



2022-2023

The Vincent J. Apruzzese High School

Mock Trial Competition



HIGH SCHOOL WORKBOOK

★ Celebrating **41** years of service to the educational community ★



*Sponsored by the New Jersey State Bar Foundation in cooperation with
New Jersey's county bar associations and the New Jersey State Bar Association*

ATTENTION TEACHER-COACHES

CASE CLARIFICATIONS

We do not send mock trial case clarifications or updates by mail or email. It will be your responsibility to check our website, www.njsbf.org, periodically for possible updates or corrections.

CONTEST SCHEDULES

Amendment to Rule 2:2-2: It is the responsibility of the teacher-coach to review the dates (including snow dates) and times provided by the county coordinator with all team members, and to arrange for substitutes if needed (see R.2:13). The county coordinator may not be able to accommodate differing vacation and/or testing schedules.

Amendments to Rules 2:10, 2:11 and 2:12: It is the responsibility of the teacher-coach to be prepared for rescheduling in the event of inclement weather, and to arrange for substitutes if needed, as previously discussed in R.2:2-2. (If virtual, also see Online Rule 1.10). As with county competitions, the state coordinator may not be able to accommodate differing vacation and/or testing schedules.

CODE OF CONDUCT

Teacher-and attorney-coaches, students, parents & observers are expected to abide by the provisions of the competition's Code of Conduct and the Online Rules, if virtual.

UPDATES

Some changes have been made to the Rules of Evidence in Part VI. Please review carefully.

Mock Trial Competition

Statement of Goals

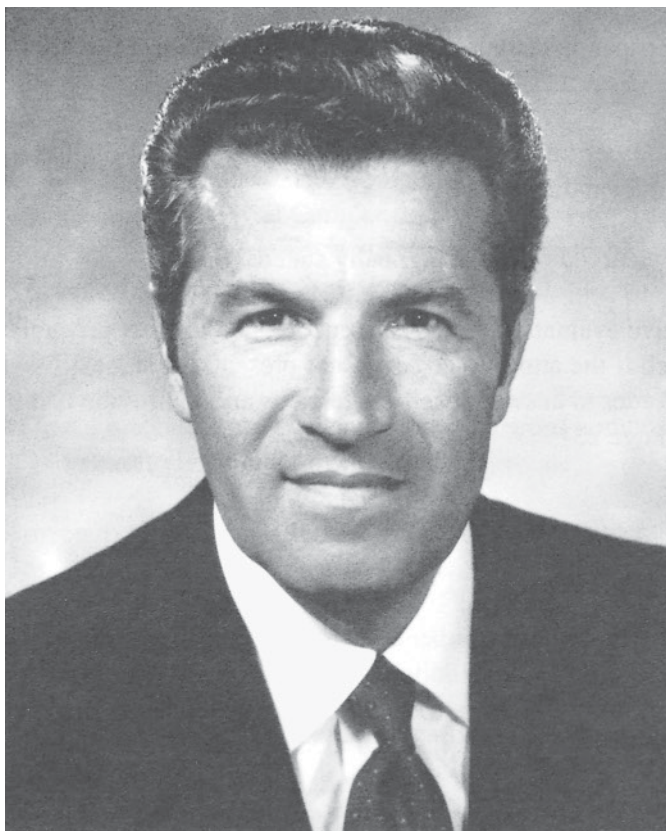
To increase comprehension of the historical, ethical and philosophical basis of the American system of justice.

To demystify the operation of the law, court procedures and the legal system.

To help students increase basic life and leadership skills such as listening, speaking, writing, reading and analyzing.

To heighten appreciation for academic studies and promote positive scholastic achievements.

To bring law to life for students through active preparation for and participation in the competitions. The goal is not to win for the sake of winning, but to learn and understand the meaning of good citizenship in a democracy vis-a-vis our system of law and justice. In this sense, all the students who participate will be winners.



Vincent J. Apruzzese, Esq.

In recognition of his many years of service, the New Jersey State Bar Foundation named its Mock Trial Competition in honor of Vincent J. Apruzzese, Esq. in 1991. Mr. Apruzzese is a past president of the New Jersey State Bar Association. He led the drive to build the New Jersey Law Center, served as the first chairman of the New Jersey State Bar Foundation, and was chair of the Foundation's Public Education Committee for several years. This competition is a fitting tribute to his leadership, indefatigable spirit and insight in implementing free law-related education programs for the public and particularly for young people.

Mock on!

The New Jersey State Bar Foundation invites veteran and new teams to join us as we mark our 41st year of service to the educational community. Over the years the Vincent J. Apruzzese High School Mock Trial Competition has taught more than 116,000 New Jersey students the fundamentals of our court system while developing critical thinking and public speaking skills.

For the past two years during the pandemic, we were successful in adapting our High School Mock Trial Competition to an online format. We anticipate that mock trial contests will be in person this year, circumstances permitting. Therefore, you will see references to in-person competition as well as virtual competition, in this workbook.

**VINCENT J. APRUZZESE
HIGH SCHOOL MOCK TRIAL COMPETITION**

TABLE OF CONTENTS

Part I	
Code of Conduct	6
Part II	
Rules of General Application	11
Part III	
Hints on Preparing for a Mock Trial Competition	16
Part IV	
Trial Procedures	18
Part V	
Rules of Procedure	21
Part VI	
Mock Trial Rules of Evidence	24
Part VII	
General Guidelines for Attorney Team Advisors	33
Part VIII	
General Guidelines to Presentations for Judges.....	33
Part IX	
Mock Trial Videos.....	34
Part X	
Mock Trial Case*	35
Part XI	
Performance Ratings	69
Part XII	
Online Rules Addendum.....	77

The New Jersey State Bar Foundation gratefully acknowledges the assistance of Ronald C. Appleby Jr., Esq., chair of the Mock Trial Committee, and committee members Edward Moody, Sheryl Mintz Goski, Esq. and Diane K. Smith, Esq. in the creation of this original case.

The Vincent J. Apruzzese High School Mock Trial Competition is sponsored by the New Jersey State Bar Foundation in cooperation with the New Jersey State Bar Association and New Jersey's County Bar Associations, and is funded by the IOLTA Fund of the Bar of New Jersey.

PART I
CODE OF CONDUCT
For Participants in the
Vincent J. Apruzzese High School Mock Trial Competition

Please review the following revised code carefully. It is the teacher-coach's responsibility to obtain all required signatures.

OVERALL PURPOSE AND SPIRIT OF THE COMPETITION

The Vincent J. Apruzzese High School Mock Trial Competition (“Mock Trial Competition”) has been created for the purpose of stimulating and encouraging a deeper understanding and appreciation of the American legal system by high school students. Because of the competition’s experiential educational format, learning derives from various sources and results from both articulated and unarticulated messages. The students learn proper comportment from each other, their teacher-coaches, their attorney-coaches, the volunteer mock trial judges and their parents and other guest-observers in the courtroom. Given the multifarious sources of student learning in the Mock Trial Competition, this Code of Conduct interprets “Participants” to include not only the students, but all of those who have the potential to influence student learning. In keeping with this interpretation, “Extensions” of this Code of Conduct must be executed by the team members, the teacher-coach and the attorney-coach. **In addition, each teacher-coach is required to provide parents and other guest-observers with copies of this Code of Conduct.**

SPECIFIC GOALS OF THE MOCK TRIAL COMPETITION

All Participants shall in manner and in deed do their parts in helping the Mock Trial Competition achieve the following specific goals:

- Promote cooperation, academic integrity, honesty and fair play among students.
- Promote good sportsmanship and respect for others in both victory and defeat. Participants must also demonstrate respect for County Mock Trial Coordinators, mock trial personnel, mock trial judges and other volunteers who make this competition possible.
- Promote good faith adherence to the Mock Trial Competition rules and procedures.
- Improve proficiency in speaking, listening, reading, reasoning and analytical skills.
- Promote respect for the judicial system and instill a notion of proper courtroom decorum. This includes respect for the courthouse and other venues where mock trials take place.
- Promote congeniality and open communication between the educational and legal communities.

SPECIFICALLY PROHIBITED NEGATIVE BEHAVIORS

Although not exhaustive, the following list contains behaviors that are directly opposed to the goals and objectives of the Mock Trial Competition and which, if engaged in, will constitute grounds for such disciplinary action as the County Coordinator at the local level (or Mock Trial Committee at state regional, semi-final and final levels) deems appropriate given the circumstances:

- Failure of the teacher-coach (a) to familiarize all parents and guest-observers with the contents of this Code of Conduct, or (b) to submit Extensions of this Code of Conduct executed by the team members, teacher-coach, and attorney-coach to the County Coordinator prior to the first round of competition.
- Use of communications technology (audio recording, visual recording, cell phone recording, text-messaging by phone, laptop or other telecommunications device) by a team member (a) to communicate with any member of its team or anyone else during an ongoing mock trial round, or (b) to record or in any way memorialize any portion of a round of the competition in which the team is not a participant. Students are not permitted to use iPads, laptops, cell phones or any electronic or telecommunication devices while competing in person. Online Rules 1.4 and 1.11 will be in effect in the event of virtual competition.

- Acceptance of an audio, video, DVD recording, or other transcription of the performance of another team in a round that the recipient did not participate in, even if the recipient has not viewed the material, listened to the recording or read the transcript.
- Plagiarism by any member of a team or any team's use of material plagiarized by its teacher-coach, its attorney-coach, or by the parents or guest-observers of team members.
- Direct verbal or written communication outside of the courtroom with a volunteer mock trial judge by any team, its teacher-coach, its attorney-coach or the parents or guest-observers of team members.

ACCOUNTABILITY FOR AND CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT

All Participants, including parents and guest-observers, must adhere to the rules and procedures of the Mock Trial Competition and this Code of Conduct (which includes by this reference the Extensions signed by the students, teacher-coaches and attorney-coaches). Teacher-coaches, attorney-coaches and students must digitally submit the Extensions prior to the first round of the local competitions. Failure to abide by the Mock Trial Code of Conduct is sufficient grounds for disqualification and dismissal of the team with which the offender(s) is directly or indirectly connected at the sole discretion of the County Coordinator at the local level or the Mock Trial Committee at the state regional, semi-final and final levels.

EXTENSION OF CODE OF CONDUCT

To Be Signed by Teacher-Coach Participants in the Vincent J. Apruzzese High School Mock Trial Competition

I have read and fully commit myself to the overall purpose and spirit of the Mock Trial Competition. Moreover, I endorse the specific goals of the Mock Trial Competition as set forth in the Code of Conduct and agree not to engage in or condone any of the negative behaviors set forth therein. I execute this Extension of said Code of Conduct in my role as teacher-coach, hereby agreeing to focus attention on the educational value of the Mock Trial Competition.

I agree to act as an adult role model for my students and to discourage willful violations of the rules. I will instruct my students as to proper procedure and decorum and will assist them in understanding and abiding by the competition rules and procedures as well as adhering to the spirit of this Code of Conduct. By action and by deed, I will teach my students the importance of treating others with respect and courtesy. In my interaction with other teacher-coaches, attorney-coaches, mock trial judges, county mock trial coordinators, other volunteers and mock trial personnel, I will set an example that my students can follow.

I understand that I have the following responsibilities for which I, alone, am accountable:

- Training students to fulfill the role of jurors and bringing a sufficient number of student jurors to each round of competition.
- Circulating the Code of Conduct to all parents and guest-observers in advance of their attending any of the rounds of competition.

I agree that I will not disseminate any reproduction of any portion of this competition without the express written consent of each student and the parent/guardian of each, of my team as well as opposing teams, as well as the permission or consent of the student's own coach, whose images may be captured on film or other telecommunications technology. I will not post any images from this competition on Facebook, Twitter or any other social networking site without the permission as set forth above. I will not encourage or permit anyone else to do so, and will report same if it happens. I further agree that any violation of this rule subjects me to removal from the competition and places my entire team in jeopardy of being severely penalized for my actions. See R.2:5-3 and Online Rule 1.11 (the latter rule is in the event of a virtual competition).

I agree to act as a role model by carrying out my responsibilities as a teacher, never forgetting that I am representing the educational system in addition to coaching high school students as their mock trial advisor. Thus, I will zealously encourage fair play and promote conduct and behavior that is in keeping both with proper courtroom decorum and the spirit of the Mock Trial Competition. I will discourage skirting the rules and engaging in obstructionist behavior that interferes with the orderly flow of courtroom procedures. I agree to inculcate the highest standards of the education profession by discouraging a culture of win-at-any-cost and by promoting a spirit of willing compliance with the rules of the competition and the ethical guidelines provided by this Code of Conduct.

**PLEASE SUBMIT THIS FORM DIGITALLY ON THE
VINCENT J. APRUZZESE PAGE OF OUR WEBSITE
NJSBF.ORG.**

EXTENSION OF CODE OF CONDUCT

To Be Signed by Attorney-Coach Participants in the Vincent J. Apruzzese High School Mock Trial Competition

I have read and fully commit myself to the overall purpose and spirit of the Mock Trial Competition. Moreover, I endorse the specific goals of the Mock Trial Competition as set forth in the Code of Conduct and agree not to engage in or condone any of the negative behaviors set forth therein. I execute this Extension of said Code of Conduct in my role as attorney-coach, hereby agreeing to abide by the rules and procedures of the Mock Trial Competition and to uphold the highest standards of the legal profession.

I agree to act as a role model of our honorable profession by carrying out my responsibilities as an officer of the court, never forgetting that I am representing the judicial system in addition to coaching high school students as their mock trial advisor. Thus, I will zealously encourage fair play and promote conduct and behavior that is in keeping both with proper courtroom decorum and the spirit of the Mock Trial Competition. I will discourage skirting the rules and engaging in obstructionist behavior that interferes with the orderly flow of courtroom procedures. I agree to inculcate the highest standards of the legal profession by discouraging a culture of win-at-any-cost and by promoting a spirit of willing compliance with the rules of the competition and the ethical guidelines provided by this Code of Conduct.

I agree that I will not disseminate any reproduction of any portion of this competition without the express written consent of each student and the parent/guardian of each, of my team as well as opposing teams, as well as the permission or consent of the student's own coach, whose images may be captured on film or other telecommunications technology. I will not post any images from this competition on Facebook, Twitter or any other social networking site without the permission as set forth above. I will not encourage or permit anyone else to do so, and will report same if it happens. I further agree that any violation of this rule subjects me to removal from the competition and places my entire team in jeopardy of being severely penalized for my actions. See R.2:5-3 and Online Rule 1.11 (the latter rule is in the event of a virtual competition).

**PLEASE SUBMIT THIS FORM DIGITALLY ON THE
VINCENT J. APRUZZESE PAGE OF OUR WEBSITE
NJSBF.ORG.**

EXTENSION OF CODE OF CONDUCT

To Be Signed by Student Team Member Participants in the Vincent J. Apruzzese High School Mock Trial Competition

As a Team Member/Juror of _____ High School, I state that I have read and fully commit myself to the overall purpose and spirit of the Mock Trial Competition. Moreover, I endorse the specific goals of the Mock Trial Competition as set forth in the Code of Conduct and agree not to engage in or condone any of the negative behaviors set forth therein. I execute this Extension of said Code of Conduct as a condition of participation in the Mock Trial Competition and hereby promise to compete with the highest standards of comportment, showing respect for my fellow students, opponents, judges, attorney-coaches, teacher-coaches, county mock trial coordinators and mock trial personnel.

I agree to accept both defeat and success with dignity and restraint. I promise to avoid all tactics that I know are wrong or in violation of the rules. I make a commitment to comply with the rules of the competition in spirit and in practice. I will not plagiarize or accept plagiarized material. I will not use telecommunications technology to circumvent the rules or to gain unfair advantage. I understand that use of telecommunications technology in the courtroom by any Participant (with the exception of permissible video recording by participating teams per R.2:5-3) seeking to gain advantage for a team subjects that team to the risk of disciplinary action, which could result in an expulsion of the team from the competition or in the lesser penalty of a score reduction. I understand that I may be photographed, video recorded or audio recorded as part of my participation in the competition. See Online Rule 1.11 (the latter rule is in the event of a virtual competition).

I agree that I will not disseminate any reproduction of any portion of this competition without the express written consent of each student and the parent/guardian of each, of my team as well as opposing teams, as well as the permission or consent of the student's own coach, whose images may be captured on film or other telecommunications technology. I will not post any images from this competition on Facebook, Twitter or any other social networking site without the permission as set forth above. I will not encourage or permit anyone else to do so, and will report same if it happens. I further agree that any violation of this rule subjects me to removal from the competition and places my entire team in jeopardy of being severely penalized for my actions. See R.2:5-3 and Online Rule 1.11 (the latter rule is in the event of a virtual competition).

**PLEASE SUBMIT THIS FORM DIGITALLY ON THE
VINCENT J. APRUZZESE PAGE OF OUR WEBSITE
NJSBF.ORG.**

PART II

RULES OF GENERAL APPLICATION

RULE 2:1 APPLICABILITY, SCOPE, CONSTRUCTION AND CITATION OF RULES

2:1-1 APPLICABILITY; SCOPE

The Vincent J. Apruzzese Mock Trial Competition is governed by these Rules of Procedure and Evidence. Additional rules regarding the competition and its procedures are contained throughout this workbook. Please read the entire workbook carefully. **Other rules of procedure or evidence may not be raised.**

2:1-2 CONSTRUCTION

These rules shall be construed to secure a just determination, simplicity in procedure, and fairness in administration of the competition.

2:1-3 CITATION

Attorneys should be prepared to cite the specific rule number upon which an objection is based if requested to do so by judges.

RULE 2:2 GENERAL CONTEST FORMAT

2:2-1 LOCAL COMPETITIONS

Each team must compete in at least two trials, switching sides for the second trial. If there are an uneven number of teams in the initial two trials, the County Mock Trial Coordinator has the discretion to ask teams to volunteer to play both sides at the same time or to randomly assign team(s) to do so. Contestants must be prepared to field both sides simultaneously if necessary. If a team does not have enough members to play both sides at once, the teacher-coach must notify the County Mock Trial Coordinator in advance.

In the event of an emergency, last-minute cancellation by a team, or failure of a team to appear, which may create an uneven number of teams competing, the County Mock Trial Coordinator shall designate one team to field both sides.

After each team has had an opportunity to play both sides, the County Mock Trial Coordinator may elect to utilize a single-elimination or other format. The County Mock Trial Coordinator has the authority to configure local contest schedules. The County Mock Trial Coordinator will determine which teams advance based upon win/loss record and point scores. In a configuration where teams play only two rounds initially, a team with two losses should not advance and a team with two wins should advance. Where three rounds of competition are initially scheduled, a team with three losses should not advance and a team with three wins should advance.

If a team has questions about the local competition, the teacher-coach should contact the County Mock Trial Coordinator. Names and phone numbers of County Mock Trial Coordinators are posted on our website, www.njsbf.org.

2:2-2 DATES AND TIMES; FAILURE TO APPEAR

Local contest dates and times will be determined by county coordinators. **Failure to appear on the dates specified by the County Mock Trial Coordinator will result in forfeiture.** The county coordinator works very hard to arrange contest schedules, and teams should make every effort to participate in the local contest once they have entered. Last-minute cancellations create scheduling difficulties for everyone.

It is the responsibility of the teacher-coach to review the dates (including snow dates) and times provided by the county coordinator with all team members, and to arrange for substitutes if needed (see R.2:13). Remember that your jurors are permitted to serve as understudies per the parameters outlined in R. 2:13. The county coordinator may not be able to accommodate differing vacation and/or testing schedules due to deadlines for regionals.

2:2-3 POSTPONEMENTS

Postponements may be made only by the county coordinator.

2:2-4 CHANGES TO RULES AND PROCEDURES

No rule or procedure may be changed after the 30th day preceding the first contest.

2:2-5 OFFICIAL REPRESENTATIVE OF EACH TEAM

The official representative of a mock trial team is the teacher-coach, not students, lawyer-coaches or others. All communications regarding a team must be made by and through the teacher-coach as official team representative. **Communications received from students will not be answered.** See R.2:14-15. Teacher-coaches and attorney-coaches are prohibited from coaching more than one team in any given year.

2:2-6 WORKBOOKS

Workbooks may be photocopied as necessary, and permission to photocopy a workbook is hereby granted. Please download the workbook from the Foundation's website, www.njsbf.org.

RULE 2:3 TEAMS

2:3-1 TEAM MEMBERS

A competing team in any given round shall consist of no more than TEN (10) students—two (2) attorneys, three (3) witnesses and alternates—plus the teacher-coach. A school may enter ONE (1) team only. For any single trial, a team must consist of two (2) attorneys and three (3) witnesses. The competition is open to New Jersey high schools only. **For our policy regarding a combined team, please see the back of this workbook.**

2:3-2 IDENTIFICATION OF TEAMS

Teams will be identified by I.D. numbers, not high school names, and when in person, teams should not bring materials, such as notebooks, T-shirts, school newspapers, etc., that would identify their schools. Guests of each team should similarly be requested to refrain from wearing or bringing items to contests that would identify the schools with which they are affiliated. When virtual, this includes your Zoom background (see Online Rule 1.4). Contestants are not permitted to identify their school or the opposing team's school to the judges.

2:3-3 STUDENT JURIES

There will be student juries if the trials are in person, but not in online competition. We encourage you to train students who serve as jurors as substitutes for attorneys and witnesses. See Rule 2.13.

RULE 2:5 GENERAL PROCEDURE FOR TRIALS

2:5-1 DETERMINATION OF SIDES — STATE LEVEL

Determination of which team will be prosecution/plaintiff and which team will be defense at the state level, which includes regionals, regional finals and state semi-finals as well as the final round, will be made by drawing lots a few minutes before each trial begins. However, if the same two teams have previously met in the statewide semi-finals and have both qualified for the statewide finals, the teams must switch sides in the championship round. At the regionals, teams that are eligible to advance to the next round will switch sides if possible. Where it is impossible for both teams to switch sides, a drawing of lots or coin flip must be used to determine assignments in the next round.

2:5-2 DETERMINATION OF SIDES — LOCAL/COUNTY LEVEL

At the local/county level, sides for the initial round of competition may be preassigned at the discretion of the County Mock Trial Coordinator. Contestants in any subsequent round of a competition should automatically switch sides in the case for the next round (provided that they are eligible to advance to the next round). Where it is impossible for both teams to switch sides, a drawing of lots or coin flip must be used to determine assignments in the subsequent round.

2:5-3 OBSERVATION OF TRIALS BY NON-PARTICIPANTS

If in person, teams are permitted to observe mock trial contests, even if they are not participating in those contests. Note-taking by observers by any means during competitions is not permitted except for teacher-coaches and attorney-coaches of teams participating in that round. Teams that are not participating in a round shall not audio record or video record or use any other technological means to obtain auditory or visual information. Only participating teams will be allowed to video record or audio record mock trial contests. Each school will be allowed to designate one official video recorder/audio recorder. Experience has demonstrated that careful preparation has more impact on the quality of presentation and the final result than last-minute changes based on the above.

In online competition, teams are not permitted to observe mock trial contests in which they are not participating. See Online Rules 1.2 and 1.9. Note-taking by observers by any means during competitions is not permitted except for teacher-coaches and attorney-coaches of teams participating in that round. Teams that are not participating in a round shall not audio record or video record or use any other technological means to obtain auditory or visual information. Only participating teams will be allowed to video record or audio record mock trial contests. See Online Rule 1.11.

Those who are designated as the official recorders are reminded of the last paragraphs of the Extensions to the Code of Conduct which prohibit the distribution/dissemination/reproduction in ANY FORM of any portion of the competition without the express written consent of each student and parent/guardian as well as the student's coach, and Online Rule 1.11 (if virtual).

RULE 2:6 PREPARATION OF MOCK TRIAL CONTESTS

2:6-1 MEETINGS WITH ASSIGNED ATTORNEYS

All teams are to work with their assigned attorneys in preparing their cases. It is recommended that teams meet with their lawyer-advisers at least six times prior to the contest. See Part VII for suggestions regarding the attorney-adviser's role in helping a team prepare for the competition.

2:6-2 DRESS REHEARSALS

All teams are required to conduct one full trial enactment (dress rehearsal) with attorney-advisers in attendance based on the case prior to the first round of the competition. Additional sessions devoted to the attorneys' questioning of individual witnesses are also recommended.

RULE 2:7 DECISIONS

The judge(s) will render a decision based on the quality of the students' performance in the case and the best team presentation. The judges have been instructed to rate the performance of all witnesses and attorneys on the team. (See Performance Rating Sheet.)

Judges will provide qualitative evaluations only, based on the categories in the rating sheet. Numerical scores will not be released. The purpose of this procedure is to re-emphasize the educational goals of the competition.

Judges will provide evaluations and announce the winning team before the jury delivers its verdict if in person. The jury verdict is not significant in the judges' evaluation. Contestants may, as always, discuss their trials with judges after each contest if time permits.

However, contestants are prohibited from contacting competition judges directly to complain about competition results. See Rule 2:14 and Rule 2:15.

The student jury will decide on the merits of the legal case and the applicable law. This decision of guilt or innocence in a criminal case, or finding in favor of the plaintiff or defendant in a civil case, does **not** determine which team wins or advances to the next round.

At the end of a virtual trial, if time permits, teacher and/or attorney-coaches may stay logged on to confer with the judges. See Online Rule 1.5 and Rule 5:3-6.

The decisions of the judges are final.

RULE 2:8 SCORING PERFORMANCES

While all possible measures are taken to encourage consistency in scoring, not all mock trial judges evaluate the performance of students identically. Even with rules and evaluation criteria for guidance, the competition reflects the subjective quality present in all human activities.

Please review the score sheet at the back of this workbook very carefully.

RULE 2:9 TIME LIMITS

The following time limits will be in effect:

Opening Statements—4 minutes for each side

Direct Examination—6 minutes for each witness

Cross-Examination—7 minutes for each witness

Closing Statements—8 minutes for each side

Every effort shall be made to respect these time limits. Whether in person or virtual, each team must appoint a timekeeper. Timekeepers may issue one-minute warnings verbally or with a card in person, but only through the use of the Zoom chat when virtual. See Online Rule 1.8 regarding student timekeepers when virtual. When time is up, judge(s) must halt the trial. Regarding objections, the clock will be stopped. Challenges to timekeeping will not be considered.

Re-direct and re-cross (optional, to be used at the discretion of the team)—After cross-examination, additional questions may be asked by the direct-examining attorney, but questions must be limited to matters raised by the attorney on cross-examination. Likewise, additional questions may be asked by the cross-examining attorney on re-cross, but such questions must be limited to matters raised on re-direct examination and should avoid repetition. **One minute will be allowed for re-direct and re-cross respectively. Judges should not deduct points if a team decides not to re-direct or re-cross. (See Part VIII.)**

RULE 2:10 REGIONAL COMPETITION

To reach the statewide finals, a team will have to compete in a two-part regional competition. Winning teams from each county qualify for the first stage of the regionals, consisting of two, single-elimination trials. Winners of the first stage will return for regional playoffs. Winners of the regional playoffs qualify for the statewide semi-finals. Winning semi-finalists will be eligible to compete in the statewide finals. If there is a tie score, the judge(s) will make the final determination based on overall team performance.

Please take note of all of the following contest dates before entering the competition in order to make sure your team can attend.

The New Jersey State Bar Foundation will be responsible for coordinating the regional competitions. **All regionals will be conducted as follows: Central - February 28, 2023; North - March 1, 2023; and South - March 2, 2023. Regional playoffs will be held on March 9, 2023.** Please reserve these dates. Inability to attend will result in forfeiture.

To find out which regional your county belongs in, please e-mail sboro@njsbf.org.

It is the responsibility of the teacher-coach to be prepared for rescheduling in the event of inclement weather, and to arrange for substitutes if needed, as previously discussed in R. 2:2-2 and Online Rule 1.10. As with county competitions, the state coordinator may not be able to accommodate differing vacation and/or testing schedules.

RULE 2:11 SEMI-FINALS

Regional finals winners are eligible to compete in the statewide semi-finals scheduled for **March 14, 2023** at the New Jersey Law Center in New Brunswick. Please reserve this date. Inability to attend will result in forfeiture.

It is the responsibility of the teacher-coach to be prepared for rescheduling in the event of inclement weather, and to arrange for substitutes if needed, as previously discussed in R. 2:2-2 and Online Rule 1.10. As with county competitions, the state coordinator may not be able to accommodate differing vacation and/or testing schedules.

RULE 2:12 STATEWIDE FINALS

The winners of the semi-finals are eligible to compete in the statewide championship round in March 20, 2023. Inability of finalist teams to attend will result in forfeiture. This will be a single elimination round. The judges' decision will be final.

It is the responsibility of the teacher-coach to be prepared for rescheduling in the event of inclement weather, and to arrange for substitutes if needed, as previously discussed in R. 2:2-2 and Online Rule 1.10. As with county competitions, the state coordinator may not be able to accommodate differing vacation and/or testing schedules.

2:13 SUBSTITUTION

In the event that one or more members of a team cannot compete, another member or members of that team may substitute for them. The substitutes must be team members who are not already playing in that round. One attorney cannot play the roles of both attorneys in any given round. Likewise, one witness cannot play the roles of other witnesses in the same round. A student-lawyer cannot play the role of a witness in the same round nor can a witness play the role of a lawyer in the same round. See Online Rule 1.10. It is recommended that teacher-coaches prepare understudies in case of illness, other conflicts or technical difficulties.

2:14 COMPLAINT PROCEDURE

No one shall contact any competition judge to complain about competition results. **Only teacher- or attorney-coaches are authorized to communicate about questions, problems, comments or complaints about contests. Communications received from students will not be answered.** Students should discuss issues or concerns with their teacher-coaches. Complaints about county competitions must be submitted in writing, via e-mail to your County Mock Trial Coordinator. Names and addresses of the County Mock Trial Coordinators will be posted on the New Jersey State Bar Foundation's website, www.njsbf.org. Please remember that, as stated in R. 2:7, the decisions of the judges are final. If a teacher-coach, as official team representative, wishes to file a grievance regarding another coach's/team's conduct or alleged rule violation, such complaint should be emailed promptly to the County Coordinator at the county level or to the Mock Trial Committee at the state regional, semi-final and final level. The County Coordinator or Mock Trial Committee shall forward the grievance to the teacher-coach of the team against which it is lodged and shall give that party a specific time period in which to respond. Final disposition of the grievance rests with the County Coordinator at the local level or the Mock Trial Committee at the state level.

2:15 QUESTIONS REGARDING CASE OR RULES

Contestants who have questions about the mock trial case and/or rules should submit them through their teacher- or attorney-coaches. Teacher- or attorney-coaches should e-mail their questions to Sheila Boro, director of mock trial programs, at sboro@njsbf.org. **Communications received from students will not be answered.** Please identify yourself, your school, whether you are the teacher-or attorney-coach, and provide a daytime phone number.

PART III

HINTS ON PREPARING FOR A MOCK TRIAL COMPETITION

The following tips have been developed from previous experiences in training a mock trial team.

All students should read the entire set of materials and discuss the information/procedures and rules used in the mock trial contest.

The facts of the case, witnesses' testimony, and the points for each side in the case then should be examined and discussed. Key information should be listed as discussion proceeds so that it can be referred to at some later time.

All team roles in the case should be assigned and practiced.

Credibility of witnesses is very important to a team's presentation of its case. As a result, students acting as witnesses need to really "get into" their roles and attempt to think like the persons they are playing. Students who are witnesses should read over their statements (affidavits) many times and have other members of the team or their class ask them questions about the facts until they know them cold.

Student team members have primary responsibility for deciding what possible questions should be asked of each witness on direct and cross-examination. Questions for each witness should be written down and/or recorded.

The best teams generally have students prepare their own questions, with the teacher-coach and attorney-adviser giving the team continual feedback and assistance on the assignment as it is completed. Based on the experience of these practice sessions, attorneys should revise their questions, and witnesses should restudy the parts of their witness statements where they are weak.

Opening and closing statements should also be written out by team members. Legal and/or non-legal language should be avoided where its meaning is not completely understood by attorneys and witnesses.

Closing statements should not be totally composed before trial, as they are supposed to highlight the important developments for the prosecution or plaintiff and the defense which have occurred during the trial. The more relaxed and informal such statements are, the more effective they are likely to be. Students should be prepared for interruptions by judges who like to question the attorneys, especially during closing argument.

As a team gets closer to the first round of the contest, the competition requires that it conduct at least one complete trial as a kind of "dress rehearsal." All formalities should be followed and notes taken by the teacher-coach and students concerning how the team's presentation might be improved. A team's attorney-adviser should be invited to attend this session and comment on the enactment.

The ability of a team to adapt to different situations is often a key part in a mock trial enactment since each judge—or lawyer acting as a judge—has their own way of doing things. Since the proceedings or conduct of the trial often depend in no small part on the judge who presides, student attorneys and other team members should be prepared to adapt to judicial rulings and requests, even if they appear contrary to outlined contest procedures and rules.

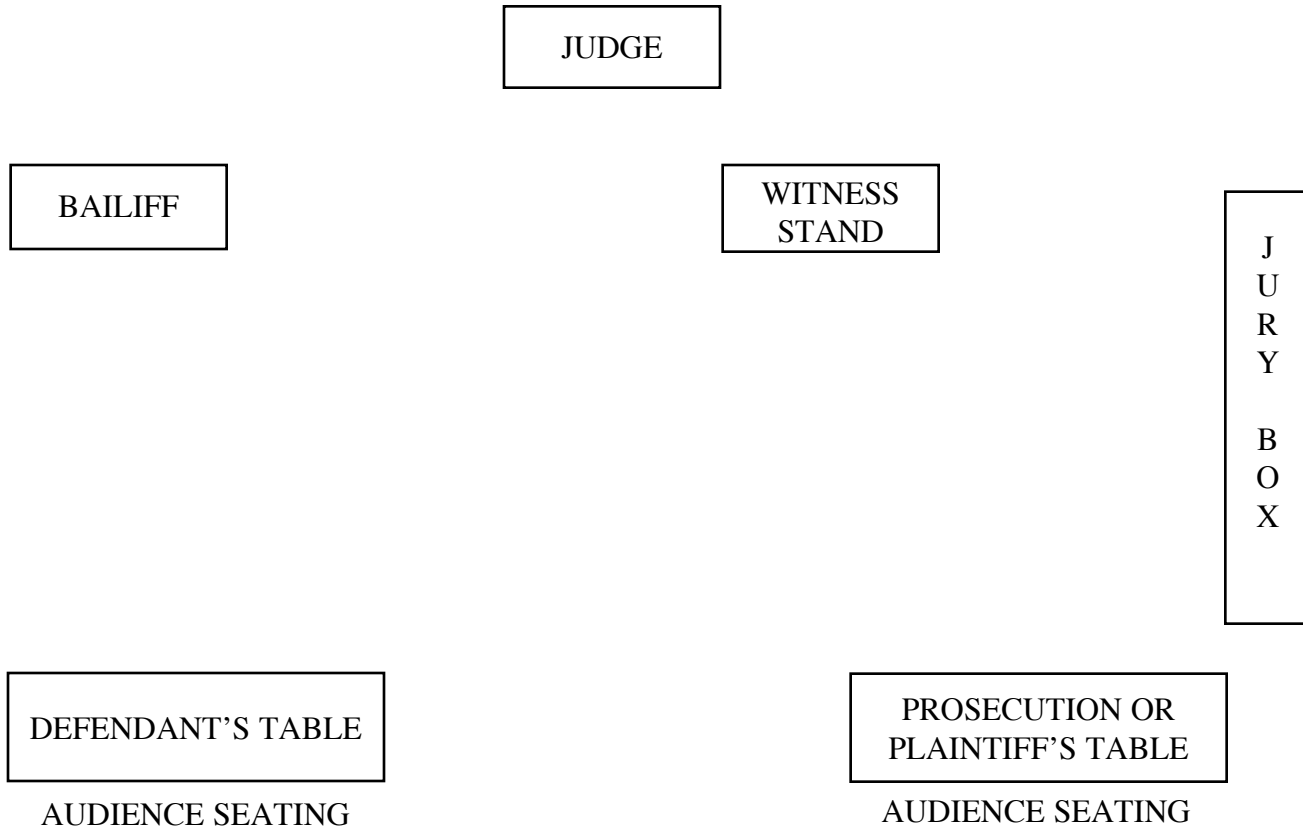
Some of the things most difficult for team members to learn to do are:

- (a) To decide which are the most important points to prove their side of the case and to make sure such proof takes place;
- (b) To tell clearly what they intend to prove in an opening statement and to argue effectively in their closing statement that the facts and evidence presented have proven their case;
- (c) To follow the formality of court, e.g., when addressing the judge, to call the judge “your honor,” etc.;
- (d) To phrase questions on direct examination that are not leading (carefully review the rules and watch for this type of questioning in practice sessions);
- (e) Not to ask so many questions on cross-examinations that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions which often lessen the impact of points previously made. (Stop — recognize what questions are likely to require answers that will make good points for your side. Rely on the use of these questions. Avoid pointless questions!)
- (f) To think quickly on their feet when a witness gives an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at the attorney or witness. (Practice sessions will help prepare for this.)

PART IV TRIAL PROCEDURES

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom as well as with the events that generally take place during the exercise and the order in which they occur.

COURTROOM LAYOUT



PARTICIPANTS

The Judge(s)

The Attorneys

Prosecutor–Defendant (Criminal Case)

Plaintiff–Defendant (Civil Case)

The Witnesses

Prosecutor–Defendant (Criminal Case)

Plaintiff–Defendant (Civil Case)

STEPS IN MOCK TRIALS

The Opening of the Court

Either the clerk of the Court or the judge will call the Court to order.

The case will be announced, i.e., “The Court will now hear the case of _____ v. _____ .”

The judge will then ask the attorneys for each side if they are ready.

Appearances

Opening Statements to the Jury

(1) Prosecution (in criminal case)/Plaintiff (in civil case)

The prosecutor in a criminal case (or plaintiff's attorney in a civil case) summarizes the evidence which will be presented to prove the case.

(2) Defendant (in criminal or civil case)

The defendant's attorney in a criminal or civil case summarizes the evidence which will be presented to rebut the case the prosecution or plaintiff's attorney has made.

Direct Examination by Prosecution or Plaintiff's Attorney

The prosecutor(s) or plaintiff's attorney(s) conduct direct examination (questioning) of each of their own witnesses. At this time, testimony and other evidence to prove the prosecution's or plaintiff's case will be presented. The purpose of direct examination is to allow the witness to narrate the facts in support of the case. Direct examination is limited by the scope of the affidavits and/or the exhibits contained in this workbook.

NOTE: The attorneys for both sides, on both direct and cross-examination, should remember that their **only function is to ask questions which elicit the most important facts of the case**; attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

Cross-Examination by Defendant's Attorney

After the attorney for the prosecution or plaintiff has completed questioning each witness, the judge then allows the other party (i.e., defense attorney) to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out through cross-examination.

Direct Examination by Defendant's Attorneys

Direct examination of each defense witness follows the same pattern as the preceding which describes the process for prosecution's/plaintiff's witnesses.

Cross-Examination by Prosecution or Plaintiff's Attorneys

Cross-examination of each defense witness follows the same pattern as the step above for cross-examination by the defense.

Closing Arguments to the Jury

(1) Defense

The closing statement for the defense is essentially the same as for the prosecution/plaintiff. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not satisfy the elements of the charge or claim, stresses the facts favorable to the defense and asks for a finding (verdict) of not guilty (criminal case) or judgment for the defense (civil case). The defense will give its closing argument first, followed by the prosecution/plaintiff, as done in real trials.

(2) Prosecution or Plaintiff

A closing statement is a review of the evidence presented. It should indicate how the evidence has satisfied the elements of the case, and ask for a finding (verdict) of guilty (criminal case).

THE JUDGE'S ROLE

The judge is the person who presides over the trial to ensure that the parties' rights are protected, and that the attorneys follow the rules of evidence and trial procedure. In trials held without a jury, the judge also has the function of determining the facts of the case and rendering a judgment. (The student jurors will render a verdict, but will not determine which team wins. That will be decided by the judges.)

At all levels of the competition, a panel of two judges will judge the contests wherever possible. This may include two judges, sitting or retired, one judge and one lawyer, or two lawyers. If, for any reason, only one judge is available for any given contest, the contest shall proceed with one judge.

THE STAFF'S ROLE

Staff of the New Jersey State Bar Foundation, when in person, attend the regional, semi-final and final contests in order to handle room and luncheon arrangements. **Please do not ask staffers to get involved in the competition proceedings. Student team members are responsible for pointing out infractions, if any, to judge(s). The judge(s) will then decide.**(See Parts V and VI for further details, particularly the section dealing with objections.)

PART V

RULES OF PROCEDURE

RULE 5:1 GENERAL PROCEDURE DURING TRIALS

5:1-1 USE OF EXHIBITS

The use of evidentiary or demonstrative exhibits not contained in this Mock Trial Workbook is not permitted. Use of props, visual and illustrative aids, other than what is specified in this workbook, is prohibited. Case materials cannot be enlarged unless specifically stated. It is assumed that once an exhibit has been put into evidence, it has been published to the jury. See Online Rule 1.7 (if virtual).

5:1-2 STATEMENT OF FACTS AND STIPULATIONS

The Statement of Facts, if provided, and any additional stipulations may not be disputed. The Statement of Facts is not admissible as an exhibit.

5:1-3 MOTIONS

No motions of any kind are allowed. For example, defense cannot make a motion to dismiss after the prosecution has rested its case. Motion for directed verdict is also prohibited.

5:1-4 VOIR DIRE

Voir dire, the preliminary examination of a witness or juror to determine his or her competency to give or hear evidence, is prohibited.

5:1-5 COURTROOM DECORUM

Usual rules of courtroom decorum apply to all participants. Appropriate, neat appearance is required.

RULE 5:2 OBJECTIONS

5:2-1 IN GENERAL

Procedural objections and objections to evidence are restricted to those in the Mock Trial Rules of Evidence. Other objections found in the New Jersey and Federal Rules of Evidence are not permitted. All objections, except those relating to openings or closings, shall be raised immediately by the appropriate attorney. When an objection is made, each side will usually have at least one fair opportunity to argue the objection before the presiding judge rules. Sidebars are not permitted. Competitors shall refrain from interrupting an adversary during opening statements or closing arguments. See Mock Trial Rule of Evidence 1201.

5:2-2 TIME FOR OBJECTIONS

A student attorney can object any time that the opposing team has violated the rules of evidence or has violated the rules or procedures of the Mock Trial Competition. **IMPORTANT:** Only student attorneys may object to any violations they believe have occurred, and they must object directly to the judge during the trial at the time of the violation, except with respect to opening statements and closing arguments. See Mock Trial Rule of Evidence 1201.

5:2-3 LIMITATION ON OBJECTIONS

Objections made after the trial has concluded cannot be addressed. NJSBF staff members cannot object on your behalf. Please do not ask staffers to intervene in the competition.

5:2-4 MANNER OF OBJECTIONS

The attorney wishing to object should do so at the time of the violation, except as set forth in Rule 1201. Also see Online Rule 1.5. 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 that 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 disregarded because it has violated a rule of evidence or mock trial procedure (“objection sustained”) or whether to allow the question or answer to remain on the trial record (“objection overruled”). When objecting to a competition rule or procedural violation, student attorneys should be prepared to refer to the appropriate rule number in this workbook if requested to do so by judges. All objections should be made succinctly, with the reason for the objection publicly stated.

RULE 5:3 PROCEDURE REGARDING ATTORNEYS

5:3-1 MANDATORY ATTORNEY PARTICIPATION IN EXAMINATIONS

Each attorney shall conduct the examination of three witnesses (1 direct and 2 cross-examinations or 2 direct and 1 cross-examination).

5:3-2 ATTORNEY OPENINGS/CLOSINGS

Each team must present an opening statement and closing argument. An attorney for a team presenting the opening statement may not make the closing argument. An attorney is not permitted to advise of facts in opening for which there is no good faith basis in the Mock Trial Workbook materials. In closing argument, an attorney is not permitted to comment on evidence that was not presented or evidence which was excluded by the presiding judge. In an opening or closing, an attorney is allowed to make arguments from a fair extrapolation of the facts in the Mock Trial Workbook. "Fair extrapolation" refers to an inference that can be reasonably made from the facts stated in the Mock Trial Workbook or from testimony adduced during the course of the trial. The defendant's attorney shall make the first closing statement, followed by the prosecuting/plaintiff attorney. No rebuttal statements are permitted.

5:3-3 DESIGNATION OF ATTORNEY PERMITTED TO OBJECT

Only one attorney may address any one witness. The attorney who will examine or cross-examine the witness is the only attorney who may make an objection. Likewise, only the attorney who will open may object to the opposition's opening statement and only the lawyer who will close may object to the opposition's closing.

5:3-4 USE OF NOTES BY ATTORNEYS

Attorneys are permitted to use notes in presenting their cases.

5:3-5 COMMUNICATION BETWEEN AND AMONG TEAM MEMBERS AND OTHERS

A. During a trial, law instructors, coaches, and all other observers may not talk to, signal or otherwise communicate, in any manner whatsoever, with or, in any way, coach or attempt to coach any members of the team.

B. No team member shall seek to communicate, verbally, non-verbally or in writing, with any witness who is in the act of testifying.

C. If virtual, see Online Rule 1.4 prohibiting communication among team members and others during the trial.

5:3-6 COMMUNICATION WITH JUDGES

No one affiliated with a competing team is permitted to have any contact with competition judges before or during the competition. Only student-attorneys and student-witnesses may communicate with the judges during a trial. At the end of the trial, if time permits, teacher- and/or attorney coaches may stay logged on to confer with the judges. If virtual, see Online Rule 1.5.

RULE 5:4 WITNESS TESTIMONY

5:4-1 FACTS RELIED UPON FOR TESTIMONY

Each witness is bound by the facts contained in their own witness statement, the facts contained in the Statement of Facts, if provided, and the necessary documentation provided in the competition workbook. A witness is not bound by facts contained in other witness statements.

5:4-2 WITNESS' PHYSICAL APPEARANCE

A witness' physical appearance in the case is as the witness appears in the trial enactment.

5:4-3 WITNESS' PRONOUNS

The preferred pronouns of the students playing the witnesses will be used.

5:4-4 REQUIRED EXAMINATION OF WITNESSES

Each team of attorneys must engage in either the direct examination or cross-examination of each witness. Direct examination is limited by the scope of the affidavits and/or the exhibits contained in the workbook.

5:4-5 FAIR EXTRAPOLATION

A witness who is testifying may use fair extrapolations from their own statement. "Fair extrapolation" refers to an inference that can be reasonably made from the facts stated in the witness statement of the testifying witness. A witness who is testifying on direct examination, in responding to questions of counsel, may utilize the reasonable and logical inferences from their own statement. Testimony which is unsupported by the facts in a witness' own statement and/or intended solely for the purpose of materially strengthening their team's position, is "unfair extrapolation" and is in violation of the rules and spirit of the competition. If a witness invents an answer which is favorable to their side, but not fair extrapolation, the opposition may object; the judge will decide whether to allow the testimony. An exception to this rule can occur when an attorney on cross-examination asks a question, the answer to which is not included in the witness statement. The witness is then free to "create" an answer.

5:4-6 IMPEACHMENT

On cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. A witness may be impeached by showing that the witness has given a prior statement that differs from their trial testimony, that the witness has some interest in the outcome of the case, that the witness has a bias for or against any other party or person, that the witness has some other motivation to either lie or be untruthful, or that the witness is simply mistaken as to what they have seen or heard. If virtual, see Online Rule 1.7.

5:4-7 USE OF NOTES BY WITNESSES

Witnesses are not permitted to use notes while testifying during the trial.

5:4-8 REQUIRED WITNESSES

All three witnesses for each side must testify. Teams may not call another team's witnesses.

5:4-9 SEQUESTERING WITNESSES

Sequestering witnesses is not permitted.

RULE 5:5 INTRODUCTION OF PHYSICAL EVIDENCE

5:5-1 PRE-TRIAL CONFERENCE

Physical evidence must be relevant to the case and the attorney must be prepared to define its use on that basis. In an actual trial an attorney introduces a physical object or document for identification and/or use as evidence during the trial. **For the purposes of this mock trial competition, there will be a pre-trial conference, lasting no more than five minutes, in which both prosecution's/plaintiff's and defendant's attorneys get together to present pre-marked exhibits for identification before trial. The issue of admissibility cannot be addressed at this stage.**

The purpose of the pre-trial procedure is to avoid eroding into each team's time limitations during the trial and to help students understand that attorneys, while they are adversaries, can also work cooperatively to benefit their clients. During this pre-trial, students should introduce themselves and the roles they will play.

PART VI

MOCK TRIAL RULES OF EVIDENCE

In American courts, complex rules are used to govern the admission of proof (both oral and physical evidence). These rules are to ensure all parties a fair hearing as well as to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. Attorneys must use the evidence rules, by making objections, to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence and the New Jersey Rules of Evidence and their parallel numbering system. **Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure.** The High School Mock Trial Rules of Evidence are fully set forth below. DO NOT refer to any other outside materials or source other than these rules when making or responding to objections. Rules 1201 and 1202 have been added as no parallel rules exist in either the Federal or State Rules of Evidence.

Not all judges will interpret the Rules of Evidence (or procedure) in the same way, and mock trial attorneys should be prepared to point out specific rules for reference (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate. Judges are asked to adjust scoring to reflect how well attorneys pose and respond to objections. Judges are encouraged to have attorneys explain their positions more than might be expected in a real courtroom, so you may demonstrate your knowledge of how the evidence rules apply in court.

While the evidence rules are numbered, attorneys are expected to refer to the rules by description but may also refer to them by number. Memorizing the evidence rule numbers is not necessary. However, if a Judge asks for a rule number, the mock trial attorney should be prepared to give the rule number referenced. Note that multiple evidence objections may be under a single rule number. Additionally, where a witness makes a statement which is objected to and the Judge sustains the objection, the mock trial attorney may also request: "I ask that the jury be directed to disregard the witness's last statement" or "I ask that the witness's last statement be stricken from the record."

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Rule 402. General Admissibility of Relevant Evidence

Relevant evidence is admissible unless these rules provide otherwise. Irrelevant evidence is not admissible.

Example of objection to irrelevant evidence: "I object, your Honor. This testimony is not relevant to the facts of the case."

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence, or unfair extrapolation.

The probative value of evidence is the tendency of the evidence to establish the proposition that it is offered to prove. In determining the probative value of evidence, the focus is upon the logical connection between the proffered evidence and the fact in issue.

Example of objection to compound question: "Objection. Counsel is asking the witness a compound question."

Example of objection to mischaracterization of testimony: "Objection. Counsel is mischaracterizing the witness's testimony."

Example of objection to assuming facts not in evidence: “Objection. Counsel’s question (or closing argument) assumes facts which are not in evidence.”

Example of objection to unfair extrapolation: “Objection, the witness’ unfair extrapolation is in violation of Rule 5:4-5 in that it goes beyond the witness’ statement/deposition/testimony or any reasonable inference to be drawn therefrom.”

NOTE: While “needless presentation of cumulative evidence” may support the objection that a question was already “asked and answered,” this objection is **not** allowed in Mock Trial Rules. The prescribed time limits already discourage repetitive questioning.

Rule 404. Character Evidence not Admissible to Prove Conduct; Exceptions

(a) Character Evidence Generally. Evidence of a person’s character or character trait, including a trait of care or skill or lack thereof, is not admissible for the purpose of proving that on a particular occasion the person acted in accordance with the character or character trait.

This rule does not apply to evidence admissible under Rule 406, however.

Example of objection to improper character testimony: “Objection. Counsel’s question is inadmissible, as it goes to the witness’s character.”

NOTE: That is, you cannot show that someone acted a certain way just because they did a similar act in the past. BUT see habit evidence, Rule 406, below.

(b) Crimes, Wrongs, or Other Acts

(1) Prohibited Uses. Evidence of a crime, wrong or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident when such matters are relevant to a material issue in dispute.

(c) Character and Character Trait in Issue. Evidence of a person’s character or trait of character is admissible *when that character or trait is an element of a claim or defense.*

Rule 405. Methods of Proving Character

(a) Reputation or opinion. When evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.

(b) Specific instances of conduct. When character or a trait of character of a person is an essential element of a charge, claim, or defense, evidence of specific instances of conduct may also be admitted.

Rule 406. Habit, Routine Practice

Evidence of a person’s habit or an organization’s routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

The witness’ knowledge must be that the person or organization has engaged in the habit or routine practice on many occasions.

The habit or routine practice must be specific, or else it is inadmissible under Rule 404(a) as character evidence.

NOTE: For example, if a witness knows X *always* uses their seatbelt when getting into a car, as the witness has often seen them get into a car many times and buckle the seatbelt, the witness may be permitted to testify to this habit. The key to admissibility is that X engages in the conduct of wearing their seatbelt on a regular basis. The habit must be specific or routine must be specific in nature. The witness cannot make the broad statement, for example, that X is a careful driver.

ARTICLE VI. WITNESSES

Rule 601. Competency to be a Witness

Each mock trial witness is competent to be a witness and may testify in accordance with their witness statement, deposition, prior testimony, the facts contained in the Statement of Facts and the documents provided. A witness may testify as to any reasonable inference to be drawn from these facts.

Example of objection to unfair extrapolation: “Objection, the witness’ unfair extrapolation is in violation of Rule 5:4-5 in that it goes beyond the witness’ statement/deposition/testimony/Statement of Facts/documents or any reasonable inference to be drawn therefrom.”

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced establishing that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness’s own testimony. This rule does not apply to a witness’s expert testimony, which is governed by Rule 703.

Example of objection to lack of personal knowledge: “Objection. The witness has no personal knowledge that would enable the witness to answer this question.”

Example of objection to speculation: “Objection. The question calls for speculation on the part of the witness.”

Rule 607. Who May Impeach a Witness

Any party, including the party that called the witness, may attack the witness’s credibility. Also see R.5:4-6.

NOTE: That is, an attorney may ask questions to show that the witness is lying or lied on a prior occasion.

Rule 608. Evidence of Character for Truthfulness or Untruthfulness and Conduct of Witnesses

(a) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, provided, however, that (1) the evidence relates only to the witness’ character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’ character for truthfulness may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness, (1) concerning the witness’ character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by the Court; Purposes.

The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to

- (1) make those procedures effective for determining the truth and
- (2) protect witnesses from harassment or undue embarrassment.

Example of objection to argumentative question: “Objection. Counsel’s question is argumentative.”

(b) Leading and Narrative Questions.

Leading questions should not be used on direct examination or re-direct examination of one's own witness. Ordinarily, the court should allow leading questions on cross-examination and re-cross-exam. Narrative questions (questions that call for a narrative answer) are generally not permitted on direct or re-direct exam or cross or re-cross exam.

NOTE: Direct examination may cover all facts relevant to the case of which the witness has firsthand knowledge. It is limited by the scope of the witness statements and/or the exhibits in this workbook and the Statement of Facts or stipulated facts if the witness has knowledge of them. Any factual areas examined on direct examination may be subject to cross-examination. On direct examination, a witness is not permitted to quote from the witness statement of another witness. Fair extrapolation, as defined in Rule 5:4-5, is permitted.

In direct examination, attorneys call and question witnesses. Witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a "yes" or "no" answer. Direct questions generally are phrased to evoke a set of facts from the witness.

Example of direct question: "Mr. Hudson, when did you meet June Harris?"

Example of a leading question: "Mr. Hudson, isn't it true that you first met June Harris on April 14, 1981?"

Example of objection to leading question: "Objection. Counsel is leading the witness." (Remember, this is only objectionable when done on direct examination or re-direct examination of one's own witness).

Example of objection to non-responsive answer: "Objection. The answer is not responsive."

Example of objection to question calling for a narrative answer: "Objection. Counsel's question calls for a narrative answer."

Note: Narrative questions (questions that call for a narrative answer) and narrative answers are generally not permitted, especially in direct examination. While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions should not be so broad that the witness is allowed to wander or narrate a whole story. The opposing team will likely want to object to a question on direct examination calling for a narrative response.

At times, a direct question may be appropriate, but the witness' answer may go beyond the facts for which the question was asked. This may also happen when a leading question is asked on cross-examination and the answer given is in a narrative form.

(c) Cross-Examination.

The scope of cross-examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters. Opposing counsel may also inquire into any omissions from the witness' statement that are otherwise material and admissible and/or into any issue potentially affecting the credibility of the witness.

NOTE: An attorney may ask leading questions when cross-examining the opponent's witnesses, but asking that opposing witness a narrative question is generally not wise, since it gives the witness an opportunity to stress facts that favor their own side.

While the purpose of direct examination is to get the witness to tell a story, the questions in cross-examination and re-cross should ask for specific information. It is not in the cross-examining team's interest to ask an opposing witness questions that are so broad that the witness is allowed to wander or narrate a whole story. Questions tending to evoke a narrative answer often begin with "how," "why" or "explain." An example of a narrative question is: "Mr. Hudson, what went wrong with your marriage?"

On cross-examination, a witness is permitted to invent an answer which is not included in their witness statement only as permitted by Rule 5:4-5. If that answer is inconsistent with any other evidence, including statements of that witness, the Statement of Facts, or any other stipulations, the cross-examining attorney may impeach or object as may be appropriate. For example, that attorney may object to an answer as being non-responsive.

(d) Re-Direct and Re-Cross Examination.

After cross-examination, additional non-leading questions may be asked by the direct-examining attorney on re-direct examination, but questions must be limited to matters raised by the opposing attorney on cross-examination. Likewise, additional questions may be asked by the cross-examining attorney on re-cross, but such questions must be limited to matters raised on re-direct.

NOTE: Re-direct and re-cross are optional, to be used at the discretion of the team. One minute will be allowed for re-direct and re-cross respectively. Judges should not deduct points if a team decides not to re-direct or re-cross.

Example of objection to questions beyond the scope: On re-direct or re-cross, the opposing party may object as follows: “Objection. This question is beyond the scope of cross-examination (or re-direct).”

(e) Permitted Motions.

The judge is presumed to strike testimony elicited by a question following a successful objection to its admission.

NOTE: For the purpose of mock trial, it is assumed that when an objection is sustained, the response is stricken. If the witness has responded in a meaningful way, mock trial attorneys need not but may move to have the testimony stricken from the record. Counsel should **not** refer to stricken testimony in closing arguments.

Rule 612. Writing Used to Refresh a Witness’s Memory

A written statement is used to refresh the memory of a witness, but while on direct examination, a witness cannot read from the witness’ own statements to bolster testimony (that is, to show that the witness said something earlier). The adverse party may cross-examine the witness on the material and introduce into evidence those portions of the written statement that relate to the testimony of the witness.

Rule 613. Witness’s Prior Statement

The statements of witnesses, whether in affidavit or deposition format, are not admissible into evidence, but may be used during cross-examination for impeachment purposes. When examining a witness about the witness’ prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, indicate the relevant segment of the statement for opposing counsel. Counsel may show the document for impeachment, or on re-direct examination, may show the same document to rebut the impeachment.

NOTE: It is best to briefly show the exhibit you are going to show a witness to opposing counsel just as you are about to approach the witness with it. When asking the witness about the document, it is best to refer to the page and line number. For example:

“Ms. Jones, I am showing you what has been marked as S-1 for identification. Do you recognize S-1?” (The witness should say “yes” and identify the document. After the witness identifies S-1, ask, “I would like you to read line X of page Y. . . .” When referring to the witness’ own statement, mock trial attorneys may ask the witness if the statement was given under oath, but are not required to do so and may refer to it in summation.

Otherwise, opposing counsel may ask the court: “Can I have the page and line number (counsel is referring to)?” If your witness is impeached by their statement, but the words used were taken out of context, not fairly showing what the witness meant, on re-direct you may want to show the statement to your witness and “rehabilitate” your witness. For example, if cross-examination brings out that the witness said “I did not shoot the victim,” in response to police asking if the witness did so, you may ask your witness to add what the witness said after that phrase:

“Witness, you were asked if you said to police, “I did not shoot the victim?” “Yes.” “Do you remember your complete response to police?” “No.” “I am showing you S-1 again, the same line opposing counsel showed you. Do you now remember your *complete* answer to that question?” “Yes.” “What was that full response?” “I did not shoot the victim until he pointed a gun in my face.””

After the exhibits have been agreed upon, the attorneys may ask witnesses about the documents.

For example, if an attorney decides to show a letter (already agreed upon as an exhibit by both sides) to a witness, an attorney may show the letter to the witness, asking: “Mr. Davis, do you recognize this document which is marked Plaintiff’s P-1 for identification?” (The witness should say yes and identify the document.)

At this point the attorney may proceed to ask the witness questions about P-1.

If the attorney wishes to place the document into evidence, say, “Your Honor, I offer this letter for admission into evidence as Plaintiff’s P-1 and ask the court to so admit it.” Moving a document into evidence must occur either at the time the document is identified or at the end of the parties’ case.

Get a ruling from the court on admissibility and hand the document to the judge.

Bringing physical evidence to the trial, e.g., a weapon in the case of a murder trial, is prohibited unless otherwise indicated. It is sufficient to rely upon the documents provided in this workbook for exhibits. Use of props, visual and illustrative aids, other than what is specified in the workbook, is prohibited, under Rule 5:1-1.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witness

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness’s perception;
- (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

NOTE: Lay witnesses are any witnesses not admitted as experts in the trial. A lay witness may offer testimony in the form of an opinion based on the common experience of laypersons in the community and of which the witness has firsthand knowledge. Examples include: what things look like; how someone is acting (e.g., drunk, tired, happy); speed, distance, sound, size, weight, degree of darkness, and general weather conditions.

A witness may not testify to any matter of which the witness has no personal knowledge (except for expert witnesses, in exceptions listed below).

For example: If Ms. Davis was not present at the scene of an intersectional collision between a Ford Explorer and a bus, she could not say, “The bus went through the red light.”

Example of objection to improper request for opinion: “Objection. The witness is not qualified as an expert on this topic and counsel is asking the witness to give an expert opinion.”

Example for lay witnesses: “Objection. Counsel is asking the witness to give an opinion on a topic about which the witness has no personal knowledge.”

Rule 702. Testimony by Experts

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

NOTE: Certain witnesses who have special knowledge or qualifications may be qualified as “experts.” An expert must be qualified by the attorney for the party for which the expert is testifying; this means that before an expert can be asked an expert opinion, the questioning attorney must bring out the expert’s qualifications and experience.

An expert witness may offer testimony in the form of an opinion only if the subject matter is within the expert’s area of expertise.

Rule 703. Bases of Opinion Testimony by Experts

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, this is sufficient grounds for the admissibility of the expert’s opinion in the case at hand.

NOTE: An expert may testify to things that are otherwise not admissible under the rules of evidence, if the expert relied upon that information to come up with the expert’s opinion. For example, if an expert physician relied upon medical records of treatment, the expert physician can testify to them.

Rule 705. Disclosing the Facts or Data Underlying an Expert’s Opinion

Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

NOTE: In mock trial, however, we have limited the presentation of an expert’s facts and data to streamline the case. Parties should not use invention on direct examination of their own expert witnesses to enhance their testimony.

ARTICLE VIII. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

- (a) “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct if the person intended it as an assertion.
- (b) “Declarant” means the person who made the statement.
- (c) Hearsay is a statement attributed to a declarant *who is not a witness in the case* which is offered to prove the truth of the statement. A witness is not permitted on direct examination to quote from the witness statement of another witness.

Example: Ms. Mills is testifying. Her witness statement contains the following statement: “Mr. Hudson told me he was at the scene of the crime.” This is inadmissible hearsay (if offered to prove that Mr. Hudson was at the scene of the crime) unless Mr. Hudson is also a witness in the case. If Mr. Hudson is a witness in the case, then the statement is not hearsay.

Example: Ms. Mills is testifying. Mr. Hudson is a witness in the case. His witness statement contains the following statement: “I heard Ms. Harris threaten my son.” Ms. Mills may not testify that “Mr. Hudson said that Ms. Harris threatened his son.” The statement is not contained in the witness statement of Ms. Mills. Such testimony is inadmissible hearsay and also violates the mock trial rule that prohibits a witness on direct examination from quoting from the witness statement of another witness.

(d) Statements That Are Not Hearsay.

A statement that meets the following conditions is not hearsay:

(1) Party Declarant’s Admission against Interest

A statement may be admissible if it was said by a party in the case and contains evidence that goes against the party’s interest (e.g., in a murder case, the defendant told someone he committed the murder).

(2) **Opposing Party’s Statement**

A statement may be admissible if it is offered against an opposing party and was made by the party.

(3) **Relied upon by Expert**

A statement may be admissible if it was relied upon by an expert witness and forms the basis for the expert’s opinion. See Rule 703, above.

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these Rules.

Example of objection to hearsay: “Objection. Counsel’s question/the witness’ answer is based on hearsay.” (If the witness makes a hearsay statement, the attorney should also say, “and I ask that the jury be directed to disregard the witness’ last statement” or “and I ask that the witness’ last statement be stricken from the record.”)

Rule 803. Exceptions to the Rule against Hearsay

The following exceptions to the hearsay rule are not dependent on whether the declarant is available as a witness or not:

(1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it and without opportunity to deliberate or fabricate.

(2) **Excited Utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition and without opportunity to deliberate or fabricate.

(3) **State of Mind.** A statement of the declarant’s then-existing state of mind (such as motive, intent or plan).

NOTE: Understand that the statement may not be used to prove the truth of the matter asserted, however, if it comes in, it is only to establish the speaker’s “state of mind.”

(5) **Recorded Recollection.** A statement concerning a matter about which the witness is unable to testify fully and accurately because of insufficient present recollection if the statement is contained in a writing or other record that; (A) was made at a time when the fact recorded actually occurred or was fresh in the memory of the witness; and (B) was made by the witness or under the witness’ direction or by some other person for the purpose of recording the statement when it was made; and (C) the statement concerns a matter of which the witness had knowledge when it was made. This exception does not apply if unless the circumstances indicate that the statement is not trustworthy. When the witness does not remember part or all of the contents of a writing, the portion the witness does not remember may be read into evidence but shall not be introduced as an exhibit over objection.

(6) **Records of a Regularly Conducted Activity.** A statement contained in a writing or other record of acts, events, conditions, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make such writing or other record. This exception does not apply if the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

(25) **Statement against Interest.** A statement that a reasonable person in the declarant’s position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant’s proprietary, pecuniary or social interest, or had so great a tendency to invalidate the declarant’s claim against another or to expose the declarant to civil or criminal liability.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

ARTICLE XII. OTHER OBJECTIONS

Rule 1201. Objections to Openings and Closings

Attorneys may not interrupt or object during the opposition’s opening or closing, but must raise any objections to openings or closings immediately after the opposing attorney concludes. The presiding judge will then rule on the objections and instruct the jury as may be necessary.

Rule 1202. Number of Objections

While there is no limit on the number of objections attorneys may raise, teams should be aware that judges may assess scoring penalties for objections which are frivolous.

Rule 1203. Other Standard Objections

Other standard forms of evidentiary objections allowed in the Mock Trial Competition are as follows. These “other objections” may be altered from year to year depending on the nature of the case.

Example of objection to lack of proper foundation: “Objection. Counsel has not laid a proper foundation for the question (or for admission of an exhibit).”

Example of objection to conclusion of law improperly called for by question: “Objection. Counsel is calling for the witness to make a conclusion of law.”

PART VII

GUIDELINES FOR ATTORNEY TEAM ADVISERS

The rules of evidence governing trial practice have been modified and simplified for the purposes of this mock trial competition (see Part VI of this packet.) Other more complex rules are **not** to be raised during the trial enactment.

Team members cannot contradict the witness statement sheets for the case (see Part X of this packet) nor introduce any evidence that is not included in this packet of materials.

ALL WITNESSES MUST TAKE THE STAND.

The decision of the judge(s) in any mock trial enactment determines which team advances. This decision is to be based on the quality of the students' performance.

The preparation phase of the contest is intended to be a cooperative effort among students, teacher-coach and attorney-adviser. **Remember:** The official representative of a mock trial team is the teacher-coach, **not** students, lawyer-coaches or others. All communications regarding a mock trial team will be made by and through the teacher-coach as official team representative.

When assisting students, attorney-advisers should avoid use of highly complicated legal terminology unless such terminology is pertinent to the comprehension of the case.

Attorneys should not “script” or prepare the cases for the students. As part of the educational goals of the competition, students are expected to read, study and analyze the case. Attorney-coaches may then help students to refine their strategy.

The first session with a student team should be devoted to the following tasks:

- answering questions which students may have concerning general trial practices;
- explaining the reasons for the sequence of events/procedures in a trial;
- listening to the students' approach to the assigned case; and
- discussing general strategies as well as raising key questions regarding the enactment.

A second and subsequent session with students should center on the development of proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here an attorney can **best** serve as constructive observer and critic-teacher, i.e., listening, suggesting, demonstrating to the team.

PART VIII

GENERAL GUIDELINES TO PRESENTATIONS FOR JUDGES

Under contest rules, student-attorneys are allowed to use notes in presenting their cases; witnesses may **not** use notes in testifying.

Attorneys and witnesses may neither contradict the witness statement sheets for the case nor introduce any evidence that is not included in this packet of materials.

Only **one** opening and closing statement is allowed.

Except for opening the court, general procedural instructions, rulings on objections, etc., it is best to keep judicial involvement/participation to a minimum during the trial enactment.

Each attorney (two for each side) shall conduct the examination of three witnesses. See R.5:3-1.

The Mock Trial Rules of Evidence have been revised. (See Part VI of this workbook). They are to govern proceedings. Other more complex rules are **not** to be raised during the trial enactment.

Witness statements may be used by attorneys to “refresh” a witness’ memory and/or impeach the witness’ testimony in court.

Attorneys have been asked to keep their presentations within the following guidelines: Opening Statements—4 minutes; Closing Statements—8 minutes; Direct Examination—6 minutes/witness; and Cross-Examination—7 minutes/witness. Regarding objections, the clock will stop. One minute will be allowed for re-direct and re-cross respectively. See rule 2:9 on “Time Limits” for details. Judges should **not** deduct points if a team decides not to re-direct or re-cross.

The decision of the judge(s) determines which team advances and which team is eliminated.

In the event of a tie score, the judge(s) shall make a final determination based on overall team performance. Judges may award an additional point to the team with the better overall team performance in order to break a tie. See Part XI for details.

Judges may include in their rating of overall team performance an evaluation of civility and compliance with the Code of Conduct in this workbook as well as compliance with mock trial rules.

If a team fails to adhere to the established guidelines/rules set forth for the competition, a judge may (depending upon the circumstances of the violation) lessen their rating of that team.

Better understanding is promoted among students and teachers if the judge(s) in a mock trial takes a few minutes following the enactment to explain their decision(s) regarding the teams’ presentation. Judges will provide a qualitative evaluation of each team’s performance. They will not release numerical scores. At the end of the trial, if time permits, teacher-and/or attorney-coaches may stay logged on to confer with the judges. See Rule 2:7, Rule 5:3-6, and Online Rule 1.5.

The judges’ decisions are final.

PART IX MOCK TRIAL VIDEOS

Watch championship teams battle for the state title on our website, njsbf.org. You’ll see examples of opening statements, direct and cross-examinations of witnesses and closing arguments.

Part X

Dylan Salerno v. Sam Arena

STATEMENT OF FACTS

After years of on-line “challenges” performed by the youth in Metropolitan County, the summer of 2020 brought the Slamanaid “energy drink” challenge. On July 6, 2020, 18-year-old Sam Arena challenged 17-year-old Rory Salerno on the FilmMe Platform to “Slam” three Slaman aids in a short period of time, then do a physical activity. While performing the “challenge,” Rory collapsed and subsequently died. Dylan Salerno, grandparent of Rory, is suing Sam Arena for wrongful death. Dylan Salerno had a separate lawsuit with the Goodrink Beverage Company.

JOINT EXHIBITS

Exhibit A - Partial Transcript of Interview with Hayden Thomas, CEO of Goodrink Beverage Company

Exhibit B - Partial Transcript of 911 Call

Exhibit C - Chart Comparing Selective Nutritional Facts of Major Energy Drinks With Slaman aid and Slaman aid XL

Exhibit D - Label on All Cans of Slaman aid

Exhibit E - Email from Hayden Thomas, CEO of Goodrink Beverage Company, to Influencers

STIPULATIONS

1. Costumes, make-up and props are prohibited.
2. All witness statements are deemed sworn or affirmed, and duly notarized.
3. The trial judge shall dispense with the reading of the jury charge, and it shall be stipulated that all jurors are familiar with its contents. (If virtual, there will not be a student jury.)
4. There may be no reference to Dylan Salerno having had a separate lawsuit with the Goodrink Beverage Company.
5. The partial transcripts in Exhibit A and Exhibit E are accurate.
6. The experts may testify to any exhibit or witness statement.
7. The experts have reviewed all case materials.
8. Dr. Alex Schwartz is an expert in cardiology and in nutritional science.
9. Dr. Jordan Scott is an expert in cardiology.
10. Rory Salerno had hypertrophic obstructive cardiomyopathy at time of death.

Plaintiff's Witness

Dylan Salerno
Logan Huntzperger
Dr. Alex Schwartz

Defense Witnesses

Sam Arena
Dr. Jordan Scott
Bailey Patel

These materials are produced for educational purposes only. All characters, names, events and circumstances are fictitious. No resemblance or reference to real individuals, events or circumstances is intended or should be inferred. Any reference to a social media challenge or actions by individuals utilizing social media are for illustrative purposes only. Nothing in these materials should be construed as inviting or encouraging any individual to engage in similar actions. Rather, individuals are specifically advised not to attempt any of the challenges referenced in these materials and not to invite or encourage others to attempt them either.

JURY CHARGE

A. Purpose of Charge

I am now going to tell you about the principles of law governing this case. You are required to accept my instruction as the law.

B. Role of the Judge

I sit here as the judge of the law. As part of this responsibility, I have made various rulings and statements throughout this trial. Do not view these rulings and statements as clues about how I think this case should be decided. They are not. They are based solely on my understanding of the law and rules of evidence, and they do not reflect any opinions of mine about the merits of this case. Even if they did, you should disregard them, because it is your role to decide this case, not mine.

C. Role of the Attorneys

The lawyers are here as advocates for their clients. In their opening statements and in their summations, they have given you their views of the evidence and their arguments in favor of their clients' position. While you may consider their comments, nothing that the attorneys say is evidence and their comments are not binding upon you.

D. Role of the Jury

You sit here as judges of the facts. You alone have the responsibility of deciding the factual issues in this case. It is your recollection and evaluation of the evidence that controls. If the attorneys or I say anything about the facts in this case that disagrees with your recollection of the evidence, it is your recollection that you should rely on.

Your decision in this case must be based solely on the evidence presented and my instructions on the law.

E. The Evidence

The evidence in this case consists of:

1. the testimony that you heard from the witnesses,
2. the exhibits that have been marked into evidence,
3. the stipulations and admissions that were placed on the record. As you recall, the stipulations and admissions are facts that the parties agree are true. Therefore, you can accept all admissions and stipulations as true in your deliberations.

Any testimony that I have stricken from the record is not evidence and should not be considered by you in your deliberations. This means that even though you may remember the testimony, you are not to use it in your discussions or deliberations.

F. Burden of Proof

The burden of proof is on the plaintiff to establish plaintiff's claim by a preponderance of the evidence. In other words, if a person makes an allegation, then that person must prove the allegation.

In this action, the plaintiff Dylan Salerno has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove that Sam Arena is civilly liable for the death of Rory Salerno. Defendant Sam Arena denies this.

G. Preponderance of Evidence

The party with the burden of proof has the burden of proving that party's claim by a preponderance of the evidence. If the party fails to carry that burden, the party is not entitled to your favorable decision on that claim.

To sustain the burden, the evidence supporting the claim must weigh heavier and be more persuasive in your minds than the contrary evidence. It makes no difference if the heavier weight is small in amount. As long as the evidence supporting the claim weighs heavier in your minds, then the burden of proof has been satisfied and the party who has the burden is entitled to your favorable decision on that claim.

However, if you find that the evidence is equal in weight, or if the evidence weighs heavier in your minds against the party who has the burden, then the burden of proof has not been carried and the party with the burden is not entitled to your decision on that claim.

When I talk about weighing the evidence, I refer to its capacity to persuade you. I do not mean that you are to count the number of witnesses presented by each side or measure the length of their testimony. The concept of weighing the evidence refers to its quality and not its quantity.

In order to decide whether the burden of proof has been carried, you are to sift through the believable evidence and determine the persuasive weight, which you feel should be assigned to it.

Proof need not come wholly from the witnesses produced by the party having the burden of proof but may be derived from any believable evidence in the case.

H. Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence (sometimes called inferences) consists of a chain of circumstances pointing to the existence of certain facts. Circumstantial evidence is based upon deductions or logical conclusions that you reach from the direct evidence.

Let me give you an example of direct and circumstantial evidence. If a witness testified that that witness observed snow falling last night, that would be an example of direct evidence. On the other hand, if a witness testified that there was no snow on the ground before going to sleep and that when that witness arose in the morning the ground was snow covered, you could *infer* from these facts that it snowed during the night. That would be an example of circumstantial

evidence.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

I. Inferences

When deciding this case, you are permitted to draw inferences from the evidence. Inferences are deductions or logical conclusions drawn from the evidence. Use logic, your collective common knowledge and your common sense when determining what inferences can be made from the evidence.

J. Credibility

In deciding the facts of this case, you will have to decide which witnesses to believe and which witnesses not to believe. You may believe everything a witness says or only part of it or none of it.

In deciding what to believe, here are some factors you may want to consider:

1. Does the witness have an interest in the outcome of this case?
2. How good and accurate is the witness' recollection?
3. What was the witness' ability to know what that witness was talking about?
4. Were there any contradictions or changes in the witness' testimony? Did the witness say one thing at one time and something different at some other time? If so, you may consider whether or not the discrepancy involves a matter of importance or whether it results from an innocent mistake or willful lie. You may consider any explanation that the witness gave explaining the inconsistency.
5. You may consider the demeanor of the witness. By that I mean the way the witness acted, the way the witness talked, or the way the witness reacted to certain questions.
6. Use your common sense when evaluating the testimony of a witness. If a witness told you something that did not make sense, you have a right to reject that testimony. On the other hand, if what the witness said seemed reasonable and logical, you have a right to accept that testimony.
7. Is the witness' testimony reasonable when considered in the light of other evidence that you believe?

K. False in One - False in All

If you believe that any witness or party willfully or knowingly testified falsely to any facts significant to your decision in the case, with intent to deceive you, you may give such weight to the witness' testimony as you may deem it is entitled. You may believe some of it, or you may, in your discretion, disregard all of it.

L. Liability

NEGLIGENCE AND ORDINARY CARE – GENERAL

1. Negligence may be defined as a failure to exercise, in the given circumstances, that degree of care for the safety of others, which a person of ordinary prudence would exercise under similar circumstances. It may be the doing of an act which the ordinary prudent person would not have done, or the failure to do that which the ordinary prudent person would have done, under the circumstances then existing.

2. Negligence is the failure to use that degree of care, precaution and vigilance which a reasonably prudent person would use under the same or similar circumstances. It includes both affirmative acts which a reasonably prudent person would not have done and the omission of acts or precautions which a reasonably prudent person would have done or taken in the circumstances.

By “a reasonably prudent person” it is not meant the most cautious person nor one who is unusually bold but rather one of reasonable vigilance, caution and prudence.

In order to establish negligence, it is not necessary that it be shown that the defendant had an evil heart or an intent to do harm.

To summarize, every person is required to exercise the foresight, prudence and caution which a reasonably prudent person would exercise under the same or similar circumstances. Negligence then is a departure from that standard of care.

FORESEEABILITY (AS AFFECTING NEGLIGENCE)

In determining whether reasonable care has been exercised, you will consider whether the defendant ought to have foreseen, under the attending circumstances, that the natural and probable consequence of defendant’s act or omission to act would have been some injury. It is not necessary that the defendant have anticipated the very occurrence which resulted from defendant’s wrongdoing, but it is sufficient that it was within the realm of foreseeability that some harm might occur thereby. The test is the probable and foreseeable consequences that may reasonably be anticipated from the performance, or the failure to perform, a particular act. If an ordinary person, under similar circumstances and by the use of ordinary care, could have foreseen the result, [*i.e.*, that some injury or damage would probably result] and either would not have acted or, if the ordinary person did act, would have taken precaution to avoid the result, then the performance of the act or the failure to take such precautions would constitute negligence.

RES IPSA LOQUITUR

In any case in which there is a claim that the defendant was negligent, it must be proven to you that the defendant breached a duty of reasonable care which was a proximate cause of the plaintiff’s injuries. Generally, the mere fact that an accident happened, with nothing more, does not provide proof that the accident was a result of negligence.

In a negligence case, the plaintiff must prove that there was some specific negligent act or omission by the defendant which proximately caused the accident. However, in certain circumstances, the very happening of an accident may be an indication of negligence.

Thus, the plaintiff may, by providing facts and circumstances, establish negligence by circumstantial evidence. If the instrumentality causing the injury was in the exclusive control of the defendant, and if the circumstances surrounding the happening were of such a nature that in the ordinary course of events the incident would not have occurred if the person having control of the instrumentality had used reasonable care under the circumstances, the law permits, but does not require, the jury to infer negligence from the happening of the incident.

Plaintiff's voluntary act or neglect contributing to the occurrence prevents the inference from being drawn. However, the mere fact that plaintiff was present does not defeat the inference. Rather, you must find that plaintiff's action or negligence was a proximate cause of the occurrence to prevent the inference.

For instance, assume someone was walking on a sidewalk under a piano, which was being lifted by a crane to go into the upper floor, and assume further that the piano fell onto the pedestrian. The falling piano would be an indication of negligence, since pianos do not usually fall from the sky without someone being negligent. The mere fact that the pedestrian was present is not a voluntary act or neglect.

In summary, if you find by the greater weight of the evidence that at the time of the incident (1) the defendant had exclusive control of the instrumentality causing the occurrence, (2) that the circumstances were such that in the ordinary course of events the incident would not have occurred if the defendant had exercised reasonable care and (3) plaintiff's voluntary act or negligence did not contribute to the occurrence, then you may infer that the defendant was negligent.

As to the requirement of "defendant having exclusive control," this implies that the control was of such type that the probabilities that the negligent act was caused by someone else is so remote that it is fair to permit an inference of negligence by defendant.

If you infer that the defendant was negligent, then the plaintiff need not point out any specific conduct or inaction by the defendant that was a breach of defendant's duty of reasonable care. This inference was drawn, even if plaintiff has introduced some evidence of defendant's specific negligence.

If you do infer that the defendant was negligent, then you should consider the defendant's explanation of the accident. If the explanation causes you to believe that it is no longer reasonable to infer that the defendant was negligent, then the defendant is entitled to your verdict. But if giving fair weight to all of the worthwhile evidence, you decide that it is more likely than not that the defendant was negligent, then your verdict should be for the plaintiff.

M. PROXIMATE CAUSE

To find proximate cause, you must first find that Sam Arena's negligence was a cause of the incident. If you find that Sam Arena's negligence is not a cause of the incident, then you must find no proximate cause.

Second, you must find that Sam Arena's negligence was a substantial factor that singly, or in combination with other causes, brought about the death of Rory Salerno as Dylan Salerno claims. By substantial, it is meant that it was not a remote, trivial or inconsequential cause. The mere circumstance that there may also be another cause of the death does not mean that there cannot be a finding of proximate cause. Nor is it necessary for the negligence of Sam Arena to be the sole cause

of Rory Salerno's death. However, you must find that Sam Arena's negligence was a substantial factor in bringing about Rory Salerno's death.

Third, you must find that the death of Rory Salerno must have been foreseeable. For the death to be foreseeable, it is not necessary that the precise injury that occurred here (that is, the injury resulting in Rory Salerno's death) was foreseeable by Sam Arena. Rather, a reasonable person should have anticipated the risk that Sam Arena's conduct could cause some injury suffered by Rory Salerno. In other words, if some of that injury from Sam Arena's negligence was within the realm of reasonable foreseeability, then the injury is considered foreseeable. On the other hand, if the risk of injury was so remote as not to be in the realm of reasonable foreseeability, you must find no proximate cause.

In sum, in order to find proximate cause, you must find that the negligence of Sam Arena was a substantial factor in bringing about the injury resulting in Rory Salerno's death that occurred and that some harm to Rory Salerno was foreseeable from Sam Arena's negligence.

N. EXPERT TESTIMONY

You have heard testimony from witnesses who were called as experts. Generally, witnesses can testify only about the facts and are not permitted to give opinions. However, an exception to this rule exists in the case of an expert witness. An expert witness may give an opinion on a matter in which the witness has some special knowledge, education, skill, experience or training. An expert witness may be able to assist you in understanding the evidence in this case or in performing your duties as a fact finder. But I want to emphasize to you that the determination of the facts in this case rests solely with you as jurors.

In this case, Dr. Alex Schwartz and Dr. Jordan Scott were called as experts and testified about certain opinions. Dr. Alex Schwartz was acknowledged to be an expert in cardiology and in nutritional science. Dr. Jordan Scott was acknowledged to be an expert in cardiology. Both doctors agree that Rory Salerno had a preexisting condition known as obstructive hypertrophic cardiomyopathy, known as HOCM for short. Dr. Schwartz concluded that Rory Salerno's death was caused by the ingestion of the Slamanaid, as it affected Salerno, with HOCM. Dr. Jordan Scott, on the other hand, concluded that Rory Salerno's death was not caused by the ingestion of Slamanaid, but merely by the HOCM preexisting cardiac condition together with physical activity.

In examining each expert's opinions, you may consider the person's reasons for testifying, if any. You may also consider the qualifications of the individuals and the believability of the expert, including all the considerations that generally apply when you are deciding whether or not to believe a witness' testimony. The weight of the expert's opinion depends on the facts on which the expert bases their opinion. You as jurors must also decide whether the facts relied upon by the expert actually exist.

Finally, you are not bound by the testimony of an expert. You may give it whatever weight you deem is appropriate. You may accept or reject all or part of it.

It is for you the jury to resolve any conflicts in the testimony of the experts, using the same guidelines in determining credibility that I mentioned earlier. The amount of the expert witness' fee is a matter that you may consider as possibly affecting the believability of an expert. However, there is nothing improper in the expert witnesses being paid a reasonable fee for their work and for their time in attending court.

In this case, you have heard that other non-testifying experts have examined evidence regarding the incident and the death of Rory Salerno and have rendered reports expressing opinions as to their findings. Testifying experts may rely upon such out of court statements contained in such reports in formulating their opinions if they are of the type reasonably relied upon by experts, within that particular field in forming opinions or inferences upon the subject. I instruct you, as the jury in this case, that you are not to consider any such out of court statements or opinions by any non-testifying experts as substantive proof and you should not speculate as to what those statements or opinions are or were. The fact that a testifying expert relied upon or failed to rely upon reports of a non-testifying expert or considered and rejected such a report may be considered by you for the limited purpose of the witness explaining the basis of their opinion, if it is a factor in such opinion, and your assessing the quality of their testimony and for no other purpose.

O. GENERAL PROVISIONS

No Prejudice, Passion, Bias or Sympathy

Your oath as jurors requires you to decide this case fairly and impartially, without sympathy, passion, bias or prejudice. You are to decide this case based solely upon the evidence that you find believable and in accordance with the rules of law that I give you.

As jurors, it is your duty to weigh the evidence calmly and without passion, prejudice or sympathy. Any influence caused by these emotions has the potential to deprive both the plaintiff and the defendant of what you promised them -- a fair and impartial trial by fair and impartial jurors. Also, speculation, conjecture and other forms of guessing play no role in the performance of your duty. As jurors, your oath requires that you not be affected or influenced by any personal likes or dislikes, opinions, prejudices, sympathy, or biases, including implicit, or unconscious, bias.

Sympathy is an emotion which is normal for human beings. No one can be critical of you for feeling some degree of sympathy in this matter. However, that sympathy must play no part in your thinking and in the decision you reach in the jury room.

Similarly, your decision must not be based upon bias or prejudice which you might have developed during the trial, for or against any party.

Your duty is to decide this case impartially and a decision based on sympathy, passion, bias or prejudice would violate that duty.

Verdict

Since this is a civil case, any verdict of 5-1 or 6-0 is a legal verdict. Therefore, it is not necessary that all six jurors agree on each question. An agreement of any five jurors is sufficient. All six jurors must deliberate fully and fairly on each and every question, and all six jurors must determine and vote upon each question. It is not necessary that the same five jurors agree upon the answers to all questions. Whenever at least five jurors have agreed to any answer, that question has been decided, and you may move on to consider the remaining questions in the case if it is appropriate to do so. All six jurors must participate fully in deliberating on the remaining questions. A juror who has been outvoted on any question shall continue to deliberate with the other jurors fairly, impartially, honestly and conscientiously to decide the remaining questions. Each juror must consider each question with an open mind.

Verdict Form

In this case, there is only one question for the jury, as follows:

Was defendant Sam Arena negligent, which negligence was a proximate cause of the death of Rory Salerno?

Yes ____ No ____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38

STATEMENT OF DYLAN SALERNO

My name is Dylan Salerno. I am 58 years old. I am widowed and the grandparent of Rory Salerno. My son, Joseph Salerno, was a member of the United States Marine Corps. I raised Rory since 2007. For all intents and purposes, I was the only constant presence in Rory's life. My son passed away in the summer of 2007. While he was on active duty at the time, his death was non-combat. It was a horrible feeling, one that I would never wish upon anyone else, to hear that knock on the door. From what I was told, Joseph passed while training. There were no red flags, or any signs that he was in poor health. He was fit, strong, and could run like the wind. He ran marathons. He collapsed as he walked back to his barracks after a morning session. I was told by one of the men in his regiment that he was injured the previous day during training. He had been hit in the chest by a fellow Marine. He refused treatment. The Marines did tell me that they found no drugs in his system, but still did not conduct a full autopsy. Actually, they might have, but I am not sure if they would have told me what they found. Looking back, I'd much rather know what happened. He was 23 years old. It was hard on Rory and myself, but I promised to give Rory a good, stable life.

Rory's mother, I never knew. I never met her. Joseph came home from one deployment and shocked me with a grandbaby. Rory's mother died in a car wreck. As a result of this accident, Rory was due to inherit a large settlement upon reaching the age of 18. We didn't need the money...I mean I run a successful small business. It would pay for college, or at least part of it. Rory and I rarely spoke of his mother.

Rory was such a great kid to raise. Rory rarely ever gave me any trouble. Rory was a straight-A student all through elementary school and adored by all the teachers. Never gave me any trouble at all. Even through middle school. There were some struggles, but every kid goes through some sort of growing pains. Rory played all kinds of sports growing up. Soccer, both town and club team. Basketball in the winter. It was year-round and really kept me on my toes, but I loved it. I felt young again. Without Rory, the house is empty now.

I started to notice subtle changes in Rory right about the end of sophomore year. Instead of continuing soccer, Rory decided to join the computer club as soccer was no longer a passion. I noticed that Rory did not have the same stamina as before. He couldn't, or wouldn't, run as far as before. We have a yard, and a basketball net in the front driveway, but I would no longer would see Rory outside like before. I think that ate at Rory. I never really knew Rory to be that big into computers, but I guess that's what was going on upstairs all the time. I also started to notice that Rory was hanging around with a different group of friends. Rory had always been friends with Logan Huntzperger, who lived across the street. I loved those two together. I never thought that I had to worry about anything as long as they hung out.

39 It was during the fall of 2018 that I saw Rory hanging out with a different group of kids,
40 one of them being Sam Arena. I always had a bad feeling about Sam. First, Sam was
41 older by almost two years. Not sure if Sam got held back or started late. Rory started to
42 come home late, stay up late, always on the cell phone. For the first time ever, I had to
43 go down to school to talk to the assistant principal. Supposedly, Rory took out the cell
44 phone during class and refused to put it away, or hand it over. The school rules only
45 allowed phones out in the cafeteria during lunch, not during class time. Rory, upset,
46 reluctantly admitted he would not hand it over, yelling, "well, it's mine." I took Rory's
47 phone away. I mean I was paying for it, and this was a new phone after Rory broke the
48 other phone. I told Rory that the phone would be returned when Rory got a job. I
49 didn't care about the money. It was more the responsibility. Turns out, I shouldn't
50 have pushed so hard. Rory got a job at the local convenience store at the end of the
51 street, during his junior year.

52 Rory didn't really care for the job and he admitted as much to me, one day when he was
53 upset over not having any free time, but it did keep Rory from running around at all
54 hours. Or from being cooped up in the bedroom. And I always knew where my
55 grandchild was. What I did notice is that Rory started to eat and drink all kinds of
56 things I wouldn't let into the house. I would find telltale signs - wrappers in his clothes
57 pockets, empty bottles, which he'd place at the bottom of the recycling bin, under the
58 water bottles, so that I wouldn't notice. I never let Joseph eat or drink bad things
59 either. Not saying I'm a health nut, but I don't think kids need to be drinking energy
60 drinks or coffee. They don't need to be eating snack cakes. That stuff is pure
61 sugar. When I confronted Rory about all of these bad habits, I was told to mind my
62 own business. No matter how bad it got before, Rory never talked back to me. This
63 was the first time. I collected the bottles, and confronted him with a full bin of them. He
64 actually started throwing bottles from the bin around the room. Not at me, thank
65 goodness. I'd have thrown him out of the house! I blame Sam. Supposedly, from what
66 I learned, Sam was some sort of social media person. I think they call it an
67 influencer. All I ever felt was that Sam was a bad influence on Rory. Rory would post
68 all of these videos about these challenges kids were doing. I never saw any of them, but
69 I would always overhear Rory and Sam, with other kids excitedly, talking about doing
70 this or doing that while being recorded. I would hear them laughing and screaming like
71 children from Rory's room. I hated the fact that Rory, at 17 years old, was acting like a
72 little kid. I mean, Sam was almost 19 by the time that Rory passed away.

73 Obviously my life changed in July of 2020. The pandemic was raging. I tried to keep a
74 tight leash on Rory, who was about to be a senior. I had this dream of going to colleges
75 and open houses, but Rory had other plans. It seemed like as soon as summer hit, and
76 there was no more school, Rory was out all the time. I never suspected that there was
77 any kind of illegal substance use going on. Deep down, even though our relationship
78 was changing, I felt a sense of relief that Rory wasn't doing anything illegal or using
79 illegal substances. I know it would have only taken one time. I wouldn't have stood for

80 it in my house. Those last few months were hard on Rory, and I'm sure were hard on
81 most kids. Virtual learning didn't work for Rory and Rory's grades showed it. Rory
82 became more restless, had trouble sleeping and was fidgety. When summer hit, Rory
83 went out. Still worked at the store too.

84 On the morning of July 6, Rory went to work. It was a Monday. I was away that
85 previous weekend at our lake house. Rory didn't go with me because of work. I
86 stopped by the store when I got back into town on Monday morning. I walked into the
87 store and found Rory sleeping at the counter. Thank goodness there weren't any other
88 customers. After waking up, Rory seemed to be in good spirits. I actually saw a smile
89 after a minute or two. That was nice. Rory was sweating profusely though and seemed
90 out of breath. I didn't think anything of it at the time because of the summer weather. I
91 told Rory that I would be coming home later that evening. I had to go into work for a
92 few hours to catch up on some old business. Rory told me that after work let out at 2
93 p.m., some friends were meeting up. I asked who the friends were. I got really excited
94 when Rory said that it was Logan and they were going to dinner. Logan would help set
95 Rory straight. I never thought to ask who else Rory would be seeing. I told Rory that I
96 might join them for dinner. That actually made Rory happy. I'm sure it was because I
97 would pay for it.

98 I never got to see Rory again. After work, Rory met up with Sam at the local
99 park. Rory's boss told me that Rory left to go to the park with a six-pack of Slamanaid
100 energy drink. I never let that stuff in my house, and Rory and I did argue about
101 drinking that stuff. My grandchild would be up all hours of the night after drinking
102 that stuff. I also noticed that Rory had gained some weight. I am not sure if it was
103 because I hadn't seen Rory for a few days, but Rory's skin looked puffy. I did see a few
104 dozen cans of Slamanaid in the recycling bin the previous few weeks. This time, at the
105 top of the bin. Rory must have downed a lot of them that past weekend. From what I
106 gathered, Sam was being paid to hawk this stuff on social media, and hung out at the
107 house when I wasn't there. I found a receipt for computer supplies, with Sam's address
108 on it, in Rory's room after Rory passed. I just know that Sam wanted Rory to bring some
109 of this drink to the park. It was just the two of them there at first. I think another kid,
110 Bailey Patel, left when Rory got there. From my understanding, Logan was going to
111 pick Rory up at the park.

112 Logan told me that Sam went on and on about getting Rory to drink three of these
113 drinks as quickly as possible. Rory was supposed to "Slam the Slamanaid," do jumping
114 jacks, then run three laps around the play area. I know that it was hot. I think that day
115 was the hottest day in July. Rory was supposed to go first, then Sam was going to do
116 it. That's why Rory brought six cans. I heard from Logan that the running joke was
117 that Rory would always be challenged by Sam, then Sam would wind up not doing the
118 challenge. That seems sick to me. This wasn't the first challenge Sam made Rory do. Of
119 course, I didn't know about any of them until after this one. Rory drank the three cans,
120 then did the jumping jacks, and then started to run the first lap. My grandchild didn't

121 make it to the end of the first lap. Rory collapsed within one minute of drinking the
122 third can.

123 I find it horrible that Sam's first reaction was to laugh. I don't know if Sam realized the
124 gravity of the situation. I know the 911 call was made within three minutes after Rory
125 collapsed. Thank goodness for Logan. I take some solace in the fact that Rory saw and
126 tried to talk to Logan. I found out later that Sam was trying to post the video as Rory
127 was being taken away in the ambulance. I got to the hospital just after they pronounced
128 my only grandchild dead. Rory was not responsive at the park when the ambulance
129 arrived and wasn't breathing. Rory's heart rate was above 200 when at the
130 hospital. When the doctors came to talk to me, I still didn't understand how this
131 happened. It wasn't like Rory was out of shape. Rory wasn't really exercising when the
132 collapse happened. It was maybe 30 yards of running. The doctors had performed
133 some tests. I guess tests are common when a young person like Rory dies
134 unexpectedly. They asked me if there was a history of heart trouble in my family. I
135 told them about my spouse dying at 48 of cancer. I don't remember whether I told
136 them about Joseph. I was in a fog.

137 The funeral was hard. People kept coming up to me and asking me how I could be so
138 stoic. Looking back, I'm not sure if I cried much during the funeral. Maybe I'm still
139 numb from this whole thing. Maybe I'm filled with such anger towards Sam
140 Arena. Towards that darn drink. How could anyone put that drink out? Give it to
141 kids? Market it to kids? Maybe I'm just so used to this pain. Buried my spouse, my
142 son, and now my grandchild. I miss Rory so much.

143 s/ October 1, 2020

STATEMENT OF LOGAN HUNTZPERGER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

My name is Logan Huntzperger. I am 19 years old. I go to Metropolitan Preparatory High School. I have been accepted to Metropolitan University and plan on studying nursing. I have lived in Metropolitan my whole life. Obviously, I've wanted to leave the city at times. But I have too many memories and all of my family are here in town. I feel that Rory's death might be the impetus for me leaving. Maybe I need to be more on my own. Maybe I have to live a better life because Rory never got to.

Growing up, Rory was my best friend. We would do everything together. I knew that Rory had a tough family situation. I mean, as I got older I understood that. At the beginning, I was way too young to fully grasp all the details. To me, Rory was just a fun kid. We would play all day every day. Summer was the best. I had a swimming pool in my backyard, so Rory and I would swim any chance we could. I didn't have many other friends. I have very overprotective parents, and battled some anxiety issues when I was younger. I've worked hard to overcome these issues.

As we got older, Rory and I still were best friends. We went to the same elementary school, Gilmore Elementary, through sixth grade. We were inseparable. Rory helped me to feel comfortable every day and I didn't bug Rory about the family situation. Though we didn't talk much about it, I know that it was hard on Rory not to have parents around. Dylan Salerno was a really good grandparent for Rory, but Dylan was very strict when we were growing up. Rory always had strict curfews and couldn't eat or drink anything that was unhealthy. I remember once that Rory got grounded for eating all of the Halloween candy. Dylan was a health nut, I guess.

Things started to change as we left middle school. My parents transferred me to a private school where I could get some extra help with my social anxiety. Rory and I were still close, but because we didn't go to the same school, we didn't hang around as much as we once did. When I wasn't at school, I was usually reading or playing video games. I always got really good grades, most of the time without even trying. I just have a natural aptitude for learning. It's in social settings where I struggle. Rory always helped me to cope, but I saw less and less of Rory as we entered high school. I also noticed that Rory's relationship with Dylan was changing. I am not sure why, but Rory was almost rebelling against Dylan. I would hear them arguing when I was in earshot, but not in sight. Dylan would say Rory was "talking back." Rory even stopped swimming, which I found to be really odd. Rory's times weren't as good as they were in middle school. Rory seemed to be struggling with a changing body.

When we got to the middle of our sophomore year, I started to see Rory hanging with some new friends. I didn't really know these kids, because I went to private school, but I knew that I didn't get a good feeling from them. In the summer after sophomore year, the summer of 2019, I went to get something to eat with Rory and catch up. We walked down to the local pizza shop. When we got there, Rory introduced me to Sam Arena,

40 who I guessed was a friend from Rory's school. I found Sam to be one of those over-
41 the-top kids who were totally obsessed with social media. I was never into social
42 media. In fact, I've never even set up an account. But Sam took a picture of the three of
43 us, and posted it on Sam's Instagram. It was the first time I was ever on social
44 media. Sam made sure to tag the pizza shop, and to show the Slamanaid energy drink
45 Sam had ordered. I wouldn't touch that stuff with a 10-foot pole, and I was sure that
46 Rory wouldn't either. I couldn't even imagine what Dylan would do if Rory was
47 caught drinking that. Anyway, Sam left us, and Rory and I were able to catch up a little
48 bit. Rory seemed distracted. I'm not quite sure that Rory even liked Sam, but I think
49 that Rory was just struggling to find friends.

50 During our junior year, I didn't really see Rory that much. We would wave to each
51 other, and I would sometimes stop by the convenience store where Rory worked. But
52 we didn't hang out much at all. Whenever I did see Rory outside of school, I noticed
53 that Rory was always with Sam. I just had a bad feeling about Sam. I've never done
54 any of those "challenges" that all these other kids were doing. I didn't ask whether
55 Rory was doing any of them either. Oddly, there was one time that a classmate of mine
56 at the Met Prep showed me a video of a kid doing a "penny" challenge. Now, the video
57 was grainy, and I never saw the kid's face, but I could have sworn that the kid in the
58 video was Rory. I could also recognize the voice as Sam's. The voice was cackling as
59 Rory's phone caught fire. My classmate said that the people in the video were local. To
60 me, that was enough evidence. I hated that Rory was some sort of entertainment for
61 Sam.

62 I bumped into Rory out front of our houses on the morning of July 6, 2020. Rory was
63 putting out the recycling can for pick-up. It was overflowing with Slamanaid. I told
64 Rory that I was headed to a summer camp the next day for a few weeks. It was a retreat
65 for young people dealing with social issues. Rory seemed to be struggling with the
66 heat. I found that odd because Dylan always kept the house freezing. We made plans
67 to meet up for dinner. I was supposed to pick Rory up at the local park at around 4:30
68 p.m. I found it odd that Rory wanted to meet up at the park rather than the house. I
69 didn't ask why. If I did, I probably would have yelled at Rory for what Rory and Sam
70 were planning to do.

71 I showed up to the park a few minutes early. Rory must have gotten off work at 2
72 p.m. When I pulled into the park, I noticed Sam filming Rory near the monkey
73 bars. Sam's 18 years old, maybe even 19, and hanging at a kid's playground. That
74 about says enough right there. When I got out of my car, I saw that Rory was downing
75 a drink. I couldn't see the type of drink it was since I was still a little distance
76 away. Rory began to do jumping jacks. Rory looked really ragged. I was about 50
77 yards away when Rory began to run. I thought something was wrong. I saw Rory
78 almost immediately go down. I ran over as fast as I could. Sam was still filming Rory
79 on the ground. I finally got to Rory and called 911 as fast as I could. Rory's last words
80 were something to the effect of, "I shouldn't have done it." I don't have any training in

81 medicine, but I could see that Rory became unresponsive, even when I tapped Rory's
82 face and yelled; he was sweating horribly, with a drenched shirt. I talked with Rory
83 and the 911 operator until the ambulance arrived. It wasn't that long...maybe 5-6
84 minutes.

85 I went in the ambulance with Rory. I remember looking around when the EMT asked
86 and I didn't see Sam. When we were closing the door to the ambulance, I saw Sam
87 typing away on the cell phone. Like I said, I don't have any social media, but I was told
88 by a few kids that Sam had thought about posting the video. I guess when Sam found
89 out that Rory had passed, Sam deleted the video. That was a few hours later though. I
90 can't believe that other people might have seen it. I was at the hospital when Rory's
91 grandparent got there. Horrible to see. Dylan's been through so much. I can't imagine
92 losing a spouse, son, and now grandkid.

93 Rory's death has destroyed me. Rory was pretty much my best friend, even if we had
94 grown apart. Looking back, I just wish that I had the courage to tell Rory to stop
95 hanging out with Sam Arena. Sam's love of attention, and the fact that Sam was getting
96 paid to hawk junk on the internet, pushed Rory too far. Rory would still be here if it
97 wasn't for Sam.

98 s/ November 2, 2020

1 **STATEMENT OF DR. ALEX SCHWARTZ**

2 My name is Alex Schwartz. I will summarize my resume. I am a 2015 graduate of Metropolitan
3 Medical School. I am also a Board-Certified Cardiologist. Finally, prior to attending
4 Metropolitan Medical School, I obtained a BS and MS in nutritional science from Metropolitan
5 University.

6 For the past five years I have worked as a researcher in the Cardiology Department of
7 Metropolitan Medical Center. I have conducted clinical studies related to the ingestion of energy
8 drinks such as Slamanaid, specifically, focusing on the caffeine content and the warnings
9 regarding use provided by the manufacturer, Goodrink.

10 I have been asked to opine on whether the ingestion of three Slamanaid drinks, in three minutes,
11 then engaging in jumping jacks and running in the heat caused or led to the untimely death of
12 Rory Salerno.

13 Let me explain how the ingestion of Slamanaid drinks affects the body generally, and more
14 importantly, how those effects are exasperated by someone who has hypertrophic
15 cardiomyopathy or HCM, or hypertrophic obstructive cardiomyopathy, HOCM.

16 I have seen the postmortem scans and I agree with Dr. Scott that Rory's heart tissue, as
17 compared with normal tissue for a normal teenager was thickened. I agree with Dr. Scott's
18 diagnosis that Rory suffered from HOCM. Rory was 17 at the time of passing, and thickening
19 becomes apparent by that age by those predisposed to HOCM. I understand that the condition
20 had not been diagnosed before death, as is common with teenagers with HOCM.

21 The way this occurs, to use layperson's terms is as follows: one might find an active person who
22 suddenly faints and the pathology will reveal that the ventricular wall of the heart has thickened.
23 As a result, there is less space in the heart to fill with blood as is necessary to be pumped to the
24 brain and organs. If there is less blood pumped to the brain (because space is being taken by the
25 thickened cardiac wall), that leads to the fainting of the individual, even if it is a healthy, active
26 person. You may hear of soccer players and other professional athletes who suddenly collapse,
27 having fainted due to decreased blood flow to the brain.

28 This is what is known as extreme dehydration. Or, if the ventricular walls are very large, the
29 individual might get a heart attack because of the inability to obtain blood flow to the coronary
30 vessels.

31 With extreme dehydration the physical heart rate will increase so there is less time to fill
32 ventricles to pump blood to the brain and organs.

33 In the case of Rory, who was diagnosed with HOCM, if the heart rate increases due to being
34 dehydrated or working out, this is more of an issue than with someone without HOCM.

35 The connection between HOCM and the misuse of Slamanaid is that Slamanaid contains caffeine
36 and very little electrolytes or salt. Use or misuse of Slamanaid is more likely to lead to extreme
37 dehydration than the ingestion of other drinks such as sports drinks that contain electrolytes.

38 The caffeine in energy drinks such as Slamanaid causes the heart rate to increase even further in
39 someone who already has a dangerously fast heart rate, such as someone with HOCM. The
40 misuse of the Slamanaid in such person is that HOCM would predispose an individual to be
41 more likely to suffer from heat stroke, heat exhaustion, and extreme dehydration. The caffeine
42 causes the elevated heart rate and an electrolyte imbalance (no salt products in the Slamanaid)
43 and the discrepancy in supply and demand is such that the body is demanding more from the
44 heart exerting itself and exhausting; the individual develops lactic acid in the tissues which it
45 cannot release because of the HOCM condition. In addition, the individual is not supplying
46 oxygen to organs and blood efficiently. The caffeine in energy drinks is like using cocaine in
47 terms of the effect on the heart and its efficiency or inefficiency.

48 The result of all this is Sudden Cardiac Death, as Dr. Scott correctly concluded. Although I agree
49 that Rory was predisposed to suffer some form of discomfort if engaged in extreme physical
50 activity, it was the inappropriate ingestion of Slamanaid in a short time frame, however, contrary
51 to the manufacturer's warnings and instructions, and then the conducting of extreme physical
52 activity in the heat that caused the untimely demise.

53 I can state within a reasonable degree of medical certainty that even with the HOCM condition,
54 without the ingestion of Slamanaid, Rory would not have died solely from the physical activity
55 in which he was engaged at the time of his demise.

56 s/ December 15, 2020

STATEMENT OF SAM ARENA

1 My name is Sam Arena, and I live in a studio apartment on Main Street in Metropolitan,
2 New Jersey. I have lived on my own since my parents moved back to California at the
3 end of my junior year in high school. That would have been June, 2020. I was
4 originally from California, Los Angeles to be exact. I moved with my parents to
5 Metropolitan during middle school. I didn't like it here in Metropolitan at first, since I
6 was so used to the weather and the lifestyle in LA. I didn't grow to like it or anything,
7 but I realized that me being close to New York was great for my brand. In my line of
8 work, you're either an LA person or a New York person. I'd like to think that me being
9 an LA person in New York works for me. My parents pay for my apartment and my
10 expenses, but I am responsible for everything else. I am 19 years old. I was held back
11 in kindergarten by my parents. They thought it would give me all kinds of advantages
12 in sports and school. They were ahead of the trend there. I have an early birthday
13 already. September 1st. That means I started my senior year as a 19-year-old.

14 I feel that it's important to talk about my relationship with Rory Salerno first, before I
15 get into all of the FilmMe stuff. I met Rory towards the end of our sophomore year in
16 high school. We were in the same computer club at school. I wasn't into computers,
17 per se, but I needed to understand the basics in order to succeed at my job. I never
18 really knew why Rory was in the club. Rory wasn't really into computers. We hit it
19 off. We were both kids without too many friends. I never felt bad about it though since
20 I was starting to make a lot of money. Rory was the kind of friend that I was always
21 searching for. No matter what I did, Rory was always there for me. I hope that comes
22 across as a good thing. I know that people said that I was using Rory. That wasn't the
23 case. I genuinely liked Rory.

24 I made quite a few videos with Rory. We had to keep it hidden since Rory's
25 grandparent, Dylan, didn't care for me too much. I would usually do videos with Rory
26 that involved pranks. I would set Rory up with a job or challenge, and Rory would do
27 it. Sometimes it would work while other times it would fail miserably. Rory never
28 seemed to care about failing. If it worked, I would post the video. These videos weren't
29 big money makers, but they were consistent. A good fail video would get a few
30 thousand views. Maybe 20,000. Sometimes Rory would turn the tables on me and
31 make me look like a fool. Those were popular too.

32 I know the focus will be on the events of July 6, 2020. It should be. I feel so bad for
33 what happened to Rory. I was told by many people that Rory had some undiagnosed
34 heart problem. I've seen people, even young people, die out of nowhere. Those videos
35 are all over FilmMe with people telling stories about friends and loved ones dying. A
36 lot of people watch those videos. A lot.

37 July 6th was supposed to be like any other day. I was at Locke-Harris Park with a few
38 other friends, like Bailey Patel. Rory was working until about 2 p.m. We had spent the

39 weekend before together with a group of friends. Actually we had spent a lot of time
40 together in the weeks leading up to July 6th. We always hung out with a big
41 group. We'd make videos. We never did anything illegal like drinking alcohol or doing
42 drugs. I was able to get us a lot of Slamanaid. Rory was very careful to throw the cans
43 directly into the recycle bin on the day of pick-up. Rory didn't want Dylan to see the
44 cans. I can honestly say that I never saw Rory drink Slamanaid other than when we
45 were together with a large group. I never drank Slamanaid. I didn't like the taste. But
46 our friends did. I don't think that Rory drank more than anyone else.

47 Rory showed up at the park just after 2 p.m. It was hot. It was so hot that we were
48 going to go to my apartment and hang out in the air conditioning, but Rory didn't want
49 to leave the park as a friend was coming to the park. Rory had brought a six pack of
50 Slamanaid, but I had a newer version, so we wound up not using the cans that Rory
51 brought. I can't remember if I told Rory about the Slamanaid XL. When Bailey left, it
52 was just Rory and me. I had made mention that I was expected to post a few videos for
53 Slamanaid in the next week or so. A few weeks earlier, we had filmed a video where
54 Rory jumped out of the passenger seat of my car and danced to that Drake song. It got
55 a lot of views. I think a lot of people were thrilled when I drove off at the end of the
56 video. Rory didn't seem to mind.

57 I am not sure who was the first to bring up the challenge on July 6th. It very well could
58 have been me, but I am pretty sure that Rory pushed to do it. I had seen challenges like
59 this before. Eat or drink something quickly, then do something funny to see how you
60 react. I even went to a minor league baseball game once and saw two kids being
61 brought onto the field to spin with their foreheads on a baseball bat. They then ran a
62 race to see which kid would fall from being so dizzy. It was hilarious. Anyways, Rory
63 was supposed to drink three cans really quickly, then do jumping jacks. If I would have
64 known that Rory had a heart ailment, I would never have allowed it. It was way too
65 hot.

66 Rory drank the first two pretty quickly. I didn't really have to edit the video much. The
67 third can took a little longer. I had to stop filming for a few seconds to see if Rory was
68 okay. Rory shrugged me off, or at least that's what I took it as.

69 Rory then counted down the jumping jacks. I can't remember, but I think I asked if
70 everything was okay at least once or twice during the jumping jacks. Rory kept
71 counting. It became slower as it went on. Rory turned to run towards the slide, but it
72 soon became obvious that something wasn't right. Rory fell to the ground. I think my
73 first reaction was laughter, like it was just dizziness. Just then, I heard Rory's friend
74 Logan come from behind me. I had met Logan once or twice. Logan rushed over and
75 turned Rory over onto his stomach. Rory wasn't conscious, and his shirt was soaked
76 with sweat. I hadn't really noticed anything out of the ordinary with Rory's
77 sweating. Rory always sweated. Logan called 911. I stopped filming when Logan
78 called 911.

79 I know a lot of people are upset with me for not going in the ambulance. I seriously
80 thought that only family members could go. When I realized that I could go, Logan had
81 already jumped into the ambulance. I know it's not an excuse, but I had no idea how
82 serious this really was. I was fumbling with my phone as the ambulance pulled
83 away. My hands were shaking, and I must have deleted the video by accident. At the
84 time, I did not know that a deleted video could be recovered from the phone's memory.
85 A month later, I got a new cell phone, and the phone provider gave me \$500 to
86 exchange the old phone, so I did it. As soon as I found out that Rory had passed away, I
87 was so distraught. If I would have known about Rory's heart problem, I wouldn't have
88 allowed this challenge. Rory was a good friend, who I miss.

89 I don't really plan on sticking around for graduation. I might just head to New York for
90 good to try to make it as an influencer. Living in New York would make the most
91 money for me. I started out as an influencer back in middle school as a way to make
92 friends. Not only could I make friends here in New Jersey, but I could also still connect
93 to my friends in LA.

94 My typical videos are about gaming, food reviews, unboxings, and of course, pranks. I
95 also do some videos about my living alone as a high school student. "Fails" are also a
96 great source of money on the FilmMe platform. I have posted over 1,000 videos in my
97 five years as an influencer. At this point, I have over 400,000 subscribers. It's really not
98 that hard to get people to subscribe. Just lead off a video with the "hit the subscribe"
99 button slogan, then make sure to end with it too!

100 I make my money in two ways: first, I work with FilmMe directly. Most of the time, I
101 get paid directly through the site. Depending on the number of views I get, the more
102 money I make. For example, during the early days of the pandemic, I was making
103 about \$5,000 per month. I was raking it in, getting half a million views a month for
104 some videos. FilmMe would take their share since my videos ran with ads, and I would
105 get the rest.

106 This was a cool way to make money, but not the easiest. The other way, working
107 directly with companies to promote their products, was so lucrative. I was paid by
108 sneaker companies to wear their shoes. I was paid by a company that makes
109 inexpensive glasses to wear their products. And, of course, I was paid by Slamanaid to
110 show their beverage can in my videos. Again, I didn't have to drink the stuff...I just
111 had to promote it. Slamanaid paid me \$50 for every 1,000 views when their product
112 was promoted in a video. I tried to bring Slamanaid into all of my videos. The money
113 was insane.

114 s/ November 16, 2020

STATEMENT OF DR. JORDAN SCOTT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

My name is Jordan Scott. I am a licensed cardiologist and have been a consultant with the Cardiologist Consultants of Metropolitan for 10 months. Before that, I was a concierge doctor in the Hamptons on Long Island. I received my undergraduate and master's degrees from Metropolitan University. Both were in biology. I went to medical school at the Metropolitan University School of Medicine. I completed my residency at Metropolitan Mercy Hospital. I made the decision to specialize in cardiology during my residency. As I said before, I took an interesting career path by becoming a concierge doctor. I wanted to try something new and exciting, but I was also told that the money was fantastic. I quickly learned that it was not all that it was made out to be and returned to Metropolitan in the early spring of 2000. I began working at CCM on March 1, 2020.

I was contacted by lawyers for Sam Arena in early November, 2020 in order to investigate the cause of death of Rory Salerno, who had died on July 6, 2020. Though I have been a part of multiple investigations, this was the first in which I acted as lead. I had heard of the death at the time, from friends and colleagues at Metropolitan Mercy, where Rory was brought. I was shocked at the situation. This was right at the time of all of those challenges that young people were doing. I have to admit that I felt compelled to blame the death on the drink because that was the narrative being played in the press. I never drank energy drinks and still don't.

It is important to note what exactly is hypertrophic cardiomyopathy, or HCM. The easiest was for me to describe it is as a hardening or thickening of the heart's left ventricle. What that means is that the body, due to this thickening, does not receive the blood necessary for all of its basic needs. Gradually, and unfortunately, this could manifest itself in a large number of ways. This includes, but is not limited to, heart arrhythmias, shortness of breath, bloating, stroke, and, sadly, sudden cardiac death (SCD). It is estimated that HCM affects 1 in every 500 people. The most prevalent form of HCM is HOCM, which is obstructive. This occurs in upwards of 70-75% of the cases of HCM.

There are two very unfortunate circumstances when it comes to HCM, and both of these circumstances relate to the death of Rory Salerno. First, as with many conditions affecting the heart, symptoms are often not seen until after a catastrophic event occurs. Because of this, I often say that when a person suffers SCD it is a *missed* diagnosis rather than a *misdiagnosis*. If there are symptoms, they are commonly chest pains, difficulty breathing or tachycardia (rapid heartbeat). This may lead to the sufferer to conclude that they are simply out of shape, or have another condition, like asthma. The second circumstance is the fact that HCM is a hereditary condition.

43 In this particular case, and after looking at all of the information available to me, it is
44 my opinion that Rory Salerno suffered from hypertrophic obstructive cardiomyopathy,
45 which resulted in SCD on July 6, 2020. The following information supports that
46 opinion.

47
48 The most telling circumstance is the fact that Rory's father died unexpectedly at a young
49 age after exhibiting, what seems to be, no symptoms. Much of this could have been
50 supported if Dylan Salerno had demanded full testing done on Joseph Salerno. This
51 would have allowed us to know more, but more importantly, could have been vital in
52 diagnosing Rory Salerno in the months and years before Rory's death. If Rory had
53 undergone an electrocardiogram (ECG), along with other heart examination, the death
54 would have been prevented, as a heart MRI would have then been indicated, which
55 would have shown the physical thickening which is HOCD. I find it tragic that Rory's
56 condition went undiagnosed for so long. Though few tests were done on Rory
57 postmortem, the one result that was able to be seen was the thickness of Rory's left
58 ventricle wall. HCM is diagnosed when the thickness is > 15mm, with 13-14 mm being
59 considered borderline. Rory's result indicates 14.5mm thickness, which I would
60 diagnose as HCM. Therefore, I can state within a reasonable degree of medical
61 certainty that the proximate of Rory's death was the HCM condition.

62
63
64 Rory did exhibit classic symptoms of HCM in the months and years before July 6,
65 2020. Dylan Salerno and Logan Huntzperger both acknowledge that Rory's stamina
66 decreased in swimming and soccer, leading to Rory's leaving the sports. Rory exhibited
67 signs of fatigue, shortness of breath, sweating, and noticeable bloating in the weeks
68 before July 6, 2020. I don't believe that any use of energy drinks would have offered
69 those same symptoms.

70
71 I am being paid for my investigation. The rate charged by CCM is \$500 an hour, plus
72 \$2,000 to testify in court, if needed.

73
74 s/ December 1, 2020

STATEMENT OF BAILEY PATEL

1
2
3
4 My name is Bailey Patel, and I am 21 years old. I don't currently go to college, though I
5 did enroll at Metropolitan Community College out of high school. I dropped out after a
6 few weeks. I don't know if I will ever go back to school. I am not sure that I will ever
7 need to. I have made so much money over the last few years as a social media
8 influencer. If I do go back to school, I'll probably just try to get an MBA. It can't be too
9 hard to get.

10
11
12 I have been a kind of mentor to Sam Arena in Sam's attempts to become a social media
13 influencer. As long as Sam's business doesn't take away from mine, I would do
14 anything to help Sam. When Sam's parents moved back to California, they asked me to
15 keep an eye on Sam. Sam's got some of the best business sense that I have ever seen.

16
17
18 I started to work as an influencer during my high school years. I think I signed my first
19 contract when I was a sophomore. It was with a local pizza chain. I was supposed to
20 bring my friends to the restaurants, all of the ones in town that the chain had, and
21 record videos of me and my friends eating and having a good time. It didn't bring in a
22 lot of views but did earn me a little spending money. One of those times I brought my
23 friends, Sam was with us. I could tell that Sam loved the attention. I am not sure if that
24 was when Sam started, but it wasn't long before Sam started to ask me questions.

25
26
27 By that time, I was doing more than just local pizza shops. I had branched out to
28 include apparel, candy bars, even cars. I was starting to make a name for myself,
29 especially when it came to the things that young people were interested in. I found that
30 the more outrageous and insane the video made the product look, the more clicks and
31 views I got. This is right about the time that influencers had started to do "challenges"
32 in order to get more clicks. Now, I made it a point not to do anything too crazy, but I
33 did see some people do some dangerous things to get more clicks. I used to see my
34 friends and classmates watch videos in school. There were some things that I would
35 never do.

36
37
38 I tried to keep my channel respectable. Sure, I had a video or two that might have
39 crossed the line, at least approached the line, but I never wanted to put my friends in
40 danger. In fact, while some influencers' crazy endorsement videos got banned by a
41 video host, like FilmMe, that never happened to any of my videos. I would never have
42 endorsed a product, or made videos endorsing a product, that I didn't totally believe

43 in. In fact, I tried to make it a point to only endorse products that I actually used and
44 enjoyed. I tried to make this point to Sam, and from what I saw, Sam totally agreed.

45
46 I actually started to endorse Slamanaid a few months before Sam did. I think my videos
47 might have inspired Sam to look into Slamanaid. I remember Sam laughing when I
48 showed Sam, on my cell phone, an early video of me trying to crush a freshly-drained
49 can of Slamanaid on my forehead. I loved the drink. I didn't drink a lot of it since I
50 already am a pretty high-strung person. I never needed the energy that Slamanaid
51 gave...I actually liked the taste of it! I first came up with the idea of the "Slam the
52 Slamanaid" challenge in early 2020. Might have been late 2019. I had a few friends
53 drink Slamanaid and try to do some outrageous stunt. I had them ride a unicycle. I had
54 them hit golf balls "Happy Gilmore" style. There was a bunch of really cool things that I
55 had friends do. I even did it a few times. I never thought of the challenge as anything
56 but safe. I never had an issue, and the hundreds of videos that I saw never had any
57 problems.

58
59 Even with this, I got an email in late-spring 2020, right during the pandemic, that
60 advised us to stop endorsing the challenge. It seems that there were a bunch of young
61 kids who were doing this challenge and so many others on their own, with no
62 supervision. Young people were locked up in their homes during the pandemic and
63 trying all sorts of crazy things. And the "Slam the Slamanaid" challenge got swept up
64 by all of the other things kids were doing.

65
66 As soon as I got the email, I stopped doing the challenge. Like I said, I never saw any
67 issues with doing it correctly. I just wanted to make sure that I kept up a good
68 relationship with Slamanaid because I was making so much money. Every once in a
69 while, I would still see some videos of the challenge. I never saw Sam make a video
70 after the email. I can't confirm whether Sam saw or read the email. I just assumed that
71 Sam had read it since I never saw another video from Sam with the challenge.

72
73 I got a text from Sam over the July 4th weekend asking me if I had gotten the new
74 Slamanaid XL. I told Sam that I had received my first batch a few days before. Since I
75 was on a higher earning tier than Sam at Slamanaid, I had earlier access to the latest
76 products. Sam wouldn't have gotten Slamanaid XL for another few weeks. I told Sam
77 that I was going to be at Locke-Harris Park on the following Monday morning for my
78 little brother's baseball camp. I told Sam that we could meet up there. I brought Sam a
79 six-pack of Slamanaid XL. We met up at around noon from what I remember.

80
81 Sam never gave any impression that the new drink was going to be used in a
82 challenge. In fact, I distinctly remember that I told Sam not to use the product in any
83 new videos until the next week, since I wanted to debut the new product on my
84 channel. Sam assured me that the XL wasn't going to be used until the next weekend

85 when Sam was going to New York. Like I said, I assumed that Sam had read the email
86 from Hayden Thomas.

87

88 As I was walking to my car, I bumped into Rory Salerno in the parking lot. I had met
89 Rory a few times before, mostly through Sam. I had seen Rory at the convenience store
90 as well. I would not call us friends in any way. I always thought that something was
91 off with Rory. I got the sense that Rory was trying to act older and was way too
92 immature for me. As I walked by Rory, I noticed that Rory did not look good. There
93 was sweat pouring down Rory's forehead. I know that it was hot, but Rory seemed to
94 be feeling it a lot more than I was. I even noticed Rory bend over halfway across the
95 lot. Rory's hands were on their knees. I asked Rory if everything was okay. Rory
96 responded with a shrug. Rory then walked over to where Sam was hanging out.

97

98 I never would have thought that Sam was going to push Rory into doing the
99 challenge. And if I would have known about the heart condition, I definitely would
100 have stopped Rory in the parking lot. I could definitely see that Rory was not well. No
101 matter what, I don't think that Slamanaid had anything to do with Rory's death.

102

103 s/ January 12, 2021

EXHIBIT A

Partial transcript of interview with Hayden Thomas, CEO of Goodrink Beverage Company, conducted by Lincoln Jones, Coalition of American Beverage Companies

Posted to Goodrink website, June 30, 2020

Why don't you introduce yourself for our viewers?

My name is Hayden Thomas, and I am the CEO of Goodrink Beverage Company.

How long have you been with Goodrink?

I have been CEO of GBC since 2015.

Where were you before?

Before taking over at GBC, I was the COO of the nationwide sandwich chain, Hoagie Time. Goodrink made me a lucrative offer to take over the company and to expand their offerings.

How would you say you're doing as CEO?

The shareholders have been very pleased with the performance over the last few years.

Why were you hired?

When I took over at GBC, almost all of their products were marketed as healthy drinks. GBC was ahead of the game when it came to products like coconut water, pomegranate and beet juice, and kombucha tea. I remember as a kid all of those V8 commercials, but I don't think I ever really drank a V8. GBC had found its niche, but was looking to expand on its offerings. They saw the emerging energy drink market and were looking to dip their toes in.

How were you able to do that?

I had developed a relationship with a few of the companies making and marketing these energy drinks through my previous positions. Because of my unique background in both product development and management, GBC saw me as an ideal candidate to take the company forward. I believe that they made the right choice. As I said, GBC's profits have more than doubled since I took over.

What was your first step?

My first priority was to develop a product that was attractive to the market that we were looking to tap into. We spent almost a year before we were able to put a product out to market. All of the feedback that we received from our focus groups indicated that people were looking for a drink that would taste good, but would also give a long-lasting source of energy and focus. We studied the ingredients and concentration of all of the major leading brands. There is no doubt that our product, Slamanaid, offered the best combination of both safe and effective ingredients.

What was the reaction to Slamanaid in focus groups?

I am very proud of the drink, and results showed that it was an attractive option for a wide-ranging number of people. I don't remember a single time where anyone involved in developing the product had any apprehension in what was in the drink, nor in how much of a concentration the drink offered. It was like the old McDonald's coffee story. Customers wanted their coffee to be hot, hot, hot. No one wanted lukewarm coffee. In this case, our customers wanted energy. As much as can be found in a can. We developed the product to meet that demand.

What did you do next?

My second priority was to market the product correctly. This time coincided with an explosion in social media advertising, which made it much easier to reach a larger audience. The traditional marketing tools of television and radio were becoming ancient, especially to the Millennials.

Why the emphasis on social media?

People fast-forward through commercials on TV, but we were able to take advantage of social media to reach this new customer pool. I was able to convince the board to relocate our marketing dollars from traditional sources like celebrities and fancy advertising campaigns, and move towards the use of influencers on platforms like Instapost and FilmMe. The ROI [return on investment] was more than we could have ever imagined.

When did Slamanaid reach shelves?

Slamanaid hit the market in the spring of 2017. As I said before, GBC's profits more than doubled between 2017 and 2020. We were even able to lift our sales on GBC's other offerings, something that can't be ignored. While Slamanaid was our cash cow, we marketed our other products into health food stores and gyms. I am very proud of our accomplishments at GBC.

Hayden, you were responsible for a company-wide email sent earlier this year. Can you explain the circumstances of that memo?

In February of 2020, I was made aware that a few of our influencers were encouraging people to drink Slamanaid on camera, then do outrageous stunts. I immediately sent word to all influencers not to promote, encourage, or perform any stunt or challenge involving misuse of our product. I made it very clear that influencers would be suspended, or even terminated, from promoting our products.

What was the reaction that you saw to that email?

There was some blowback across the industry. Especially because of the connection of social media and the youth.

Do you use social media specifically to reach young people?

Of course we do. Young people have an amazing amount of disposable income. Anyone will tell you that. But we never encourage the misuse of any of our products. We know that many states are pushing for the minimum age to purchase energy drinks to be raised to 18. I would have no problem with that. As long as it's enforced across the board, and no one company gets an advantage, I would lead the charge. While I believe that Slamanaid, and all of our products for that matter, are healthy choices for our consumers, I don't want to see my company dragged through the mud.

EXHIBIT B

Partial Transcript of 911 Call

July 6, 2020, 3:44 p.m. Metropolitan, NJ Call Center

Operator: 911, what's the emergency?

LH: My friend is unconscious...I am not sure if Rory is breathing!

Operator: What is your name?

LH: Logan Huntzperger

Operator: And what is your friend's name?

LH: Rory Salerno...oh no!

Operator: And how old is your friend?

LH: 17...please hurry!

Operator: Where are you located?

LH: We're at Locke-Harris Park.

Operator: What was your friend doing?

LH: Rory just collapsed...it's so hot out here!

Operator: Is there anyone else with you?

LH: Yes...another fri...just please hurry!

Operator: Help is on the way...I need you to tell me everything...is Rory responsive?

LH: No...turn off that camera...I just got here and saw Rory collapse...Sam, what were you two doing? Stop filming me!

Operator: I need you to focus on Rory...

Ambulance and EMT arrived at 3:50 p.m.

EXHIBIT C

Chart Comparing Selective Nutritional Facts
of Major Energy Drinks with Slamanaid and Slamanaid XL

	Drink A	Drink B	Drink C	Drink D	Drink E	Slamanaid	Slamanaid XL
Sugar	37g	54g	0g	0g	63g	42g	43g
Caffeine	111mg	86mg	200mg	300mg	160mg	310mg	330mg
Carbohydrates	27g	29g	2g	2g	3.9g	30g	31g

EXHIBIT D

Label on All Cans of Slamanaid

SLAMANAIID IS HIGH IN CAFFEINE AND SHOULD BE USED IN MODERATION. NOT RECOMMENDED FOR PREGNANT WOMEN AND CHILDREN.

EXHIBIT E

Email from Hayden Thomas, CEO of Goodrink Beverage Company, to Influencers

From: Hayden Thomas March 23, 2020, 2:20 AM

To: allen, ryan altmann, sam arena, sam frye, cameron +62 others

Subject: "Slam the Slamanaid"

It has come to my attention that a "Slam the Slamanaid" challenge has been used by our influencers to promote our great product. Goodrink Beverage Company does not endorse, nor does it condone, this challenge. It is recommended that our influencers stop this challenge immediately. Please find other exciting ways to get Slamanaid to those who enjoy it!

Thomas Hayden
CEO Goodrink Beverage Company

PART XI

EXPLANATION OF PERFORMANCE RATINGS USED ON MOCK TRIAL COMPETITION SCORESHEETS

Please consider the criteria listed below when evaluating student performances. Participants will be rated in the categories listed in the score sheet on a scale of **5-10**. **Fractional points are NOT to be awarded.**

Please use the following guide when awarding points:

5-6: Average (exhibiting only a few of criteria listed below)

7-8: Very Good (exhibiting many of the criteria listed below)

9-10: Excellent (exhibiting virtually all of the criteria listed below)

The judge(s) will score student performance in each category, not the legal merits of the case. Each category on the score sheet must be evaluated separately. Note that one team must be awarded more total points than the other. **There are no ties. The tiebreaker category is overall team performance. In the event of a tie score, the judge(s) shall make a final determination based on overall team performance. While this category must be rated like all other categories, judges may award an additional point to the team with the better overall team performance in order to break a tie.** This category is designed to measure whether the team stayed within established time limits, followed mock trial rules and procedures, and demonstrated excellent teamwork. See Part VIII for more information.

Also please note that all post-trial evaluations by the judge(s) will be qualitative. Numerical scores will not be released. The purpose is to re-emphasize the educational goals of the competition.

EVALUATIVE CRITERIA

Attorneys

Opening/Closing Statements:

- Establishes theory of the case (opening)/continues theory of case (closing).
- Clearly provides overview of team's case and position in a persuasive fashion.
- Addresses strengths of own case, and weaknesses of opponent's case.
- Demonstrates a thorough understanding of the issues.
- Exhibits mastery of case and materials.
- Applies applicable law effectively.
- Refers to key witnesses.
- Is articulate and professional in presentation, with minimal use of notes.
- Discusses burden of proof.
- States relief requested.
- Displays appropriate decorum to judges, opposing team and teammates.
- Demonstrates spontaneity, summarizes evidence and incorporates examples from actual trial (closing).

Direct Examination:

- Effective in phrasing straightforward questions and eliciting information.
- Exhibits mastery of case and materials.
- Observes rules of competition at all times.
- Demonstrates understanding of mock trial procedures and rules of evidence.
- Uses case theory appropriately and effectively.

- Avoids leading and narrative questions.
- Responds effectively to opponent's objections.
- Demonstrates proper use of objections in cross-examination.
- Makes effective use of time.
- Interacts well with witnesses.
- Demonstrates confidence and speaks sufficiently loudly and clearly to be heard and understood.

Cross Examination:

- Skillfully utilizes leading questions.
- Does not ask "one too many" questions, i.e. cross examines witnesses judiciously.
- Does not invite invention.
- Effectively able to rephrase questions.
- Exhibits mastery of case and materials.
- Observes rules of competition at all times.
- Demonstrates understanding of mock trial procedures and rules of evidence.
- Responds effectively to opponent's objections.
- Demonstrates proper use of objections in direct examination.
- Effectively exposes contradictions or weaknesses of other side's case.
- Interacts well with witnesses. Confidently manages difficult witnesses.
- Able to proceed without reading from prepared script.
- Demonstrates confidence and speaks sufficiently loudly and clearly to be heard and understood.

Witnesses

Direct Examination:

- Dress and demeanor are appropriate for witness being portrayed. (Costumes are not allowed. See case stipulations.)
- Demonstrates extensive knowledge of the facts and theory of team's case.
- Observes rules of competition at all times.
- Convincingly and credibly portrays character throughout testimony, without relying on notes. (See R.5:4-7.)
- Shows emotion appropriate to the role.
- Effectively responds to questions without inventing material facts.
- Demonstrates confidence and speaks sufficiently loudly and clearly to be heard and understood.

Cross Examination:

- Convincingly and credibly portrays character throughout testimony, without relying on notes. (See R.5:4-7.)
- Able to field questions with confidence and poise.
- Observes rules of competition at all times.
- Does not become flustered or uncertain when responding to unanticipated or leading questions.
- Able to avoid impeachment.
- Employs invention but only appropriately.
- Demonstrates confidence and speaks sufficiently loudly and clearly to be heard and understood.

IMPORTANT NOTICE

Prior to each round, please fill out the names of the students and the roles they will play on the PDF form on our website, **www.njsbf.org**.

2022-2023 VINCENT J. APRUZZESE MOCK TRIAL COMPETITION Score Sheet

Prosecution/Plaintiff: _____ Defendant: _____
(Team Code) (Team Code)

Date: _____ **Competition Level:** _____ **Round:** _____

On a scale of **5 to 10** rate the Prosecution/Plaintiff and Defendant in the categories below.

DO NOT USE FRACTIONS.

	PROSECUTION/PLAINTIFF		DEFENDANT		
	Name	Score	Name	Score	
Opening Statements					
Prosecution/Plaintiff's First Witness					
Witness Performance – Direct Examination:					
Witness Performance – Cross Examination:					
Attorney – Direct Examination:					
Attorney – Cross Examination:					
Prosecution/Plaintiff's Second Witness					
Witness Performance – Direct Examination:					
Witness Performance – Cross Examination:					
Attorney – Direct Examination:					
Attorney – Cross Examination:					
Prosecution/Plaintiff's Third Witness					
Witness Performance – Direct Examination:					
Witness Performance – Cross Examination:					
Attorney – Direct Examination:					
Attorney – Cross Examination:					
Column Subtotals:					

(Continued on next page.)

2022-2023 VINCENT J. APRUZZESE MOCK TRIAL COMPETITION Score Sheet

Prosecution/Plaintiff: _____ Defendant: _____
(Team Code) (Team Code)

Date: _____ **Competition Level:** _____ **Round:** _____

On a scale of **5 to 10** rate the Prosecution/Plaintiff and Defendant in the categories below.

DO NOT USE FRACTIONS.

	PROSECUTION/PLAINTIFF	DEFENDANT	
	Name Score	Name	Score
Defense's First Witness			
Witness Performance – Direct Examination:			
Witness Performance – Cross Examination:			
Attorney – Direct Examination:			
Attorney – Cross Examination:			
Defense's Second Witness			
Witness Performance – Direct Examination:			
Witness Performance – Cross Examination:			
Attorney – Direct Examination:			
Attorney – Cross Examination:			
Defense's Third Witness			
Witness Performance – Direct Examination:			
Witness Performance – Cross Examination:			
Attorney – Direct Examination:			
Attorney – Cross Examination:			
Closing Arguments			
Overall Team Performance*			
Column Subtotals:			
Subtotals from preceding page			
Column Totals			

Please advise county or state coordinator of scores before critique.

Judge(s) Signature(s)

***This category MUST be graded with all the other categories, and can also be used as a tiebreaker.**



WINNER (P or D)

NJSBF HIGH SCHOOL MOCK TRIAL POLICY REGARDING A COMBINED TEAM

The intent of the New Jersey State Bar Foundation (NJSBF) High School Mock Trial policy regarding a combined team is to encourage schools, which would otherwise be unable to compete because of an inability to field a full team, to request permission to combine their students with those of another school. In order to form a combined or cooperative mock trial team under the above circumstances, the boards of education or governing bodies of both schools must submit a joint request to the Mock Trial Committee of the New Jersey State Bar Foundation. Teams that combine without such permission will be disqualified.

The intent of the cooperative mock trial program is to afford greater opportunity to students to participate in mock trial only when the enrollment of their high school would not allow either the initiation of such a program or its continuance. Only schools that qualify under the specific enrollment requirements will be permitted to apply to form a combined team with any other equally qualified school. No cooperative mock trial team should be undertaken to enhance the competitive advantage of a member school or for the purpose of “venue shopping.”

The following guidelines were adopted by the New Jersey State Bar Foundation’s Mock Trial Committee and will be utilized to implement cooperative mock trial teams in order to afford the opportunity for as many students as possible to participate in the NJSBF Vincent J. Apruzzese Mock Trial Competition. Factors considered in granting approval of a combined team include, but are not limited to, the following:

- The boards of education or governing bodies of both schools approve the request to form a combined team.
- The host school accepts the responsibilities and obligations that go along with that designation. The combined team will compete in the county in which the host school is located. (See #7 of application form regarding designation of the host school.)
- The total student population of each school involved is under 200 students per class year (800 for a 4-year high school and 600 for a 3-year high school).
- A pattern of declining enrollment in mock trial, i.e., insufficient number of team members in or from the previous year to field a team.
- The schools involved have made a good faith effort to recruit students for mock trial without success.
- The boards of education or governing bodies of both schools certify that they are not applying to form a combined team for the purpose of strengthening their current teams.
- The boards of education or governing bodies of both schools certify that, without a combined team, the schools involved would not be able to participate in the competition.

The Mock Trial Committee will review requests on a case-by-case basis and will advise applicants of its decision in writing. The application form follows on the next page.

The application must be approved by both boards of education or other governing bodies, signed by both school principals and submitted to the State Bar Foundation’s Mock Trial Committee with the approval of their County Mock Trial Coordinator(s). The application form will be reviewed by the Mock Trial Committee and its decision will be final. Schools must make an application **prior** to their enrollment in NJSBF’s Vincent J. Apruzzese Mock Trial Competition and, if approved, must enroll in mock trial as one single team and remain as a single team throughout the competition school year. Approval is only for the school year in which it is given.

**NJSBF VINCENT J. APRUZZESE MOCK TRIAL COMPETITION
COMBINED TEAM APPLICATION**

Combined Team Application for School Year: _____

Cooperating Schools

School #1 (Sponsoring/Host)

Address _____

Principal Name & Email _____

Enrollment _____

School #2

Address _____

Principal Name & Email _____

Enrollment _____

Combined enrollment: (no. of pupils) _____

1. Mock trial is open to all students in both schools in grades 9 through 12. Both schools represent that they have made a good faith effort to recruit students for a mock trial team without success and that one or both schools has been unable to obtain enough student participation to field a team for the school year for which a cooperative team approval is sought. Both schools certify that they are not applying to form a combined team for the purpose of strengthening their current teams.

Please attach a sheet outlining the circumstances in both schools which have led to this cooperative team application specifically setting forth why, without a combined team, the schools involved would not be able to participate in the competition.

2. Approved (public schools): Both Boards of Education Yes _____ No _____ Date _____

3. Approved (non-public schools): Superintendent(s)/ School Governing Bodies Yes _____ No _____ Date _____

4. County Coordinator approval:

_____, Coordinator, _____ Approved: Yes _____ No _____ Date _____
(signature) (County)

County Coordinator approval:

_____, Coordinator, _____ Approved: Yes _____ No _____ Date _____
(signature) (County)

5. Public Schools Agreement: _____ agrees to act as the Sponsoring/Host school.
(name of school)

Non-Public Schools Agreement: _____ agrees to act as the Sponsoring/ Host school.
(name of school)

6. The participating schools shall agree on the legal, financial, staff and personnel responsibilities of each school, including but not limited to, such considerations as transportation, release time, rules, and supervisory services.

7. The Sponsoring/Host School for the combined mock trial team shall be the larger of the two schools based on enrollment of grades 9-12. The combined mock trial team shall function as any other extracurricular activity in that school and will compete in the NJSBF Mock Trial Program in the county in which the host school is located.

8. A participating school shall not withdraw from a Cooperative Program until the completion of the involved Mock Trial Competition season.

9. The Sponsoring/Host School will be considered the home site, and as such will be entitled to all county and state awards.

10. The student participants shall be subject to NJSBF's Vincent J. Apruzzese Mock Trial Competition eligibility rules as well as the eligibility rules of both schools; where rules are at variance, the more stringent rules will be in effect.

11. The decision of the NJSBF State Mock Trial Committee will be final, with NO appeals.

I hereby attest to the accuracy of all facts contained herein. I have also read and agree to abide by all qualifications set forth in the application.

_____, Principal _____, School #1

_____, Principal _____, School #2

This agreement shall terminate at the end of the school year for which cooperation is sought. Renewal must be accompanied by a new application.

New Jersey State Bar Foundation Approval: Yes___ No___

_____, Executive Director, NJSBF

_____, Chair, NJSBF Mock Trial Committee

Please scan and email to Sheila Boro, Director of Mock Trial Programs, at sboro@njsbf.org.

PART XII

ONLINE RULES ADDENDUM

Online Rule 1.1. Photo/ Video Release

By registering to compete in the New Jersey State Bar Foundation's Mock Trial Competition, each participant grants the New Jersey State Bar Foundation the right to photograph, record, or stream trials and use them for any mock trial related purpose, including educational or promotional materials. If a participant does not wish to be photographed or recorded, that teacher-coach must notify the County Mock Trial Coordinator, or State Mock Trial Director at advanced levels, in writing prior to the date of the first round of competition.

Online Rule 1.2. Zoom Security Measures

1. The Zoom waiting room feature and password will be used. A link to the Zoom "courtroom" will be emailed to participants prior to the tournament.
2. It is not permissible to share Zoom links with anyone that is not a competing team member, coach or observer. Do not post links on social media or other platforms.
3. Anyone who violates Zoom security will be automatically disqualified from the Mock Trial Competition.

Online Rule 1.3. Naming Rules

To be admitted from the waiting room to the main room and to trial rooms, each person must use the following renaming rules. Participants must have a valid team code and use their real name:

- **Competing team members:** Courtroom Number (P/D) First and Last name.
Example: 3 (P) Frodo Baggins
- **Witnesses:** add "playing witness name"
Example: 3 (P) Samwise Gamgee playing Luke Skywalker
- **Timekeeper:** Courtroom Number (P/D) TIMEKEEPER First and Last name
Example: 4 (P) TIMEKEEPER Gandalf the Grey
- **Coaches:** Courtroom Number (P/D)- COACH First and Last name
Example: 2 (D)- COACH Bilbo Baggins
- **Judges:** Courtroom Number JUDGE- First and Last name
Example: 5 JUDGE- Hermoine Granger
- **Observer:** Courtroom Number (P/D)- OBSERVER First and Last name
Example: 6 (D)- OBSERVER Bell Gamgee

Online Rule 1.4. Presentation in Zoom

1. Background: No virtual backgrounds are allowed except for solid color black or white. It is the duty of the participants to remove distractions from the background.
2. One person per screen at a time. The naming rules need to be followed for each participant.
3. All participants will mute their audio and video when not performing. For example, when "Witness Mr. Defendant" is testifying, the only students who may be displayed or heard are those portraying, directing, and crossing the witness.
4. With the exception of the timekeeper, the Zoom chat is not to be used during the trial for communications, including the private chat feature. Team members are not allowed to communicate privately with one another or anyone else using other methods such as text (with phones on vibrate or silent), or a different chat platform. This is a violation of the Code of Conduct.
5. All cell phones need to be silenced or on vibrate. Participants need to take precautions to have a quiet background during their performance.

Online Rule 1.5. Trial Functions in Zoom

- 1. Pretrial Check In:** While waiting for the trial to begin, all participants will have their camera on and mic off. When the judges are all present, they will ask the lead attorney if all competing team members are present. All judges will stay on camera with their mic muted. The judges will remain on camera and start the trial.
- 2. Pretrial Matters:** During team introductions, team members will have their camera and mic on. For pretrial matters, only the judges and presenting attorneys will have their camera and mic on; all other participants will have the camera off and mic muted.
- 3. Attorney:** Attorney participants will sit for scored functions (opening, closing, witness exams) and for other functions (introductions, housekeeping, objections).
- 4. Witness:** Witnesses will be seated for their examination.
- 5. Timekeeper:** The timekeeper will remain off camera and will use the chat for one-minute warnings.
- 6. Post Trial Comments:** All competing student participants and judges will have their camera on and mics muted unless speaking. At the end of the trial, if time permits, teacher- and/or attorney-coaches may stay logged on to confer with the judges. See R.2:7 and R.5:3-6 in the Mock Trial Workbook.

Online Rule 1.6. Location

Teams may determine location needs as based on their individual team needs (internet accessibility) and school regulations. If any team members are meeting in the same building, they must use one screen per person at a time and individual students need to compete from individual rooms. Students must be far enough away in the building to avoid microphone feedback and sound quality/echo issues.

Online Rule 1.7. Use of Exhibits/ Affidavits in Online Format

1. All participants must possess hard copies of all relevant materials, including exhibits and witness statements. When referenced, students must be able to access documents quickly.
2. Students need not show opposing counsel documents prior to the admission of those documents.
3. Exhibits will not be shared on the screen. It is sufficient to refer to the exhibits. See #1 above.
4. All students have access to all case documents. Judges will be instructed to penalize students who deny having exhibits or who attempt to manipulate time in locating a document.

Online Rule 1.8. Timekeeper

- a. Each team is required to provide one student who will serve as the timekeeper for that team. Timekeepers are responsible for fairly and accurately keeping and reporting the time during the trial presentation. Timekeepers are not to communicate with their respective teams during the course of the trial presentation except to indicate a one-minute time warning using the chat.
- b. See R.2:9 regarding time limits in the Mock Trial Workbook.
- c. The timekeeper shall time their own team and will input the one-minute warning time in the Zoom chat for everyone to see.
- d. Timekeepers time is final and not disputable.

Online Rule 1.9. Trial Access

Each team will be allowed up to 17 devices logged into Zoom per trial. Participants include competing team members, timekeeper, and coach(es). It will be at the team's discretion to use devices logged into Zoom for non-competing team members, coaching staff, and observers.

Online Rule 1.10. Technical Difficulties

In the event of technical difficulties during the trial in a virtual competition, the presiding judges shall have discretion to declare a brief recess to resolve any technical difficulty substantially impairing a participant's participation in the trial. If the technical difficulty cannot be resolved within a reasonable,

but brief, amount of time, then the trial will continue with another member of the impacted team substituting for the impacted team member. The emergency substitute must be a member of the same team as the impacted participant.

Before making an emergency substitution, the impacted team must make the presiding judges aware, by stating words to the effect of, “Your honor, before I begin I would like to inform the court that I am [insert name] and I am substituting for [insert name], who is unable to compete due to technical difficulties.”

If no substitute is available, or the team chooses not to use a substitute, the judges will score a zero for the affected role(s) and the trial will proceed.

The presentation will be scored based on the performance by the initial team member and the emergency substitute, taken as a whole.

Once the presiding judges determine either at the request of the team or *sua sponte* that a student is unable to compete in a role due to technical difficulties, to minimize disruption, the impacted student is not permitted to return and compete in the role for which a substitution was made.

For purposes of this rule, technical difficulties include internet failure and computer, device or microphone failure; failure of a camera only does not permit emergency substitution under this rule. Students who lose internet connection shall rejoin the trial using a telephonic connection, if possible.

In the event of a loss of connection for a timekeeper, that team shall defer to its opponent’s timekeeper for that trial segment. The team whose timekeeper lost connection may substitute another timekeeper for the remaining trial segments. See Online R.1.8. regarding timekeeping.

In the event that a technical emergency prevents an entire team from completing in part or all of a round, the presiding judges shall declare a recess of up to 15 minutes, to allow that team to reconnect, either via video or by connecting on audio-only via telephone. If reconnection is impossible, a forfeit shall be declared in favor of the team that maintains its connection.

No student or team may feign technical difficulty or invoke the technical difficulty rule for purposes other than a genuine technical difficulty. Such an act may be subject to point deductions or other means up to and including disqualification from the competition.

Online Rule 1.11. Trial Recording in Zoom

If a team would like to record a trial, follow these instructions:

Before the trial

- Get permission from the competing team’s coach to record the trial. Both teams must agree to recording.
- Prior to the trial’s start, the recording coach will need to visit the Main Room to obtain Zoom permission to record. The Mock Trial Coordinator will set this up.

Trial Recording Procedures

- At the beginning of the trial, the recording coach will hit the record button.
- When the round finishes, the video is processed by Zoom and saved on the recording coach’s personal computer.

Sharing the Recordings

- It is the responsibility of the recording coach to upload the trial on YouTube (unlisted setting) and share the link with the other team's coach. The recordings may be viewed by coaches only.
- However, the recordings are NOT to be replayed or viewed in any manner by anyone else until AFTER the state season concludes, and only in compliance with the Code of Conduct in the Mock Trial Workbook.

Online Rule 1.12. Swearing in of Witnesses

- All witnesses are deemed to be sworn.

NEW JERSEY STATE BAR FOUNDATION

FREE PROGRAMS AND RESOURCES

Informed Citizens Are Better Citizens



The New Jersey State Bar Foundation offers a wide variety of **FREE** law-related, civics and violence prevention education for New Jersey teachers and their students.

.....

These are just some of our services. **All are available free of charge.**

Follow us on social media—@NJStateBarFdn can be found on Facebook, Twitter, Instagram and LinkedIn or check out our YouTube videos.



CIVICS

CIVICS PUBLICATIONS for elementary, middle and high school students (see reverse for a complete list)

BLOGS containing timely posts on social justice and/or civics issues for grades 5 and up, including *The Informed Citizen*, our civics blog. All blog posts include discussion questions and relevant glossary words for ready-made lesson plans that can be distributed to students

THE LEGAL EAGLE, a legal newspaper for elementary, middle and high school students

RESPECT, a newsletter about law and diversity for middle and high school students

SPEAKERS BUREAU covering many law-related topics

Our Law Fair and Law Adventure Competitions help to fulfill the new middle school civics requirement. See below.

MOCK TRIAL

LAW FAIR COMPETITION and programs for grades 3–6

LAW ADVENTURE COMPETITION and programs for grades 7 and 8

VINCENT J. APRUZZESE HIGH SCHOOL MOCK TRIAL COMPETITION

MOCK TRIAL WORKSHOPS for elementary, middle and high school teachers

COURTROOM ART CONTEST for high school students

SEL AND ANTI-BIAS TRAINING (virtual and in-person)

RESTORATIVE JUSTICE IN SCHOOLS gives educators strategies to implement restorative justice practices into classrooms and schools

BEYOND BIAS addresses Unconscious Bias, Talking About Race, and Being an Antiracist

UNDERSTANDING HIB CHARACTERISTICS helps educators prevent, identify, and address HIB incidents

THE ROLE OF THE SCHOOL CLIMATE TEAM focuses on how to be proactive in creating a positive climate

CONFLICT RESOLUTION introduces methods to prevent and address conflict in the school community

PEER MEDIATION for educators who believe students have agency to solve their own conflicts

SOCIAL EMOTIONAL CHARACTER DEVELOPMENT offers SEL skills and habits for educators to incorporate into their learning environments

HOW TO TEACH THE HOLOCAUST for educators who want to know effective pedagogy to teach the Holocaust

BREAKING BIAS: LESSONS FROM THE AMISTAD focuses on teaching African American history through an anti-bias lens

TRAUMA SENSITIVE SCHOOLS helps educators create trauma sensitive classrooms in order to prevent violence

VARIOUS SEL WEBINARS

The New Jersey State Bar Foundation is a New Jersey professional development provider.

FREE NJSBF PUBLICATIONS

The following FREE publications may be obtained by visiting the New Jersey State Bar Foundation's website at njsbf.org or calling 1-800-FREE LAW. Some publications are available in alternate formats, including Spanish, Braille and CD.

SCHOOL-BASED PUBLICATIONS

BEYOND THE BILL OF RIGHTS is a 24-page newsletter that explains the 17 amendments added to the U.S. Constitution after the Bill of Rights was ratified in 1791. Geared to middle and high school students.

BILL OF RIGHTS BULLETIN is a newsletter packed with articles on the Bill of Rights, as well as puzzles, constitutional trivia and much more. Geared to elementary and middle school students.

THE BILL OF RIGHTS UP CLOSE is a 28-page newsletter that takes a deep dive into the Bill of Rights. Geared to middle and high school students.

CONSTITUTIONALLY NEW JERSEY is a 12-page newsletter devoted to the New Jersey Constitution. Geared to elementary, middle and high school students. **ONLINE ONLY**

HISTORICAL DOCUMENTS OF NEW JERSEY AND THE UNITED STATES contains the Declaration of Independence, The Articles of Confederation, as well as the U.S. and New Jersey Constitutions. **ONLINE ONLY**

HIGH SCHOOL MOCK TRIAL WORKBOOK contains the procedures, rules and mock trial case for the annual Vincent J. Apruzzese High School Mock Trial Competition. **ONLINE ONLY**

LAW FAIR AND LAW ADVENTURE COMPETITION BOOKLETS provide rules and procedures for these mock trial contests for grades three to six and seven and eight respectively. **ONLINE ONLY**

MINI-COURT TEACHER'S GUIDE provides two mock trial lesson plans and related classroom activities and resources. Designed to introduce age-appropriate legal concepts to children in kindergarten through second grade.

MOCK TRIAL EXERCISE BOOKLETS are available for grades three through six and for grades seven and eight. The booklets feature the winning Law Fair and Law Adventure original mock trial cases from previous competitions. **ONLINE ONLY**

STUDENTS' RIGHTS HANDBOOK was written by the American Civil Liberties Union of New Jersey and addresses the responsibilities and rights affecting students in school today. **ONLINE ONLY**

TURNING 18 IN NJ covers issues relevant to becoming an adult, including establishing credit, being a good citizen and much more. **ONLINE ONLY**

WHAT YOU NEED TO KNOW ABOUT PLAGIARISM discusses different forms of plagiarism including copying out of encyclopedias and cutting and pasting information directly from the Internet.

PUBLICATIONS FOR ADULTS

AIDS AND THE LAW IN NEW JERSEY (second edition) covers such topics as confidentiality, discrimination, insurance and referrals.

AVOIDING NOTARIO FRAUD IN NJ explains what notario fraud is and the laws that provide protection from it. The printed booklet contains both the English and Spanish versions.

A BASIC GUIDE TO PERSONAL BANKRUPTCY (second edition) explains the different types of personal bankruptcy options available and the advantages and disadvantages of each.

CONSUMER'S GUIDE TO NEW JERSEY LAW gives an overview of 24 areas of law, including wills, divorce, auto insurance and much more.

DISABILITY LAW: A LEGAL PRIMER (sixth edition) helps individuals with disabilities and their advocates understand their legal rights.

DOMESTIC VIOLENCE: THE LAW AND YOU examines the Prevention of Domestic Violence Act and the legal process for obtaining temporary and permanent restraining orders. It also includes a domestic violence checklist to assist victims in documenting their abuse.

EDUCATIONAL GUIDE FOR TRIAL JURORS (third edition) explains the important role of jurors within our judicial system and how lawsuits are tried. The guide was produced with assistance from the Administrative Office of the Courts.

HOW TO BECOME A LAWYER outlines the general requirements for becoming a lawyer in New Jersey. **ONLINE ONLY**

LAW POINTS FOR SENIOR CITIZENS is published in a question-and-answer format, and outlines several topics of interest to seniors, including Medicare, Social Security and guardianship.

RESIDENTIAL CONSTRUCTION AND RENOVATION: A LEGAL GUIDE FOR NEW JERSEY HOMEOWNERS helps homeowners navigate the laws surrounding home repair contracts and renovations. **ONLINE ONLY**

STARTING AND SUCCEEDING WITH A NEW BUSINESS examines everything an entrepreneur needs to know when starting a new business. **ONLINE ONLY**

YOUR GUIDE TO MUNICIPAL COURT is a 12-page pamphlet that highlights your basic rights when appearing in municipal court.

The
New Jersey State Bar
Foundation invites
you to enter our

Law Fair and Law Adventure

2023 COMPETITIONS

FOR GRADES 3-8

These FREE educational mock trial programs for **grades 3-6 and grades 7 and 8** respectively are open to public and private schools and other organizations in New Jersey. Students and their teachers are invited to submit original mock trial cases to the Law Fair and Law Adventure Competitions. **THERE IS NO CHARGE TO ENTER.**



Cases entered must be suitable for use in the classroom as a tool to teach students about legal issues. For details about the competitions, which help to increase writing, reading, listening and analytical skills, please download *the Law Fair (for grades 3-6) and Law Adventure (for grades 7 and 8) Rules Booklets* from our website, njsbf.org.



Entries must be received by January 31, 2023. Winners will be invited to perform their cases in person (or via Zoom if circumstances warrant) in May. Judges and attorneys will preside over the mock trials. Winning cases will be posted on our website.



To help teachers of grades 3-8 prepare their students for the competitions, and to learn how to use mock trials to teach about law in the classroom, the New Jersey State Bar Foundation will sponsor a **FREE WORKSHOP** on October 28, 2022, 8:30 a.m.-12:30 p.m., at the New Jersey Law Center in New Brunswick. Register for the workshop online at njsbf.org. Professional development hours will be provided.



Here's what teachers have to say:

"My students have benefited immeasurably from their participation in the Law Fair and Law Adventure Mock Trial Competitions."
Bridget S. Charles, Luis Munoz Marin School for Social Justice, Newark

"We have been entering our classes in the Law Fair Mock Trial Competition for years now, and it is always such a wonderful learning experience. The students work hard at brainstorming creative scenarios for their cases, and their ideas never cease to amaze us. This past year we had a winning case, and the opportunity to perform it in front of a judge was thrilling for all of us. We look forward to working on these every year!"
Karen Magliacano and Mary Donovan, Fairview Elementary School, Bloomfield

"As the advisor of Millstone's Mock Trial Club, I was able to witness firsthand the passion of our middle school students for analyzing and debating different topics. As the students spent more time working on these cases, they were able to view both sides of an argument, further improving their ability to debate and empathize both with the defendant and the plaintiff. I saw our students grow in understanding the implications of cases in the real world."
Suman Kapoor, Millstone Middle School, Millstone



**FOR MORE
INFORMATION**

Sheila Boro, Director of Mock Trial Programs
New Jersey State Bar Foundation, One Constitution Sq., New Brunswick, NJ 08901-1520
732-937-7519 | sboro@njsbf.org | njsbf.org



New Jersey State Bar Foundation
New Jersey Law Center
One Constitution Square
New Brunswick, NJ 08901-1520
1-800-FREE LAW
njsbf.org