogosphere.



**N<sub>ew</sub> Y<sub>ork</sub> R<sub>ag</sub>**

*Salacious R Us*  
Vol. 26, No. 40  
February 9, 2009

**FOR SHAME!****Ryan Williams' Legacy: The Demise of S&S Derivatives, LLC**  
**Georgette Wills**

The fall of S&S Derivatives, LLC appears to be an isolated event until all of the dots are connected. The dots all lead back to Ryan Williams, the unit manager of the now defunct mortgage-back securities operation of bankrupt Behman Brothers.

As the **Rag** reported on October 30, 2008, Ryan Williams contributed significantly to the causes that brought down Behman. Williams, while raking in a personal fortune for himself/herself, allowed Behman to remain highly leveraged in collateralized mortgage obligations (CMOs), perhaps as much as 40 or 50 to 1! Consequently, Behman lacked the reserves to pay off most of their cashouts.

Moreover, Williams' manipulation of the rating system by securing AAA ratings on poor quality bungled mortgages was pure fraud. With institutions and governments in this country and all over the world relying on these ratings, Williams' actions were criminal. Many institutions, like pension plans, and governments, like Iceland, are themselves teetering on bankruptcy. Without a doubt, excessive greed and gross miscalculations led to a firestorm at Behman.

Now the **Rag** has learned that one of the principals at S&S Derivatives, Shawn Miller, was an associate and protégé of Ryan Williams when Mr./Ms. Miller was employed at Behman. The two worked together for eight and one-half (8 1/2) years and would meet frequently for lunch. Miller and the other co-owner of S&S Derivatives, Sidney Taylor, were indicted last Thursday on securities fraud charges and conspiracy to commit securities fraud. Given Williams' questionable ethics, there is no doubt that s/he conveyed this "win at all cost" to his/her young and impressionable friend. We at the **Rag** are at a total lost as to why Williams has not been indicted.

People like Ryan Williams caused the financial collapse of 2008. These scourges of Wall Street enticed investors to entrust their life savings to them and they betrayed that trust. We will never know whether Miller would have engaged in the alleged criminal activity had s/he never met Williams. We do know that the dots ran from Behman Brothers and Williams to S&S Derivatives and Miller and the picture drawn is not pretty.

**New York State Attorney General's Office  
Investor Protection Bureau  
S. Holmes, Senior Investigator/Analyst**

Wiretap – October 23, 2008

Shawn: This thing is a disaster!

Sidney: We're screwed....that's for sure. I've never seen a train wreck like this in my life.

Shawn: He started out doing such a good job....but you know, we're going to have to find someone else. He's just not delivering the goods any more.

Sidney: There's no way to save this situation. Right now, it's every man for himself. Just blow the whole thing up and start over.

Shawn: The press has been all over this. Every day there's a new story.

Sidney: The bigwigs are going to have to clean house, or they'll have egg all over their faces.

**S&S Derivatives, LLC**  
**Customer Account Journal**  
**July 31, 2008**

Client: Fran Ashcott  
 787 Stratton Road  
 Scarsdale, NY 10583

<b>Stocks</b>	Basis	Current Market Value
450 shares Ambuskate	45,604.00	48,600.00
700 shares BunnyShark	20,222.00	28,091.00
500 shares Connecticut Smart Phone	46,119.11	50,508.00
300 shares DogFood	7,583.25	10,578.44
175 shares Denial.com	24,370.00	31,500.00
150 shares Edgy Com	27,335.18	49,562.01
255 shares Entertots	3,504.00	6,075.00
900 shares Gerbil Exercise Systems	75,137.25	90,900.00
335 shares Football Stadia, Inc.	24,695.13	32,734.00
400 shares Idaho Asparagus	35,500.00	40,972.00
500 shares Joyous Pucks United	3,904.72	7,500.00
880 shares Lol Cola	85,542.33	90,582.00
500 shares Mal Props Inds	23,456.18	31,500.00
475 shares Sand Mining	37,096.00	38,500.00
350 shares MaxiHard	36,542.18	37,813.13
155 shares Southern Strategy Systems	10,000.00	12,803.41
225 shares Sphere, Inc	13,790.25	14,700.00
400 shares United Busware	35,000.00	39,400.00
425 shares Tenn Fish Farms	42,494.50	45,738.00
500 shares Walpert	30,000.00	32,482.76
468 shares West Eastern Co.	10,115.00	12,714.00
500 shares Western Pride Juices	18,375.25	21,150.00
350 shares Xert Prognosis	20,450.00	25,202.75
735 shares Yankee Popcorn	65,850.00	70,972.50
500 shares Youvgot	25,000.00	29,000.00

**Options**

108 Put GEBX Aug 08	350.50
92 Call MXHD Aug 08	376.50
56 Call UBWH Aug 08	110.00
40 Call WVFPZ Aug 08	1,172.00
45 Call WPJ Sep 08	58.00
65 Put MNBV Sep 08	135.00
13 Put JPUK Sep 08	132.00
90 Call ZXD Sep 08	1,332.00
210 Call KLP Oct 08	735.00
40 Call YVL Oct 08	480.00
65 Put XEPR Oct 08	87.75

**Funds**

1,508.3625 shares NOVER Fund	151,308.92	155,321.49
1,742.1956 shares Alias Mortgage Fund	175,633.68	179,456.00
1,245.3001 shares PurMo Fund	118,375.22	119,732.69
1,5498.3749 shares Big Dev Fd	158,945.32	159,102.35
Total Funds		613,612.53

Ending value as of July 31, 2008

\$904,547.75

# S&S Derivatives, LLC

## Monthly Statement of Account

Your Financial Advisor  
Sidney Taylor  
S&S Derivatives, LLC  
New York, NY

Fran Ashcott  
787 Stratton Road  
Scarsdale, New York 10583

### YOUR PORTFOLIO AT A GLANCE

<b>Beginning value as of Jul 1</b>	<b>\$877,132.97</b>
<b>Change in investment value</b>	<b>27,414.78</b>
<b>Ending value as of July 31, 2008</b>	<b>\$904,547.75</b>

### Portfolio

#### Stocks

450 shares	Ambuskate	48,600.00
700 shares	BunnyShark	28,091.00
500 shares	Connecticut Smart Phone	50,508.00
300 shares	DogFood	10,578.44
175 shares	Denial.com	31,500.00
150 shares	Edgy Com	49,562.01
255 shares	Entertots	6,075.00
900 shares	Gerbil Exercise Systems	90,900.00
335 shares	Football Stadia, Inc.	32,734.00
400 shares	Idaho Asparagus	40,972.00
500 shares	Joyous Pucks United	7,500.00
880 shares	Lol Cola	90,582.00
500 shares	Mal Props Inds	31,500.00
475 shares	Sand Mining	38,500.00
350 shares	MaxiHard	37,813.13
155 shares	Southern Strategy Systems	12,803.41
225 shares	Sphere, Inc	14,700.00
400 shares	United Busware	39,400.00
425 shares	Tenn Fish Farms	45,738.00
500 shares	Walpert	32,482.76
468 shares	West Eastern Co.	12,714.00
500 shares	Western Pride Juices	21,150.00
350 shares	Xert Prognosis	25,202.75
735 shares	Yankee Popcorn	70,972.50
500 shares	Youvgot	29,000.00

#### Options

108 Put GEBX Aug 08	350.50
92 Call MXHD Aug 08	376.50
56 Call UBWH Aug 08	110.00

40 Call WVFPZ Aug 08	1,172.00
45 Call WPJ Sep 08	58.00
65 Put MNBV Sep 08	135.00
13 Put JPUK Sep 08	132.00
90 CallZXD Sep 08	1,332.00
210 Call KLP Oct 08	735.00
40 Call YVL Oct 08	480.00
65 Put XEPR Oct 08	87.75

## TRANSACTIONS BY TYPE OF ACTIVITY

### Dividends and Interest

07/06/08	Dividend West Eastern Co.	172.25
07/15/08	Dividend Sphere, Inc	232.24
07/25/08	Dividend MaxiHard	367.50

### Sales & Purchases

07/05/08	Sold 300 shares Walpert	\$25,800.00
07/05/08	Purchased 275 shares DogFood	20,474.96-
07/14/08	Sold 200 shares GEBX	22,473.99
07/14/08	Purchased 375 shares Lol Cola	24,298.38-
07/14/08	Sold 375 shares Qua Computer	33,202.50
07/14/08	Sold 250 shares Distributed Electric	12,479.42
07/14/08	Sold 150 shares Qleen Wind Energy	10,052.14
07/15/08	Sold 300 shares Dublet Systems	26,354.00
07/15/08	Purchased 500 shares Edgy Com	48,897.74-
07/17/08	Purchased 380 shares Walpert	31,920.00-
07/25/08	Sold 150 shares My Turn	19,000.00

### Additions & Withdrawals

07/30/08	Withdrawal	1,000.00-
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**Dorgan Manly LLC****CONFIRMATION STATEMENT**

Your Financial Advisor  
 Sidney Taylor  
 S&S Derivatives, LLC  
 New York, NY

Fran Ashcott  
 787 Stratton Road  
 Scarsdale, New York 10583

Account Number: 44-99107

August 15, 2008

Confirm Date	Trade Date	Description of Transaction	Dollar Amount of Transaction	Share Price	Shares this Transaction
		You Sold			
08/15/08	08/15/08	M & A Fund	\$25,377.08	\$72	338.36106

Please review your statement and notify us in writing of any inaccuracy or discrepancy promptly. It is also recommended that you re-confirm any oral communications between you and the firm in writing. Dorgan Manly LLC assumes that customer records are correct unless notification is received otherwise. You can check your account information at our website at [www.dorganmanly.hcp](http://www.dorganmanly.hcp) or call us at 800-999-9999.

- Dow Jones Industrial Average Index
- (\$INDU)

**9,781.28 ▲+97.87 +1.01%**

Open: 9,683.71 High: 9,799.72 Low: 9,679.18

Previous Close: 9,683.41 Volume: 181,255,223

Eastern Time



[www.djindexes.com](http://www.djindexes.com)



Choose columns to display (limit 11) You can display 5 more columns.

American League 

Select favorite team

Standings as of Jun  15  2007

East	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
Boston	42	24	.636	-	-	-	5-5	W1	21-12	21-12	6/15 v SF, W 10-2	6/16 v SF, 3:55P
New York	33	32	.508	8.5	89	-	9-1	L1	18-14	15-18	6/15 v NYM, L 0-2	6/16 v NYM, 1:05P
Toronto	32	34	.485	10.0	87	-	5-5	W2	19-15	13-19	6/15 v WSH, W 7-2	6/16 v WSH, 1:07P
Tampa Bay	29	36	.446	12.5	85	-	5-5	L3	17-19	12-17	6/15 @ COL, L 2-12	6/16 @ COL, 8:05P
Baltimore	29	38	.433	13.5	83	-	2-8	L6	16-17	13-21	6/15 v ARI, L 3-7	6/16 v ARI, 7:05P

Central	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
Cleveland	39	27	.591	-	-	-	4-6	L1	21-9	18-18	6/15 v ATL, L 4-5	6/16 v ATL, 3:55P
Detroit	38	28	.576	1.0	96	-	6-4	W1	18-14	20-14	6/15 @ PHI, W 12-8	6/16 @ PHI, 7:05P
Minnesota	33	32	.508	5.5	92	-	5-5	L1	19-17	14-15	6/15 v MIL, L 3-11	6/16 v MIL, 7:10P
Chicago	27	36	.429	10.5	88	-	1-9	L4	14-16	13-20	6/15 @ PIT, L 2-4	6/16 @ PIT, 7:05P
Kansas City	27	41	.397	13.0	83	-	6-4	W2	14-23	13-18	6/15 v FLA, W 6-2	6/16 v FLA, 7:10P


West	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
Los Angeles	42	26	.618	-	-	-	6-4	L1	24-9	18-17	6/15 @ LAD, L 1-2	6/16 @ LAD, 3:55P
Oakland	37	29	.561	4.0	92	-	8-2	W3	19-15	18-14	6/15 v STL, W 14-3	6/16 v STL, 9:05P
Seattle	35	29	.547	5.0	92	-	6-4	L3	17-13	18-16	6/15 @ HOU, L 1-5	6/16 @ HOU, 7:05P
Texas	25	42	.373	16.5	79	-	5-5	W2	14-18	11-24	6/15 @ CIN, W 7-6	6/16 @ CIN, 7:10P

National League 


East	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
New York	37	28	.569	-	-	-	2-8	W1	17-16	20-12	6/15 @ NYY, W 2-0	6/16 @ NYY, 1:05P
Atlanta	36	32	.529	2.5	94	-	3-7	W1	18-16	18-16	6/15 @ CLE, W 5-4	6/16 @ CLE, 3:55P
Philadelphia	35	32	.522	3.0	94	-	7-3	L1	18-16	17-16	6/15 v DET, L 8-12	6/16 v DET, 7:05P
Florida	32	36	.471	6.5	90	-	4-6	L3	14-19	18-17	6/15 @ KC, L 2-6	6/16 @ KC, 7:10P
Washington	29	38	.433	9.0	88	-	6-4	L1	14-19	15-19	6/15 @ TOR, L 2-7	6/16 @ TOR, 1:07P

Central	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
Milwaukee	37	30	.552	-	-	-	5-5	W3	22-12	15-18	6/15 @ MIN, W 11-3	6/16 @ MIN, 7:10P
Chicago	31	35	.470	5.5	91	-	7-3	W3	15-18	16-17	6/15 v SD, W 4-1	6/16 v SD, 1:05P

Choose columns to display (limit 11) You can display 5 more columns.

American League   Standings as of

East	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
y-Tampa Bay	97	65	.599	-	-	-	6-4	W1	57-24	40-41	9/28 @ DET, W 8-7	10/2 v CWS, W 6-4
w-Boston	95	67	.586	2.0	E	-	6-4	W1	56-25	39-42	9/28 v NYY, W 4-3	10/1 @ LAA, W 4-1
New York	89	73	.549	8.0	E	-	8-2	L1	48-33	41-40	9/28 @ BOS, L 3-4	-
Toronto	86	76	.531	11.0	E	-	5-5	W1	47-34	39-42	9/28 @ BAL, W 10-1	-
Baltimore	68	93	.422	28.5	E	-	1-9	L1	37-43	31-50	9/28 v TOR, L 1-10	-
Central	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
y-Chicago	89	74	.546	-	-	-	4-6	W3	54-28	35-46	9/30 v MIN, W 1-0	10/2 @ TB, L 4-6
Minnesota	88	75	.540	1.0	E	-	5-5	L1	53-28	35-47	9/30 @ CWS, L 0-1	-
Cleveland	81	81	.500	7.5	E	-	6-4	L1	45-36	36-45	9/28 @ CWS, L 1-5	-
Kansas City	75	87	.463	13.5	E	-	7-3	L1	38-43	37-44	9/28 @ MIN, L 0-6	-
Detroit	74	88	.457	14.5	E	-	3-7	L2	40-41	34-47	9/29 @ CWS, L 2-8	-
West	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
y-Los Angeles	100	62	.617	-	-	-	7-3	W1	50-31	50-31	9/28 v TEX, W 7-0	10/1 v BOS, L 1-4
Texas	79	83	.488	21.0	E	-	4-6	L1	40-41	39-42	9/28 @ LAA, L 0-7	-
Oakland	75	86	.466	24.5	E	-	4-6	L5	43-38	32-48	9/28 @ SEA, L 3-4	-
Seattle	61	101	.377	39.0	E	-	4-6	W3	35-46	26-55	9/28 v OAK, W 4-3	-

National League 

East	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
y-Philadelphia	92	70	.568	-	-	-	7-3	W3	48-33	44-37	9/28 v WSH, W 8-3	10/1 v MIL, W 3-1
New York	89	73	.549	3.0	E	-	4-6	L1	48-33	41-40	9/28 v FLA, L 2-4	-
Florida	84	77	.522	7.5	E	-	5-5	W1	45-36	39-41	9/28 @ NYM, W 4-2	-
Atlanta	72	90	.444	20.0	E	-	5-5	L1	43-38	29-52	9/28 @ HOU, L 1-3	-
Washington	59	102	.366	32.5	E	-	1-9	L4	34-46	25-56	9/28 @ PHI, L 3-8	-
Central	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
y-Chicago	97	64	.602	-	-	-	5-5	L1	55-26	42-38	9/28 @ MIL, L 1-3	10/1 v LAD, L 2-7
w-Milwaukee	90	72	.556	7.5	E	-	6-4	W1	49-32	41-40	9/28 v CHC, W 3-1	10/1 @ PHI, L 1-3

**PART VI**  
**NEW YORK STATE HIGHS SCHOOL MOCK TRIAL TOUNAMAENT**  
**RELATED LAW**

***People v. F.H. Smith Co.***, 230 AD 268

The defendant was the underwriter of bonds to be used to convert an apartment building to a hotel. The court held that it was a violation of the Martin Act to issue bonds where the property's appraisal was exorbitant.

***People v. The Federated Radio Corporation***, 244 NY 33

Promoters issued a prospectus that, according to the Attorney General, contained unduly inflated stock values and concealed certain facts regarding the stock values which should have been revealed. The court held that the purpose of the Martin Act is to prevent all kinds of fraud in connection with the sale of securities and commodities and to defeat all unsubstantial and visionary schemes in relation thereto whereby the public is fraudulently exploited. Promoters are under a duty to make reasonable investigation before issuing a prospectus and to the extent that they fail in the performance of their duty, lack of *scienter* will not relieve them from liability in actions brought under the Martin Act.

***People v. Sala***, 258 AD2d 182 (affirmed 95 NY2d 254)

The defendants marketed financial plans consisting of numismatic coin portfolis, art portfolios and condominiums, promising very high appreciation rates. On appeal, they contended that their convictions under the Martin Act were not based upon legally sufficient evidence because they lacked the requisite fraudulent intent. The court, however, held that neither *scienter* nor an intent to defraud need be proven in order to establish liability under the Martin Act. Rather, the prosecutor need only prove that the defendant committed an intentional act constituting fraud, which under the Martin Act includes all deceitful practices contrary to the plain rules of common honesty and all acts tending to deceive or mislead the public.

***People v. Schlund***, 295 NY 859

The defendant was prohibited by court order from participating in the sale of or offer to sell securities. He was convicted in the Batavia City Court of a Martin Act violation in that he had allegedly provided advice to an individual about her securities and assisted her in disposing of certain bonds. The Court of Appeals reversed the conviction, holding that the prosecutor must prove the defendant's guilt of a Martin Act violation beyond a reasonable doubt.

***People v. First Meridian Planning Corp.***, 86 NY2d 608

(companion case to *People v. Sala* 258 AD2d 182 (affirmed 95 NY2d 254))

The Court of Appeals defined what is a security under the Martin Act by adopting the Federal definition that equated securities with investment contracts. The tripartite test enunciated in *Securities & Exchange Commission v. Howey* (328 US 293) provides that "an investment contract ... means a contract, transaction, or scheme whereby a person [1]invests his money [2]in a common enterprise and [3]is led to expect profits solely from the efforts of the promoter or a third party."

***People v. Barysh***, 95 Misc2d 616

The defendants moved to dismiss the indictment on the ground that the Martin Act requires proof of intent to defraud to sustain a criminal prosecution. Dismissing the motion, the court held that the Martin Act is directed at acts or practices, and not at any particular mental state on the part of the defendant.

***People v. Hasslinger***, 4 AD3d 564

The defendant was found guilty by a jury of conspiracy in the fourth degree, grand larceny in the second degree, money laundering in the second degree and securities fraud in violation of the Martin Act. He was accused of bilking over \$1 million an elderly woman who was suffering from dementia and Alzheimer's disease. In a 2½-year period, the defendant had liquidated all of the victim's bank accounts, stocks and bonds. The court reversed the Martin Act conviction, holding that the defendant's conduct did not constitute a violation of the Martin Act as he was not engaged in a securities transaction with an intent to deceive or defraud the investing public.

***People v. Burns et al.***, 36 Misc2d 444

The defendant and his codefendant were accused of filing a fraudulent medical report as part of a scheme to defraud an insurance company. They were charged with conspiracy to commit the crime of grand larceny. On a motion to inspect the Grand Jury minutes, the defendants contend that Grand Jury had to "speculate" on the effect Dr. Burn's report had on the insurance company's decision to pay an award. Dismissing the motion, the court held that the "... gravamen of the offense of conspiracy is the unlawful combination and not the successful execution of the plan. The offense is completed upon proof of the unlawful agreement and of an overt act done to affect the object thereof by either of the parties to the agreement."

***People v. Bac Tran***, 80 NY2d 170

The defendant, a fire safety director of two Manhattan hotels, was charged with two counts of bribery. He had allegedly tried on separate occasions to get a fire safety inspector and an undercover investigator to disregard fire violations. At trial, the defendant objected to the admission of taped hearsay statements of a co-worker implicating the defendant, claiming that a *prima facie* case of conspiracy had not been presented or proven and, absent that, the hearsay statements could not be admitted under the coconspirator exception. Agreeing with the defendant, the Court of Appeals held that since "... a *prima facie* case of conspiracy was never made out, the recorded hearsay statements of the coworker referring to the defendant in any respect never should have been allowed into evidence."

***People v. Korsen***, 167 AD2d 180

The defendant was convicted of conspiracy and scheme to defraud in connection with the fraudulent sale of securities. On appeal, he argued that he did not know about the misrepresentation contained in the script and promotional materials provided by the company. However, because the defendant had made additional misrepresentations about the securities, the appellate court held that his own misrepresentations and intent to benefit thereby tied him into the conspiracy.

***People v. Caban***, 5 NY3d 143

The defendant was convicted of conspiracy to commit murder. Coconspirators made statements that were used against the defendant. He argued that hearsay statements of coconspirators are

admissible only when a *prima facie* case of conspiracy is established independent of the statements. The Court of Appeals held that the coconspirator's acceptance of the defendant's solicitation to kill the victim, by stating "I'll do it," was nonhearsay with respect to the conspiracy charge. Said statement was relevant not for its truth, but rather as evidence of an agreement to commit the underlying crime of conspiracy and it was a verbal act which rendered the defendant and his coconspirators culpable for the inchoate crime of conspiracy, even if the planned substantive crime never came to fruition.

***People v. Chapman*, 30 AD3d 1000**

The defendant was convicted of manslaughter, criminal facilitation and criminal possession of a weapon. On appeal, he contended that the evidence was legally insufficient to support the conviction of manslaughter and criminal facilitation because the prosecutor failed to present evidence establishing that the shooting of the victim by a co-defendant was not justified. The court held that accessorial liability "... requires only that defendant, acting with the mental culpability required for the commission of the crime, intentionally aid another in the conduct constituting the offense (citation omitted). The People presented evidence establishing that defendant shared the shooter's intent to cause serious physical injury to the victim and intentionally aided the shooter by providing him with the weapon and informing the victim where the shooter was located, thereby leading the victim to the shooter."

## **MARTIN-WEBB ACT (General Business Law, Article 23-A)**

### **Section 352**

Whenever it shall appear to the attorney-general, either upon complaint or otherwise, that in the advertisement, investment advice, purchase or sale within this state of any commodity dealt in on any exchange within the United States of America or the delivery of which is contemplated by transfer of negotiable documents of title all of which are hereinafter called commodities, or that in the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice or distribution within or from this state, of any stocks, bonds, notes, evidences of interest or indebtedness or other securities, including oil and mineral deeds or leases and any interest therein, sold or transferred in whole or in part to the purchaser where the same do not effect a transfer of the title in fee simple to the land, or negotiable documents of title, or foreign currency orders, calls or options therefor hereinafter called security or securities, any person, partnership, corporation, company, trust or association, or any agent or employee thereof, shall have employed, or employs, or is about to employ any device, scheme or artifice to defraud or for obtaining money or property by means of any false pretense, representation or promise, or that any person, partnership, corporation, company, trust or association, or any agent or employee thereof, shall have made, makes or attempts to make within or from this state fictitious or pretended purchases or sales of securities or commodities or that any person, partnership, corporation, company, trust or association, or agent or employee thereof shall have employed, or employs, or is about to employ, any deception, misrepresentation, concealment, suppression, fraud, false pretense or false promise, or shall have engaged in or engages in or is about to engage in any practice or transaction or course of business relating to the purchase, exchange, investment advice or sale of securities or commodities which is fraudulent or in violation of law and which has operated or which would operate as a fraud upon the purchaser,... any one or all of which devices, schemes, artifices, fictitious or pretended purchases or sales of securities or commodities, deceptions, misrepresentations, concealments, suppressions, frauds, false pretenses, false promises, practices, transactions and courses of business are hereby declared to be and are hereinafter referred to as a fraudulent practice or fraudulent practices or he believes it to be in the public interest that an investigation be made, he may in his discretion either require or permit such person, partnership, corporation, company, trust or association, or any agent or employee thereof, to file with him a statement in writing under oath or otherwise as to all the facts and circumstances concerning the subject matter which he believes it is to the public interest to investigate, and for that purpose may prescribe forms upon which such statements shall be made. The attorney-general may also require such other data and information as he may deem relevant and may make such special and independent investigations as he may deem necessary in connection with the matter.

### **Section 352-c**

1. It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to use or employ any of the following acts or practices:

- (a) Any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;
- (b) Any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (c) Any representation or statement which is false, where the person who made such representation or statement: (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation or

statement made;

where engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation or purchase within or from this state of any securities or commodities, as defined in [section three hundred fifty-two](#) of this article, regardless of whether issuance, distribution, exchange, sale, negotiation or purchase resulted.

2. It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to engage in any artifice, agreement, device or scheme to obtain money, profit or property by any of the means prohibited by this section.

...

6. Any person, partnership, corporation, company, trust or association, or any agent or employee thereof who intentionally engages in fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale, or who makes any material false representation or statement with intent to deceive or defraud, while engaged in inducing or promoting the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of any securities or commodities, as defined in this article, and thereby wrongfully obtains property of a value in excess of two hundred fifty dollars, shall be guilty of a class E felony.

## **Section 358**

The attorney-general may prosecute every person charged with the commission of a criminal offense in violation of the laws of this state, applicable to or in respect of the practices or transactions which in this article are referred to as fraudulent practices. In all such proceedings, the attorney-general may appear in person or by his deputy before any court of record or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform ....

## **PENAL LAW**

### **Section 105.05 - Conspiracy in the Fifth Degree**

A person is guilty of conspiracy in the fifth degree when, with intent that conduct constituting :

1. a felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct ....

## **APPENDICES**

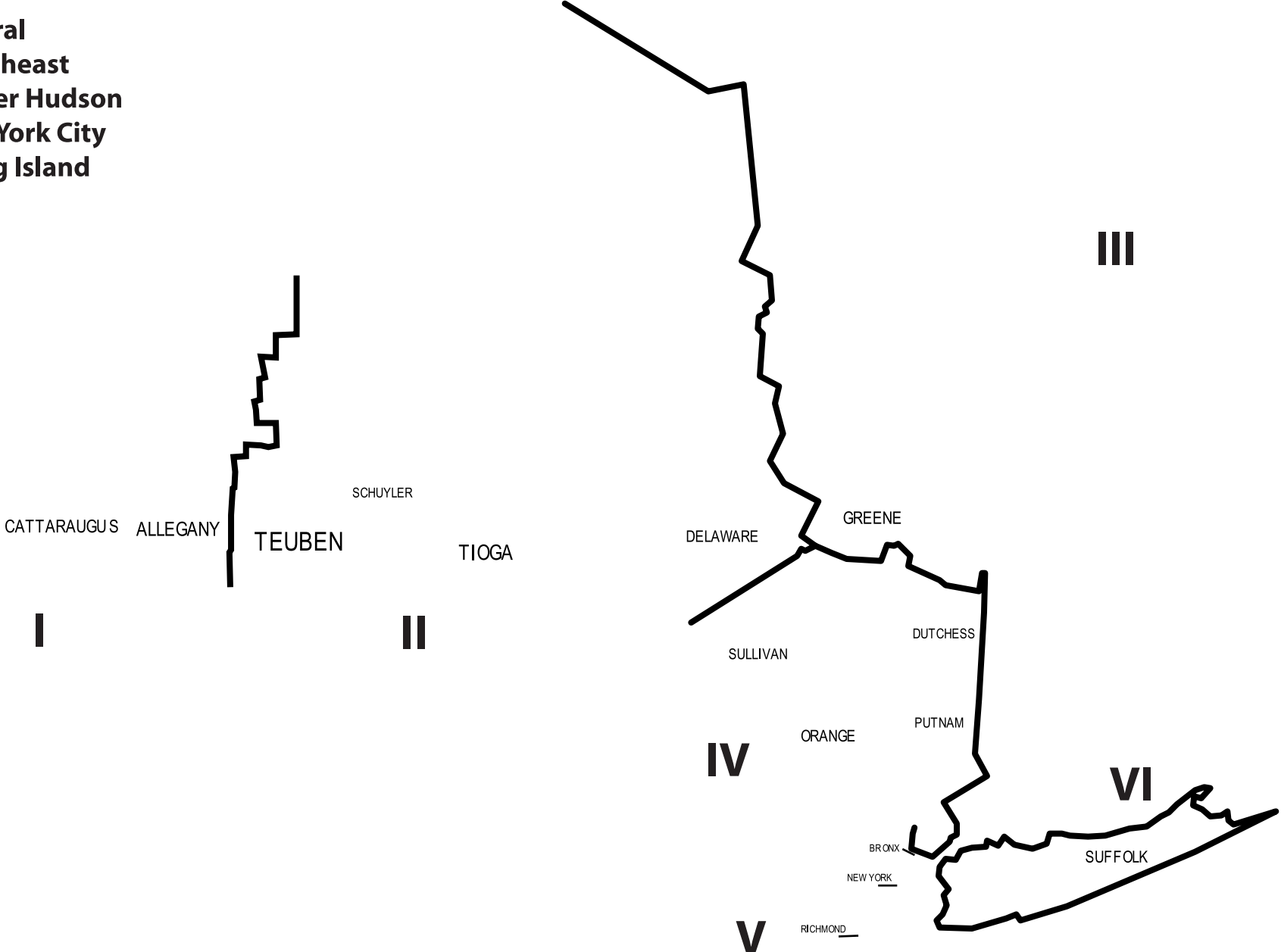
- A. STATEWIDE MOCK TRIAL REGIONS (MAP)
- B. MOCK TRIAL TOURNAMENT  
PERFORMANCE RATING GUIDELINES
- C. MOCK TRIAL TOURNAMENT  
PERFORMANCE RATING SHEET
- D. MOCK TRIAL SUMMER INSTITUTE INFORMATION



# Statewide Mock Trial Tournament

## Regions

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



## MOCK TRIAL TOURNAMENT PERFORMANCE RATING GUIDELINES

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

## NEW YORK STATE MOCK TRIAL TOURNAMENT PERFORMANCE RATING SHEET

In deciding which team has made the best presentation in the case you are judging, use the following criteria to evaluate each team's performance. For each of the performance categories listed below, rate each team on a scale of 1 to 5 as follows (use whole numbers only).

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

### Time Limits

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

		Plaintiff/ Prosecution	Defense
Opening Statements			
Plaintiff/ Prosecution First Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness 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  
2010 Mock Trial Summer Institute  
July 11-16  
Silver Bay, New York**

**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](mailto:swhiteley@nysba.org) OR go to [lycny.org](http://lycny.org) and fill out the online interest form.

Thanks!