



2023-2024

The Vincent J. Apruzzese High School

# Mock Trial

## Competition



# HIGH SCHOOL WORKBOOK



*Celebrating 42 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](http://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**

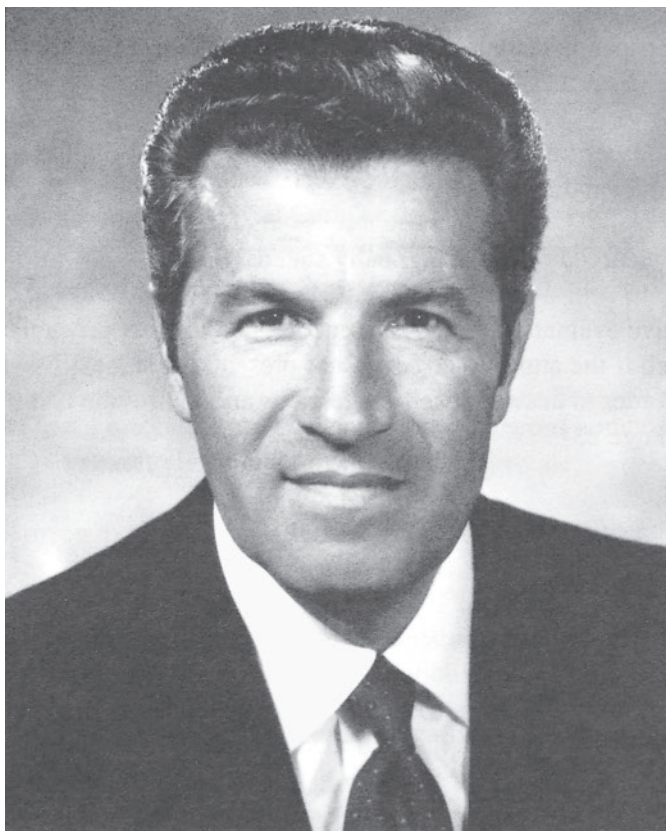
To increase comprehension of the historical, ethical and philosophical basis of the American system of justice.

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 42nd year of service to the educational community. Over the years the Vincent J. Apruzzese High School Mock Trial Competition has taught more than 119,000 New Jersey students the fundamentals of our court system while developing critical thinking and public speaking skills.

During the pandemic, we were successful in adapting our High School Mock Trial Competition to an online format. While mock trial contests will be in person again this year, you will see references to both in-person competition and virtual competition in this workbook.

**VINCENT J. APRUZZESE**  
**HIGH SCHOOL MOCK TRIAL COMPETITION**  
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The New Jersey State Bar Foundation gratefully acknowledges the assistance of Ronald C. Appleby Jr., Esq., chair of the Mock Trial Committee, committee members Edward Moody, Kathy Manz, Robert Ferrara, Lewis Fichera, Esq., 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 **by December 1, 2023.**
- 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](http://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).

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## **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).

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## 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](http://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](http://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 trial. Teams that are not participating in that trial 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 in their own trial. 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 trial. Teams that are not participating in that trial 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 in their own trial. 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: South - February 27, 2024; North - February 28, 2024; and Central - February 29, 2024. Regional playoffs will be held on March 12, 2024.** 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](mailto: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 19, 2024** 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 of 2024 (date to be announced). 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](http://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](mailto: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.

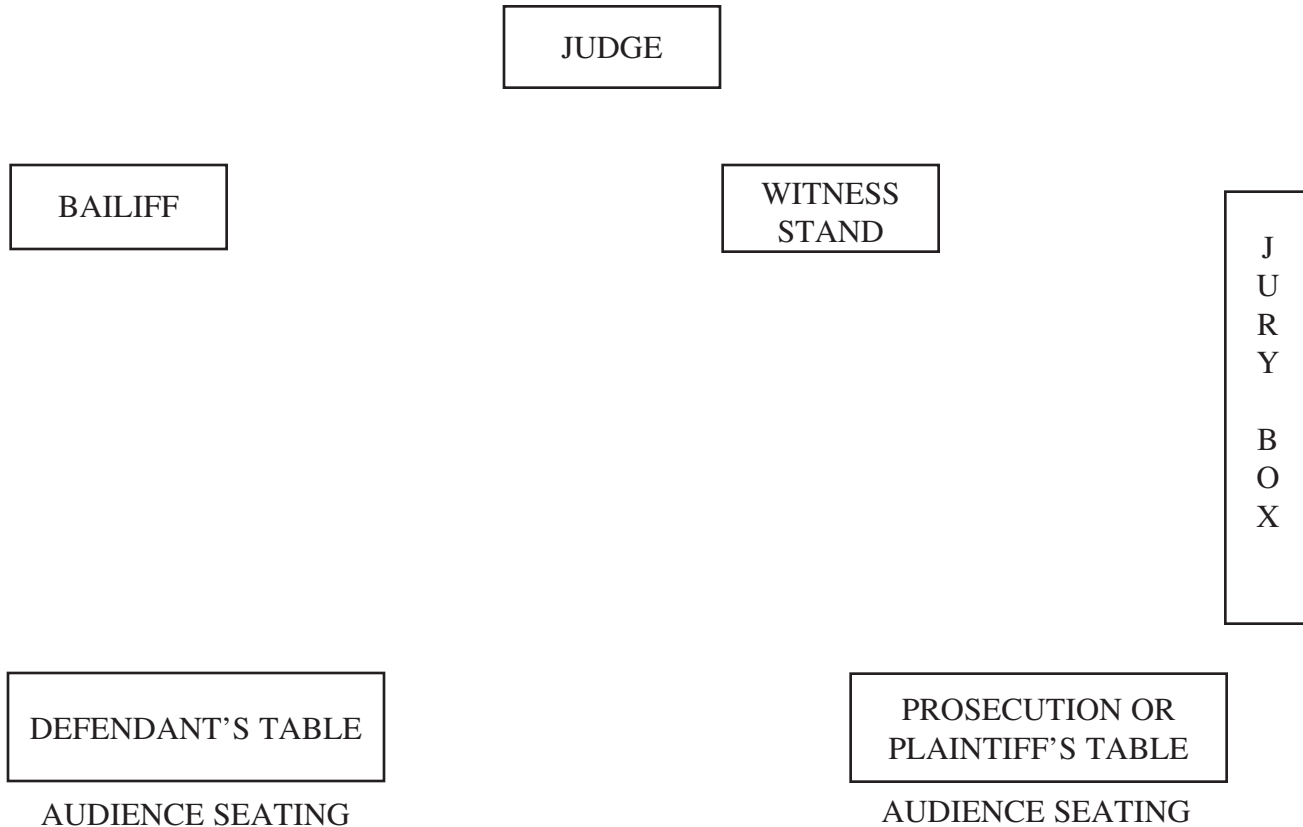
**Some of the things most difficult for team members to learn to do are:**

- (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.

D. When in person, only the two participating student-attorneys may communicate with each other during the five-minute pre-summation recess.

Failure to comply with the aforementioned shall be considered a violation of the mock trial rules. Should any team member participating in that round observe any conduct which is in violation of this rule, that team member shall immediately and unobtrusively bring the alleged violation to the attention of the appropriate student attorney. The student attorney, at their discretion, may then object to the presiding judges. Any such objection must be made at the time the violation is noted, and in the case of Section B above, prior to the witness leaving the witness stand.

The judge(s) shall immediately make an inquiry into the matter and may deduct one or more points at their discretion. The deduction may come from the score of the witness, the attorney(s), and/or the overall team score.

### **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 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 609. Impeachment by Evidence of a Criminal Conviction**

**(a) In General.** The following rules apply to attacking a witness’s character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 403, in a criminal case in which the witness is not a defendant.

### **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. OPINION 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.”



## 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](http://njsbf.org). You’ll see examples of opening statements, direct and cross-examinations of witnesses and closing arguments.

## **Part X**

### ***United States of America v. Ellis Kirwin***

#### **Scandal Rocks Metropolitan University**

**by Staff Writer Charlie Quinn**

**Tuesday, January 9, 2023**

**Former Dean of Admissions at Metropolitan University, Ellis Kirwin, has been arrested and charged as part of a yearlong investigation conducted by the United States Attorney's Office for the State of Metropolitan.**

**It is alleged by that Office that Kirwin, as the Dean, engaged in the theft of honest services, including accepting over \$100,000 in impermissible benefits, including money, vacations, and gifts from representatives of We Get You In, a local college placement program run by Devon Morris.**

**Morris, who has been a key witness for the State during the investigation, recently pleaded guilty to a related crime. Morris is currently on home monitoring, awaiting sentencing.**

**Kirwin, through an attorney, denies the allegations, and has previously called this investigation a "witch hunt," claiming that no crimes were committed in the Admissions Office during their tenure, which ended in early summer of 2021. Kirwin left the university before the investigation was underway. It was only after a new Dean of Admissions, Jean Cote, began to serve in the role that an internal admissions audit was ordered, which showed some irregularities.**

**Metropolitan University has seen its fair share of turnover within administration in the past year. A few months after the departure of Kirwin, the university lost its longtime President, Aidan Kelly. Also leaving was Director of Athletics, Frankie Solari. Both unexpectedly retired just prior to the 2021-2022 school year.**

#### **EXHIBITS**

- A. Devon Morris plea form (redacted)
- B. Letter from Defendant, Ellis Kirwin, to Aidan Kelly

#### **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. Devon Morris has a criminal record, consisting of a sentence on May 1, 2014, to a single count of tax evasion, a felony, with penalties of one year probation and a \$100,000.00 fine.
5. Devon Morris has pled guilty, but their sentence is put off until the end of the trial of Ellis Kirwin. Morris' sentence will be decided by the sentencing judge, who will take into account any testimony of Morris at this trial. The sentence may be from as low as probation with no jail and a \$300.00 fine up to the sentence spelled out in the plea agreement, Exhibit A. This exhibit is deemed signed by Devon Morris.
6. Ola Tang is accredited by the American Forensic Accountant Society as a Certified Forensic Accountant ("CFE").
7. Brighton Kershner is permitted to testify as a fact witness, and may not be barred by Mock Trial Rule of Evidence 405. Kershner may also testify as a character witness.
8. Metropolitan University is a public university, supported in part by the State of Metropolitan, and administered in part by the government of the State of Metropolitan.
9. Exhibit B, the redaction of a letter to Aidan Kelly, is acknowledged by Defendant, Ellis Kirwin, as being genuine, and written by Kirwin. The original of the letter was kept in the Metropolitan University Records Department in the course of ordinary business. It was sent by mail, the envelope being stamped by the US Postal Service with the date September 21, 2019, but the municipality and state from where it was processed is illegible.

#### **Prosecution Witnesses**

Devon Morris  
Amari Simpson  
Jean Cote

#### **Defense Witnesses**

Ellis Kirwin  
Ola Tang  
Brighton Kershner

*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.*

## **Jury Charge**

Members of the jury, you have seen and heard all the evidence and the arguments of the lawyers. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence that you have heard and seen in court during this trial. That is your job and yours alone. I play no part in finding the facts. You should not take anything I may have said or done during the trial as indicating what I think of the evidence or what I think about what your verdict should be.

Your second duty is to apply the law that I give you to the facts. My role now is to explain to you the legal principles that must guide you in your decisions. You must apply my instructions carefully. Each of the instructions is important, and you must apply all of them. You must not substitute or follow your own notion or opinion about what the law is or ought to be. You must apply the law that I give to you, whether you agree with it or not.

Whatever your verdict, it will have to be unanimous. All of you will have to agree on it or there will be no verdict. In the jury room you will discuss the case among yourselves, but ultimately each of you will have to make up their own mind. This is a responsibility that each of you has and that you cannot avoid.

Throughout your deliberations, you may discuss with each other the evidence and the law that has been presented in this case, but you must not communicate with anyone else by any means about the case. You also cannot learn from outside sources about the case, the matters in the case, the legal issues in the case, or individuals or other entities involved in the case. This means you may not use any electronic device or media, the internet, any text or instant messaging service, or any social media apps to research or communicate about what you've seen and heard in this courtroom.

These restrictions continue during deliberations because it is essential, under our Constitution, that you decide this case based solely on the evidence and law presented in this courtroom. Information you find on the internet or through social media might be incomplete, misleading, or inaccurate. And, as I noted in my instructions at the start of the trial, even using your smartphones, tablets, and computers - and the news and social media apps on those devices - may inadvertently expose you to certain notices, such as pop-ups or advertisements, that could influence your consideration of the matters you've heard about in this courtroom.

You are permitted to discuss the case with only your fellow jurors during deliberations because they have seen and heard the same evidence and instructions on the law that you have, and it is important that you decide this case solely on the evidence presented during the trial, without undue influence by anything or anyone outside of the courtroom.

## **Evidence**

You must make your decision in this case based only on the evidence that you saw and heard in the courtroom. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence from which you are to find the facts consists of the following:

- (1) The testimony of the witnesses;
- (2) Documents received as an exhibit; and
- (3) Any fact or testimony that was a stipulation, which are deemed to be formally agreed to by the parties.

The following are not evidence:

- (1) The indictment;
- (2) Statements and arguments of the lawyers for the parties in this case;
- (3) Questions by the lawyers and questions that I might have asked;
- (4) Objections by lawyers, including objections in which the lawyers stated facts;
- (5) Any testimony I struck or told you to disregard; and
- (6) Anything you may have seen or heard about this case outside the courtroom.

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience and common sense tells you that certain evidence reasonably leads to a conclusion, you may reach that conclusion.

As I told you in my preliminary instructions, the rules of evidence control what can be received into evidence. During the trial the lawyers objected when they thought that evidence was offered that was not permitted by the rules of evidence. These objections simply meant that the lawyers were asking me to decide whether the evidence should be allowed under the rules.

You should not be influenced by the fact that an objection was made. You should also not be influenced by my rulings on objections or any sidebar conferences you may have overheard. When I overruled an objection, the question was answered or the exhibit was received as evidence, and you should treat that testimony or exhibit like any other. When I allowed evidence (testimony or exhibits) for a limited purpose only, I instructed you to consider that evidence only for that limited purpose and you must do that.

When I sustained an objection, the question was not answered or the exhibit was not received as evidence. You must disregard the question or the exhibit entirely. Do not think about or guess what the witness might have said in answer to the question; do not think about or guess what the exhibit might have shown. Sometimes a witness may have already answered before a lawyer objected or before I ruled on the objection. If that happened and if I sustained the objection, you must disregard the answer that was given.

Also, if I ordered that some testimony or other evidence be stricken or removed from the record, you must disregard that evidence. When you are deciding this case, you must not consider or be influenced in any way by the testimony or other evidence that I told you to disregard.

Although the lawyers may have called your attention to certain facts or factual conclusions that they thought were important, what the lawyers said is not evidence and is not binding on you. It is your own recollection and interpretation of the evidence that controls your decision in this

case. Also, do not assume from anything I may have done or said during the trial that I have any opinion about any of the issues in this case or about what your verdict should be.

### **Direct and Circumstantial Evidence**

Two types of evidence may be used in this trial, “direct evidence” and “circumstantial, or indirect, evidence.” You may use both types of evidence in reaching your verdict.

“Direct evidence” is simply evidence which, if believed, directly proves a fact. An example of “direct evidence” occurs when a witness testifies about something the witness knows from their own senses — something the witness has seen, touched, heard, or smelled.

“Circumstantial evidence” is evidence which, if believed, indirectly proves a fact. It is evidence that proves one or more facts from which you could reasonably find or infer the existence of some other fact or facts. A reasonable inference is simply a deduction or conclusion that reason, experience, and common sense lead you to make from the evidence. A reasonable inference is not a suspicion or a guess. It is a reasoned, logical decision to find that a disputed fact exists on the basis of another fact.

For example, if a witness testified that she had been outside and saw that it was raining, that testimony would be direct evidence that it was raining. On the other hand, if a witness testified that she saw someone walk in from outside wearing a wet raincoat and carrying a wet umbrella, that testimony would be circumstantial evidence from which you could reasonably infer that it was raining. You would not have to find that it was raining, but you could.

Sometimes different inferences may be drawn from the same set of facts. The government may ask you to draw one inference, and the defense may ask you to draw another. You, and you alone, must decide what reasonable inferences you will draw based on all the evidence and your reason, experience and common sense.

You should consider all the evidence that is presented in this trial, direct and circumstantial. The law makes no distinction between the weight that you should give to either direct or circumstantial evidence. It is for you to decide how much weight to give any evidence.

### **Credibility of Witnesses**

As I stated in my preliminary instructions at the beginning of the trial, in deciding what the facts are you must decide what testimony you believe and what testimony you do not believe. You are the sole judges of the credibility of the witnesses. Credibility refers to whether a witness is worthy of belief: Was the witness truthful? Was the witness’ testimony accurate? You may believe everything a witness says, or only part of it, or none of it.

You may decide whether to believe a witness based on their behavior and manner of testifying, the explanations the witness gave, and all the other evidence in the case, just as you would in any important matter where you are trying to decide if a person is truthful, straightforward, and accurate in their recollection. In deciding the question of credibility, remember to use your common sense, your good judgment, and your experience.

In deciding what to believe, you may consider a number of factors:

- (1) The opportunity and ability of the witness to see or hear or know the things about which the witness testified;
- (2) The quality of the witness' knowledge, understanding, and memory;
- (3) The witness' appearance, behavior, and manner while testifying;
- (4) Whether the witness has an interest in the outcome of the case or any motive, bias, or prejudice;
- (5) Any relation the witness may have with a party in the case and any effect the verdict may have on the witness;
- (6) Whether the witness said or wrote anything before trial that was different from the witness' testimony in court;
- (7) Whether the witness' testimony was consistent or inconsistent with other evidence that you believe; and
- (8) Any other factors that bear on whether the witness should be believed.

Inconsistencies or discrepancies in a witness' testimony or between the testimony of different witnesses may or may not cause you to disbelieve a witness' testimony. Two or more persons witnessing an event may simply see or hear it differently. Mistaken recollection, like failure to recall, is a common human experience. In weighing the effect of an inconsistency, you should also consider whether it was about a matter of importance or an insignificant detail. You should also consider whether the inconsistency was innocent or intentional.

You are not required to accept testimony even if the testimony was not contradicted and the witness was not impeached. You may decide that the witness is not worthy of belief because of the witness' bearing and demeanor, or because of the inherent improbability of the testimony, or for other reasons that are sufficient to you.

After you make your own judgment about the believability of a witness, you can then attach to that witness' testimony the importance or weight that you think it deserves.

The weight of the evidence to prove a fact does not necessarily depend on the number of witnesses who testified or the quantity of evidence that was presented. What is more important than numbers or quantity is how believable the witnesses were, and how much weight you think their testimony deserves.

### **Not All Evidence, Not All Witnesses Needed**

Although the government is required to prove the defendant guilty beyond a reasonable doubt, the government is not required to present all possible evidence related to the case or to produce all possible witnesses who might have some knowledge about the facts of the case. In addition, as I have explained, the defendant is not required to present any evidence or produce any witnesses.

In this case, the Defendant, Ellis Kirwin, produced three witnesses. The Defendant is not required to present any possible evidence related to the case or to produce all possible witnesses who might have some knowledge about the facts of the case.



### **Stipulation of Fact**

The Government and the defendant have agreed that the Stipulations of Fact are true. You should therefore treat these facts as having been proven.

### **Opinion Evidence (Lay Witnesses)**

Witnesses are not generally permitted to state their personal opinions about important questions in a trial. However, a witness may be allowed to testify to their opinion if it is rationally based on the witness's perception and is helpful to a clear understanding of the witness's testimony or to the determination of a fact in issue.

In this case, I may have permitted one or more witnesses to offer opinion based on their perceptions. The opinion of this witness should receive whatever weight you think appropriate, given all the other evidence in the case and the other factors I will discuss in my final instructions for weighing and considering whether to believe the testimony of witnesses.

### **Limited Admissibility: Evidence Admitted for a Limited Purpose**

In certain instances, evidence may be admitted only for a particular purpose and not generally for all purposes. If I determine that something is admissible, not for the truth of the matter asserted, but for some other purpose, as permissible hearsay, and I have said so, then you may not consider it for the truth of the matter asserted.

For the limited purpose for which this evidence has been received you may give it such weight as you feel it deserves. You may not, however, use this evidence for any other purpose not specifically mentioned.

### **Stricken Testimony, Disregard**

I may have ordered that testimony be stricken from the record. Any such testimony is not proper evidence in the case. You must disregard it entirely.

### **Prior Consistent Statements**

You just heard evidence that, before witnesses testified in this trial, they made statements that were the same as, or similar to, what they said in the courtroom. You may consider evidence of this statement in determining the facts of this case. In addition, this evidence may help you decide whether you believe the witness's testimony. If that witness said essentially the same thing before trial, it may be reason for you to believe that witness's testimony in court.

### **Impeachment of Witness - Prior Inconsistent Statement for Credibility Only**

You have heard the testimony of witnesses. You may have also heard that before this trial they made a statement that may be different from their testimony in this trial. It is up to you to determine whether this statement was made and whether it was different from their testimony in this trial. This earlier statement was brought to your attention only to help you decide whether to

believe their testimony here at trial. You cannot use it as proof of the truth of what the witness said in the earlier statement. You can only use it as one way of evaluating their testimony in this trial.

### **Impeachment of Witness - Prior Conviction**

You are about to hear evidence that Devon Morris has previously been convicted of a crime punishable by more than one year in jail or prison. You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe Devon Morris and how much weight to give to Devon Morris' testimony.

### **Prior Statement of Defendant**

The government has introduced evidence that the Defendant made a statement to another. You must decide whether Defendant did in fact make the statement. If you find that Defendant did make the statement, then you must decide what weight, if any, you feel the statement deserves. In making this decision, you should consider all matters in evidence having to do with the statement, including those concerning Defendant their self and the circumstances under which the statement was made.

### **Presumption of Innocence; Burden of Proof; Reasonable Doubt**

The Defendant pleaded not guilty to the offense charged, and accordingly is presumed to be innocent. Defendant started the trial with a clean slate, with no evidence against them. The presumption of innocence stays with Defendant unless and until the government has presented evidence that overcomes that presumption by convincing you that Defendant is guilty of the offense charged beyond a reasonable doubt. The presumption of innocence requires that you find Defendant not guilty, unless you are satisfied that the government has proved guilt beyond a reasonable doubt.

The presumption of innocence means that the Defendant has no burden or obligation to present any evidence at all or to prove that they are not guilty. The burden or obligation of proof is on the government to prove that the Defendant is guilty and this burden stays with the government throughout the trial.

In order for you to find Defendant guilty of the offense charged, the government must convince you that Defendant is guilty beyond a reasonable doubt. That means that the government must prove each and every element of the offense charged beyond a reasonable doubt. A defendant may not be convicted based on suspicion or conjecture, but only on evidence proving guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt does not mean proof beyond all possible doubt or to a mathematical certainty. Possible doubts or doubts based on conjecture, speculation, or hunch are not reasonable doubts. A reasonable doubt is a fair doubt based on reason, logic, common sense, or experience. It is a doubt that an ordinary reasonable person has after carefully weighing all of the evidence, and is a doubt of the sort that would cause them to hesitate to act in matters of importance in their own life. It may arise from the evidence, or from the lack of evidence, or from the nature of the evidence.

If, having now heard all the evidence, you are convinced that the government proved each and every element of the offense charged beyond a reasonable doubt, you should return a verdict of guilty for that offense. However, if you have a reasonable doubt about one or more of the elements of the offense charged, then you must return a verdict of not guilty of that offense.

### **Mail Fraud - Elements of the Offense**

Count One of One of the Indictment charges the Defendant with mail fraud, which is a violation of federal law.

In order to find the Defendant guilty of this offense, you must find that the government proved each of the following three elements beyond a reasonable doubt:

First: That the Defendant knowingly devised a scheme to defraud or to obtain the intangible right of honest services by materially false or fraudulent pretenses, representations or promises, or willfully participated in such a scheme with knowledge of its fraudulent nature;

Second: That Defendant acted with the intent to defraud; and

Third: That in advancing, furthering, or carrying out the scheme, Defendant used the mails, or a private or commercial interstate carrier, or caused the mails, or a private or commercial interstate carrier to be used.

### **Proof of Required State of Mind – Knowingly**

Often the state of mind knowledge with which a person acts at any given time cannot be proved directly, because one cannot read another person's mind and tell what they are thinking. However, Defendant's state of mind can be proved indirectly from the surrounding circumstances. Thus, to determine Defendant's state of mind what Defendant knew at a particular time, you may consider evidence about what Defendant said, what Defendant did and failed to do, how Defendant acted, and all the other facts and circumstances shown by the evidence that may prove what was in the Defendant's mind at that time. It is entirely up to you to decide what the evidence presented during this trial proves, or fails to prove, about Defendant's state of mind.

You may also consider the natural and probable results or consequences of any acts Defendant knowingly did, and whether it is reasonable to conclude that Defendant intended those results or consequences. You may find, but you are not required to find, that Defendant knew and intended the natural and probable consequences or results of acts they knowingly did. This means that if you find that an ordinary person in Defendant's situation would have naturally realized that certain consequences would result from their actions, then you may find, but you are not required to find, that Defendant did know and did intend that those consequences would result from their actions. This is entirely up to you to decide as the finders of the facts in this case.

### **Prior Statement of Defendant**

The government introduced evidence that the Defendant made a statement to someone. You must decide whether Defendant did in fact make the statement. If you find that Defendant did make

the statement, then you must decide what weight, if any, you feel the statement deserves. In making this decision, you should consider all matters in evidence having to do with the statement, including those concerning Defendant themselves and the circumstances under which the statement was made.

## **Mail Fraud**

The first element that the government must prove beyond a reasonable doubt is that Defendant knowingly devised or willfully participated in a scheme to defraud Metropolitan University of the intangible right of honest services by materially false or fraudulent pretenses, representations or promises.

A "scheme" is merely a plan for accomplishing an object.

"Fraud" is a general term which embraces all the various means by which one person can gain an advantage over another by false representations, suppression of the truth, or deliberate disregard for the truth.

Thus, a "scheme to defraud" is any plan, device, or course of action to deprive another of the intangible right of honest services by means of false or fraudulent pretenses, representations or promises reasonably calculated to deceive persons of average prudence.

In this case, the indictment alleges that the scheme to defraud was carried out by making false or fraudulent statements, representations or claims. The representations which the government charges were made as part of the scheme to defraud are set forth in the indictment. The government is not required to prove every misrepresentation charged in the indictment. It is sufficient if the government proves beyond a reasonable doubt that one or more of the alleged material misrepresentations were made in furtherance of the alleged scheme to defraud. However, you cannot convict the defendant unless all of you agree as to at least one of the material misrepresentations.

A statement, representation, claim is false if it is untrue when made and if the person making the statement, representation, claim or causing it to be made knew it was untrue at the time it was made.

A representation or statement is fraudulent if it was falsely made with the intention to deceive.

In addition, deceitful statements of half-truths or the concealment of material facts or the expression of an opinion not honestly entertained may constitute false or fraudulent statements. The arrangement of the words, or the circumstances in which they are used may convey the false and deceptive appearance.

The deception need not be premised upon spoken or written words alone. If there is deception, the manner in which it is accomplished is immaterial.

The failure to disclose information may constitute a fraudulent representation if the defendant was under a legal, professional or contractual duty to make such a disclosure, the defendant actually knew such disclosure ought to be made, and the defendant failed to make such disclosure with the intent to defraud.

The false or fraudulent representation or failure to disclose must relate to a material fact or matter. A material fact is one which would reasonably be expected to be of concern to a

reasonable and prudent person in relying upon the representation or statement in making a decision, namely, who was admitted into Metropolitan University as a student or students.

This means that if you find that a particular statement of fact was false, you must determine whether that statement was one that a reasonable person might have considered important in making their decision. The same principle applies to fraudulent half-truths or omissions of material facts.

In order to establish a scheme to defraud, the government must also prove that the alleged scheme contemplated depriving another of the intangible right of honest services.

However, the government is not required to prove that Defendant themselves originated the scheme to defraud. Furthermore, it is not necessary that the government prove that Defendant actually realized any gain from the scheme or that any intended victim actually suffered any loss. In this case, it so happens that the government does contend that the proof establishes that persons were defrauded and that (name) profited. Although whether or not the scheme actually succeeded is really not the question, you may consider whether it succeeded in determining whether the scheme existed. If you find that the government has proved beyond a reasonable doubt that the scheme to defraud charged in the indictment did exist and that the defendant knowingly devised or participated in the scheme charged in the indictment, you should then consider the second element.

### **Intentionally**

The offense charged in the indictment requires that the government prove that Defendant acted “with intent” with respect to a certain element of the offense. This means that the government must prove beyond a reasonable doubt either that (1) it was Defendant’s conscious desire or purpose to act in a certain way or to cause a certain result, or that (2) Defendant knew that they were acting in that way or would be practically certain to cause that result.

In deciding whether Defendant acted “with intent”, you may consider evidence about what Defendant said, what Defendant did and failed to do, how Defendant acted, and all the other facts and circumstances shown by the evidence that may prove what was in Defendant’s mind at that time.

### **Mail Fraud - Unanimity Required**

Count One of one of the indictment, charging Defendant with mail fraud, alleges a number of separate schemes or plans to obtain money or property by means of false or fraudulent pretenses, representations, or promises.

The government is not required to prove all of the schemes or plans to obtain money or property by means of false or fraudulent pretenses, representations or promises all of the false or fraudulent pretenses, representations, or promises that are alleged.

However, each of you must agree with each of the other jurors that the same scheme or plan to obtain money or property by means of false or fraudulent pretenses, representations, or promises alleged in Count One was, in fact, employed by Defendant. The jury need not unanimously agree on each scheme or plan, but, in order to convict, must unanimously agree upon at least one such scheme or plan as a scheme or plan that was knowingly used by the defendant.

Unless each of you agrees that the government has proven the same scheme or plan to obtain money or property by means of false or fraudulent pretenses, representations, or promises beyond a reasonable doubt, you must find the defendant not guilty of the mail fraud charged in Count One of the indictment.

### **Mail Fraud – Protected Interests: Honest Services**

A public official or employee owes a duty of honest, faithful and disinterested service to the public and to the government that they serve. The public relies on officials of the government to act for the public interest, not for their own enrichment. A public official who accepts a bribe or a kickback; i.e., something of value in exchange for or as a reward for favorable treatment breaches the duty of honest, faithful, and disinterested service. While outwardly appearing to be exercising independent judgment in their official work, the public official instead has been paid privately for their public conduct. Thus, the public is not receiving the public official's honest and faithful service to which it is entitled.

If you find beyond a reasonable doubt that Defendant has violated the duty to provide honest services as defined here, then you may find the first element of the particular mail fraud count satisfied.

### **Mail or Wire Fraud – “Intent to Defraud” Defined**

The second element that the government must prove beyond a reasonable doubt is that Defendant acted with the specific intent to defraud.

To act with an "intent to defraud" means to act knowingly and with the intention or the purpose to deceive or to cheat.

In considering whether Defendant acted with an intent to defraud, you may consider, among other things, whether Defendant acted with a desire or purpose to bring about some gain or benefit to themselves or someone else or with a desire or purpose to cause some loss to someone.

### **Mail Fraud – “Use of the Mails” Defined**

The third element that the government must prove beyond a reasonable doubt is that in advancing, furthering, or carrying out the scheme, Defendant used the mails, a private and/or commercial interstate carrier, or caused the mails, a private and/or commercial interstate carrier to be used.

The government is not required to prove that Defendant themselves actually mailed anything or that Defendant even intended that the mails would be used to further, or to advance, or to carry out the scheme.

However, the government must prove beyond a reasonable doubt, that the mails, a private and/or commercial interstate carrier, were, in fact, used in some manner to further, or to advance, or to carry out the scheme to defraud. The government must also prove either that Defendant used the mails, or that Defendant knew the use of the mails, private and/or commercial interstate carrier would follow in the ordinary course of business or events, or that Defendant should reasonably have anticipated that the mails would be used.

It is not necessary that the item mailed and/or sent by carrier was itself false or fraudulent or contained any false or fraudulent statement, representation, or promise, or contained any request for money or thing of value.

However, the government must prove beyond a reasonable doubt that the use of the mails, private and/or commercial interstate carrier, in some way furthered, or advanced, or carried out the scheme.

### **Unanimous Verdict; Do Not Consider Punishment; Duty to Deliberate**

Your verdict, whether it is guilty or not guilty, must be unanimous. To find Defendant guilty of an offense, every one of you must agree that the government has overcome the presumption of innocence with evidence that proves each element of that offense beyond a reasonable doubt. To find the Defendant not guilty, every one of you must agree that the government has failed to convince you beyond a reasonable doubt.

If you decide that the government has proved Defendant guilty, then it will be my responsibility to decide what the appropriate punishment should be. You should never consider the possible punishment in reaching your verdict.

Now that all the evidence is in, the arguments are completed, and once I have finished these instructions, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong. But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that--your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience. Listen carefully to what the other jurors have to say, and then decide for yourself if the government has proved the defendant guilty beyond a reasonable doubt.

Once you start deliberating, do not talk, communicate with, or provide any information about this case by any means to the court officials, or to me, or to anyone else except each other. During your deliberations, you may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website to communicate to anyone any information about this case or to conduct any research about this case.

If you have any questions or messages, your foreperson should write them down on a piece of paper, sign them, and then give them to the court official who will give them to me. I will first talk to the lawyers about what you have asked, and I will respond as soon as I can. In the meantime, if possible, continue with your deliberations on some other subject.

### **Verdict Form**

A verdict form has been prepared that you should use to record your verdict.

When you have reached your unanimous verdict, the foreperson should write the verdict on the form and give the form to my courtroom deputy to give to me. If you decide that the government



has proved Defendant guilty of the offense charged beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. If you decide that the government has not proved Defendant guilty of some or all of the offense charged beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF METROPOLITAN**

**UNITED STATES OF AMERICA**

**V.**

**ELLIS KIRWIN**

**INDICTMENT**

**The Grand Jury charges that:**

**COUNT ONE**

At times material to this Indictment:

**1. Defendant Ellis Kirwin was the Dean of Admissions at Metropolitan University, a Metropolitan Public University, a full-time position, and hence a public official.**

**2. Metropolitan University was the State University of Metropolitan.**

Public service is a public trust. The Dean of Admissions of a public university, Ellis Kirwin was an official of the State of Metropolitan, the honest services owed by Defendant to the State, its citizens, and its students, professors, administrators and other workers, included the duties to admit students in a manner that benefitted the public, without choosing to admit any students based on benefits besides Ellis Kirwin's salary.

Beginning on or about June 1, 2018 and continuing thereafter through on or about June 1, 2021, Eliis Kirwin did devise, and intend to devise, a scheme and artifice: (1) to defraud and to deprive the State of Metropolitan, its citizens, and others of their right to honest services; and (2) to obtain money and property by means of false and fraudulent pretenses, representations and promises.

Defendant's scheme or artifice to defraud was a scheme or artifice to deprive Metropolitan University of the intangible right of honest services.

Specifically, Defendant did receive gifts, monies and or services, including but not limited to a country club membership, in exchange for admitting students to Metropolitan University who may not have otherwise been admitted.

Dated: January 9, 2023

ENDORSED AS TRUE BILL

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Jonathan Q. Putnam

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF METROPOLITAN  
UNITED STATES OF AMERICA**

**V.**

**ELLIS KIRWIN**

**JURY VERDICT FORM**

All jurors must agree on the answer to the question. Please indicate your verdict with a check mark.

**COUNT ONE:**

Honest Services Mail Fraud

On the charges of honest services mail fraud, we the jury find the defendant, ELLIS KIRWIN:

Not Guilty \_\_\_\_\_

Guilty \_\_\_\_\_

## STATEMENT OF DEVON MORRIS

My name is Devon Morris. I turned 50 on my last birthday. I live in Metropolitan, and summer in the Hamptons, after living for over 20 years in Los Angeles. I am originally from Metropolitan as well. I went to Metropolitan University and graduated with a degree in marketing. This was way back in the 80s and 90s when it was much easier to get into Metropolitan University. I got my MBA from Metropolitan right away, and then set out for California. I have to say that I was young and ambitious.

I got a job working for a college in their admissions department. It wasn't a perfect way to use my degree but it worked well for a few years. The whole time I was working there, I realized that the real money was not coming from the college. There were all kinds of people, stars, that would pay huge amounts of money to get their kids into college. Now, they never gave me the money. At least not directly. They had these companies, these middlemen, who worked with the kids and colleges to see how the kids could get in. I saw "donations" for new dorm buildings. I saw "donations" of new lecture halls. I saw "donations" to athletic departments. All kinds of ways to get kids into schools.

I made the move into the private sector in the fall of 2000. I spent over 15 years working for Getting U In, a company specializing in getting kids of celebrities into the best universities and colleges on the West Coast. A lot changed in those 15 years. We used to be able to get kids into schools rather easily. And parents paid a lot of money. Sometimes they didn't even need to spend the money. They just felt like they had to. Some of the kids were going to get in already. A new dorm building, or weight room just put their kid over the top. Sometimes, we had to work miracles. And that means a lot of money.

I got into some trouble. There were a lot of perks. Normally, and I should have known this, I would make sure to declare all of the extra things I got from my job. And I did know it, but I got greedy. A new car showed up in my driveway. An invitation to a country club. Initiation fee covered. It was very expensive living in L.A. and these things helped me to maintain a certain lifestyle. Things changed right about 2015. The IRS came snooping around. They had me, and there really wasn't much I could do about it. I made a deal with the IRS that I would pay back all of the money in installments. I made a deal with the state that I would relinquish my license and leave the state.

That's when I came back to Metropolitan. The climate had changed. Metropolitan University went from this typical small private school to a prestigious university with a waiting list. They went from a few buildings on the highway to an amazing school with a downtown, a Metropolitan Avenue District. Their engineering school is phenomenal. They were in talks to form a medical school. I am not sure if they had a vet school yet, but they were headed that way. I found it to be a very competitive situation, and with it being so competitive, I realized that I could jump in with both feet.

I started We Get You In in the fall of 2016. I didn't work exclusively with Metropolitan University, but there was no doubt that it was going to be my biggest prize school. I found that being so close to New York, the Wall Street types and celebrities were willing to spend a lot of money to get their kids in. It was headed in the direction of being on scale with the best schools on the East Coast. And people were willing to pay.

43 I first came into contact with Ellis Kirwin in the winter of 2016-2017. I am not sure if it was  
44 before or after the winter holidays. Kirwin had been with the university for a year or two as  
45 Dean of Admissions. I am not quite sure, since I was not in the state, whether Kirwin had  
46 worked in some other capacity with the university before this job. Our first meeting was  
47 cordial. I introduced myself. Ellis seemed to me to be a no-nonsense type of person. I made  
48 small talk, trying to gauge any type of shared interests. I was looking for some sort of “in.” I  
49 couldn’t really find any.

50 That changed in the summer of 2018. I saw that Ellis was really interested in golf and had won a  
51 local golf tournament. At that point, the wheels started to spin. I saw an opportunity to help  
52 some of my clients. I pulled some strings and got Ellis an interview at the prestigious  
53 Metropolitan Links Country Club. This was done through my Hamptons neighbor, Frankie  
54 Solari. Unbeknownst to Ellis, the interview was a formality. I got Ellis into the club, at the front  
55 of a huge waiting list, with the initiation fee waived. I used the old trick of telling Ellis that they  
56 were a “legacy” since the old uncle of the Kirwins had helped to found the club. The truth is, no  
57 one at the club ever wanted Ellis as a member before I got involved. I personally next-day  
58 mailed him the congratulatory letter from the club. This gave me an in with Ellis.

59 I started to help my clients directly with getting into Metropolitan University, working directly  
60 with Ellis. I would direct clients to make sizable donations to the university, usually to the  
61 athletic department. I would take some money for myself, since I was the go-between. I would  
62 also take a large portion of the money, sometimes totaling thousands of dollars, and would divert  
63 that money to a crypto account. Only Ellis and I had access to this account. I never asked Ellis  
64 what the money was to be used for. I did notice that Ellis had a nice car, as well as a nice boat.

65 This went on for a few years. Ellis disappeared for a few months in the fall of 2019. From what  
66 I understand, Ellis went on sabbatical. I never knew where they went. When they got back, we  
67 didn’t interact as often for a few months. I didn’t question it much since it was during a down  
68 period in the admissions process. By the late spring of 2020, the arrangement was back in full  
69 swing. In fact, more and more money was being put into this crypto wallet than ever before. In  
70 one of our conversations, though we didn’t really have a personal relationship, Ellis told me that  
71 they had beaten cancer “at great cost.” I didn’t really care to follow up. In all, more than  
72 \$100,000 was put into the crypto wallet. In the late spring of 2021, I attempted to access the  
73 account to check on the currency. It was wiped clean. That’s when I got word that Ellis had  
74 resigned from the position.

75 I didn’t press the issue with Ellis or attempt to confront them. It was Ellis’ money. We had a  
76 good thing going. I was making money. Ellis was making money. The school was getting  
77 weight rooms and new tennis courts. Maybe a dorm building. I was supplying lists of “willing”  
78 alumni donors. I was upset that I had to start fresh with a new person at the helm of the  
79 admissions department, Jean Cote. Then Frankie and Aidan Kelly resigned. It was a wake-up  
80 call, for sure.

81 I was approached by Amari Simpson from the U.S. Attorney’s Office for the State of  
82 Metropolitan in late summer of 2021. I knew that with my record, as well as my actions, that I  
83 wouldn’t really stand a chance in court since I hadn’t reported any of the extra income. The  
84 court of public opinion would have had a field day with me. I decided that my best course of  
85 action would be to give Simpson every bit of information that I could. I got a sense that I wasn’t  
86 the big catch, though. It seemed that Simpson was after the parents and the university. I decided

87 to detail all of the money that I had given to Ellis Kirwin. Sure, I had made a lot of money,  
88 too. But Ellis was living too well above their pay grade. Ellis was bound to get caught. I am  
89 currently awaiting sentencing. As a part of that plea, I have agreed to testify truthfully against  
90 Ellis Kirwin.

91

92 Dated: June 5, 2022

## STATEMENT OF AMARI SIMPSON

My name is Amari Simpson. I am the lead investigator, U.S. Attorney's Office for the State of Metropolitan, in the Fraud Division. I have been with the Fraud Division since 2015. I was elevated to lead investigator in 2020 at the height of the pandemic. When I was promoted, it surprised a lot of people since I was rather young at the time. I was only 27 years old. I had graduated from Linwood University, just outside of Metropolitan, in 2014. Truth be told, I had wanted to go to Metropolitan University for their excellent forensic engineering department, but was not accepted. I did well at Linwood, though. I guess my name didn't hold much power or influence. At least not then.

I received a phone call from Jean Cote, the new Dean of Admissions at Metropolitan University on Monday, September 13, 2021. At that time, Jean Cote told me of a phone conversation they had with Devon Morris the previous Friday. This was a name that I knew. Morris was a loudmouth, but also very successful. Morris was, from what I could tell at the time, the sole owner and employee of We Get You In, a company specializing in getting rich kids into college. I had never had a reason to investigate Morris before, so this was a new inquiry. I asked for permission to interview Jean Cote in their office. It was granted, and I arrived at around noon the next day.

At this time, there seemed to be no information that I had that pointed to Ellis Kirwin being involved in any criminal activity. Cote told me about some irregularities involving the college essays. I informed Cote that I wasn't really equipped, or had much interest, in investigating artificial intelligence issues with college essays. I became more intrigued when Cote gave me more information about their phone conversation with Devon Morris from the previous week. I believe that was the first time that I had any inkling that Ellis Kirwin might have been involved in a scheme to enrich themselves. My first instinct was to investigate any possible embezzlement that Kirwin might have been involved in. Was Kirwin stealing money from the university? Like I said, that was my first gut instinct. I had very little contact information for Ellis Kirwin. Their tenure ended abruptly, and people said that Kirwin vanished like the wind.

Because of Jean Cote's insistence, I did call the phone number listed and asked to interview Devon Morris. I found it interesting that Morris answered the phone. This was a one-person operation, which surprised me since there seemed, on the surface, to be a lot of money exchanging hands in this type of business. I met in person with Morris on September 15, 2021.

When I first sat down with Devon Morris, the conversation turned quickly from artificial intelligence to the amount of money that wealthy people were willing to pay in order to get their kids into college. Morris seemed to be doing really well financially. Upon asking about the phone conversation between Morris and Kirwin, Morris suddenly got very defensive. I asked Morris what was meant by an "arrangement" that might have existed between Morris and Kirwin. The response that Morris gave was, "That was between me and Ellis Kirwin." Morris refused to talk after that.

This conversation piqued my interest. I attempted to find Ellis Kirwin. It took some time, but I was able to surmise that Ellis Kirwin had left the country. Apparently, Kirwin had left the country shortly after abruptly leaving the university. It was at this time that I began to investigate the financial relationship between Kirwin and Morris.



43 My investigation uncovered a financial scheme involving improper payments made to Ellis  
44 Kirwin over a three-year period. This activity occurred between the summer of 2018 until  
45 Kirwin's departure from the university in June of 2021. Devon Morris would direct clients,  
46 specifically wealthy clients who wished to have their children accepted into the university, to  
47 donate large sums of money to the university. This money would be in the guise of endowments  
48 for new buildings or other projects. Devon Morris, after extensive interviews over a three-month  
49 period, alerted me to the scheme. Morris would act as the intermediary for the donation, and  
50 would skim a prearranged sum of money from the donation and convert to a secret crypto  
51 account. Only Ellis Kirwin would have access to the account.

52 I also found out that Davonia, the location that Ellis Kirwin retreated to after resigning, is well  
53 known for offshore and unmonitored crypto accounts. The crypto account used for these illegal  
54 activities had been wiped clean shortly before Kirwin resigned and left the country. The  
55 implication that Kirwin left the country to seek medical treatment could not be corroborated. I  
56 believe that Kirwin fabricated this story to hide the money. To me, this was a "smoking gun."

57 In order to conceal this illegal activity, Devon Morris would ensure that the school would be  
58 given a list of phone numbers of wealthy alumni. We cannot corroborate that these were  
59 legitimate phone numbers. These "alumni" would be called during fundraising drives, typically  
60 conducted by current students. Donations from this alumni list would be used to "grease the  
61 wheels" as well as divert attention away from the covert arrangement between Morris and  
62 Kirwin. It is my understanding that much of this money was used by the athletic and admissions  
63 departments for new furniture and other amenities.

64 The most important decision that I had to make was whether to go after Morris or Kirwin  
65 first. When Morris copped to the charges first and agreed to testify, I realized that Kirwin was  
66 the real target here. As an employee of the university, and a supposed trusted member of the  
67 community, Kirwin was a true scoundrel. I know that they claim that the money comes from  
68 decades of frugal living, coupled with a family fortune, but the more recent windfall of spending  
69 signals something sinister. I didn't know how Kirwin could live with themselves blaming their  
70 former superiors at the university. Devon Morris saw an opening and Kirwin took the  
71 bait. When you lay down with dogs, you get fleas.

72 Dated: June 2, 2022

## STATEMENT OF JEAN COTE

My name is Jean Cote. I currently am the Dean of Admissions at Metropolitan University. After a nationwide search in the wake of the resignation of the previous Dean of Admissions, Ellis Kirwin, I was hired for the position. I didn't quite understand why Ellis had resigned. No one seemed to understand the circumstances around it. The place seemed to be running smoothly, almost too perfectly. I didn't really have to change anything with the office dynamic or process. I had previously served in the same position at Metropolitan A&M. This was a big step up but, I always felt that I could handle this jump. After my hiring, I overheard one of my staff saying that Devon Morris played a role in my hiring. I did not know Devon Morris, and responded as such.

I started to notice something as we got closer to the beginning of the 2021 fall term. By that point, our focus had obviously turned to the 2022 graduating high school seniors. The early enrollment period began September 1, 2021. I made it a point, and I know that Ellis Kirwin had not done this, to read a large number of essays written by prospective students. I would estimate that I read close to 500 essays in the first few weeks. I didn't want to just leave the essays to the other members of my staff. I wanted to be involved. I got the sense from the other staff members that Kirwin would be involved in the final decisions, without having a real reason or rhyme to the process. The staff told me that they often joked that they could tell who was going to get in by just looking at the last name of the applicant. In fact, I did see that many current students' parents had made generous donations.

I began to notice a pattern with the essays. The essays were all quite similar in their nature. They weren't innovative, creative or unique. I decided to investigate further. The students whose essays shared similar characteristics all seemed to stem from the same stable of clientele. They were children from wealthy families. Their family names were the Who's Who of names near Metropolitan. They also shared one other characteristic...they were all clients of Devon Morris. There was no need for applications to have any reference to an application service. Yet these were applications with Devon Morris' own name emblazoned on the cover page.

I had seen Artificial Intelligence (AI) used before in regard to essays. Back when I was younger, there were always stories of students getting other students to take their standardized tests. However, I had never seen it in such blatant fashion as these essays. Their length was similar. Their structure was similar. Their stories were similar. There was very little, if any, personal touch to the essays. I called Devon Morris on September 10, 2021 to get some clarification.

Devon Morris is not a person that I wish to associate with. Morris told me that these students were going to get into the university at any cost. It almost seemed that the decisions were already made without my input. Mind you, I am the Dean of Admissions. Morris told me that they had a certain arrangement with Ellis Kirwin, and that I should continue with this arrangement. I told Morris that I didn't want to know anything about any previous relationship with my predecessor. I broke off all communication. When I told some of my staff about this interaction, they seemed surprised that I would cut it off. I am not sure why they were upset. I guess I didn't realize how deep the money went. The new office furniture. The new computers. Expensive retreats at fancy resorts. These people were living it up.

44 At this point, I was worried that I might be caught up in something unseemly. The university  
45 was already in a state of flux. The President and Athletic Director had both retired abruptly right  
46 before the fall semester. Both of their retirements were effective immediately. After speaking  
47 with my lawyer and family members, I called the U.S. Attorney's Office for the State of  
48 Metropolitan in order to make them aware of some suspicions that I had. I was connected with  
49 Amari Simpson, with the Fraud Division.

50 I am sticking it out with Metropolitan University. This whole scandal has hit hard, but I think  
51 the path that the university was on before Devon Morris and Ellis Kirwin is a lot brighter than  
52 the shame they have brought. We are still ranked as one of the best research universities on the  
53 East Coast. And our campus is wonderful, even if donations are down significantly. Bright  
54 times are ahead for Metropolitan University.

55

56 Dated: June 19, 2022

## STATEMENT OF ELLIS KIRWIN

My name is Ellis Kirwin. I am 56 years old. I have no dependents. The first thing that I want to say is that I am not a criminal. I never did anything that Amari Simpson, and especially Devon Morris, say that I did. I never had any arrangement with Devon Morris. Morris is only saying this to save their own reputation. Like they have any reputation to save.

I was the Dean of Admissions at Metropolitan University from 2015 until my departure in 2021. I think it is important to start with my arrival at Metropolitan University. I had spent over a decade at a leading university on the West Coast. I don't want to drag that university through the mud, so I won't mention its name. You can probably just Google my name to find out. I had a sparkling reputation. I had numerous recommendations from colleges all across the region. I don't want to say that my interview process was a slam dunk, but Metropolitan University hired the right person. I got the feeling that there were people in my department that were upset that an outside person was hired. It took a few years for me to win them over.

My tenure coincided with Metropolitan University's rise from a rather small regional university, to a nationwide, competitive university that ranks highly in multiple disciplines. My mission statement as Dean of Admissions was, "Accept the Best, Expect the Best." I only wanted to consider for acceptance top-tier, academically driven applicants. I stressed to the members of my department that they had the autonomy to be the initial step in the process. I had trust in them. I would be the person to come in after the initial phase had begun. There were obviously applicants that were going to get in. They had the grades. They had the recommendations. They had the extracurricular activities. They volunteered in the community. These were all the things that the university was looking for. Sure, some of them had names that the community knew. But I never made a decision because of a name. They had to be the right fit. We wanted to bring elite students, and student-athletes, onto campus.

I first met Devon Morris at the university's 2016 Winter Reception. It was my second year at the university. I had heard that Devon Morris was back in Metropolitan. Though we had run in similar circles on the West Coast, I had never met Morris. I got the initial feeling that Morris knew me. I can say with almost certainty that I did not personally know Devon Morris before this meeting. We did have some mutual people that we both knew. I was not aware of Morris' previous criminal activity in California. Had I known, I would have stayed away.

I did notice an uptick in We Get You In clients getting into the university. I want to stress that, while I was the Dean of Admissions, I did not have final say on who got into the university. That final decision ultimately was in the hands of Aidan Kelly, the President of the university. I guess you could say that only President Kelly had the authority to override my decision. I guess the Board of Regents could as well, but it never got to that point. In all too often circumstances, Frankie Solari, the Director of Athletics, might have held some sway. There were a few times that Solari would pull the "we need this one here" card. I almost always acquiesced, simply because the student was already qualified. I never would have brought someone onto campus that wasn't qualified. I just checked the box.

Devon Morris was a constant on the campus. Constantly in my offices. I saw Morris at sporting events. I seem to remember seeing Morris a lot at receptions for the President. I was never approached directly in person by Morris, but I did answer some phone calls. Also, Devon Morris would send me letters. I don't know why Morris sent me copies of applications. They were just

the same materials Morris sent, addressed, appropriately, to the admissions department. To be honest, most of our conversations were professional in nature. The only off-site contact was when I played golf with Morris at the country club on occasion. I had gained membership in September, 2018. I gave Morris insight on what type of student the university was looking for. I gave some suggestions on the application process itself. I gave some insight on essay writing for the students. None of this information would have been any different from the countless times I visited local high schools. If any prospective student asked for advice, I gave said advice from my years of expertise.

In the fall of 2019 I was forced to take a leave of absence. I was diagnosed with a rare form of cancer, one that did not have any effective course of treatment in the United States. I told absolutely no one at the university of my condition. From my travels, I was always thinking of relocating to Davonia, a small island nation. Though small, it had excellent medical facilities. I received experimental treatment for my cancer during this time. It worked initially, and I went back to work. In the spring of 2021, I started to feel the same symptoms that I had a few years prior. This was the impetus for my resignation in June.

I know people want to talk about my departure from the university. I had spent over 30 years in the business, with over 15 years in a high-stress position. Five years at Metropolitan University. My relationship with President Kelly had deteriorated to a point that I could not coexist. I deeply believed that Kelly was in Devon Morris' pocket. Though I was a few months short of retirement age, I decided that I wanted to do other things in life. I had a nice home. I had a nice car. I had a nice boat. I had been very wise in putting money away. I led a pretty frugal life up to that point. I also believed that I was in line for a very large inheritance. My uncle, I was being told, was leaving a substantial amount of money to his nieces and nephews. Well into six figures for each of us. It was time to go. Since I didn't have family, why shouldn't I make a clean break and travel the world?

I obviously deny all allegations made by Devon Morris. I have no idea why Morris is pointing the finger at me. My only thought is that Morris got caught with their hand in the cookie jar, and I was an easy scapegoat. The authorities should really be looking at Frankie Solari and Aidan Kelly. Or better yet, maybe Devon Morris has all of the money. How else could they afford a house in the Hamptons?

Dated: April 1, 2023

## STATEMENT OF OLA TANG

My name is Ola Tang. After graduating from college, Metropolitan Tech, I became an accountant with Foreman, Lucas and Associates accounting firm. It was a business started by my spouse's uncle. I worked for the family business for seven years. Starting in 2015, I worked in the Accounting Office at Metropolitan University. That is, I used to work there. I was let go from that position in a "restructuring" in the fall of 2021. At least that was the official reason. I did not have a good relationship with Jean Cote, the new Dean of Admissions. I always felt that Cote was a scoundrel. I still do. I also did not have a good working relationship with Frankie Solari. That had more to do with the fact that Metropolitan University was moving from a Division II school for athletics to Division I. I did not believe that the university had the resources to make this jump. Because I was not afraid to let both know this, I was let go.

In full transparency, I am Ellis Kirwin's cousin. Actually cousin by marriage. I married into the Kirwin family. It's a very wealthy family, and the patriarch of the family, my spouse's uncle, is going to leave a substantial amount of the family fortune to my spouse and the other cousins. I can't say that I have interacted socially much with Ellis over the years. Ellis is a very private person. I was approached by Ellis after the accusations were made. This was before the arrest. Since I did most of the taxes for the Kirwin family, I had full access to Ellis' financial records, and tax statements for the years 2015-2021. I personally prepared those taxes. There was absolutely nothing in those years that would suggest that Ellis Kirwin was doing anything improper. I could account for every cent that Ellis earned and spent. Ellis was frugal, and never spent above their means. The salary package from Metropolitan University that Ellis received was generous. Though I don't have any other numbers to compare it to, I would think that Ellis would have no problem affording the lifestyle they lived. Again, though, I don't know what Deans of Admissions make at other schools.

I had a fantastic vantage point at the university. This wasn't just in the physical location of my department and office, but also as a person who saw a lot of money move from side to side on ledger sheets. I saw Devon Morris come into the offices on a regular basis. I never interacted professionally with Morris, though I did socialize when we played golf at Metropolitan Links Country Club.

Morris would meet with Frankie Solari and Aidan Kelly on many occasions at the university offices. These meetings always occurred behind closed doors. I also saw Morris and Ellis meet, but these meetings always seemed professional to me. It was in the open, most often in the common areas. Ellis always seemed proud of the new office furniture and accommodations. Even after Ellis left, I saw Morris and Jean Cote meet as well. I always wondered how Devon Morris had such easy access to the university.

It was amazing how much money was coming into the university from anonymous donors. The school got new buildings, opened up new schools of study. We built a new downtown area, with restaurants and retail stores. It all seemed to be happening too fast. The school was also, as I said before, making the jump to Division I in many sports. With each new year, more and more money was being donated. I had the nerve to ask for a raise once and was denied. And, yet I was still being asked to oversee how the donations were allocated within the school.

I have since gone back to the family business. While my previous job at the firm was to do tax and new business client preparation, during the 2020 calendar year, I took online classes and

became accredited by the American Forensic Accountant Society as a CFE (certified forensic accountant). As a CFE, my main responsibility is to investigate accusations related to fraud and other financial crimes. I have investigated one case in my new role, writing an expert report, and would have testified as an expert in this case. The case involved a state representative who was accused of accepting bribes in exchange for the building of a new hospital. It was well publicized, though my services in court were not needed since a plea deal was arranged. Ironically, I did not find any impropriety in the financial dealings and would have testified to that.

I am looking forward to Ellis being exonerated in this case. I don't believe that Ellis did anything wrong here, except get tangled in a web of deceit perpetrated by Devon Morris, and the former leaders of Metropolitan University. I never liked Morris, and it seems that anything they touch turns to black and white stripes.

Dated: May 1, 2023



## STATEMENT OF BRIGHTON KERSHNER

My name is Brighton Kershner. I am 22 years old. I come from a long line of Kershners in Metropolitan. I attended Metropolitan Academy for private school. That was 1<sup>st</sup> through 12<sup>th</sup> grades, boarding the last six years. My parents were both distinguished members of the community. Unfortunately, they both passed away when I was in my senior, and final, year at the academy. It was a difficult time, and I have never fully been the same since, though I know I have matured a lot since then.

At the beginning of my last year, September 2018, I applied to Metropolitan University. This was a few months before my parents passed. My record at Metropolitan Academy was not stellar. I didn't really have a lot of extracurricular activities. I was pretty much a spoiled brat. My parents expected me to go to Metropolitan University. They both attended. That was way back when the university was still small. Now, it has become prestigious and competitive. I guess I thought that with my name and parents' money, I'd get in easily.

Devon Morris worked with me on my application. I always got the feeling that Morris only cared for the money, not about helping kids. But my family had a lot of money, so I guess I am not one to talk. Anyway, my application was pretty much a joke. My parents gave all kinds of money to Morris, and I didn't even have to write the essay or fill out any of the forms. My parents, I presumed, would also donate a new wing to the library or something.

The only thing standing in my way of getting in seemed to be Ellis Kirwin. I remember the first time where my admittance was in jeopardy. I got a phone call from Devon Morris stating that there was an admissions director who had some reservations with my application. This was right at the time that my parents had their accident. There were a lot of people coming up to me and talking about money. They were coming out of the woodwork. I didn't really process the whole rejection thing since there was too much going on.

I know that Devon Morris made it happen, though. There was a new weight room named in my parents' honor. Morris worked that out with the Athletic Director, Frankie Solari. Devon Morris got a new house in the Hamptons from the deal, too. It was a win-win for those people.

I never quite fit in at Metropolitan University. Ironically, the one person who helped me the most was Ellis Kirwin. I befriended Ellis at the end of my freshman year. I noticed the name tag at some dedication ceremony, and wanted to talk. Upon reflection, I started to question the hangers-on and my lifestyle. I had done a lot of growing up. I didn't want to be seen as just a trust-fund kid. I started by introducing myself. Ellis seemed quite surprised that I wanted to talk, almost like I was going to be confrontational. I actually wanted to thank Ellis for helping me get into Metropolitan University. I wasn't a good prospect for the university. I knew my money and name got me in, probably in that order.

Ellis seemed genuinely interested in helping me out. After many talks, Ellis helped me transfer to a school on the West Coast. Ellis even handled all of the financial details with my family accountant. I didn't have to worry about anything. The school was great fit. I am now working towards an M.S. in marine biology. I have an internship lined up at the Woods Hole Oceanographic Institution in Falmouth. I will study migration patterns of whales under the acclaimed Dr. G. Costanza.

42 When I heard that Ellis Kirwin had been accused of taking bribes by Devon Morris and the state,  
43 I knew I had to be a witness. Ellis Kirwin is a true professional. Devon Morris, on the other  
44 hand, didn't care one bit about helping people. Morris was more interested in helping their  
45 wallet. I'm not surprised that the President and Athletic Director resigned right before the  
46 charges were announced. To me, they seemed in on it, too.

47 I can confidently say that Ellis Kirwin is honest and trustworthy. I also know Ellis Kirwin to  
48 have a reputation for being honest and trustworthy in the community.

49

50

51 Dated: May 29, 2023

**JOINT EXHIBIT A**  
**(Redacted from Prior Conviction)**

Plea Agreement of: Devon Morris

Crime: Mail Fraud

Degree: 4th

Potential incarceration: 5 years imprisonment

Potential fine: \$100,000.00

Did you commit the offense(s) to which you are pleading guilty? **Yes**

Do you understand that by pleading guilty you are giving up certain rights?

Among them are:

- a) The right to a jury trial in which the State must prove you guilty beyond a reasonable doubt? **Yes**
- b) The right to remain silent? **Yes**
- c) The right to confront the witnesses against you? **Yes**

List any charges the prosecutor has agreed to dismiss: **4th degree Soliciting Bribe**

Specify any sentence the prosecutor has agreed to recommend: **Three years incarceration and \$100,000.00 fine. However, the Prosecutor will take into account any truthful testimony given against Ellis Kirwin, which may reduce the penalties, but shall not reduce said penalties below the minimum, consisting of one year of probation, with a fine of \$300.00.**

Do you understand that if you are a public office holder or employee, you can be required to forfeit your office or job by virtue of your plea of guilty, and be barred from future public service? **Yes**

Have any promises other than those mentioned on this form, or any threats, been made in order to cause you to plead guilty? **No**

**JOINT EXHIBIT B**  
**(Redacted)**

September 23, 2019

Aidan Kelly, President, Metropolitan University

Aidan:

I wish that I could speak to you in person, instead of sending a letter, but I do not want either of us to get upset and say something we will later regret. I am sick and tired of the pressure, unnecessary, you understand, from this position I have been honored with, serving the great state of Metropolitan and its crown jewel.

I want you to write what my options would be if I were to take a leave of absence. I am unsure for how long, but, as General Douglas MacArthur famously said, "I shall return!" And I will continue to see that every student at this fine university has been admitted based on merit, as well as on creating the best possible learning environment. Period.

I look forward to your reply.

Sincerely,

Ellis

## 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](http://www.njsbf.org)**.



# 2023-2024 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
<b>Opening Statements</b>				
<b>Prosecution/Plaintiff's First Witness</b>				
Witness Performance — Direct Examination:				
Witness Performance — Cross Examination:				
Attorney — Direct Examination:				
Attorney — Cross Examination:				
<b>Prosecution/Plaintiff's Second Witness</b>				
Witness Performance — Direct Examination:				
Witness Performance — Cross Examination:				
Attorney — Direct Examination:				
Attorney — Cross Examination:				
<b>Prosecution/Plaintiff's Third Witness</b>				
Witness Performance — Direct Examination:				
Witness Performance — Cross Examination:				
Attorney — Direct Examination:				
Attorney — Cross Examination:				
<b>Column Subtotals:</b>				

*(Continued on next page.)*

# 2023-2024 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
<b>Defense's First Witness</b>				
Witness Performance — Direct Examination:				
Witness Performance — Cross Examination:				
Attorney — Direct Examination:				
Attorney — Cross Examination:				
<b>Defense's Second Witness</b>				
Witness Performance — Direct Examination:				
Witness Performance — Cross Examination:				
Attorney — Direct Examination:				
Attorney — Cross Examination:				
<b>Defense's Third Witness</b>				
Witness Performance — Direct Examination:				
Witness Performance — Cross Examination:				
Attorney — Direct Examination:				
Attorney — Cross Examination:				
<b>Closing Arguments</b>				
<b>Overall Team Performance*</b>				
<b>Column Subtotals:</b>				
<b>Subtotals from preceding page</b>				
<b>Column Totals</b>				

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 or home schools): Superintendent(s)/ School Governing Bodies/ Head of Home School  
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 or Head of Home School

\_\_\_\_\_, 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](mailto:sboro@njsbf.org).**

**CONFIDENTIAL**  
**Vincent J. Apruzzese High School Mock Trial Competition**  
**Request for Accommodation for Extra Time During Competitions**

School: \_\_\_\_\_

County: \_\_\_\_\_

**Submit To: Mock Trial County Coordinator, after all three sections have been completed and signed.**

**Please Note:** The information contained in this request is for the purpose of the Mock Trial Competition only, and should remain with the County Coordinator, and only shared in a confidential manner with the opposing team's teacher-coach, the presiding judge for each trial, and any other official associated with the Mock Trial Competition that requires the information to implement this request. Every effort should be made to maintain and respect the confidentiality of the student.

**I. Teacher-Coach Request**

I, \_\_\_\_\_, am submitting a request for  
(print name)

additional time, as explained below, for the student named below during each trial competition in which the student competes, either as an attorney or witness.

Student Name (print name): \_\_\_\_\_

Teacher-Coach Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Specify the role this student will play and the amount of additional time requested. See Mock Trial Rule 2:9 regarding time limits. (Attach additional page.)**

**II. Parent/Guardian Request/Permission**

I, \_\_\_\_\_, am the parent or legal guardian of the student  
(print name)

named above. On the student's behalf I am submitting this request for additional time, as requested by the teacher-coach, for the student to complete their role as attorney or witness in the Mock Trial Competition each time they compete.

By signing below, I am requesting that the Mock Trial Teacher-Coach and the student's school provide any information necessary to implement this request, and I give permission for that information to be provided to the Mock Trial County Coordinator.

I further give permission for the Mock Trial County Coordinator to provide information, in a confidential manner, to the opposing team's teacher-coach, the presiding judge for each trial, and any other official associated with the Mock Trial Competition that requires the information to implement this request.

Parent/Guardian Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**III. Special Education Supervisor/Child Study Team Member/Guidance Counselor Certification**

I, \_\_\_\_\_, certify that the above student  
(print name)

has an IEP and/or 504, and should be accommodated with extra time during Mock Trial Competitions, as requested by the teacher-coach in Part I.

Supervisor/CST Member/Counselor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## 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 made possible by the IOLTA Fund of the Bar of New Jersey. **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.



LinkedIn YouTube



### 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 diversity and inclusion newsletter for middle and high school students

**SPEAKERS BUREAU** volunteer attorney speakers cover more than 30 law-related topics

*Our Law Fair and Law Adventure Competitions help to fulfill the 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

### ANTI-BIAS TRAINING FOR EDUCATORS (virtual, in-person and for individual schools and districts)

**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](http://njsbf.org). Some publications are available in alternate formats, including Spanish, Braille and audio.

## 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**

**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

**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.

**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 (6th edition)** helps individuals with disabilities and their advocates understand their legal rights.

**DOMESTIC VIOLENCE: THE LAW AND YOU (4th edition)** 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 (3rd 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 (4th edition)** 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.



New Jersey State Bar Foundation  
New Jersey Law Center  
One Constitution Square  
New Brunswick, NJ 08901-1520  
732-249-5000  
[njsbf.org](http://njsbf.org)