

New York State 2015 High School Mock Trial Tournament Materials

*Morningside Heights
Booster Club, Inc.*

v.

Casey Cheatham

*Materials prepared by the Law, Youth & Citizenship Program
of the New York State Bar Association
Supported by The New York Bar Foundation*

Law, Youth and Citizenship
New York State Bar Association®





2014 New York State Bar Association High School Mock Trial Champions

WILLIAM FLOYD HIGH SCHOOL

Team Members

Kelsey Barnett
Shannon Beattie
Julianna Bona
A.G. Chancellor
Carolina Fuentes
Jonathon Gilbert
Taylor-Marie Hausser
Vianna Iorio
Vincent Kappel
Numaira Khan
Umar Khan
Emma van Nieuwenhuizen
Ezekiel Torres
Gabriel Stellato

Faculty Advisor

William Hennessy

Legal Advisors

Keri Joeckel, Esq.
George Della Ratta, Esq.
Stephanie Suarez, Esq.

With The **Honorable Susan Phillips Read**
Associate Judge of the Court of Appeals – May 20, 2014



Love Mock Trial?

Get your application in early for the
Mock Trial Summer Institute

July 12-17, 2015
Silver Bay YMCA
Lake George, NY

More details about MTSI are available online at

www.nysba.org/mtsi

or contact Kim Francis at kfrancis@nysba.org

2014-2015 Mock Trial Case Materials

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Letter from the Chair

November 19, 2014

Dear Mock Trial Students, Teacher-Coaches and Attorney-Advisors:

Thank you for participating in the 2014-2015 New York State High School Mock Trial Tournament. The tournament is now entering its 34th year. Thanks to the continued financial and logistical support from the New York Bar Foundation and the New York State Bar Association, New York State continues to have one of the largest and longest running high school mock trial programs in the nation. Equally important to the success of the program is the continued support of the numerous local bar associations across the state that sponsor mock trial tournaments in their counties and the County Coordinators who spend many hours managing the local tournaments. We are grateful to the teacher-coaches and attorney advisors who give their time, dedication and commitment to the program. And finally, our special thanks to the students who devote their time and energy in preparing for the tournament. Every year, we are amazed at the level of skill and talent the students bring to the courtrooms. Congratulations to the 2013-2014 NYS Tournament Champion, William Floyd High School, who turned in a winning performance last May at the State Finals here in Albany.

Please take the time to carefully review all of the enclosed mock trial tournament information. The Simplified Rules of Evidence and the General Tournament Rules should be studied carefully. Please pay special attention to the information regarding the timing, redaction of evidence and constructive sequestration of witnesses. This year's case is ***Morningside Heights Booster Club, Inc. v. Casey Cheatham***. In this civil case, the Booster Club hosted a Fun Fair to raise money for funding some of the school's extracurricular activities, which were being eliminated due to budget cuts. Casey Cheatham was assigned the responsibility of collecting the money raised from the ride tickets and games-of-chance at the Fun Fair. Casey Cheatham is accused of stealing from those specific funds in order to pay for expensive purchases and support his/her gambling habit.

The mock trial program is, first and foremost, an educational program designed to teach high school students basic trial skills. Students learn how to conduct direct and cross examinations, how to present opening and closing statements, how to think on their feet and learn the dynamics of a courtroom. Students will also learn how to analyze legal issues and apply the law to the facts of the case. Second, but equally important, is that participation in mock trial will teach the students professionalism. Students learn ethics, civility, and how to be ardent but courteous advocates for their clients. Good sportsmanship and respect for all participants are central to the competition. We thank the teachers, coaches, advisors, and judges, not only for the skills that they teach, but for the example of professionalism and good sportsmanship they model for the students throughout the tournament.

We remind the teams that all participants (students, teachers, attorneys, parents and all spectators) must conduct themselves with the utmost respect and civility toward the judge, before, during and after each round. If there is a circumstance in which any participant

does not abide by this standard, a referral will be made to the LYC Mock Trial Subcommittee to consider appropriate sanctioning.

Please be sure to encourage your students to consider participating in the Mock Trial Summer Institute. MTSI is scheduled for July 12-17, 2015 at the Silver Bay YMCA on the shores of beautiful Lake George. If you have not had a student attend MTSI, now is the time! The students who return from MTSI become the team leaders of tomorrow and an inspiration to the rest of the team. Having a student or two attend MTSI will give you a definite leg up as you start the tournament season next year.

The tournament finals will be held in Albany on May 18 and 19, 2015. As in years past, the regional winners in each of the eight regions will be invited to participate in the semi-finals, and two of the teams will advance to the final round the next day. The New York Bar Foundation is generously supporting the tournament again this year and will fund the teams' room and board for the state tournament. More details will be available closer to the date of the tournament.

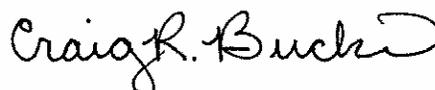
This year's Mock Trial Tournament materials will be posted on the Law, Youth and Citizenship website, www.lycny.org, and there will be frequent updates to the Facebook and Twitter pages (NYS Mock Trial and Mock Trial Summer Institute and @NYSMockTrial). We are also on Pinterest, where our "pin" is nyciviced. Alternatively, you can look for us on Pinterest's Mock Trial boards.

We trust you will enjoy working on this year's case. Best wishes to all of you for a successful and challenging mock trial tournament.

Sincerely,



Hon. Jonah Triebwasser, Red Hook
Chair, Committee on Law, Youth and
Citizenship



Craig R. Bucki, Esq., Buffalo
Chair, Mock Trial Subcommittee

Subcommittee Members:

- Melissa Ryan Clark, Esq., New York City
- Christine E. Daly, Esq., Chappaqua
- Chaya Gourarie, Esq., New York City
- Eugenia Brennan Heslin, Esq., Poughkeepsie
- Seth F. Gilbertson, Esq., Albany
- Stuart E. Kahan, Esq., White Plains
- John Owens, Jr., Esq., Bronx
- Susan Katz Richman, Esq., Hempstead
- Lynn Boepple Su, Esq., Old Tappan
- Oliver C. Young, Esq., Buffalo

STANDARDS OF CIVILITY

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

Hon. Judith S. Kaye, Former Chief Judge of the State of New York

The following standards apply to all participants in the Mock Trial Tournament, including students, teachers, attorneys, and parents/guardians:

1. Lawyers should be courteous and civil in all professional dealings with other persons.
2. Lawyers should act in a civil manner regardless of the ill feelings that their clients may have toward others.
3. Lawyers can disagree without being disagreeable. Effective representation does not require antagonistic or acrimonious behavior. Whether orally or in writing, lawyers should avoid vulgar language, disparaging personal remarks or acrimony toward other counsel, parties or witnesses.
4. Lawyers should require that persons under their supervision conduct themselves with courtesy and civility.
5. A lawyer should adhere to all expressed promises and agreements with other counsel, whether oral or in writing, and to agreements implied by the circumstances or by local customs.
6. A lawyer is both an officer of the court and an advocate. As such, the lawyer should always strive to uphold the honor and dignity of the profession, avoid disorder and disruption in the courtroom, and maintain a respectful attitude toward the court.
7. Lawyers should speak and write civilly and respectfully in all communications with the court and court personnel.
8. Lawyers should use their best efforts to dissuade clients and witnesses from causing disorder or disruption in the courtroom.
9. Lawyers should not engage in conduct intended primarily to harass or humiliate witnesses.
10. Lawyers should be punctual and prepared for all court appearances; if delayed, the lawyer should notify the court and counsel whenever possible.
11. Court personnel are an integral part of the justice system and should be treated with courtesy and respect at all times.

The foregoing Standards of Civility are based upon the Standards of Civility for the New York State Unified Court System.

**NEW YORK STATE
HIGH SCHOOL
MOCK TRIAL
TOURNAMENT
RULES**

PART I

MOCK TRIAL TOURNAMENT RULES

1. TEAM COMPOSITION:

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

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

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

2. OBJECTIONS

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

3. DRESS

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

4. STIPULATIONS

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

5. OUTSIDE MATERIALS

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

6. EXHIBITS

Students may introduce into evidence or use only the exhibits and documents provided in the Mock Trial Tournament materials. Students may not create their own charts, graphs or any other visual aids for use in the courtroom in presenting their case. **Evidence is not to be enlarged, projected, marked or altered for use during the trial.**

7. SIGNALS AND COMMUNICATION

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

8. VIDEOTAPING/AUDIOTAPING

a. During any tournament round, except State semi-finals and State finals, a trial may be videotaped or audio taped but only if each of the following conditions is satisfied:

1. The courthouse in which the tournament round is taking place must permit video or audio taping and the team wishing to videotape or audiotape has received permission from the courthouse in advance of the trial. *We note that many state and Federal courthouses prohibit video or audio taping devices in the courthouse.*

2. The judge consents before the beginning of the trial.
 3. The opposing team consents in writing prior to the time the trial begins. Written consents should be delivered to the County Coordinator. Fax or e-mail is acceptable.
 4. A copy of the video or audio tape must be furnished to the opposing team (at no cost) within 48 hours after the trial.
 5. The video or audio tape may not be shared by either team with any other team in the competition.
- b. Video or audio taping of the State semi-finals and final rounds is **NOT** permitted by either team.

9. MOCK TRIAL COORDINATORS

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

10. ROLE AND RESPONSIBILITY OF ATTORNEYS

- a. The attorney who makes the opening statement may not make the closing statement.
- b. Requests for bench conferences (i.e., conferences involving the Judge, attorney(s) for the plaintiff or the people and attorney(s) for the defendant) may be granted after the opening of court in a mock trial, but not before.
- c. Attorneys may use notes in presenting their cases, for opening statements, direct examination of witnesses, etc. Witnesses are **NOT** permitted to use notes while testifying during the trial.

d. Each of the three attorneys on a team must conduct the direct examination of one witness and the cross examination of another witness.

e. The attorney examining a particular witness must make the objections to that witness's cross examination, and the attorney who will cross-examine a witness must make the objections to the witness's direct examination.

11. WITNESSES

a. Each witness is bound by the facts of his/her affidavit or witness statement and any exhibit authored or produced by the witness that is relevant to his/her testimony. Witnesses may not invent any other testimony. However, in the event a witness is asked a question on cross examination, the answer to which is not contained in the witness's statement or was not testified to on direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial.

b. If there is an inconsistency between the witness statement or affidavit and the statement of facts or stipulated facts, the witness can only rely on and is bound by the information contained in his/her affidavit or witness statement.

c. A witness is not bound by facts in other witnesses' affidavits or statements.

d. If a witness contradicts a fact in his or her own witness statement, the opposition may impeach the testimony of that witness.

e. A witness's physical appearance in the case is as he or she appears in the trial re-enactment. No costumes or props may be used.

f. Witnesses, other than the plaintiff and the defendant, may be constructively sequestered from the courtroom at the request of opposing counsel. A constructively sequestered witness may not be asked on the stand about the testimony another witness may have given during the trial enactment. A team is **NOT** required to make a sequestration motion. However, if a team wishes to make such motion, it should be made during the time the team is introducing itself to the judge. Please note that while a witness may be constructively sequestered, said witness **WILL REMAIN** in the courtroom at all times. (Note: Since this is an educational exercise, no participant will actually be excluded from the courtroom during an enactment.)

g. Witnesses shall not sit at the attorneys' table.

12. PROTESTS

a. Other than as set forth in 12(b) below, protests of judicial rulings are **NOT** allowed. **All judicial rulings are final and cannot be appealed.**

b. Protests are highly disfavored and will only be allowed to address two issues:

- (1) Cheating (a dishonest act by a team that has not been the subject of a prior judicial ruling)
- (2) A conflict of interest or gross misconduct by a judge (e.g., where a judge is related to a team member). All protests must be made in writing and either faxed or emailed to the appropriate County Coordinator and to the teacher-coach of the opposing team. The County Coordinator will investigate the grounds for the protest and has the discretion to make a ruling on the protest or refer the matter directly to the LYC Committee. The County Coordinator's decision can be appealed to the LYC Committee.

c. Hostile or discourteous protests will not be considered.

13. JUDGING

The Decisions of the Judge Are Final.

14. ORDER OF THE TRIAL

The trial shall proceed in the following manner:

- Opening statement by plaintiff's attorney/prosecuting attorney
- Opening statement by defense attorney
- Direct examination of first plaintiff/prosecution witness
- Cross examination of first plaintiff/prosecution witness
- Re-direct examination of first plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second plaintiff/prosecution witness
- Cross examination of second plaintiff/prosecution witness
- Re-direct examination of second plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third plaintiff/prosecution witness
- Cross examination of third plaintiff/prosecution witness
- Re-direct examination of third plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Plaintiff/prosecution rests
- Direct examination of first defense witness
- Cross examination of first defense witness
- Re-direct examination of first defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second defense witness
- Cross examination of second defense witness
- Re-direct examination of second defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third defense witness
- Cross examination of third defense witness
- Re-direct examination of third defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Defense rests
- Closing arguments by defense attorney
- Closing arguments by plaintiff's attorney/prosecuting attorney

15. TIME LIMITS

a. The following time limits apply:

- Opening Statement.....5 minutes for each team
- Direct Examination10 minutes for each witness
- Cross Examination10 minutes for each witness
- Closing Argument10 minutes for each team

b. At all county and regional trials, the time will be kept by two timekeepers. Each team shall provide one of the timekeepers. Timekeeper shall be a student of the participating school. A school may use a student witness who is not a witness during a particular phase of the trial. (For example, a defense witness can keep time when the plaintiff/prosecution attorneys are presenting their case.)

The timekeepers will use one watch and shall agree as to when a segment of the trial (e.g., the direct examination of a witness) begins. When one minute remains in a segment, the timekeepers shall flash the “1 Minute Remaining” card (found in the *Appendices*), alerting the judge and the attorneys. The timekeepers will not stop the clock during objections, *voir dire* of witnesses or bench conferences. Since the number of questions allowed on redirect and re-cross is limited to three, time limits are not necessary. Any dispute as to the timekeeping shall be resolved by the trial judge. The judge, in his/her sole discretion, may extend the time, having taken into account the time expended by objections, *voir dire* of witnesses and/or bench conferences, thereby allowing an attorney to complete a line of questioning.

16. TEAM ATTENDANCE AT STATE FINALS ROUND

Eight teams will advance to the State Finals. All eight teams are required to participate in all events associated with the Mock Trial Tournament, including attending the final round of the competition.

**NEW YORK STATE
HIGH SCHOOL
MOCK TRIAL
TOURNAMENT
POLICIES AND
PROCEDURES**

PART II

MOCK TRIAL TOURNAMENT POLICIES AND PROCEDURES

New York's Annual Mock Trial Tournament is governed by the policies set forth below. The LYC Committee and the Law, Youth and Citizenship Program of the New York State Bar Association reserve the right to make decisions to preserve the equity, integrity, and educational aspects of the program.

By participating in the Mock Trial Tournament, participants agree to abide by the decisions rendered by the LYC Committee and the Mock Trial program staff and accept such decisions as final.

1. GENERAL POLICIES

- a. All mock trial rules, regulations, and criteria for judging apply at all levels of the Mock Trial Tournament.
- b. The Simplified Rules of Evidence and Procedure contained in Part III govern the trial proceedings.
- c. County Coordinators administer county tournaments. County Coordinators have sole responsibility for organizing, planning, and conducting tournaments at the county level and should be the first point of contact for questions at the county level.
- d. For any single tournament round, all teams are to consist of three attorneys and three witnesses.
- e. For all tournament rounds, one judge will be utilized for trial re-enactments.
- f. Teams must not identify themselves by their school name to the judge prior to the announcement of the judge's decision.

- g. If a team member who is scheduled to participate in a trial enactment becomes ill, injured, or has a serious conflict and as a result cannot compete, then the team may substitute an alternate team member. If an alternate team member is not available, the local coordinator may declare a forfeit or reschedule the enactment at his or her sole discretion.
- h. Members of a team may play different roles in different rounds, or other students may participate in another round.
- i. Winners in any single round will be asked to switch sides in the case for the next round. Where it is impossible for both teams to switch sides, a coin flip will be used to determine assignments in the next round.
- j. Teacher-coaches of teams who will be competing against one another are required to exchange information regarding the names and gender of their witnesses at least three days prior to each round.
- k. No attorney may be compensated in any way for his or her service as an attorney-advisor to a mock trial team or as a judge in the Mock Trial Tournament. When a team has a student or students with special needs who may require an accommodation, the teacher-coach **MUST** bring this to the attention of the County Coordinator at least two weeks prior to the time when the accommodation will be needed.
- l. The judge must take judicial notice of the Statement of Stipulated Facts and any other stipulations.
- m. Teams may bring perceived errors in the problem or suggestions for improvements in the tournament rules and procedures to the attention of the LYC staff at any time. These, however, are not grounds for protests. Any protest arising from an enactment must be filed with the County Coordinator in accordance with the protest rule in the Tournament Rules.

2. SCORING

- a. Scoring is on a scale of 1-5 for each performance (5 is excellent). Judges are required to enter each score on the performance rating sheet (Appendix) after each performance, while the

enactment is fresh in their minds. Judges should be familiar with and use the performance rating guidelines (Appendix) when scoring a trial.

b. Judges are required to also assign between 1 and 10 points to **EACH** team for demonstrating professionalism during a trial. A score for professionalism may not be left blank. Professionalism criteria are:

- Team's overall confidence, preparedness and demeanor
- Compliance with the rules of civility
- Zealous but courteous advocacy
- Honest and ethical conduct
- Knowledge and adherence to the rules of the competition
- Absence of unfair tactics, such as repetitive, baseless objections and signals

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

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

3. LEVELS OF COMPETITION

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

- Region 1West
- Region 2Central
- Region 3Northeast
- Region 4Lower Hudson
- Region 5New York City (NYC-A)
- Region 6New York City (NYC-B)
- Region 7Nassau County
- Region 8Suffolk County

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

4. COUNTY TOURNAMENTS

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

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

5. REGIONAL TOURNAMENTS

a. Teams who have been successful in winning county level tournaments will proceed to regional level tournaments. Coordinators administer regional tournaments. Coordinators have sole responsibility for organizing, planning and conducting tournaments at the regional level. Participants must adhere to all rules of the tournament at regional level tournaments.

b. Regional tournaments are held in counties within the region on a rotating basis. Every effort is made to determine and announce the location and organizer of the regional tournaments before the new mock trial season begins.

c. All mock trial rules and regulations and criteria for judging apply, at all levels of the Mock Trial Tournament.

d. The winning team from each region will be determined by an enactment between the two teams with the best records (most number of wins and greatest number of points) during the regional tournament. The winning team from each region will qualify for the State Finals in Albany.

e. The regional tournaments **MUST** be completed 16 days prior to the State Finals. Due to administrative requirements and contractual obligations, the State Coordinator must have in its possession the schools' and students' names by this deadline. Failure to adhere to this deadline may jeopardize hotel blocks set aside for a region's teacher-coaches, attorney-advisors and students coming to Albany for the State Finals.

6. STATEWIDE FINALS

a. Once regional winners have been determined, The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days it participates in the State Finals in Albany. Funding is available to pay for up to nine students, one teacher coach and one attorney-advisor for each team. Students are up to four to a room. Transportation costs are not covered. However, if a school can cover additional costs for room and board for additional team members above the nine sponsored through the Bar Foundation, all members of a team are welcome to attend the State Finals.

b. Additional students' and adults' costs will not be covered by the New York Bar Foundation grant or the LYC Program. The Mock Trial Program Manager will not be responsible for making room arrangements and reservations for anyone other than the nine students, one teacher-coach and one attorney-advisor for each team. However, every attempt will be made to pass along any special hotel rates to these other participants. Additional students and adults attending the State Finals may participate in organized meal functions but will be responsible for paying for their participation.

c. Each team will participate in two enactments the first day, against two different teams. Each team will be required to change sides—plaintiff/prosecution to defendant, defendant to plaintiff/prosecution—for the second enactment. Numerical scores will be assigned to each team's performance by the judges.

d. The two teams with the most wins and highest numerical score will compete on the following day, except that any team that has won both its enactments will automatically advance, regardless of its point total. In the rare event of three teams each winning both of their enactments, the two teams with the highest point totals, in addition to having won both of their enactments, will advance.

e. The final enactment will be a single elimination tournament. Plaintiff/prosecution and defendant will be determined by a coin toss by the Mock Trial Program Manager. All teams invited to the State Finals must attend the final trial enactment.

f. A judge will determine the winner. **The judge's decision is final.**

7. MCLE CREDIT FOR JUDGES AND ATTORNEY-ADVISORS

The LYC Program applies for MCLE credit for attorneys participating in the New York State High School Mock Trial program. All paperwork is submitted to the MCLE board after the State Finals are held in May. Coordinators and the LYC Program must follow the following procedures:

- a. County Coordinators receive and disseminate the appropriate forms to attorneys and judges that participate in their counties.
- b. The County Coordinators will collect all forms from attorneys who participated in the Mock Trial Tournament during the current year, complete the required form provided by the Mock Trial Program Manager and return it to Albany by June 1.
- c. The Mock Trial Program Manager compiles all of the forms and submits them to the MCLE Board within 7 days of receiving the forms from the County Coordinators.
- d. Once the tournament has been accredited, certificates will be generated by the MCLE staff at the NYSBA and emailed to attorneys.
- e. According to MCLE rules, each attorney-judge or attorney-coach may earn CLE credits by participating in a specific activity. That is, an attorney-judge earns credits for trial time only; an attorney coach earns credit for time spent working with students only which does not include the advisor's personal preparation time. A maximum of three (3) CLE credits may be earned for judging or coaching mock trial competitions during any one reporting cycle, i.e., in a two-year period. Finally, an attorney who has been admitted to the New York State Bar in the last two years **MAY NOT** apply for this type of CLE credit.

**NEW YORK STATE
HIGH SCHOOL
MOCK TRIAL
SIMPLIFIED RULES
OF EVIDENCE AND
PROCEDURE**

PART III

SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

In trials in the United States, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the attorneys to know the rules of evidence and to be able to use them to protect their client and to limit the actions of opposing counsel and their witnesses.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this Mock Trial Tournament, the New York State rules of evidence have been modified and simplified. Not all judges will interpret the rules of evidence or procedure the same way, and you must be prepared to point out the specific rule (quoting it, if necessary) and to argue persuasively for the interpretation and application of the rule that you think is proper. No matter which way the judge rules, you should accept the ruling with grace and courtesy.

1. SCOPE

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

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

2. RELEVANCY

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

Example:

Photographs present a classic problem of possible unfair prejudice. For instance, in a murder trial, the prosecution seeks to introduce graphic photographs of the bloodied victim. These photographs would be relevant because, among other reasons, they establish the victim's death and location of the wounds. At the same time, the photographs present a high danger of unfair prejudice, as they could cause the jurors to feel incredible anger and a desire to punish someone for the vile crime. In other words, the photographs could have an inflammatory effect on the jurors, causing them to substitute passion and anger for reasoned analysis. The defense therefore should object on the ground that any probative value of the photographs is substantially outweighed by the danger of unfair prejudice to the defendant. Problems of unfair prejudice often can be resolved by offering the evidence in a matter that retains the probative value, while reducing the danger of unfair prejudice. In this example, the defense might stipulate to the location of the wounds and the cause of death. Therefore, the relevant aspects of the photographs would come in, without the unduly prejudicial effect.

Rule 202: CHARACTER. Evidence about the character of a party or witness may not be introduced unless the person's character is an issue in the case or unless the evidence is being offered to show the truthfulness or untruthfulness of the party or witness. Evidence of character to prove the person's propensity to act in a particular way is generally not admissible in a civil case.

In a criminal case, the general rule is that the prosecution cannot initiate evidence of the bad character of the defendant to show that he or she is more likely to have committed the crime. However, the defendant may introduce evidence of her good character to show that she is innocent, and the prosecution may offer evidence to rebut the defense's evidence of the defendant's character. With respect to the character of the victim, the general rule is that the prosecution cannot initiate evidence of the character of the victim. However, the defendant may introduce evidence of the victim's good or (more likely) bad character, and the prosecution may offer evidence to rebut the defense's evidence of the victim's character.

Examples:

A limousine driver is driving Ms. Daisy while he is intoxicated and gets into a car accident injuring Ms. Daisy. If Ms. Daisy sues the limousine company for negligently employing an alcoholic driver, then the driver's tendency to drink is at issue. Evidence of the driver's alcoholism is admissible because it is not offered to demonstrate that he was drunk on a particular occasion. The evidence is offered to demonstrate that the limousine company negligently trusted him to drive a limousine when it knew or should have known that the driver had a serious drinking problem.

Sally is fired and sues her employer for sexual harassment. The employer cannot introduce evidence that Sally experienced similar problems when she worked for other employers. Evidence about Sally's character is not admissible to prove that she acted in conformity with her prior conduct, unless her character is at issue or it relates to truthfulness.

If an attorney is accused of stealing a client's money, he may introduce evidence to demonstrate that he is trustworthy. In this scenario, proof of his trustworthiness makes it less probable that he stole the money.

Richard is on trial for punching his coworker, Larry, during an argument. The prosecution wants to offer that Richard has, in the past, lost his temper and has neared physical altercations. This evidence constitutes character evidence within the meaning of the rule, because it is being offered to show that Richard has a propensity for losing his temper and that he may have acted in conformity with this character trait at the time he struck Larry.

Therefore, it would only be admissible if Richard, as the defendant, has decided to place his character at issue.

Rule 203: OTHER CRIMES, WRONGS, OR ACTS. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person. Such evidence, however, may be admissible for purposes other than to prove character, such as to show motive, intent, preparation, knowledge, or identity.

Examples:

Harry is on trial for stealing from a heavy metal safe at an office. The prosecution seeks to offer evidence that, on an earlier date, Harry opened the safe and stole some money from the safe. The evidence is not being offered to show character (in other words, it is not being offered to show that Harry is a thief), but rather it is being offered to show that Harry knew how to crack the safe. This evidence therefore places Harry among a very small number of people who know how to crack safes and, in particular, this safe. The evidence therefore goes to identity and makes Harry somewhat more likely to be guilty.

William is on trial for murder after he killed someone during a fight. The prosecution seeks to offer evidence that a week earlier William and the victim had another physical altercation. In other words, the victim was not some new guy William has never met before; rather, William and the victim had a history of bad blood. The evidence of the past fight would be admissible because it is not being offered to show that William has bad character as someone who gets into fights, but rather to show that William may have had motive to harm his victim.

In the same trial, the evidence shows that the victim died after William struck him in the larynx. William's defense is that the death was completely accidental and that the fatal injury suffered by his victim was unintended and a fluke. The prosecution seeks to offer evidence that William has a black belt in martial arts, and therefore has knowledge of how to administer deadly strikes as well as the effect of such strikes. This evidence would be admissible to show the death was not an accident; rather, William was aware that the strike could cause death.

3. WITNESS EXAMINATION

a. Direct Examination (attorneys call and question witnesses)

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

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

Example of a Leading Question: *“Isn’t it true that in your current position you are responsible for making important investment decisions?”*

Narration: While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or “narrate” a whole story. Narrative questions are objectionable.

Example of a Narrative Question: *“Please describe how you were able to achieve your financial success.” Or “Tell me everything that was said in the board room on that day.”*

Narrative Answers: At times, a direct question may be appropriate, but the witness’s answer may go beyond the facts for which the question was asked. Such answers are subject to objection on the grounds of narration.

Objections:

“Objection. Counsel is leading the witness.” “Objection. Question asks for a narration.”

“Objection. Witness is narrating.”

Rule 302: SCOPE OF WITNESS EXAMINATION. Direct examination may cover all the facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.

Objection:

“Objection. The question requires information beyond the scope of the witness’s knowledge.”

Rule 303: REFRESHING RECOLLECTION. If a witness is unable to recall a statement made in an affidavit, the attorney on direct may show that portion of the affidavit that will help the witness to remember.

b. **Cross-examination** (questioning the other side’s witnesses)

Rule 304: FORM OF QUESTION. An attorney may ask leading questions when cross-examining the opponent’s witnesses. Questions tending to evoke a narrative answer should be avoided.

Rule 305: SCOPE OF WITNESS EXAMINATION. Attorneys may only ask questions that relate to matters brought out by the other side on direct examination, or to matters relating to the credibility of the witness. This includes facts and statements made by the witness for the opposing party. Note that many judges allow a broad interpretation of this rule.

Objection:

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

Rule 306: IMPEACHMENT. An attorney may impeach the credibility of a witness (show that a witness should not be believed) in the following ways:

1. A witness may testify as to another witness's reputation for truthfulness, provided that an adequate foundation is established for the testifying witness's ability to testify about the other witness's reputation.

Example:

Ben testifies at trial. Jeannette then takes the stand and is familiar with Ben's reputation in the community as not being truthful. Jeannette therefore would be able to testify to Ben's reputation for truthfulness.

2. Counsel may ask questions demonstrating that the witness has made statements on other occasions that are inconsistent with the witness's present testimony. A foundation must be laid for the introduction of prior contradictory statements by asking the witness whether he or she made such statements.

Example:

If a witness previously stated that the car was black but at trial testified that the car was red, the witness could be questioned about this prior inconsistent statement for impeachment purposes.

3. An attorney may ask questions demonstrating the witness's bias in favor of the party on whose behalf the witness is testifying, or hostility toward the party against whom the witness is testifying or the witness's interest in the case.

Examples:

"Isn't it true that you are being paid to testify at this trial?" If the witness is paid to testify, he may have an incentive not to tell the truth while testifying.

Steve is on trial for bank robbery, and calls his father as a defense witness to testify that they were watching football at the time of the crime. On cross-examination, the prosecutor could attempt to demonstrate the father's bias that could cause him to fabricate an alibi for his son. Proper questions to impeach the father's credibility might include, "You love your son very much, don't you?" and "You don't want to see your son go to jail, do you?"

Rule 307: IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION.

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted, but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the value of this evidence as reliable proof outweighs its prejudicial effect to a party. Crimes of moral turpitude are crimes that involve dishonesty or false statements. These crimes involve the intent to deceive or defraud, such as forgery, perjury, counterfeiting and fraud.

Example:

"Have you ever been convicted of criminal possession of marijuana?"

Objections:

"Objection. The prejudicial effect of this evidence outweighs its usefulness."

"Objection. The prior conviction being testified to is not a felony or a crime involving moral turpitude."

c. Re-Direct Examination

Rule 308: LIMIT ON QUESTIONS. After cross-examination, up to three, but no more than three questions, may be asked by the attorney conducting the direct examination, but such questions are limited to matters raised by the attorney on cross-examination. The presiding judge has considerable discretion in deciding how to limit the scope of re-direct.

NOTE: If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to “save” the witness’s truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Please note that at times it may be more appropriate not to engage in re-direct examination.

Objection:

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

d. Re-Cross Examination

Rule 309: LIMIT ON QUESTIONS. Three additional questions, but no more than three, may be asked by the cross-examining attorney, but such questions are limited to matters on re-direct examination and should avoid repetition. The presiding judge has considerable discretion in deciding how to limit the scope of re-cross. Like re-direct examination, at times it may be more appropriate not to engage in re-cross-examination.

Objection:

“Objection. Counsel is asking the witness about matters that did not come up on re-direct examination.”

e. Argumentative Questions

Rule 310: Questions that are argumentative should be avoided and may be objected to by counsel. An argumentative question is one in which the cross-examiner challenges the witness about his or her inference from the facts, rather than seeking additional facts.

Example:

“Why were you driving so carelessly?” Objection:

“Objection. “Your Honor, counsel is being argumentative.”

f. Compound Questions

Rule 311: Questions that are compound in nature should be avoided and may be objected to by counsel. A compound question requires the witness to give one answer to a question, which contains two separate inquiries. Each inquiry in an otherwise compound question could be asked and answered separately.

Examples:

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

“Did you see and feel the residue on the counter?”

Objection:

“Objection. “Your Honor, counsel is asking a compound question.”

g. Asked and Answered Questions

Rule 312: Questions that have already been asked of and answered by a witness should not be asked again and may be objected to by opposing counsel.

Objection:

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

h. Speculation

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

Example:

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

Objection:

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

4. HEARSAY

Understanding and applying the Hearsay Rule (Rule 401), and its exceptions (Rules 402, 403, 404, and 405), is one of the more challenging aspects of the Mock Trial Tournament. We strongly suggest that teacher-coaches and students work closely with their attorney-advisors to better understand and more effectively apply these evidentiary rules.

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

REASONS FOR EXCLUDING HEARSAY: The reason for excluding hearsay evidence from a trial is that the opposing party was denied the opportunity to cross-examine the

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

Example:

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

5. EXCEPTIONS

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

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

Example:

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

Rule 403: STATE OF MIND: A judge may admit an out-of-court statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health). Such out-of-court statements of pain or intent do not present the usual concerns with the reliability of hearsay testimony. For instance, when a witness testifies as to a declarant's statement of intent, there are no memory problems with the declarant's statement of intent and there are no perception problems because a declarant cannot misperceive intent. When applying this exception, it is important to keep in mind that the reliability concerns of hearsay relate to the out-of-court declarant, not to the witness who is offering the statement in court.

Example:

Mike is on trial for a murder that occurred at the West End Restaurant. Mike's defense relies upon the theory that another person, Jane, committed the murder. The defense then calls a witness who testifies that on the night of the murder he heard Jane say that she intended to go to the West End Restaurant. This hearsay statement is admissible as proof of Jane's intent to go to the restaurant.

Rule 404: BUSINESS RECORDS. A judge may admit a memorandum, report, record, or data compilation concerning an event or act, provided that the record was made at or near the time of the act by a person with knowledge and that the record is kept in the regular course of business. The rationale for this exception is that this type of evidence is particularly reliable because of the regularity with which business records are kept, their use

and importance in the business and the incentive of employees to keep accurate records or risk being reprimanded by the employer.

Example:

Diane is on trial for possession of an illegal weapon. The prosecution introduces a written inventory prepared by a police officer of items, including a switchblade knife, taken from Diane when she was arrested as evidence of Diane's guilt. The written inventory is admissible. In this example, the statement that is hearsay is the written inventory (hearsay can be oral or written), the declarant is the police officer who wrote the inventory and the inventory is being offered into evidence to prove that Diane had a switchblade knife in her possession. The reason that the written inventory is admissible is that it was a record made at the time of Diane's arrest by a police officer, whose job required her to prepare records of items taken from suspects at the time of arrest and it was the regular practice of the police department to prepare records of this type at the time of an arrest.

Rule 405: PRESENT SENSE IMPRESSION. A judge may admit an out-of-court statement of a declarant's statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter. The rationale for this exception is that a declarant's description of an event as it is occurring is reliable because the declarant does not have the time to think up a lie.

Example:

James is witnessing a robbery and calls 911. While on the phone with the 911 operator, James describes the crime as it is occurring and provides a physical description of the robber. These hearsay statements are admissible because they are James's description or explanation of an event – the robbery – as James perceives that event.

Rule 406: STATEMENTS IN LEARNED TREATISES. A statement contained in a treatise, periodical, or pamphlet is admissible if:

(A) The statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

Example:

Dr. G, plaintiff's expert witness, is being cross-examined by defendant's counsel. During the cross-examination Dr. G is shown a volume of a treatise on cardiac surgery, which is the subject of Dr. G's testimony. Dr. G is asked if s/he recognizes the treatise as reliable on the subject of cardiac surgery. Dr. G acknowledges that the treatise is so recognized. Portions of the treatise may then be read into evidence although the treatise is not to be received as an exhibit.

If Dr. G does not recognize the treatise as authoritative, the treatise may still be read to the jury if another expert witness testifies as to the treatise's reliability or if the court by judicial notice recognizes the treatise as authoritative.

6. **OPINION AND EXPERT TESTIMONY**

Rule 501: OPINION TESTIMONY BY NON-EXPERTS. Witnesses who are not testifying as experts may give opinions which are based on what they saw or heard and are helpful in explaining their story. A witness may not testify to any matter of which the witness has no personal knowledge, nor may a witness give an opinion about how the case should be decided. In addition, a non-expert witness may not offer opinions as to any matters that would require specialized knowledge, training, or qualifications.

Example:

(General Opinion)

The attorney asks the non-expert witness, "Why is there so much conflict in the Middle East?" This question asks the witness to give his general opinion on the Middle East conflict.

Note: This question is objectionable because the witness lacks personal perceptions as to the conflict in the Middle East and any conclusions regarding this issue would require specialized knowledge.

Objection:

“Objection. Counsel is asking the witness to give an opinion.”

Example:

(Lack of Personal Knowledge)

The attorney asks the witness, “Why do you think Abe skipped class?” This question requires the witness to speculate about Abe’s reasons for skipping class.

Objection:

“Objection. The witness has no personal knowledge that would enable him/her to answer this question.”

Example:

(Opinion on Outcome of Case)

The attorney asks the witness, “Do you think the defendant intended to commit the crime?” This question requires the witness to provide a conclusion that is directly at issue and relates to the outcome of the case.

Objection:

“Objection. The question asks the witness to give a conclusion that goes to the finding of the Court.”

Rule 502: OPINION TESTIMONY BY EXPERTS. Only persons qualified as experts may give opinions on questions that require special knowledge or qualifications. An expert may be called as a witness to render an opinion based on professional experience. The attorney for the party for whom the expert is testifying must qualify the witness as an expert. This means that before the expert witness can be asked for an expert opinion, the questioning attorney must bring out the expert's qualifications, education and/or experience.

Example:

The attorney asks the witness, an auto mechanic, "Do you think Luke's recurrent, severe migraine headaches could have caused him to crash his car into the side of George's house?"

Objection:

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

However, a doctor can provide an expert opinion on how migraine headaches affect eyesight.

7. PHYSICAL EVIDENCE

Rule 601: INTRODUCTION OF PHYSICAL EVIDENCE. Physical evidence may be introduced if it is relevant to the case. Physical evidence will not be admitted into evidence until it has been identified and shown to be authentic or its identification and/or authenticity have been stipulated to. That a document is "authentic" means only that it is what it appears to be, not that the statements in the document are necessarily true.

A prosecutor must authenticate a weapon by demonstrating that the weapon is the same weapon used in the crime. This shows that the evidence offered (the weapon) relates to the issue (the crime). If the weapon belonged to the prosecutor, it would not be relevant to the defendant's guilt. The evidence must be relevant to the issue to be admissible.

PROCEDURE FOR INTRODUCING EVIDENCE: Physical evidence need only be introduced once. The proper procedure to use when introducing a physical object or document for identification and/or use as evidence is:

- a. Have exhibit marked for identification. *“Your Honor, please mark this as Plaintiff’s Exhibit 1 (or Defense Exhibit A) for identification.”*
- b. Ask witness to identify the exhibit. *“I now hand you what is marked as Plaintiff’s Exhibit 1 (or Defense Exhibit A). Would you identify it, please?”*
- c. Ask witness questions about the exhibit, establishing its relevancy, and other pertinent questions.
- d. Offer the exhibit into evidence. *“Your Honor, we offer Plaintiff’s Exhibit 1 (or Defense Exhibit A) into evidence at this time.”*
- e. Show the exhibit to opposing counsel, who may make an objection to the offering.
- f. The Judge will ask opposing counsel whether there is any objection, rule on any objection, admit or not admit the exhibit.
- g. If an exhibit is a document, hand it to the judge.

NOTE: After an affidavit has been marked for identification, a witness may be asked questions about his or her affidavit without its introduction into evidence. In order to read directly from an affidavit or submit it to the judge, it must first be admitted into evidence.

Rule 602: REDACTION OF DOCUMENT. When a document sought to be introduced into evidence contains both admissible and inadmissible evidence, the judge may, at the request of the party objecting to the inadmissible portion of the document, redact the inadmissible portion of the document and allow the redacted document into evidence.

Objection:

“Objection. Your Honor, opposing counsel is offering into evidence a document that contains improper opinion evidence by the witness. The defense requests that the portion of the document setting forth the witness’s opinion be redacted.”

Rule 603: VOIR DIRE OF A WITNESS. When an item of physical evidence is sought to be introduced under a doctrine that normally excludes that type of evidence (e.g., a document which purports to fall under the business record exception to the Hearsay Rule), or when a witness is offered as an expert, an opponent may interrupt the direct examination to request the judge’s permission to make limited inquiry of the witness, which is called *“voir dire.”*

The opponent may use leading questions to conduct the *voir dire* but it must be remembered that the *voir dire*’s limited purpose is to test the competency of the witness or evidence and the opponent is not entitled to conduct a general cross-examination on the merits of the case.

The *voir dire* must be limited to three questions. The clock will not be stopped for *voir dire*.

8. INVENTION OF FACTS (Special Rules for the Mock Trial Competition)

Rule 701: DIRECT EXAMINATION. On direct examination, the witness is limited to the facts given. Facts cannot be made up. If the witness goes beyond the facts given opposing counsel may object. If a witness testifies in contradiction of a fact given in the witness’s statement, opposing counsel should impeach the witness during cross-examination.

Objection:

“Objection. Your Honor, the witness is creating facts which are not in the record.”

Rule 702: CROSS-EXAMINATION. Questions on cross-examination should not seek to elicit information that is not contained in the fact pattern. If on cross-examination a witness is asked a question, the answer to which is not contained in the witness's statement or the direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial. If a witness's response might materially alter the outcome of the trial, the attorney conducting the cross-examination may object.

Objection:

"Objection. The witness's answer is inventing facts that would materially alter the outcome of the case."

9. PROCEDURAL RULES

Rule 801: PROCEDURE FOR OBJECTIONS. An attorney may object any time the opposing attorneys have violated the "Simplified Rules of Evidence and Procedure." Each attorney is restricted to raising objections concerning witnesses, whom that attorney is responsible for examining, both on direct and cross-examinations.

NOTE: The attorney wishing to object (only one attorney may object at a time) should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for it. Then the judge will turn to the attorney who asked the question and the attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a question or answer must be discarded because it has violated a rule of evidence ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

Rule 802: MOTIONS TO DISMISS. Motions for directed verdict or dismissal are not permitted at any time during the plaintiff's or prosecution's case.

Rule 803: CLOSING ARGUMENTS. Closing arguments must be based on the evidence presented during the trial.

Rule 804: OBJECTIONS DURING OPENING STATEMENTS AND CLOSING ARGUMENTS. Objections during opening statements and closing arguments are **NOT** permitted.

Rule 901: PROSECUTION'S BURDEN OF PROOF (criminal cases).

Beyond a Reasonable Doubt: A defendant is presumed to be innocent. As such, the trier of fact (jury or judge) must find the defendant not guilty, unless, on the evidence presented at trial, the prosecution has proven the defendant guilty beyond a reasonable doubt. Such proof precludes every reasonable theory except that which is consistent with the defendant's guilt. A reasonable doubt is an honest doubt of the defendant's guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary one. It is a doubt that a reasonable person would be likely to entertain because of the evidence that was presented or because of the lack of convincing evidence. While the defendant may introduce evidence to prove his/her innocence, the burden of proof never shifts to the defendant. Moreover, the prosecution must prove beyond a reasonable doubt every element of the crime including that the defendant is the person who committed the crime charged. (Source: NY Criminal Jury Instructions).

Rule 902: PLAINTIFF'S BURDENS OF PROOF (civil cases).

902.1 Preponderance of the Evidence: The plaintiff must prove his/her claim by a fair preponderance of the credible evidence. The credible evidence is testimony or exhibits that the trier of fact (jury or judge) finds to be worthy to be believed. A preponderance of the evidence means the greater part of such evidence. It does not mean the greater number of witnesses or the greater length of time taken by either side. The phrase refers to the quality of the evidence, *i.e.*, its convincing quality, the weight and the effect that it has on the trier of fact. (Source: NY Pattern Jury Instructions, §1:23).

902.2 Clear and Convincing Evidence: (To be used in cases involving fraud, malice, mistake, incompetency, etc.) The burden is on the plaintiff to prove fraud, for instance, by clear and convincing evidence. This means evidence that satisfies the trier of fact that there is a high degree of probability that the ultimate issue to be decided, *e.g.*, fraud, was committed by the defendant. To decide for the plaintiff, it is not enough to find that the

preponderance of the evidence is in the plaintiff's favor. A party who must prove his/her case by a preponderance of the evidence only needs to satisfy the trier of fact that the evidence supporting his/her case more nearly represents what actually happened than the evidence which is opposed to it. But a party who must establish his/her case by clear and convincing evidence must satisfy the trier of fact that the evidence makes it highly probable that what s/he claims is what actually happened. (Source: NY Pattern Jury Instructions, §1:64).

Rule 903: DIRECT AND CIRCUMSTANTIAL EVIDENCE

903.1 Direct evidence: Direct evidence is evidence of a fact based on a witness's personal knowledge or observation of that fact. A person's guilt of a charged crime may be proven by direct evidence if, standing alone, that evidence satisfies the fact-finder (a judge or a jury) beyond a reasonable doubt of the person's guilt of that crime. (Source: NY Criminal Jury Instructions).

903.2 Circumstantial evidence: Circumstantial evidence is direct evidence of a fact from which a person may reasonably infer the existence or non-existence of another fact. A person's guilt of a charged crime may be proven by circumstantial evidence, if that evidence, while not directly establishing guilt, gives rise to an inference of guilt beyond a reasonable doubt. (Source: NY Criminal Jury Instructions).

NOTE: The law draws no distinction between circumstantial evidence and direct evidence in terms of weight or importance. Either type of evidence may be enough to establish guilt beyond a reasonable doubt, depending on the facts of the case as the fact-finder (a judge or a jury) finds them to be. [Source: NY Criminal Jury Instructions].

**NEW YORK STATE
HIGH SCHOOL
MOCK TRIAL
SCRIPT**

PART IV

MOCK TRIAL CASE SUMMARY

MORNINGSIDE HEIGHTS BOOSTER CLUB, INC. v. CASEY CHEATHAM

1. In recent years, the Morningside Heights Central School District (the “Morningside Heights District”), like others throughout New York State, has been challenged to fund academic, athletic, and extracurricular programs for its students in the face of rising costs and the sensitivity of the members of its Board of Education to raising property taxes. As a consequence, the Morningside Heights District adopted for the 2013-2014 school year a budget that eliminated numerous athletic teams and clubs, including Morningside Heights High School’s award-winning Mock Trial Team.

2. In response to this funding crisis, a group of influential business owners—led by Peyton Pearson, the deep-pocketed owner of the Pearson Precision Corp., and the largest property taxpayer in the Morningside Heights District—created the Morningside Heights Booster Club, Inc., a not-for-profit, tax-exempt corporation pursuant to Section 501(c)(3) of the Internal Revenue Code.

3. Drafted by Peyton Pearson, the Club’s by-laws assigned the role of governance over the Booster Club to a three-person Board of Directors, including a President, a Vice President, and a Secretary. Upon the creation of the Booster Club, its initial complement of members elected Pearson the Club’s first President on May 15, 2013. The Club’s members likewise elected Alex Aldrich and Fran Farley, two other prominent businesspeople, as the Club’s first Vice President and its first Secretary, respectively.

4. The three Directors of the Booster Club met for the first time on June 1, 2013, at the offices of the Pearson Precision Corp. Hopeful that the Club would raise enough money to restore funding for the eliminated extracurricular activities in the Morningside Heights District, the Directors decided that the Club needed to retain a Treasurer who could keep track of donations to the Club and ensure those funds’ appropriate expenditure. Peyton Pearson recommended that the Club hire Casey Cheatham, the Pearson Precision Corp.’s trusted Chief Financial Officer, as the Club’s Treasurer. The Directors voted unanimously to do so and to pay

Cheatham a \$12,000 annual stipend, even though Alex expressed misgivings about Casey's honesty, based upon his/her knowledge of complaining by Casey's former spouse. In the weeks that followed, the Directors created a page dedicated to the Booster Club's activities on Face Space, a social networking website. Casey Cheatham was a member of Face Space, and he became "friends" with the Directors and several members of the Booster Club on that website in the weeks that followed.

5. During the summer of 2013, the Directors and the members of the Morningside Heights Booster Club raised \$150,000 by soliciting donations from the wealthiest residents of the Morningside Heights District. Notwithstanding the success of this direct solicitation, Peyton Pearson convinced the other Directors that the Booster Club should host a fundraiser that would be affordable for most citizens of the Morningside Heights District to attend. After discussing possible fundraising ideas, the Directors decided to plan a first annual "Morningside Heights Fun Fair" that would take place from Friday, August 23, through Sunday, August 25, in the nearby Shoreline Park. The Fun Fair would include carnival rides for attendees of all ages, a chicken barbecue, and games of chance – such as bingo, roulette, and blackjack – for adults. Although tickets to the Fun Fair would cost only \$5.00, the Directors anticipated making most of their revenue on sales of tickets for the rides and the chicken barbecue, and especially on the proceeds from the games of chance.

6. The Fun Fair proved to be a great success. Over 5,000 tickets at \$5.00 apiece and 4,000 chicken dinners at \$7.00 apiece were sold. All of the revenues from the sale of the entry tickets and the chicken dinner tickets were profit because Peyton Pearson had graciously contributed all of the food, rides, and prizes at the Fun Fair in kind. Because the entry tickets and the chicken dinners were sold at a single location – the headquarters of the Pearson Precision Corp. – only until the day before the Fun Fair began, the Booster Club could easily keep track of the proceeds. Every business day from July 1, 2013 (the first day the entry and chicken dinner tickets were sold), through August 22, 2013, Peyton Pearson gathered the proceeds from that day's ticket sales and personally deposited them in the Booster Club's account the next day at the local branch of the Empire of New York Bank.

7. Unlike the entry tickets and the chicken dinner tickets, ride tickets were sold only during the Fun Fair. Before the Fun Fair began, the Booster Club's Directors could not predict how much money the Club would earn from the sales of those ride tickets, or from the proceeds of the games of chance. Because Peyton Pearson would be busy overseeing the Fun Fair event all three days of its duration, Peyton deputized Casey Cheatham to monitor the sale of ride tickets and the games of chance. Peyton specifically recalls directing Casey to gather the proceeds of ride ticket sales and the games of chance at the end of each day of the Fun Fair, and to await further instruction as to how those funds were to be deposited or disbursed.

8. Exhausted from the time and effort necessary to plan the Fun Fair, Peyton Pearson and Peyton's spouse decided, a few weeks before the Fun Fair, to take a three-week vacation to Europe immediately after the Fun Fair ended. They scheduled their vacation for August 26 through September 16, 2013. Before Peyton left on his/her trip, Peyton gave Casey Cheatham no additional instructions as to what s/he should do with the proceeds of the ride ticket sales and the games of chance at the Fun Fair.

9. During Peyton's trip to Europe, the other Directors and several members of the Booster Club noticed Casey Cheatham made several postings bragging about significant personal expenditures on his/her Face Space page. "Take a look at my new sports car!" boasted Casey on September 3, 2013, next to a picture of a bright red coupe. The next day, September 4, 2013, Casey remarked on Face Space, "Finally, I have the money to put a swimming pool in the backyard!" On September 15, 2013, Casey wrote on Face Space, "There's nothing better than the exhilaration of a great day at Shoreline Downs!"

10. Alex Aldrich checked his Face Space page online every day. By September 15, after Alex had read all three of these posts, Alex became extremely concerned. Alex had heard from several sources that Casey had a problem with compulsive gambling. Casey had been rumored to bet on horse races at the local Off Track Betting ("OTB") parlor several times every week and to play the video lottery terminal games to excess at the Shoreline Downs horse racing track. Although Casey made a six-figure salary as the Chief Financial Officer at the Pearson Precision Corp., it did not go far, for Alex knew that Casey was required to pay almost half his disposable

income to Casey's former spouse, Shannon Templeton, as maintenance as the result of a bitterly contested divorce in 2010. Alex had not recalled seeing Casey brag about large purchases on his Face Space page, moreover, before his/her September 3 post about his/her sports car purchase. Aware that Peyton Pearson had assigned Casey the task of gathering and safeguarding the proceeds of the ride ticket sales and the games of chance at the Fun Fair, Alex became strongly suspicious that Casey in fact was spending money that belonged to the Booster Club.

11. The evening of September 16, 2013, Alex Aldrich paid an unannounced visit to Casey Cheatham's home in search of answers as to where Casey was keeping the proceeds earned from the Fun Fair ride ticket sales and the games of chance. When Casey answered the door, Alex asked for an opportunity to discuss those proceeds, but Casey replied that it was not a good time, because s/he was taking care of his/her dog Rex, who Casey claimed to be sick. From Casey's porch, Alex thought s/he could see stacks of cash lying on a coffee table about ten feet away. Alex asked Casey whether it was cash on Casey's coffee table. Casey said s/he had to go and closed the door in Alex's face.

12. The next day, Alex called the offices of the Pearson Precision Corp. to speak with Peyton Pearson on his/her first day back in the office after s/he had returned home from his/her trip to Europe. Alex described his/her encounter with Casey Cheatham the previous day and told Peyton that s/he was now convinced that Casey had stolen money from the Fun Fair proceeds that Peyton had entrusted to Casey's care. Peyton answered that this was nonsense. According to Peyton, Casey had delivered to him/her that morning a full accounting of those proceeds and, upon Peyton's instruction, had deposited the cash in a special account that Peyton had created solely for those funds at the Empire of New York Bank. According to Peyton, **the Fun Fair profits** had amounted to \$98,200.00, derived mostly from the sale of ride tickets.

13. Incredulous, Alex then called Taylor Templeton, a Shoreline Downs blackjack dealer who had overseen the operation of the games of chance at the Fun Fair. Morningside Heights is a tight-knit community, and Taylor happened to be a sibling of Casey's former spouse, Shannon Templeton. When Alex reported how much Casey had allegedly delivered to Peyton Pearson, Taylor immediately expressed concern. Based on the magnitude of the bets that Taylor had seen

placed during the Fun Fair, Taylor believed that the games of chance easily made more than only a few thousand dollars, even accounting for payments to the winners.

14. In response, Alex and Taylor arranged to visit the Morningside Heights Police Department on September 18, 2013, to file a criminal larceny complaint against Casey Cheatham. After recounting their suspicions about Casey to Toni Tuesday, the Desk Lieutenant on duty, Lieutenant Tuesday told Alex and Taylor that absent of more concrete information proving that Casey had in fact stolen money that belonged to the Booster Club, the Morningside Heights Police would not likely take action against Casey and that Alex's and Taylor's grievances against Casey constituted a civil matter. Indeed, no criminal charges have been filed against Casey Cheatham concerning his/her stewardship of any funds earned during the course of the Fun Fair.

15. At the next meeting of the Booster Club's Board of Directors on October 1, 2013, Taylor Templeton, upon Alex Aldrich's invitation, gave a presentation as to why s/he believed that Casey Cheatham had under-reported the proceeds earned from the games of chance at the Fun Fair, given Taylor's personal observation of those games' operation. Alex further recounted his visit to Casey Cheatham's house, and how s/he had seen the stacks of cash on Casey's coffee table. Peyton Pearson reacted angrily in response. Peyton charged that Taylor was lying simply to retaliate against Casey for having divorced Taylor's sibling, Shannon Templeton. In any event, Peyton claimed Casey had recently inherited \$500,000 from his/her favorite Aunt Mabel Cheatham, a well-known former Morningside Heights High School teacher who had died single and childless and had pinched pennies all her life.

16. In turn, Alex complained that Peyton was trying to protect Casey only because s/he was his/her employee and knew all the "dirty secrets" about Peyton's business and his/her personal life. Over Peyton's strident objection, Alex moved to commence a civil action on behalf of the Booster Club against Casey Cheatham for conversion of Fun Fair ride ticket and game-of-chance proceeds that belonged to the Booster Club. Fran Farley seconded the motion. Alex and Fran voted in favor, and Peyton voted against.

17. This action has ensued, alleging that Casey Cheatham stole specific Fun Fair proceeds arising from the rides ticket sales and games-of-chance earnings in order to fund expensive purchases and support his/her compulsive gambling habit.

Plaintiff's Witnesses

- Alex Aldrich, Vice President of the Morningside Heights Booster Club
- Taylor Templeton, Supervisor of Games of Chance at the 2013 Morningside Heights Fun Fair
- Dr. Jesse James, Psychiatrist Specializing in Addiction

Defendant's Witnesses

- Casey Cheatham, Defendant
- Peyton Pearson, Former President of the Morningside Heights Booster Club
- Whitney Williams, Executor/Executrix of the Estate of Mabel Cheatham

STIPULATIONS

1. All witness statements are sworn and notarized.
2. All items of evidence are eligible for use at trial, following proper procedure for identification and submission.
3. Any enactment of this case is conducted after the named dates in the stipulated facts and witness affidavits.
4. All the games of chance played at the Fun Fair were legal in the State of New York at the time of the Fun Fair, and took place pursuant to any licenses or permits required by law.
5. No other stipulations shall be made between the plaintiff/prosecution and the defense, except as to the admissibility of evidentiary exhibits provided herein.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MORNINGSID HEIGHTS

MORNINGSID HEIGHTS BOOSTER
CLUB, INC.,

Index No. 12345/2013

Plaintiff,

-against-

VERIFIED COMPLAINT

CASEY CHEATHAM,

Defendant.

Plaintiff, by its attorneys, respectfully alleges the following, on information and belief:

THE PARTIES

1. Plaintiff Morningside Heights Booster Club, Inc. (the “Club”) is a fundraising organization for the Morningside Heights Central School District (“Morningside Heights District”) academic, athletic, and extracurricular programs. The Club was established in 2013 and is a not-for-profit, tax-exempt corporation pursuant to Section 501(c)(3) of the Internal Revenue Code. At all relevant times, the Club was incorporated in Morningside Heights, New York.

2. Defendant Casey Cheatham is the Chief Financial Officer of Pearson Precision Corp. and, in 2013, was hired as the Club’s treasurer for an annual stipend of \$12,000. At all relevant times, Defendant Cheatham was employed in and was a resident of Morningside Heights, New York.

JURISDICTION AND VENUE

3. The Court has personal jurisdiction over the claims asserted herein because the Defendant resides in the State of New York and the County of Morningside Heights and because this action

arises out of conduct that took place in the State of New York and the County of Morningside Heights.

4. Venue is proper in this county because Defendant resides in this county and because the events giving rise to this action occurred in this county.

BACKGROUND AND FACTUAL ALLEGATIONS

5. The Morningside Heights Booster Club, Inc. was established in 2013 in response to budget cuts for academic, athletic, and extracurricular programs in the Morningside Heights District. The Club was created by a group of Morningside Heights' business owners, led by Peyton Pearson.

6. The Club's By-laws assign the role of governance over the Club to a three-person Board of Directors, including a President, a Vice President, and a Secretary. Pearson was elected the Club's first President on May 15, 2013. The Club's members likewise elected Alex Aldrich and Fran Farley as the Club's first Vice President and its first Secretary, respectively.

7. The three Directors of the Club met for the first time on June 1, 2013, at the offices of the Pearson Precision Corp. Hopeful that the Club would raise enough money to restore funding for the eliminated extracurricular activities in the Morningside Heights District, the Directors decided that the Club needed to retain a treasurer who could keep track of donations to the Club and ensure those funds' appropriate expenditure. Peyton Pearson recommended that the Club hire Defendant Casey Cheatham, Pearson Precision Corp.'s Chief Financial Officer, as the Club's treasurer.

8. At the June 1, 2013 meeting, Alex expressed misgivings about Defendant Cheatham's honesty based on reports by Cheatham's former spouse. However, Peyton persuaded the group that Cheatham would not cheat or steal, and the Directors voted unanimously to hire Defendant Cheatham and to pay Cheatham a \$12,000 annual stipend.

9. In the summer of 2013, the Directors planned a first annual “Morningside Heights Fun Fair” to take place from Friday, August 23, through Sunday, August 25, in Shoreline Park. The Fun Fair included carnival rides for attendees of all ages, a chicken barbecue, and games of chance – such as bingo, roulette, and blackjack – for adults.

10. The Directors agreed to charge \$5 for admission tickets, and anticipated making most of their revenue from the other aspects of the Fun Fair: sales of tickets for the rides and the chicken barbecue, and especially on the proceeds from the games of chance.

11. The Fun Fair proved to be a great success. The Club sold **more than 5,000 entry** tickets at \$5.00 apiece and 4,000 chicken dinners at \$7.00 apiece. All of the revenues from the sale of the entry tickets and the chicken dinner tickets were profits, because Peyton Pearson had graciously contributed all of the food, rides, and prizes at the Fun Fair.

12. The entry tickets and chicken dinners were sold at the headquarters of the Pearson Precision Corp. until the day before the Fun Fair began. Accordingly, the Club easily kept track of the proceeds. Peyton Pearson gathered the proceeds from that day’s admission and dinner ticket sales and personally deposited them in the Fun Fair account the next day at the local branch of the Empire of New York Bank.

13. Unlike the entry tickets and the chicken dinner tickets, ride and game tickets were sold only during the Fun Fair. Because Peyton Pearson would be busy overseeing the Fun Fair event all three days of its duration, Peyton deputized Club Treasurer Casey Cheatham to monitor the sale of ride tickets and the games of chance. Peyton directed Casey to gather the proceeds of ride ticket sales and the games of chance at the end of each day of the Fun Fair, and to await further instruction as to how those funds were to be deposited or disbursed.

14. After the Fun Fair, Peyton Pearson and Peyton’s spouse took a three-week vacation to Europe. During Peyton’s trip to Europe, the other Directors and several members of the Club noticed Defendant Cheatham made several postings bragging about significant personal expenditures on his Face Space page. “Take a look at my new sports car!” boasted Casey on

September 3, 2013, next to a picture of a bright red coupe. The next day, September 4, 2013, Casey remarked on Face Space, “Finally, I have the money to put a swimming pool in the backyard!” On September 15, 2013, Casey wrote on Face Space, “There’s nothing better than the exhilaration of a great day at Shoreline Downs!”

15. Alex Aldrich, the Club’s Vice President, checked his/her Face Space page online every day. Alex was aware that Peyton Pearson had assigned Casey the task of gathering and safeguarding the proceeds of the ride ticket sales and the games of chance at the Fun Fair. Defendant Cheatham’s posts were particularly concerning to Alex as s/he had heard from several sources that Casey had a problem with compulsive gambling. Casey had been rumored several times every week to bet on horse races at the local Off Track Betting (“OTB”) parlor and to play the video lottery terminal games to excess at the Shoreline Downs horse racing track.

16. Alex also knew that Casey was required to pay almost half his/her disposable income to Casey’s former spouse, Shannon Templeton, as maintenance as the result of a bitterly contested divorce in 2010. Alex had not recalled seeing Casey brag about large purchases on his/her Face Space page before his/her September 3 post about his/her sports car purchase. Accordingly, Alex became strongly suspicious that Defendant Cheatham in fact was spending money that belonged to the Booster Club.

17. In the evening on September 16, 2013, Alex Aldrich visited Casey Cheatham at home to discuss the proceeds earned from the Fun Fair ride ticket sales and the games of chance. When Casey answered the door, Alex asked for an opportunity to discuss those proceeds, but Casey replied that it was not a good time. From Defendant Cheatham’s porch, Alex thought s/he could see stacks of cash lying on a coffee table about ten feet away and asked whether there was cash on Defendant Cheatham’s coffee table. Casey said s/he had to go and closed the door in Alex’s face.

18. The next day, Alex called the offices of the Pearson Precision Corp. to speak with Peyton Pearson on his/her first day back in the office after his/her trip to Europe. Alex described his/her encounter with Casey Cheatham the previous day, and told Peyton that s/he was now convinced

that Casey had stolen money from the Fun Fair proceeds that Peyton had entrusted to Defendant Cheatham's care. Peyton answered that Defendant Cheatham had delivered to him/her that morning a full accounting of those proceeds and, upon Peyton's instruction, had deposited the cash in a special account that Peyton had created solely for those funds at the Empire of New York Bank. According to Peyton, those proceeds had amounted to \$45,200.00, derived mostly from the sale of ride tickets.

19. Alex then called Taylor Templeton, a Shoreline Downs blackjack dealer, who had overseen the operation of the games of chance at the Fun Fair. When Alex reported how much Casey had allegedly delivered to Peyton Pearson, Taylor immediately expressed concern. Based on the magnitude of the bets that Taylor had seen placed during the Fun Fair, Taylor believed that the games of chance easily made more than \$90,000.00, even accounting for payments to the winners.

20. At the next meeting of the Club's Board of Directors on October 1, 2013, Taylor Templeton, upon Alex Aldrich's invitation, gave a presentation as to why s/he believed that Defendant Cheatham had under-reported the proceeds earned from the games of chance at the Fun Fair, given Taylor's personal observation of those games' operation. Alex further recounted his/her visit to Defendant Cheatham's house and how s/he had seen the stacks of cash on Cheatham's coffee table.

21. The Club now seeks reimbursement of the Fun Fair proceeds that Casey Cheatham stole and used to fund expensive purchases and support his/her gambling habit.

FIRST CAUSE OF ACTION

(Conversion)

22. Plaintiff re-alleges and incorporates the allegations made above at ¶¶ 1 through 21, as if fully set forth herein.

23. Defendant Cheatham was entrusted to gather the proceeds of the specifically identifiable ride ticket sales and the games of chance at the end of each day of the Fun Fair, and to await

further instruction as to how those funds were to be deposited or disbursed.

24. Defendant Cheatham, upon information and belief, has wrongfully converted and made use of funds raised by the Club in connection with the Fun Fair for his/her own benefit and to plaintiff's injury.

25. Defendant Cheatham was entrusted to safeguard the Fun Fair funds but, on information and belief, used those funds to fund expensive personal purchases and support Defendant Cheatham's gambling habit.

26. Defendant Cheatham's improper use of the Fun Fair funds, which rightfully and legally belong solely to Plaintiff, has never been authorized or sanctioned in any manner by Plaintiff.

27. Defendant Cheatham has refused to cease making use of the funds, or to return them to Plaintiff.

28. Plaintiff has been damaged in an amount to be determined at trial, including interest and attorneys' fees, for converting the Fun Fair Funds.

29. Defendant Cheatham's actions were willful, wanton, outrageous, and in conscious disregard of Plaintiff's rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendant, as follows:

A. *Monetary damages in an amount to be determined at trial.*

B. *Punitive damages to the fullest extent permitted by law as may be available under the causes of action alleged above or which may be alleged in any amended complaint;*

C. *Costs and disbursements, including, inter alia, statutory and reasonable attorneys' fees incurred and recoverable under applicable law in connection with prosecuting this action;*

D. *Prejudgment interest on the entire judgment;*

E. *Post-judgment interest on the entire judgment until paid in full; and*

F. *Such other relief as this Court deems just, equitable, and proper.*

DATED: July 22, 2014

By: *Sam Esquire, Esq.*

Sam Esquire, Esq.

Counsel for Plaintiff

Morningside Heights Booster Club, Inc.

VERIFICATION

I am the Secretary of the Corporation in the above-entitled action. I declare, subject to the penalties of perjury under the laws of the United States and the State of New York that the foregoing is true and correct, except as to matters alleged upon information and belief, and with respect to such allegations, I believe them to be true.

Dated: Morningside Heights, New York
July 22, 2014

By: *Fran Farley*

Fran Farley

Morningside Heights Booster Club Secretary

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MORNINGSID HEIGHTS

MORNINGSID HEIGHTS BOOSTER
CLUB, INC.,

Index No. 12345/2013

Plaintiff,

-against-

VERIFIED ANSWER

CASEY CHEATHAM,

Defendant.

Defendant Casey Cheatham, by his attorneys, as and for his answer to the Verified Complaint, states as follows:

1. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 7 of the Verified Complaint, except admits that Peyton Pearson recommended that the plaintiff hire the defendant as plaintiff's treasurer.
2. Defendant denies the allegations contained in paragraphs 21, 24, 25, 26, 27, 28 and 29 of the Verified Complaint.
3. Defendant admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 9, 10, 11, 12 and 23 of the Verified Complaint.
4. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 8 of the Verified Complaint, except admits that the defendant was hired as plaintiff's treasurer with a \$12,000 annual stipend.

5. Defendant denied knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 13 of the Verified Complaint, except admits that the defendant was directed by Peyton Pearson to gather the proceeds of ride ticket sales and games of chance at the end of each day of the fun fair and await instructions as to how to deposit or disburse the funds.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 14 of the Verified Complaint, except admits that the defendant has a Face Space page and that the defendant posted on his page information regarding recent purchases including a sports car and swimming pool.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 15 of the Verified Complaint, except that the defendant denies that he gambled to excess at the Shoreline Downs horse racing track.

8. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 16, 18, 19 and **20** of the Verified Complaint.

9. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 17 of the Verified Complaint, except admits that Alex Aldrich came to defendant's home and that Aldrich may have observed some money on a table in defendant's home.

10. Defendant repeats and reiterates each and every admission and/or denial as if more fully set forth herein in response to paragraph 22 of the Verified Complaint.

FIRST AFFIRMATIVE DEFENSE

11. The Verified Complaint fails to state a cause of action upon which relief may be granted as the plaintiff has not demonstrated a specific identifiable piece of property over which the defendant has exercised control nor has the **plaintiff** sufficiently pled the necessary intent to exercise control over the allegedly converted property.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has not made a demand for the property that Defendant has allegedly converted, and therefore may not pursue a conversion claim.

WHEREFORE, Defendant demands judgment dismissing the Verified Complaint, together with the costs and disbursements of this action.

DATED: New York, New York
August 22, 2014

Lawless, Lawless & Lawless, LLP

By: *Robert J. Lawless, Esq.*

Robert J. Lawless, Esq.

Counsel for Defendant

VERIFICATION

I am the Defendant in the above-entitled action. I declare, subject to the penalties of perjury under the laws of the United States and the State of New York that the foregoing is true and correct, except as to matters alleged upon information and belief, and with respect to such allegations, I believe them to be true.

Dated: Morningside Heights, New York
August 22, 2014

By: Casey Cheatham

Casey Cheatham

**NEW YORK STATE
HIGH SCHOOL
MOCK TRIAL
AFFIDAVITS**

AFFIDAVIT OF ALEX ALDRICH

1. My name is Alex Aldrich. I am 45 years old and have been married for 20 years. My address is 777 Clover Lane, Morningside Heights, NY. I have lived in Morningside Heights my entire life and have two children who attend Morningside Heights High School. My spouse and I own and operate a successful equestrian center on the outskirts of town, complete with an indoor arena, where the school district's equestrian teams are based. I think it's important to give back to our community, which I do in many ways.

2. Given rising costs and attempts to limit property tax increases, our Morningside Heights Central School District adopted, like many, a budget for 2013-2014 that eliminated numerous athletic programs, including the equestrian teams and clubs. In response, a group of local business owners, including me, and led by Peyton Pearson, the owner of Pearson Precision Corporation, created the Morningside Heights Booster Club, a not-for-profit, tax exempt corporation under 501(c)(3) of the Internal Revenue Code.

3. Pursuant to our by-laws, the Club was to be run by a three-member Board of Directors, consisting of a President, a Vice President, and a Secretary. On May 15, 2013, we elected Peyton Pearson as the Club President. I was elected Vice President, and Fran Farley was elected Secretary.

4. The first meeting of the Booster Club's Board of Directors was held on June 1, 2013, at the offices of Pearson Precision. Since we were hopeful that the Club would raise enough money to restore funding for all of the eliminated extracurricular activities in the District, we decided that we needed to hire a Treasurer to keep track of donations to the Club and to ensure that those funds were spent appropriately.

5. Peyton Pearson recommended that the Booster Club hire Casey Cheatham, Pearson Precision's Chief Financial Officer ("CFO"), as our Treasurer. Given what I personally knew about Casey Cheatham, I had my doubts about his/her honesty, based upon what his/her former spouse had said about him/her being a compulsive gambler. However, Peyton persuaded me that despite some problems a few years earlier, Casey would never cheat or steal, and we unanimously voted to hire Casey Cheatham for an annual stipend of \$12,000.00. We created a

Face Space page for the Booster Club's activities, and I became Face Space "friends" with Casey.

6. During the summer of 2013, we, the Directors and members of the Morningside Heights Booster Club, raised \$150,000.00 by soliciting donations from the wealthiest residents in the District. Nevertheless, Peyton Pearson convinced us that the Booster Club should hold a fundraiser that most of the residents in the District could afford to attend. After some discussion, we, the Directors, decided to host a First Annual Morningside Heights Fun Fair, to be held from Friday, August 23, 2013 through Sunday, August 25, 2013, in nearby Shoreline Park.

7. The Fun Fair would include carnival rides for all ages, a chicken barbeque, and games of chance for adults, such as bingo, roulette and blackjack. The tickets to attend the Fun Fair would cost only \$5.00 each, but we figured we'd make most of the money on the sale of tickets for the rides, the chicken BBQ and especially the proceeds from the games of chance.

8. The Fun Fair was a tremendous success. We sold over 5,000 tickets at \$5.00 each, and 4,000 chicken dinners at \$7.00 each. All of the revenue from the sale of the admission tickets and the chicken dinner tickets were profit because Peyton Pearson had contributed all of the food, rides and prizes, in kind.

9. Since the tickets for admission and the chicken dinners were sold at a single location, Pearson Precision's headquarters, up until the day before the Fun Fair began, the Booster Club could easily keep track of those proceeds. This was because on every business day from the first day of sales, July 1, 2013, through Thursday, August 22, 2013, Peyton gathered the proceeds from that day's ticket sales and personally deposited them, the very next day, in the Booster Club's account at the local branch of the Empire of New York Bank.

10. Unlike the tickets for entry and the chicken dinners, the ride tickets were sold only during the Fun Fair. Accordingly, we could not predict how much the Booster Club would earn from the ride tickets or the games of chance. Peyton Pearson would be busy overseeing the Fun Fair during its entire three days, so s/he deputized Casey Cheatham to monitor the sales of the ride tickets and the games of chance.

11. Peyton told Casey to gather those proceeds at the end of each day and await further instructions as to how that money was to be deposited or disbursed. A few weeks before the Fun Fair, Peyton and his/her spouse decided that they would take a three-week vacation to Europe as soon as the Fun Fair was over, from August 26, 2013 to September 16, 2013. However, before s/he left, Peyton did not give Casey any additional instructions as to what to do with the proceeds.

12. I check my Face Space daily, and while Peyton was away, I noticed, as did several other Booster Club members, that Casey had made several postings bragging about substantial personal expenditures. One of them, on September 3, 2013, said, "Take a look at my new sports car!" next to a photo of a bright red coupe. The following day, Casey posted, "Finally, I have the money to put a swimming pool in my backyard!" On September 15, 2013, Casey wrote on Face Space, "There's nothing better than the exhilaration of a great day at Shoreline Downs!"

13. By then, I was extremely concerned. I had heard from several sources that Casey Cheatham had a compulsive gambling problem. Rumor had it that Casey bet on the horse races at the local Off Track Betting ("OTB") parlor, and that s/he played the video lottery terminal games at the Shoreline Downs Racetrack excessively. True, Casey made a six-figure salary as the CFO at Pearson Precision, but that didn't go very far, since Casey had to pay almost half of his/her disposable income to his/her ex-spouse, Shannon Templeton, as maintenance from his/her hotly contested divorce in 2010.

14. I didn't recall having seen Casey Cheatham brag about large purchases on his/her Face Space page before the September 3rd sports car purchase posting. I knew that Peyton Pearson had assigned Casey to gather and safeguard the proceeds from the ride ticket sales and the games of chance at the Fun Fair. Needless to say, I became very suspicious that Casey was spending money that belonged to the Booster Club.

15. On the evening of September 16, 2013, I paid an unannounced visit to Casey Cheatham's home. I wanted to find out where s/he was keeping the proceeds from the Fun Fair ride tickets and games of chance. When Casey answered the door, I asked if we could discuss the money, but Casey said it wasn't a good time because s/he was taking care of his/her dog, Rex, who Casey claimed was sick. From where I was standing on Casey's porch, I thought I saw stacks of cash

lying on a coffee table, about 10 feet away. When I asked Casey if it was cash on the coffee table, Casey said that s/he had to go, and closed the door in my face.

16. The next day, I went to see Peyton at the offices of Pearson Precision Corp. It was his/her first day back there since returning from Europe. I told Peyton about my encounter with Casey Cheatham the previous day, and that I was now convinced that Casey had stolen money from the Fun Fair proceeds that Peyton had entrusted to him/her. Peyton answered that what I said was nonsense, that just that morning, Casey had given him/her a full accounting of those proceeds, and that on Peyton's instruction, Casey had deposited the cash in a special account that Peyton had created solely for those funds at the Empire of New York Bank. Peyton specifically told me that those proceeds, totaling \$98,200.00, derived mostly from the sale of tickets for the chicken dinners and the rides. I was really upset, especially because Peyton refused to see that Casey had stolen from our kids, and on my way out I said, "I told you so - Casey is a no-good, lying thief!"

17. I couldn't believe that Peyton still didn't get it, so I called Taylor Templeton, a Shoreline Downs blackjack dealer, who had overseen the operation of the games of chance at the Fun Fair. Morningside Heights is a tightly knit community, and Taylor happens to be a sibling of Shannon Templeton, Casey's former spouse. As soon as I told Taylor Templeton how much money Casey had allegedly delivered to Peyton, Taylor was concerned. Based upon the magnitude of the bets that Taylor had seen being placed during the Fun Fair, Taylor believed that the games of chance easily made more than a mere few thousand dollars, even minus the payments made to winners.

18. As a result of our conversation, Taylor and I went to the Morningside Heights Police Department the following day, September 18, 2013, to file criminal charges against Casey Cheatham. Unfortunately, after we recounted our suspicions to the Desk Lieutenant on duty, Toni Tuesday, she told us that without more concrete evidence proving that Casey had stolen money that belonged to the Booster Club, the Morningside Heights Police would probably not take a case against Casey. Lt. Tuesday also said that our complaint against Casey was civil, not criminal, in nature and, in fact, no criminal charges regarding the Fun Fair proceeds have been filed against Casey.

19. At the next meeting of the Booster Club's Board of Directors on October 1, 2013, Taylor Templeton gave a presentation, at my request, as to why s/he believed that Casey Cheatham had

under-reported the proceeds from the games of chance, based upon Taylor's personal observation of the operation of those games at the Fun Fair. During the same Board of Director's meeting, I described my visit to Casey Cheatham's house and how I had seen stacks of cash on Casey's coffee table.

20. Peyton Pearson reacted very angrily and accused Taylor Templeton of lying in retaliation against Casey for having divorced his/her sibling, Shannon. Peyton also insisted that Casey had recently inherited \$500,000.00 from his/her favorite Aunt Mabel Cheatham, a popular, retired teacher at Morningside Heights High School, who had died single and childless, and had pinched pennies her entire life.

21. I then accused Peyton of trying to protect Casey because Casey, as Peyton's CFO, knew all the "dirty secrets" about Peyton's business and personal life. Over Peyton's objection, I moved to commence a civil action on the Booster Club's behalf against Casey Cheatham for conversion of the proceeds from the Fun Fair's ride ticket sales and games of chance. Fran Farley seconded the motion. S/he and I voted in favor of it, while Peyton was against it. As a result, this case ensued, based upon the claim that Casey Cheatham stole Fun Fair money from the ride ticket sales and the games of chance in order to support his/her compulsive gambling habit and to fund his/her expensive purchases.

Dated: September 2, 2014

I affirm the truth of this statement.

Alex Aldrich

Alex Aldrich

AFFIDAVIT OF TAYLOR TEMPLETON

1. I live at 131 Sunrise Terrace. I have lived and worked in Morningside Heights all my life. I graduated from Morningside Heights High and have worked at Shoreline Downs for 10 years, where I am the longest-serving blackjack dealer. Before attending dealer school, I was a change attendant, craps stickman, and bingo caller, so I know the gaming business as well as anyone.

2. With tips, I do all right at Shoreline Downs, but I'm not exactly rolling in it if you know what I mean. That's why I'm always looking for side-gigs where I can put my gaming knowledge to good use. I call bingo at the Knights of Columbus Hall every other Saturday, deal at the poker nights they have over at the Country Club once a month, and help out the occasional charity fundraiser.

3. Peyton Pearson is a regular at the Country Club poker nights, so I've known him/her for a while. Back in the summer of 2013 s/he asked if I could help out with this event s/he was planning to help the schools and I was glad to do it. S/he didn't want to go overboard with the gambling since this was a family thing, but we agreed to do bingo, one of those big cardboard roulette wheels, and even a couple of blackjack tables. I had a couple of the guys I work with at Shoreline help me out, as I often do for these sorts of things. We had a tent set up with a barrier around it to keep the kiddies out, and I sold and cashed chips from a sort of improvised pit in the middle.

4. Since there wasn't much security, we arranged it so that one of Peyton's people, Casey Cheatham, would come by every hour or so to check on the cash situation and take any proceeds back to the trailer they had set up to run the Fair. Casey and I go way back because s/he used to be my sister/brother in law, believe it or not. I still see him/her pretty regularly because s/he comes to the Downs all the time. S/he never plays at my table anymore for some reason, but s/he used to all the time when we were family. I remember joking with her/him that it was weird to have her/him taking cash from me since it used to be the other way around!

5. Anyway, this event was bigger than the ones I usually work, so I was happy not to have to sit on all that cash or do any of the accounting other than to make sure I had enough on hand

for payouts. I think we were there for three days and we seemed to take in quite a haul. Only once did I have to call Casey to have her/him bring me some cash (some old lady hit a hot streak on the roulette wheel). I would try to keep around two-thousand in my till and give him the extra.

6. Over the course of those three days, I'd guess we raked in at least ninety grand. Bingo nights at the K-of-C usually clear ten. And about a year ago, I worked the games of chance at a three-day fair in Riverside, a town which is about five miles from Morningside Heights. We took in seventy-five grand from the games of chance at the Riverside fair and that was with a crowd of only 3,000—I understand the Fun Fair drew at least 5,000 people. At the Fun Fair, we had at least as many cards going on Friday and Saturday as we usually do at the K-of-C, and even Sunday was fairly busy (the pews were probably a little thin that weekend).

7. When I heard later from Alex Aldrich that the take was under twenty grand, I knew right off that someone had their hand in the cookie jar. There is no other explanation. To be quite honest, I knew right away that it was Casey too. It's just like Cheatham to pull something like that. And that's pretty much what I told that group of people Alex asked me to talk to in October. We took in over ninety grand and the shortfall had to be under Casey's mattress—or maybe even in **Shoreline** Downs' books by now.

8. Now, Casey will probably say that I've got some kind of vendetta against him/her because of how things went down with my sister/brother, but come on. Yes, s/he and my sister/brother borrowed some money from my parents and never paid it back to the estate that we all split after they passed. And yes, that money could have helped me out a lot a while back. I might have even gone back to school. That was the plan anyway.

9. But I am way over that stuff. That was a long time ago and it was technically my sister/brother who borrowed that money anyway. I've forgiven my sister/brother and all but forgotten about Casey since those two split. Am I surprised though? No, I'm not. If you spend as much time around gamblers as I do, you learn to spot a cheat, and Cheatham might as well wear a sign around his/her neck.

10. All that I can say for sure though is that Casey took bags of cash from my gaming tent to that trailer s/he had set up several times a day for three days in a row. The blackjack tables alone would have put up more than forty thousand. Judging by the traffic inside of the tent, they probably took in more like sixty. That I know. I mean, I do it for a living. Unfortunately, so does Casey, it seems. S/he's just usually on the other side of the table. I guess this is what happens when you let the mouse watch the cheese.

Dated: October 16, 2014

I affirm the veracity of the foregoing statement.

Taylor Templeton

Taylor Templeton

AFFIDAVIT OF DR. JESSE JAMES

1. I am a licensed psychiatrist with a specialty in addiction. I live at 123 Vista Road on Fire Island. I graduated from SUNY Stony Brook, *magna cum laude*, with a B.S. in 1992. After that, I attended St. George's University Medical School in Grenada, West Indies, where I received my M.D. I served my internship and was later employed at The Center for Change in Omaha, Nebraska, from 2000 until 2004. I moved back to New York after I inherited my parents' home on Fire Island in 2006, and became licensed by the State of New York in 2008. I have been self-employed as a treating psychiatrist since my licensure. I am a member of the American Academy of Addiction Psychiatry.

2. Addiction psychiatry involves identifying and addressing a patient's compulsions whether or not those compulsions result in problematic behavior. Most people are familiar with substance-related addictive disorders, such as addictions to drugs or alcohol, or even tobacco or caffeine. Psychiatrists believe that substances taken in excess may result in a direct activation of the brain's reward system, producing feelings of pleasure or being "high." Some psychiatrists, including me, also believe that certain behaviors can activate reward systems similar to those activated by drugs of abuse. Compulsive gambling is generally recognized as one of those behaviors that can activate the reward system.

3. Gambling means that you are willing to risk something you value in the hope of getting something of even greater value. Gambling can stimulate the brain's reward system much like drugs such as alcohol can, leading to addiction. Compulsive gambling, also called gambling disorder, is the uncontrollable urge to keep gambling despite the toll it takes on your life. If you are prone to compulsive gambling, you may chase bets (continually trying to win back money), hide your behavior, deplete savings, accumulate debt, or even resort to theft or fraud to support your addiction.

4. The destructive behavior can and should be controlled, with intensive treatment of the source of the problem – the addiction.

5. Some psychiatrists believe that an addict's destructive behavior cannot be considered "intentional" because it is a by-product of an addictive disorder. I admit this is an area of

controversy in my field. In my opinion, there is a big difference between addiction, which no one intends to have in their life, and the resulting destructive behavior, which I believe the addict knowingly and intentionally engages in.

6. The addict knows right from wrong. The addict might not be able to control the compulsion, but in my opinion s/he surely has the ability to choose behavior. Unfortunately the addict often chooses bad behavior. But that doesn't mean the addict didn't "intend" to behave that way.

7. Another huge challenge is trying to differentiate between problematic use and an addictive disorder. People can ingest perfectly legal substances, such as alcohol, or engage in perfectly legal behaviors, such as gambling. Depending on their social status and income, it is possible that no one would ever suspect they were addicts, especially when the consequences of their behavior do not really affect their lifestyles substantially. For example, a very wealthy person can afford to gamble and lose a substantial amount of money without suffering any serious financial consequences. But in my opinion, that person is just as much of a gambling addict as someone who gambles with, and loses, the grocery and rent money.

8. When evaluating or diagnosing a person, psychiatrists and psychologists use the most recent volume of a seminal manual titled, Diagnosing How We Act, Volume 5, or DHA-5 for short. The DHA-5 was created by teams of researchers from the top of the field in their various specialties, and it is primarily intended to guide the clinician in coming to accurate clinical judgments to diagnose and treat patients. To come to an accurate diagnosis, treating or clinical psychiatrists such as myself do an exhaustive clinical assessment, patient history, and sometimes neurological and medical assessments before coming to a conclusion. In my opinion, that is the best and most reliable way to be confident in a diagnosis, which is absolutely necessary before a psychiatrist can design and implement a treatment plan, if necessary. The patients who come to me are generally cooperative and willing to participate and provide as much information as possible.

9. The DHA-5 is also used when psychiatric conditions are relevant to legal proceedings. This is referred to as "forensic" psychiatry, and there is a separate (optional) board certification for that specialty. Quite frequently a forensic psychiatrist is called upon to make a diagnosis

when s/he has had little or no opportunity to interview or evaluate an individual – in other words, based solely on whatever information the psychiatrist can obtain from the record and the facts provided by the attorneys, or what limited information the attorneys will allow the defendant to provide. That is the type of evaluation I conducted in this case.

10. During discovery, I obtained many records and reviewed statements from other witnesses. I was permitted to meet Casey Cheatham with defense counsel. In my opinion, that meeting was not fruitful as Casey was not forthcoming with his answers to my questions. In short, he denied any involvement.

11. My diagnosis is based on the records, statements, and interviews with a particular emphasis on the following factors: a) Casey admits s/he has or had a gambling problem; b) Casey's own family widely acknowledges that s/he is a problem gambler; c) there was a lot of money missing from the gaming tables at the fund raiser; d) Casey had a lot of cash in his/her home without a decent explanation of where it came from; e) Casey is engaged in a high risk/high reward career which financially benefits his/her boss, leading both Casey and the boss to be in denial about Casey's problem.

12. The DHA-5 cautions that there are risks and limitations in using the DHA-5 criteria in forensic cases, especially without a productive interview with the subject. Nonetheless, I am reasonably confident in my diagnosis and assessment of Casey Cheatham as suffering from a gambling disorder. In my opinion, Casey's addiction caused him to steal the funds at issue as part of his gambling disorder.

13. According to the DHA-5, there are a number of signs and symptoms of compulsive (pathologic) gambling. They include gaining a thrill from taking bigger and bigger gambling risks, preoccupation with gambling, including planning new and different ways to obtain money to gamble with, being restless or irritable when attempting to cut down or stop gambling, using gambling as a way to escape problems or feelings of helplessness, guilt or depression, "chasing" the losses by continuing to try to win back money, taking time from work or family life to gamble, concealing or lying about gambling, feeling guilt or remorse after gambling, borrowing money or stealing to gamble, and failed efforts to cut back on gambling.

14. Being highly competitive, a workaholic, restless or easily bored increases the risk of becoming a compulsive gambler. This is particularly applicable to Casey, who has a hard-charging six-figure job with Pearson Precision Corp. as its Chief Financial Officer. In that role, Casey made some risky moves that paid off very handsomely over the years. In my opinion, this explains Peyton's loyalty to Casey, and may also be the source of Casey's feelings of stress to keep those personal and professional rewards coming. Casey had been rewarded personally and professionally from essentially risky, gambling behavior. In my opinion, if Casey's gambling disorder remains untreated, it is likely that it will escalate with Casey potentially stealing from Pearson Corporation in the future.

15. It is my opinion that Casey's gambling is out of control for a number of reasons. Casey admits that in the past, gambling has wrecked a marriage, created huge financial losses, and caused depression. I have been told that Casey bets on the horses several times per week at a local OTB parlor and plays video lottery terminals to excess. I believe this indicates the return of Casey's full-fledged gambling addiction. My professional opinion is that Casey was annoyed and depressed by the delay in receiving his/her inheritance, and as a result, he returned to gambling and suffered huge losses prior to stealing the Booster Club money.

16. Despite the opinions of other psychiatrists in my field about whether a compulsive gambler "intends" to steal money, gambling addiction does not and should not relieve anyone from criminal or civil consequences of their behavior. Therefore, based on the foregoing, it is my professional opinion that Casey intentionally stole the money at issue; he should be held accountable and receive treatment.

Dated: September 17, 2014

To the best of my knowledge, the above is true.

Jesse James

Jesse James, M.D., A.A.A.P.

AFFIDAVIT OF CASEY CHEATHAM

1. My name is Casey Cheatham and I am 56 years old. I reside at 534 Big Hill Road in Morningside Heights, New York. I am employed as the Chief Financial Officer (CFO) of Pearson Precision Corp., a company that coordinates projects for eco-friendly businesses. We have the distinction of being the largest property taxpayer in the Morningside Heights District.

2. I have an M.B.A. from SUNY at Stony Brook, received in 1983. I received my undergraduate degree in political science from SUNY at Buffalo in 1980. After M.B.A. school, I went to work for Parthur Pandersen, a national accounting firm. Following the demise of PP in 2002 as a result of the Fenron accounting fiasco, I was hired in 2003 by my longtime friend, Mr./Mrs. Peyton Pearson, as an internal auditor. Our friendship grew even stronger as a result of our working together. About three years after I was hired, the then-CFO retired and I was promoted to the position. Peyton trusted me in the role of CFO. I skipped over several individuals who had been in the financial division of the company a lot longer and needless to say, many of them were not happy with my elevation. You wouldn't believe the backbiting and vitriol accompanying my promotion. The stories about how I got the CFO position were rampant with gossip backed by rumors and supported by innuendo. Anyway, I have always been a hardworking and loyal employee of Pearson Precision and deserved this promotion.

3. So, I am not surprised that I would be accused by detractors of stealing from a charity set up to help the children of our public schools. Because of my background, I was asked by Peyton to serve as Treasurer of Morningside Heights Booster Club, a tax-exempt corporation pursuant to section 501[c][3] of the Internal Revenue Code. The organization was established to raise money to pay for extracurricular activities in the Morningside Heights District that were eliminated due to budget cuts. I am paid \$12,000.00 per year for my services.

4. Seed money was put into the organization in June 2013 by Peyton and other prominent businesspeople, like Alex Aldrich, Fran Farley, and other wealthy residents of Morningside Heights, for upstart operational expenses, including the payment of my salary. Approximately \$150,000.00 was raised in the summer of 2013. Since this amount was not nearly enough to meet the needs of the school district, the Board of Directors, which includes Peyton, Alex Aldrich and Fran Farley, set out to raise more money by sponsoring an annual Fun Fair. The

2013 Fun Fair took place on Friday, August 23rd through Sunday, August 25th. The Fun Fair included carnival rides, a chicken BBQ, and games of chance for adults, such as bingo, roulette and blackjack. Because Peyton was busy overseeing the entire Fun Fair, s/he asked me to collect the proceeds from the carnival rides and the games of chance. By my estimate, approximately 5,500 people attended the 2013 Fun Fair, with 1,500 in attendance on the first day, 2,250 on the second day and 1,750 on the third day. From the ride ticket sales, we raised \$7,100.00 on day one, \$10,840.00 on day two and \$9,590.00 on day three. The games of chance brought in \$5,340.00 on day one, \$6,440.00 on day two and \$5,890.00 on day three. At the end of each day of the Fun Fair, I collected the proceeds from the rides and the games and awaited instructions from Peyton on how to deposit the funds.

5. Peyton was so exhausted as result of expending so much energy overseeing the Fun Fair that s/he and his/her spouse left for a three-week vacation to Europe on the Monday morning following the close of the Fair. Peyton forgot to give me instructions on how to deposit the proceeds in my possession, so I used the night deposit slot of the Empire of New York Bank to place the money into the Club's checking account. I have the receipt showing a deposit of \$45,200.00. I also prepared a financial statement showing the expenses incurred and revenue earned in putting on the Fun Fair. When Peyton returned from his/her vacation, s/he told me to move the money to a special account s/he had set up for the Fun Fair proceeds. Now, I know there are some people who are saying a lot more than 5,000 people attended the Fun Fair over the three days and that the proceeds from the rides and the games should easily be in the range of \$170,000.00. I can't believe it! They are accusing me of pocketing nearly \$70,000.00. These detractors I talked about earlier will stop at nothing to get at me.

6. One of these detractors is Alex Aldrich, one of the Directors of the Booster Club. Although Mr./Mrs. Aldrich voted to hire me as Treasurer, I've heard that s/he has questioned my honesty. I believe this sentiment may have arisen as a result of complaints about me by my ex-spouse. My ex-spouse, Shannon Templeton, has been running all over town talking about my past gambling addiction and the family assets I wasted before I got the problem under control. I admit that it was my fault that we are divorced.

7. Alex Aldrich will stop at nothing to get me dismissed as Treasurer. S/he dropped by my house on September 16, 2013 to question me about the proceeds I had collected at the Fun Fair.

I told him/her that it was not a good time to discuss the matter because my dog, Rex, was sick and I had to take care of him. I noticed Mr./Mrs. Aldrich looking over my shoulder and apparently seeing several stacks of cash on my coffee table. I told him/her I had to go and quickly closed the door. I didn't want my dog to run out into the street and get hit by a car.

8. Well, the next day Mr./Mrs. Aldrich went to see Peyton, who had just returned from his/her vacation and probably told Peyton what s/he had seen on my coffee table, and that I had stolen funds from the fair. It is my understanding that Peyton was livid and reassured Mr./Mrs. Aldrich that I had not misappropriated the proceeds of the Fun Fair. Still on his/her witch hunt and not satisfied that everything was in order, Mr./Mrs. Aldrich visited my former sibling-in-law, Taylor Templeton, a Shoreline Downs blackjack dealer, who never liked the fact that I was married to Shannon. S/he disliked me even more after the messy divorce. Taylor had served as the overseer of the games of chance at the Fair. Mr./Mrs. Aldrich apparently told Taylor about the amount of money I had deposited, and Taylor thought that the games brought in more proceeds than what I reported.

9. So, these two C.S.I.-wannabees (Aldrich and Templeton) went to the police to file criminal charges against me. The police officers, I gather, looked at Mr./Mrs. Aldrich's so-called evidence and laughed them out of the building. It's truly amazing what some people will do to destroy a person.

10. Now, I don't claim to be a perfect person. I have had my share of challenges in this life. My compulsive gambling problem caused me to lie to my spouse about money and contributed to the demise of my marriage. I attended six months of Gamblers Anonymous, but found the bi-weekly sessions to be a bit corny. Anyway, I learned a lot about the addiction, about myself and how to control the urges. I have cleaned up my act, so to speak. I may have wasted assets that belonged to me and my spouse, but no one can prove that I ever misused any other money entrusted to me.

11. I really should stay off Face Space. I wouldn't call it another addiction, but I am on the site incessantly it seems. I love to keep my "friends" updated on what is happening in my life. On September 3, 2013, I posted a picture and a comment about my newly purchased 2013 red convertible Mercedes Benz sports car with all of the creature-features. Boy, it is a sharp looking

vehicle and I just had to tell everyone. On September 4th, I let everyone know about the swimming pool I have been planning to put in and that I now had the money to go forward. On September 15th, I posted a note about my recent visit to the race track, saying, “There’s nothing better than the exhilaration of a great day at Shoreline Downs.” Since my gambling addiction is under control, an occasional trip “to play the ponies” is a good outlet for me. Besides, it takes my mind off all of the money I send to my ex-spouse each month as spousal support. Do you believe s/he will get about one-half of my monthly disposable income for another four years?! I make about \$110,000.00 at Pearson Precision, but that amount doesn’t go very far considering all of my expenses.

12. I know there are wild rumors out there that I go weekly to the Off Track Betting (OTB) location that is approximately two blocks from my house. There are also claims that I use the video lottery terminal game to an excess at Shoreline Downs. All I have to say is that these people should mind their own business. Once, when I thought I had a gambling problem, I met with this quack doctor. What a waste of time. S/He didn’t do anything for me. Sometimes, you get a little depressed after losing money. I once lost \$20,000.00 in one weekend. I never worry because I am always able to get money when I need it. I now realize that it was a big mistake to accept Mr./Mrs. Aldrich as a “friend” on Face Space.

13. The money that Mr./Mrs. Aldrich may have seen on my coffee table is the money I earned as Treasurer of the Booster Club. As I noted above, I am paid a stipend of \$12,000.00 per year or \$1,000.00 per month. So, to keep from having to write out checks, I use the Club’s ATM card to withdraw \$500.00 on the 1st and 15th of each month. The June 15th withdrawal slip shows a “Cash Advance From Credit” denial comment. That was just a “fat-finger” error on my part. I hit the “Cash Advance From Credit” icon by mistake. Anyway, I like to keep my stipend money on hand instead of depositing it into my own bank account. I know I could have arranged for direct deposit, but who wants to go through that hassle. Besides, who doesn’t like the smell of fresh new money?! So, the money on the coffee table was my Treasurer’s salary from June to September, approximately \$4,000.00. You can check my 1099-MISC statement I filed with the Internal Revenue Service in January 2014 showing my Booster Club compensation for 2013. As you know, the ATM machines dispense twenty dollar bills. Four thousand dollars in twenty-dollar notes will look like a lot of money from a distance. I may also have had some other of my money on the table as well. I just don’t remember for sure right now. I realize that what I am saying is my word only, but I am telling the truth. Bank on that!

14. I learned in late August 2013 that I was inheriting \$500,000.00 from my late Aunt Mabel Cheatham. Besides being my favorite auntie, she was a well-known Morningside Heights High School teacher who died single and childless. She lived a miserly life, spending very little and saving the rest. To celebrate my impending windfall, I decided to buy the Benz, to put in the swimming pool and to treat myself to Shoreline Downs. I don't know why I have only received \$20,000.00 so far from Aunt Mabel's estate. That executor/trix, Whitney Williams, is deliberately slow-walking the closing of the estate. I believe s/he can continue to charge the estate for his/her services so long as the estate remains open. I'm not a spendthrift and my share of the estate should not be doled out in periodic payments. My estate attorney is looking into getting the payment schedule set aside. It is a good thing I had kept the approximate \$50,000.00 I had won during my excessive gambling days. So what if I don't have the gambling receipts to prove I won this money. You can trust me. I'm just not good at keeping receipts. The initial plan was to keep the gambling proceeds on hand as a rainy day / emergency fund. It is wise to keep savings in the amount equal to six months of income in case of a job loss or other disaster. But when I heard about the will, I decided to treat myself and splurge.

15. I believe Mr./Mrs. Aldrich and Taylor are jealous of my success and are trying their best to set me up. Mr./Mrs. Aldrich never wanted me to be hired as the Club's Treasurer. Taylor believes I mistreated his/her sibling and that I probably should be paying even more in spousal support. At the end of this silly lawsuit, the truth will come out and these two miscreants will be exposed for their misdeeds.

Dated: September 9, 2014

I affirm the veracity of the foregoing statement.

Casey Cheatham
Casey Cheatham

AFFIDAVIT OF PEYTON PEARSON

1. My name is Peyton Pearson. I reside at 428 Hilltop Drive in Morningside Heights, New York. I am 57 years old and have been married to Nicky Newhart for 30 years. We have one grown child, Kate, who is an attorney with the Environmental Protection Agency (“EPA”). I have lived in downtown Morningside Heights for the last 25 years and am active in and committed to the community.

2. After earning a B.S. in electrical engineering from Erie College and an M.B.A., with a concentration in systems management from Harton University, I worked for many years in engineering firms, first as an engineer and then a manager. In 2000, I formed Pearson Precision Corp. (“Pearson Precision”), a company in Morningside Heights that coordinates projects for eco-friendly businesses. We help our clients obtain local, state, and federal government approvals for their ventures and also put them in touch with business resources, both personnel and capital. I am the owner and President of Pearson Precision, and Casey Cheatham, my longtime friend and business associate, is the company’s Chief Financial Officer. Pearson Precision has 45 employees, including Casey and me. With the recent proliferation of eco-friendly enterprises, my business has become very successful—we are the largest property taxpayer in Morningside Heights. In light of my company’s success, I recently have been able to devote more of my time to advocating for increased civic education and volunteering for charitable causes.

3. In 2013, I learned that Morningside Heights Central School District (“Morningside Heights Central District”), where my daughter Kate went to school, adopted a 2013-14 school year budget that eliminated funding for the Morningside Heights Central High School’s award-winning mock trial team as well as for numerous athletic teams and clubs, and also cut financial support for the Mock Trial Summer Institute. The Morningside Heights Central District, like others throughout New York State, was not able to fund all of its student academic, athletic, and extracurricular programs because of rising costs and opposition by members of its Board of Education to raising property taxes. I was dismayed to hear about the cutting of student programs, especially since my daughter had a great experience as a member of the Morningside Heights Central High School Mock Trial Team—in fact, I believe her exposure to trial advocacy

during high school motivated her to pursue a career in the law and social justice.

4. After hearing about the funding crisis, I decided to create the Morningside Heights Booster Club, Inc. (“Club”), a not-for-profit tax-exempt corporation under Section 501(c) (3) of the Internal Revenue Code. It was my hope that the Club would raise enough money to restore funding for eliminated extracurricular activities in the Morningside Heights Central District. I drafted by-laws for the Club. The by-laws assign the role of governance to a three-person Board of Directors, including a President, Vice President, and Secretary. On May 15, 2013, the Club’s initial complement of members elected me as President, and two other local businesspeople, Alex Aldrich and Fran Farley, as Vice President and Secretary, respectively.

5. On June 1, 2013, Alex, Fran, and I met for the first time at my company’s offices. We decided that the Club needed to retain a Treasurer to keep track of donations and ensure the appropriate expenditure of those funds. I recommended that we retain Casey Cheatham, who has served as Pearson Precision’s trusted Chief Financial Officer. Alex, however, expressed misgivings about Casey’s honesty—Alex had heard that Shannon Templeton, Casey’s former spouse, accused him/her of being a compulsive gambler. I told Alex that I had known Casey since college and that Nicky and I considered him/her to be family and even made him/her Kate’s godfather/godmother. In 2003, I hired Casey as the auditor for Pearson Precision, and three years later when the company’s Chief Financial Officer retired, I promoted Casey to fill the position because of his/her excellent work. Sure, Casey made some risky investments with the company’s money shortly after becoming CFO, investments made without my knowledge and many of which I would not have approved. In the end, however, we did not lose any money and, quite frankly, some of the investments paid off rather well, thank you. I mentioned to Alex that although Casey did, several years ago, have a bit of a gambling habit as well as some marital problems, s/he was a stand-up guy/gal who would never cheat, steal, or engage in any business improprieties. This assuaged Alex’s concerns. The Club’s Board of Directors then unanimously approved Casey’s appointment as Treasurer and voted to pay him/her an annual \$12,000 stipend. A few days after the June meeting, the Club created a page on Face Space, a social networking site, to promote the club’s fundraising activities.

6. Early in the summer of 2013, the Club raised \$150,000 by soliciting donations from the wealthiest residents in the Morningside Heights Central District—I believe that the Club’s

presence on Face Space and the publicity it generated greatly helped us. Despite the success of this initial direct solicitation, I convinced the Directors of the Club to host an affordable fundraiser so that all the citizens of the Morningside Heights Central District could be part of the effort to restore funding to student programs in the district. After considering possible fundraising ideas, we decided to host a first annual Morningside Heights Central Fun Fair (“Fun Fair”).

7. The Fun Fair was scheduled to take place on August 23-25, 2013 in nearby Shoreline Park. It would include carnival rides for attendees of all ages, a chicken barbecue, and games of chance, including bingo, roulette, and blackjack, for adults. The Board of Directors decided that tickets to the Fun Fair would cost \$5.00, a price that would be affordable for most of the community, and we anticipated that the major revenue from the Fun Fair would be generated from the sales of tickets for the rides, the chicken barbecue, and especially from the games-of-chance proceeds.

8. I wanted to do all I could to get the District’s student programs, especially the mock trial team, up and running, so my spouse Nicky and I contributed all the food, rides, and prizes to the Fun Fair, in kind. We sold Fun Fair entry tickets and vouchers for chicken dinners at Pearson Precision headquarters up until the day before the event. No entry tickets or vouchers for chicken dinners were available at the event. This made it easy for the Club to keep track of the proceeds. Every business day from July 1, 2013 - the first day the entry tickets and chicken dinners went on sale - through August 22, 2013, I collected the proceeds from the day’s sales, and each following day, I personally deposited them in the Club’s Fun Fair account at the local branch of the Empire of New York Bank. The advance sale of entry tickets and chicken dinners was a great success. A total of 5,000 tickets at \$5.00 apiece and 4,000 chicken dinners at \$7.00 apiece were sold. Unlike the entry tickets and chicken dinner vouchers, ride tickets were sold only during the Fun Fair.

9. During the three days of the Fun Fair, I was very busy overseeing the activities and making sure all the food and supplies were on hand—in fact, I did not have a free moment because my friends and business associates, who had come to support the kids, wanted to chat with me. It was great to catch up with everyone, and I was happy that they were having such a good time. Because I was so busy, I had no time to get involved with the collection of money. I

therefore asked Casey to monitor the sale of ride tickets and games of chance. I told Casey to collect the proceeds at the end of each day of the Fun Fair and to wait for further instructions on how those funds were to be deposited or disbursed. But with all the excitement and busyness of the fair, I forgot to tell Casey what to do with the daily proceeds.

10. The Fun Fair turned out to be a lot more work than I had expected, probably because both the planning of the event and the event itself occurred within a very short time frame. Exhausted from all the time and energy I had put into the fundraiser, I decided to take a three-week European vacation with Nicky as soon as the Fun Fair was over. Nicky and I flew to Amsterdam on August 26, 2013, and took a river cruise to Netherlands, Germany, Austria, Slovakia, Bulgaria, and Hungary—the trip was magical and also restful and restorative, beautiful scenery and no Internet service or email. In my haste to leave for my trip, I again forgot to give Casey instructions regarding the deposit of the proceeds from the games of chance and ride ticket sales.

11. I returned from Europe on September 16, 2013. I went back to work at Pearson Precision the next day. That morning, Casey gave me a full accounting of the proceeds from the ride ticket sales and games of chance at the Fun Fair. The proceeds amounted to \$45,200.00, derived mostly from the sale of ride tickets. I then instructed Casey to deposit the proceeds in a Fun Fair account, solely for those funds, that I had opened at Empire of New York Bank.

12. Shortly before noon on September 17, 2013, my administrative assistant told me that Alex Aldrich was waiting in the lobby of Pearson Precision and had demanded to meet with me. Alex was very agitated and upset. I ushered Alex into my office and closed the door. As soon as I shut the door, Alex screamed, “I told you so—Casey is a no-good, lying thief.” I asked Alex to sit down and tell me what was going on.

13. Alex said that shortly after the Fun Fair, Casey bragged on his/her Face Space page about significant personal expenditures. On September 3, 2013, Casey posted a picture of his/her brand new red sports car; on September 4, 2013, s/he remarked that s/he finally had enough money to install a swimming pool in his/her yard; and on September 15, 2013, Casey wrote about the “exhilaration of a great day at Shoreline Downs.” Alex said Casey was rumored to be a compulsive gambler, placing bets several times each week at the local Off Track Betting

(“OTB”) parlor and incessantly playing the video lottery terminal games at the Shoreline Downs horse racing track.

14. At one point during our September 17, 2013 meeting, Alex angrily blurted out, “Money we worked so hard to raise for the kids of Morningside Heights Central is now gone because of ‘conniving Casey.’” I cautioned Alex to stop spewing nonsense and to calm down. I informed Alex that Casey had given me a full accounting of the ride tickets and games of chance proceeds, totaling \$45,200.00 and that s/he had deposited the funds into the Booster Club’s checking account at Empire of New York Bank. I believed, albeit mistakenly, that this information would put an end to Alex’s unfounded accusations.

15. On October 1, 2013, the Club’s Board of Directors had its second meeting. Alex invited Taylor Templeton, who oversaw the operation of the games of chance at the Fun Fair, to give a presentation to the board. Taylor is a blackjack dealer at Shoreline Downs and is also Shannon Templeton’s sibling. At the meeting, Taylor told the Board that Casey had under-reported the proceeds from the games of chance at the Fun Fair, given Taylor’s observation of the operation of the games. Alex also informed the Board that s/he had seen stacks of cash on Casey’s coffee table when s/he visited Casey’s house on September 16, 2013.

16. I was incensed by the scurrilous accusations against Casey, who has been my faithful, devoted friend and employee for many years. I told the Board that Taylor was lying to retaliate against Casey for having divorced Taylor’s sibling, Shannon Templeton. Casey makes a good living as Chief Financial Officer of Pearson Precision— \$110,000.00 annual base salary plus benefits and stock options. In addition, Casey recently inherited \$500,000.00 from his/her favorite aunt, Mabel, who was a well-known Morningside Heights Central High School teacher. Mabel died single and childless and had pinched pennies all her life. She and Casey had a very close relationship, so he became her main beneficiary. Casey therefore has the financial wherewithal to indulge a bit and certainly had no reason to steal Fun Fair proceeds. I told the board that it was completely wrong—and in fact discriminatory—to accuse a person of being a thief simply because s/he had struggled with a gambling addiction in the past.

17. In response to my defense of Casey at the October 1, 2013 meeting, Alex said I was trying to protect Casey because s/he was my longtime employee and knew all the “dirty secrets”

about my business and personal life. At this point, I could not believe what I was hearing—not only was Casey being defamed, but now I was being victimized as well. Over my strident objection, Alex moved to commence a civil action on behalf of the Booster Club against Casey Cheatham for conversion of Fun Fair ride tickets and game-of-chance proceeds that belonged to the Club. Fran Farley seconded the motion. Alex and Fran voted in favor, and I voted against it. Disgusted with the Board’s baseless attack against my trusted friend and employee, I regrettably had no choice but to resign from the Booster Club.

Dated: October 1, 2014

To the best of my knowledge the above is true.

Peyton Pearson
Peyton Pearson

AFFIDAVIT OF WHITNEY WILLIAMS

1. My name is Whitney Williams. I am 62 years old and I live at 120 Hicks Street, Brooklyn, New York.
2. I received my B.S. degree from the New York State School of Industrial and Labor Relations at Cornell University in 1974. I received my M.S. and Ph.D. in Industrial Psychology from the University of Illinois in 1981. I am on the faculty of New York Medical College in Valhalla, New York, where I am an adjunct assistant professor in the Department of Psychology.
3. I worked for various corporations designing psychological testing for employees and employment candidates. Since 1998, I have been in private practice, advising corporations on how to work with employees who present addictive and/or compulsive behaviors.
4. I have written, as primary and/or co-author, more than 75 articles on various aspects of industrial psychology, including the effects of addiction on workplace productivity. In my work as a psychologist, I regard Diagnosing How We Act (“DHA-5”) as authoritative in the study and diagnosis of Non-substance Related Addictive Disorders.
5. I had known Mabel Cheatham since 1985. She read one of my articles which had been published in the Wall Street Journal, and we began to correspond. Mabel told me that she was a fan of my work. Although I never met Mabel, we communicated at least two to three times a week for the past 20 plus years. Over time, our communications became more intimate and I learned about Mabel’s family, her work as a teacher at Morningside Heights High School, and her plans post-retirement.
6. During one of our many communications, Mabel asked if I would be willing to serve as her executor. Frankly, I was quite surprised at the request, and I asked Mabel why she wanted me to serve in this role. Mabel explained that she wanted someone she could trust. Mabel did not want any family member to be named as the representative of her estate. We did not discuss the size of her estate nor did we discuss the provisions of her will. I told Mabel that I would serve as her executor and that I would waive any fees to which I would be entitled. However, since the administration of Mabel’s estate has taken far longer than anticipated, I have decided

that it is appropriate for me to accept a reasonable fee as administrator of Mabel's estate. I intend to ask the Surrogate's Court to award a reasonable fee to me for my services. I will defer to the court's determination in deciding what a reasonable fee is for my services as executor.

7. Mabel and I did not discuss the issue of being named as her executor again. In June of 2013, Mabel died after a long illness. Shortly after her death, I was advised by her attorneys that I had been named as executor of her estate. I was surprised to learn that Mabel left an estate including property, stocks, bonds, cash and jewelry in excess of \$2,000,000.

8. Mabel, who did not have any children, was very specific in her bequests. As a long-time member of the Morningside Heights High School faculty, Mabel wanted to give the bulk of her estate to the school for improvements to the Science, Technology, and Math (STEM) Curriculum. A fund was created under my supervision as executor to see that the funds were properly distributed and spent.

9. Mabel had only one living relative, her niece/nephew, Casey Cheatham. While Mabel was very fond of Casey, she also was very concerned about her/him. As I mentioned before, during our numerous conversations, Mabel told me about her family. She was worried about Casey, who she believed had a serious gambling addiction. Mabel, who rarely used credit cards, told me that on more than one occasion she found charges for online banking and Atlantic City casinos. When she checked on the charges, she was told that her niece/nephew Casey had used her credit card. When Mabel questioned Casey about the unauthorized use of her credit card, Casey initially insisted that the charges were legitimate. After more questioning, Casey admitted that s/he had used her/his aunt's credit card for gambling expenses.

10. When Mabel related this story to me, she was uncertain what to do. I suggested that she report the unauthorized charges to the police department. However, Mabel did not want to do that since Casey was her only living relative and at that time s/he was married to Shannon Templeton. Instead, Mabel insisted that Casey get help for her/his gambling problem. Casey promised to do so, and Mabel did not report the incident to the police. The unauthorized use of her credit card and other issues regarding Casey's personality gave Mabel pause as to what portion of her estate should be distributed to Casey. Mabel told me that on family occasions, such as Thanksgiving and New Year's Day, she would often hear Casey talking on the telephone

to someone about how much Casey had bet on the games. When Casey was having these “discussions”, s/he often became quite loud and disrupted the family gatherings. Mabel told me that while Casey denied anything was wrong, she believed that s/he was gambling with large amounts of money. Mabel also began to notice that certain items were missing from her home after these family gatherings, such as jewelry, candlesticks, and some coins. Mabel suspected that Casey was taking these items to pay off debts. Despite my suggestions that Mabel report the incidents to the police, she refused to do so.

11. Although I was not familiar with the terms of her will until the will was admitted to probate, I did suggest to Mabel that if she intended to leave any of her estate to Casey, that she include restrictions as to when Casey could receive the money. Under the will, Mabel left \$500,000 to Casey. Mabel provided in her will that Casey would not receive the money all at once. Instead, Casey would receive an initial payment of \$20,000. This sum was paid to Casey on September 1, 2013, after the will was approved for probate by the New York County Surrogate. The remaining funds would be deposited into an approved bank and would be paid to Casey (or Casey’s distributees) based upon a schedule set forth in the will. The next payment is scheduled to be made on September 1, 2015. Therefore, to date, only \$20,000 has been distributed to Casey from Mabel’s estate. Mabel also included in her will, a provision that if the will is challenged, then the person making that challenge loses any of the funds bequeathed under the will. As Mabel’s executor, I am responsible for the distribution of the estate’s assets. I can state that there have been no other payments to Casey from the estate.

12. I understand that Casey has been sued for conversion. I have been advised by the attorneys for Mabel’s estate that conversion requires proof that a person intentionally exercised control over the property of another. I further understand that plaintiffs allege that Casey stole the Fun Fair proceeds to support her/his gambling habit and to fund expensive purchases. My work as an Industrial Psychologist has included examining addiction and its effect on workplace productivity. Casey Cheatham’s actions are consistent with an individual who has a serious gambling addiction. The temptation provided by the cash generated by the games of chance may have proven too much for Casey to resist. S/he rapidly spiraled downward, making luxury purchases and gambling. When Casey took these actions, s/he was only concerned with satisfying her/his urge to gamble. Nothing else mattered. This is typical of the addiction.

13. I have read the affidavit of Dr. Jesse James, submitted on behalf of the plaintiff. I agree with Dr. James' finding that Casey suffers from a gambling addiction. My understanding of Casey's condition is based upon my many communications with Mabel Cheatham. While Casey's transgressions were not the only topic we discussed, I can state that Mabel was greatly concerned about Casey and the choices s/he was making. Mabel told me that gambling was a problem with Casey's father, grandfather and uncle. All had gambled excessively and indeed, Casey's father was forced to file for bankruptcy due to his debts arising from gambling. Mabel loved Casey but she was concerned that s/he would end up just like her/his father. When Mabel confronted Casey about her/his gambling, Casey would tell Mabel not to worry and that s/he could stop at any time. Mabel did not believe Casey.

14. Dr. James and I disagree on whether Casey is responsible for her/his behavior. My study of addiction, particularly in a workplace setting, leads me to conclude that Casey could not control her/his impulses to gamble. The examples provided by Mabel indicate to me that Casey's compulsion was becoming stronger and that s/he could not control her/his actions. While I have never examined Casey, I am confident that Mabel's recollections about Casey's gambling are accurate.

15. If Casey used the Fun Fair funds to pay for the purchases and to gamble, s/he did not intend to take the funds for an improper purpose. S/he simply could not control herself/himself.

Dated: October 27, 2014

To the best of my knowledge the above is true.

Whitney Williams
Whitney Williams

**NEW YORK STATE
HIGH SCHOOL
MOCK TRIAL
TOURNAMENT
EVIDENCE**

PART V

EXHIBIT _____

**Morningside Heights Booster Club
2013 Fun Fair
Income Statement
August 23rd through August 25th**

Revenues

| | | |
|------------------------------------|--------------|------------|
| Admission Ticket Sales | \$ 25,000 | |
| Ride Ticket Sales | 27,530 | |
| Games of Chance Sales | 17,670 | |
| Dinner Ticket Sales | 28,000 | |
| Cash Donation (Mr. & Mrs. Pearson) | <u>7,000</u> | |
| Total Revenues: | | \$ 105,200 |

Expenses

| | | |
|--------------------------------|--------------|-----------------|
| Cost of Goods Sold | \$ 4,000 | |
| Security Expense | 1,500 | |
| Miscellaneous Supplies Expense | <u>1,500</u> | |
| Total Expenses: | | \$ <u>7,000</u> |

Net Income **\$ 98,200**

Dated: September 17, 2013

Prepared by: Casey Cheatham

Casey Cheatham

EXHIBIT _____

CORRECTED (if checked)

| | | | | |
|--|---|--|--|---|
| PAYER'S name, street address, city or town, province or state, country, ZIP or foreign postal code, and telephone no. Morningside Heights Booster Club, Inc. 428 Hilltop Drive Morningside Heights, NY 10103 | | 1 Rents \$ | OMB No. 1545-0115 2013 Form 1099-MISC | Copy B For Recipient |
| | | 2 Royalties \$ | | |
| | | 3 Other income \$ | | |
| PAYER'S federal identification number 11-1111111 | RECIPIENT'S identification number 123-45-6789 | 5 Fishing boat proceeds \$ | 6 Medical and health care payments \$ | |
| RECIPIENT'S name Casey Cheatham Street address (including apt. no.) 534 Big Hill Road City or town, province or state, country, and ZIP or foreign postal code Morningside Heights, NY 10103 | | 7 Nonemployee compensation \$ 7,000.00 | 8 Substitute payments in lieu of dividends or interest \$ | |
| | | 9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale ^a \$ | 10 Crop insurance proceeds \$ | |
| | | 11 Foreign tax paid \$ | 12 Foreign country or U.S. possession \$ | |
| Account number (see instructions) 987654-3 | | 13 Excess golden parachute payments \$ | 14 Gross proceeds paid to an attorney \$ | |
| 15a Section 409A deferrals \$ | 15b Section 409A income \$ | 16 State tax withheld \$ 0.00 \$ | 17 State/Payer's state no. 11223344-5 | 18 State income \$ 7,000.00 \$ |

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

EXHIBIT _____

Transaction Summary: August 25, 2013

1. Deposit to Checking **\$45,200.00**

1. CASH DEPOSIT TO CHECKING

Sequence# 5789

Deposit to Checking **\$ 45,200.00**

ACCT. NO. 246810

BANK FROM HOME, THE OFFICE, OR THE ROAD.
EMPIREOFNYBANK.COM MAKES BANKING
EASIER! VIEW ACCOUNT STATEMENTS & CHECK
IMAGES, PAY BILLS. SET ATM PREFERENCES.

ENROLL TODAY!

Empire of New York Bank, N.A.
Member F.D.I.C.

EXHIBIT _____

Transaction Summary: June 15, 2013

| | | |
|-----------------------------|--------|----------|
| 1. Cash Advance from Credit | Denied | |
| 2. Withdrawal from Checking | | \$500.00 |

1. CASH ADVANCE FROM CREDIT

Sequence#

Transaction Denied

2. WITHDRAWAL FROM CHECKING

Sequence# 5432

| | |
|------------------------|------------------|
| Withdraw from Checking | \$500.00 |
| Surcharge | 0.00 |
| Total Withdrawal | \$500.00 |
| Balance | \$149,500.00 |

ACCT. NO. 246810

BANK FROM HOME, THE OFFICE, OR THE ROAD.
EMPIREOFNYBANK.COM MAKES BANKING
EASIER! VIEW ACCOUNT STATEMENTS & CHECK
IMAGES, PAY BILLS. SET ATM PREFERENCES.

ENROLL TODAY!

Empire of New York Bank, N.A.
Member F.D.I.C.

EXHIBIT _____

Diagnosing How We Act Fifth Edition DHA-5

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Washington, DC
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Excerpted from:

Section II, Non-Substance Related Addictive Disorders

Gambling Disorder

Criteria Used for Purposes of Diagnosis:

Recurring and problematic gambling behavior that leads to substantial destruction or distress, as characterized by the individual exhibiting at least three (or more) of the following in a two year period:

1. Persistent thoughts about gambling.
2. Irritability or unease when attempting to decrease or end gambling behavior.
3. Repeated attempts to stop gambling.
4. Inability to stop gambling.
5. Gambling when unhappy, depressed, or feeling otherwise distressed.
6. Lying to cover up gambling.
7. Losing a significant relationship or career opportunity because of gambling.
8. Relying on others to fix financial problems caused by gambling.

Specify current severity:

Mild: 3-4 criteria met

Moderate: 5-6 criteria met

Severe: 7-8 criteria met

Diagnostic Features:

Gambling is the process by which an individual consciously risks something of personal value in the hopes of obtaining something of greater value. This behavior is often exhibited in games or at events without a predetermined outcome. It is important to note that there are many culturally acceptable games and events in which risks are wagered. A gambling disorder is categorized by the features of persistent and destructive gambling behavior that interferes with a person

realizing their full potential; and in fact destabilizes the individual, their family, and oftentimes their employment.

Individuals frequently develop a pattern of “chasing one’s losses,” as they feel compelled to wager more, and take on greater risks, the more they gamble. Oftentimes this behavior is precipitated by a loss, and the pattern of “chasing the loss” frequently escalates upon subsequent losses. This can lead to a destructive cycle.

Patterns of gambling can be consistent or sporadic. Typical presentation of gambling disorder involves a pattern of gambling that increases in frequency and the amount of wagering. Gambling may increase during vulnerable periods, such as depression, stress, or grappling with loss.

Individuals with gambling disorder may lie or distort facts to conceal their involvement with gambling.

Gambling disorder may be persistent or in remission. This disorder runs in families due to both environmental and genetic factors. A strong predictor of future gambling problems is a past history of prior gambling.

**NEW YORK STATE
HIGH SCHOOL
MOCK TRIAL
RELATED CASES
AND CASE LAW**

PART VI

***Pappas v. Tzolis*, 20 N.Y.3d 228, 982 N.E.2d 576, 958 N.Y.S.2d 656 [2012]**

“Two key elements of conversion are (1) plaintiff’s possessory right or interest in the property and (2) defendant’s dominion over the property or interference with it, in derogation of plaintiff’s rights” ***Colavito v. New York Organ Donor Network, Inc.*, 8 N.Y.3d 43, 50 [2006]**.

***Abacus Fed. Savings Bank v. Lim*, 75 A.D.3d 472, 905 N.Y.S.2d 585 [1st Dept. 2010]**

“Conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person’s right of possession” ***Colavito v. New York Organ Donor Network, Inc.*, 8 N.Y.3d 43, 49-50 [2006]**.

***Marine Midland Bank v. Russo Produce Co.*, 65 A.D.2d 950, 410 N.Y.S.2d 730 [4th Dept. 1978]**

Money may be the subject of an action for conversion. “The money sued upon must have been the property of or belonged to the plaintiff and a mere claim of moneys paid out by mistake based upon contract will not support an action for conversion.”

***Hamlet at Willow Creek Development Co. v. Northeast Land Development Corp.*, 64 A.D.3d 85, 878 N.Y.S.2d 97 [2nd Dept. 2009]**

Conversion is the unauthorized assumption and exercise of the right of ownership over goods belonging to another to the exclusion of the owner’s rights. To establish conversion plaintiff must prove, “legal ownership or an immediate superior right of possession to a specific identifiable thing and must show that the defendant exercised an unauthorized dominion over the thing in question...to the exclusion of the plaintiff’s rights.” ***Castaldi v. 39 Winfield Associates*, 30 A.D.3d 458 [2006]**.

The intent required for a conversion action is “intent to exercise such control over the property as to interfere with the plaintiff’s use and enjoyment of it.” 2A NY Pattern Jury Instructions 3d 3:10, at 115 (2014).

***Goldberger v. Rudnicki*, 94 AD3d 1047, 944 NYS2d 157 [2d Dept. 2012]**

Defendant A transferred Plaintiff's 50% interest in a partnership (money, accounts receivable and equipment) to a third party without Plaintiff's knowledge or permission. The third party transferred the assets to Defendant B, who now employed Defendant A. The court, in denying Defendant B's motion to dismiss the cause of action alleging conversion against him, held that the complaint sufficiently alleged that Defendant B intentionally, and without authority, assumed or exercised control over the assets belonging in part to Plaintiff.

***Key Bank of N.Y. v. Grossi*, 227 AD2d 841, 642 NYS2d 403 [3d Dept. 1996]**

Defendants, officers of Corporation, failed to remit money to Plaintiff pursuant to a contract. Seeking dismissal of the cause of action alleging conversion, Defendants alleged that they could not be held personally liable for action of Corporation. The court held that: (1) personal liability will be imposed upon corporate officers who commit or participate in the commission of a tort, even if the commission or participation is for the corporation's benefit and (2) the tort of conversion is established when one who owns and has a right to possession of personal property proves that the property is in the unauthorized possession of another who has acted to exclude the rights of the owner.... Where the property is money, it must be specifically identifiable and be subject to an obligation to be returned or to be otherwise treated in a particular manner.

***Hecht v. Components Intl., Inc.*, 22 Misc3d 360, 867 NYS2d 889 [Sup. Ct. Nassau County 2008]**

Plaintiff, former CEO of Defendant Corporation, sued for breach of severance and redemption agreement. Defendant Corporation counterclaimed, alleging that Plaintiff had committed several torts against Defendant Corporation, including conversion. The alleged conversion related to Plaintiff's failure to pay to the Canadian authorities taxes from the sale of computer components to Canadian customers. The court found that after collecting the Canadian taxes from the Canadian customers, Plaintiff was under an obligation to remit them to the Canadian taxing authority. To the extent that Plaintiff failed to use the funds for that specific purpose, he is liable for the tort of conversion.

**NEW YORK STATE
HIGH SCHOOL
MOCK TRIAL
APPENDICES**

MOCK TRIAL TOURNAMENT PERFORMANCE RATING GUIDELINES

| POINTS | |
|--|---|
| 1 Ineffective | <ul style="list-style-type: none"> • Not prepared/disorganized/illogical/uninformed • Major points not covered • Difficult to hear/speech is too soft or too fast to be easily understood • Speaks in monotone • Persistently invents (or elicits invented) facts • Denies facts witness should know • Ineffective in communications |
| 2 Fair | <ul style="list-style-type: none"> • Minimal performance and preparation • Performance lacks depth in terms of knowledge of task and materials • Hesitates or stumbles • Sounds flat/memorized rather than natural and spontaneous • Voice not projected • Communication lack clarity and conviction • Occasionally invents facts or denies facts that should be known |
| 3 Good | <ul style="list-style-type: none"> • Good performance but unable to apply facts creatively • Can perform outside the script but with less confidence than when using the script • Doesn't demonstrate a mastery of the case but grasps major aspects of it • Covers essential points/well prepared • Few, if any mistakes • Speaks clearly and at good pace but could be more persuasive • Responsive to questions and/or objections • Acceptable but uninspired performance |
| 4 Very Good | <ul style="list-style-type: none"> • Presentation is fluent, persuasive, clear and understandable • Student is confident • Extremely well prepared—organizes materials and thoughts well and exhibits a mastery of the case and materials • Handles questions and objections well • Extremely responsive to questions and/or objections • Quickly recovers from minor mistakes • Presentation was both believable and skillful |
| 5 Excellent | <ul style="list-style-type: none"> • Able to apply case law and statutes appropriately • Able to apply facts creatively • Able to present analogies that make case easy for judge to understand • Outstandingly well prepared and professional • Supremely self-confident, keeps poise under duress • Thinks well on feet • Presentation was resourceful, original and innovative • Can sort out the essential from non-essential and uses time effectively • Outstandingly responsive to questions and/or objections • Handles questions from judges and attorneys (in the case of a witness) extremely well • Knows how to emphasize vital points of the trial and does so |
| Professionalism of Team Between 1 to 10 points per team | <ul style="list-style-type: none"> • Team's overall confidence, preparedness and demeanor • Compliance with the rules of civility • Zealous but courteous advocacy • Honest and ethical conduct • Knowledge of the rules of the competition • Absence of unfair tactics, such as repetitive baseless objections and signals |

2015

NEW YORK STATE MOCK TRIAL TOURNAMENT PERFORMANCE RATING SHEET

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

| | | | | | |
|--------------|----------------------|---------------|---------------|--------------------|--------------------|
| SCALE | 1=Ineffective | 2=Fair | 3=Good | 4=Very Good | 5=Excellent |
|--------------|----------------------|---------------|---------------|--------------------|--------------------|

TIME LIMITS

| | | | |
|---------------------------|---------------------------|--------------------------|--------------------------|
| Opening Statements | Direct Examination | Cross Examination | Closing Arguments |
| 5 minutes for each side | 10 minutes for each side | 10 minutes for each side | 10 minutes for each side |

| | | |
|--|-------------------------------|----------------|
| | Plaintiff/ Prosecution | Defense |
|--|-------------------------------|----------------|

| | | | |
|---|---|--|--|
| * OPENING STATEMENTS (A SCORE IS REQUIRED) → | | | |
| Plaintiff / Prosecution - First Witness | Direct and Re-Direct Examination by Attorney | | |
| | Cross and Re-Cross Examination by Attorney | | |
| | Witness Preparation and Credibility | | |
| Plaintiff / Prosecution - Second Witness | Direct and Re-Direct Examination by Attorney | | |
| | Cross and Re-Cross Examination by Attorney | | |
| | Witness Preparation and Credibility | | |
| Plaintiff / Prosecution - Third Witness | Direct and Re-Direct Examination by Attorney | | |
| | Cross and Re-Cross Examination by Attorney | | |
| | Witness Preparation and Credibility | | |

| | | | | | |
|--------------|----------------------|---------------|---------------|--------------------|--------------------|
| SCALE | 1=Ineffective | 2=Fair | 3=Good | 4=Very Good | 5=Excellent |
|--------------|----------------------|---------------|---------------|--------------------|--------------------|

TIME LIMITS

| | | | |
|---------------------------|---------------------------|--------------------------|--------------------------|
| Opening Statements | Direct Examination | Cross Examination | Closing Arguments |
| 5 minutes for each side | 10 minutes for each side | 10 minutes for each side | 10 minutes for each side |

| | | Plaintiff/ Prosecution | Defense |
|---|---|-------------------------------|----------------|
| Defense - First Witness | Direct and Re-Direct Examination by Attorney | | |
| | Cross and Re-Cross Examination by Attorney | | |
| | Witness Preparation and Credibility | | |
| Defense - Second Witness | Direct and Re-Direct Examination by Attorney | | |
| | Cross and Re-Cross Examination by Attorney | | |
| | Witness Preparation and Credibility | | |
| Defense - Third Witness | Direct and Re-Direct Examination by Attorney | | |
| | Cross and Re-Cross Examination by Attorney | | |
| | Witness Preparation and Credibility | | |
| * CLOSING STATEMENTS (A SCORE IS REQUIRED) → | | | |
| * PROFESSIONALISM (1-10 points PER team) (A SCORE IS REQUIRED) → <ul style="list-style-type: none"> • Team’s overall confidence, preparedness and demeanor • Compliance with the rules of civility • Zealous but courteous advocacy • Honest and ethical conduct • Knowledge of the rules of the competition • Absence of unfair tactics, such as repetitive baseless objections and signals | | | |
| * TOTAL SCORE (A SCORE IS REQUIRED) → | | | |

JUDGE’S NAME *(Please print)*

In the event of a tie, please award one point to the team you feel won this round. (circle your choice below)

→ Plaintiff/Prosecution **→ Defense**



ORDER OF THE TRIAL

The trial shall proceed in the following manner:

- Opening statement by plaintiff's attorney/prosecuting attorney
- Opening statement by defense attorney
- Direct examination of first plaintiff/prosecution witness
- Cross examination of first plaintiff/prosecution witness
- Re-direct examination of first plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second plaintiff/prosecution witness
- Cross examination of second plaintiff/prosecution witness
- Re-direct examination of second plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third plaintiff/prosecution witness
- Cross examination of third plaintiff/prosecution witness
- Re-direct examination of third plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Plaintiff/prosecution rests
- Direct examination of first defense witness
- Cross examination of first defense witness
- Re-direct examination of first defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second defense witness
- Cross examination of second defense witness
- Re-direct examination of second defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third defense witness
- Cross examination of third defense witness
- Re-direct examination of third defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Defense rests
- Closing arguments by defense attorney
- Closing arguments by plaintiff's attorney/prosecuting attorney

There can be no deviation from this ordering. Thank you,

Craig R. Bucki, Chair
NYSBA's Mock Trial Subcommittee (11/14)

PREPARING FOR THE MOCK TRIAL TOURNAMENT

Learning the Basics

Teachers and attorneys should instruct students in trial practice skills and courtroom decorum. You may use books, videos and other materials in addition to the tournament materials that have been provided to you to familiarize yourself with trial practice. However, during the competition, you may cite only the materials and cases provided in the Mock Trial Tournament materials contained in this booklet. You may find the following books and materials helpful:

Mauet, Thomas A., Trial Techniques (6th ed.), Aspen Law and Business Murray, Peter, Basic Trial Advocacy, Little, Brown and Company

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

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

Preparation

1. Teachers and attorneys should teach the students what a trial is, basic terminology (e.g., plaintiff, prosecutor, defendant), where people sit in the courtroom, the mechanics of a trial (e.g., everyone rises when the judge enters and leaves the courtroom; the student-attorney rises when making objections, etc.), and the importance of ethics and civility in trial practice.
2. Teachers and attorneys should discuss with their students the elements of the charge or cause of action, defenses, and the theme of their case. We encourage you to help the students, but not to do it for them.
3. Teachers should assign students their respective roles (witness or attorney).
4. Teams must prepare both sides of the case.

5. Student-witnesses cannot refer to notes so they should become very familiar with their affidavits and know all the facts of their roles. Witnesses should “get into” their roles. Witnesses should practice their roles, with repeated direct and cross examinations, and anticipate questions that may be asked by the other side. The goal is to be a credible, highly prepared witness who cannot be stumped or shaken.

6. Student-attorneys should be equally familiar with their roles (direct examination, cross examination, opening and closing statements). Student attorneys should practice direct and cross examinations with their witnesses, as well as practice opening and closing arguments. Closings should consist of a flexible outline. This will allow the attorney to adjust the presentation to match the facts and events of the trial itself, which will vary somewhat with each trial. Practices may include a judge who will interrupt the attorneys and witnesses occasionally. During the earlier practices, students may fall “out of role”; however, we suggest that as your practices continue, this be done less and that you critique presentations at the end. Each student should strive for a presentation that is as professional and realistic as possible.

7. Each team should conduct a dress rehearsal before the first round of the competition. We encourage you to invite other teachers, friends and family to your dress rehearsal.

1

TIME LIMITS

OPENING STATEMENTS

5 minutes for each side

DIRECT EXAMINATION

10 minutes for each side

CROSS EXAMINATION

10 minutes for each side

CLOSING ARGUMENTS

10 minutes for each side

**NEW YORK STATEWIDE HIGH SCHOOL MOCK TRIAL TOURNAMENT
PAST REGIONAL CHAMPIONS**

2014

Brooklyn Technical High School
Notre Dame-Bishop Gibbons High School
Pittsford-Mendon High School
Plainview-Old Bethpage JFK High School
Seton Catholic Central High School
The Brooklyn Latin School
The Mount Academy
William Floyd High School

2013

Frewsburg Central High School
Jamesville-Dewitt High School
Saratoga Central Catholic High School
The Mount Academy
Tottenville High School
William Floyd High School

2012

Clarence High School
Jamesville-Dewitt High School
Notre Dame-Bishop Gibbons High School
Nyack High School
Townsend Harris High School
William Floyd High School

2011

Buffalo Academy of the Sacred Heart
Seton Catholic Central
LEAH Schenectady Homeschool Team
Blind Brook High School
Bronx High School of Science
William Floyd High School

2010

Brighton High School
Vestal High School
LEAH Schenectady Homeschool Team
Scarsdale High School
James Madison High School
William Floyd High School

2009

Pittsford Mendon High School
Lehman Alternative Community School
Madrid-Waddington Central School
Rye Neck High School
Tottenville High School
W. Tresper Clarke High School

2008

Clarence High School Bishop
Ludden Jr./Sr. High School
Notre Dame-Bishop Gibbons High School
Nyack High School
Tottenville High School
East Islip High School

2007

Clarence High School
Vestal High School
Potsdam High School
Blind Brook High School
Bronx School for Law, Government and Justice
Bay Shore High School

2006

Buffalo Academy of the Sacred Heart
Lehman Alternative Community School
LEAH Schenectady Homeschool Team
Blind Brook High School
Marymount High School of New York
William Floyd High School

2005

Buffalo Academy of the Sacred Heart
Vestal High School
Notre Dame-Bishop Gibbons High School
Blind Brook High School
James Madison High School
William Floyd High School

2004

McQuaid Jesuit High School
Union-Endicott High School
Notre Dame-Bishop Gibbons High School
Ramapo High School
Tottenville High School
William Floyd High School

2003

Albany Academy for Girls
Hunter College High School
Minisink Valley High School
Vestal High School
Williamsville North High School
W. Tresper Clarke High School

2002

Pittsford-Mendon High School
Vestal High School
Coxsackie-Athens High School
Ramapo High School
The Rabbi Joseph H. Lookstein Upper School of Rainaz
William Floyd High School

2001

St. Francis High School
Chittenango High School
Albany Academy for Girls
Kingston High School The
Kew-Forest School
William Floyd High School

2000

St. Francis High School
Norwich High School
Notre Dame-Bishop Gibbons High School
Sleepy Hollow High School
The Kew-Forest School
Roslyn High School

1999

Orchard Park High School
Dewitt High School
The Academy of the Holy Names
Mt. Vernon High School
Louis D. Brandeis High School
William Floyd High School

1998

Allendale Columbia School
Seton Catholic Central High School
Scotia-Glenville High School
John S. Burke Catholic High School
The Rabbi Joseph H. Lookstein Upper School of Rainaz
Stella K. Abraham High School for Girls

1997

Canisius High School

Susquehanna Valley High School
Waterford-Halfmoon High School
Mt. Vernon High School
St. Ann's School
Hebrew Academy of the Five Towns and Rockaway

1996

Canisius High School

Fayetteville-Manlius High School
Waterford-Halfmoon High School
Port Jervis High School
Townsend Harris High School
Port Washington Senior High School

1995

Clarence High School

New Berlin Central School
Scotia-Glenville High School
Spring Valley Senior High School
Sheepshead Bay High School
Hebrew Academy of the Five Towns and Rockaway

1994

Buffalo Seminary High School

Seton Catholic Central School
Waterford-Halfmoon High School
Kingston High School
York Preparatory School
Hebrew Academy of the Five Towns and Rockaway

1993

Pittsford Mendon High School Seton

Catholic Central School
Waterford-Halfmoon High School
Kingston High School
Martin Van Buren High School
Syosset High School

1992

Pittsford Mendon High School

Fayetteville-Manlius High School
Ballston Spa High School
Byram Hills High School
Edward R. Murrow High School
Half Hollow Hills High School—West

1991

Brighton High School
Fayetteville-Manlius High School
Academy of the Holy Names
Kingston High School
Andrew Jackson High School
Port Washington Senior High School

1990

Canisius High School
Seton Catholic Central High School
Ballston Spa High School
Kingston High School
Edward R. Murrow High School
Roslyn High School

1989

Canisius High School
Binghamton High School
Waterford-Halfmoon High School
Kingston High School
Riverdale Country School
Roslyn High School

1988

St. Francis High School
Chittenango Central School
Christian Brothers Academy
Spring Valley High School
Packer Collegiate Institute
Half Hollow Hills High School—East

1987

Greece-Athena High School
Binghamton High School
Shenendehowa High School
Ossining High School
Packer Collegiate Institute
Roslyn High School

1986

Clarence Central High School
Binghamton High School
Albany High School
Mount Vernon High School
Jamaica High School
George W. Hewlett High School

1985

Pittsford Mendon High School
Union-Endicott High School
South Colonie High School
Harrison High School
Martin Van Buren High School
Brentwood High School

1984

R. L. Thomas Fayetteville-Manlius High School
Colonie High School
Harrison High School
The Ramaz School
Bay Shore High School

1983

Pittsford Mendon High School
Union-Endicott High School
Keveny Memorial Academy
Ossining High School
The Ramaz School
Half Hollow Hills High School—West

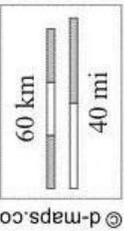
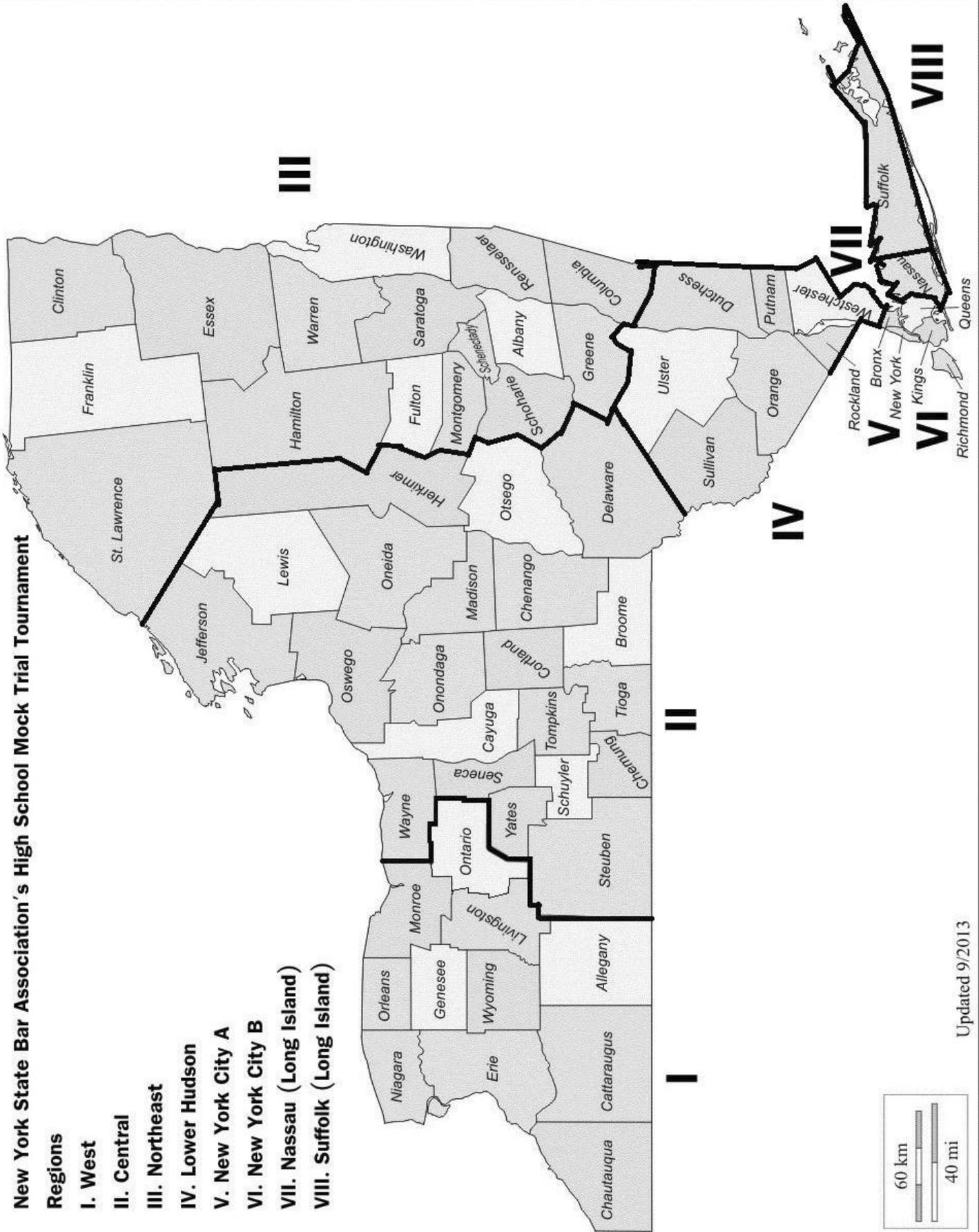
1982

Fairport High School
Maine-Endwell High School
Cohoes High School
North Rockland High School
Jamaica High School
Hewlett High School

New York State Bar Association's High School Mock Trial Tournament

Regions

- I. West**
- II. Central**
- III. Northeast**
- IV. Lower Hudson**
- V. New York City A**
- VI. New York City B**
- VII. Nassau (Long Island)**
- VIII. Suffolk (Long Island)**



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Law, Youth and Citizenship

www.lycny.org

YOUTH COURT...IS IT FOR YOU?

- *Do you wish to practice your courtroom skills in more “real life” situations?*
- *Would you like to be an agent of change in another young person’s life?*
- *Do you want to be part of the solution?*
- *Would you like to work closely with attorneys, judges, and law enforcement officials as you further your legal and civic education?*
- *Would you like to work with like-minded students that are both passionate about the law as well as interested in providing positive peer pressure for those most at risk?*

If you answered yes to any of the questions above, then you should become a Youth Court member.

If your school or community doesn’t have a Youth Court, let us help! The New York State Bar Association’s Law, Youth & Citizenship (LYC) Department and the Association of New York State Youth Courts (ANYSYC) can assist in providing resources and training materials to start a Youth Court in your school or community. With assistance from ANYSYC and LYC and support from your community, you can get a Youth Court started too.

For a list of New York State Youth Courts and more information regarding Youth Courts, please visit:

www.nysyouthcourts.org

