



# New York State Bar Association

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

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November 18, 2005

Dear Mock Trial Coaches and Teachers,

Thank you for participating in the New York State High School Mock Trial Tournament. This program, now in its 23rd 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 county bar associations across the state that sponsor the mock trial tournaments in their counties and to the County Coordinators who spend many hours managing the local tournaments. Thanks also go to all of the teacher-coaches and attorney-advisors who dedicate a countless number of hours to students across the state.

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 of the State of New York v. Terry C. O'Neal*, is a criminal case centered on the prosecution of a defendant for the death of a passenger caused by the allegedly reckless or negligent operation of a motor vehicle by the defendant.

The tournament is a competition which 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. The level of skill shown by our 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 these trials. As noted by the Hon. Judith S. Kaye, Chief Judge of the State of New York, "We need to be certain that the newest lawyers learn good habits early on, both from internalizing the succinct principles articulated in the standards of civility, and from observing the more seasoned among us give life to those principles in our own daily practice."<sup>1</sup> We thank all of our coaches and judges not only for the skills that you teach, but for the professional example that you set throughout this competition.

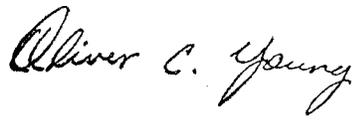
The tournament finals will be held in Albany on May 17-19, 2006. The team that is successful in achieving the regional championship in each of the six mock trial regions will be invited to participate in the finals. The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days that the team participates in the tournament finals in Albany. Regional teams consist of the nine students paid for by The New York Bar Foundation. Only those nine students will be able to compete in Albany.

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<sup>1</sup>Standards of Civility (1997), New York State Unified Court System, "How do we make the standards of civility work?" (Hon. Judith S. Kaye).

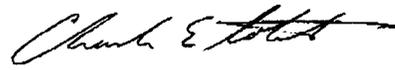
We hope you enjoy working on this year's case. Best wishes to all of you for a successful and enjoyable mock trial season.

Sincerely,



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Oliver C. Young, Esq., Chair  
**Committee on Law, Youth and Citizenship**



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Charles Roberts, Esq.  
**Chair, Mock Trial Sub Committee**

## 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.*

## PREPARING FOR A MOCK TRIAL TOURNAMENT

### Learning the Basics

Teachers and attorneys may instruct students in trial practice skills and courtroom decorum. Books, videos and other materials outside the competition materials may be used. The following books and materials may be 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

### 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 student-attorney rises when making objections, etc.), and the importance of ethics and civility in a trial.
2. Teachers and attorneys should discuss the elements of their cause of action, defenses, and the theme of their case, with their students. This is done by helping the students, not doing it for them.
3. Teachers should assign students their respective roles (witness or attorney). Teams should prepare both sides of the case.
4. Witnesses should become very familiar with their affidavits and know all the facts of their roles without referring to any notes or paper. 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.
5. 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 openings and closings. 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 each time. Practices may include a “judge” who will interrupt the attorneys and witnesses occasionally. During the earlier practices, students may fall “out of role”; however, this should be discouraged as the practices continue, and critiquing should be done at the end. Each presentation should be polished and professional.
6. Each team should conduct a “dress rehearsal” before the first round of the competition. Other teachers, friends and family may be invited.

# 2005-2006 Mock Trial Case Materials

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# PART I

## NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT RULES

### General Information

#### 1. TEAM COMPOSITION:

- a. The Tournament is open to all 9th - 12th graders in public and nonpublic schools who are currently registered as students at that school.

If a school chooses to limit student participation for reasons of supervision or safety, this should be accomplished through an equitable “try-out” system, not through disallowing participation by one or more entire grade levels.

Each school participating in the Tournament may enter **one** team.

- b. Members of a school team entered in the Tournament—including teacher-coaches, back-up witnesses, attorneys, and others directly associated with the team’s preparation—are not to attend the enactments of any possible future opponent in the contest.

**Violations of this rule can lead to a disqualification.**

- c. Immediately prior to each trial enactment, the attorneys and witnesses for each team must be physically identified to the opposing team by stating their first and last names, not the name of their school.

#### 2. OBJECTIONS

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

#### 3. DRESS

Business attire is required.

#### 4. STIPULATED FACTS

The Statement of Stipulated Facts, and any additional 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 judicial opinions, textbooks, etc., in preparation for the mock trial. However, they may cite only the materials and cases given in the Tournament materials.

## **6. EXHIBITS**

Students may introduce or use only the exhibits and documents provided in the Tournament materials. No enlargements or charts are allowed.

## **7. SIGNALS AND COMMUNICATION**

The team coaches, advisors, and spectators may not signal the team members (both student-attorneys and witnesses) or communicate with them in any way during the trial. 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 trial may not be videotaped or audiotaped during a tournament round. Teams may videotape or audiotape their practices.

## **9. MOCK TRIAL COORDINATORS:**

The success of the New York State Mock Trial Program depends on the many volunteer coordinators in the counties and regions. The appropriate supervisor will be contacted if any representative from a given 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 uncivil manner. County Coordinators may refer this matter to the Law, Youth and Citizenship Committee of the New York State Bar Association for appropriate sanctions 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 in testifying during the trial.
- d. Each of the three attorneys on a team must engage in the direct examination of one witness and the cross examination of another.
- 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 objection 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 which is relevant to his/her testimony. Witnesses may not invent any other testimony.
- b. If there is an inconsistency between the witness statement or affidavit and the statement of facts or stipulated facts, the witness must still rely on and be 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 witness statement, the opposition may impeach the testimony of the 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. Protests are not allowed regarding judicial rulings. All judicial rulings are final and cannot be appealed.
- b. Protests are highly disfavored and will only be allowed for 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 filed with the County Coordinators, who have the discretion to investigate and make a ruling, with an appeal to the LYC Committee of the New York State Bar Association; or the County Coordinator may investigate and refer the matter directly 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

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

Time limits will be enforced at the discretion of the judge.

## **15. TEAM ATTENDANCE AT STATE FINALS ROUND**

The six teams that advance to the State Finals are required to participate in all events associated with the 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 Tournament, participants agree to abide by the decisions rendered by the LYC Committee and program staff and accept such decisions as final.

#### **GENERAL POLICIES**

1. The Simplified Rules of Evidence and Procedure govern the trial proceedings.
2. 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.
3. For any single contest round, all teams are to consist of three attorneys and three witnesses.
4. Teams must not identify themselves by their school name to the judge prior to the announcement of the judge's decision.
5. If a team member, scheduled to participate in an enactment, becomes ill, injured, or has a serious conflict and as a result cannot compete, then an alternate team member should substitute. If no alternate team member is available, the local coordinator may declare a forfeit or reschedule the enactment at his or her discretion.
6. A team may use its members to play different roles in different rounds, or it may use other students in another round.

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 flip of the coin will be used to determine assignments in the next round.

7. Teacher-coaches 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 any given round.
8. 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 competition.
9. When a team has a student or students with special needs who may be assisted by 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.
10. The Judge must take Judicial Notice of the "Statement of Stipulated Facts" and any other stipulations.

11. 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 in Albany 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.

## **SCORING**

1. Scoring is on a 1-5 scale for each performance (5 is excellent). Judges should enter each score on the performance rating sheet (Appendix C) after each performance, while it is fresh in their minds. Judges should use the performance rating guidelines (Appendix B) when scoring a trial.
2. Teams may be awarded up to 10 points for demonstrating professionalism during a trial. 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 of the rules of the competition
  - Absence of unfair tactics, such as repetitive, baseless objections and signals
3. The appropriate County Coordinator will collect the Performance Rating Sheet for record keeping purposes.

## **LEVELS OF COMPETITION**

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

Region #1: West	Region #4: Lower Hudson
Region #2: Central	Region #5: New York City
Region #3: Northeast	Region #6: Long Island

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

## **COUNTY TOURNAMENTS**

1. All rules of the New York State Mock Trial Tournament must be adhered to at tournaments at the county level. If a County Coordinator uses a procedure different than those used at the State level, that procedure must be on file with the LYC office prior to the first round of the county tournament.
2. In these tournaments there are two phases. In phase I, 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, half the original number of teams will continue in a phase II single elimination tournament.
3. The teams that advance to phase II do so based on a combination of wins and points. Any 2-0 team would automatically advance; teams with a 1-1 record would advance based on total number of

points; if any spots remained open, teams with a record of 0-2 would advance based on their total number of points.

4. The County Coordinator may, prior to the competition and with the knowledge of the competitors, determine a certain number of teams that will continue in the phase II single elimination tournament. This number may be more or less than half the original number of teams. However, any team that has won both rounds 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.
5. 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. Phase II of the contest is a single round elimination tournament; winners advance to the next round.
6. At times, a forfeit may become a factor in determining aggregate point totals and which teams should advance to the single elimination tournament. Each county should review its procedures for dealing with forfeits, in light of the recommended procedures below. Please note that due to the variety of formats in use in different counties, it is strongly urged that each county develop a system which takes its own structure into account and which participants understand prior to the start of the local tournament. That procedure should be forwarded to the State Coordinator (Rebecca Varno) before the first round of competition is held.
7. 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.*

## **REGIONAL TOURNAMENTS**

1. Teams who have been successful in winning county level tournaments will proceed on to regional level tournaments. Volunteer coordinators administer regional tournaments. Coordinators have sole responsibility for organizing, planning and conducting tournaments at the regional level. All rules of the tournament must also be adhered to at county level tournaments.
2. 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.
3. All mock trial rules, regulations, and criteria for judging apply at all levels of the mock trial tournament.
4. 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 Tournament in Albany.

5. The regional tournaments must be completed 10 days prior to the State Finals Tournament. Due to administrative requirements and contractual obligations, the LYC Program 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.

## **STATEWIDE FINALS**

1. Once regional winners have been determined, The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days it participates in the State Finals in Albany. Funding is available to only pay for up to nine students, one teacher coach and one attorney-advisor for each team. Students are two to a room. Only the nine housed team members, one teacher-coach, and one attorney-advisor are eligible for the hotel block and room rate. Regional teams consist of the nine students paid for by The New York Bar Foundation. Only those nine students are eligible to participate as competitors in the State Finals in Albany.
2. Additional students and adults attending the State Finals are not eligible for rooms in the room block. Those students, and adult's 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 rooming arrangements and reservations for anyone other than the nine students, one teacher-coach and one attorney-advisor for each team. Additional students and adults attending the State Finals may participate in organized meal functions but will be responsible for paying for their participation.
3. Each team will be provided with a stipend of \$200 to help defray the cost of travel to and from the tournament. The funds will be reimbursed after the tournament.
4. Teacher-coaches proceeding to the State Finals must communicate all meal needs and totals to the Mock Trial State Coordinator (Rebecca Varno) within 72 hours before the tournament.
5. 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.
6. The two teams with the most wins and highest numerical score will compete on the following day, except that any team which 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.
7. The final enactment will be a single elimination tournament. Plaintiff/prosecution and defendant will be determined by a coin toss by the tournament director.
8. A judge or a panel of judges will determine the winner. The judge or judges' decision will be final.

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

The LYC Program applies for MCLE credit each year 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 procedure:

1. County Coordinators receive and disseminate the appropriate forms (the attorney-advisor or judge form and the attorney biography sheet) to attorneys and judges that participate in their counties. Forms are also available on the LYC website at [www.lycny.org](http://www.lycny.org).
2. The County Coordinators will gather 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 7 days of the completion of their final round of the tournament.
3. The State Coordinator compiles all of the forms and submits them to the MCLE board within 1 days of the completion of the State Finals.
4. Once the tournament has been accredited, certificates will be generated by MCLE staff at the NYSBA and mailed to attorneys.
5. Per 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 advisors'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 **cannot** 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 rules of evidence have been modified and simplified. Not all judges will interpret the rules of evidence or procedure the same way, and you must be prepared to point out the specific rule (quoting it, if necessary) and to argue persuasively for the interpretation and application of the rule that you think is proper. No matter which way the judge rules, you should accept the ruling with grace and courtesy.

#### 1. SCOPE

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

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

#### 2. RELEVANCY

Rule 201: RELEVANCY. Only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the probative value of the relevant evidence is substantially outweighed by the danger that the evidence will cause unfair prejudice, confuse the issues, or result in undue delay or a waste of time, the court may exclude it. This may include testimony, physical evidence, and demonstrations that do not relate to time, event or person directly involved in the litigation.

Example:

*Defendant Dan is alleged to have run a red light and hit Pamela, a*

*pedestrian. Dan is asked whether it is true that three years ago he got a ticket for running a stop sign. Proof that Dan ran a stop sign five years ago has little probative value in proving whether he ran a red light in this case. Therefore, while proof of Dan's prior ticket may be relevant (because to some extent, it makes it more likely that he ran the red light at the time of the accident at issue), the judge may decide to exclude the evidence because the probative value of the proof is substantially outweighed by the confusion and unfair prejudice that would result if it were admitted.*

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 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 defenses evidence of the defendants 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 victims good or (more likely) bad character, and the prosecution may offer evidence to rebut the defenses evidence of the victims 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 his character, that he is an alcoholic, 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.*

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:

*A defendant is on trial for stealing from a heavy metal safe at an office. The prosecution seeks to offer evidence that, on an earlier date, the defendant 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 the defendant is a thief), but rather it is being offered to show that the defendant knew how to crack the safe. This evidence therefore places the defendant 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 the defendant somewhat more likely to be guilty.*

*A defendant is on trial for murder. The prosecution seeks to offer evidence that, a week earlier, the defendant and the victim had a physical altercation. This evidence is not being offered to show the defendant's bad character as someone who gets into fights, but rather the evidence is being offered to show that the defendant may have had a motive to harm the victim. Again, this evidence makes it somewhat more likely that the defendant is guilty.*

### 3. WITNESS EXAMINATION

#### a. Direct Examination (attorneys call and question witnesses)

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

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

Example of a Leading Question: “*Isn't it true that in your current position you are responsible for 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.

Example:

*If on direct examination a witness is not questioned about a topic, the opposing attorneys may not ask questions about this topic on cross examination.*

Objection:

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

Rule 306: IMPEACHMENT. On cross examination the attorney may impeach a witness (show that a witness should not be believed) by:

Example:

1. *Ben testifies at the 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. *Asking questions demonstrating that the witness has made statements on other occasions which are inconsistent with the witness’s present testimony.*

*If a witness previously stated that the car was black and at trial indicated the car was red, this would be a prior inconsistent statement. This shows that on another occasion the witness made statements that are inconsistent with a material part of his current testimony.*

3. *Asking questions demonstrating the witness’s bias in favor of the party on whose behalf the witness testified, or hostility towards the party against whom the witness testified or the witness’s interest in the case.*

*“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.*

*If the witness is a member of a neo-Nazi organization, a bias may be demonstrated.*

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 a controlled substance?”*

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 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:

*“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.)

Example:

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

*“Did you see or feel the residue on the counter?”*

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:

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

### 4. 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.

- a. 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 April 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)?*

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

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

Example:

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

Rule 403: **STATE OF MIND:** A judge may admit an out-of-court statement if that statement serves as evidence of the state of mind of the declarant or the person who heard the statement. These types of statements are admissible even if they are not true because they are not being offered to prove the truth of the matter asserted in the statement, they are being offering to show state of mind.

Example:

*David is on trial for murder and his defense is insanity. William, a witness in the case, testifies that he heard David say on a number of occasions "I am the President." This statement is being introduced into evidence, not to prove that David is the President, but as evidence of David's insanity.*

A judge also may admit out-of-court statements concerning the declarants state of mind to show evidence of intent or plan. A statement of intent or plan is admissible because there are no memory problems with a statement such as, "I now intend" and because there are no perception problems because a declarant cannot misperceive intent.

Example:

*Mike is on trial for a murder that occurred at the West End Restaurant. Mikes defense relies upon the theory that another person, Paul, committed the murder. The defense then calls a witness who testifies that, on the night of the murder, he heard*

*Paul say that he intended to go to the West End Restaurant. This hearsay statement is admissible as proof of Pauls 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, which included 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.*

## 5. 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-witness may not offer opinions as to any matters that would require specialized knowledge, training, or qualifications.

Example:

*(General Opinion) The attorney asks the 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 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, “How much money would your investments be worth if you did not invest in the Defendant’s company?”*

Objection:

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

*However, an economist can provide an expert opinion on how money multiplies and the inflation rates for the relevant periods of time.*

## 6. 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.

## 7. 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's testimony 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 statements 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' answer is inventing facts that would materially alter the outcome of the case."*

## 8. 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**

**IN THE SUPREME COURT OF THE STATE OF NEW YORK  
AND FOR THE COUNTY OF ERIE**

THE PEOPLE OF THE STATE OF  
NEW YORK,

Prosecution,

vs.

TERRY C. O'NEAL,

Defendant

Indictment No. 2004-10546

## STIPULATED FACTS

1  
2  
3 Terry O'Neal, Jamie Anderson and Nicole Anderson are high school students at  
4 West Egg High School. Terry and Jamie are seniors and Nicole, Jamie's younger sister,  
5 is a freshman. West Egg High does not have a closed campus and allows students to  
6 leave campus during the school day. Nevertheless, in an effort to discourage students  
7 from leaving campus at lunchtime, West Egg High has a strict parental notification policy  
8 regarding returning to campus late or absences after a lunch period. A student's parents  
9 are contacted by the Principal's office when a student is absent or late twice during any  
10 semester following a lunch period. Lunch hour at West Egg High is only 50 minutes  
11 long. The first class after lunch begins at 1:05 pm.

12  
13 On October 18, 2004, Terry, Jamie and Nicole left West Egg High in Terry's car  
14 to go to lunch at Joe's Pizza. Terry was driving her/his 2004 Ford Explorer Sport Trac  
15 that her/his parents had bought for her/him for her/his seventeenth birthday. After lunch,  
16 the students headed back to West Egg High. Terry was driving, Jamie was seated in the  
17 front passenger seat and Nicole was seated in the backseat behind Terry. They were  
18 running close in terms of time because the wait at Joe's Pizza was longer than usual.  
19 Terry took Jefferson Avenue back to campus. However, after going halfway down  
20 Jefferson, the street was closed because of construction and Terry had to turn around and  
21 take a detour. Nicole told Terry that they needed to hurry because she already had been  
22 late coming back from lunch two weeks ago and did not want her parents to be notified  
23 that she had left campus again. Terry told Nicole not to worry and reassured her that they  
24 would get back to campus in time for her next class.

25  
26 Terry turned eastbound onto Elm Street, which runs along the north side of the  
27 campus. The student parking lot is on Magnolia Street, which is on the east side of the  
28 campus. The speed limit on Elm Street is 30 miles per hour. There is a traffic light at the  
29 corner of Elm and Magnolia Streets, but there is not a marked crosswalk. There is also a

30 reflective yellow sign about 100 yards from the intersection of Elm and Magnolia Streets  
31 that says “Caution Pedestrians.”

32

33 As Terry approached Magnolia Street, he saw another car stopped in the middle  
34 of the street with its left turn signal flashing. The traffic light was green so Terry moved  
35 to the far right to pass the stopped car and make a right turn onto Magnolia Street. As  
36 Terry was moving to the right to pass the stopped car, his cell phone rang. Terry’s cell  
37 phone was in his/her backpack, which was on the floor in the back next to Nicole. Nicole  
38 took Terry’s cell phone out of his/her backpack and handed it to Terry, who turned  
39 around to take it from her to check the number on the caller ID.

40

41 At that moment, Jamie yelled “ Watch out!” and Terry looked forward and saw a  
42 student walking a bike across Elm Street heading toward campus emerging from in front  
43 of the car with its turn signal on. Terry slammed on the brakes and swerved right to  
44 avoid hitting the student. The Explorer hit and ran up the curb, and as a result, the  
45 vehicle rolled over. Terry missed hitting the student, but the car slid and crashed into the  
46 pole holding the traffic signal. Terry and Jamie were hurt, but survived the accident  
47 because both were restrained by their seat belts. However, Nicole was not wearing a seat  
48 belt and was ejected from the car. Nicole suffered very serious injuries from which she  
49 later died.

50

51 After the accident, the investigating police officer cited Terry for speeding. In  
52 April 2004, Terry received a speeding ticket for going 48 miles per hour in a 35-mile per  
53 hour zone.

54

55 The State has charged Terry O’Neal with second degree manslaughter in the death  
56 of Nicole Anderson.

57

58 *NOTE: If the court finds the defendant guilty of Manslaughter in the Second Degree, the*  
59 *court will not need to consider the lesser-included offense of Criminally Negligent*  
60 *Homicide. If the prosecution believes that its proof may not be sufficient to warrant a*  
61 *second degree manslaughter conviction, a request may be made to the Court to consider*  
62 *finding the defendant guilty of criminally negligent homicide, a "charge down."*  
63 *Similarly, the defense may also request a "charge down."*

**STATE WITNESSES:**

- 1. Casey Dunsworth**
- 2. Pat Young**
- 3. Officer Morgan Wilson**

**DEFENSE WITNESSES:**

- 1. Terry O’Neal**
- 2. Jamie Anderson**
- 3. Kirby Martinez**

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

All witnesses may be portrayed by either sex. All witness names are meant to be 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.

Adapted with permission from the Arizona Foundation for Legal Services and Education and edited by the Mock Trial Sub-Committee of the Law, Youth and Citizenship Program.

## AFFIDAVIT OF CASEY DUNSWORTH

1. My name is Casey Dunsworth. I am 75 years old. My spouse and I reside at 3103 N. Maple Street, which is approximately three blocks from West Egg High School. My family and I have lived in our current location for thirty years. Our two grown children both attended West Egg High School.
2. The neighborhood around West Egg High School is residential. There are longstanding neighborhoods on three sides of the school, across from Elm, Willow and Cutler streets. Magnolia Street, which runs along the front of the campus, is a normal cross street.
3. The speed limit on Elm, Willow and Cutler streets is 30 miles per hour. The speed limit on Magnolia Street is 40 miles per hour.
4. Over the years, the traffic around the high school has grown enormously. It seems like every student gets a car these days when they turn sixteen years old. Students always seem to be coming and going from the school between about 7:30 in the morning and about 4:00 in the afternoon. My spouse has often told me that the sound of squealing tires and the roar of "souped up" engines can be heard from the students cars.
5. Around lunchtime, from approximately 11:00AM to 1:30PM, the number of students racing to and from the high school is enormous. Other neighbors and I have complained to the Principal and the School Board about it and voiced our belief that the safety of the surrounding neighborhoods is compromised when the students try to hurry off campus to eat lunch and then return in less than 50 minutes. I am so concerned that I generally try to never drive by the school at this time. This means I am limited in not leaving or returning to the house during this period of the day, which is very frustrating. Obviously, sometimes I cannot avoid driving at this time, but I sure do try.
6. On October 18, 2004, I had a doctor's appointment at 1:30PM. I tried to get a later one, but would not have been able to see the doctor for three days unless I took that appointment. My back was acting up again. As a result, I was leaving my house around 12:50 to 12:55 to go to the doctor. I went down to Elm and made a right turn to go down to Magnolia.
7. I drove to the corner of Elm and Magnolia, turned on my left signal and stopped to turn left onto Magnolia. Elm is a typical residential street with no line down the middle of the road. There is a traffic light at the corner of Elm and Magnolia Streets. The light was green when I reached the intersection, but I had to stop in the middle of the street because two cars were coming down Elm Street from the opposite direction. It was around 1:00 in the afternoon, probably a few minutes before the hour. The sun was shining and it was a warm October day in West Egg. I remember I was thinking we were actually enjoying almost summer-like weather.

8. As I waited to turn left, a student began to cross Elm Street walking a bicycle. The student had been standing on the corner when I stopped and looked to see what I was going to do. Although I could have turned left since the two oncoming cars had passed and the light was still green, I was being a nice person and decided to signal the student to cross the street in front of my car. There is not a marked crosswalk at this corner. In fact, there are no marked crosswalks at any of the corners around the West Egg High campus. Nevertheless, there are signs on all the surrounding streets that say to watch out for pedestrians. There is one on Elm about half a block before the intersection with Magnolia.
9. At about this time, I don't know if I heard or sensed a car coming behind me. I looked up in my rearview mirror and saw a white Ford SUV coming very fast behind me. My first thought was they are going too fast — I bet it is kids going to the high school. The entrance to the parking lot is on Magnolia and so students often go fast down Elm so they can turn on Magnolia and go to the parking lot. As I watched the car, and it all happened so fast, maybe a few seconds, I thought to myself, I hope they stop and don't rear-end my car.
10. I quickly looked forward to see if I could turn, and saw that the student was just now crossing from in front of my car and was almost to the corner. At that moment, I heard an awful squeal of brakes and tires. I was sure I was going to be hit! I closed my eyes. The next thing I knew, I heard a terrible crash but I did not feel anything.
11. I opened my eyes and saw the student with the bike still in the street just a foot or so from my car. I also saw the SUV where it apparently crashed into the traffic signal pole. The SUV was lying on its left side and was almost all on the sidewalk. I sat in my car and was literally shaking. I do not know how long I just sat in my car and stared. Several people came over to the SUV and helped the occupants from the car. They all looked like students to me.
12. The police and fire department arrived in what seemed like just minutes. I felt in a daze. I believe some of the students in the car were taken to the hospital, but I do not know what happened to them.
13. I spoke to a police officer who told me I could move my car from Elm Street. I told the police everything I could remember about the accident. It all happened so fast. The police took my name and said they would contact me if they needed anything else.
14. In 1998, my daughter Katherine was seriously injured in an automobile accident in Delphi. She was hit by a 19-year-old university student who was intoxicated. Luckily, Katherine is fine now except for some lingering back pain. However, for a while, we thought she was going to be paralyzed. Young people never seem to realize the fact that an automobile can be a dangerous weapon.

This I swear under penalty of perjury.

*Casey Dunsworth*

Date 12/10/04

**Casey Dunsworth**

## AFFIDAVIT OF PAT YOUNG

1. My name is Pat Young. I was born on April 12, 1987. I am a senior at West Egg High School.
2. I am a classmate of Terry O’Neal and Jamie Anderson. We are all in the same grade and have gone to the same school since third grade. I am a friend of Terry O’Neal. We used to be really close in elementary school and our freshman year at West Egg High. However, over the course of high school we have not done as much together as we used to. I know Jamie Anderson also but we have never been close friends. I also knew Jamie’s sister Nicole a little. I mean she was younger than we were so we never paid much attention to her.
3. I live about half a mile from school and generally ride my bike to school. I also generally go home for lunch because I can “chill out” and watch TV. My parents are not home and so I have the house to myself. It only takes about 5 to 10 minutes to go each way depending on how long I have to wait to cross Elm Street because of the traffic.
4. Classes at West Egg High are 50 minutes in length. They begin at five minutes past the hour and end at five minutes before the hour. This allows us ten minutes to go from one class to another. My lunch period is from 12:05 to 12:55. However my next class does not start until 1:05. I usually stay at home until about 12:50 before hopping on my bike and going back. I have never been late returning from lunch.
5. When we were freshman, both Terry O’Neal and I rode our bikes to school. Terry lives about a quarter mile or so further from the school than I do. Terry used to come over and we would ride together to school in the morning. Terry would often come over for lunch. However, as I said, we do not hang out together as much since freshman year. Also, I do not think Terry has ridden a bike at all since Terry's parents gave Terry a Ford Explorer as a birthday present.
6. Many kids leave campus for lunch. Most go out for food and complain about how little time they have. That is because they go to places that are far away from campus and always crowded for their “favorite grub.” Also, they sit around and talk until the last minute, and then are late if they hit a red light. I don’t think getting back in time is so hard, but everyone thinks I am a “geek” for going home for lunch.
7. On October 18, 2004, I went home for lunch. I watched “All My Children” on TV and ate a cheese sandwich. I left as they began the commercials at the end of the show. I cannot believe how many commercials there are at the end of a show. They could add an easy three to five minutes if they did not have so many commercials.

8. I rode to the corner of Elm and Magnolia across from school. I reached the corner and got off my bike to cross the street. You have to be careful at the streets around the school because there are a lot of students driving around, especially around lunchtime.
9. I looked and saw a car stopping to turn left. The light was green and so I was going to wait until it turned red to cross, when this “old guy” stopped at the intersection and signaled me to cross. I guess the “old guy” wasn’t in a hurry, because the cars coming down Elm had already passed the intersection. I thought, “Alright, you don’t have to ask me twice.” I started to walk my bike across the street. I was looking no place in particular and just thinking about how I really did not want to go to my next class, which was Physics.
10. I was about two-thirds of the way across the street and just passing the car that was turning, when I looked up Elm. I froze because I saw Terry’s Explorer speeding toward me. I did not see Terry’s face. I think he was turned around talking to whoever was in the backseat. I thought “Terry, don’t hit me!”
11. The next thing I remember is seeing Terry turning back around and looking up at me and the Explorer swerving up on the curb by the school. The Explorer seemed to bounce and start to swerve again. It was almost to me, and I still thought I was going to be hit. Then it flipped on its side and slid. It made a horrible screeching sound. I could not believe Terry didn’t hit me or even my bike.
12. I saw the SUV go by me and it just slammed into the pole on the corner that held the traffic signal. Everything happened so fast and yet it seemed like slow motion. I ran across the rest of the street and threw down my bike. I ran to the car with a group of other students. I was going to give Terry a piece of my mind as I was almost killed.
13. When we got to the car, Terry was helping Jamie from the car. Jamie's arm was hurt. I also noticed Jamie crying. I could also see that Terry's head was bleeding. Jamie was yelling for Nicole. I thought he/she was crazy, I did not see Nicole. However, some kids later called to us that Nicole was in the grass back where the car flipped. I never saw her leave the car.
14. The police and fire department arrived and Terry, Jamie and Nicole were taken away in ambulances. I told the police I saw the whole thing. I was not going to tell them that I was almost hit, because I did not want to get Terry in trouble. But the old guy in the car told the police about me and so I had to come clean and tell them how close it really was.
15. I don’t know why the car flipped. I honestly thought Terry was going to swerve back into the street and hit me.

This I swear under penalty of perjury.

*Pat Young*

Date 12/09/04

**Pat Young**

## **AFFIDAVIT OF OFFICER MORGAN WILSON**

1. My name is Morgan Wilson. I am a police officer with the West Egg Police Department. My badge number is 4672. I have been a police officer for 14 years, and spent 10 of those years as a New York State Trooper.
2. I was trained in collision reconstruction at the time of my initial training at the New York State Police Academy. I also received advanced training in collision reconstruction at the New York State Police Academy Collision Reconstruction Unit in 1993. I have been an accredited accident reconstructionist by the Accreditation Commission for Traffic Accident Reconstruction (ACTAR) since 1996. I am a member of the New York Statewide Traffic Accident Reconstruction Society (NYSTARS). I teach a course in accident investigation skills to new recruits at the West Egg Police Academy.
3. I have investigated hundreds of traffic accidents during my career as a New York State Trooper and a West Egg police officer and now I am part of a special group that is called in to investigate rollover accidents. I became a part of this special “rollover group” in 2000.
4. I received a call at 13:25 on October 18, 2004 to report to the corner of Magnolia and Elm near West Egg High School. Officers on the scene had reported a single car rollover with serious injuries and I was dispatched to conduct the accident investigation. Apparently, the officers at the scene believed that one or more of the injured parties may not survive and criminal charges might be filed.
5. Upon my arrival at the scene, I took measurements of the skid marks and evaluated the other physical evidence such as the vehicle itself. I also interviewed witnesses to the accident including but not limited to Pat Young, Casey Dunsworth and several high school students.
6. I also traveled to the hospital and interviewed Jamie Anderson. Jamie Anderson told me that Nicole was leaning forward in the backseat handing Terry his cell phone just before the accident. Nicole was not wearing a seat belt. Jamie looked up and saw the pedestrian and bike and yelled, “Watch Out!” Jamie said Terry yelled “Oh No!” and the next thing Jamie remembers they were rolling over and hitting the pole. Jamie does not remember Nicole being thrown from the car.
7. I also interviewed Terry O’Neal at the hospital and received parental consent to do so. Terry was driving down Elm Street returning to school from lunch. Nicole was worried about being late to her next class and having her parents notified under the school parental notification policy that she had left campus. Terry reportedly told her not to worry — they would be back in time. Terry felt they had plenty of time. Terry does not know exactly how fast he/she was going on Elm but Terry was sure it was not faster than traffic normally goes on that street.

Terry insisted they were not speeding. Based on my field investigation, I cited Terry at the hospital for speeding.

8. With regard to the accident, Terry stated it was simply a freak occurrence. Terry's cell phone was ringing and it was in Terry's backpack on the floor in the back of the SUV and Terry asked Nicole to get it. Terry was reaching back to grab his/her cell phone from Nicole when Jamie yelled "Watch Out!" Terry looked and saw Pat Young crossing the street. Terry reportedly stepped on the brakes and the car pulled to the side and hit the curb. Terry was turning back into the road when the car rolled over and slid into the pole.
9. From the length of the skid marks, the damage to the vehicle, the distance the vehicle rolled and based on my training, I calculated the speed of the Explorer to be between 47 and 50 miles per hour immediately before the accident. This is substantially above the 30-mile per hour speed limit for a residential street and definitely a hazardous speed so close to a high school with known high amount of pedestrian traffic.
10. There are several signs around the West Egg High campus warning motorists to watch and use caution because of pedestrians. The signs are large and a reflective yellow color. They read "Caution Pedestrians."
11. I have investigated several accidents in the last few years around West Egg High School. In the last four years, 88% of the accidents in a five-mile radius around West Egg High School have involved students who were speeding. The police force generally places officers a few blocks from the school every few months to ticket speeders. We hope this will slow everyone down. I must admit however that many of the speeding tickets that are written are not issued to students. Many people use Elm Street as a regular thoroughfare and often travel at a speed over 40 miles an hour.
12. Based on all the information I gathered, the physical evidence and my conversations with all the witnesses, I believe the accident occurred because Terry O'Neal was driving at a greatly excessive speed and was inattentive to the surroundings, which caused a situation to develop where there was a substantial and unjustified risk of harm to the people in the Explorer and anyone around it. When Jamie screamed "Watch Out," Terry O'Neal panicked and jerked the wheel. The vehicle skidded at a high rate of speed and hit the curb causing the right side wheels to lose contact with the ground. Terry then attempted to quickly turn back to the right, which caused the unbalanced vehicle to tip even more. Given the rate of speed and the jerky movements, Terry O'Neal lost control of the vehicle. The vehicle rolled over and slid into the pole.
13. I admit that studies indicate that the Ford Explorer Sport Trac has a high center of gravity. However, a vehicle does not roll over by itself. It was the rate of speed and inattentiveness that caused Terry O'Neal to lose control of the vehicle. In losing control, there were quick changes of direction that may have contributed to the vehicle rolling over.

14. As part of my investigation, I also checked Terry O'Neal's driving record. In April 2004, just a short time after Terry got his/her drivers license, he received a speeding ticket for going 48 miles an hour in a 35-mile an hour zone. Terry went to traffic safety school and the violation was erased. The ticket was given at a location about 10 miles from West Egg High School in East Egg, New York.
15. After completing our investigation, the West Egg Police Department arrested Terry O'Neal on November 15, 2004 for second-degree manslaughter.

This I swear under penalty of perjury.

*Morgan Wilson*

Date 12/09/04

**Officer Morgan Wilson**

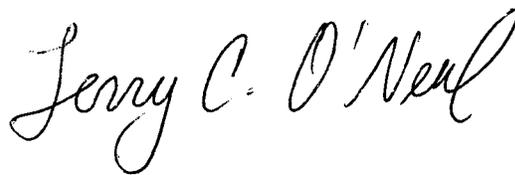
## **AFFIDAVIT OF TERRY O'NEAL**

1. My name is Terry O'Neal. I was born on September 3, 1987. I am a senior at West Egg High School. On October 18, 2004, I was involved in a motor vehicle accident while driving my 2004 Ford Explorer Sport Trac. I was seventeen at the time of the accident.
2. I received my driver's license following my sixteenth birthday. My parents said they would buy me a car when I turned seventeen if I took the full driver education course at West Egg High School. This class was both classwork and actual driving. I thought the class was only for "geeks." However, I willingly took the class in exchange for my parents buying me a Ford Explorer. It was a cool car. White with a sunroof. Since I got an A, my parents even threw in a cell phone in case of an emergency.
3. I am really a safe driver. Mr. Maxwell taught the driver education course at West Egg High School. He was a very strict teacher, especially in the actual driving segment. We were drilled in defensive driving skills and techniques. Mr. Maxwell told me I was one of the best driver education students. We even took a field trip to International Speedway where a race driver friend of Mr. Maxwell lectured to us. We were also allowed to drive a Mustang around the track. It was very cool and did that car ever go fast.
4. I have received one ticket. A few months after I got my license, I received a speeding ticket in East Egg. I was leaving a friend's house and was late getting home for dinner. I did not want to get in trouble with my parents since they have this thing about the whole family being home for dinner. I did not think I was speeding but the police officer said I was. It was terrible. My parents grounded me and took away the car for two months. I learned that nothing is worth getting a ticket.
5. I have driven to school since I reached sixteen. Before I got the Explorer, I was allowed to drive my Mom's old beat-up car. It is an easy drive because I only live about a mile away. I know this is really close but it is much better driving than riding my bike like I used to do. Also now I can leave campus and go with my friends to lunch. Over the last two years I must have driven to and from school about a thousand times. I could drive there with my eyes shut.
6. I really like West Egg High School. It is a great school and a pretty campus. I am the Student Body President this year. I am planning to go to NYU next year and study psychology. They have a great psychology department. I am in the top 5% of my senior class. Until the accident, life was pretty wonderful.
7. I still cannot believe the accident really happened. Jamie, Nicole and I went to lunch like we had done a zillion times. It was a normal lunch and we had a good time. We left to return to school in plenty of time. We are all careful about that because of the school's parental notification policy for being late or absent after a lunch period.

8. I was driving back to school on Jefferson Avenue. That is not the way we went to the restaurant but I thought it might be faster going back. Boy, was I wrong. About halfway to school, at the intersection of Jefferson and Main, the city was installing sewer pipe. They had the entire intersection closed. We had to turn around and detour. This made us a little late going back. Nicole was worried because she already had one late and thought she would be late again. I told her not to worry. I was sure we could make it.
9. We made good time on the detour and turned onto Elm next to the school. I told everyone to gather their stuff so we could all jump out of the car and run to class as soon as I turned onto Magnolia and went into the parking lot. At that point, I could hear my cell phone ringing in my backpack. I knew it was my phone because I had just downloaded this cool ring-tone. I asked Nicole to grab the phone out of the front pocket of my backpack, which was on the floor in the back next to Nicole. Nicole leaned up between the seats to hand me the cell phone and I remember turning around for a split second to get the phone so I could check the caller ID. I knew it was probably Sam again, and if it was, I wasn't going to answer — Sam calls me practically 20 times a day!
10. All of a sudden, Jamie yelled "Watch Out!" I looked back and saw Pat Young crossing Elm in front of us. I had been looking that way just a second ago and I swear there was nothing but a silver car with its left turn signal flashing waiting to turn left. I had moved to the far right so I could go around the car and turn right onto Magnolia. I immediately stepped on the brakes pretty hard.
11. I do not think I turned the wheel. I only remember slamming on the brakes. Anyway the car seemed to swerve to the right and bumped up onto the curb. I knew from class that it would be harder to stop on uneven ground so I was going to turn back onto the road and maybe try to do a U-turn and avoid everything. However, before I could do anything the car was airborne and we rolled. I don't know what happened. Once we rolled there was nothing I could do and we went into the traffic light pole.
12. When we hit the pole, I hit my head on the side window or support; I am not sure which one. It hurt some and started to bleed but that was the only injury I had. I was real lucky. My head was bleeding badly but it turned out not to be too serious. It looked worse than it was and I only needed eight stitches.
13. After the accident, we had to stand up and climb out the passenger door window. I unhooked my seat belt and helped Jamie out. There were several other students who helped. Jamie's shoulder was hurt. I looked for Nicole but did not see her. I figured she must have climbed out the back of the car.
14. Once I was out of the car, several people made me lie down. The blood was running down my forehead into my eyes. I asked about Jamie and Nicole and they said not to worry. The fire department was there very quickly and sent me to the hospital. They were concerned about a neck injury and concussion and placed me on a backboard. Luckily, I did not suffer any such injuries.

15. In the hospital, my parents and I spoke to Officer Wilson. I stated everything I could remember about how the accident occurred. I learned that Jamie was going to be fine, but that Nicole was seriously injured. I was shocked. Apparently, she had not been wearing her seat belt and was thrown out when the car rolled. I thought she was wearing her seat belt. I always tell everyone to buckle up.
16. At the hospital, Officer Wilson cited me for speeding. I do not believe I was speeding. I know the speed limit is 30 miles per hour and I felt that is how fast I was going. I was not in any hurry and I was going just what everyone goes on Elm. I was paying attention to where we were going. There was nothing in front or behind us except for the silver car. I do not know how Pat got in front of us. I never saw Pat until Jamie screamed. I did everything I could to avoid an accident.
17. I know that there is a warning on the sunvisor about the Explorer sometimes rolling over. I saw the warning because it is impossible to miss; it is right in front of you. However, I never paid much attention because I never took it offroad or anything. I only drove around town. I admit I never read the entire owner's manual. I only looked in it if I had a question about something. That is what the salesman said it was for.
18. I have known the Anderson family and Jamie and Nicole since I was a little kid. Jamie is probably my best friend. I am so sorry about Nicole. I cannot believe she is gone. I know the Andersons think it is my fault, but I swear I was not speeding and I did everything I could to avoid an accident. When the car rolled over there was nothing more I could do. I do not think I will ever be able to put this accident out of my mind.

This I swear under penalty of perjury.



Date 12/07/04

**Terry O'Neal**

## AFFIDAVIT OF JAMIE ANDERSON

1. My name is Jamie Anderson. I was born on November 15, 1986. I am a senior at West Egg High School. Nicole Anderson was my younger sister. She was born on January 12, 1989. We were both involved in a car accident on October 18, 2004 at the corner of Elm and Magnolia. I was seventeen at the time of the accident and Nicole was fifteen.
2. On October 18, 2004, Nicole and I went to lunch with my best friend Terry O'Neal. We all have lunch from 12:05 to 12:55. We left campus in Terry's car, a white Ford Explorer Sport Trac. We went to Joe's Pizza a few miles from campus and had a deep-dish pizza. We like to go there for lunch but sometimes we are almost late getting back to school because Joe's Pizza is popular with West Egg High students and it is usually busy so it can take 15 to 20 minutes just to cook the pizza after we order. I guess fast food restaurants can be kind of slow.
3. After lunch, we all got back in the car to return to school. I am not sure what time we left Joe's Pizza, but I did not think we were really late. We try to keep a watch on the time because of our school's parental notification policy. To discourage students from leaving campus for lunch and to ensure they return on time, our school has a strict policy that if you are late or absent to the class following your lunch period twice during a semester, the school contacts your parents. My sister had already been late once because her class after lunch was on the far south side of the campus and a long way from the parking lot.
4. Our parents have told Nicole and me not to leave the school campus during the school day. I am sure they mean well but I do not believe they mean we can't leave to get lunch. The food at school is gross and everyone leaves for lunch, especially if you are a senior.
5. As we were driving back to school, we were on Jefferson Street. At the intersection of Jefferson and Main Street, the entire street was blocked because they were installing sewer pipe. We had to turn around and detour. Nicole said that we needed to hurry because she could not afford to be late again. She did not want the Assistant Principal to call Mom and Dad because they had told her that she would be grounded "indefinitely" if she left campus during the school day again. Terry told Nicole not to worry. Terry said that we would be back in time for her next class "no matter what."
6. It was almost 1:00 PM when we turned onto Elm Street. That meant we just had to drive by the school on Elm, and turn right onto Magnolia so we could then turn in the parking lot. I thought Terry was driving too fast. The cell phone in Terry's backpack began to ring. The backpack was on the floor in the backseat. At that point, Terry asked Nicole to get it out of the backpack. Nicole had taken the phone out of the backpack, leaned forward between the seats and was handing it to Terry.

7. As Terry was turning around to reach for the cell phone so that he/she could check the caller ID, I looked forward and saw Pat Young crossing the street in front of us. I have known both Pat and Terry since third grade. I don't know why Terry needed to check caller ID, it was probably Sam. They just started dating and I swear Sam calls every ten minutes. I yelled "Watch Out!" because I was not sure if Terry had seen Pat and I was afraid. Terry yelled "Oh No!"
8. The next thing I remember is the car swerving quickly to the right and going on the curb. Then it seemed to jerk back the other way and roll over. It all happened very fast. We were skidding and there was a lot of noise. I was screaming and I closed my eyes. We hit the pole that supports the traffic light but missed Pat Young.
9. When we hit the pole, I jerked violently forward. I was wearing my seat belt with a shoulder strap. The strap cut into my arm and really hurt. After the accident, I could hardly stand the pain in my shoulder and chest. I was eventually taken to the hospital. I had a bruised chest, a broken collarbone and some ligament tears in my shoulder. The doctor said I got injured because I was twisted in my seat when we hit but the seat belt kept me from getting hurt worse.
10. After the accident, I yelled for Nicole but she did not answer. Terry and some other kids helped me out of the car and had me lay down. I started to get up because I wanted to see how Nicole and Terry were, but the next thing I recall the fire department was there and they made me stay still and then sent me to the hospital in an ambulance.
11. Since the accident, I have learned that Nicole was thrown from the vehicle when we rolled. She suffered massive head and internal injuries and died a week later on October 25, 2004. I cannot believe my sister is gone. I just don't know why this happened.
12. I know that my parents blame Terry for the accident. However, I feel it was just an accident. We had all driven that street a thousand times. I don't know why the car rolled. Although we may have been driving fast, I do not think we were going that fast. Everyone drives like that on that street. It was a bright sunny day. There was no reason to go that slow.
13. I know there are a lot of kids that cross Elm Street to get to school. I often cross Elm on my way home. Most kids do not even go to the corner. But no one has ever been hit, or even come close to it. This was a freak thing.
14. I know Terry feels terrible about this. Terry would never have risked anyone getting hurt. Also the car was totaled. Terry loved that car. No way Terry would risk an accident. Terry is the only kid I know that actually took a driver education class at school. Terry said it helped with insurance and made him/her a better driver. I think Terry's parents required the class in exchange for the Explorer. Nevertheless Terry took the class very seriously and got an A.

This I swear under penalty of perjury.

A handwritten signature in black ink that reads "Jamie Anderson". The signature is written in a cursive style with a large, looping initial "J".

Date 12/10/04

**Jamie Anderson**

## **AFFIDAVIT OF KIRBY MARTINEZ**

1. My name is Kirby Martinez. I am the owner of KM Accident Reconstruction. I am a certified accident reconstructionist. I also have extensive training and experience in biomechanics.
2. I graduated from the University of California at Los Angeles in 1980 with a degree in Mechanical Engineering, BSME. I received Biomechanics training in 1994 from the University of San Diego. Biomechanics represents the interface between mechanical engineering and medical science and therefore can answer the question of exactly how an injury occurs. Biomechanics correlates the physical facts of the accident to the physical facts of the injury. I graduated from the Northwestern University Center for Public Safety Accident Reconstruction Program in 1995 and received my certification in accident reconstruction.
3. I received additional training in Automobile Vehicle Dynamics and training in Low Speed Rear Collisions from the Society of American Engineers in 1997. I also attended Accidental Injury: Biomechanics and Prevention training in 1999 at the University of Southern California, School of Medicine.
4. I was hired by the parents of Terry O'Neal to investigate the rollover of their child's Ford Explorer Sport Trac on October 18, 2004. I am charging the O'Neals an hourly rate of \$250 per hour for my time and have charged them a total fee to date of \$10,000.
5. As part of my investigation, I visited the scene of the accident and reviewed the physical evidence and skid marks. I talked to Terry O'Neal and Jamie Anderson. I also reviewed the accident report filed by Officer Wilson of the West Egg Police Department.
6. The primary issues to be investigated were: (a) the speed of the vehicle, (b) the sequence of events before the rollover, (c) whether the rollover was foreseeable or preventable and (d) whether the injuries and death of Nicole Anderson were the result of Terry O'Neal ignoring or failing to perceive a substantial and unjustified risk.
7. I accumulated the data necessary for my conclusions, which included not only the items derived from my investigation but also information concerning the weight of the vehicle, statistical information concerning the center of gravity of the vehicle and comparable automobiles, and the opinions of the coroner concerning the injuries suffered by Nicole Anderson.
8. I performed calculations to determine, among other things:
  - the velocity of the vehicle;
  - sequence of events leading to the accident;
  - the forces exerted upon Nicole Anderson during the incident; and
  - the propensity of the vehicle to roll over on an uneven surface.

9. As a result of my investigation and calculations, I reached the following conclusions:
  - a. The speed of the vehicle prior to the accident was approximately 42 to 43 miles per hour.
  - b. The normal speed of traffic on Elm Street during daylight hours is 40 miles per hour.
  - c. A vehicle traveling at 30 miles per hour on Elm Street would be unsafe as it would impede normal traffic flow.
  - d. The rolling over of the vehicle was not the responsibility or fault of the driver but is the result of an unusually high center of gravity which causes an unreasonably high likelihood of a rollover when the vehicle is sharply maneuvered on unequal ground.
10. It is my opinion that there was not a substantial or unjustified risk that Terry O'Neal's driving might cause injury or death to Nicole Anderson or anyone immediately prior to the accident. In fact, I believe that Terry would have successfully avoided any mishap if not for the manufacturer of the vehicle constructing it to have a dangerously high center of gravity.
11. Unfortunately, because the vehicle rolled over, the skid marks are not sufficient to determine whether, on the unequal ground of the curb and street, the vehicle would have been able to stop prior to entering the intersection of Magnolia and Elm Streets.
12. Officer Wilson is simply incorrect in concluding that the cause of the accident is unreasonable speed. Further, without the rollover, it is my opinion that Nicole Anderson would not have been thrown from the vehicle even considering that she was not wearing her seat belt.
13. There are warnings in the owner's manual and on the driver's sunvisor stating that quick turns or such maneuvers should be avoided because it can cause the vehicle to roll over. However, I believe most people do not read or pay attention to these warnings. The manufacturer should not expect people to be careful about something that the manufacturer can eliminate by redesigning the car to have a lower center of gravity.
14. Many newer model SUVs have a new safety feature called Electronic Stability Control. This new technology helps drivers maintain control of their vehicle during extreme steering maneuvers by keeping the vehicle headed in the driver's intended direction even when the vehicle nears or exceeds the limits of road traction. Terry's 2004 Ford Explorer Sport Trac did not come equipped with Electronic Stability Control. If it had, this vehicle may not have rolled over.
15. The National Highway Traffic Safety Administration rates vehicle rollover resistance and the Ford Explorer Sport Trac was rated one of the worst vehicles for rollovers.

16. I acknowledge that neither the National Highway Traffic Safety Administration or any court to my knowledge has found the Ford Explorer Sport Trac to be unreasonably dangerous. Nevertheless, just because it has not happened yet does not mean it is not true.

This I swear under penalty of perjury.

*Kirby Martinez*

Date 12/14/04

**Kirby Martinez**

## **PART V**

### **NEW YORK STATE HIGH SCHOOL MOCK TRIAL OFFICIAL EXHIBITS**

- A. NATIONAL HIGHWAY TRAFFIC SAFETY  
ADMINISTRATION  
Vehicles at the Highest Risk for Rollover
- B. TRAFFIC TICKET
- C. VISOR WARNING
- D. DIAGRAM

# National Highway Traffic Safety Administration (NHTSA)

## Vehicles At The Highest Risk For Rollover

The following vehicles scored the lowest in the National Highway Traffic Safety Administration Model Year 2004 Rollover Ratings.

<u>SUV MODEL</u>	<u>ROLLOVER RATING</u>	<u>ROLLOVER CHANCE</u>
GMC Yukon 4-DR	***	28%
Mercury Mountaineer 4-DR	***	28%
Ford Explorer Sport Trac	**	34%

## Rollover Rating System

### Interpreting Ratings

A vehicle's rollover resistance rating is an estimate of its risk of rolling over in a single-vehicle crash, not a prediction of the likelihood of a crash. As the chart below indicates, the lowest-rated vehicles (1 star) are at least four times more likely to roll over than the highest-rated vehicles (5 stars) when involved in a single-vehicle crash.

- \*\*\*\*\* Has a risk of rollover of less than 10%
- \*\*\*\* Has a risk of rollover between 10% and 20%
- \*\*\* Has a risk of rollover between 20% and 30%
- \*\* Has a risk of rollover between 30% and 40%
- \* Has a risk of rollover greater than 40%

NHTSA's rollover ratings reflect the real-world rollover experience of vehicles involved in over 86,000 single-vehicle crashes.

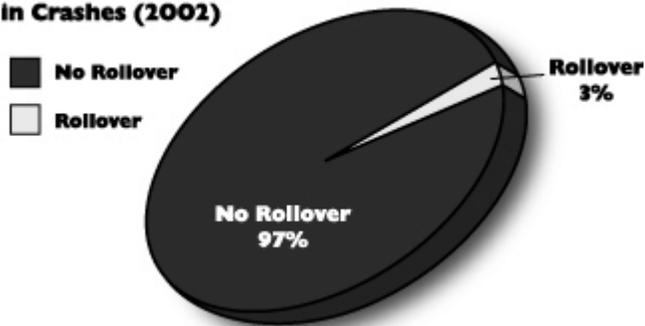
# Rollover Characteristics

## Fatalities

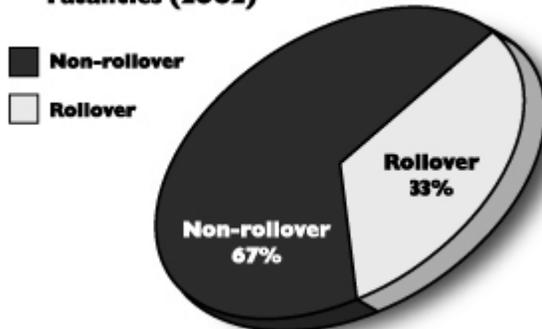
Rollovers are dangerous incidents and have a higher fatality rate than other kinds of crashes. Of the **nearly 11 million** passenger car, SUV, pickup and van crashes in 2002, only **3%** involved a rollover.

However, rollovers accounted for **nearly 33%** of all deaths from passenger vehicle crashes. In 2002 alone, more than 10,000 people died in rollover crashes. The **majority** of them (72%) were **not wearing safety belts**.

**Rollover Occurrences  
in Crashes (2002)**



**Rollover vs. Non-rollover  
Fatalities (2002)**



# TICKET



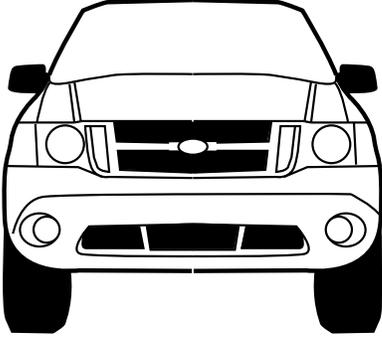
Uniform Traffic Complaint  
State of New York

Date: 04 / 08 / 2004

Ticket #: **12345**

Last Name O'Neal	First Terry	Middle C.
City East Egg	State NY	
DOB 09/03/1987		
Violation of NYS V&T Law: Sec.: <u>1180</u> Sub <u>D</u>		
Violation: 48 in a 35		
Signature of Officer 	Badge # 887	

## VISOR WARNING

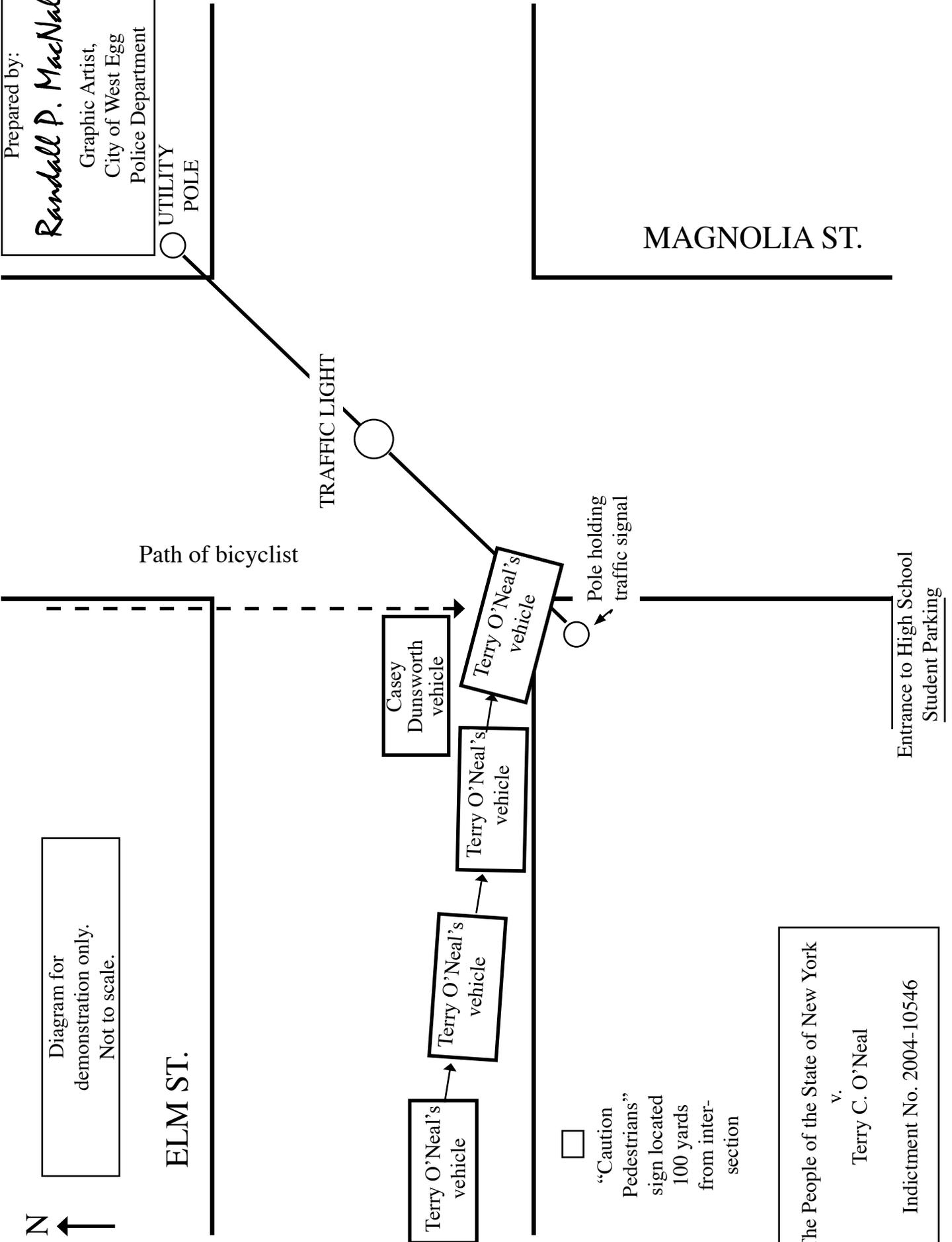


### **WARNING!**

QUICK TURNS OR SIMILAR MANEUVERS SHOULD BE AVOIDED, AS THEY MAY CAUSE THE VEHICLE TO ROLLOVER OR EXHIBIT SIMILAR INSTABILITIES.

Prepared by:  
*Randall P. MacNally*  
 Graphic Artist,  
 City of West Egg  
 Police Department

**DIAGRAM**



MAGNOLIA ST.

TRAFFIC LIGHT

Path of bicyclist

ELM ST.

Entrance to High School  
 Student Parking

Diagram for  
 demonstration only.  
 Not to scale.

□  
 "Caution  
 Pedestrians"  
 sign located  
 100 yards  
 from inter-  
 section

The People of the State of New York  
 v.  
 Terry C. O'Neal  
 Indictment No. 2004-10546

## PART VI

### NEW YORK STATE HIGH SCHOOL MOCK TRIAL RELATED LAW

**It should be noted by the student that case law further defines a particular statute by applying both a fact pattern, and to some degree, the community's sensibilities. The cases described below should all be considered controlling cases — the law of the land.**

#### **The People of the State of New York v. Geneo Brown 269 AD2d 817, 704 NYS 2d 416 [4th Dept 2000]**

**Facts:** The defendant fired three shots in the direction of the victim and at a third person who was allegedly harassing him.

**Issue:** Should the lesser included offense of manslaughter in the second degree, that of criminally negligent homicide, always be considered by the court.

**Holding:** Although criminally negligent homicide is usually a lesser included offense when considering manslaughter in the second degree, it can be considered only when there is a reasonable analysis of evidence to support a finding that the defendant could have committed the lesser offense but not the greater offense. Because of the fact that the defendant fired in the direction of two individuals, there can be no reasonable analysis that the defendant failed to perceive of the risk that his actions could result in the death of the victim.

**NOTE:** In order for one to determine if a defendant has committed either manslaughter in the second degree or criminally negligent homicide one must consider the defendant's intent (*mens rea*) or state of mind at the time of the commission of the crime.

#### **The People of the State of New York v. Wayne Heber 192 Misc 2d 412, 745 NYS 2d 835 [Sup Ct, Kings County 2002]**

**Facts:** On July 14, 2001, a four-year-old child died as a result of a single self-inflicted gun shot to the head. The child accidentally shot himself with an illegal firearm that his uncle left underneath the cushion of a chair in the living room of his house. It should be noted that while the child's mother was present in the household, but in the kitchen, the uncle was the only one aware that the gun was even in the household. The uncle (the defendant) was charged with manslaughter in the second degree and criminally negligent homicide, amongst other charges.

**Issue:** In the consideration of the above fact pattern and the current laws of New York State, can the defendant be held criminally liable under the theories of either reckless or negligent conduct?

**Holding:**

1. A person is guilty of manslaughter in the second degree when he recklessly causes the death of another.
  
2. A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another.
  - a. Criminal negligence occurs when the defendant fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would have observed in the same situation.
  
  - b. Criminal liability cannot be predicated on every act of carelessness resulting in death. The carelessness required for criminal liability is far more serious than that for ordinary civil negligence (non criminal), the carelessness must be such that its seriousness would be apparent to anyone who shares the community sense of right and wrong.
  
  - c. Criminal negligence requires some serious blameworthiness in the conduct that caused the death. The defendant's actions must have sufficiently caused the ensuing death. It must be shown that the defendant's actions set the wheels in motion to have caused the victim's death.

NOTE: Criminal negligence is a subtle concept, but this case defines criminal negligence in an explicit and clear manner. In addition, this case also defines when criminal liability will attach itself to an actor's conduct when that conduct results in an unintended consequence.

**The People of the State of New York v. Daniel P. Boutin**  
**75 NY2d 692, 555 NE2d 253, 556 NYS 2d 1 [1990]**

**Facts:** The defendant truck driver failed to perceive emergency lights until it was too late to avoid a collision with a police cruiser and truck parked in the right lane of a three-lane highway as a result of poor weather conditions. Both the police officer and the driver of the disabled vehicle were killed.

**Issue:** Was the evidence sufficient to support a conviction of criminally negligent homicide?

**Holding:** Criminally negligent homicide requires not only a failure to be aware of a risk of death, but it requires a failure to be able to show blame in the conduct that caused it. (In other words, we cannot say with certainty what action caused the resulting death.) Every act of carelessness that results in a death does not result in criminal liability; however, if that carelessness is such that its seriousness would be apparent to anyone who shares in the community's general sense of right and wrong, then criminal liability would be present. This criminally culpable risk-creating conduct—e.g., dangerous speeding,

racing, failure to obey a traffic device or any other misconduct must contribute to a substantial and unjustifiable risk of death.

NOTE: This case compares the similarities of manslaughter in the second degree with criminally negligent homicide. With both criminally negligent homicide and manslaughter in the second degree, the necessary act or conduct is the same—it must result in a death. Criminally negligent homicide differs from manslaughter in the second degree in that criminally negligent homicide does not require that the defendant intended for death to occur—it is an accident; manslaughter in the second degree requires that the defendant acted in such a manner that anyone from the community would know that the defendant’s conduct would result in death.

**The People of the State of New York v. Paul V. S.**  
**75 NY2d 944 [1990]**

**Facts:** The defendant was driving on a thruway approximately 90 miles per hour in a 55 miles per hour speed zone, even though he was aware that he was traveling through a police radar area. The defendant noticed a line of traffic backed up on the thruway, with cars stopped on the side of the road. Although a passenger in his car warned him to slow down, the defendant accelerated his vehicle and struck and killed a New York State Trooper. After a trial, the jury found the defendant guilty of criminally negligent homicide.

**Issue:** Was the evidence legally sufficient to support the defendant’s conviction for criminally negligent homicide?

**Holding:** On appeal, the Court of Appeals of New York affirmed the defendant’s conviction for criminally negligent homicide, concluding that there was ample evidence to establish that the defendant engaged in criminally culpable risk-creating conduct. The court explained that the evidence supported the jury’s finding that the defendant failed to perceive a substantial and unjustifiable risk that death would result from his actions and that this failure was a gross deviation from the ordinary standard of care.

**The People of the State of New York v. Lauryl Maloof**  
**254 AD2d 766, 678 NYS 2d 175 [4th Dept 1998]**

**Facts:** The defendant was driving approximately 10 to 15 miles per hour below the speed limit on a slushy road when her car struck two pedestrians who were exiting a car parked on the shoulder of the road. One of the pedestrians was killed, and the other was seriously injured. The pedestrians’ car was parked behind three other vehicles, each of which had flashing overhead lights: a police car, a tow truck, and a county sanitation truck. The defendant stated that she saw the flashing lights of the tow truck and the next thing she knew, she hit something. The prosecution’s accident reconstruction expert testified that the defendant failed to apply her brakes before striking the victims. The prosecution also offered evidence that the defendant ingested cocaine several hours before the accident. After a trial, the jury found the defendant guilty of criminally negligent homicide and assault in the first degree.

**Issue:** Was the evidence legally sufficient to support the defendant’s conviction for criminally negligent homicide?

**Holding:** The court reversed the defendant’s conviction and dismissed the indictment. While the court acknowledged that the prosecution established that the accident resulted from the “defendant’s unexplained failure to see the pedestrians” and by the vehicle’s deviation onto the shoulder, the court determined that these factors alone failed to establish criminal negligence committed by the defendant. The court explained that there was no evidence that the “defendant was engaged in any criminally culpable risk-creating conduct—e.g., dangerous speeding, racing, failure to obey traffic signals, or any other misconduct that created or contributed to a substantial and unjustifiable risk of death.” The court also concluded that the defendant’s ingestion of cocaine did not support the conviction because the prosecution did not show that the drug use affected the defendant’s driving or caused the defendant to drive carelessly.

**The People of the State of New York v. Clark Phippen**  
**232 AD2d 790, 649 NYS 2d 191 [3rd Dept 1996]**

**Facts:** The defendant, the owner of a truck company, failed to replace a defective tire that was being used on one of the company’s trucks, despite being told on numerous occasions that the tire was defective and said defect would cause a blowout. On September 13, 1994, the tire did blow-out causing the truck to swerve into the opposite lane into oncoming traffic. The truck collided with a vehicle. Three people were killed in the said vehicle.

**Issue:** Was the evidence sufficient to support a conviction of manslaughter in the second degree?

**Holding:** Before a person can be found guilty of manslaughter in the second degree, there must be proof that his conduct must create a substantial and unjustifiable risk; an awareness and disregard of the risk (reckless conduct) on the part of the defendant; and a resulting death. Even if recklessness can be shown, it still must be shown that the defendant’s action must be a sufficiently direct cause of the victim’s death. Merely a probable cause between the act and the resulting death is not enough to find the defendant guilty of manslaughter in the second degree. Lastly, it must be shown that the consequence of the defendant’s conduct was the foreseeable result of the defendant’s recklessness. (It is foreseeable that people would die as a result of the defendant’s conduct.)

**NOTE:** This case provides a good test or analysis to use in order to determine if manslaughter in the second degree can be applied to a particular fact pattern: Is the defendant aware of the risk and does he ignore such a risk; and, despite the defendant ignoring the risk, did his conduct directly result in the death of the victim; and, if the conduct did result in the victim’s death, did such conduct significantly cause the death of the victim; and lastly, was the death foreseeable (predictable) as a result of the defendant’s reckless conduct.

**The People of the State of New York v. Brandon G. Racine**  
**132 AD2d 899, 518 NYS 2d 458 [3rd Dept 1987]**

**Facts:** The defendant was driving northbound on a two-lane highway when he crossed a double solid line and hit a second vehicle traveling southbound. A third driver, whom the defendant passed earlier on the road, estimated that the defendant was driving

approximately 65 to 70 miles per hour. The third driver's passenger testified that the third driver was traveling approximately 50 miles per hour, and that the defendant was driving "a great deal faster than we were."

The vehicle that was struck by the defendant's car was traveling approximately 50 to 55 miles per hour. The defendant struck this vehicle with sufficient force to drive that car approximately 48 feet northbound. The two cars were demolished, the driver of the second vehicle was killed, and the passenger in the second vehicle and the defendant sustained serious injuries. Although the pavement was dry at the time of the accident, there were no skid marks at the scene, nor was there any indication that the defendant attempted to stop his vehicle or avoid the other car. The defendant was convicted, after a jury trial, of manslaughter in the second degree.

**Issues:** Was the evidence legally sufficient to support the defendant's conviction for manslaughter in the second degree? Did the trial court erroneously admit opinion evidence of the speed the defendant was driving, offered by the individuals in the third vehicle? (Other issues were raised on appeal, but they are not relevant for purposes of this case.)

**Holding:** On appeal, the court held that there was sufficient evidence to support a conviction for manslaughter in the second degree. The court noted that there was no evidence that the defendant took any evasive action whatsoever to avoid the accident and that the defendant was driving at a speed in excess of 65 or 70 miles per hour.

The court also held that the opinion evidence from the passengers in the third vehicle was properly admitted because a person of ordinary intelligence and experience may testify to the speed of a vehicle based upon that person's observation. Because both the driver and passenger in the third vehicle had extensive driving experience, there was an adequate foundation for their opinion testimony as to the speed of the defendant's car.

### **The People of the State of New York v. James Marchese 158 AD2d 473, 550 NYS 2d 932 [2nd Dept 1990]**

**Facts:** The defendant, a bartender, offered to drive an intoxicated patron of the bar home late one night at approximately 4:30 a.m. While driving the intoxicated patron home, the patron became distraught over personal problems, starting screaming, and asked that the defendant stop the car and let her out. As the defendant drove away, the patron jumped in front of the defendant's car. Despite the defendant's attempt to avoid hitting the patron by swerving, his vehicle struck her. The defendant admitted that he thought he must have hit her and that he neither looked back to see if she was all right nor reported the incident to the police. The prosecution's reconstruction expert concluded that the defendant was driving slowly and that he swerved to avoid hitting the decedent.

The defendant was charged with manslaughter in the second degree and the lesser charge of criminally negligent homicide. After a trial, the jury found the defendant guilty of manslaughter in the second degree, and therefore did not reach the lesser charge.

**Issue:** Was the evidence legally sufficient to support the defendant's conviction for manslaughter in the second degree?

**Holding:** On appeal, the court reversed jury verdict because evidence was not legally sufficient to support a conviction for manslaughter in the second degree. The court concluded that the prosecution failed to prove that the defendant possessed the required

mental state for manslaughter in the second degree. The court explained that the prosecution “presented no evidence whatsoever from which it could be inferred that the defendant was aware of and consciously disregarded a substantial and unjustifiable risk of causing the decedent’s death.” The court noted, however, the insufficiency of the evidence to support a manslaughter conviction did not foreclose a possible prosecution for criminally negligent homicide. The court explained that although the evidence was insufficient to establish that the defendant acted recklessly in causing the death, “a viable fact issue exists with regard to the question of whether the defendant acted in a criminally negligent manner by leaving the victim, near the roadway, in a drunken and distraught condition and by failing to wait a reasonable time before driving away.” The court therefore ordered a new trial on the charge of criminally negligent homicide.

**\*\*\* *The two following cases are offered only to demonstrate when one may use a lesser included offense.***

**The People of the State of New York v. Charles S. Dann**  
**17 AD3d 1152, 793 NYS 2d 852 [4th Dept 2005]**

**Facts:** The defendant shot at the victims’ house from a distance of 50 yards, using bird shot as ammunition, causing great alarm to the residence of said house. Out of a perceived threat, a victim placed a call to 911.

**Issue:** Was the defendant entitled to have the charge of second-degree reckless endangerment as a lesser included offense of first-degree reckless endangerment?

**Holding:** The defendant is entitled to have the charge of second-degree reckless endangerment as a lesser included offense as his conduct was shown to have created only a substantial risk of serious physical injury to each victim, but did not create a grave risk of death. Additionally, both prongs of the *Glover* test are met: (1) it is theoretically impossible to commit reckless endangerment in the first degree without committing reckless endangerment in the second degree; and (2) there is reasonable evidence that would support a finding that the defendant committed the lesser offense but not the greater offense.

**The People of the State of New York v. James Glover**  
**57 NY2d 61, 439 NE2d 376, 453 NYS 2d 660 [1982]**

**Facts:** The defendant was convicted of criminal sale of a controlled substance in the second degree. He is appealing his conviction based upon a lower court’s failure to provide him with the charge of criminal facilitation in the second degree charged as a lesser included offense of charge of criminal sale of a controlled substance in the second degree.

**Issue:** What must be established for the court to consider a lesser included offense?

**Holding:** One must apply a two pronged *Glover* test in order to determine if a defendant is entitled to a lesser included offense. The first requirement—that it is theoretically impossible to commit the greater crime without at the same time committing the lesser—is determined by a comparative examination of the statutes defining the two crimes, in

the abstract. The second sequential requirement (CPL sec. 300.50(1)), calls for an assessment of the evidence of the particular criminal transaction in the individual case and a determination that there is a reasonable view of such evidence which would support a finding that while the defendant did commit the lesser offense, he did not commit the greater offense.

**NOTE: While these cases do not address manslaughter in the second degree and criminally negligent homicide, they do present an excellent standard to determine whether or not a lesser included offense be considered by a court.**

**HINT: Attorneys and Judges like to use “tests” such as the *Glover* test because it presents an easy and somewhat objective analysis of a particular fact pattern. Such tests are great to use in a closing argument as they may aid in simplifying one’s analysis of a given fact pattern so that one may attempt to persuade the judge to arrive at a desired decision. However, this hint is offered only as a suggestion, not as a directive. This is not offered to tell the student-attorney how to practice law.**

## **NEW YORK STATE PENAL LAW**

### **Section 15.05. Culpability; definitions of culpable mental states**

1. "Intentionally." A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct.
2. "Knowingly." A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature of that such circumstances exists.
3. "Recklessly." A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.
4. "Criminal negligence." A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

### **Section 125.15. Manslaughter in the second degree**

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

He recklessly causes the death of another person.

Manslaughter in the second degree is a class C felony.

### **Section 125.10. Criminally negligent homicide**

A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person.

Criminally negligent homicide is a class E felony.

## NEW YORK STATE CRIMINAL PROCEDURE LAW

### Section 1.20. Definitions

37. “Lesser included offense.” When it is impossible to commit a particular crime without concomitantly committing, by the same conduct, another offense of lesser grade or degree, the latter is, with respect to the former, a “lesser included offense.”

### Section 300.50. Court’s Consideration of lesser included offenses

1. In submitting a count of an indictment to the jury, the court in its discretion may, in addition to submitting the greatest offense which it is required to submit, submit in the alternative any lesser included offense if there is a reasonable view of the evidence which would support a finding that the defendant committed such lesser offense but did not commit the greater. If there is no reasonable view of the evidence which would support such a finding, the court may not submit such lesser offense. Any error respecting such submission, however, is waived by the defendant unless he objects thereto before the jury retires to deliberate.
2. If the court is authorized by subdivision one to submit a lesser included offense and is requested by either party to do so, it must do so. In the absence of such a request, the court’s failure to submit such offense does not constitute error.
3. The principles prescribed in subdivision one and two apply equally where the lesser included offense is specifically charged in another count of the indictment.
4. Whenever the court submits two or more offenses in the alternative pursuant to this section, it must instruct the jury that it may render a verdict of guilty with respect to any one of such offenses, depending upon its findings of fact, but that it may not render a verdict of guilty with respect to more than one. A verdict of guilty of any such offense is not deemed an acquittal of any lesser offense submitted, but is deemed an acquittal of every greater offense submitted.



## **APPENDICES**

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



# COUNTY MAP

## Statewide Mock Trial Tournament

### Regions

**I. West**

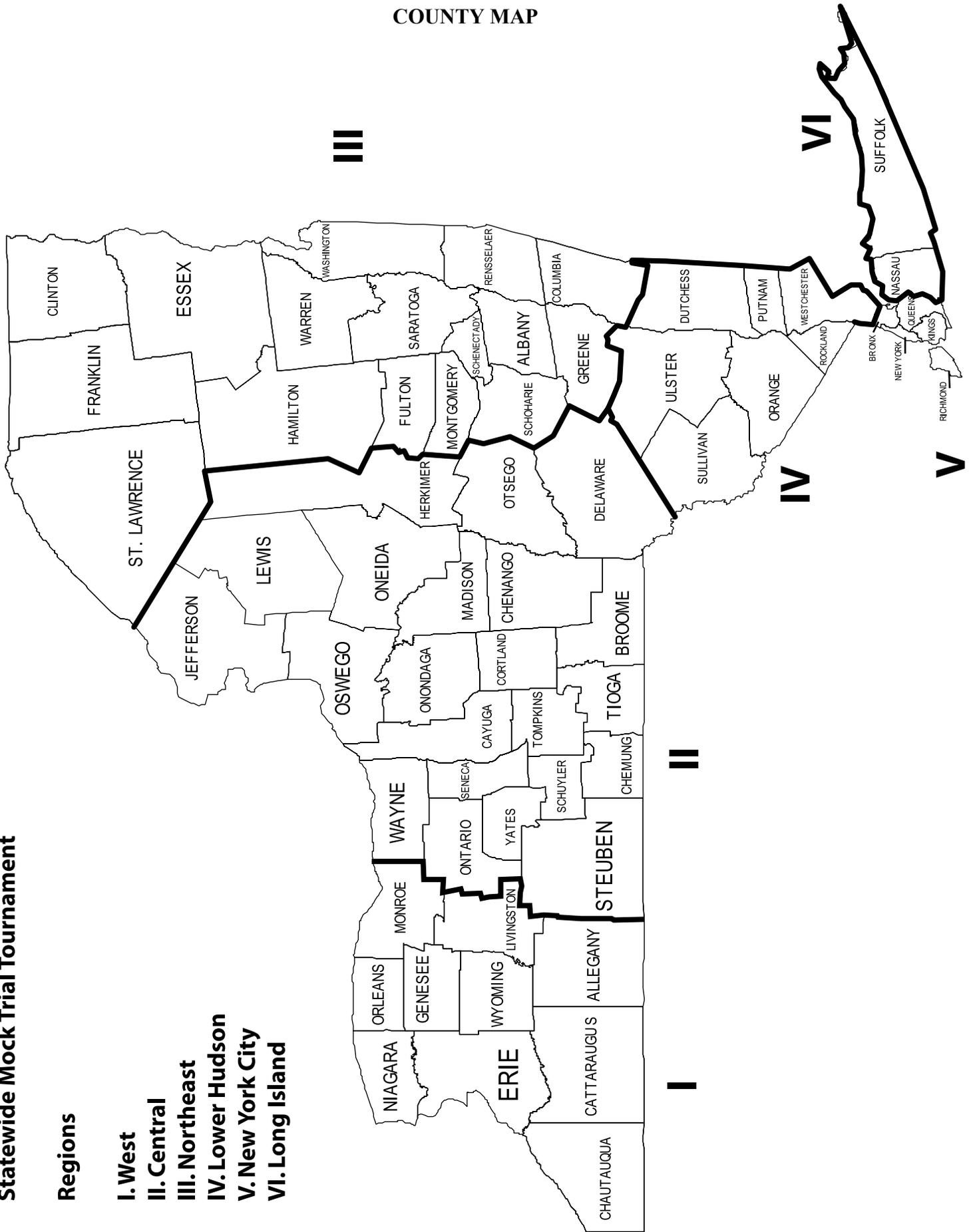
**II. Central**

**III. Northeast**

**IV. Lower Hudson**

**V. New York City**

**VI. Long Island**





**APPENDIX B**  
**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 or 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 polished</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>

<b>Professionalism of Team</b>	<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> <li>• <b>[1-10 POINTS MAY BE AWARDED PER TEAM]</b></li> </ul>
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## 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			
<b>Professionalism (1-10 points PER team)</b> <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>			
		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