



Law, Youth and Citizenship

New York State's 2008 Statewide High School Mock Trial Tournament Materials

RYAN STRONGARM
Plaintiff

VS.

CHRIS ROCKET
Defendant

Law, Youth and Citizenship
New York State Bar Association®

*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



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November 26, 2007

Dear Mock Trial Students, Teachers and Coaches:

Thank you for participating in the 2008 New York State High School Mock Trial Tournament. This program, now in its 25th year, is sponsored by the New York State Bar Association's Committee on Law, Youth and Citizenship and The New York Bar Foundation. Many thanks to the numerous local bar associations across the state that sponsor mock trial tournaments in their counties and to the County Coordinators who spend many hours managing the local tournaments. Thanks also go to the teacher-coaches and attorney-advisors who dedicate countless hours to students across the state. Most importantly, thank you to all the students who devote their time and energy to preparing for the tournament and never cease to amaze us with their incredible performances year after year. Congratulations to Bronx School for Law, Government and Justice, the winner of the 2007 Mock Trial Tournament.

Please review carefully all of the enclosed mock trial tournament information, paying special attention to the rules of the competition and the simplified rules of evidence with which you must become familiar. The case this year, *Ryan Strongarm v. Chris Rocket*, is a negligence case involving a hit and run accident.

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

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

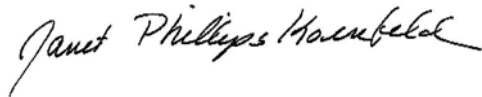
We have not made any significant changes to the tournament rules this year. Over the past few years however, we have received a number of comments stemming from the application of Rules 701 and 702. Rules 701 and 702 are fictitious rules of evidence that do not exist in the actual rules of evidence. They were devised to facilitate a mock trial and without these rules, the participants would have no boundaries in the examination of witnesses. We would like to caution teams against inventing facts and over-using objections based on invention of facts. These types of objections are disruptive to the trial and should be used sparingly in only the most egregious situations. You should remember that an objection based on Rule 701 or 702 is not a substantive application of the law or the rules of evidence and will not likely help your overall presentation.

The tournament finals will be held in Albany on May 18 through 20, 2008. The team that is successful in achieving the regional championship in each of the six mock trial regions will be invited to participate in the finals. The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days that the team participates in the tournament finals in Albany. Regional teams consist of the nine students paid for by The New York Bar Foundation. However, as we have done for the past few years, if schools can cover the additional costs for transportation, rooming and meals, all official team members are invited to attend the State Finals.

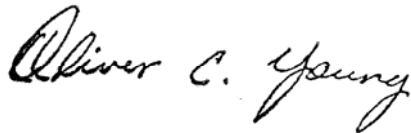
This year's Mock Trial Tournament materials will be posted on the Law, Youth and Citizenship website, www.lycny.org. Throughout the competition, you should check the website for important announcements about the competition.

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

Sincerely,



Janet Phillips Kornfeld, Esq.
Chair, Committee on Law, Youth and Citizenship



Oliver Young, Esq.
Chair, Mock Trial Subcommittee

Subcommittee Members:

Craig Bucki, Esq.
Linda Cohen, Esq.
John Cronan, Esq.
Michael Yood, Esq.

STANDARDS OF CIVILITY

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

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

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

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

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

2007-2008 Mock Trial Case Materials

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PREPARING FOR THE MOCK TRIAL TOURNAMENT

Learning the Basics

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

Mauet, Thomas A., Trial Techniques (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.

PART I

NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT RULES

General Information

1. TEAM COMPOSITION:

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

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

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

2. OBJECTIONS

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

3. DRESS

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

4. STIPULATIONS

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

5. OUTSIDE MATERIALS

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

6. EXHIBITS

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

7. SIGNALS AND COMMUNICATION

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

8. VIDEOTAPING/AUDIOTAPING

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

9. MOCK TRIAL COORDINATORS

- a. The success of the New York State Mock Trial Program depends on the many volunteer county and regional coordinators. The appropriate supervisor will be contacted if any representative

from a high school, parent, coach, or team member addresses a mock trial volunteer or staff person at any level of the competition in an unprofessional or discourteous manner. County Coordinators may also refer any such matters to the Law, Youth and Citizenship Committee of the New York State Bar Association for appropriate action by the LYC Committee.

10. ROLE AND RESPONSIBILITY OF ATTORNEYS

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

11. WITNESSES

- a. Each witness is bound by the facts of his/her affidavit or witness statement and any exhibit authored or produced by the witness that is relevant to his/her testimony. Witnesses may not invent any other testimony. However, in the event a witness is asked a question on cross examination, the answer to which is not contained in the witness's statement or was not testified to on direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial.
- b. If there is an inconsistency between the witness statement or affidavit and the statement of facts or stipulated facts, the witness can only rely on and is bound by the information contained in his/her affidavit or witness statement.
- c. A witness is not bound by facts in other witnesses' affidavits or statements.
- d. If a witness contradicts a fact in his or her own witness statement, the opposition may impeach the testimony of that witness.
- e. A witness's physical appearance in the case is as he or she appears in the trial enactment. No costumes or props may be used.
- f. Witnesses shall not sit at the attorneys' table.

12. PROTESTS

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

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

13. JUDGING

The decisions of the judge are final.

14. TIME LIMITS

- a. The following time limits apply:

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

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

15. TEAM ATTENDANCE AT STATE FINALS ROUND

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

PART II

NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT POLICIES AND PROCEDURES

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

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

1. GENERAL POLICIES

- a. All mock trial rules, regulations, and criteria for judging apply at all levels of the Mock Trial Tournament.
- b. The Simplified Rules of Evidence and Procedure contained in Part III govern the trial proceedings.
- c. Volunteer County Coordinators administer county tournaments. County Coordinators have sole responsibility for organizing, planning, and conducting tournaments at the county level and should be the first point of contact for questions at the county level.
- d. For any single tournament round, all teams are to consist of three attorneys and three witnesses.
- e. Teams must not identify themselves by their school name to the judge prior to the announcement of the judge's decision.
- f. If a team member who is scheduled to participate in a trial enactment becomes ill, injured, or has a serious conflict and as a result cannot compete, then the team may substitute an alternate team member. If an alternate team member is not available, the local coordinator may declare a forfeit or reschedule the enactment at his or her sole discretion.
- g. Members of a team may play different roles in different rounds, or other students may participate in another round.
- h. Winners in any single round will be asked to switch sides in the case for the next round. Where it is impossible for both teams to switch sides, a coin flip will be used to determine assignments in the next round.
- i. Teacher-coaches of teams who will be competing against one another are required to exchange information regarding the names and gender of their witnesses at least three days prior to each round.
- j. No attorney may be compensated in any way for his or her service as an attorney-advisor to a mock trial team or as a judge in the Mock Trial Tournament.

- k. When a team has a student or students with special needs who may require an accommodation, the teacher-coach **MUST** bring this to the attention of the County Coordinator at least two weeks prior to the time when the accommodation will be needed.
- l. The Judge must take judicial notice of the Statement of Stipulated Facts and any other stipulations.
- m. Teams may bring perceived errors in the problem, or suggestions for improvements in the tournament rules and procedures to the attention of the LYC staff at any time. These, however, are not grounds for protests. Any protest arising from an enactment must be filed with the County Coordinator in accordance with the protest rule in the Tournament Rules.

2. SCORING

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

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

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

3. LEVELS OF COMPETITION

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

Region #1: West

Region #2: Central

Region #3: Northeast

Region #4: Lower Hudson

Region #5: New York City

Region #6: Long Island

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

4. COUNTY TOURNAMENTS

- a. All rules of the New York State Mock Trial Tournament must be adhered to at tournaments at the county level.
- b. In these tournaments there are two phases. In the first phase each team will participate in at least two rounds before the elimination process begins, once as plaintiff/prosecution and once as defendant. After the second round, a certain number of the original teams will proceed to the second phase in a single elimination tournament. Prior to the competition and with the knowledge of the competitors, the County Coordinator may determine a certain number of teams that will proceed to the Phase II single elimination tournament. While this number may be more or less than half the original number of teams, any team that has won both rounds based on points, but whose combined score does not place it within the established number of teams, **MUST** be allowed to compete in the phase II single elimination tournament.
- c. The teams that advance to Phase II do so based on a combination of wins and points. All 2-0 teams automatically advance; teams with a 1-1 record advance based on total number of points; if any spots remain open, teams with a record of 0-2 advance, based on their total number of points.
- d. If the number of teams going into the single elimination phase is odd, the team with the most wins and highest combined score will receive a bye. If any region starts the year with an odd number of teams, one team from that region may receive a bye—coin toss, etc.
- e. Phase II of the contest is a single round elimination tournament; winners advance to the next round.
- f. At times, a forfeit may become a factor in determining aggregate point totals and which teams should advance to the single elimination tournament. Each county should review its procedures for dealing with forfeits, in light of the recommended procedures below. Please note that due to the variety of formats in use in different counties, it is strongly urged that each county develop a system which takes its own structure into account and which participants understand prior to the start of the local tournament. That procedure should be forwarded to Rebecca Varno, the New York State Coordinator, before the first round of competition is held.
- g. If a county has an established method for dealing with forfeits, or establishes one, then that rule continues to govern. If no local rule is established, then the following State rule will apply: *In determining which teams will advance to the single elimination tournament, forfeits will first be considered to cancel each other out, as between two teams vying for the right to advance. If such canceling is not possible (as only one of two teams vying for a particular spot has a forfeit victory) then a point value must be assigned for the forfeit. The point value to be assigned should be derived from averaging the team's point total in the three matches (where possible) chronologically closest to the date of the forfeit; or if only two matches were scheduled, then double the score of the one that was held.*

5. REGIONAL TOURNAMENTS

- a. Teams who have been successful in winning county level tournaments will proceed to regional level tournaments. Volunteer coordinators administer regional tournaments. Coordinators have sole responsibility for organizing, planning and conducting tournaments at the regional level. Participants must adhere to all rules of the tournament at regional level tournaments.
- 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 10 days prior to the State Finals. Due to administrative requirements and contractual obligations, the LYC Program must have in its possession the schools' and students' names by this deadline. Failure to adhere to this deadline may jeopardize hotel blocks set aside for a region's teacher-coaches, attorney-advisors and students coming to Albany for the State Finals.

6. STATEWIDE FINALS

- a. Once regional winners have been determined, The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days it participates in the State Finals in Albany. Funding is available only to pay for up to nine students, one teacher coach and one attorney-advisor for each team. Students are two to a room. Regional teams consist of the nine students paid for by The New York Bar Foundation. However, as we have done in the past, if schools can cover additional costs for transportation and room and board, all members of a team are welcome to attend the State Finals.
- b. Additional students and adults attending the State Finals will not be reimbursed for their expenses. The cost of those students, and adults' rooms will not be covered by the New York Bar Foundation grant or the LYC Program. The State Coordinator will not be responsible for making room arrangements and reservations for anyone other than the nine students, one teacher-coach and one attorney-advisor for each team. However, every attempt will be made to pass along any special hotel rates to these other participants. Additional students and adults attending the State Finals may participate in organized meal functions but will be responsible for paying for their participation.
- c. Each team will be provided with a stipend of \$200 to help defray the cost of travel to and from the State Finals. These costs will be reimbursed after the tournament.
- d. Teacher-coaches proceeding to the State Finals must communicate all special dietary requirements and the total number of persons attending to Rebecca Varno, the New York State Coordinator, within 72 hours before the tournament.

- e. 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.
- f. 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.
- g. The final enactment will be a single elimination tournament. Plaintiff/prosecution and defendant will be determined by a coin toss by the tournament director. All teams invited to the State Finals must attend the final trial enactment.
- h. A judge or a panel of judges will determine the winner. The judge or judges’ decision is final.

7. MCLE CREDIT FOR JUDGES AND ATTORNEY-ADVISORS

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

- a. County Coordinators receive and disseminate the appropriate forms (the attorney-advisor or judge form and the attorney biography sheet) to attorneys and judges that participate in their counties.
- b. The County Coordinators will collect all forms from attorneys who participated in the Mock Trial Tournament during the current year, complete the cover form and return it to the State Coordinator within 6 days of the completion of their final round of the tournament.
- c. The State Coordinator compiles all of the forms and submits them to the MCLE board within 7 days of the completion of the State Finals.
- d. Once the tournament has been accredited, certificates will be generated by MCLE staff at the New York State Bar Association and mailed to attorneys.
- e. According to MCLE rules, each attorney-judge or attorney-coach may earn CLE credits by participating in a specific activity. That is, an attorney-judge earns credits for trial time only; an attorney coach earns credits for time spent working with students only, which does not include the advisor’s personal preparation time. A maximum of three (3) CLE credits may be earned for judging or coaching mock trial competitions during any one reporting cycle, i.e., in a two-year period. Finally, an attorney who has been admitted to the New York State Bar in the last two years **MAY NOT** apply for this type of CLE credit.

PART III

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

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

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

SCOPE

- Rule 101: SCOPE. These rules govern all proceedings in the mock trial competition. The only rules of evidence in the competition are those included in these rules.
- Rule 102: OBJECTIONS. The court shall not consider an objection that is not contained in these rules. If counsel makes an objection not contained in these rules, counsel responding to the objection must point out to the judge, citing Rule 102, that the objection is beyond the scope of the listed objections. However, if counsel responding to the objection does not point out to the judge the application of this rule, the court may exercise its discretion and consider such objection.

RELEVANCY

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

Example:

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

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

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

Examples:

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

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

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

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

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

Examples:

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

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

In the same trial, the evidence shows that the victim died after William struck him in the larynx. William's defense is that the death was completely accidental and that the fatal injury suffered by his victim was unintended and a fluke. The prosecution seeks to offer evidence that

William has a black belt in martial arts, and therefore has knowledge of how to administer deadly strikes as well as the effect of such strikes. This evidence would be admissible to show the death was not an accident; rather, William was aware that the strike could cause death.

WITNESS EXAMINATION

a. Direct Examination (attorneys call and question witnesses)

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

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

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

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

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

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

Objections:

“*Objection. Counsel is leading the witness.*”

“*Objection. Question asks for a narration.*”

“*Objection. Witness is narrating.*”

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

Objection:

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

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

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

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

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

Objection:

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

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

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

Example:

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

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

Example:

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

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

Examples:

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

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

Rule 307: IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted, but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the value of this evidence as reliable proof outweighs its prejudicial effect to a party. Crimes of moral turpitude are crimes that involve dishonesty or false statements. These crimes involve an intent to deceive or defraud, such as forgery, perjury, counterfeiting and fraud.

Example:

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

Objections:

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

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

c. Re-Direct Examination

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

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

Objection:

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

d. Re-Cross Examination

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

Objection:

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

e. Argumentative Questions

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

Example:

“Why were you driving so carelessly?”

Objection:

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

f. Compound Questions

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

Examples:

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

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

Objection:

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

g. Asked and Answered Questions

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

Objection:

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

HEARSAY

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

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

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

Example:

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

EXCEPTIONS

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

Rule 402: 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 is perceiving that event.

OPINION AND EXPERT TESTIMONY

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

Example:

(General Opinion)

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

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

Objection:

"Objection. Counsel is asking the witness to give an opinion."

Example:

(Lack of Personal Knowledge)

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

Objection:

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

Example:

(Opinion on Outcome of Case)

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

Objection:

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

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

Example:

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

Objection:

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

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

PHYSICAL EVIDENCE

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

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

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

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

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

Rule 602: *VOIR DIRE OF A WITNESS.* When an item of physical evidence is sought to be introduced under a doctrine that normally excludes that type of evidence (e.g., a document which purports to fall under the business record exception to the Hearsay Rule), or when a witness is offered as an expert, an opponent may interrupt the direct examination to request the judge's permission to make limited inquiry of the witness, which is called *"voir dire."*

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

The *voir dire* must be limited to three questions and any time spent on *voir dire* will be deducted from the time allowed for cross examination of that witness.

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

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

Objection:

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

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

Objection:

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

PROCEDURAL RULES

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

NOTE: The attorney wishing to object (only one attorney may object at a time) should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for it. Then the judge will turn to the attorney who asked the question and the attorney usually will have a chance to explain why the objection should not be

accepted (“sustained”) by the judge. The judge will then decide whether a question or answer must be discarded because it has violated a rule of evidence (“objection sustained”), or whether to allow the question or answer to remain on the trial record (“objection overruled”).

- Rule 802: MOTIONS TO DISMISS. Motions for directed verdict or dismissal at the end of the plaintiff’s or prosecution’s case are not permitted.
- Rule 803: CLOSING ARGUMENTS. Closing arguments must be based on the evidence presented during the trial.
- Rule 804: OBJECTIONS DURING OPENING STATEMENTS AND CLOSING ARGUMENTS. Objections during opening statements and closing arguments are **NOT** permitted.

PART IV

NEW YORK STATE HIGH SCHOOL MOCK TRIAL

TRIAL SCRIPT

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

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

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

SUPREME COURT OF NEW YORK
COUNTY OF LONGCHESTER

| | | |
|-----------------|---|---------------------|
| ----- | x | |
| RYAN STRONGARM, | | |
| | x | |
| Plaintiff, | | Index No. 07/000001 |
| | x | |
| — vs. — | | |
| | x | |
| CHRIS ROCKET, | | |
| | x | |
| Defendant. | | |
| ----- | x | |

CASE SUMMARY¹

1. Chris Rocket is a freshman at Bartmoor College, a local college in Lydon, New York. In June 2007, near the end of her/his senior year at Franklin High, Chris attended the Senior Night Party, an event that has been held one week before the senior prom every year since the late seventies. The Senior Night Party was held in the upstairs loft of Ben’s Restaurant and Grille on June 8th from 7:00 p.m. to 11:00 p.m. Franklin High’s rules prohibit the dispensing and/or consumption of alcoholic beverages at school-sanctioned events, including the Senior Night Party, because the drinking age in New York State is 21. Anyone who violates this policy is suspended for two weeks. A second offense within the same academic year could result in expulsion.

2. Chris owned a yellow 1998 Pontiac Sunbird, a car Chris bought after s/he received his/her driver’s license in June 2006 with the money s/he earned from his/her part-time job bagging groceries. S/he passed the driving test on her/his first try and has never gotten a ticket for a moving violation.

3. On the evening of June 8th, Chris gave her/his best friend, Dana Dowright, a ride to the Senior Night Party. They arrived shortly after the party started. Chris and Dana were together most of the time at the party, dancing and socializing with other friends and acquaintances. Although alcoholic beverages are forbidden, it was well known among the students that some students would sneak in hard liquor to “spike” the punch. There were two large bowls of punch on the table along with bowls of chips and dips, and it was rumored that one of the punch bowls was spiked. At approximately 10:00 p.m., Dana told Chris that s/he was tired and wanted to go home. Chris and Dana had been up very late the night before studying for a big math unit test that was given on the morning of Friday, June 8th. Chris wasn’t ready to leave yet, having gotten a “second wind,” but Dana insisted, and so Chris and Dana left the party. Chris claims to have consumed only

¹ The foregoing summary of the case is provided solely for the convenience of the participants in the Mock Trial Tournament. This overview itself does not constitute evidence and may not be introduced at trial or used for impeachment purposes.

three glasses of punch between the time s/he arrived at the party and the time s/he left to drive Dana home.

4. Chris dropped Dana off at his/her house and then decided to return to the party. Even though it had been an exceptionally warm day, the evening turned cooler so a light fog was beginning to form in low-lying areas. Visibility was fair. Upon her/his return to the party at approximately 10:20 p.m., Chris had several more glasses of the punch. The party began to break up promptly at 11:00 p.m. and everyone left the upstairs loft by 11:15 p.m. About fifteen students decided in Ben's parking lot to continue the party in LaSalle Park off Stahl Road, approximately three miles from Ben's Restaurant and Grille. One student commented, "We have 3 six-packs and two bottles of top-shelf. This should be an awesome party in the park!" By now, Chris' second wind was starting to fade, but s/he decided to join them anyway. S/he gave Pat Smith, who Chris knew from an art class they took together in junior year, a ride to the park. Although Pat appeared to Chris to be more than a little tipsy, s/he nevertheless was coherent. They arrived at the park at approximately 11:20 p.m.

5. The students were in the park for approximately forty to forty-five minutes. They all left in a hurry when they saw the park rangers approaching. LaSalle Park closes at 10:30 p.m. and drinking is prohibited at all times unless a special permit is obtained from the Parks Department. When the park rangers arrived at the location where the students had gathered, they found two unopened six-packs and one unopened bottle of vodka. No one can recall observing Chris consuming any alcoholic beverages while at the park.

6. In the mad dash to avoid being caught by the park rangers, Chris left the park without seeing whether Pat or anyone else needed a ride home. By this time, the fog had become heavier. Chris lived about twelve miles from the park. S/he had to take two major roads to get home from the park: Stahl Road for four miles, then a right onto Colvin Street Extension, which leads into her/his housing development. The posted speed limit on Stahl Road, like most city roadways, is 35 miles per hour. On Colvin Street Extension, the speed limit is 45 mph. Chris couldn't help but think how lucky s/he was that s/he had not been caught by the park rangers with beer and liquor around. If s/he had been caught, there was a good chance that s/he might have been expelled. Last October at Franklin High's Fallfest, Chris was caught drinking by a teacher. The teacher reported the incident to the principal and Chris was suspended for two weeks. S/he pledged at that time that s/he would never take another drink again until s/he turned 21. Besides, Chris was a key player on the soccer team and the coach constantly stressed to the team the importance of avoiding alcohol and illegal drugs. "Clean Living" became Chris' motto.

7. At approximately 11:55 p.m., Fran and Kerry Knowall, a married couple, had stopped on the side of Colvin Street Extension to fix a flat tire. They had just left the home of Fran's sister and her family. Fran's sister's daughter, their niece Stella, had just arrived home after two years of service to the Peace Corps in Botswana. Fran and Kerry were proud of Stella's service. In fact, Fran and Kerry met each other when they were Peace Corps volunteers in Ghana in 1971. They normally were not out at that late hour

because of Fran's poor health, but the time just got away from them during their visit as they reminisced about the Peace Corps. As they were getting ready to jack up their car at approximately 12:10 a.m., they observed a car going by. Fran exclaimed, "That car had better slow down in this fog or else it's going to kill someone!" Fran was able to get the first letter of the license plate, "T". As a former engineer for Ford, Fran knew cars and believed that the car was a Pontiac Sunbird. Several minutes later a second car traveling in the same direction as the first car also went by. Fran was not able to identify the second car or get any part of the license plate.

8. Approximately one mile from where the Knowalls were parked, Chris, whose heart was still pounding from his/her escape from the park, was thinking that suspension from school just before graduation would be devastating. S/he was going to Bartmoor College on a partial math scholarship and a partial soccer athletic scholarship. S/he then remembered that s/he had not called her/his parents to let them know s/he would be out past midnight. Since s/he first began driving, her/his parents insisted that s/he be home on Friday and Saturday nights by midnight. If s/he was going to be delayed, s/he must call home. S/he was fearful s/he might get grounded the next weekend. S/he was thinking s/he had better get home fast. Chris was feeling very stressed out. Of course, s/he did not want her/his parents to see her/him in her/his current state in case they were still up. Thinking that music might calm her/him down, s/he decided to play his/her new smooth jazz CD. There were several CD cases stuck between the console and the front passenger seat. Without taking her/his eyes off the road, s/he reached over to retrieve one of the cases. Looking at it briefly, s/he realized it was not the one s/he wanted. S/he placed the unwanted CD case on the passenger seat and grabbed another one. In an instant, what appeared to be a deer darted toward the front of her/his car from the left (driver) side. The deer stopped before crossing the double yellow center lines. Startled by the deer, Chris swerved to the right to avoid the animal and was looking to his/her left, fearing another deer could be following. The car was slightly on the shoulder when s/he felt a thump. Chris alleges that s/he thought s/he struck another deer running off into the woods, so s/he decided not to stop. Chris claims s/he did not see a jogger running along the right side of the road. S/he arrived home at approximately 12:20 a.m.

9. The Knowalls managed to get their spare tire onto their vehicle at approximately 12:30 a.m. and proceeded home. Up the road slightly, they noticed the flashing lights of several police vehicles and an emergency ambulance. They pulled behind one of the police vehicles and got out of their car to see what was going on. A police officer told them that a person had been struck by a car and was injured. Fran nudged Kerry and reminded her/him of the car they had observed going by. The Knowalls told the police officer that they had seen a vehicle speed past them about thirty minutes earlier. The vehicle has passed at what appeared to Fran to be a high rate of speed. The police officer asked for a description of the car and Fran told the police officer that s/he thought it was a yellow Pontiac Sunbird with a license plate beginning with the letter "T". From this information, the police officer was able to learn that a vehicle fitting that description was registered to a Chris Rocket, residing at 259 Spencer Avenue in Lydon.

10. After obtaining a search warrant from a county court judge at 9:00 a.m. on

Saturday morning, the police arrived at Chris' house at approximately 9:30 a.m. to execute the warrant. Chris was still sleeping. Chris' car was parked in the garage, although normally, it is just parked in the driveway. The search warrant permitted officers to examine the exterior of the vehicle. The police officers observed a dent on the front right side bumper. Chris said s/he had not seen the dent before, but told the police that s/he was pretty sure s/he had hit a deer on Colvin Street Extension while s/he was driving home.

11. The victim, Ryan Strongarm, is an accomplished athlete, having won many marathons. S/he was a member of the US Track and Field Team and was preparing to compete in the 2008 Olympics in Beijing. Ryan was sure s/he would take the gold and that her/his earning potential would approach that of Lance Armstrong. Now, due to the significant injuries s/he has suffered as a result of the accident, including a broken leg, s/he will never be able to compete again.

12. Recounting the events of that night, Ryan said s/he was out running because s/he could not sleep. Running helped to relax her/him. Ryan grew up in New York City and after finishing college at UCLA, moved to Lydon in Longchester County because there was more space to train. S/he was closer to freshwater lakes which allowed him/her to train for triathlon events. S/he did not often run this late in Lydon. Unlike in New York City, there are not any street lights, so the roads can be dark. On the few occasions when s/he has run late at night, Ryan has always felt safe and exercised extreme caution. Ryan was quite accustomed to running at night in Central Park when there was less traffic. S/he was wearing black leggings and a navy blue nylon turtleneck, because it had become a little chilly that evening. Ryan never wore a reflector vest because it was uncomfortable. Ryan's running shoes did have reflectors.

13. Ryan stated that s/he always ran against the traffic so s/he could be seen, which is one of the accepted rules of the road for runners. On the night in question, Ryan maintained that s/he was running on the shoulder of Colvin Street Extension at least two feet from the solid white line on the right side of most roadways, commonly referred to as the "fog line." S/he was quite familiar with this route, having run this route many times. The entire shoulder is approximately three feet wide and is asphalt covered. At the point of the accident, however, there is a fifteen-foot rectangular section of the shoulder that is filled with small construction rocks. This fifteen-foot rectangular section is approximately one foot from the fog line. To avoid the possibility of turning an ankle, Ryan moved toward the fog line causing his/her right foot to come into contact with the fog line. Ryan said that s/he made every effort to get out of Chris' way, but that Chris was weaving and driving too fast for the conditions. S/he claimed that Chris must have seen her/him. Ryan further stated that s/he did not see any deer that night.

14. At the time the Knowalls spoke with the police about the car they believed was involved in the incident, they did not know that the vehicle belonged to the child of their neighbors. John and Glenda Rocket were ex-business associates of the Knowalls. The Knowalls and the Rockets were involved in an import-export business that folded after 18

months. Kerry and Fran lost half of their retirement savings due to what they believed were improper accounting and recordkeeping on the part of the Rockets. Kerry and Fran pledged that if it was the last thing they did, they would make sure that the Rockets would pay for ruining them financially. Fran even said, "I'll make sure the Rockets pay dearly for this!" The Rockets and the Knowalls have not talked in five years.

15. Although the forensic team had not yet examined the vehicle, the police officer who executed the search warrant was convinced that Chris' vehicle had indeed struck the runner. Chris was placed under arrest and was charged with vehicular assault in the second degree (section 120.03 of the Penal Law), a class E felony and leaving the scene of an incident without reporting (section 600[2] of the Vehicle and Traffic Law), also a class E felony. However, because Longchester County District Attorney Hyphong did not believe he could prove beyond a reasonable doubt that Chris was criminally negligent under the circumstances or that s/he knew or should have known that a person had been injured, all charges were dropped. Ryan Strongarm wanted "justice," and so s/he commenced a civil lawsuit against Chris Rocket.

STIPULATIONS

1. 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. Trial of this case has been bifurcated, and the only issue to be tried is liability.

Witnesses for Plaintiff:

Ryan Strongarm
Kerry Knowall
Lindsey Grimm

Witnesses for Defense:

Chris Rocket
Pat Smith
Terry McNeela

QUESTIONS (*Special Verdict Sheet*):

NOTE: This is a “special verdict” sheet. In evaluating Chris Rocket’s liability, if any, to Ryan Strongarm for Ryan’s injuries, a jury would answer these questions to apportion Chris’ and Ryan’s relative fault for the accident on June 9, 2007.

We provide this sample verdict sheet, not for purposes of a jury trial, but to delineate the questions that a jury would need to answer in determining the extent of Chris Rocket’s liability.

- 1: **Was the defendant, Chris Rocket, negligent?**
 If “Yes,” proceed to 2.
 If “No,” find Rocket not liable.

- 2: **Was the defendant’s, Chris Rocket’s, negligence a substantial factor in causing the accident?**
 If “Yes,” proceed to 3.
 If “No,” find Rocket not liable.

- 3: **Was the plaintiff, Ryan Strongarm, negligent?**
 If “Yes,” proceed to 4.
 If “No,” find Rocket 100% liable.

- 4: **Was the plaintiff, Ryan Strongarm’s negligence, a substantial factor in causing the accident?**
 If “Yes,” proceed to 5.
 If “No,” find Rocket 100% liable.

- 5: **What was the percentage of fault of the defendant, Chris Rocket, and what was the percentage of fault of the plaintiff, Ryan Strongarm?**

Defendant, Chris Rocket _____ %
Plaintiff, Ryan Strongarm _____ %

Total must be 100 %

SUPREME COURT OF NEW YORK
COUNTY OF LONGCHESTER

----- x
RYAN STRONGARM,

Plaintiff,

— vs. —

CHRIS ROCKET,

Defendant.
----- x

x

x

x

x

x

Index No. 07/000001

VERIFIED COMPLAINT

The plaintiff, Ryan Strongarm, by attorney, complaining of the defendant, Chris Rocket, alleges as follows:

AS FOR THE FIRST CAUSE OF ACTION

1. At all times mentioned herein, the plaintiff was and is a resident of Longchester County, State of New York.
2. At all times mentioned herein, the defendant was and is a resident of Longchester County, State of New York.
3. At the time of the accident alleged herein, the plaintiff was an accomplished runner, who had won numerous marathons and triathlons and had earned approximately \$500,000 since 2003. At the time of the incident alleged herein, the plaintiff was training for an upcoming tryout for the Olympics.
4. At the time of the accident alleged herein, the plaintiff was in discussions with several potential endorsers and the plaintiff's earning potential would far surpass that of any prior marathon runner.
5. On or about June 8, 2007, the defendant owned a motor vehicle, specifically a 1998 yellow Pontiac Sunbird bearing New York license plate TKO 1682.
6. On or about June 8, 2007, the defendant operated a motor vehicle, specifically a 1998 yellow Pontiac Sunbird bearing New York license plate TKO 1682.
7. On or about June 8, 2007, a Pontiac Sunbird bearing New York license plate TKO 1682, which vehicle was owned and operated by the defendant, came into contact with the plaintiff, causing serious injury to the plaintiff.
8. On or about June 9, 2007, the defendant was negligent, reckless, and careless in the ownership and operation of a yellow Pontiac Sunbird bearing New York license plate TKO 1682.

9. The incident and resulting injuries alleged herein were caused by reason of the negligence, carelessness, and recklessness of the defendant in the ownership, operation, and control of the motor vehicle on or about June 9, 2007.

10. As a result of said negligence, carelessness, and recklessness, the plaintiff was seriously injured, and will never again be able to compete in marathons.

11. The incident and resulting injuries alleged herein occurred without any fault or wrongdoing on the part of the plaintiff contributing thereto.

12. By reason of the foregoing, the plaintiff has sustained a serious injury as defined in Section 5102(d) of the Insurance Law of the State of New York and economic loss greater than basic economic loss as defined in Section 5102(a) of the Insurance Law of the State of New York.

13. The limitations set forth in New York Civil Practice Laws and Rules Section 1601 do not apply by virtue of one or more of the exceptions of New York Civil Practice Laws and Rules Section 1602.

14. By reason of the foregoing, the plaintiff sustained severe and serious personal injuries to the plaintiff's mind and body, some of which injuries have permanent effects on pain and disability, disfigurement, and loss of body function. Furthermore, the plaintiff expended money to obtain medical care to alleviate the suffering and ills sustained as a result of the incident alleged herein; the plaintiff was caused to lose substantial money from future competitions and endorsements; and the plaintiff will continue to suffer similar losses in the future.

15. By reason of the foregoing, the plaintiff was damaged to the sum of \$100 million dollars.

WHEREFORE, the plaintiff demands judgment against the defendant in the sum of \$100 million, together with interest from the date of the incident alleged herein, plus costs and disbursements of this action.

Dated: Lydon, New York
July 28, 2007

Yours, etc.,

TURNER & TURNER LLP
123 Main Street
Lydon, New York

For Plaintiff Ryan Strongarm

SUPREME COURT OF NEW YORK
COUNTY OF LONGCHESTER

----- x

RYAN STRONGARM, x

Plaintiff, x Index No. 07/000001

- vs. - x

CHRIS ROCKET, x **VERIFIED ANSWER**

Defendant. x

----- x

The defendant, Chris Rocket, through the defendant's attorneys, Smith, Vassallo & Armand, answers plaintiff's complaint as follows:

1. The defendant admits paragraphs: 2, 5 and 6.
2. The defendant denies paragraphs: 1, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14 and 15.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

3. Any injuries and/or damages suffered by the plaintiff were the direct result of the plaintiff's conduct in whole or in part by assumption of the risk.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

4. Any injuries and/or damages suffered by the plaintiff in whole or in part that may have been the result of defendant's conduct to any measurable extent was the direct result of the defendant acting within the scope of the Emergency Doctrine.

WHEREFORE, the defendant demands judgment dismissing the complaint and granting such further relief as this Court deems just and proper, including costs and disbursements.

Dated: Fallen River, New York
August 10, 2007

Yours, etc.,

Smith, Vassallo & Armand, LLP
Attorneys for Defendant
86 Court Street
Fallen River, New York

For Defendant Chris Rocket

Affidavit of Ryan Strongarm
Plaintiff

1. My name is Ryan Strongarm, and I live at 32 Deer Run Drive in Lydon, New York. I am 25 years old, and am a graduate of the University of California at Los Angeles.

2. At UCLA, I was a member of the elite track and field team. During my four years at UCLA, our track and field team was the premier team in the country, and won an NCAA Division I national championship during my senior year. I was named the NCAA Division I Most Outstanding Student Athlete in Track & Field that year. I moved to Longchester County after I graduated to be closer to my parents and brothers and so I could have more open terrain on which to train. Also, with all of the freshwater lakes around here, I was able to practice my swimming to improve my triathlon time.

3. Since graduating, I have been competing professionally. I am, or at least I was until Chris Rocket ran me down, a world-class, long-distance runner. I have won first-place medals and prize money in many racing events around the world, including 16 ten thousand meter races, 20 marathons, and 4 triathlon competitions. I was going to compete in the 2008 Olympics in Beijing, and I fully expected to take the gold in all of my events. With multi-million dollar deals involving product endorsements, and TV and possibly movie deals on the horizon, my agent was telling me that I was going to be bigger than Lance Armstrong. Not anymore thanks to Chris Rocket. It all came to a crashing end in the early morning of June 9, 2007.

4. I normally do not run late in the evening because, unlike New York City, there aren't any street lights on my regular route. It can get pretty dark on this route. It's not a problem though because I've run that route so many times, I have every little bump in the road memorized and of course my running shoes have reflectors. Besides, when I was in New York City, I ran at night in Central Park all the time. Now, I don't like wearing a reflective vest because it is very uncomfortable. On the night of June 8th, I just could not fall asleep. So, I threw on a pair of black leggings and a navy blue nylon turtle neck because there was a chill in the air and decided to go for a short jog. Running really relaxes me, and I sleep like a log when I finish. Anyway, I was not going to run on Saturday anyway, so the Friday night jog would not have interfered with my training schedule.

5. I was running along Colvin Street Extension. I am a professional, so I know the rules of the road very well. I was facing the traffic and I was running along the shoulder of the road at least two feet from the solid white line on the right side of the road that most people refer to as a "fog line." The shoulder of the road is about three feet wide and is a blacktop surface. I think it was a little after midnight when, out of nowhere, a car was speeding down the road and suddenly it started swerving. I swear the driver looked out of control. I remember that just before I was struck by Chris' car, I was approaching a section of the road's shoulder that is rock covered. It is a section that is about fifteen-

feet long and probably two feet wide and full of those small construction rocks on which you can easily twist your ankle. To avoid injury I moved over more toward the white fog line. My right foot may have been slightly touching the fog line, but I didn't think anything of it since I would normally be past that fifteen-foot section in a matter of seconds. I did everything I could to get out of the way of Chris' car, but to no avail. S/he had to have seen me. The car was weaving and going way too fast given the conditions. The next thing I remember is waking up in the hospital with a broken leg.

6. When the police stopped by to tell me that they had arrested the person who hit me, they told me that Ms./Mr. Rocket claims that s/he swerved to avoid hitting a deer. I can tell you that I have run in this area for a long time. I have never come across a deer, and I definitely did not see deer the night of the accident.

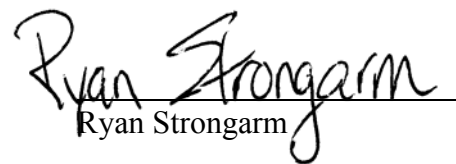
7. I can remember my conversation with a doctor at the hospital about my leg. I had a compound fracture in my right femur and torn ligaments in my right knee. A team of some of the best sports orthopedists operated on my right leg. According to the doctor who did the operation, they needed to insert a titanium rod and a bunch of screws into my leg, because the bone had shattered in several places. Between that and the knee, I was looking at a couple of months of rehab.

8. After the accident, my running career was over. Done with – FINISHED!!! Sure, my broken leg eventually healed but the ligament damage to my right knee causes running to be extremely painful. As a result, the accident squelched my dreams of competing in the Olympics or ever running again for that matter. My face will never be on the front of the Wheaties box and I won't earn a dollar from endorsement deals. I'll be lucky if I get a commercial for Bengay.

9. Had Chris Rocket, in a drunken stupor, not run me off the road on June 9, 2007, the nightmare that I have experienced in losing my career, and in expending so much physical energy to recover from my injuries, would never have happened. I am suing Chris Rocket not only to gain monetary compensation for my ordeal, but also to hold Chris responsible for his/her actions that fated early morning, and to make sure Chris never ruins another person's dreams in the way s/he did mine.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 3, 2007


Ryan Strongarm

Affidavit of Kerry Knowall

1. My name is Kerry Knowall and I live at 2 Ginger Street in Lydon, New York with my spouse, Fran.
2. Fran and I met in Ghana where we served in the Peace Corps in 1971. After our 27-month commitment to the Corps, we returned to Lydon and were married in 1974. The Peace Corps was a wonderful and fulfilling experience and we were proud to help so many people less fortunate than we are.
3. We were not fortunate enough to have children of our own. But we were blessed with many wonderful nieces and nephews. One of our nieces, Stella, Fran's sister's daughter, is a Peace Corps volunteer in Botswana. During the weekend of June 8 and 9, 2007, s/he was home for a brief vacation with her parents, having served approximately 15 months. We were especially proud of Stella because of her service to the Peace Corps. As a child, she loved our stories about our Peace Corps years and I guess she wanted to do her part too.
4. On the Friday, June 8, 2007, we went to Fran's sister's to see Stella before she returned to Botswana. It was great talking to Stella about her adventures as it brought back fun memories about our own time in Africa. She was stationed in a small village where she was teaching English to the school kids. The time just got away from us and before we knew it was almost midnight.
5. We had to leave then because Fran had a stroke a few months ago and s/he couldn't drive anymore because his/her stroke left him/her without the use of his/her left arm and leg. It also took a toll on his/her short term memory.
6. On the night of the accident, we left my sister-in-law's house around 11:45 p.m. It was foggy, but it wasn't too bad when we left. I could see enough to drive if I went slowly.
7. Several miles down Colvin Street Extension we got a flat tire. I pulled over on the shoulder so that I could fix it. I had just gotten the car jacked up when I looked up and saw a yellow car flying down the road past us. I remember Fran shouting, "That car had better slow down in this fog or else it's going to kill someone!" Fran is a former engineer for Ford and was able to identify the car as a Pontiac Sunbird. S/he also was able to get the first letter of the license plate, "T". Several minutes later, a second car went by. The fog seemed thicker then and Fran was not able to identify that car or get any part of the license plate.
8. It was about 12:30 a.m. by the time we were able to get the spare tire on and we continued down Colvin. About a mile or so down the road we saw the flashing lights of an emergency vehicle and several police cars. We pulled behind one of the police cars to see what was going on. We saw them lifting a person into an ambulance. We asked one of the police officers what had happened and were told that the person had been hit by a car and was seriously injured. The police were already considering it a hit-and-run accident. That's when I told the officer that Fran and I had seen a car speed past us when I was fixing our tire.

9. After I told the officer about the car, Fran told the officer that s/he had seen a yellow Pontiac Sunbird and that the first letter of the license plate was "T". The officer took down the information and said s/he would investigate the matter. S/he also took our names and our address and phone number.

10. Ginger Street, where I live, and Spencer Avenue, where the Rockets live, are parallel streets. My back yard abuts the back yard of the Rockets. Our yards are separated by a four foot high chain-link fence. There is a tall hedge inside our side of the fence. Fran and I have known the Rockets since they moved into their house about seven years ago, but we don't know much about what goes on over there. We don't have anything in common with the Rockets and haven't really spoken to them in about five years. That's why, at the time of the accident we didn't know that Chris owned the vehicle allegedly involved in the hit-and-run.

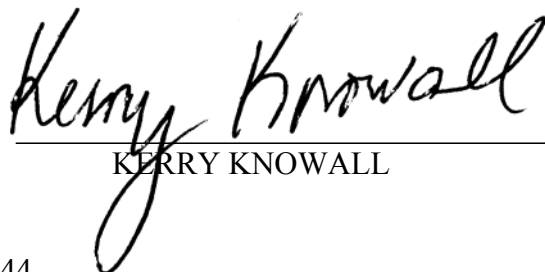
11. In fact, we have had a long standing dispute with the Rockets. What happened is this: Shortly after the Rockets moved into their house we became really good friends. They convinced us to invest in an import-export business. We looked at the business from all angles and believed them when they said it was a sure bet. Besides, the Rockets seemed like honest people. We put a sizeable portion of our retirement savings into the venture only to see it fold after 18 months due to some accounting shenanigans on the part of the Rockets. We lost our whole investment. That is one of the reasons why Fran had to continue to work as an engineer longer than s/he had planned. We had to recoup some of our losses. At the time Fran and I were pretty angry and one of us might have said something foolish like we would "... make sure the Rockets pay big time," but we really didn't mean it. And we especially didn't mean it about Chris. S/he was just a little child at the time! We were just venting, you know. It was our frustration talking.

12. Now Chris is in trouble and I feel just awful about it, but I don't know what I can do about it. I certainly can't lie about what I saw. Especially since this is under oath. I only learned it was Chris' car when the police followed-up with us as part of their investigation.

13. Fran really wanted to testify him/herself but can no longer tell you about what s/he saw that night because s/he had another stroke Labor Day weekend in 2007. Although s/he survived, the stroke caused problems with his/her short-term memory and left her/him without the use of his/her left arm and leg. I am grateful that Fran is still physically with me, but I miss her/his conversation and we just can't do the things we used to do anymore. We were even thinking of going back to Africa to volunteer in Rwanda, but we won't be able to do that now. Fran is a strong-willed person and is doing great with therapy, so maybe next year.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 3, 2007


KERRY KNOWALL

Affidavit of Lindsey Grimm
Lydon Police Officer

1. My name is Lindsey Grimm. I reside with my spouse and our two children at 250 Hopkins Road in the Town of Lydon, New York. I am a Detective with the Lydon Police Department, which I have served in various capacities for the last ten years.
2. Ever since I watched old Dragnet reruns when I was young, I always wanted to become a police officer to protect and serve my fellow citizens. When I enrolled at Buffalo State College after high school, I immediately chose a major in Criminal Justice. Four years later, in May 1997, I graduated from Buffalo State with my Bachelor of Science degree in Criminal Justice, *magna cum laude*. After passing a civil service exam with flying colors one month later, I entered the police academy in Lydon, and began work on patrol that autumn. After being named "Officer of the Year" by the Lydon Tribune for a traffic stop that turned into a bigger drug bust than Lydon had ever seen, I took another civil service exam in 2003, and scored highly enough to be promoted to the rank of Detective.
3. Since becoming a Detective in 2003, I have had the opportunity to work on far more interesting cases, which have included a number of hit-and-run accidents. I also have continued my education. Two years ago, thanks to a grant from the Department of Homeland Security, I attended a month-long, twice-weekly seminar, entitled "Probability for Police," at the Erie Community College City Campus. The seminar taught basic statistics and probability – from "t" tests to "z" scores – and their applications to criminal investigations. I found the subject matter really interesting, and plan to take the advanced course sometime next year.
4. I was scheduled to work the midnight to 8:00 a.m. shift on June 9, 2007. Not long after I arrived at the station at 11:50 p.m., I received a call about excessive noise coming from a home at 1500 Colvin Street Extension. We're cracking down on disruptions to the "quality of life" in Lydon, so I drove in a squad car to the site of the reported incident.
5. As I drove to the site of the reported incident, I heard some chatter over my radio about how some LaSalle park rangers had broken up a party at a shelter in LaSalle Park, and that some liquor was left behind.
6. Upon arriving at 1500 Colvin Street Extension at approximately midnight, I found some members of the soccer team at the local high school. They were playing a heavy metal CD at full blast. I advised them to keep it down, and the teenagers apologized. After about ten minutes, I returned to my squad car, and backed out of the driveway to begin the drive back to the station.
7. Driving northbound along the Colvin Street Extension at about 12:15 a.m., I noticed a person lying along the right side of the road. The person was laying half-way in the right-hand lane, and half-way on the shoulder. Fortunately, I had been driving about 35 miles per hour, because the road was dark, and the conditions were foggy outside.

8. Immediately, I pulled over to the side of the road, turned on my squad car's flashing lights, and called for an ambulance and police backup. I began administering first aid to the person, who looked like s/he had been out for a midnight run, until an ambulance and backup arrived about three minutes later, at about 12:20 a.m.
9. When the ambulance arrived, paramedics took over tending to the injured victim. In the meantime, Patrolman Alberto Rodriguez and I cordoned off the scene to collect any physical evidence.
10. As we were looking around, a blue Ford Fusion pulled over and I approached the car. The couple in the car introduced themselves as Fran and Kerry Knowall. They appeared to be the nosey types who wanted to know what happened. I told them that it looked like a hit and run. Then Fran said to Kerry, "You know, we just saw a car speeding northbound on Colvin Street Extension less than a half an hour ago."
11. Since it appeared that the Knowalls might be able to provide some information about the accident, I interviewed them for several minutes, and took notes. Kerry described how s/he had been changing a flat tire when a yellow car had passed them. I asked what kind of car it was and whether they caught the license plate number. Kerry responded that the car was going too fast. Then Fran said that even though s/he could only make out the first letter, a "T," s/he thought the car was a Pontiac Sunbird. Kerry did say, however, that s/he and Fran were "reasonably sure" the vehicle had a New York license plate. After taking down the Knowalls' contact information, I thanked them for their help and they drove off.
12. The physical evidence that Patrolman Rodriguez and I collected at the accident scene consisted of a New York State driver's license for one Ryan Strongarm and a house key. We also noticed some faint skid marks on the road a few feet in front of the victim's body.
13. I returned to the precinct at about 2:00 A.M. Using the information from the Knowalls, I went online to search a nationwide motor vehicle database. I queried for all yellow Pontiac Sunbirds with a New York license plate having a first letter of "T." I found ten such vehicles registered in all of New York State, but only one – registered to a Chris Rocket of 259 Spencer Avenue in Lydon – belonged to someone who lived within fifty miles of the accident site. The license plate for Chris' vehicle was TKO 1682. "Bingo!" I thought, and I printed my results, and shut down the computer.
14. As I can tell you from having taken the "Probability for Police" course, there are 6,760,000 possible license plate combinations beginning with "T" in New York. This is because every New York non-commercial, non-vanity license plate starts with three of a possible twenty-six letters, and ends in four of a possible ten numerical digits. If T is the first letter, then there are 26 times 26 times 10,000 combinations, or 6,760,000. To narrow this universe down to just ten vehicles was extremely helpful.

15. Next, for each of the ten Sunbird owners, I used an online mapping interface to determine the distance from the owner's address in the computer to the accident site. I then input these distances into a computer algorithm – which I also learned in “Probability for Police” – that determines the likelihood that each owner was driving on Colvin Street Extension. Having completed the algorithm, I can say to a 90% degree of confidence that it was Chris Rocket who drove her/his yellow Pontiac Sunbird on Colvin Street Extension around midnight on June 9.

16. I sought to obtain a search warrant for Chris Rocket's vehicle. At 9:00 a.m., June 9, 2007, I went to the home of a county court judge to obtain the search warrant. About thirty minutes later, Patrolman Rodriguez and I arrived at Chris Rocket's house with warrant in hand. Although the garage door was open, I rang the doorbell, and Chris' mother answered. I announced my presence, that I had a warrant, and that I wished to speak with Chris Rocket. Visibly shaken, she told me that Chris was still sleeping, and that she would go and wake him/her up.

17. While we waited for Chris, I examined the exterior of the yellow Pontiac Sunbird. On the front right-side bumper, I noticed a dent.

18. Ten minutes after my arrival, Chris came downstairs. Chris appeared tired, almost hung over, and Chris' eyes were bloodshot. I asked Chris about the dent, and about whether s/he had been on Colvin Street Extension around midnight. Chris replied that s/he had never noticed the dent before, but was now thinking that s/he might have hit a deer as s/he swerved to avoid hitting another deer as s/he was driving home from LaSalle Park last night.

19. I asked Chris to describe exactly the route that s/he had taken. Chris told me s/he had driven along Stahl Road, then made a right onto Colvin Street Extension, then turned into the Paradise Acres subdivision. Chris' mother said she heard Chris come in around 12:15 or so.

20. Based on the evidence Patrolman Rodriguez and I uncovered, including the large dent in Chris' car and the partial license plate number provided by the Knowalls, Chris was then placed under arrest and was charged with vehicular assault in the second degree and leaving the scene of an incident without reporting. Chris' car was impounded for examination. The Department's forensic team observed that microscopic fibers found near a dent in the car were of the same material as fibers from the victim's clothing. The head of the forensic team cautioned me, however, that the fibers are of a type commonly used in clothing as well as housing and industrial textiles.

21. Also on June 10, 2007, after resetting the odometer, I drove a police vehicle along the exact route that Chris Rocket purported to have taken home. I observed the distance along Stahl Road from LaSalle Park to Colvin Street Extension was four miles, and the total distance from LaSalle Park to Chris' home was 12 miles. The speed limit was 35

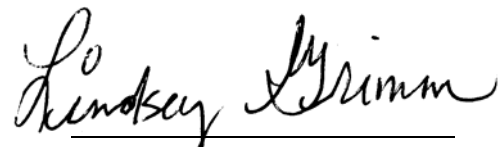
mph on Stahl Road, 45 mph on Colvin Street Extension, and 30 mph in the Paradise Acres subdivision.

22. Therefore, pursuant to his/her account, Chris drove 12 miles in 15 minutes. Because $12/15$ equals $48/60$, Chris had driven at an average speed of 48 miles per hour.

23. Yet because of a supposed lack of evidence, Chris Rocket was never convicted of a crime. This was unfortunate. Granted, I never interviewed the nine other owners of Pontiac Sunbirds that showed up in my online search of the motor vehicle database. Yet all the physical, eyewitness, and statistical evidence points to Chris Rocket as the driver of the vehicle that hit Ryan, and Chris should be held accountable.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 4, 2007


Lindsey Grimm

Affidavit of Chris Rocket

1. My name is Chris Rocket and I live with my parents, John and Glenda Rocket, at 259 Spencer Avenue in Lydon, New York. We moved to this house when I was almost 11 years old. I am 18 years old and a freshman at Bartmoor College in Lydon. The college has a reputation of being a big-time party school, but it also has a high academic rating, especially in math. Last year, I was a senior at Franklin High School. I was a first string wing forward on my high school soccer team and I have received an academic scholarship and partial athletic scholarship to play soccer for Bartmoor.

2. I can't believe what has happened to me over the past year. It all started the night of our high school senior party on June 8, 2007. The party is held every year just before the senior prom. Last year, the party was held in the upstairs loft of Ben's Restaurant and Grille, a local sports bar not far from the high school. The party started at 7:00 p.m. and was scheduled to end at approximately 11:00 p.m.

3. I arrived at the party shortly after it started with my best friend Dana Dowright. I had picked up Dana in my 1998 Pontiac Sunbird, a yellowish-gold sports car. I worked part-time bagging groceries to purchase my car after I got my driver's license in October 2006. I passed my driving test on my first try; so, I am a good driver, but I don't consider myself to be like a Jeff Gordon or a Lindsey Adams.

4. Dana and I were together the whole time at the party. We were just talking, dancing and socializing with our classmates. We were standing practically the whole time near the punch bowls. There were two large punch bowls that were constantly being refilled by one of the waiters. I heard that one of the punch bowls had been "spiked" with liquor. Now, it is against the school rules to consume alcoholic beverages at a school-approved event, such as our senior night party. Student athletes must agree to and acknowledge receiving the school district's code of conduct which expressly prohibits drinking alcoholic beverages, taking illegal drugs and consuming tobacco products. There were three or four teachers at the party serving as chaperones. But with hundreds of students milling around, coupled with the dim lighting and the loud music, the chaperones couldn't have seen everything.

5. Throughout the evening, Dana and I had a few glasses of punch. There is no way the punch we were drinking was spiked. Since my little episode earlier during my senior year, I pledged to myself and my parents that I would not again drink liquor until I am of legal age. What happened was this: Back in October 2006 at the school's Fallfest event, a chaperone saw me take a drink from a bottle in a brown paper bag. I met with the school principal, Mr. Peter Skinner, admitted to what I had done and accepted the two-week suspension. I had come to realize that underage drinking is a stupid, stupid activity to engage in. Besides, to be caught a second time during the same academic year could result in expulsion according to the district's code of conduct because I was a student athlete. For me, that would have meant not graduating on time and losing my admission and partial scholarships to Bartmoor. That would have been devastating. So, you won't catch me drinking again!

6. Around 10:00 p.m., Dana was getting tired and was starting to bug me about leaving. I was not ready to leave even though I was also tired. Earlier that day we had a tough math unit test on conics. I was up well past midnight on Thursday night/Friday morning studying for the test. Dana said s/he did not go to bed until approximately 1:00 a.m. There is a lot of stuff you have to memorize in this advanced geometry unit.
7. Dana prevailed and I drove her/him home. I had planned to go home as well, but since it was still early and I got a second wind, I decided to return to the party, arriving back at around 10:20 p.m.
8. Promptly at 11:00 p.m., everyone started to leave. The lights had come on, the music had stopped and the chaperones were ushering us out. In the parking lot, several students were discussing the possibility of continuing the party in LaSalle Park. At first, I was not interested in going, but with some encouragement from the ringleaders and since I wasn't that tired, I decided to join them. A fellow student, Pat Smith, needed a ride. So, s/he rode with me and we arrived at the park at approximately 11:20 p.m. I believe Pat may have had a little too much of that "spiked" punch because s/he kept dozing off during the 3-mile ride to the park. In between though, we were able to carry on conversation.
9. We were in the park for about 45 minutes when we saw a park ranger jeep coming towards us. We all dashed for our cars and sped out of the park. That was really a close call. To have been arrested for possessing liquor in the park would probably have resulted in expulsion from school for me. I later learned that Pat had gotten a ride in one of the other cars.
10. I may have been going a little faster than the speed limit on Stahl Road as I emerged from the park. Of course, the adrenalin was flowing and I certainly did not want to be falsely accused of drinking alcohol. I did not drink any alcoholic beverages that night. In fact, I have not had anything to drink since that Fallfest outing. But, given the circumstances, it would have been difficult to convince the school principal of that.
11. I slowed down by the time I turned off Stahl Road onto Colvin Street Extension. I'm sure I was not speeding on Colvin Street Extension. Besides, the fog was starting to get thick and, even though I have traveled this road thousands of times, I slowed down to the speed limit because it was getting a little hard to see in front of me. Speeding under these conditions would have been too dangerous.
12. About five miles from my house, my heart was still pounding fast. So, I decided to play my new smooth jazz CD to calm me down. Besides, I did not want my parents to see me in this state in case they were still up. There were several CD cases stuck between the center console and the front passenger seat. Without taking my eyes off the road, I reached over to retrieve one of the cases. After looking at it briefly, it was not the one I wanted. So I threw it on the passenger seat.

13. I then looked over to get the right CD case when in an instant after returning my eyes to the road I saw a deer running toward the left side of my car. The deer was just at the middle double yellow lines as I was just about to pass it when I swerved to avoid hitting it. As I was swerving, the right side of my car was hit by something. I did not see what it was. At the time, I thought it was just another deer. Everyone knows that deer travel in packs. What a close call! I know hitting a deer head-on can really cause a lot of damage to a car. Due to the darkness and because there was not much of a shoulder to get off the road safely, I decided not to stop, hoping that the animal was simply grazed and not critically injured.

14. I arrived home at approximately 12:20 a.m. I normally park my car at the very end of my driveway so as not to block my parents' cars as they exit our 2-car garage. I remembered as I pulled into the driveway that my mother's car was at the repair shop since Wednesday of that week. I had not parked in the garage on that Wednesday night or Thursday night, so I decided why not take advantage of the garage on Friday night. No big deal. I didn't check the right side of my car for damage because the lighting in the garage was dim and, besides, I had arrived home very late. Anyway, I could not do anything about any damage at that time. It could wait until daylight.

15. My parents were asleep when I arrived home. That was lucky. I just quietly went to bed.

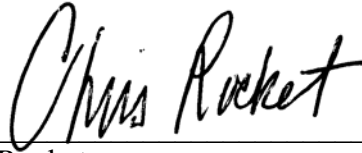
16. The next thing I knew the police were knocking on the door of our house at 9:30 a.m. on Saturday morning with a search warrant. The police said they wanted to look at my car because they suspected it had been involved in a hit-and-run accident. I had no idea what they were talking about. The police examined my car and saw a large dent. I told them that I had seen deer the night before and that I believe I had hit one of the deer. The police then told me that a runner had been struck and severely injured by a car and that my car had been seen in the vicinity at about the time of the accident. The fact that the police officer may have noticed that my eyes were bloodshot and that I looked tired doesn't mean that I had been drinking the night before. Besides, I was up late on Thursday night / Friday morning studying for that math test. I was then placed under arrest and was charged with vehicular assault in the second degree and leaving the scene of an incident without reporting. The police also impounded my car.

17. My parents and I could not believe what was happening to me. I was being accused by the Knowalls, our crazy neighbors, and the police, of injuring that poor runner and leaving the scene of an accident. This is all the doings of Kerry and Fran Knowall. They have never liked my parents ever since some stupid business deal they had going with my parents crashed and burned. They have always blamed my parents when the Knowalls should have been doing their own homework. After all of these years, they have never spoken to us. The Knowalls are very nice people - NOT!

18. Of course, I feel very sorry about the injuries Ms./Mr. Strongarm suffered, but her/his injuries were not my fault. I have never before been involved in a car accident. I had not been drinking that night and I was driving as carefully as I could under the circumstances. All along I have believed this was just a big misunderstanding and that it would all come to a satisfactory end very soon. In fact, the criminal charges were dropped after the District Attorney's Office realized that it could not prove that I was criminally negligent. Then I get hit with this nonsense civil lawsuit. The injuries to Ms./Mr. Strongarm were not my fault.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 3, 2007

A handwritten signature in black ink that reads "Chris Rocket". The signature is written in a cursive, flowing style. The first name "Chris" is written with a large, looped 'C' and the last name "Rocket" is written with a large, looped 'R'. The signature is positioned above a horizontal line.

Chris Rocket

Affidavit of Pat Smith

1. I am a witness to the events that occurred on June 8, 2007 which resulted in Ryan Strongarm's lawsuit against Chris Rocket. I make this affidavit of my own free will and without any compensation.
2. I am 18 years of age and I reside at 5311 Brandymore Drive, in the town of Lydon in the County of Longchester in the State of New York. I am currently a student at Longchester County Junior College and I am enrolled in the hospitality program.
3. In June 2007, I was a senior at Franklin High School.
4. On the night of June 8, 2007, I attended our Senior Night Party in the upstairs loft of Ben's Restaurant and Grille.
5. In attendance at the event were various members of the faculty and approximately 85% of the senior class.
6. The event is held annually one week before the senior prom as the school's way of congratulating the seniors. To the best of my knowledge, I believe this event has occurred every year since the seventies.
7. I have been friends with Chris Rocket since we were juniors in high school. I would not say that we are especially close, as we travel in different social circles. S/he tends to hang out with the smart kids and I tend to hang out with the kids who party and like to have fun.
8. I have always been told that at the senior party, students spike at least one of the punch bowls with whatever booze they can steal from their parents.
9. I believe that everyone, including the teachers, is aware of this tradition as it has been going on forever. In fact, it has become kind of a joke.
10. Our school counselor, Ms./Mr. McNeela was assigned to keep watch over the punch bowls. However, I noticed that Ms./Mr. McNeela left to go to the restroom practically every 15 minutes.
11. I do not know why Ms./Mr. McNeela did not notice that one of the punch bowls was being spiked. It was very obvious to me that students were using his/her frequent absences to add alcohol to one of the punch bowls.
12. I can remember having at least five 8 oz. cups of the spiked punch.
13. Given the fact that I drank so much, I was a little tipsy by the end of the evening. Also, since I did not have much sleep the night before, I was really tired.

14. When the Senior Night Party ended, a few of our classmates decided to go to LaSalle Park to continue the party; so, I asked Chris for a ride.
15. I asked Chris to drive me because I knew s/he does not drink and I felt safe riding with her/him. I observed Chris throughout most of the evening at the Senior Night Party and I recall seeing him/her drinking from the non-spiked punch bowl. I also saw Chris leave with Dana Dowright before the party ended, and Chris returned shortly before the party ended.
16. During the ride, we talked about what great friends we were in our junior year, and about why we grew apart. We had met in art class that year. I do not really remember much of the conversation because I was just about to doze off.
17. I cannot say for sure that Chris did not drink out of the spiked punch bowl, but if Chris did it would be very out of character for her/him.
18. We arrived at the park at approximately 11:20 p.m. I remember this because Chris commented that the park had closed about an hour earlier. I told Chris to stop being such a baby and drive on.
19. We drove to a clearing where the other cars were parked. They had their lights on and they were playing music.
20. I ran out of Chris' car as soon as we stopped and I joined a couple of my friends. Chris went over to talk to other classmates.
21. About forty-five minutes after Chris and I arrived at the park, the park rangers showed up, and I left with another friend.
22. I do not recall much that happened the rest of the night after I fled the park.
23. A few days after the senior party, I noticed Chris didn't have his/her car. I asked her/him what happened. S/he told me that while s/he was driving home on the night of the senior party, a deer struck her/his car.
24. I did ask her/him if s/he stopped to make sure the deer was all right and s/he said that s/he had not because s/he was scared about getting home late.
25. Before we heard of Chris' arrest, there was a rumor in school that some drunk from our party had injured a runner on her/his way home. At the time, no one knew who might have injured the runner and as I said it was just a rumor.
26. When I later heard that Chris was accused of being the driver, I knew that this could not be true because s/he has always been a careful driver and I have never known Chris to drink and drive.


27. After I heard this rumor, I was scared because I could not remember anything after we all fled LaSalle Park. I thought maybe I could have been the drunk because I can not account for my whereabouts after we ran from LaSalle Park. I became very concerned about my own drinking habits and about the possible consequences to myself and others if those habits continued. I want to be able to have a good life. I knew I could not let drinking ruin my life and my future, so I sought assistance through my college and I am currently enrolled in a program that will help me take control of my actions. I have so many plans for my future and I know that I cannot achieve these goals and continue drinking as I did in high school.

28. I did not see Chris Rocket drink any alcohol at the Senior Night Party on June 8, 2007, or later in LaSalle Park.

29. I wish to further state that while I give this affidavit willingly, I was encouraged to give this statement by my sponsor. I participate in a 12 step intervention program.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 3, 2007



PAT SMITH

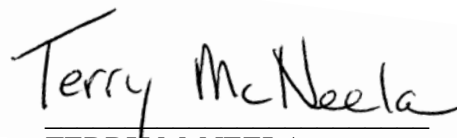
**Affidavit of Terry McNeela
Senior Guidance Counselor**

1. My name is Terry McNeela, and I am the Senior Guidance Counselor at Franklin High School, in Lydon, New York. I have worked at Franklin High School for 20 years, and have held my current position since September 2002.
2. My ties to Franklin High School go back nearly 35 years. I graduated from Franklin High School in 1977, and then proudly returned to teach in September 1986.
3. After graduating from Franklin High School, I attended Big Apple State College, where I received a Bachelor's Degree in History in 1981 and a Master's Degree in Education in 1983. I then taught History at a small high school in upstate New York for three years, when a position opened at Franklin High School. I immediately sent in my résumé and was hired to teach in the History Department. I have worked at Franklin High School since.
4. About ten years ago, I realized that my true passion was with student development, so I applied for an opening in the school's Guidance Department. From 1997 to 2002, I worked as an Associate Guidance Counselor and taught a half-load of History classes. In September 2002, I was promoted to my current position of Senior Guidance Counselor. I still teach one Advanced Placement American History class per semester.
5. My position as the school's Senior Guidance Counselor, as the title suggests, is to provide guidance to the students as they make difficult decisions about college and careers. I cannot imagine having a better job. Each day, I help mold and guide young men and women during some of the formative years of their lives.
6. I have known Chris Rocket and his family for a long time, and have come to know him/her as a truly extraordinary student. Chris' father, Johnny, is one of my oldest and dearest friends, and I have known Chris since the day Chris was born. In fact, Chris often used to babysit for my daughter. Since Chris started at Franklin High School in September 2003, I have gotten to know Chris even better and have enjoyed watching Chris develop as a young adult.
7. I remember the night of June 8, 2007 like it was yesterday. That was the night of the Senior Night Party. We have a longstanding tradition at Franklin High School to throw a party for the graduating seniors. In fact, the first party was held in 1977, the year that I graduated from Franklin High School. The party is usually held the weekend before the Senior Prom. In recent years, the party has been held at Ben's Restaurant and Grille. Ben's is owned by Ben Skinner, the brother of the principal of Franklin High School, so we always get an excellent deal.

8. Of course, the rules of the high school apply at this school-sanctioned event, including, most importantly, NO ALCOHOLIC BEVERAGES. We unfortunately have had trouble enforcing the alcohol policy in recent years. The worst was the 2006 Senior Night Party, which was marred by a couple of miscreants who poured two entire bottles of vodka into the punch while no one was looking. We never caught the kids who did this, but the school had a lot of explaining to do when several parents complained that their children arrived home tipsy and with alcohol on their breaths. The School Board has told us that another incident like this would mean the end to the Senior Night Party.
9. I was one of the chaperones for the 2007 Senior Night Party. Peter Skinner, the Principal of Franklin High School, told me that my one and only job was to guard the punch bowl and make sure that it was not spiked. "We don't need any more embarrassment like last year," he emphasized. The teacher who was supposed to guard the punch bowl the previous year was fired, and I wasn't about to fall down on the job.
10. During the night of June 8, 2007, I watched the punch bowls like a hawk and made sure that no students came near with any alcohol. Throughout the night, I noticed a few seniors eyeing me, probably looking for an opportunity to sneak in, but I wouldn't budge. Even when I had to go to the bathroom, I found another chaperone to guard the punch bowl while I was away.
11. Like any event involving unruly high school seniors, however, the party did not go off without a hitch. About midway through the party, a scuffle broke out among several seniors. I, along with other chaperones, quickly intervened to break it up, although I did get a fat lip in the process.
12. The Senior Night Party ended at around 11:00 p.m. I don't know where the students went afterwards, but I heard a few kids mention an afterparty in LaSalle Park, which is about two miles from Ben's Restaurant and Grille, off Stahl Road. I recall one student said something along the lines of, "Let's go to LaSalle Park. We have five six-packs and four bottles of top-shelf. This should be an awesome party in the park!" I wasn't too sure what he meant, but my job was done. I was exhausted, had a fat lip, and was ready to hit the hay.
13. I saw Chris Rocket throughout the evening of the Senior Night Party. Every so often, Chris would come over to refill his/her punch glass, and we would chat for a bit. Chris was very giddy and gregarious, but Chris is often that way. Chris did not seem at all intoxicated or impaired. I guess I last saw Chris that night at about 10:45 p.m., shortly before the party ended. I have no idea whether s/he joined the group of students that went to LaSalle Park afterwards.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 5, 2007
Lydon, New York


TERRY McNEELA

PART V

NEW YORK STATE HIGH SCHOOL MOCK TRIAL

OFFICIAL EXHIBITS

Exhibit 1 ~ Longchester County Deer Safety Poster

Exhibit 2 ~ Franklin High School Code of Conduct

Exhibit 3 ~ NYS Dept. of Motor Vehicle Police Investigative Report

Exhibit 4 ~ Lydon Police Dept. Crime Scene Lab Report

Exhibit 5 ~ Motor Vehicle Database Online Search Results

What You Need to Know About Driving and Deer Safety

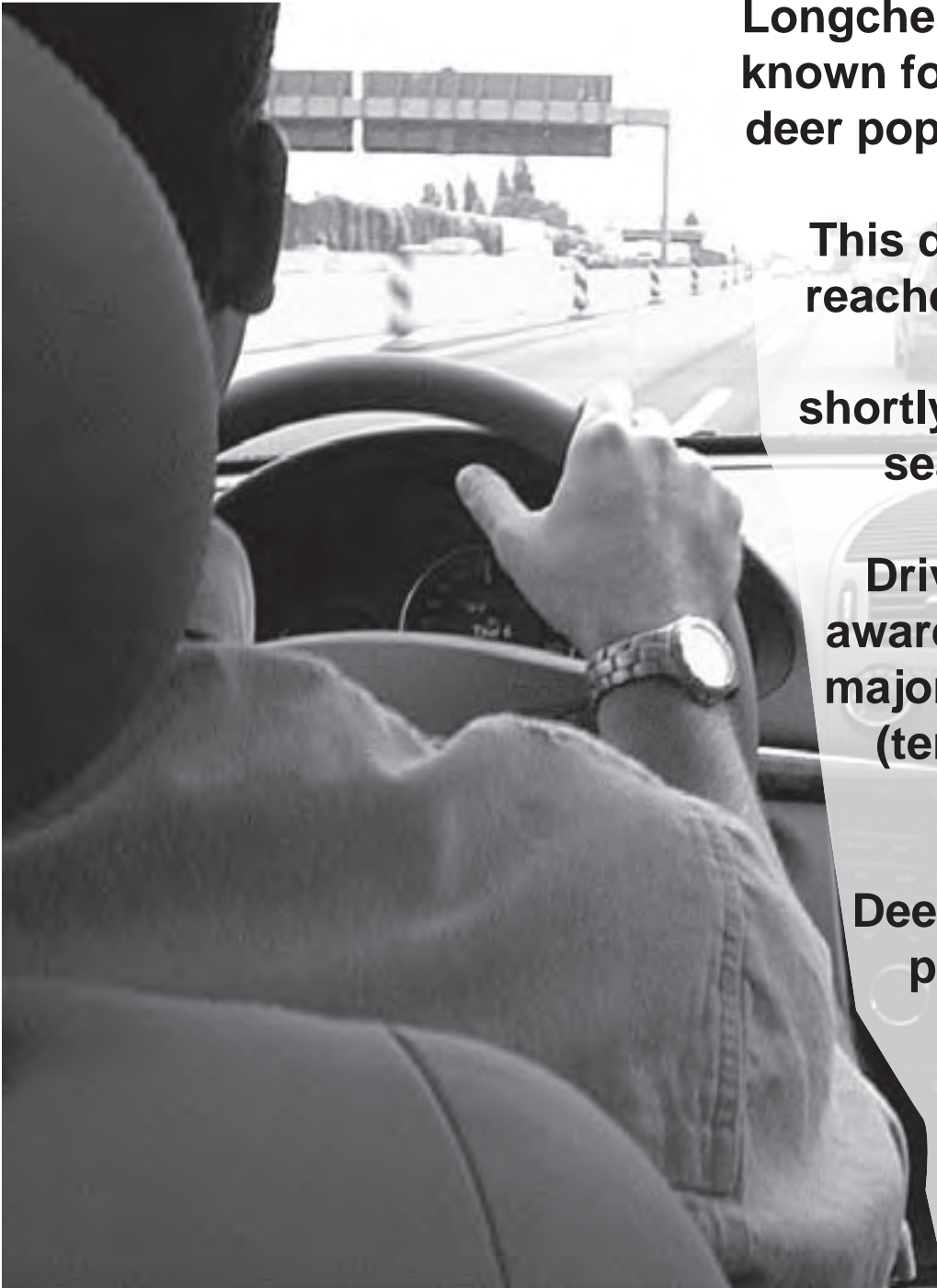


Longchester County is known for having a large deer population.

This deer population reaches its peak every fall, shortly before hunting season begins.

Drivers should be aware that deer cross major as well as small (tertiary) roads all year.

Deer tend to travel in packs and when you see one, there may be more close by.



This information is released by the Longchester County Environmental, Roadway and Infrastructure Committee, 2006.



Franklin High School

Lydon, New York

Code of Conduct for Student Athletes (alcohol, tobacco and illegal drugs)

The student athlete must agree that he or she will not engage in consuming, sharing, transmitting, selling, buying, possessing and/or being under the influence of alcohol, tobacco, and other drugs (including the misuse of prescription medication) at any time. The student athlete understands that a violation will result in a two-week suspension from school. The student athlete further understands that a second violation of this policy within the same academic year may also result in expulsion after a hearing.

I have read and agree to adhere to the Code of Conduct

Participating Athlete's signature

I have reviewed the Code of Conduct and discussed it with the above mentioned athlete

Parent/Guardian signature

New York State Department of Motor Vehicles
POLICE INVESTIGATIVE REPORT
 MV-104A
 DMV COPY

Date of Accident: **June 9, 2007** Day of Week: **Saturday** Military Time: **00:15**
 No. of Vehicles: **1** No. of Injured: **1** No. Killed: **0** Investigated at Scene: **Y**
 Accident Reconstructed: **N** Left Scene: **Y** Police Photos: **N**

VEHICLE 1:

Driver License ID Number: **555-555-555**
 Driver Name - exactly as printed on license: **Chris Rocket**
 Address: **259 Spencer Avenue** City or Town: **Lydon** State: **NY** Zip Code: **13999**
 Date of Birth: **Nov. 5, 1989** Unlicensed: **N** No. of Occupants: **1**
 Public Property Damaged: **N**
 Name - exactly as printed on registration: **Chris Rocket**
 Address: **259 Spencer Avenue** City or Town: **Lydon** State: **NY** Zip Code: **13999**
 Date of Birth: **Nov. 5, 1989** Haz. Mat. Code: **N/A** Released: **N/A**
 Plate Number: **TKO 1682** State of Reg.: **NY** Vehicle Year & Make: **1998 Pontiac**
 Vehicle Type: **Pas** Insurance Code: **FS-20**
 Ticket/Arrest Number(s): **2007-99999-01** Violation Section(s): **PL 120.03; V&T 600(2)**

VEHICLE 2: N

Driver License ID Number: Driver Name - exactly as printed on license:
 Address: City or Town: State: Zip Code:
 Date of Birth: Unlicensed: No. of Occupants:
 Public Property Damaged:
 Name - exactly as printed on registration:
 Address: City or Town: State: Zip Code:
 Date of Birth: Haz. Mat. Code: Released:
 Plate Number: State of Reg.: Vehicle Year & Make:
 Vehicle Type: Insurance Code: Ticket/Arrest Number(s):
 Violation Section(s):

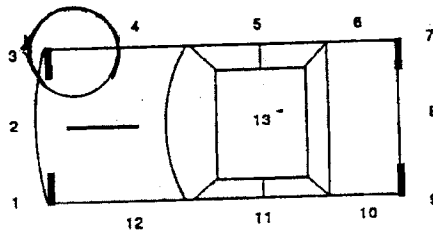
BICYCLIST: N

PEDESTRIAN: Y

OTHER PEDESTRIAN: N

Pedestrian/Bicyclist/Other Pedestrian Location: **Not at Intersection**
 Pedestrian/Bicyclist/Other Pedestrian Action: **Walking/Running Along Highway Against Traffic**
 Traffic Control: **None**
 Light Conditions: **Dark - Road Unlighted**
 Roadway Character: **Straight and Level**
 Roadway Surface Condition: **Wet**
 Weather: **Fog**
 Apparent Contributing Factors:
 - Human: **Alcohol Involvement; Driver Inattention/Distracted; Unsafe Speed**
 - Vehicular: **None**
 - Environmental: **None**
 Pre-Accident Vehicle Action: **Going Straight Ahead**
 Location of First Event: **On Roadway**
 Type of Accident: **Collision With Pedestrian**
 Location of Most Severe Physical Complaint: **Knee-Lower Leg-Foot**
 Type of Physical Complaint: **Fracture - Dislocation**
 Victim's Physical and Emotional Status: **Semiconscious**

Circle the diagram below that shows the area of damage on the vehicle:



Place Where Accident Occurred

County: Longchester

City/Town/Village: Lydon

Road on which accident occurred: Colvin Street Extension near intersecting road: Stahl Road

Accident Description/Officer's Notes

A pedestrian apparently traveling along the right side of Colvin Street Extension near Stahl Road was observed by this officer as said pedestrian was lying in a prone position with part of her/his body in the roadway and the rest of her/his body on the shoulder of the road. The pedestrian, later identified as Ryan Strongarm, had been struck by a vehicle. Strongarm appeared to be severely injured prompting this officer to call for medical assistance. Police backup was also called. Strongarm was taken to the hospital for treatment. After an investigation, this officer learned that the vehicle involved in this accident was registered to a Chris Rocket. Rocket was arrested for violation of PL 120.03 and V&T 600(2). Her/His vehicle was impounded. A forensic analysis is attached and made a part of this report.

Lindsey Grimm

Officer's Signature

Detective

Officer's Rank

Lindsey Grimm

Print or Type Name in Full

1234-987

Badge/ID No.

12

Precinct/Zone

Colvin Street Extension Station

Station/Beat/Sector

Ed Green, Detective

Reviewing Officer

June 12, 2007/14:30 hour

Date/Time Reviewed

Forensic Textile Fiber Examination

Vehicle License Plate No. TKO 1682

A vehicle registered to a Chris Rocket, license plate number TKO 1682, allegedly involved in a hit-and-run accident, was impounded and subjected to a forensic examination. A large dent was observed on the right-side panel toward the front of the vehicle. In the area of the dent, fibers were observed and recovered using tweezers. Fibers were also obtained from the clothing worn by the victim of the hit-and-run at the time of the accident. Using the police lab's micro spectrophotometer, this officer was able to determine that the fibers recovered from the dent area of the vehicle matched fibers taken from the knit running shirt worn by the victim.

Note that fibers were taken from the Franklin High School soccer team jacket that Chris Rocket allegedly wore on the night of the accident. Said fibers were tested and appeared to be in the same class of fibers taken from the knit running shirt worn by the victim.

While this textile fiber, rayon/acetate, is used in a wide variety of applications, including but not limited to clothing, household textiles, carpeting and industrial textiles, there is, nevertheless, a high probability in my opinion that the fibers recovered from the vehicle originated from the knit shirt worn by the victim. However, because this lab adheres to the rules of the International Organization for Standardization (ISO), specifically regarding the examination of trace evidence, this examiner is limited to stating that the questioned fibers are consistent with originating from the evidence garment, the victim's knit running shirt, with the understanding that other similar garments may or may not be distinguishable from the evidence garment by fiber analysis alone.

Jil Grissom

Officer's Signature

Crime Scene Investigator IV
Officer's Rank

Jil Grissom

Print or Type Name in Full

5678-876

Badge/ID No.

Headquarters
Precinct/Zone

Crime Scene Laboratory
Station/Beat/Sector

Horatio Caine, Detective

Reviewing Officer

June 11, 2007/16:45 hour

Date/Time Reviewed

EXHIBIT 5**U.S.A. MOTOR VEHICLE ONLINE DATABASE**
Search Request**USERNAME:** LGRIMM**PASSWORD:** *******QUERY:** MAKE = Pontiac; MODEL = Sunbird; COLOR = yellow; LICENSE = (Txx
xxxx); STATE = NY**RESULTS:** 10 records found.

| NUM | FIRST | LAST | STREET | CITY | PLATE |
|------------|--------------|-------------|----------------------------|---------------|--------------|
| 1 | Andrew | Kenmore | 1000 Route 9-W | Coxsackie | TND 6091 |
| 2 | John | Nowicki | 320 Pine Avenue | Niagara Falls | TSP 7984 |
| 3 | Steven | Washington | 547 University Avenue | Rochester | TVF 8411 |
| 4 | Carl | Lincoln | 850 South Salina Street | Syracuse | TOY 3754 |
| 5 | Chris | Rocket | 259 Spencer Avenue | Lydon | TKO 1682 |
| 6 | Deborah | Parker | 634 Genesee Street | Utica | TGN 9722 |
| 7 | William | Hughes | 425 West 121st Street | New York | TRS 3764 |
| 8 | Adam | Paddington | 4200 Queens Boulevard | Queens | TWE 2198 |
| 9 | Allan | Kennedy | 27 Walnut Street | Binghamton | TLK 2378 |
| 10 | Ashley | Clinton | 300 West Seneca Street | Ithaca | TUZ 8341 |

SEARCH PERFORMED 06-09-2007 at 0330.***END***

PART VI
NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT
RELATED LAW

NEW YORK STATE CASE LAW

Caristo v. Sanzone 96 NY2d 172

At approximately 9:00 a.m., defendant's car slid through a stop sign at the bottom of a downhill slope, striking the plaintiff's car and injuring her. Defendant attempted to pump his brakes, but the condition of the road was described as "a sheet of ice." Plaintiff attempted to swerve to avoid the accident, but was unsuccessful.

The trial court allowed the jury to consider the emergency doctrine and the jury found in favor of the defendant. Generally, the common-law emergency doctrine which "recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context" (citation omitted), provided the actor has not created the emergency.

In the instant case, the Court of Appeals reversed the lower courts and held that as a matter of law there was no qualifying event which justified the trial court permitting the jury to consider the emergency doctrine. Given the defendant's admitted knowledge of the worsening weather conditions, the presence of ice on the hill cannot be deemed a sudden and unexpected emergency.

Burnell v. Huneau 1 AD3d 758

This is a three-car accident, occurring after a car driven by defendant R, traveling at a high rate of speed, tipped over onto two wheels and crossed into a lane of oncoming traffic. Defendant R hit defendant H's car. Plaintiff B was passenger of defendant H. Defendant H had swerved to the left in an attempt to avoid defendant R. Defendant R then slid into defendant W's car. Plaintiff B was injured and sued all defendants.

The appellate court held that defendant H was entitled to summary dismissal of the complaint against him. Citing the general emergency doctrine set forth in *Caristo*, the court ruled that a driver is faced with an emergency situation when a car going in the opposite direction crosses into the driver's lane. "While the question of whether a driver reacted reasonably when faced with an emergency situation is generally for the trier of fact, summary resolution is possible ... when the driver presents sufficient evidence to establish the reasonableness of his or her actions and there is no opposing evidentiary showing sufficient to raise a legitimate question of fact on the issue." (Citation omitted).

Defendant H testified that he first saw defendant R's oncoming car traveling in the proper lane. He looked briefly to his right and used his right hand to change a track on his CD player. When he looked back at the road, defendant R's car was in his lane and he had only a split second to react before the accident occurred.

Kizis v. Nehring, 27 AD3d 1106

Plaintiff Samantha Kizis, by her father and natural guardian, Angelo Rivera, and plaintiff Angelo Rivera, individually, commenced an action seeking damages for injuries sustained by Samantha when the vehicle driven by Samantha's mother, defendant Christa Kizis, in which Samantha was a passenger, was involved in a head-on collision with a vehicle driven by defendant Toi L. Nehring. It is undisputed that the Nehring vehicle crossed the double yellow centerline of a two-lane highway into the path of the Kizis vehicle. Nehring testified at trial that she crossed into the opposing lane of travel to avoid hitting "a large brown what appeared to be a bird" that was either "flying or running" toward her vehicle.

The appellate court held that the lower court erred in charging the emergency doctrine. In view of the vagueness and equivocation in the explanations of Nehring concerning the circumstances that allegedly caused her to cross into the opposing lane of travel, the court concluded that there is no reasonable view of the evidence that Nehring was confronted by a "qualifying emergency", i.e., a sudden and unforeseeable occurrence that would have made it reasonable and prudent for Nehring to react by swerving into the opposing lane of travel and colliding head-on with an oncoming vehicle.

The Court also noted that "It is . . . well settled . . . that the emergency doctrine does not automatically absolve a person from liability for his or her conduct". "Indeed, '[a] driver confronted with an emergency situation may still be found to be at fault for the resulting accident where his or her reaction is found to be unreasonable or where the prior tortious conduct of the driver contributed to bringing about the emergency' ". (Citations omitted).

Weaver v. Trackey 272 AD2d 705

Plaintiff seeks to recover damages resulting from the death of her son who drowned in the Hudson River after falling off a personal watercraft (wave runner) owned by the defendant. Finding for the defendant, the court held that assumption of risk is not an absolute defense but a measure of the defendant's duty of care. By engaging in a sport or recreational activity, a participant consents to those commonly appreciated risks which are inherent in and arise out of the nature of the sport generally and flows from such participation.

Assumption of risk serves to delineate "the standard of care under which a defendant's duty is defined and circumscribed because assumption of risk in this form is really a principle of no duty, or no negligence and so denies the existence of any underlying cause of action. Without a breach of duty by the defendant, there is thus logically nothing to compare with any misconduct of the plaintiff." (Citation omitted)

Deljanin v. St. Nicholas Cathedral and Antonov
(Gische, J., Supreme Court, New York County, May 22, 2006)

While walking along a public sidewalk in front of defendant church, plaintiff hit her forehead on the arm of a large cherry picker. The cherry picker, owned by defendant contractor Antonov hired by defendant church to perform restoration work, was parked in the roadway adjacent to the sidewalk and its arm traversed the sidewalk. Plaintiff was searching for her cell phone when struck. Defendants argued that because plaintiff assumed the risk of walking down the street inattentively, they did not owe her any duty of care.

The court denied the defendant's motion for summary judgment, holding that "the absolute bar due to assumption of risk is not available because the activity the plaintiff was engaging in at the time of her accident, i.e., walking along a city sidewalk, is not an inherently dangerous activity. There is no elevated risk of danger in the activity of walking on a city sidewalk. This is to be distinguished from other activities, like certain athletic or criminal activities, which clearly have elevated risks associated with them. (Citation omitted). Whether plaintiff did or should have observed the cherry picker does not transform a pedestrian activity into an inherently dangerous activity; at most it creates an issue of apportioned liability under an implied assumption of risk doctrine."

Merrill v. State of New York, 110 Misc. 2d 260

In September 1977, Theophane Merrill, his wife Virginia, and their two daughters drove to the New York State Fair in Syracuse. Upon arriving at the fairgrounds, the Merrills were directed by a State trooper to park their car on the grassy median of Interstate 690. The Merrills parked their car on the median, proceeded across the eastbound lanes of the highway, and followed other pedestrians to the fairgrounds.

When the Merrill family left the fair at around midnight, they had trouble finding their car. They walked along the median of the highway searching for the car, with their backs facing eastbound traffic. Although the weather was clear, the road was pitch dark because of the absence of street lights and the State troopers who previously were directing traffic were then gone.

While the Merrills were looking for their car, Michael Sullivan was driving along Interstate 690 in the lane closest to the median. Mr. Sullivan suddenly saw the Merrill family about 50 to 65 feet ahead of him, unsuccessfully attempted to pull his vehicle to the right, and struck Mr. Merrill on the right side of his body, causing serious injury. It was determined that Mr. Merrill was walking slightly to the right of the yellow line on the traveled portion of the road.

The New York Court of Claims first held that the State's conduct constituted negligence. The court concluded that the use of a State expressway for parking created an unreasonably dangerous condition, particularly after dark. The State therefore had a duty either to abate the dangerous condition or to take reasonable measures to protect pedestrians from being struck by high speed motorists. Instead of taking such measures, the State "chose to do nothing. Pedestrians returning to their vehicles were left to their own devices and were forced to travel on an unregulated, unlighted expressway, where they were exposed to traffic."

The court also rejected the State's argument that the sole proximate cause of the accident was the negligence of Mr. Merrill or the acts of third parties, or a combination of both. The court concluded that "[t]he State's permitting motorists to park along Interstate Route 690, coupled with its failure to abate the condition, control pedestrian traffic, or warn motorists of the potential presence of pedestrian traffic on its highways, was a substantial factor in the happening of this accident."

The court held, however, that Mr. Merrill should share a certain amount of responsibility for the accident because he failed to exercise the degree of care that a reasonably prudent person would utilize for his protection under the circumstances. The court explained that it was not reasonable for Mr. Merrill to walk on the traveled portion of the highway with his back to the traffic, when he could have just as easily walked along the shoulder of the road or on the median.

This contributory negligence on the part of Merrill, however, played only a small part in the series of transactions leading to the accident. The court therefore reduced any damages sustained by ten percent to reflect Mr. Merrill's culpable share of responsibility. The court then determined the damages to which the Merrills were entitled.

***Palsgraf v. Long Island Railroad Company* 248 NY 339**

Rule: The risk reasonably to be perceived defines the duty to be obeyed.

Facts: A man carrying a package jumped aboard a car of a moving train and, seeming to be unsteady as if about to fall, a guard on the car reached out to grab him while a guard on the platform pushed the man from behind. A package the man was carrying dislodged, fell to the rail and exploded. The plaintiff, standing many feet away and waiting to purchase a ticket, was injured by scales that fell onto her as a result of the explosion. The defendant had no reason to believe that the man was carrying explosives.

Holding: Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right, and the conduct of the defendant's guards, if a wrong in relation to the holder of the package, was not a wrong in its relation to the plaintiff standing many feet away. Nothing in the situation gave notice that the falling package had in it the potency of peril to persons thus removed.

Although Chief Judge Cardozo did not expressly refer to the issue in the case as one of proximate cause, the decision clearly centers on assessing risk and foreseeability of injury to the plaintiff.

West Group's The Law of Torts (2001), pp. 291-292:

Negligence consists of harm-causing conduct. Neither the defendant's state of mind nor his physical condition are in themselves negligence. Consequently, the mere fact that a driver's mental or physical faculties are affected by alcohol does not necessarily lead to the conclusion that the driver was negligent, not even if he is involved in a collision with a stationary object. If his overt conduct was blameless, intoxication is irrelevant and he is not negligent and not liable. On the other hand, if the driver drove too fast, or failed to keep a lookout, or drove in the wrong lane of traffic, his conduct shows a departure from the reasonable person standard, and liability is appropriate, but only because his conduct was faulty, not because he was intoxicated. (Citations omitted.)

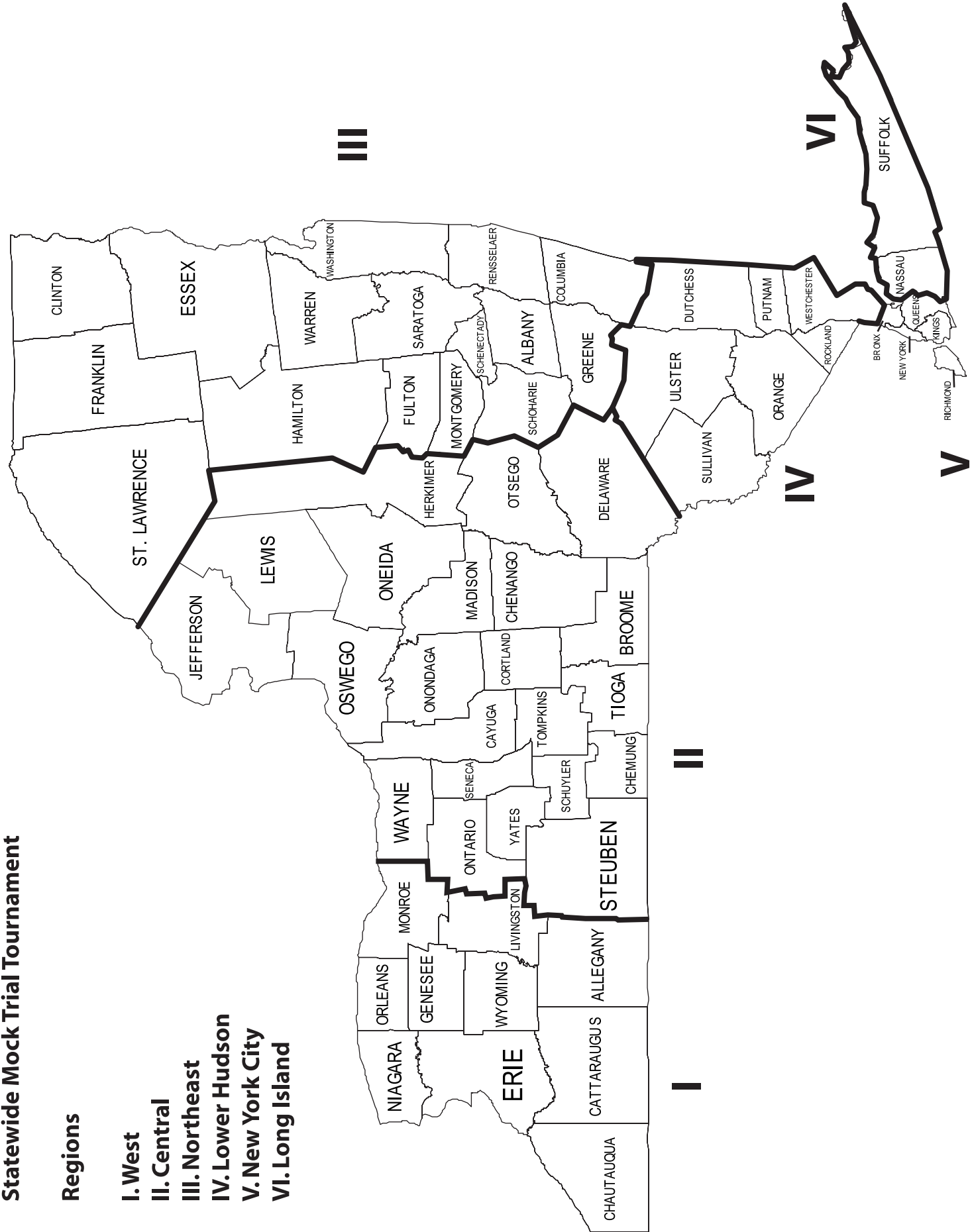
The Law of Torts (2001), p. 292:

Because it is conduct, not intoxication that counts as negligence, it might be argued that evidence of the defendant's intoxication should be excluded as irrelevant and prejudicial except when punitive damages are in issue. But courts do in fact admit evidence of intoxication where that evidence tends to support an inference that the actor's actual conduct fell short of the reasonable prudent person standard. For instance, proof of intoxication may be evidence tending to show that the defendant's perception of danger was impaired. Even if evidence of intoxication is admissible, however, it may be quite insufficient to prove negligence. Whether evidence of intoxication is sufficient to show negligence depends upon the facts. (Citations omitted.)

APPENDICES

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

Statewide Mock Trial Tournament



APPENDIX B

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 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 |
|--|---|

NEW YORK STATE MOCK TRIAL TOURNAMENT PERFORMANCE RATING SHEET

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

1=Ineffective

2=Fair

3=Good

4=Very Good

5=Excellent

Time Limits

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

| | | Plaintiff/ Prosecution | Defense |
|--|---|---------------------------|---------|
| Opening Statements | | | |
| Plaintiff/ Prosecution- First Witness | Direct and Re-Direct Examination by Attorney | | |
| | Cross and Re-Cross Examination by Attorney | | |
| | Witness Performance | | |
| Plaintiff/ Prosecution- Second Witness | Direct and Re-Direct Examination by Attorney | | |
| | Cross and Re-Cross Examination by Attorney | | |
| | Witness Performance | | |
| Plaintiff/ Prosecution- Third Witness | Direct and Re-Direct Examination by Attorney | | |
| | Cross and Re-Cross Examination by Attorney | | |
| | Witness Performance | | |

| | | Plaintiff/ Prosecution | Defense |
|--|---|------------------------|---------|
| Defense- First Witness | Direct and Re-Direct Examination by Attorney | | |
| | Cross and Re-Cross Examination by Attorney | | |
| | Witness Performance | | |
| Defense- Second Witness | Direct and Re-Direct Examination by Attorney | | |
| | Cross and Re-Cross Examination by Attorney | | |
| | Witness Performance | | |
| Defense-Third Witness | Direct and Re-Direct Examination by Attorney | | |
| | Cross and Re-Cross Examination by Attorney | | |
| | Witness Performance | | |
| Closing Statements | | | |
| Professionalism (1-10 points PER team) <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 | |

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



****PENDING FUNDING****

Please send in this form if you would like information on
Mock Trial Camp 2008

NAME:

SCHOOL:

HOME ADDRESS:

YEARS ON MOCK TRIAL TEAM:

GRADE LEVEL FALL 2008:

PHONE NUMBER:

EMAIL:

Please return this information via email to rvarno@nysba.org,

fax to 518-486-1571

or mail to:

NYSBA

c/o Rebecca Varno

1 Elk Street

Albany, NY 12207